[DE] TKG Amendment Passed by Bundestag

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On 27 October 2011, the Bundestag adopted, at the third reading, an amendment to the Telekommunikationsgesetz (Telecommunications Act - TKG), the main purpose of which is to transpose into German law the 2009 reforms of the EU regulatory framework for electronic communications.

A large number of last-minute changes had been made to the government draft of 2 March 2011 (see IRIS 2011-5/17). These concerned issues such as net neutrality: under the newly added section 41a(1) TKG, the federal government can establish this principle by means of a statutory order with the agreement of the Bundestag and Bundesrat. The order can lay down “the fundamental requirement for non-discriminatory data transmission and non-discriminatory access to content and applications”. In addition, the Bundesnetzagentur (Federal Network Agency - BNetzA) is entitled, under section 41a(2) TKG, to lay down detailed minimum requirements for service quality in a technical directive.

In order to give planning security to operators of public telecommunications networks wishing to invest in building next generation networks (NGNs), section 15a(4) TKG obliges the BNetzA to provide information, on request, about anticipated regulatory measures in a particular region. The use of alternative infrastructures and federal trunk roads and waterways for the construction of NGNs is facilitated. There are also provisions to improve the protection of telephone service users: under the version adopted by the Bundestag, call-by-call operators must, in future, announce the call price before the call begins. However, the proposed amendment contained in the government draft under which the intercarrier traffic data required for billing purposes should be erased after three months has been removed. The current rule, allowing such data to be stored indefinitely, remains applicable.

Under the amendments, the renewal of frequency allocations for analogue VHF radio stations until the end of the current period, which should not exceed 10 years, will take place automatically. According to the government draft, renewals would have been the subject of an application procedure and evaluation by the BNetzA.

The opposition voted against the draft in the Bundestag. It criticised the fact that net neutrality was not required by law, but could merely be regulated by means of

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a statutory order. It also demanded the expansion of universal service obligations to include broadband Internet access. However, corresponding proposals by the opposition parties were rejected by the government majority.

The Bundesrat must now examine the Act. At the request of Hamburg and Rhineland-Palatinate, the Culture Committee, which is involved in the legislative process, has recommended referral of the matter to the Mediation Committee. The Länder consider that the Bundestag's adoption of the Act particularly threatens their right of participation with regard to the interests of broadcasters. For example, they want to be involved not only in the allocation of frequencies to broadcasters, but also in all decisions that might have an impact on broadcasting. They also want to receive half of the proceeds of the frequency auctions. Only Bavaria and Schleswig-Holstein voted against the idea of referring the matter to the Mediation Committee.

Gesetzesbeschluss des Bundestags vom 27. Oktober 2011

http://www.bundesrat.de/cln_228/nn_8694/SharedDocs/Drucksachen/2011/0601-700/685-11,templateId=raw,property=publicationFile.pdf/685-11.pdf

Bundestag decision of 27 October 2011

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