

EUROPEAN  
COMMISSION

Brussels, XXX  
[...] (2013) XXX draft

2013/[...] (COD)

Proposal for a

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

**laying down measures to complete the European single market for electronic  
communications and to achieve a Connected Continent**

(Text with EEA relevance)

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

**laying down measures to complete 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)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Objectives of the proposal

The general objective of the proposal is to ~~create~~complete 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;
- ~~those companies~~ providing electronic communications networks and services can operate and provide them wherever ~~the company is~~they are established or ~~its~~their customers are situated in the EU.

~~This can be achieved by a number of specific means~~To achieve these objectives, urgent and decisive action is necessary in the following areas: First, ~~by removing~~to remove unnecessary obstacles in the authorisation regime and in the rules ~~that apply~~applying to service provision. Second, ~~through~~to ensure greater ~~consistency in~~harmonisation for accessing essential inputs: ~~with by guaranteeing~~mobile operators able to access spectrum across the EU on the basis of predictable assignment conditions and coordinated timeframes; ~~and electronic communication service providers enjoying consistent~~to access spectrum across the EU; ~~by harmonising~~European fixed wholesale inputs; so ~~they~~that providers can more easily operate across the single market ~~without excess regulation;~~ and by increasing consistency of the regulatory obligations imposed on incumbent European operators. Third, to guarantee common high levels of consumer protection across the Union ~~will help both consumers and those providing services. This includes, including~~measures onto gradually end mobile roaming; ~~surcharges~~and to safeguardsafeguarding access to the open ~~Internet~~internet.

The ultimate goal is to ~~improve~~underpin European ~~competitiveness~~competitiveness in a world ~~more and more reliant~~which increasingly depends on the digital economy: ~~to function and to grow.~~

For ~~Europeans to be able to enjoy from~~new innovative high quality services ~~to be available to all~~, investment in next generation infrastructure needs to speed up. The right regulatory environment ~~can ensure is crucial to contribute to~~a dynamic and competitive market. It can ~~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 ~~across the EU single market. Achieving this goal requires urgent and decisive action to all industries and users across the EU. In order to achieve 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> which 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.

1 COM [insert final reference]

## 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, ~~and running.~~ Running almost any kind of business, from small ~~startups~~ start-ups to large enterprises, requires access to state of the art services and infrastructure. ~~Yet this~~ This entire ecosystem depends on the connectivity provided by electronic communications networks.

Today, ~~the EU~~ Europe is fragmented into separate national communications markets, each with a limited number of players. EU rules ~~are implemented in diverging ways (on, for example, as concerns~~ authorisations, regulatory conditions, spectrum assignment and consumer protection). ~~are implemented in diverging ways.~~ This patchy scenario raises barriers to entry and ~~makes it difficult and costly~~ increases the costs for operators wanting to provide cross-border services thereby impeding their expansion.

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

~~At the same time, consumers face less choice, less innovative quality services and of lower quality,~~ and they still pay a high price to ~~eat~~ make calls across borders or ~~"roam"~~ 'roam' within the EU. This ~~inhibits their ability~~ means they are unable to enjoy and use ~~make the most of digital services to the full.~~ 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>2</sup> The benefits from a single market for business communication services alone amount to almost €90 billion per year.<sup>3,4</sup>

In the wider economy, increasing ICT investment, improving e-skills in the labour force and reforming the conditions for the Internet economy could boost GDP by an additional 5% up to 2020,<sup>5</sup> and create 3.8 million jobs.<sup>6</sup>

Such 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, content and application providers, from ~~startups~~ start-ups to governments. It also ~~impacts those~~ has an impact on economic sectors ~~(e.g. such as banking, automobile~~ automotive, logistics, retail, energy or transport) ~~who that~~ rely on connectivity to

2 Steps towards a truly internal market for e-communications in the run-up to 2020, Ecorys, TU Delft and TNO, 2012.

3 Business communications, economic growth and the competitive challenge, WIK, 2012.

4 Business communications, economic growth and the competitive challenge, WIK, 2012.

5 Capturing the ICT dividend, Oxford Economics Research, 2011.

6 Quantitative estimates of the demand for cloud computing in Europe and the likely barriers to takeup, IDC, 2012.

enhance productivity, ~~such as~~ for instance, through cloud computing, connected objects and integrated service provision.

### 1.3. Political background

Europe faces a deep economic and social crisis, ~~economically and socially~~. It 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.

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, ~~ensuring 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. -

The cornerstone of the Digital Single Market ecosystem is, however, missing: a truly single market for electronic communications. 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 responds to this challenge. 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 achieving the Single Market in Telecommunications and fostering investment.~~

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

### 2.1. Views of stakeholders and EU institutions

In addition to specific formal consultations and consultative events, the Commission has engaged extensively with a wide range of stakeholder organisations to assess the general state of the electronic communications market and how to establish a single market. ~~These included~~ It has met and received submissions from stakeholders representing all industry segments, consumer organisations, civil society, and national regulators and governments.

This included ~~several consultative events. Such consultation showed~~ These consultations have shown that a large majority of stakeholders share the Commission's problem analysis and recognise the urgency in taking that urgent action is needed.

~~Furthermore, discussions were held with European Institutions. In the Council of Ministers, most delegations shared the problem analysis and recognised the need for measures to achieve~~

a true single market. Discussions in the European Parliament also showed strong support for the objectives of the Commission's proposals, especially on net neutrality and roaming.

## 2.2. Expertise

As part of the Digital Agenda for Europe, 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>7</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, such as for instance on fragmentation of the telecommunications market in Europe.<sup>8</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.<sup>9</sup>

Three policy options were chosen for further analysis. The first option was the baseline scenario, with of maintaining the regulatory framework for electronic communications as it stands. The second option consisted of gradual regulatory harmonisation to foster market integration, using the possibilities offered under the Treaty and the current regulatory framework. The third option considered a single legislative instrument (a Regulation) adapting adjusting the regulatory framework only where necessary to complete a single EU market for electronic communications, based on enhanced EU coordination. The fourth third option included the substance of the third second option, but replaced the current governance structure by a single EU regulator ensuring 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 impact assessment report concludes that the third second option is the best available. It would enhance legal predictability and transparency in the most efficient and timely manner. 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 [...].

<sup>7</sup> Steps towards a truly internal market for e-communications in the run-up to 2020, Ecorys, TU Delft and TNO, 2012.

<sup>8</sup> European Commission, European Economy Occasional Papers 129: Market Functioning in Network Industries - Electronic Communications, Energy and Transport, 2013.

<sup>9</sup>

~~The Impact Assessment Report~~ 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 aims to complete the internal market for electronic communications and ensure 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 current patchwork of differences in national rules creates, while compatible with the existing EU regulatory framework, nevertheless create barriers to operate~~operating and acquireacquiring services across borders, thereby obstructinglimiting the freedom to provide electronic communications, as guaranteed under EU law, and thus. 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 an EU passport regime: 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. In line with measures to enhance the single market for other sectors (such as audiovisual media, financial services, energy, transport and e-commerce), the home-country control of the fully harmonised rules aims to simplify enforcement of these rules for EU operators, while the power by the Commission to require withdrawal of remedies imposed on EU operators ensures consistency. Finally, harmonised procedures and access inputs ensure the possibility of providing pan-European services.~~

~~The principle of subsidiarity is respected as EU intervention will be limited to the extent that is necessary to achieve the internal market. Regulatory obligations inherently linked to the place where a network is located or a service is provided are remain to be decided by the hostnational regulator of that Member State. Revenues levied from spectrum assignments will remain with the Member State concerned. The intervention regarding radioextension of the benefit of general authorisation to use of small-area wireless access networkpoints is confined to unobtrusive, low-power stationsdeployments strictly defined by implementing measures.~~

#### 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. They will not focus on involve 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. -

### **3.4. Fundamental rights**

The proposal's impact on fundamental rights of such as the proposal has been analysed. In particular freedom of expression and information, the reallocation of competences with regard freedom to supervision and public enforcement of conduct a business, non-discrimination, consumer protection rules harmonised by and the proposal is without prejudice to right of any party (whether an undertaking or a consumer) to refer any case to a court. The protection of personal data, has been analysed. In particular, the Regulation will safeguard access to the open Internet 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 completion of the single market by complementing the existing regulatory framework for electronic communications. This includes specific, directly-applicable rights and obligations for providers and end users; as well as it also includes coordinating mechanisms regarding certain inputs at European level with a view to enable facilitate the provision of electronic communications services across borders.**

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

#### **EU passport 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)**

The EU passport sets out the conditions applicable to European electronic communications providers active in more than one Operators wanting to provide services in several Member State. It is 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 (i.e. the home country)-

Holders of such an EU passport) and sets out the conditions applicable to it. The withdrawal and/or suspension of the Single EU authorisation are subject to home-country control for the enforcement of conditions directly applicable under the proposed Regulation and the Roaming Regulation (i.e. consumer protection), as well as. 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 benefit from greater consistency of the regulatory obligations imposed on them throughout the EU thanks to the Commission's power to require national regulators to withdraw draft remedies when



incompatible with EU law in case a European electronic communications provider is concerned.

EU The European passport 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 2III)**

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

In order to facilitate provision of electronic communications 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 is must be ensured by means of:

Defining common principles to be followed in allowing the for rights of 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 use and the assignment and the use of spectrum and.

Simplifying conditions applicable to for the deployment and provision of radio local low-power wireless broadband access network (Wi-Fi ('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 access products to be provided by operators with significant market power.

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. These are accompanied by provisions requiring national regulators to take into account the introduction of such harmonised access products, with due regard for existing investments, existing infrastructure competition, the limited possibilities to physically unbundle some networks 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 under reciprocity on reasonable terms harmonised connectivity products with assured service quality in accordance with the harmonised features. to enable new types of online services.

## **Rights of end-users (Chapter 3IV, Articles 1721 to 2329)**

~~Rules defining the rights of end-users are harmonised, including:~~

~~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 nationalcertain domestic and international services (unless differences are objectively justified),~~
- ~~- mandatory pre-contractual and contractual information ~~as well as the elements of the contract,~~~~
- ~~- increased transparency and facilities to avoid "bill shocks" ~~due to extra-bundle traffic;~~,~~
- ~~- 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 particular in respect of general internet access. At the blocking, slowing down or otherwise degrading of specific same time, the legal framework for specialised services or applications by providers with enhanced quality is not permitted, except in specified circumstances such as to implement a court order clarified.~~~~

## **Facilitating change of provider (Chapter 4V, Article 2430)**

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 ~~also~~ provided, such as cost-orientation, receiving provider-led process, automatic termination of contract with the transferring provider. -

## **Organisational and final provisions (Chapter 5VI, Articles 2531 to 3640)**

**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 regulatory framework, including 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 limit the cases where 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 ~~EU passport operators~~companies with a single EU authorisation, as well as legal certainty concerning the criteria for ~~market analysis~~identifying markets subject to such *ex ante*.

remedies, taking also into account competitive constraints from equivalent services provided by "over-the-top" (OTT) players.

~~With regard to roaming,~~ Article 33 builds on the Roaming Regulation, providing further incentives to operators to provide roaming at domestic price levels. ~~In addition, maximum wholesale charges are reduced in line with cost reductions, while leaving a reasonable margin in relation to capped retail charges to encourage market entry.~~ The proposal introduces a voluntary mechanism for mobile operators to enter into collective 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.

**Finally, changes in the BEREC Regulation ensure are necessary to provide more stability to the body and allow it to play a more strategic role, within particular through the appointment of a full-time 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 BEREC Regulation (Regulation (EC) No 1211/2009), has no impact on the EU budget.

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**laying down measures to complete 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)

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>10</sup>,

Having regard to the opinion of the Committee of the Regions<sup>11</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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 ~~ahead of its October meeting, in order~~ to establish a single market in Information and Communications Technology (ICT) as early as possible. ~~This initiative is a direct response to that call and will help achieving~~ In line with the objectives of the Europe 2020 Strategy's Strategy and with this call, this regulation aims of restoring smart growth and job creation in the Union at establishing a single market for electronic communications by completing and adapting the existing EU Regulatory Framework for Electronic Communications ~~in order to establish a single market for electronic communications.~~

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~~ For Europe to reap the benefits of digital transformation, the EU needs a dynamic single market in electronic communications for all sectors and across all of Europe. Such a truly single communications market is 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.

10 OJ C , , p. .

11 OJ C , , p. .

In a seamless ~~digital~~ single market in electronic communications, the freedom to provide electronic communications networks and services to every customer in the Union and the right ~~for~~ each end-user to choose the best offer available on the market should be ensured and should not be hindered by the ~~legacy~~ fragmentation of markets along national borders. The current regulatory framework for electronic communications does not fully address such fragmentation, with national, rather than ~~Europe~~ 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 ~~EU~~ Union rules in many cases merely define a baseline, and are often implemented in diverging ways ~~in each~~ by the Member ~~State~~ States.

A truly single market for electronic communications, ~~once established, will~~ should promote competition, investment and innovation in new and enhanced networks and services by fostering market integration and cross-border service offerings. It ~~will~~ should thus help ~~achieving to~~ achieve the ambitious high-speed broadband targets set out in the DAE. The growing availability of digital infrastructures and services ~~will~~ should in turn increase consumer choice and quality of service, and contribute to territorial and social cohesion, as well as ~~facilitate mobility across the EU. Finally the establishment of a true single market for electronic communications may 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~~ facilitating mobility across the Union.

~~The benefits arising from a single market for electronic communications will~~ should extend to the wider digital ~~eco-system including EU~~ ecosystem that includes Union equipment manufacturers, content and application providers and the wider economy, ~~including covering~~ sectors such as banking, ~~automobile~~ automotive, logistics, retail, energy, ~~and~~ transport, ~~wh~~ 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 ~~general services such as in particular~~ the health sector ~~will~~ should also benefit from a wider availability of e-government and e-health services. The provision of connectivity through electronic communications networks and services is of such importance to the wider economy and society, ~~as a general purpose technology;~~ that unjustified sector-specific burdens, whether regulatory, ~~fiscal, planning-related~~ or otherwise, should be avoided.

