



## *Helpdesk*

### **EU NEWS ON IMPLEMENTATION OF “ACQUIS COMMUNAUTAIRE”**

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#### **BERT – Body of European regulators in Telecoms**

With three legislative reports adopted, on 24 September in Brussels, by majorities of more than two thirds, the European Parliament now has enough material to influence the revision of the telecoms package. Underway for almost a year, this reform aiming to boost competition and investment in the European electronic communications sector, but also to better protect consumers, has since then caused several controversies, for at least one clear reason: the Council immediately rejected the telecoms ‘super regulator’ with extended powers (market regulation, network security, role in a management of radiofrequency spectrum) wanted by the European Commission. Likewise, most member states do not want the EU executive to have a right of veto on the decisions of national regulators.

At a regulatory level (Trautmann and Del Castillo reports), things were clear from the vote in the Industry Committee in early July: there will be neither a super regulator nor a Commission veto, but a **Body of European Regulators in Telecoms (BERT)** and a co-regulation system between national regulators, the Commission and the BERT. Questions of network security were removed from the package. One of the important points, explained Catherine Trautmann (PES, France), the rapporteur on the regulatory aspects, concerned the remedial measures administered by the national regulators on the market in the event of competition problems: “We have opted for a method which allows for a dialogue between regulators and EU authorities,” with a “double security for functional separation”. This **‘functional separation’** is one of the measures criticised by incumbent operators: if it is used, like today in the UK, it would force them to separate their network management activities from their commercial activities. ETNO, the European association of the former national monopolies, such as France Télécom and Deutsche Telekom, see this as a break on investment at a time when investments must be encouraged in new very high-speed fibre optic networks.

## FUNCTIONAL SEPARATION

According to the EP's report, a double agreement between the BERT and the Commission will be necessary to apply functional separation. For other remedial measures, the Commission will need the BERT's support for challenging them. Lacking this, regulators will be able to administer them. Functional separation remains possible to use, and though it is certainly a threat, with the risk shared between the operator newly entering the market and incumbent operators, as well as geographic segmentation (the regulation is applied where competition is lacking) Trautmann assures that investments in new networks will certainly be encouraged. The question of the BERT's funding remains unanswered.

No matter how much EU Information Society Commissioner Viviane Reding talks about her pleasure that "the European Parliament voted in favour of the creation of a European telecoms regulator" and that it "will be funded through the EU budget to reinforce independence and ensure equality between national regulators," certain qualifying statements need to be made. In fact, for the EP, in no way will the BERT be a "Community agency" fully funded by the EU budget, but a "coordinating body, a forum for standardisation," explained Pilar del Castillo (EPP-ED, Spain), who is responsible for the dossier. And, above all, the BERT will be based on two funding sources: the EU budget and funds from member states, "even though they do not say exactly what share of the funds" will come from each, she specified. According to the amendment adopted in plenary, regulators will have six months to agree on their participation.

The Parliament is also trying to resolve a confrontation regarding the management of radiofrequencies, which the Commission wanted to liberalise. According to the EP vote, member states remain competent to decide on the management, except there is now a "reference to the effectiveness of the spectrum management" as well as to necessary coordination on a European scale. According to the EP, the next European mandate will have to open with a conference on the European spectrum policy, which responds to public needs but also to the need to deploy new supply. Finally, the rapporteurs insisted on the need to obtain an agreement with the Council before the EP's next term (the elections are scheduled for June 2009). The Commission and the Parliament are now held up by the debate between ministers responsible for telecommunications, who will gather on 27 November to try to reach a political agreement on this reform, which is supposed to come into force on 1 January 2010.