[DE] German Economy Ministry Introduces Proposals for Implementing Reform of Telecommunications Legislation

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In a position paper of 19 March 2010, the *Bundesministerium für Wirtschaft und Technologie* (Federal Ministry for the Economy and Technology - BMWi) set out its proposals for transposing the new EU package of directives on electronic communication (see IRIS 2010-1/7) into national law.

The structure of the document is based on the two directives “Better Regulation” (2009/140/EC) and “Citizens’ Rights” (2009/136/EC) amending the EU’s legal framework for electronic communication.

It contains, *inter alia*, new rules for expanding the broadband networks in accordance with the rules on competition and for investing in the next generation networks (NGNs). In this connection the *Bundesnetzagentur* (Federal Network Agency - BNetzA) has been given the authority, as the regulatory body responsible, to specify competition- and investment-friendly regulatory principles in accordance with Article 8(5) of the Framework Directive. In order to achieve greater planning certainty, regulatory cycles are to be extended and the BNetzA is to be authorised to issue administrative rules on its regulatory approaches. The paper also provides for the BNetzA to be able to order the joint use of land and any facilities installed thereon irrespective of the existence of market dominance. Co-operation of this nature is to be promoted through an obligation to provide information on existing and planned infrastructure facilities.

The position paper also contains proposals on the more flexible and more efficient organisation of the use of radio frequencies provided for in Articles 9ff. of the Framework Directive. The BMWi evidently wants to make use of Article 9a(1), according to which member states can enable holders of existing rights of use to have their compatibility with the new provisions examined in advance. Use is to be made of the possibility existing under Article 9(7) of laying down domestic rules, subject to penalties, to prevent spectrum hoarding.

The position paper also proposes rules for functional separation in accordance with the new Article 13a of the Access Directive and for the security and integrity of networks and services in accordance with Articles 13a and 13b of the Framework Directive.

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In the area covered by the “Citizens’ Rights” directive, the BNetzA is to be given the power to impose consumer protection requirements, such as a duty to provide information and an obligation to make a minimum service quality available and provide improved access for disabled end-users.

In order to improve international co-operation, the BMWi intends to involve the newly-created Body of European Regulators of Electronic Communications (BEREC) in the market regulations procedures and in proceedings to settle cross-border disputes. Finally, the paper suggests that information on legal remedies available against measures imposed by the BNetzA be collected on a systematic basis in future.

Eckpunktepapier des BMWi vom 19. März 2010

http://www.bmwi.de/BMWi/Redaktion/PDF/Publikationen/eckpunkte-tkg-novelle-2010,property=pdf,bereich=bmwi,sprache=de,rwb=true.pdf

BMWi position paper of 19 March 2010

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