This Regulation ~~should ensure~~ aims at the completion of the single electronic communications market through action on three broad, inter-related axes. First, it should ~~ensure~~ secure the freedom to provide electronic communications services ~~and networks~~ across borders and networks in different Member States, building on the concept of a European Passport to ~~put~~ single EU authorisation which puts in place the conditions for ~~much~~ 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, ~~both not only~~ for wireless broadband communications, for which both licensed and unlicensed spectrum is key, ~~and~~ but also for fixed line connectivity. Third, in the interests of aligning business conditions and ~~of~~ building the digital confidence of citizens, this Regulation should harmonise rules on the protection of end-users, especially consumers, ~~ranging from. This includes rules on~~

non-discrimination~~to~~, contractual information~~to~~, 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.

The measures provided for in thisThis Regulation should therefore complement the existing Union regulatory framework (Directive 2002/19/EC of the European Parliament and of the Council<sup>12</sup>, Directive 2002/20/EC of the European Parliament and of the Council<sup>13</sup>, Directive 2002/21/EC of the European Parliament and of the Council<sup>14</sup>, Directive 2002/22/EC of the European Parliament and of the Council<sup>15</sup>, Directive 2002/58/EC of the European Parliament and of the Council<sup>16</sup>, Commission Directive 2002/77/EC<sup>17</sup>, as well as Regulation (EC) No 1211/2009 of the European Parliament and of the Council<sup>18</sup>, Regulation (EU Regulatory Framework) No 531/2012 of the European Parliament and of the Council<sup>19</sup> and Decision No 243/2012/EU of the European Parliament<sup>20</sup>) and the applicable national legislations adopted in conformity with Union law, by providingestablisg 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, and by coordinating the definition

12 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).

13 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).

14 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).

15 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).

16 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)

17 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.)

18 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).

19 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.)

20 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)

of certain inputs at European level with a view to enable the provision of electronic communications services across national borders.

The measures foreseen provided in this Regulation respect the principle of technological neutrality, that is to say that they neither impose nor discriminate in favorfavour of the use of a particular type of technology.

A European Passport defining the legal framework applicable to an electronic communications operator providing services across Member States is the least onerous regime ensuring the effectiveness of the freedom to provide electronic communications services and networks in the whole Union.. There should not be any need to file multiple notifications in each Member State where services are provided, with only a declaratory notification to be filed with the competent regulatory authorities in the home Member State in order to ensure transparency for the identification of the provider and of its organisation and activities across the Union. The European passportThe 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, in order to ensure that such a European electronic communications provider is entitledthereby 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.

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 degreeextent of the physical infrastructuresinfrastructure needed or the subscriber basenumber of subscribers in the different Member States. The mere request of access or interconnection in one Member State does not entail *per se* the provision of services in that Member State pursuant to Article 3(1) of Directive 2002/19/EC. The declared intention to engage in the cross-border provision ofprovide electronic communications services cross-border or operation ofto operate an electronic communications network shouldin more than one Member State may be supporteddemonstrated by evidence of the substantiated and immediate intention of the provider to direct its operations to other Member States. Such evidence could includeactivities such as negotiation of access agreements on access to networks in a given Member State or availability ofmarketing via an internet site in the language or currency of the targeted Member State.

Irrespective of the different modalities chosen byhow the provider for the operation ofchooses to operate electronic communications networks or the provision ofprovide electronic communications services across borders, the regulatory regime applicable to a European undertaking providing electronic communications services and networkprovider should be neutral vis-à-vis the commercial choices concerningwhich underlie the organisation of functions and activities across Member



States. Therefore, regardless of the corporate structure of the provider undertaking, the home Member State of a European electronic communications provider should in principle be considered to be the one Member State where the strategic decisions concerning the provision of electronic communications networks or services are taken, provided it also represents a non-negligible part of the overall commercial activities in this domain. Where this is not the case, the Member State where the most significant commercial activities take place in the field of electronic communications networks and services.

The single EU authorisation should be considered to be the home Member State. It should be ensured that the means of identifying the home Member State lead to stable results, such as an indicator based on the turnover of existing operators over a multi-year period, including that of each merging entity in the event of consolidation, and confirmed over a reasonable period, while in the case of newly established operators the initial choice should be consistent with the effective centre of gravity of activities over a period of time. Finally, where joint control of a provider is held by two electronic communications providers with their main establishments in different Member States, any notification filed by the parent company should take into account the decision of the subsidiary as for the relevant home jurisdiction among those of the parents for the purpose of this Regulation.

In accordance with Directive 2002/20/EC the general authorisation pursuant to EU Passport cannot in the home Member State. It should not be made subject in the Member States concerned 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.

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.

Where Member States require contribution to the from the sector in order to finance universal service obligations and to the regulatory administrative costs of the competent national regulatory authorities, the criteria and procedures for apportioning contributions should be proportionate and non-discriminatory with regard to European electronic communications providers, in order so as not to hinder cross-border market entry; therefore, 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.

This Regulation envisages an allocation of regulatory and supervisory competences between the home and any host Member State of European electronic communications providers which minimises the restrictions and favours a coordinated supervision and regulation. In order to ensure a consistent and coordinated regulation of an European electronic communications provider, the sector-specific requirements subject to full harmonisation pursuant to this Regulation and in the Roaming Regulation should in principle be applied by the competent national regulatory authorities in the home Member State to all services provided across the Union, such as with regard to

supervision and compliance with the rules concerning transparency, contracts, traffic management, freedom of Internet access and end-users' rights in the single digital market. Moreover, only the competent national regulatory authority in the home Member State should be entitled to restrict the freedom to provide electronic communications services and networks in the Union or in part thereof by withdrawing or suspending the general authorisation, without prejudice to the powers of each concerned Member State concerning rights of use and interim measures. On the other hand, where national regulatory conditions apply to European electronic communications providers in accordance with this Regulation, the competent national regulatory authority in each concerned Member State where services or networks are provided should continue to ensure implementation and supervision of those conditions applicable in its territory in accordance with the powers and procedures provided for in the Framework Directive and the Specific Directives.

~~Some sector-specific conditions, such as conditions concerning access to or security and integrity of networks or access to emergency services, are strongly linked to the place and conditions where such network is located or the service is provided. Therefore, European electronic communications provider may be subject to conditions applicable to electronic communications providers in conformity with Union law in the Member States where it operates, to the extent that this Regulation does not provide otherwise. However, in order~~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 with a view to ensure that consistent regulatory practicepractices are applied in the Single Marketsingle market, in particular as regards measures falling within the scope of Articles 12, 15 or 16 of Directive 2002/21/EC (Framework Directive), or Articles 5 or 8 of Directive 2002/19/EC (Access Directive), it is necessary to ensure that the imposition of remedies on operators in accordance with the regulation applicable in the different Member States concerned does not discriminate, *de iure* or *de facto*, *vis-à-vis* cross-border. European electronic communications providers and ensuresshould 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 EuropeanUnion level for the review of draft remedies decisions on remedies within the meaning of Article 7a of Directive 2002/21/EC in such cases, in order to avoid unjustified divergences in remediesobligations applicable to European electronic communications providers in different Member States.

Finally, itAn 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.

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>21</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>22</sup> have not been sufficient to address this problem.

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, 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.

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.

21 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

22 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).

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 RSPP 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.

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.

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.

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.

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.

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 'WiFi'), as well as networks of low-power small size cellular access points (also called femto-, pico- or metrocalls).

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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. Indeed, without prejudice to the assessment of significant market power, in the presence of two fixed NGA networks, the market conditions are generally considered 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.

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 the normalisation of competitive conditions 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 based on efficient investment, 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.

In the interests of regulatory predictability, key elements of evolving decisional practice under the current Framework 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 price controls on such access to NGA networks, of the relationship between competitive constraints from alternative infrastructures, effective guarantees of non-discriminatory access, and the level of competition in terms of price and quality at retail level. Indeed, in the presence of two NGA networks, the market conditions are generally considered competitive enough to be able to evolve towards the provision of ultra-fast services. [Footnote: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ 2013, C25, p. 1] The establishment of a European virtual broadband

access product under this Regulation with equivalent functionalities, in terms of access to fixed NGA networks, to passive infrastructure access should also be reflected in the assessment by NRAs of the proportionality of alternative access remedies to the NGA networks of SMP operators.

Spectrum is a public good and an essential resource for the internal market for mobile, wireless broadband and satellite communications in the Union. Wireless broadband communications contribute to 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 at providing the Union with the highest possible broadband speed and capacity, as set by Article 3(c) of the Radio Spectrum Policy Programme (RSPP). 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 failing to do so by the deadline laid down in the RSPP, is eloquent testimony to the urgency of action even within the term of the current RSPP.

The application of various national policies creates inconsistencies and fragmentation of the internal market which hamper the roll-out of EU-wide services and the completion of the internal market for wireless broadband communications. It could in particular set unequal conditions for access to such services, hamper competition between undertaking originating in different Member States and stifle investments in more advanced networks and technologies and the emergence of innovative services, 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 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 retain the right to adopt measures to organise their spectrum for public order, public security purposes and defence.

Electronic communications services providers including mobile operators or consortia of 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 spectrum across several Member States with similar conditions, procedures, costs, timing, duration and obligations in harmonised bands. Users or groups of users could simultaneously acquire usage rights in several or all Member States and benefit from complementary spectrum packages, such as a combination of lower and higher frequencies for coverage of densely and less densely populated areas, to provide integrated services over large areas or over the whole Union territory. Initiatives in favour of greater coordination and consistency would also enhance the optimal use of spectrum resources and the general consistency and predictability of the network investment environment. Such predictability would also be greatly favoured by a clear policy in favour of long-term duration, if not the indefinite character, of rights of use related to spectrum, linked in its turn to clear conditions for the transfer, lease or sharing of part of all of the spectrum subject to such an individual right of use.

In line with the principle of subsidiarity and proportionality and without prejudice to the primary competence of Member States including to manage spectrum and set fees



and charges, better coordination and consistency of authorisation conditions should therefore be achieved at least for the bands which have been harmonised for wireless fixed, nomadic and mobile broadband communications, including bands identified at ITU level for International Mobile Telecommunications (IMT) Advanced systems as well as bands used for radio local access networks such as 2.4 GHz and 5 GHz. This should also extend to bands that may be harmonised in the near future for wireless broadband communications, as envisaged in Article 3(b) of the RSPP and in the RSPG Opinion on Strategic challenges facing Europe in addressing the growing spectrum demand for wireless broadband adopted on 13 June 2013, such as the 700 MHz, 1.5 GHz and 3.8-4.2 GHz bands; it could also build on the future results of the spectrum inventory pursuant to Article 9 of the RSPP. Conditions should also be put in place to synchronise the future cycles of reassignment or renewal of individual rights of use of spectrum which have already been granted in bands harmonised for wireless broadband communications, accompanied if necessary by arrangements for the extension on stable terms of rights which may expire before a future synchronised cycle at Union level can begin.

Consistency of the different national spectrum assignment procedures would be favoured by more explicit legislative guidance on the criteria relevant to the timing of authorisation procedures; authorisation duration; fees and administrative charges and their payment modalities; capacity and coverage obligations; definition of the range of spectrum subject to an authorisation process; organisation and size of spectrum blocks, bandwidth and channels, the content of multi-band selection procedures; the need to respect objective threshold requirements for imposing conditions designed to promote effective competition, such as the limitation of the amount of spectrum accessible by an individual operator, reservations for new entrants or access conditions for service providers; conditions for the tradability of rights of use, in whole or in part, including sharing conditions, which ensure flexible and liquid markets.

Investments in rapid roll-out of infrastructure and new technology could be encouraged, and pass-on of the attendant cost advantages could promote widespread take-up and high wireless data consumption by end users, if Member States ensure that the burden of fees collected for the granting of rights to use spectrum remains reasonable and tied to optimal spectrum management, and is structured to achieve a balance between upfront payments and payments spread over the duration of the rights.

The alignment of the timing of assignments of newly harmonised spectrum for wireless broadband communications, and of the duration of the rights so assigned, is especially apt in order to promote the roll-out of advanced networks and services under predictable and consistent conditions throughout the Union, and to 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, to a greater extent than has recently been the case, European spectrum policy. A harmonisation procedure for the timetables for assignment and minimum duration of rights of use in such bands should therefore be established, as well as upstream arrangements to monitor and ensure timely compliance. This harmonisation procedure should extend in time to existing rights of use. While minimum durations and reassignment or reassignment cycles should be sufficiently long to provide stable investment conditions, the envisaged measures should not be a barrier to the grant of rights of indefinite duration.

As regards the other main substantive conditions which may be attached to rights of use of spectrum for wireless broadband, the convergent application by individual Member States of the criteria to be 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 authorisation procedure 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.

Complementary wireless access systems known as radio local access networks (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. RLAN is a wireless broadband technology that benefits from harmonised spectrum resources, in the 2.4 GHz and the 5 GHz bands, which is freely accessible by anyone using compliant equipment without requiring an individual authorisation; this has allowed widespread deployment of interoperable RLAN-capable devices and access points. Most RLAN access points are so far used by private users as a local wireless extension of their fixed broadband subscription. However, the availability of a large number of such access points, particularly in densely populated areas, could maximise wireless data capacity through frequency re-use and create a cost-effective complementary wireless broadband infrastructure accessible to other end-users. This justifies the removal of unnecessary restrictions to the deployment and interlinkage of RLAN access points, in particular by fixed backhaul operators or public authorities such as municipalities. Public authorities or providers of public services increasingly use RLAN access points in their premises for their own purpose, for example for use by their personnel, to better facilitate cost-effective on-site access by citizens to eGovernment services or to support provision of smart public services with real-time information. Such bodies could also provide access to such access points for the public 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, should not qualify such a provider as an electronic communications provider.

The availability of high-speed wireless broadband to the public and the promotion of spectral efficiency should be facilitated through measures to define at Union level technical characteristics of unobtrusive small-area wireless access points, justifying general authorisation of deployments without individual planning or other permits.

Considering the general obligation of loyal cooperation of Member States, Member States should ensure that their internal organisation of spectrum use does not prevent other Member States from using the spectrum to which they are entitled, or from implementing their obligations where spectrum usage has been harmonised at EU level. Building on the existing activities of the RSPG, a coordination mechanism is necessary to ensure that each Member State has equitable access to spectrum and that the outcomes of coordination are consistent and enforceable. Such mechanism should be without prejudice to the existing possibility for the Commission to adopt technical implementing measures pursuant to Decision No 676/2002/EC to ensure the timely

and appropriate coordinated organisation of spectrum between several or all Member States.

