

The Telecom Reform Package: changes in the EU regulatory framework

Cullen Forum 3
Budva (Montenegro)
4-5 February 2010

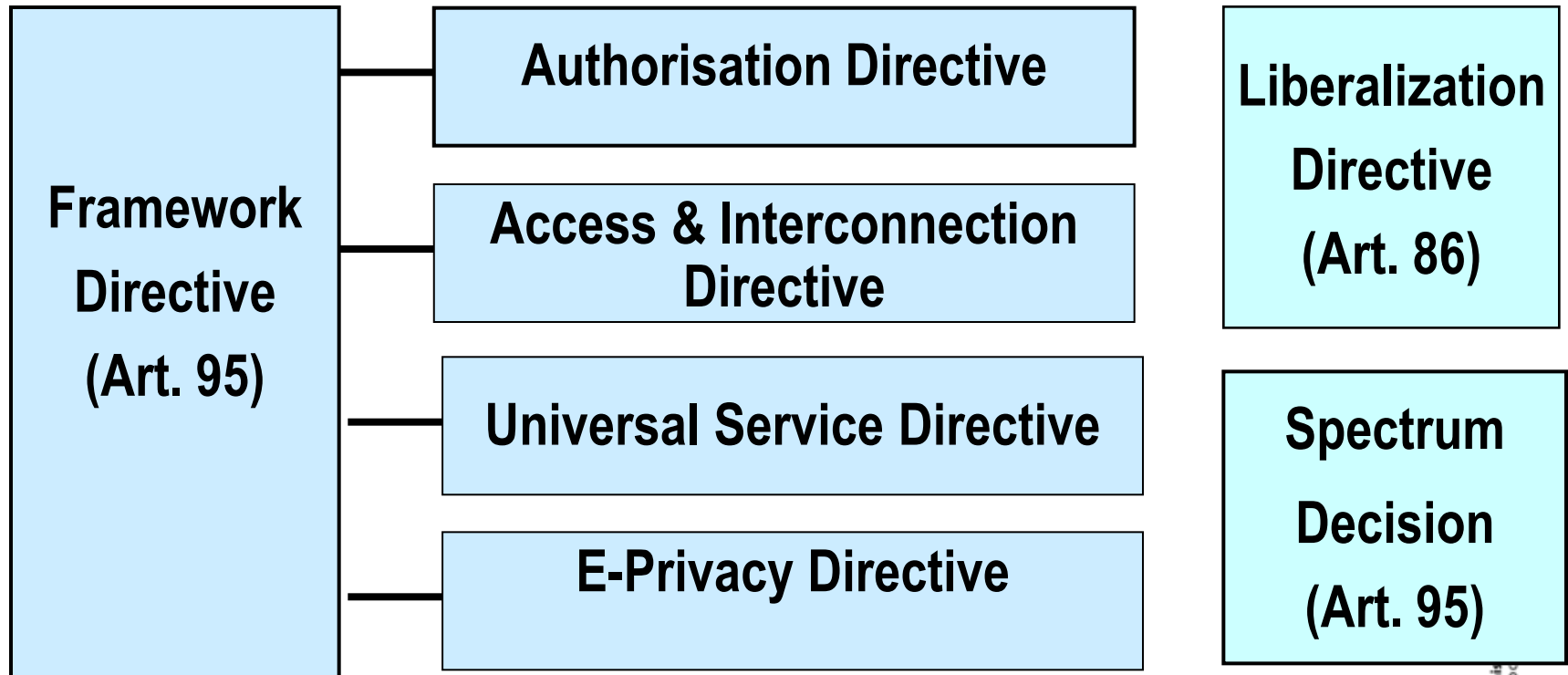
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The EU regulatory Framework

