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European Union

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**NOTE**

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| From:          | General Secretariat of the Council                                                                                                                                                                           |
| To:            | Working Party on Telecommunications and Information Society                                                                                                                                                  |
| No. Cion doc.: | 12252/1/16 TELECOM 165 COMPET 486 MI 578 CONSOM 215 IA 72<br>CODEC 1269 REV 1                                                                                                                                |
| Subject:       | Proposal for a Directive of the European Parliament and of the Council<br>establishing the European Electronic Communications Code (Recast)<br>- Opinion of the Consultative Working Party of Legal Services |

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Delegations will find attached the opinion of the Consultative Working Party of Legal Services regarding the above mentioned subject.

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Brussels, 02 MAI 2017

## OPINION

FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION

**Proposal for a Directive of the European Parliament and of the Council  
establishing the European Electronic Communications Code (recast)  
COM(2016) 590 final/2 of 12.10.2016 - 2016/0288 (COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 27 October and 1, 7 and 14 December 2016 and on 6 February and 3 March 2017 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings<sup>1</sup>, an examination of the proposal for a Directive of the European Parliament and of the Council recasting 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), 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), 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) and 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) resulted in the Consultative Working Party's establishing, by common accord, as follows.

1. The following should have been marked with the grey-shaded type generally used for identifying substantive changes:

- in recital 30, the replacement of the word '*should*' with '*may*';
- in recital 118, the replacement of the word '*may*' with '*should*';

<sup>1</sup> The Consultative Working Party worked on the basis of the English language version of the proposal, being the master-copy language version of the text under discussion.

- in recital 126, the replacement of the words '*radio frequencies in a specific range*' with '*radio spectrum band*';
- in recital 176, the adding of the words '*and/or higher performance and end-user benefits*';
- in recital 206, the replacement of the words '*widely available*' with the word '*affordable*' and the adding of the words '*including equipment with assistive technologies*';
- in recital 251, the adding of sentence '*In order to facilitate a one-stop-shop enabling a seamless switching experience for end- users, the switching process should be led by the receiving provider of electronic communications to the public*';
- the deletion of the entire text of recital 27 of Directive 2002/19/EC;
- the deletion of the entire text of recital 52 of Directive 2002/22/EC;
- in Article 8(1), the replacement of the current reference to '*paragraphs 4 and 5*' with a reference to '*Article 10*';
- in Article 15(2)(b), the replacement of the current reference to '*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)*' with a reference to '*Articles 81 or 82*';
- in Article 30(1), (5) and (6), the adding of the words '*or Article 47(1) and (2)*';
- the deletion of Article 7b(2) of Directive 2002/22/EC;
- in Article 38(1), the replacement of the current reference to '*Article 9 of this Directive and Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive)*' with a reference to '*Articles 37, 45, 46(3), 47(3), 53*';
- the deletion of Article 19(2), first subparagraph, and of Article 13a(4) of Directive 2002/21/EC;
- in Article 51(1), third subparagraph, the adding of the initial words '*Without prejudice to paragraph 3*';
- in Article 54(1), the adding of the initial words '*Without prejudice to any implementing act adopted pursuant to Article 53*';
- in Article 66(1), the replacement of the current reference to '*Articles 9 to 13a*' with a reference to '*Articles 67 to 78*';
- in Article 66(2) and (3), the words '*to 75 and 77*';
- in Article 67(4), second subparagraph, the article number '*70*';
- in Article 75(1) and (5) and in Article 76(3), the words '*to 72*';
- in Article 83(1), the replacement of the current reference to '*Articles 4, 5, 6, 7 and 9(2)*' with a reference to '*Article 79*' and the adding of the words '*in accordance with Article 79, 81 and 82*';
- in Article 83(2), the replacement of the words '*with obligations under Articles 4, 5, 6, 7 and 9(2)*' with the words '*providing the voice communications services referred to in Article 79 and implemented pursuant to Article 80*';
- in Article 84(1), first subparagraph, the replacement of the words '*as set out in Articles 3 to 10*' with the words '*as set out in Articles 79, 80 and 81 or the continuation of existing universal services as set out in Article 82*';
- in Article 84(1), second subparagraph, the deletion of the indications '*81(3)*' and '*and 81(5)*';
- in Article 86(2), the replacement of the words '*designated to provide universal service, where a fund is actually in place and working*' with the words '*pursuant to universal service obligations laid down in Articles 79, 81 and 82*';
- the deletion of the entire text of Article 17 of Directive 2002/22/EC;
- the entire wording of Article 106(1), second subparagraph;

- in Article 106(1), third subparagraph, the replacement of the words '*on a regular basis*' with the words '*at least every five years*';
  - in Article 107(2), the replacement of the words '*may decide to*' with the word '*shall*';
  - in Article 113(1), first subparagraph, the replacement of the current reference to '*Article 8(1)*' with a reference to '*Articles 84(1) or 85*';
  - in Annex I, introductory wording, the deletion of the final words '*within the limits allowed under Articles 5, 6, 7, 8 and 9 of Directive 2002/21/EC (the Framework Directive)*';
  - in point D(1) of Annex I, introductory wording, the replacement of the words '*for which the rights of use for the frequency has been granted*' with the words '*within the limits of Article 45 of this Directive*'.
2. The text of recital 48 of Directive 2002/22/EC should have been present in the preamble to the proposed new act, and should have been identified with a 'substantive deletion' marker.
  3. The texts of recitals 34 and 49 of Directive 2002/22/EC should have been present in the preamble to the proposed new act, and should have been marked with 'double strikethrough'.
  4. In recital 62, the reference made to '*Articles 24 and 34*' should be adjusted so as to read as a reference to Articles 23 and 32.
  5. In recital 76, the reference made to '*Article 24*' should be adjusted so as to read as a reference to Article 23, and the reference made to '*Articles 34 and 35*' should be adjusted so as to read as a reference to Articles 32 and 33.
  6. In recital 77, the reference made to '*Article 34*' should be adjusted so as to read as a reference to Article 32.
  7. In recital 87, the reference made to '*Article 40(1)*' should be adjusted so as to read as a reference to Article 38(1).
  8. In recital 176, the reference made to '*Articles 27 and 28*' should be adjusted so as to read as a reference to Articles 26 and 27.
  9. In recital 185, the reference made to '*Article 67*' should be adjusted so as to read as a reference to Article 65.
  10. A typographical mistake is present in Article 54, where the current point number '*(d)*' should have apparently been replaced by a paragraph number '*4*'.
  11. In Article 54(6), the indication '*459*' should be adjusted so as to read as a reference to Article 45.
  12. In Article 113(1), first subparagraph, the reference made to '*Article 118*' should be adjusted so as to read as a reference to Article 115.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

  
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