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.

The integration of the single market for electronic communications would be accelerated through establishment of a framework to define certain key 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, in accordance with key parameters and minimum characteristics.

In this context, operators, as undertakings that provide or are authorised to provide a public communications network or an associated facility in accordance with Directive 2002/19/EC, should be considered to include providers of any network that is offered to third parties by way of a commercial offer, whether or not the network in question is closed or connected to other networks, but should be considered to exclude closed networks that are built by undertakings for self-supply only.

The operational needs served by various virtual products should be addressed. As regards virtual broadband access products, these should be made available 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. On the one hand, efficient cross-border entry should be facilitated by the definition of harmonised products that require limited investment from the access seeker, so that a punctual and ad hoc solution to provide services across Member State borders is available to access seekers that want to provide such services to their end customers effectively, without delay and with a predictable and sufficient quality. Such products should be made available in accordance with harmonised parameters that allow integrated technical offers across borders, thus lowering barriers to entry into markets of other Member States, including in order to provide services to business customers with sites in multiple countries. The duration of the obligations to make these harmonised products available should also be sufficient to allow access seekers and providers to take into account medium and long term investment considerations.

On the other hand, sophisticated virtual access products that require greater investment by access seeker and allow them greater levels 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 over the longer term, so that the provision of these key next generation products 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 proportionate remedies available to national regulatory authorities under the Access directive.

The absence of connectivity products with assured service quality that enable communication paths across network domains and across network borders, within Member States as well as across the Internal Market, hinders the development of applications that rely on access to other networks, thus limiting technological innovation and competitive offers within the internal market. A harmonised approach to the design and availability of these products is therefore necessary, based on reasonable terms including, where requested, the possibility of cross-supply by the electronic communications undertakings concerned.

Disparities in the national implementation of sector-specific end-user protection rules create significant barriers to the single digital market, affecting end-users and in particular in the form of increased compliance costs for providers of electronic communications to the public. Those disparities increase compliance costs in particular to the providers wishing to offer services across Member States. Fragmentation also Moreover, fragmentation and uncertainty as to the level of protection granted in different Member States undermines consumer confidence in the internal market. end-users' trust and dissuades them from purchasing electronic communications services abroad. In order to achieve the Union's objectives through the removal of internal market objective to remove barriers, to the internal market it is necessary to replace existing, divergent national legal measures. Both end-users and providers should be able to rely on with a single and fully harmonised set of sector-specific rules (Chapter 3 and 4 of this Regulation) which create a high common level of end-user protection. Such full harmonisation at a high level of end-user protection 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.

At the same time, As this Regulation is harmonises only certain sector-specific rules, it should be without prejudice to the level of general consumer protection for consumer interests rules, as established by Union acts other than this Regulation and acts amended by this Regulation, and and national legislation implementing them.

Where the provisions in Chapters 34 and 45 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. Where appropriate At their individual request, end-users other than consumers should be able to agree, by individual contract, to different conditions deviate from certain provisions.

The completion of the single market for electronic communications also requires the removal of barriers for end-users to acquire 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 objective and demonstrable objectively justifiable differences in cost, price elasticity costs, risks and market conditions such as demand variations and other parameters pricing by competitors.

Very significant price differences continue to prevail, both for fixed and mobile communications, between, on the one hand, domestic voice calls and SMS communications within a and those terminating in another Member State and, on the other hand, between one Member State and another. 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. In fact, retail price differences are observed despiteThis 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 bring additional cost reductions. In a Single Market, such underlying cost differences should ultimately be negligible and this should in due course be reflected in retail prices. Providers of electronic communications to the public should therefore justify any such differences by reference to additional costs, which can be demonstrated in aggregate for such communications in the Union. This should include an allowance for a reasonable margin relative to such aggregate additional costs, bearing in mind related price elasticity and the current contribution of this service category to covering the overall fixed costs of electronic communications networks and servicesin 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.

The internetBundles comprising electronic communications and other services such as linear broadcasting have become increasingly widespread and are an important element of competition. In order to enable end-users to compare effectively all available offers and to choose the most suitable, the provisions of this Regulation on end-user rights, transparency, quality of service, internet access and traffic management, contract information and termination, and switching should apply to all elements of such a bundle.

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 Internetinternet service providers. It is paramount to maintain this openness to foster growth and innovation and the accessibility of information to the benefit of citizens and businesses. The Union'sexisting regulatory framework as adopted in 2009 comprises the objective ofaims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, BEREC'sthe report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012, documentedand 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 Internetinternet and to avoid fragmentation of the single market throughresulting from individual Member States' measures.

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.

In an open Internetinternet, 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 or, degrade or discriminate against specific servicescontent, applications or serviceservices or specific classes thereof except for a limited number of reasons, namely an explicit legal order, threats to the network integrityreasonable traffic management measures. Such measures should be transparent, proportionate and security, protection against unsolicited communications non-discriminatory. Reasonable traffic management encompasses prevention or impediment of serious crimes, including voluntary actions of providers to prevent access to and exceptional 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.

Volume-based tariffs ashould be considered compatible with the principle of an open Internetinternet as long as they allow end-users to choose the tariff corresponding to their normal data consumption while enablingbased 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 the network capacities to the expected data volumes. It is essential that end-users are fully informed before agreeing to any data volume, or speed or other general quality characteristicslimitations and the tariffs applicable, that they can continuously monitor their consumption and easily acquire extensions tooof the available data volumes if desired.

There is also end-user demand for services and applications withrequiring an enhanced qualitylevel of assured service quality offered by providers of electronic communications to the public or by content and, applications or service providers. Such services, which require an enhanced level of assured service quality, may comprise inter alia broadcasting via Internet Protocol (IP-TV), voice over Internet Protocol (VoIP), 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.

In addition, there is demand on the part of content, applications and serviceservices providers, for the provision of transmission services based on flexible quality of serviceparameters, including lower levels of priority for traffic which is not time-sensitive. The possibility for content, applications and service providers who are not consumers to negotiate such flexible service quality of service levels with providers of electronic communications to the public is crucialnecessary 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 flexibility 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.

This Regulation should establish the freedom of the various actors to pursue these different activities without unjustified restrictions either by public authorities or by providers of electronic communications to the public, taking as an essential foundation the aforementioned freedom of end users to access and distribute information or run applications and services of their choice.

National regulatory authorities haveplay an essential role in ensuring the effective ability ofthat end-users are effectively able to exercise this freedom. to avail of open internet access. To this end national regulatory authorities should monitor closelyhave monitoring and reporting obligations, and ensure that traffic management measures are transparent and proportionate and that specific services or applications or classes thereof are not blocked, slowed down or otherwise degraded, save for the legitimate reasons foreseen in this Regulation.compliance of providers of electronic communications to the public and the availability of non-discriminatory internet access services of high quality which are not substantially impaired by specialised services. National regulatory authorityauthorities should be empowered to impose non-discriminatory minimum quality of service requirements on all or individual providers of electronic communications to the public if this is necessary to prevent the general degradation of the quality of service, *inter alia* of Internetinternet access services which are available outside specific quality agreements,...

The measures to ensure better transparency onand comparability of prices, tariffs, terms and conditions, and quality of service parameters including those specific to the provision of Internetinternet access services, should increase the ability of end-users to optimise their selection of providers and thus benefit fully from competition.

End-users should be adequately informed of the price and the type of service offered before they purchase a service, including. This information should also be provided immediately prior to connection of the call. This is necessary in particular when a call to a specific number or service is subject to particular pricing conditions, such as applies for example for calls to special rate or 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.

Providers of electronic communications to the public should ensure that their customers are inform end-users adequately informed *inter alia* as to whether or not access to emergencyon their services is provided and of any limitation on service (such as a limitation on the provision of caller location information or the routing of emergency calls),tariffs, quality of service parameters, access to emergency services and any limitation, and the choice of services and products designed for disabled consumers, and, where requested, public interest information related to unlawful activities and protection against risks to personal security, privacy and data. The details of such information should be specific to the Member States where the service is provided.. This information should also be provided in a clear and transparent manner in

contracts and be specific to the Member States where the services are provided, and in the event of any change, for example in billing information be updated. Providers should be exempted from such information requirements as regards those offers which are individually negotiated.

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, for instance by means of online comparison tools supplied by the national regulatory authorities or accredited third parties, increases end-user confidence in the use of services and enhances the willingness to exercise their choice.

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.

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.

In order to avoid bill shocks, end-users should be able, upon request, to define maximum financial limits for the charges related to their usage of call services calls and Internet internet access services. This facility should be available free of charge, with an appropriate notification, in a media format that can be consulted again subsequently, such as for example an SMS message, an e-mail or a pop-up window on the computer, when this 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 in accordance with the conditions set out in the notification. However, taking into account the importance of maintaining the access to Internet in view of ensuring end-users' participation in social and economic activities, a minimum level of service agreed by the end-user and specified in advance in the contract may still be available to the end-user even if the financial limit is exceeded. These transparency measures should not preclude providers of electronic communications to the public from offering their customers other safeguarding facilities which help them to predict and control their expenditure, as agreed with the provider.

Contracts are an important tool for end-users to ensure a high level of transparency of information and legal security. In addition to the provisions of this Regulation, the requirements of existing Union consumer protection legislation relating to contracts should apply to end-user transactions relating to electronic networks and services. Specifically, end-users should enjoy a high level of legal certainty in respect of their contractual relations with their service provider, such that the contractual terms, conditions, quality of service, condition for termination of the contract and the



service, switching and portability of numbers, compensation measures and dispute resolution are specified in their contracts.

With respect to terminal equipment, the contracts should specify any restrictions imposed by the provider on the use of the equipment, such as for example by way of ‘SIM-locking’ mobile devices, and any charges due on termination of the contract, whether before or on the agreed expiry date, including any cost recovery and unlocking procedure with respect to terminal equipment or promotional offers.

Experience from Member States and from a recent study commissioned by the Executive Agency for Consumers and Health has shown that long contractual contract periods as well as and automatic or tacit extensions of contracts constitute significant obstacles to changing a provider. It is thus desirable that end-users are should be able to withdraw terminate, without penalties, from the incurring any costs, a contract after six months from after its conclusion. In this instancesuch a case, end-users may be requested to compensate their providers for the residual value of subsidized subsidised terminal equipment or for the *pro rata temporetemporis* value of any other promotions. Contracts thatwhich have been tacitly extended should be subject to termination with a one-month notice period.

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 those relatedin relation to charges, tariffs, data volume limitations, data speeds and similar, , 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 penalty. incurring any costs.

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.

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. It is essential that switching is a simple and easy process that requires minimum input on the part of the end-user. 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 and. It should be implemented with thewithin a minimum delay, so that the number is functionallyeffectively activated within one working day fromof concluding an agreement to port a number. Settlement of outstanding bills should not be a condition for validationexecution of a porting request.

In view of providingorder to support for the provision of one-stop-shops and to facilitate a seamless switching experience for the end-users, the switching process should be led by the receiving provider of electronic communications to the public which initiates the necessary sequence of steps to complete the switch.. 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, to the extent technically feasible. and a high level of protection of personal data should be ensured. Availability of transparent, accurate and timely information on switching.

before and during the process, as well as immediately after, increases should increase the end-users' confidence in switching and fosters their willingnessmake them more willing to engage actively in the competitive process.

Contracts with transferring providers of electronic communications to the public should be cancelled automatically after switching, so that end-users do not have to take without any additional steps to contact their previous provider. It is important to ensure that when switching to a new provider, consumers usingbeing required from end-users. In the case of pre-paid services retain the financial amounts that haveany credit balance which has not been spent. should be refunded to the switching consumer.

It is important that endEnd-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 provided with a possibilitygiven the opportunity to opt, free of charge, for an email forwarding facility offered by the transferring Internetinternet access service provider in cases where the end-user has an email address provided by the transferring provider.

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. Experience has shown that there is a risk of end-users being switched to another provider without their consent or being subject to abuse or delays during the switching process. Member StatesCompetent national authorities should be able to impose proportionate measures regardingto protect end-users adequately throughout the switching process including appropriate sanctions that are necessary to minimise such risks, andrisks of abuse or delays and of end-users being switched to another provider without their consent. They should also be able to ensure that end-users are adequately protected throughout the switching process, including by settingset an automatic compensation mechanism for end-users in such instances. Member States may *inter alia* extend the availability of number portability facility to machine-to-machine communications.

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.

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 andThe to the Council.

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.

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) No182/2011 of the European Parliament and of the Council.<sup>23</sup>

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

The mobile communications market remains fragmented. None of in the Union, with no mobile network operators present in the market has networks incovering all EU 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 EUUnion provide a means to internalise wholesale costs. In order to incentivise the formation of such alliances, which should be fully compliant with EU competition law, and where it is ensured that the resulting cost reductions are passed on to roaming customersTo provide appropriate incentives, certain regulatory obligations laid down in Regulation (EC) No 531/2012 of the European Parliament and the Council<sup>24</sup> should be adapted. In particular, when members ofparties to collective roaming alliancesagreements offer to all their customers 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. In order, subject to safeguard potential investments made by alternative roaming providers taking advantage of the separate sale of roaming, a transitional period should apply when an alternative roaming provider where such access has already been granted access to a domestic provider's customers.

Roaming alliancesCollective roaming agreements can allow a mobile operator to treat roaming by its domestic customers on the networks of alliance partners as being to a

23 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).

24 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).

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 EUUnion. Such an arrangement at the wholesale level could allow the development of new roaming products and therefore increase choice and competition at retail level.