Unbundling Regulation

Roaming Regulations

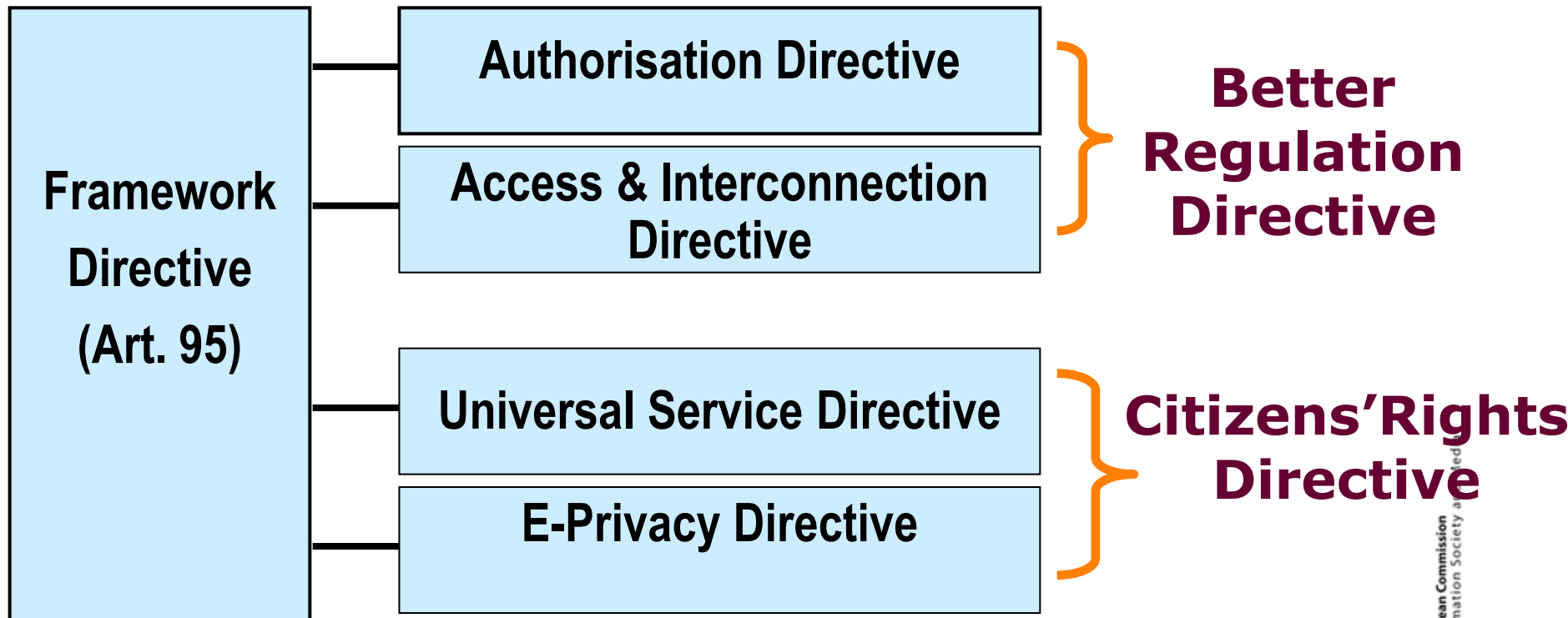


Decisions (ERG, 116)

Recommendation on relevant markets

The review of the EU framework

BEREC Regulation



The review of the EU framework for e-communications

- Formal adoption: 25 November (after final agreement between EP and Council on provision for citizens' rights relating to internet access)
- OJ/Entry into force: 18/19 Dec 2009
- 2 amending Directives:
 - ⇒ Existing directives are not repealed
 - ⇒ Provisions not amended remain in place
 - ⇒ Unbundling Regulation 2887/2000 is repealed
- Directives: transposition in national law: by May 2011
- BEREC Regulation: binding and directly applicable in MS
 - 20 days after OJ publication (18.12.2009)



Citizens' rights relating to access to internet (amendment 138)

- Citizens' rights relating to internet access are strengthened
- MS measures
 - to respect fundamental rights and freedoms (ECPHR and EU law principles)
 - appropriate, proportionate and necessary
 - Internet access: prior fair and impartial procedure, judicial review, right to be heard



“Better regulation Directive”

- Directive 2009/140/EC amending
 - Framework Directive 2002/21/EC
 - Access Directive 2002/19/EC
 - Authorisation Directive 2002/20/EC
- Repealing
 - Unbundling regulation 2887/2000
 - Publication: OJ L337, 18.12.2009, p.37