Regulated wholesale charges continue to play an important role in particular for alternative roaming providers. The wholesale cost of providing roaming service should leave a reasonable margin in relation to retail tariffs allowing roaming providers the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preferences. Whilst the regulatory safeguards which apply to Union-wide roaming services at wholesale level by virtue of Regulation (EC) No 531/2012 aim to provide a reasonable reflection of the underlying costs involved in the provision of the service a forward-looking consideration should be given to the evolution of relevant cost drivers, such as regulated mobile termination rates and traffic volumes. While cost elements differ somewhat across the Union, utmost account should be given to the most recent and accurate estimates based on methods outlined in the Commission Recommendation on the regulatory treatment of fixed and mobile termination rates in the EU. At the same time when setting wholesale charges it is appropriate to take as a benchmark the mature technologies prevailing on the market, rather than the cost profile of next-generation technologies which are not yet widespread and which, even if highly cost-efficient, are far from being amortised. On the other hand, the effect of the spreading of largely fixed costs over greatly expanding traffic volumes, in particular for data, should be taken into account. The regulated wholesale charges should therefore be revised and accordingly adapted to ensure the smooth functioning of the internal market by allowing competition to develop. In addition, the increasing data roaming traffic volumes open up other ways of trading data roaming traffic. Instead of wholesale trading based on a unit, bulk capacity trading may provide further efficiencies and flexibility. Such commercial arrangements should be encouraged.

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 their typical domestic consumption pattern associated with their respective domestic retail packages while periodically travelling within the Union, without additional costs relative 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 EUUnion accommodates varying user demands associated with a competitive market. Such 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 Member States may still justify the imposition of limits by reference to

reasonable use if domestic tariffs are applied to such roaming consumption by members of parties to a collective roaming alliance agreement.

While it is in the first place for parties to a collective roaming alliance members agreement to assess themselves the reasonable character of any allowances granted the volumes of roaming voice calls, SMS and data to be covered at domestic rates under their various retail packages for roaming purposes, National, 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. They should also monitor whether roaming conditions under various contract types are indeed reasonable having regard to the type of usage pattern addressed by the retail package in question and the evolution of expectations as regards in particular wireless data consumption. 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 EU level. BEREC should have regard 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 the evolution of wholesale roaming rates for unbalanced traffic between roaming alliance members, to the effective network coverage of an alliance and its effect on the wholesale cost base of any given alliance member, and to the objective that consumers falling into any of the broad observable categories of domestic consumption should be in a position to confidently replicate their domestic consumption pattern while travelling within the Union. Union level, and the evolution of expectations as regards in particular wireless data consumption.

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 provisions of the Framework Directive on electronic communications services and networks and based on key elements of evolving decisional practice, the Specific Directives and the Roaming Regulation should be amended. This includes the introduction of strengthened powers of the Commission in order to ensure consistency of market remedies imposed on European electronic communications providers holding substantial market power in the context of the current consultation mechanism, a reinforcement of the policy objectives and regulatory principles in Article 8 of the Framework Directive, harmonisation of the criteria adopted in assessing the definition and competitiveness of relevant markets, the introduction of European access products in the remedies available to national regulatory authorities in the context of market regulation, the adaptation of national notification systems in view of the EU passport as well as the repeal of provisions on minimum harmonisation of end-users rights provided in the Universal Service Directive made redundant by the full harmonisation provided in this Regulation.

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.

Moreover, it is necessary to build upon the experience to date with BEREC by providing additional stability for its strategic leadership. In addition, the work of completion of the single market pursuant to this Regulation will further increase the calls made upon BEREC to contribute to shaping technical and policy orientations. Therefore,

provision should be made for a professional Chairman with a three-years renewable mandate.

- (1) Competent 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.

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

In order to ensure uniform conditions for the implementation of this regulation, in particular in relation to the harmonisation and coordination of authorisation of spectrum, characteristics of small-area wireless access points, 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, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No182/2011 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.

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.

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.

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).

Since the objective of this Regulation, namely to establishes 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 aims at completing 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 that undertaking the provider is established or its customers are situated in the Union,

-(b) citizens and businesses have the right and the opportunity possibility to access a competitive provision of, 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 aims at unleashing the growth potential of a single market for electronic communications to the benefit of the entire economy of the Union.

In accordance with Articles 8 Paragraph 3 and 8a of the Framework Directive, this Regulation pursues in particular the policy objective and regulatory principle of securing<sup>2</sup>. 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, which take into due account the needs: including as regards the proportionality of individual obligations which may be imposed pursuant to market analysis;

(ab) 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;

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

(cd) to facilitate innovative and high-quality service provision and;

(de) to ensure the availability and highly efficient use of both licensed and unlicensed 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. ;

This Regulation equally aims at increasing consumerf) 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 at by facilitating mobility across the Union, and both social and territorial inclusion, in.

3. In order to meet the growing needs ensure implementation of both citizens and businesses.

3. In order to attain the foregoing objectives, this Regulation the overarching regulatory principles set out in paragraph 2, this Regulation furthermore establishes the necessary detailed rules, in particular, for:

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

- the(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 of at Union level of certain wholesale products for broadband consisting of wholesale virtual access and assured service quality connectivity under convergent regulatory conditions;

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

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

-(f) the elimination phasing out of unjustified surcharges for international and roaming traffic not justified by underlying costs.

4. This Regulation does not establish additional rules on private international law nor does it deal with the jurisdiction of Courts within the Union.

#### *Article 2 – Definitions*

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

The following definitions shall also apply for the purposes of this Regulation:

(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 that 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;

In the event that two or more electronic communications providers providing services in different Member States respectively hold, directly or indirectly, any of the foregoing powers or rights in an undertaking, such an undertaking shall indicate the relevant home Member State among those of the parent companies that shall accordingly notify it, for the purpose of this Regulation



(4) "single EU passport 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, provided that at least [15%] of the turnover stemming from the provision of electronic communications services and networks in the Union over the previous five years is realised in that Member State. If less than [15%] of such turnover is realised in the Member State where the main decisions are taken, the main establishment is deemed to be located in the Member State where the greatest amount of the turnover over the previous five years has been realised. ;

In the interests of stability, here the main establishment of a provider of European electronic communications provider has been identified in accordance with the first sub-paragraph and notified pursuant to Article 4 and its turnover evolves in such a way that its place of main establishment would be relocated to another Member State, such a change of main establishment shall only be deemed to occur and shall only be notified if the change in the proportion of turnover realised in the different Member States is confirmed over the two subsequent years.

In the case of undertakings which have provided electronic communications networks and services in the Union for less than five years, the main establishment shall be deemed to be the place of establishment where the main decisions are taken and shall be reviewed once information relating to the first five years of operation is available.

(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) "virtual broadband access(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>25</sup> and which serves for electronic communications services other than broadcasting;

(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 to 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

<sup>25</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).

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;

(9) "Assured12) "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;

(10) "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 to the public to electronic communications networks regardless of the underlying network topology;

(11)(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 an information society service that provides the capability to access specific content, applications or services, or a combination thereof, 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;

(1217) "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;.

(13) "radio local access 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 are harmonised for such use pursuant to the Radio Spectrum Decision or Article 114 of the TFEU, such as the available 2.4 GHz and 5 GHz bands.

## **Chapter I –II** **Single EU Passport authorisation**

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

1. EveryA European electronic communications provider has the right to provide electronic communications networks and services in the whole European 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 passport. The EU Passport is based on the general

authorisation in the home Member State and which is subject only to the transmission of a notification to the competent regulatory authority in the home Member State in accordance with requirements provided in Article 4.

2. The European electronic communications provider shall comply with this subject to the rules and conditions applicable pursuant to this Regulation and Regulation No. 531/2012 throughout the Union. It shall comply with national legislation implementing the Directive 2002/21/EC and the Specific Directives 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. AnyBy way of derogation from Article 12 of Directive 2002/20/EC, a European electronic communications provider may be subject to the payment of administrative charges pursuant to Article 12 of Directive 2002/20/EC in accordance with national legislation that is applicable in the host Member State only if the Europeanit has an annual turnover for electronic communications provider has an annual turnover services in that Member State above 10,5% of the total national electronic communications turnover. In levying these charges only the turnover for electronic communications services in the concerned Member State concerned shall be taken into account.

4. AnyBy 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 pursuant to Article 13 of Directive 2002/22/EC in accordance the legislation that is applicable in the host Member State only if the Europeanit has an annual turnover for electronic communications provider has an annual turnover in services in that Member State above 53% of the total national electronic communications turnover.

5. In accordance with Article 8(5)(b) oflevying any such contribution only the Framework Directive, and without prejudice toturnover in the procedure established by Articles 7 and 7a of the Framework Directive, aMember State concerned shall be taken into account.

5. A European electronic communications provider shall be entitled to equal treatment by the competent national regulatory authorities of different Member States in objectively equivalent situations. European electronic communications providers and other undertakings providing electronic communications networks and services in the same Member State shall be entitled to equal treatment by the competent national regulatory authority in objectively equivalent situations.

6. Without prejudice to Article 21 of Directive 2002/21/EC, in6. In the event of a dispute between undertakings involving a European electronic communications provider regarding obligations applicable under Directivein accordance with Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, the Specific Directives, Regulation No. 531/2012 or and 2002/22/EC, this Regulation or Regulation (EU) No 531/2012 in a host Member State, the European electronic communications provider may request thatconsult the dispute also be considered by the competentnational regulatory authority in the home Member State that, which may deliver an opinion with a view to ensurensuring the development of consistent regulatory practices. In such a case the competentThe national regulatory authority in the host Member State shall take into utmost account of the opinion inissued by the national regulatory authority of the home Member State when deciding the dispute.

7. Every European electronic communications providerproviders who has, at the date of entry into force of this Regulation, have the right to provide electronic communications networks and services, at the date of entry into force of this Regulation, in more than one Member

States in accordance with national legislation laying down measures in accordance with Union law shall be entitled to provide its services and networks in accordance with Paragraph 1 and shall comply with State shall submit the notification provided for in Article 4 [at the latest by 1 January/July 2016].

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

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

2. The notification shall contain only a declaration of the provision or the intention to commence the provision of electronic communications networks and services with and shall be accompanied by the following information necessary for the identification of the provider in the Union: the declaration as regards the intention to provide services, only:

(a) the name of the company, a provider, his legal status and form, registration number in the Union, the, 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 the identification of the home Member State in accordance with Article 2 and any other concerned ;

(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 provided submitted in the language or languages applicable in the home Member State and in any host Member State.

3. Any modification change to the information communicated pursuant to Paragraph submitted in accordance with paragraph 2 shall be made available to the competent national regulatory authority of the home Member State within 1 one month following the change. Any lack of 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 entail constitute a breach of the common conditions applicable to the European electronic communications provider in the home Member State.

45. The competent national regulatory authority of the home Member State shall forward to the competent information received in accordance with paragraph 2 and any change to that information in accordance with paragraph 3 to the national regulatory authorities in of the concerned host Member States and to the BEREC Office within [1 one week] following the communication received pursuant to Paragraph 2 and any modification thereof reception of such information or any change.

5The 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 competent national regulatory authority of the home Member State shall issue a declaration according to in accordance with Article 9 of the Authorisation Directive, confirming that the undertaking has submitted a notification and 2002/20/EC, specifying that itthe undertaking in question is subject to the single EU Passportauthorisation.

67. In the event that one or more competent national regulatory authorities in different Member States considersconsider that the identification of the home Member State in a notification made pursuant to in accordance with paragraph 2 or any modification thereof does not comply with this Regulation orchange to the provided information made available in accordance with paragraph 3 does not correspond any moreor no longer corresponds to the place of the main establishment of the undertaking pursuant to Article 2(6),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 competent national regulatory authority of the disputed home Member State the opportunity to express their positionviews, shall takeissue a Decision to determinedecision determining the home Member State of the undertaking in question pursuant to this Regulation within 3three months following the referral lof the issue.

*Article 5 – Implementation and enforcement of harmonised conditions applicable to European electronic communications providers*

*1. Article 5 –Compliance with the single EU authorisation*

1. The competent national regulatory authority in the homeof each concerned Member State shall apply the provisions ofmonitor and ensure compliance with the conditions provided for in Chapter 3 of this Regulation as from [1 January 2016] and in Regulation No. 531/2012/EU in both the home and any host Member State.

2. Where the competent authority of a home Member State ascertains that a European electronic communications provider is not complying with the conditions applicable pursuant to Paragraph 1 in any Member State, this authority shall require the European electronic communications provider to put an end to that irregular situation, in accordance with its national legislation of the home Member State applicable to electronic communications providers adopted in conformity with Union law [and with implementing the procedures provided for in Article 10(2) and 10(3) of Directive 2002/20/EC in particular]. They shall inform the competent authorities of each host Member State concerned.

3. At the request of the home Member State, the competent authority of the host Member State shall require a European electronic communications provider to provide information necessary for ensuring the effective supervision by the home Member State of compliance with the conditions applicable pursuant to Paragraph 1. . The competent authorities shall take the most appropriate measures in order to ensure compliance with the request of the home Member State.

4. The competent authority in a host Member State shall transmit to the competent authority in the home Member State any relevant information for ensuring compliance with the conditions applicable pursuant to Paragraph 1 by the home Member State.

5. The competent authority in the host Member State may request the competent authority in the home Member State to take appropriate measures, that European electronic communications providers comply with the rules and conditions applicable in its territory in accordance with Paragraph 2 or, as the case may be, Article 6 in order to ensure compliance with the conditions applicable in accordance with Paragraph 13.

6. Until a final decision on a request pursuant to Paragraph 5 is adopted by the competent authorities in the home Member State, the competent authority in the host Member State may take urgent interim measures only where it has evidence of a breach of the conditions applicable pursuant to Paragraph 1 that represents an immediate and serious threat to the interests of those to whom services are provided. By way of derogation from Article 10(6) of Directive 2002/20/EC, such measures may be valid until the adoption of a final decision by the competent authority in the home Member State on the request submitted pursuant to Paragraph 5.

The Commission, BEREC and the competent authorities of the home Member State and other Member States concerned shall be informed of the interim measure adopted at the earliest opportunity.

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 and/or numbers granted by any concerned Member State and interim measures adopted pursuant to Article 5 Paragraph 6 in accordance with paragraph 3, only the competent national regulatory authority of the home Member State may prevent an undertaking from continuing 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 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 pursuant to in accordance with Article 3, where measures aimed at ensuring compliance referred to in Article 10(3) of Directive 2002/20/EC and adopted taken by the competent national regulatory authority in such the host Member State in accordance with Article 5 have failed, it shall inform the competent 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 a view to adoption paragraph 2 is adopted by the latter national regulatory authority of the measure 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 Paragraph 1. 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.

3. Where 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 pursuant to suspend or withdraw rights of a European electronic communications provider in accordance with paragraph 1 either on its own motion initiative or at the request of the competent national regulatory authority of a host Member State, the competent national regulatory authority in the home Member State shall notify its proposal intention to the competent national regulatory authorities of any host Member State concerned affected by the withdrawal or the suspension, which shall be entitled to such a decision. The national regulatory authority of a host Member State may deliver its opinion within one month.

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

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

#### Article 7 – Coordination of enforcement measures

1. In the performance of its tasks under Articles 5 and When applying Article 6, the competent national regulatory authority of the home Member State shall be empowered and obliged to take supervisory or enforcement measures with the same diligence in respect of related to an electronic communications service or network provided in another Member State or which has caused damage in another Member State as if the facts related to 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 necessary for relating to measures pursuant to taken in accordance with Articles 5 and 6 on European electronic communications providers.

## **Chapter 2 – III** **European inputs**

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

#### Article 8 – Spectrum use Scope of application and general provisions

1. This section shall apply to harmonised radio spectrum for wireless broadband communications.

1. This section shall apply to radio frequencies for which the conditions of the availability and efficient 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>26</sup>.

*Article 9 – Radio Spectrum use for wireless broadband communications have been harmonised pursuant to Decision 676/2002/EC or to Article 114 of the Treaty on the Functioning of the European Union.: regulatory principles*

2. Competent<sup>1</sup>. 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.

In the application of Articles 8, 8a(1) and (2), 9, 9a and 9b of Directive 2002/21/EC and of Articles 5 to 8, 12, 13 and 14 Directive 2002/20/EC, and having regard to Articles 2 and 3 of Decision No 243/2012/EU, The national competent national 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 and networks 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.

3. When establishing authorisation conditions and procedures for granting rights of the use forof radio frequencies, spectrum, national competent national authorities shall respect the principle of non-discrimination, includinghave regard in particular to equal treatment between existing and potential operators and between European electronic communications providers and other undertakings.

4. Competent Without prejudice to paragraph 5, the national competent authorities shall have regard to take into account and, where necessary, shall reconcile the following criteriaregulatory principles when establishing authorisation conditions and procedures for granting rights of use for radio frequencies and shall seek to reconcile them where necessaryspectrum:

(i) The generala) maximisation of end user interest, including end users' interest in the most efficient use and effective management of spectrum;

(ii) The interest of end-users and the general interest in economicallyboth efficient long-term investment and innovation in wireless networks and services. and in effective competition;

(iii) The interest of European electronic communications providers inb) ensuring the most efficient use and effective management of radio spectrum;

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



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;

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

(v) The interest of end-users and the general interest in effective competition;

(vi) The interest of end-users and the general interest in e) ensuring wide territorial coverage of high-speed wireless broadband networks and in a high level of penetration and consumption of related services.

5. Pursuant to paragraphs 2 to 4, competent national authorities shall 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 development of the single market in the following respects:

(a) Competent national authorities shall apply the least onerous authorisation system possible, on the basis of objective, transparent, non-discriminatory and proportionate criteria, in order to promote efficiency, flexibility and comparable conditions throughout the Union for integrated multi-territorial investments and operations by European electronic communications providers; laid down in that Article.

(b) Competent national authorities shall take into account the following considerations when 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 European electronic communications providers seeking coherent portfolios of radio spectrum rights of use in different Member States to serve the provision of networks or services to the entire Union market or a significant part thereof in obtaining or completing coherent portfolios of spectrum rights of use;

(c) Competent national authorities shall ensure that 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, is compatible with 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).

- a coherent and rapid development of services over the largest territory possible in the Union; and

- is justified by objective requirements This paragraph shall be without prejudice to maintain or secure effective competition in cases where the application of paragraph 5 as regards conditions defining maximum amounts are defined. of radio spectrum.

(d) Competent national<sup>3</sup>. National competent authorities shall determineensure that the fees to be paid for spectrum rights of use for radio spectrum, if any, by reference to the need to encourage efficient use and effective management of the radio frequencies in question. In so doing, they shall ensure that any such fees:

-(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 feeperiodic payments, having regard in particular to the need to incentivise rapid network roll-out and radio spectrum utilisation;

- are justified, in accordance with Article 9(4)(b) and (e).

This paragraph shall be without prejudice to the caseapplication of paragraph 5 as regards any conditions resulting in differentiated fees, by objective requirements to maintain or achieve between operators which are laid down with a view to promoting effective competition;.

(e)4. National competent authorities shall consider the need to establish, in conformity with competition rules, appropriate compensation or incentive payments to or by existing users or spectrum usage right holders, *inter alia* through incorporation in the bidding system or fixed amount for rights of use, with a view to the timely freeing up or sharing of sufficient harmonised spectrum in cost-efficient bands for high-capacity wireless broadband services;

(f) National competent authorities shall limit anymay impose obligations to reach minimum territorial coverage obligations to what isonly when they are necessary and proportionate to achieve the underlying objective, in accordance with Article 9(4)(d), to achieve specific objectives of general interest determined at national level. In so doing, they shall take into account: 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 comparableother 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 with providers of comparableother electronic communications services;

- the need to avoid the creation of unwarranted discrimination between operators,

-(d) the investments required to achieve such coverage and the need to reflect these in the applicable fees; and

-(e) the technical suitability of the relevant bands for efficient provision of wide territorial coverage;.

(g) National competent authorities shall subject<sup>5</sup>. When determining whether to impose any decision on the imposition of specialthe measures to promote effective competition, and in particular those foreseen provided for in Article 5(2) of Decision No. 243/2012/EC (of the

RSPP), to European Parliament and the Council,<sup>27</sup> national competent authorities shall base their decision on an objective, forward-looking prospective assessment of the following, taking into account market conditions and available benchmarks, of :

-(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;

(h) Competent national<sup>6</sup>. National competent authorities shall determine conditions under which undertakings may transfer or lease part or all of their individual rights to use radio frequencies spectrum to other undertakings, including the sharing of such frequencies, in accordance with Article 9b of Directive 2002/21/EC, subject to competition rules. Such radio spectrum. When determining those conditions, national competent authorities shall have regard to the following:

- optimise (a) optimisation of efficient radio spectrum use; in accordance with Article 9(4)(b);

- enable (b) enabling the exploitation of beneficial sharing opportunities;

- reconcile (c) reconciliation of the interests of existing and potential right-holders; and

- create greater liquidity in (d) creation of a better-functioning, more liquid market for access to radio spectrum.

(i) Competent national 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, subject to such proportionate and non-discriminatory requirements as may be imposed pursuant to Article 12 of Directive 2002/21/EC or by competition rules. In so doing, they shall take into account:

-(a) the state of infrastructure-based competition and any additional service-based competition; and

-(b) the respective requirements of efficient radio spectrum use;

(c) increased choice and a higher quality of service for end users; and

(d) technological innovation.

(j) Competent national 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.

<sup>27</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).

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/EU (the RSPP)EC with a view to improving spectral efficiency. In so doing, and without prejudice to measures adopted under the Radio Spectrum Decision, they shall: 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 the Framework Directive 2002/21/EC.

(k) Where technical conditions have been harmonised under the Radio Spectrum Decision and where such conditions make it possible to use spectrum under a general authorisation regime, competent national authorities shall avoid the imposition of any additional restrictive usage condition and shall prevent any alternative use which would impede the effective application and enjoyment of such harmonised regime.

(l) Competent national authorities shall establish authorisation conditions whereby an individual authorisation may be revoked or cancelled in case of persistent failure to use the relevant spectrum, subject to compensation in case the failure to use the spectrum is for reasons beyond the control of the operator, and is objectively justified.

6. This section is without prejudice to the right of Member States to impose fees to ensure the optimal use of spectrum resources in accordance with [Article 13 of Directive 2002/20/EC](#) and to organise and use their spectrum for public order and public security purposes and for defence in conformity with Union and International law.

7. 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 of 26 July 2002.

#### *Article 912- Harmonisation of certain authorisation conditions relative to wireless broadband communications*

1. In line with Article 8 paragraph 1, in order to enable the synchronised availability of wireless services within the Union and create a predictable investment environment, National competent national authorities shall establish coordinated timetables for the granting or reassignment of spectrum usage rights of use, or for theirthe renewal of those rights under the

terms of existing rights. Authorisation periods or, which shall apply to radio spectrum harmonised for wireless broadband communications.

The duration of the rights of use or the dates for subsequent renewal cycles shall be set well in advance of the relevant procedure. Such included in the timetable referred to in the first subparagraph. The timetables, periods 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. Without prejudice to the terms of measures adopted pursuant to paragraphs 2 and 6, the competent national authorities shall implement this Article as soon as possible as regards any given harmonised band subject to this section and at the latest by 2025 for all such bands.

2. In order to ensure a coherent implementation of the above obligations paragraph 1 throughout the Union and in particular to enable the synchronised availability of wireless services within the Union, the Commission may adopt, by way of implementing acts in accordance with the examination procedure referred to in Article 28 in order to:

- harmonise, on the basis of (a) establish a common timetable for the Union as a whole, or of 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;

- guarantee (b) determine a minimum duration for the rights granted in the harmonised bands and/or;

(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; and

-(d) define the date of termination 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 use defined by such right of use shall be modified, so as amended, in order to allow the provision of wireless broadband communications, to the extent permitted under Article 9 paragraphs 3 and 4 of Directive 2002/21/EC as well as ITU rules and other relevant international agreements.

3. In 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 of this Article *pro rata temporis* of any immediate 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 objectives, regulatory principles and criteria set out in Article 8 and in the Union legislative acts referred to therein<sup>9</sup> ;

-(b) objective variations across the Union in the needs of European electronic communications providers 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 interests predictability of operating conditions for existing radio spectrum users;

-(d) the take-up, development and investment cycles of particular successive generations of wireless broadband technologies; and

-(e) end -user demand for high-capacity wireless broadband communications.

In determining whether or not to establish distinct 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 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 there will not be any variation in timetables between Member States does not result in undue differences in the competitive or regulatory situations between Member States.

45. Paragraph 2 shall not affect be without prejudice to the freedom right of the Member States, in advance of the harmonisation of timetable(s) pursuant to this Article, to grant rights of use for and to allow actual use of the harmonised bands.

Actions 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 national authorities pursuant to this paragraph grant rights of use in a harmonised band before the adoption of an implementing act in respect of that band, they shall not frustrate the potential definition by 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 of a guaranteed would adopt implementing acts in accordance with paragraph 2 establishing a minimum duration of such rights or of a synchronised expiry or renewal cycle for the Union as a whole. Such authorities shall in particular put beneficiaries of rights of use on notice of the possible effects of future harmonisation measures. This sub-paragraph This subparagraph shall not apply to the grant of rights of indefinite duration.

56. For the harmonised bands subject to a common timetable, Member States shall 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 on assignment plans to the Commission. on their plans to ensure compliance. The Commission may define the modalitiesadopt implementing acts defining the format and procedures for the provision of such information in. Those implementing acts pursuantshall be adopted in accordance with the examination procedure referred to thisin Article. 33(2).

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

6. In conjunction with the exercise of its powers pursuant to paragraph 2, the Commission may also adopt implementing acts in accordance with Article 27 in order to harmonise the date of expiry or renewal of individual rights to use spectrum in harmonised bands which were valid at the time of entry into force of this Regulation. The Commission shall seek to adopt such measures well in advance of the date of expiry or renewal of such rights in any of the Member States, in order to enhance predictability. In so doing, the Commission shall seek to synchronise throughout the Union the date for renewal or reassignment of rights of use for such bands with the date of renewal or reassignment of other bands harmonised by implementing measures adopted in accordance with paragraph 2.

This paragraph shall not apply to existing rights of indefinite duration.

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

7. This Article is without prejudice to Article 14 of Directive 2002/20/EC.

*Article 10Article 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 pursuant to Article 5 of Directive 2002/20/EC, or to amend rights and obligations pursuantin relation to the use of radio spectrum in accordance with Article 14 of that Directive 2002/20/EC, it shall, upon completion of the public consultation referred to in Article 6 of the Framework Directive, make accessible its draft measure, together with the justificationreasoning 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 inform the Commission and the competent authorities of the other Member States thereof.

The national competent authority shall provide 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, and in particular on the extent to which the draft measure would establish:

-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 and authorisations of use;

-(d) the type and amount of radio spectrum to be authorised 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; or

-(n) restrictions envisaged pursuant to articles applied in accordance with Articles 9.(3) and 9.(4) of the Framework Directive; or 2002/21/EC;

-(o) a revocation or withdrawal of one or several authorisations or rights to use spectrum or a non-minor amendment of rights or conditions attaching to such authorisations or rights attached to such rights which cannot be considered as minor within the meaning of Article 14(1) of Directive 2002/20/EC.

2. In reviewing the draft measure made accessible in accordance with this Article, the Commission shall have regard to:

- the objectives, principles and criteria set out in Article 8 and in the Union legislative acts referred to therein;

- coherence with recent, pending or planned authorisation procedures in other Member States, and possible effects on trade between Member States;

- objective variations across the Union in the needs of European electronic communications providers;

- the interests of existing spectrum users;

- the take-up, development and investment cycles of particular technologies; and



- end user demand for high-capacity wireless broadband communications.

3. Competent national<sup>2</sup>. National competent authorities and the Commission may make comments to the competent authority concerned within a period of two months which cannot. 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 a further an additional period of two months. The Commission shall also inform the national competent authorities of its reservation the other Member States of the position it has taken on the draft measure in such a case.

43. Within the additional two-month period referred to in paragraph 32, 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.

54. At any stage during the procedure, the competent authority may:

(a) amend or withdraw its draft measure taking utmost account of the Commission's notification referred to in paragraph 3; or<sup>2</sup>.

(b) maintain its draft measure.

6. Having considered any further explanations provided by<sup>5</sup>. Within the competent authority concerned, the Commission may, within the additional two-month period referred to in paragraph 3,<sup>2</sup> 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

7b) take a decision changing its position in relation to the draft measure concerned.

6. Where the Commission has not presented a draft decision to the Communications Committee within two months, referred to in paragraph 5(a) or takes a decision to lift its reservations in relation to the draft measure, 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 liftchange its reservationsposition 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.

87. 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 27. Save where more time is necessary to comply with the additional deadlines foreseen in Article 5, paragraphs 3 and 4, of Regulation No 182/2011, or with the requirements of Article 6 of that Regulation, the Commission shall adopt such a decision within four months from the notification to 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 competent authority concerned shall not adopt the draft measure during the relevant periods under this paragraph.33(2).