NRA independence

- NRA not to take instructions from any other body (Art 3 FWD) (except courts or appeal bodies)
- Transparency and consistency of the appeal process (Art 4a FWD)
- No arbitrary dismissal of the Head (or members of collegiate body) of the NRA (Art 3a FWD)
 - Only if no longer fulfils conditions
 - Decision to be made public



NRA resources

- NRAs to have
 - Adequate financial and human resources
 - Separate budgets (Art 3a FWD)



NGN/NGA

- Increased power to impose facility sharing (Art 12 FWD, Recital 43)
- Increased emphasis on investment risk (13(1) AID, 8(5)d FWD, Recitals 55-57)
- Undertakings to provide info on future network plans (with impact on wholesale services) (Art 5(1) FWD, Rec 16; Annex II, AID)
- NRAs to permit cooperative arrangements between investors and access seekers to diversify risk of investment (8(5)d FWD)



Functional separation

Prior to imposing functional separation, an NRA must:

- Identify persisting discrimination failures in several relevant markets related to access networks
- Analyse the impact of the proposed separation
 - Impacts on NRA, undertaking, investment, workforce, sector
- Receive Commission approval



Spectrum

- Service and technology neutrality
- Spectrum trading
- Increased coordination of spectrum policy at community level, incl greater flexibility in spectrum management



Harmonisation procedures

- Greater scope for harmonisation measures (Art 19 FD) by Commission where divergence between NRAs creates a barrier to single market, through recommendations of decisions
- Harmonisation decisions: inconsistent regulatory approaches, numbering issues, comitology procedures



Consistent regulation of Article 7a FWD

- New Commission oversight of regulatory remedies
- Commission serious doubts
- BEREC opinion
 - If BEREC shares COM opinion, NRA amends or withdraws
 - All other cases, COM issues Recommendation
- NRA “reasoned justification” if it does not comply



“Citizens’ Rights Directive”

- Directive 2009/136/EC amending
 - Universal Service Directive 2002/22/EC
 - e-Privacy Directive 2002/58/EC
 - Regulation 2006/2004 on cooperation between national authorities responsible for enforcement of consumer protection law
 - Publication: OJ L337, 18.12.2009, p.11



Universal service obligations

- Several modifications but no change to concept, financing, costing, mechanism..(separate review in EU Presidency' programme)
- Flexibility for MS to upgrade to broadband (Recital 5)
 - Data connection at satisfactory data rates
 - Prevailing bandwidth used by the majority of subscribers
 - Technological feasibility
- Disabled: MS shall take measures + new regulatory mechanism (Art 7 + 23a)
- Separation of connection and services



Contracts and transparency

(Arts 20 - 22)

- Better information on supply conditions
 - quality of services provided
 - access to emergency services
 - conditions limiting access to services or applications
 - traffic management procedures
 - restriction on terminal equipment supplied
 - renewal/termination conditions

- Improved comparability of tariffs



Emergency calls (Art 26)

- Access to all emergency services to be provided by all undertakings originating calls to the public network
- Strengthened provision of caller location information to emergency authorities
- Appropriate answering and handling of calls by emergency call centres – parity with calls to national emergency numbers
- Better access to emergency services for disabled users
- More publicity for the European emergency number 112



eAccessibility

- Stronger obligation on US provider (Art 7)
- Equivalence in access and choice for disabled (Art 23a)
- Terminal equipment for disabled (Art 1, Art 23a)
- Access to emergency services for disabled (Art 26(4))
- Must carry (“accessibility services” - subtitling, sign language, etc) (Art 31)



Number portability (Art 30)

- Porting of numbers and their subsequent activation within one working day (“subscribers who have concluded an agreement”)
- Conditions and procedure should not represent disincentive to change of supplier
- Contracts not exceeding 24 months (but also max. 12 month contract to be offered)
- Protection against ‘slamming’