In the case of a negative opinion from the Committee, the Commission shall lift its reservations in relation to the draft measure.

98. Where the Commission has adopted a decision in accordance with paragraph 87, the competent authority shall amend or withdraw the draft measure accordingly 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 in accordance with Article 6 of Directive 2002/21/EC or Article 7 of Directive 2002/20/ECwhere appropriate, and shall make the amended draft measure accessible to the Commission in accordance with paragraph 1.

109. 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 firstthird sub-paragraph of paragraph 82, by the second sub-paragraph of paragraph 6 and by paragraph 97, 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 1114 – Access to radio local accessarea networks*

1. National competent authorities shall allow the provision of private and public access through radio local accessarea networks to the network of a provider of electronic communications to the public as well as the use of spectrumthe harmonised radio spectrum for the purpose of such provision, without sector-specific conditions and in any case subject only to general authorisation.

2. National competent authorities shall not prevent providers of electronic communications to the public from agreeing with end users, including consumers, to allowallowing access for the public to thetheir networks of such providers, through radio local access networkarea networks, which may be located at suchan 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 with their terminal equipment to radio local access area networks of their choice provided by third parties. :

4. Providers of electronic communications to the public shall not unilaterally restrict b) the right of end users to allow reciprocally or more generally access by third parties to the networks of such providers by other end users through radio local access area networks of such end users, including on the basis of third-party initiatives which federate and make reciprocally or more generally publicly accessible the radio local access area networks of different end users.

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

7. Without prejudice to competition and procurement rules, national competent authorities shall not restrict:

- the provision to citizens by public authorities of access to radio local access networks on or in the immediate vicinity of premises occupied by such public authorities, as an ancillary activity to the public services provided on such premises;

- initiatives by non-governmental organisations or public authorities, based on the principle of solidarity and in the general interest, to federate and make reciprocally or more generally accessible the radio local access networks of different end users, including, where applicable, the radio local access networks to which public access is provided by public authorities on or around their premises.

#### *Article 1215 –Deployment and operation of small-area wireless access points*

1. The Commission 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 adopted pursuant to Article 27 of this Regulation, define product, deployment and operating, specify technical characteristics for the design, deployment and operation of small-area wireless access points, compliance with which shall ensure their unobtrusive character and shall entitle a person or undertaking using such equipment to the benefit of the least restrictive regulatory regime in accordance with paragraph 2.

The Commission when in use in different local contexts. The Commission shall define such product, deployment and operating specify those technical characteristics of small-area wireless access points by reference to the maximum size, power, and electromagnetic characteristics, as well as the generally unobtrusive character, of the equipment when in use. 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>28</sup> and with the thresholds defined in Council Recommendation No 1999/519/EC.<sup>29</sup>

The characteristics defined by the Commission shall include compliance with the essential requirements of Directive 1999/5/EC.

2. Inspecified in order to ensure the efficient use of spectrum and to facilitate for all citizens in the Union affordable and efficient access to high-speed wireless broadband services, national competent authorities shall allow for the deployment, connection and operation of small-area wireless access points under a regime 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 general authorisation and shall not require individual town planning permits, provided such use is in compliance with implementing measures adopted pursuant to paragraph 1, products.<sup>30</sup>

3. 4. Upon a duly substantiated application, the Commission may grant to the competent authority of a Member State a specific transitional derogation for the application of paragraph 2, provided that it does not unduly defer such implementation in that Member State or affect the completion of the internal market for wireless broadband communications or for access to small-area wireless access points.

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

28 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).

29 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 199, 30.7.1999, p. 59).

30 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).

Article 13 – Cooperation in Spectrum Coordination  
16 – Radio spectrum coordination among Member States

1. Without prejudice to their obligations under relevant international agreements including ITU Radio Regulations, the national competent national authorities shall ensure that the use of radio spectrum is organised on their territory, and shall in such a way as not to impede any particular take all necessary radio spectrum allocation or assignment measures, in order that no other Member State is impeded from authorising and allowing on its territory the actual use of a specific harmonised band in accordance with a harmonisation measure adopted pursuant to Decision No 676/2002/EC, to this Regulation or to Article 114 of the Treaty on the Functioning of the European Union. legislation.

2. Member States shall take all appropriate spectrum allocation or assignment actions necessary and shall cooperate with each other in the cross-border coordination of the use of radio spectrum in such a way as not order to impede any other ensure compliance with paragraph 1 and to ensure that no Member State from having is denied equitable access to spectrum or from implementing its obligations under a spectrum harmonisation measure adopted pursuant to Decision No 676/2002/EC, to this Regulation or to Article 114 of the Treaty on the Functioning of the European Union. 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 in accordance with Article 27 in order to ensure the timely and appropriate that coordinated organisation outcomes respect the requirement of spectrum between several or all Member States, in particular to ensure equitable access to radio spectrum among the relevant Member States, to resolve any practical inconsistencies between distinct coordinated outcomes between different Member States and, or to ensure the consistency and enforceability 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 14  
17 – European virtual broadband access product

1. Offers The provision of a virtual broadband access products product imposed in accordance with Article 8 and 12 of Directive 2002/19/EC shall be deemed to be considered as the provision of a European virtual broadband access products product if they cumulatively meet the following criteria:

supply it is supplied in accordance with the minimum parameters and functionality listed in one or more of the Offers listed 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;

ensuring that(f) respect of the rules on protection of privacy, personal data, security and integrity of networks and transparency required by Directive 2002/21/EC and the Specific Directives are respected in conformity with Union law.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 2632 in order to adapt Annex I in light of market and technological developments, so as to continue to meet the criteria substantive requirements listed in paragraph 1.

*Article 1518 – Regulatory conditions related to European virtual broadband access product*

1. By way of derogation from Article 12(3) of Directive 2002/19/EC, a national regulatory authority which has previously imposed on an operator in accordance with Articles 8 and 12 of that Directive any obligation to provide wholesale access to a next-generation network shall assess whether it would be 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 a passive wholesale input, such as physical unbundled access to the local loop or the sub-loop, or 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 14(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 defined specified in paragraph 4 upon request.

2. Upon specific written request. 2. Any operator shall meet any reasonable request of an undertaking authorised to provide electronic communications services, any operator shall meet all reasonable requests to provide a European ASQ connectivity product as defined specified in paragraph 4 submitted in writing by an authorised provider of electronic communications services. Any refusal to supply 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 acceptable objective ground of refusal that the party requesting the supply of a European ASQ connectivity product is unable or unwilling to also 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 supply the request is refused or agreement on specific terms and conditions, including price, has not been reached within two months from the written request for access, either party is entitled to refer the issue to the relevant national regulatory authority pursuant to Article 20 of Directive 2002/21/EC, and where applicable, in accordance with. In such a case, Article 3(6) of this Regulation may apply.

4. OffersThe provision of a connectivity productsproduct shall be deemed to be considered as the provision of a European ASQ connectivity productsproduct if they cumulatively meet the following criteria:

(h) supplyit is supplied in accordance with the minimum parameters listed in [Annex II]; and cumulatively meets the following substantive requirements:

(i) a) ability to be offered as a high quality product anywhere in the Union;

(j) b) enabling service providers to meet the needs of their end-users;

(k) c) cost-effectiveness, taking into account existing solutions that may be provided on the same networks;

(l) d) operational effectiveness, in particular in respect of limiting to the extent possible implementation obstacles and deployment costs for customers; and

(m) e) ensuring that the rules on protection of privacy, personal data, security and integrity of networks and transparency required by the Directive 2002/21/EC and the Specific Directivesin accordance with Union law are respected.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 2632 in order to adapt Annex II in light of market and technological developments, so as to continue to meet the criteriasubstantive requirements listed in paragraph 4.

#### *Article 16 – European measures20 – Measures relating to European access products*

1. The Commission shall adopt by [1 January 2016] implementing measures in accordance with Article 27acts laying down more detaileduniform technical and methodological rules for the implementation of a European virtual broadband access product within the meaning of Article 14 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. After having consulted BEREC, the The Commission may adopt implementing measures in accordance with Article 27acts laying down more detaileduniform technical and methodological rules for the implementation of one or more of the other European access products referred to in Article 14 within the meaning of Articles 17 and in Article 15,19 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 respective criteria laid down therein and with the respective parameters specified in Annex I and / or II, as applicable. examination procedure referred to in Article 33(2).

### **Chapter 3–RightsIV** **Harmonised rights of end-users**

#### *Article 17 – No restriction or21 – Elimination of restrictions and discrimination*

1. EndThe freedom of end-users shall not be restricted by public authorities in usingto 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 in a given Member State shall not apply any discriminatory requirements or conditions of access or use, including charges and tariffs, to end-users based on the end-user's nationality or place of residence unless providers can demonstrate that such differences are directly objectively justified by objective criteria.

3. Providers of electronic communications to the public shall not apply different charges within the same tariff to an end-user tariffs for electronic international communications services other than regulated roaming services as between communications originating and terminating in the same Member State and communications originating in one Member State and terminating in another Member State which are higher, unless different charges are objectively justified by and reasonably proportionate to aggregate additional costs.:

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 1822 - Cross-border dispute resolution*

1. The out-of-court procedures set up in accordance with Article 34 (1) of the Universal Service 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. Other end-users may request that those procedures also apply to them.

2. The out-of-court procedures in the Member State of the end-user's residence shall apply unless otherwise agreed by an end-user who is not a consumer.

3. The dispute settlement bodies and the national regulatory authorities in all Member States involved in a cross-border dispute shall cooperate closely and expeditiously in solving it accordance with Article 17 of Directive 2013/11/EU<sup>31</sup>.

#### *Article 19- Bundled offers*

In case of a service bundle comprising at least a connection to an electronic communications network or one electronic communications service, the provisions of Chapters 3 and 4 of this Regulation shall apply to all elements of the bundle

#### *Article 20 - Quality of service, freedom<sup>23</sup> - 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.

In pursuit of the foregoing freedom, end-users shall be free to agree enter into agreements on data volumes, and speeds and general quality characteristics with providers of electronic communications to the public 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, including offers .

<sup>31</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.

2. End-users shall also be free to agree with defined either providers of electronic communications to the public or with providers of information society services on the provision of specialised services with an enhanced quality of service. To

In order to enable the same end-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 agree enter into agreements with each other on the treatment of to transmit the related data volumes or on the transmission of traffic as specialised services with a defined quality of service or dedicated capacity so long as the provision of such specialised services does not substantially impair the 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 these the freedoms shall not be restricted by national competent authorities, or, as regards the freedom laid down provided for end-users, by providers of electronic communications to the public, save in accordance with the provisions of this Regulation, the Directives and other provisions of Union law.

End users paragraphs 1 and 2 shall be facilitated in the exercise of these freedoms by the provision of complete information in accordance with Article 21, paragraphs 25(1), Article 26 (2), and 4, Article 27 (1) and Article 22, paragraph 2, of this Regulation.(2).

25. Within the limits of any contracted contractually agreed data volumes or speeds for internet access services, providers of electronic communications to the public internet access services shall not restrict the foregoing freedoms provided for in paragraph 1 by employing traffic management practices solely or primarily to block, slow blocking, slowing down, degrading or otherwise degraded discriminating against specific services or content, applications or services, or specific classes thereof, unless, except in cases where it necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent, non-discriminatory, proportionate and only necessary to the extent that, such restrictions are 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.

3 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 exercise benefit from the freedoms defined provided for in paragraph Article 23 (1, the) and (2), compliance with paragraph 2, Article 23 (5), and the transparency and proportionality of traffic management practices in general. 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 report on an annual basis to the Commission and BEREC on their monitoring and findings.

2. In order to prevent the general degradation of quality of service for Internetinternet access services or for certain types of traffic, 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 non-discriminatory quality of service requirements on providers of electronic communications to the public.

National regulatory authorities shall provide the Commission, 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 implementedadopted 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 when deciding onand shall communicate the adopted requirements and shall informto the Commission [and BEREC] of the implemented requirements..

43. The Commission may, by means of an adopt implementing act adopted pursuant to Article 27 of this Regulation, defineacts 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 2125 - 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 and head office, address and contact information;

b) for each tariff the scope ofplan 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 tariff information to end-userstariffs regarding any number or service subject to particular pricing conditions, such information shall also be provided immediately prior to connecting ;

d) the call;

d) their compensation and refund policy, including specific details of any compensation or refund scheme

e) available facilities to safeguard bill transparency and monitor the level of consumption

f) quality of their services,

g), in accordance with respect to their Internet 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 speed ranges, speed averages and peak-hour speed 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 available data speed, and its cost, available after full consumption of the applicable data volume, if limited; and how the means for end-users can to monitor at any moment monitor 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 or the filling or overfilling of a network link, and on how those procedures could impact or affect service quality and the protection of personal data;

hf) measures taken to ensure equivalence in access for disabled end-users, including regularly updated information on details of products and services designed for them.;

ig) 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;

jh) 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.;

k) available dispute settlement mechanisms, including those developed by the provider of electronic communications to the public,

l) end-user right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC ;

mi) rights as regards universal service, including, where appropriate, the facilities and services mentioned in Annex I of the Universal Service Directive 2002/22/EC.

Such 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 between in the conditions applied to consumers and other end-users has to shall be made explicit.

2. National regulatory authorities shall specify, inter alia The Commission may adopt implementing acts specifying the methods for measuring the speed of internet access services, the quality of service parameters to be measured and the methods for measuring them, and the content, form and manner of the information to be published, including possible quality

certification mechanisms, in order to ensure that end-users, including disabled end-users, have access to comprehensive, comparable, reliable and user-friendly information. The parameters, definitions and measurements methods shall be communicated to the Commission and BEREC. Where appropriate, The Commission may take into account the parameters, definitions and measurement methods set out in Annex III of the Directive 2002/22/EC shall be used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

3. National regulatory authorities shall encourage the provision of comparable information<sup>3</sup>. In order to enable end-users to make an independent evaluation of the actual performance of their electronic communications network access and services and the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques. National national regulatory authorities shall accredit comparison providers certify on the basis of objective, transparent and proportionate criteria. providers of interactive comparison guides or similar techniques. Where accreditedcertified comparison facilities are not available on the market free of charge or at a reasonable price, national regulatory authorities shall make such guides or techniques available themselves or through third parties. Third parties shall have a right to use, free of charge, the information published by providers of electronic communications to the public for the purposes of selling or making available such interactive guides or comparison tools or similar techniques.

44. 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;

(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.

52. 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 the specified servicesit if the financial limit would otherwise be exceeded, unless and until the end-user requests the continued or renewed provision of those services. Unless otherwise agreed by the end-user, a minimum agreed level of service shall still be available for Internet accessAfter 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.

63. Providers of electronic communications to the public shall distribute public interest , immediately prior to connecting the call, enable end-users to access easily and without incurring any costs 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. Inon 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 a case, that information shall be provided by the relevant public authorities to the providersin a comparable fashion for all such numbers or services.

4. Providers of electronic communications to the public in a standardised format and shall, inter alia, cover the following topics: shall offer end-users the opportunity to opt, free of charge for receiving itemised bills.

(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 copyright and related rights, and their legal consequences; and

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

#### *Article 22- Contracts*

1. End-users subscribing to services providing connection to a public electronic communications network or publicly available electronic communications services, have a right to a contract with the undertaking providing such connection or services. Unless otherwise agreed by an end-user who is not a consumer, providers of electronic communications to the public shall provide in contracts, and update regularly, in a clear, comprehensive and easily accessible manner and in the languages of the end-user's Member State of residence, at least the following information:

(a) the identity, address and contact information of the undertaking;

(b) the services provided, including in particular,

— whether and in which Member States access to emergency services and caller location information is being provided, any limitations on the provision of emergency services under Article 26 of Directive 2002/22/EC, and any changes thereto,

— the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters,

— the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,

— any restrictions imposed by the provider on the use of terminal equipment supplied, including the information on unlocking the terminal equipment and charges involved;

(c) where an obligation exists under 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;

(d) details of prices and tariffs (for consumers including taxes), the means by which up-to-date information on all applicable tariffs and maintenance charges is made available, payment methods offered and any differences in costs due to payment method, and details of bill transparency safeguards;

(e) the duration of the contract and the conditions for renewal and termination of services and of the contract applied in accordance with this Regulation, including:

— any minimum usage or duration required to benefit from promotional terms,

— any charges related to switching and portability of numbers and other identifiers, including compensation arrangements for delay or abuse of switching,



— any charges due on termination of the contract, including any cost recovery with respect to terminal equipment (on the basis of customary accounting principles for depreciation) and other promotional advantages (on a pro tempore rata basis),

(f) any compensation and the refund arrangements, including an explicit reference to statutory rights of the end-user, which apply if contracted service quality levels are not met;

(g) for disabled end-users, details of products and services designed for them;

(h) 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 18 of this Regulation;

(i) the type of action that might be taken by the undertaking 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:

- 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 available data speed 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;

- 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;

- other quality parameters, at least latency (average delay), jitter (delay variation) and packet loss;

— information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid congestion of a network/filling or overfilling a network link, and information on how those procedures could impact on service quality,

- and a comprehensible explanation as to how any volume limitation, the actually available speed and other quality parameters, and the simultaneous use of services with an enhanced quality of service, may practically impact the use of applications and services.

3. The details of the information requirements under paragraph 2 shall be ensured by national regulatory authorities.

4. 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, privacy and personal data, referred to in Article 21(5) of this Regulation and relevant to the service provided.

#### Article 2328 - Contract termination

1. Contracts concluded between consumers and providers of electronic communications to the public shall not mandate an initial commitment period provide for a minimum duration that exceeds 24 months. Providers of electronic communications to the public shall offer end-users the possibility to subscribe to conclude a contract with a maximum duration of 12 months.

2. Irrespective of the initial contract period consumers<sup>2</sup>. 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. In such cases, 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 temporetemporis* 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. IfWhere the contracts or national law provide for contract periods mayto 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 to a tacit extension. In caself the end-user does not oppose, the contract shall be transformed intodeemed 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 penaltyincurring any costs upon notice of modification tochanges in the contractual conditions proposed by the provider of electronic communications to the public save whereunless the proposed modificationschanges are exclusively to the benefit of the end-user. Providers shall give end-users adequate notice, not shorter than one month, of any such modificationchange, and shall inform them at the same time of their right to terminate, without penalty, 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 advertised and 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. TheA 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 suchthe additional services are offered at a special promotional price linked to the renewal of the existing contract.

7. ConditionsProviders of electronic communications to the public shall apply conditions and procedures for contract termination shallwhich do not act as a disincentiveraise 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 4 – V** **Facilitating change of providers**

#### *Article 2430 - Switching and portability of numbers*

1. All end-users with numbers from a national telephone numbering plan who so request canshall have the right to retain their number(s) independently of the provider of electronic communications to the public providing the service in accordance with the provisions of Part

C of Annex I the Universal Service to Directive 2002/22/EC, provided if 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 home Member State 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. The right to port shall be immediate.

2. Pricing between operators and/or service 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 service provider.

3. Porting of numbers and their subsequent 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 undertaking shall have provider that number shall be activated within one working day from the conclusion of such agreement and loss. 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 the conclusion of the switch. Transferring providers of electronic communications to the public shall transfer refund any remaining credit to those 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 available in a timely manner, shall be obliged to compensate end-users being who are exposed to such delay or abuse.

7. In cases where the event that an end-user switching to a new provider of Internet 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 to request of requesting that the new email address is should not be disclosed in the automatic response message.

Following the initial 12 months-month period, the transferring provider of electronic communications to the public shall provide give the end-user with an option to extend the period for the provision of 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 [2two years] following contract termination, and in any case during the period for which the email forwarding has been extended.

8. Without prejudice to paragraphs 1 to 7, The competent national authorities may establish the global processes of switching and/or porting, including provision of appropriate sanctions on undertakings providers and compensations for end-users, taking. They shall take into account end-user interests including necessary end-user protection throughout the switching process and the need to ensure efficiency of such process.

## Chapter 5 – VI Organisational and final provisions

### *Article 2531 - Penalties*

Any competent national regulatory authority shall impose the penalties laid down by national law in conformity with Article 21a of Directive 2002/21/EC also in case of an infringement of the conditions applicable to electronic communications services and network providers pursuant to this Regulation or pursuant to national provisions adopted in accordance with this Regulation.

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 2II regarding the respective competences of competent national regulatory authorities in the home and host Member States.

### *Article 2632 – 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 delegation of power to adopt delegated acts referred to in Articles 1417(2) and 1519(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 1417(2) and 1519(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 1417(2) and 1519(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2two 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 2two months at the initiative of the European Parliament or the Council.

### *Article 27 – Implementing acts33 – 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 Articleparagraph, Article 5 of Regulation (EU) No 182/2011 shall apply. In this regard the Commission shall be assisted by the Communications Committee established pursuant to Article 22(1) of Directive 2002/20/EC.

Article 2834 – Amendments to Directive 2002/1920/EC

1. The first paragraph of In Article 3(2), the second subparagraph is deleted.

Article 2 shall be 35 – Amendments to Directive 2002/21/EC

Directive 2002/21/EC is amended as follows:

"For the purposes of this Directive the definitions set out in (1) In Article 2 of Directive 2002/21/EC (Framework1, the following paragraph 6 is added:

'This Directive) and the Specific Directives shall be interpreted and applied in Article [2]conjunction with the provisions of Regulation No [XX/2014 ] shall apply". J.'

(2.) Article 9 shall be7a is amended as follows:

Paragraph 4 shall be amended as follows

*Notwithstanding paragraph 3, where an operator has obligations under Article 12 concerning wholesale network infrastructure access, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II, or at least the parameters set out in Annex I.1 of Regulation [XXXX/2014] where imposing wholesale virtual access on next generation networks offering equivalent functionalities to wholesale network infrastructure access.*

the following Paragraph 4a shall be inserted:

*4a. Notwithstanding paragraph 3, where an operator has obligations under Article 12 to provide a European virtual broadband access product as defined in Article 14 of Regulation [XXX/2014], national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex I of Regulation [XXX/2014 ], referring to one of the Offers, as applicable.*

3. Article 12 shall be amended as follows:

the following sub-paragraph shall be inserted at the end of 12(2):

*In assessing the proportionality of possible imposition of obligations pursuant to paragraph 1 in respect of next-generation networks, national regulatory authorities shall assess the proportionality of imposing a non-physical or virtual wholesale input offering equivalent functionalities, and in particular a European virtual broadband access product within the meaning of Article 14 and of Annex I.1 of Regulation [XXX/2014] and as further defined in Commission implementing measures pursuant to Article 16(1) of that Regulation, as an alternative to a passive wholesale input such as physical unbundled access to the local loop or the sub-loop. In so doing, the national regulatory authorities should have regard to the existing investments by access-seekers in one or the other form of wholesale access and to the amortisation period for such investments.*

Article 12(4), (5) and (6) shall be inserted:

*4. Notwithstanding paragraph 3 and the timing of the analysis of relevant markets in accordance with Article 16(6) of Directive 2002/21/EC (Framework Directive), a national regulatory authority which has imposed on an operator in accordance with the provisions of this Article an obligation to provide physical unbundled wholesale access to a next-generation network shall consider whether it would be proportionate to impose instead an obligation to supply access inputs that meet the criteria of a European virtual broadband access product with equivalent functionalities as defined in Article 14 and Annex I.1 of that Regulation and as further defined in such implementing measure, in particular in the*

presence of infrastructure competition. Such obligation shall be subject to the application of the procedure in Articles 6 and 7 of the Framework Directive.

5. Notwithstanding paragraphs 3 and 4, where a national regulatory authority has imposed or intends to impose on an operator in accordance with the provisions of this Article an obligation to provide virtual broadband access as defined in Regulation [XXX/2014], that national regulatory authority shall instead impose an obligation to supply one or more corresponding access inputs that meet the criteria of a European virtual broadband access product as defined in Article 14 and in Annex I of that Regulation. National regulatory authorities shall impose such obligation irrespective of the timing of the analysis of relevant markets in accordance with Article 16(6) of Directive 2002/21/EC (Framework Directive). Such obligation shall be subject to the application of the procedure in Articles 6 and 7 of the Framework Directive and shall be included in an adopted measure. Where a national regulatory authority has imposed or intends to impose virtual broadband access obligations but considers in accordance with the provisions of the Regulatory Framework that European virtual broadband access products, whether corresponding to one or more of the Offers in [Annex I] of Regulation [XXX/2014], are not appropriate in the specific circumstances, it shall provide a reasoned explanation in a draft measure in accordance with the procedure in Articles 6 and 7 of Directive 2002/21/EC (Framework Directive). It may refer in particular to the needs of access seekers that have already invested in accordance with the conditions of other virtual access products, for whom a transitional period may be necessary.

6. By derogation from Article 16(3) of Directive 2002/21/EC (Framework Directive), 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 meets the criteria set out in [Annex I.2] of Regulation [XXX/2014 ], if the operator concerned voluntarily commits to make such product available at the request of third parties on fair reasonable terms for a further period of [3] years.

4. The first paragraph of Article 13 is amended as follows:

*A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. **In determining whether to impose or maintain price controls on next generation networks, national regulatory authorities shall have regard in particular to the effectiveness of protection against discrimination, to the state of infrastructure-based competition from other fixed line or wireless networks, and to the effects of such competition on the prices, choice and quality of access products offered at retail level and on the evolution of market conditions towards provision of competing next generation networks.** To encourage investments by the operator, including in next generation networks, national regulatory authorities shall take into account the investment made by the operator and allow him, **in the event that the imposition of price control is deemed necessary to reach the objectives of Article 8 of the Framework Directive,** a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new network investment project.*

#### Article 29 – Amendments to Directive 2002/20/EC

1. The first paragraph of Article 2 of Directive 2002/20/EC shall be amended as follows:

"1. For the purposes of this Directive the definitions set out in Article 2 of Directive 2002/21/EC (Framework Directive) and in Article 2 of Regulation [XX/2014] shall apply."

2. Article 3(2) second subparagraph of Directive 2002/20/EC is repealed.

3. The following Article 3(4) shall be inserted

"4. European electronic communications providers shall be subject only to notification requirements applicable pursuant to Regulation [xx/2014]. The BEREC Office shall maintain a publicly accessible registry of notifications made pursuant to this Regulation."

#### *Article 30 – Amendments to Directive 2002/21/EC*

1. Article 7a of Directive 2002/21/EC shall be amended as follows:

The first sub-paragraph shall be 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 Community Union law, including that the draft measure manifestly fails to take utmost account of 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.'

Paragraph 2 shall be amended as follows:

"(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 shall also participate in the cooperation process.'

The following sub-(c) in paragraph shall be 5 the following point (aa) is inserted between (a) and (b) of Paragraph 5:

"('aa) take a decision requiring the national regulatory authority concerned to withdraw the draft measure, together with specific proposals for amending the draft measure 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]."

The (d) in paragraph 6 the following sub-paragraph shall be added at the end of Paragraph 6:

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

2.(3) Article 8 shall be amended as follows:

The following sub-paragraph shall be inserted between sub-paragraphs (b) and (d) of Paragraph 3:

(c) pursuing the objectives laid down in Article 1 of Regulation No [XXX/2014].

The following sub-paragraph shall be inserted at the end of Paragraph 4:

(h) facilitating the upgrading and roll-out of high-capacity fixed line and wireless networks capable of catering for evolving end-user demand for enhanced quality of service.

3. Article 15 shall be amended as follows:

The following sub-paragraphs shall be 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, and having regard in particular to the need of European electronic communications providers for convergent regulation throughout the Union and, to the need to promote efficient investment and innovation in the interests of end users and the general interest, the Commission shall have regard to 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) concerned.)’

The (b) in paragraph 3 the following sub-paragraph shall be inserted at its added:

‘In the exercise of Paragraph 3:

National authorities its powers pursuant to Article 7, the Commission shall verify whether the three criteria set out in Paragraph 1 are cumulatively met before concluding in 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 as having the characteristics justifying the imposition of regulatory obligations, qualifies as such in the specific national circumstances; or

b) that a market identified in the Recommendation as having the characteristics which may justify the imposition of ex-ante regulatory obligations does not require regulation in the specific national circumstances.’