Copyright and telecoms

- Information to consumers on consequences of copyright infringements/dissemination of harmful content (Art 20(1))
- MS may require undertakings to distribute standard information on uses of e-com to engage in unlawful activities (Art 21(4))
- Encourage cooperation between right owners and ISPs to prevent unlawful activities (Art 33(3))

Net neutrality Art 22(3))

Existing rules

- Competitive market
- Rules on SMP operators
- End-to-end connectivity

With the review

- Consumer transparency
- Quality of service – supervision by NRAs



Personal data breach notification

(Article 4(3))

- Scope limited to eCommunications service providers: telcos, mobile, ISPs
- All breaches notified without undue delay to the competent national authority
 - Notification to the subscriber or individual: only when a breach is likely to adversely affect the personal data or privacy of a subscriber or individual
- No notification to subscriber if provider has implemented appropriate tech protection measures (encryption)



Spam: right of action (Article 13(6))

- Any natural or legal person adversely affected by spam
 - Including an electronic communications service provider protecting its legitimate business interests
- Right to initiate legal proceedings
- Without prejudice to other available remedies



Regulation 1211/2009 establishing the Body of European Regulators for e- Communications (BEREC) and “The Office”

OJ L 337, 18.12.2009, p.1

Main objective

Contribute to the development and better
functioning of the internal market for
electronic communications

How

- developing and disseminating best practice among NRAs
- assisting Commission and NRAs in the correct application of the framework
- issuing reports and advising European institutions on electronic communications within its competence



BEREC- main tasks (I)

linked to the Better Regulation Directive

- ✓ Deliver opinions in the context of:
 - expanded Article 7 procedures
 - Recommendation on relevant markets
 - identification of trans-national markets
 - further harmonisation
 - cross-border disputes
 - proposals to impose functional separation
- ✓ Assist NRAs in relation to the analysis of relevant markets



BEREC- main tasks (II)

linked to the Citizen's rights Directive

- ✓ To be consulted within 2 'comitology' procedures
 - access to '112' emergency call number
 - '116' numbering range (children's hotline in particular)
- ✓ Assist NRAs in relation to fraud or misuse of numbering resources



BEREC- main tasks (III)

general tasks

- ✓ Ensure the development of common rules for providers of cross-border business services
- ✓ Monitor and report on sectoral developments, including an annual report

BEREC - main bodies

Board
of
Regulators
(BoR)

Office

- Management Committee (MC)
- Administrative Manager (AM)

The work of BEREC may be organised into expert working groups

BEREC - Board of Regulators

- 27 heads of NRAs
- Commission and NRAs from EEA & candidates are observers
- Chairman is elected from among members
- Meetings occur at least 4 times a year
- Decisions are taken by 2/3 majority
- Decisions are prepared by an independent Office with expert staff



BEREC Office

- Community body with legal personality
- Provides the necessary support to BEREC
- Comprises a Management Committee & an Administrative Manager



BEREC Office

Under guidance of BoR:

- ✓ provides professional & administrative **support** services;
- ✓ **collects** information from NRAs & **exchanges and transmits** information on its tasks;
- ✓ **disseminates** regulatory best practice;
- ✓ **assists** in preparing the work of BoR;
- ✓ **sets up** the expert working groups upon request BoR and provides them with support to ensure functioning.



BEREC Office – Management Committee

- 27 heads of NRAs + 1 member representing Commission
 - ✓ appoints Administrative Manager
 - ✓ appoints staff
 - ✓ assists expert working groups



BEREC- administrative manager

- ✓ appointed on the basis of merit, skills and experience by means of open competition
- ✓ May be interviewed by EP Committee before appointment
- ✓ heads & manages the Office under the guidance of MC
- ✓ assists BoR, MC and Working Groups
- ✓ implements the Office's budget



The Office's staff

- Number of staff required to carry out its duties
- EC Staff Regulations apply
- The appointing authority is the Vice-Chair of MC



The Office's budget

- A Community subsidy
- Voluntary contributions from MS or NRAs to finance operational expenditure



BEREC

- Comes into existence:
 - 28 January 2010
- Operational:
 - Office fully staffed and operational by end 2011
- Seat:
 - Agreement between 27 MS