(4. The first paragraph of Article 16 shall be amended as follows:



National regulatory authorities shall carry out an analysis of the relevant markets taking into account the markets identified in the Recommendation, and taking the utmost account of the Guidelines. **National regulatory authorities shall take into account all relevant competitive constraints, irrespective of whether the networks, services or applications which impose such constraints are electronic communications networks or electronic communications services.** Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the national competition authorities.

5.) The first paragraph of Article 19 shall be 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, and the Specific Directives and Regulation No [XX/2014] in order to further the achievement of the objectives set out in Article 8.'

#### Article 3136 – Amendments to Directive 2002/22/EC

1. Articles 1 paragraph 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, 30 and Article 34 paragraph (3 of Directive 2002/22/EC shall be repealed with effect from 1 January 2016) are deleted.

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

#### Article 32 – Transposition of the amendments to the Directive 2002/21/EC and the Specific Directives

1. With the exception of Articles 28(4) and 31(1), Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the amendments of Directive 2002/21/EC and the Specific Directives provided for in this Regulation by [1 January 2016]. They shall forthwith communicate to the Commission the text of those measures. When Member States adopt these measures, they shall contain a reference to this Regulation or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Regulation and of any subsequent amendments to those provisions.

#### Article 33Article 37 – Amendments to Regulation (EU) No 531/2012/EU

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

(1) In Article 1(1. In Article 1, paragraph 1.), the following third sub-paragraphsubparagraph is inserted:

"This Regulation shall apply exclusively 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, paragraph (2), the following subparagraph (r) is inserted:

"('r) "collective roaming alliance agreement" means one or more commercial or technical agreements among roaming providers that allow the virtual extension of the home network coverage with the aim that sustainable provision by each of its members can sustainably provide the parties to such agreement of regulated retail roaming services at the same price level as their respective domestic mobile communications services."

(3. A new) 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 is introduced: on the basis of a collective roaming agreement.'

"(4) The following Article 4a is inserted:

'Article 4a

1. The members of a roaming alliance shall benefit from the provisions of this Article. This Article shall apply to the parties to a collective roaming agreement when:

(a) the alliance has members parties have networks in all Member States and when alliance members:

(b) the parties 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 latter regulated roaming services were consumed on the home network.

2. Paragraphs 1 and 6 shall not preclude the limitation by a party to a collective roaming agreement of consumption of regulated retail roaming services at the applicable domestic service rate may be limited by an alliance member by reference to a reasonable use criterion. An alliance member Any reasonable use criterion shall be applied in such a way that consumers availing of the party'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 party availing of this possibility shall publish, in accordance with [Article XX25(1)(b)] of Regulation XXX/2014 [transparency], and include in its contracts, in accordance with [Article XX26(1)(d)b and (c)] of that Regulation [contracts], detailed quantified information on how such a 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 contracts of roaming alliance members. BEREC retail contracts provided by parties to a collective roaming agreement. 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 the evolution of wholesale roaming rates for unbalanced traffic between roaming alliance members, to the effective network coverage of an alliance and to the objective that consumers falling into any of the broad observable categories of domestic consumption should be in a position to confidently replicate their domestic consumption pattern while travelling within the

Union parties to a collective roaming agreement and to the effective network coverage resulting from collective roaming agreements.

The competent national regulatory authority shall monitor and supervise the application of reasonable use criteria that may be applied by alliance members, 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 observed by a party to a collective roaming alliance member agreement 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 a roaming alliance member that party. The roaming alliance member provider shall remind such end users of the nature of the roaming advantages which would thereby be lost. National regulatory authorities shall monitor in particular whether parties to a collective roaming alliance member agreement engage in business practices which would amount to circumvention of the default regime.

4. Article 4 Regulated retail roaming charges laid down in Articles 8, 10 and 13 shall not apply to roaming providers that provide regulated retail roaming services offered through a collective roaming alliance agreement to the extent that these are charged at the level of the applicable domestic service rate.

Where a party to a collective roaming agreement 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. The composition of collective roaming agreements, and any changes thereto shall be notified to the BEREC Office.

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

(a) the parties notify the collective roaming agreement to the BEREC Office, making specific reference to this paragraph;

(b) the collective roaming agreement has parties with networks in at least 21 Member States representing 85% of the population of the Union;

(c) each of the parties 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) each of the parties 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) each of the parties undertakes to comply, at the latest as from 1 July 2016, with paragraph 1(b) in all of their respective retail packages.

*A party to a collective roaming agreement 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. Parties 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 parties to a collective roaming agreement notify their agreement to the BEREC Office pursuant to point (d) of the first subparagraph and thereby fall under this subparagraph, they 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. Roaming providers shall negotiate in good faith the arrangements towards establishing a collective roaming agreement, on fair and reasonable terms having regard to the objective that such an agreement should allow the virtual extension of the home network coverage and the sustainable provision by each of the parties to such agreement of regulated retail roaming services at the same price level as their respective domestic mobile communications services.*

*8. By way of exception to paragraph 1(a), after 1 July 2016, this Article shall apply to the parties to a collective roaming agreement when those parties demonstrate that they have sought in good faith to establish or extend a collective roaming agreement on the basis of fair and reasonable terms in all Member States and have been unable to secure any contractual party with a network in one or more Member States, provided they comply with the minimum network coverage referred to in paragraph 6(b) and with all other relevant provisions of this Article. In those cases, the parties to a collective roaming agreement shall continue to seek to establish reasonable terms for inclusion of a member from any unrepresented Member State.*

*9. 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 before the derogation from Article 4 can take effect. The transitional period is without prejudice to the need to respect any longer contractual period agreed with the alternative roaming provider.*

*5. Regulated retail roaming charges laid down in Articles 8, 10 and 13 shall not apply to roaming services offered through a roaming alliance to the extent that these are charged at the level of the applicable domestic service rate.*

Where an alliance member applies different charges than the applicable domestic service rate for consumption of regulated roaming services going beyond reasonable use 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 such regulated roaming services shall not exceed the retail roaming charges laid down in Articles 8, 10 and 13.

6. Roaming providers shall negotiate in good faith the arrangements towards establishing a roaming alliance. By way of exception to paragraph 1, the members of a roaming alliance shall benefit from the provisions of this Article in the period between 1 July 2014 and 1 January 2016 when the alliance has

members in at least [21] Member States representing [85%] of the population of the Union, provided that they comply with the other relevant terms of this Article, including the provision by default in all retail packages that include regulated roaming services of roaming services at domestic prices for reasonable use while travelling in all Member States.

After 1 January 2016, where undertakings have sought in good faith to establish a roaming alliance on the basis of fair and reasonable terms [allowing the substantial internalisation of the network costs of roaming provision] and have been unable to secure any member in one or more Member States, the members of such a roaming alliance shall benefit from the provisions of this Article provided they comply with the other conditions set out in the first sub-paragraph. In such cases, the alliance members shall continue to seek to establish reasonable terms for inclusion of a member from any unrepresented Member State.

7. The composition of roaming alliances, and any changes thereto that may occur from time to time, shall be notified to the BEREC Office."

4. Article 7, paragraphs 1 and 2 are replaced by the following:

"Article 7

Wholesale charges for the making of regulated roaming calls

1. The average wholesale charge that the visited network operator may levy on the customer's roaming provider for the provision of a regulated roaming call originating on that visited network, inclusive, inter alia, of origination, transit and termination costs, shall not exceed the limits set in paragraph 2.

2. The average wholesale charge referred to in paragraph 1 shall apply between any pair of operators and shall be calculated over a 12-month period or any such shorter period as may remain before the end of the period of application of a maximum average wholesale charge as provided for in this paragraph or before 30 June 2022. The maximum average wholesale charge shall not exceed EUR 0,10 on 1 July 2013 and shall decrease to EUR [0,03] on 1 July 2014 and shall, without prejudice to Article 19, remain at EUR [0,03] until 30 June 2022."

5. Article 810. This Article is without prejudice to the application of Union competition rules to collective roaming agreements.'

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

Paragraph 2,(a) the first subparagraph is replaced by the following:

"2'2. 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 2018."2017.'

Paragraph (2), (b) the third subparagraph is replaced by the following:

"Every'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. Article 9, paragraph 1 is replaced by the following:

"With effect from 1 July 2013, the average wholesale charge that the visited network operator may levy for the provision of a regulated roaming SMS message originating on that visited network shall not exceed EUR 0,02 per SMS message. The maximum average wholesale charge shall decrease to EUR [0.01] on 1 July 2014 and shall, without prejudice to Article 19, remain at EUR [0,01] until 30 June 2022"

7. Article 10, paragraph 2 is replaced by the following:

"2. With effect from 1 July 2013, the retail charge (excluding VAT) for a euro-SMS tariff which a roaming provider may levy on its roaming customer for a regulated roaming SMS message sent by that roaming customer may vary for any regulated roaming SMS message but shall not exceed EUR 0,08. That maximum charge shall decrease to EUR 0,06 on 1 July 2014 and shall, without prejudice to Article 19, remain at EUR 0,06 until 30 June 2018."

8. Article 12, paragraph 1 is replaced by the following:

"1. With effect from 1 July 2013, the average wholesale charge that the visited network operator may levy on the roaming customer's home provider for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR 0,15 per megabyte of data transmitted. The safeguard limit shall decrease to EUR [0,015] per megabyte of data transmitted on 1 July 2014 and shall, without prejudice to Article 19, remain at EUR[ 0,015] per megabyte of data transmitted until 30 June 2022."

9. Article 13, paragraph (2), first sub-paragraph is replaced by the following:

"2. With effect from 1 July 2013, the retail charge (excluding VAT) of a euro-data tariff which a roaming provider may levy on its roaming customer for the provision of a regulated data roaming service shall not exceed EUR 0,45 per megabyte used. The maximum retail charge for data used shall decrease to EUR 0,20 per megabyte used on 1 July 2014 and shall, without prejudice to Article 19, remain at EUR 0,20 per megabyte used until 30 June 2018."

10.) In Article 14, a newthe following paragraph 1a is addedinserted:

"1a' 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)."1 of this Article.'

11.(7) In Article 15, a newthe following paragraph 2a is addedinserted:

"2a' 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 personalizedpersonalised 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).".'

12. Article 16, paragraph 1, is replaced by the following:

"1. National regulatory authorities shall monitor and supervise compliance with this Regulation within their territory.

By way of exception to the first sub-paragraph, the national regulatory authority of the home Member State shall monitor and supervise compliance with this Regulation in the case of European electronic communications providers in accordance with Article 5 of Regulation No [XXX/2014]. "

13.(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 30 June 2017 at the latest. The Commission shall report by 30 June 2016 if by the end of 2015 it observes that there is no clear trend towards the achievement of the objectives of this Regulation throughout the Union, whether through the retail strategies of individual roaming providers, the development of the offers of alternative roaming providers or the formation of roaming alliances." 31 December 2016 at the latest.'

Paragraph 1,(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 collective roaming alliances agreements 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;" ;'

A new paragraph 2a is added:

"2a.(b) Paragraph 2 is amended as follows:

(i) The Commission's review shall have regard first sentence is replaced by the following:

'If the report shows that tariff options, in particular which the domestic service rate applies both to the prevalence domestic and pro-competitive effects of regulated roaming alliances. These 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 consider the question whether the substantial internalization by alliance members of the network costs of roaming has allowed the widespread by the same date make appropriate proposals to the European Parliament and effective end of roaming retail surcharges, the Council to address the situation and whether 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 can thus be removed 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 3438 – Amendments to Regulation (EC) No 1211/2009/EC

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

(1.) In Article 1, paragraph 2 shall be amended as follows 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 Regulation Regulations (EU) No 531/2012 and No XX/2014" 2014'

(2.) In Article 4, paragraph 4 is replaced by the following:

"4'4. The Board of Regulators shall elect its Chair , subject to , acting in accordance with the rules of procedure of BEREC., shall appoint as Chair a non-voting, full-time, independent professional selected on the basis of merit, skills, knowledge of electronic communication market participants and markets, and experience relevant to supervision and regulation following an open selection procedure. After election by the boardBoard of representativesRegulators, but before appointment, the Chairperson-designate may be invited to make a statement before the relevant committee(s) of the European Parliament and answer Members' questions. The expenses and reasonable emoluments of the chairperson shall be paid from the budget of the BEREC Office. The term of office of the Chair shall be three years and may be renewed once.to answer Members' questions.

The appointment of the chair is effective only after approval of the Management Committee. The term of office of the Chair shall be three years and may be renewed once. In the course of the 9 months preceding the end of the three-year term of office of the Chair, the Board of Regulators shall evaluate the results achieved in the first term of office and the way they were achieved.

The Board of Regulators, taking into account the evaluation, may extend the term of office of the Chairperson once, subject to the possibility of a further appearance before the relevant committee(s) of the European Parliament.

The expenses and emoluments of the full-time chairperson shall be paid from the budget of the BEREC Office.

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

In accordance with the Staff Regulations referred to in Article 10, the Chair shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

The Board of Regulators shall also elect the Vice-Chair(s) from among its members , subject to in accordance with the rules of procedure of BEREC. The Vice-Chair(s) shall automatically assume the duties of the Chair if the latter is not in a position to perform those duties. The term of office of the Vice Chair(s) shall be at least one year, and may be renewed in accordance with the rules of procedure of BEREC. If, however, a Vice-Chair's membership of the Board ends at any time during their term of office, theirthat Vice-Chair's term of office shall automatically expire on that date.".'

(3) In Article 354 (5) the following sentence is added:

'The Chair shall represent the Board of Regulators in matters within its competence in accordance with mandates granted by the latter.'



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 [xx]1 July 2018 years after the entry into force of this Regulation. Subsequent reports shall be submitted every [xx]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 3640 – Entry into force

1. This Regulation shall enter into force on [20 days afterthe twentieth day following that of its publication]. in the *Official Journal of the European Union*.

2. It shall apply from [1 July 2014] save for the provisions of Chapter 3.

However, Articles 21, 22, 23, 24, 25, 26, 27, 28, 29 and 4, which30 shall apply from 1 JanuaryJuly 2016.

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

Done at Brussels.

For the European Parliament

For the Council

The President

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 speed and symmetry; speeds;

-(c) security enabling;

-(d) flexible choice of customer premises equipment (as long as technically possible); and

-(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:

- Specifications(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:

- abilityAbility 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

€ 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.