

ANNEX 3

Summary of European Union reforms (of 5 November 2009)

1. This annex is a summary of the European Union reforms pack, which was approved by the European Government on 5 November 2009 (MEMO/09/491).
2. In November 2009, a council of Ministers and the European Government approved a package of proposed reforms (to the European Union directives) relating to electronic communications. All NRA's under the jurisdiction of the European Commission, including ComReg, are required to transpose these directives into national legislation before June 2011. ComReg is working with Government to ensure that these rules are transposed within the required timeframe. ComReg will then ensure that these rules are implemented in the application of electronic communications regulation in Ireland. As a result, these amendments in the European Commission directives are likely to impact directly on ComReg's workload, and strategic priorities, in the period covered by this review.
3. The amendments were broad-sweeping across a number of areas within ComReg's remit. The following is a summary of the most significant reforms (in terms of likely impact on ComReg) from the package:
 - i. **The establishment of a right for European consumers to switch between fixed or mobile operator (while keeping their old phone number) within 1 working day.** In addition, under the new rules, the maximum initial duration of a contract signed by a consumer with an operator will be no longer than 24 months. Operators must also offer consumers the possibility of agreeing to a contract with a maximum duration of 12 months.
 - ii. **Improved consumer information relating to communications services:** Under the new telecoms rules, consumers will be entitled and able to access more information about communications services. For example, under the new rules consumer contracts must specify, among other things, information on the minimum service quality levels, as well as on compensation and refunds available to consumers in cases where these levels are not met, and clear information on the qualifying criteria for promotional offers.
 - iii. **Protecting citizens' rights relating to internet access by a new internet freedom provision:** The Directives now explicitly state that any measures taken by Member States regarding access to or use of services and applications through telecoms networks must respect the fundamental rights and freedoms of citizens
 - iv. **New guarantees for an open and more "neutral" net:** Under the new rules, NRAs will be able to set minimum quality levels for network transmission services so as to promote "net neutrality" and "net freedoms". This will be supported by the new consumer transparency requirements (highlighted in point ii. above).
 - v. **Consumer protection against personal data breaches and spam:** This amendment is focused on protecting consumer privacy for example by tightening the rules around the use of "cookies" and similar devices. Furthermore, internet service providers will also gain the right to protect their business and their customers through legal action against spammers.

- vi. **Better access to emergency services, 112:** The new telecoms rules will ensure that European citizens gain better access to emergency services by extending the access requirements from traditional telephony to new technologies, strengthening operators' obligation to pass information about caller location to emergency authorities, and by improving general awareness of the European emergency number '112'.

In addition, provisions on access to telecoms services for Europeans with disabilities have been strengthened so that they can benefit from the same usability of services as other citizens, but by different means. For the first time, the EU's telecoms rules will include a provision on the availability of terminal equipment offering the requisite services and functions for users with disabilities.

- vii. **National telecoms regulators will gain greater independence:** The new telecoms rules reinforce national telecoms regulators' independence by eliminating political interference in their day-to-day duties and by adding protection against arbitrary dismissal for the heads of national regulators.
- viii. **The establishment of 'BEREC' - a new European Telecoms Authority that will help ensure fair competition and more consistency of regulation on the telecoms markets.** The new European Telecoms Authority called "BEREC" (Body of European Regulators for Electronic Communications) will replace the predecessor "the European Regulators Group". BEREC decisions will be taken, as a rule, by majority of the heads of the 27 national telecoms regulators: by a simple majority when BEREC gives opinions in the context of the Commission's analysis of remedies notified by national regulators, and by a two thirds majority in other cases. BEREC will also advise, support and complement the independent work of national telecoms regulators, especially when it comes to regulatory decisions with cross-border implications.
- ix. **The new EU telecoms rules will give the European Commission the power to oversee regulatory remedies proposed by national regulators** The objective is to avoid inconsistent regulation that could distort competition in the single telecoms market. In administering this oversight role, the EC will work in close cooperation with BEREC. Under those conditions, the Commission may issue a recommendation that requires the national regulator to amend or withdraw its planned remedy. The new rules also enable the Commission to adopt further harmonisation measures in the form of recommendations or (binding) decisions, if divergences in the implementation of remedies persist across the EU in the longer term.
- x. **Functional separation as a means to overcome competition problems:** National telecoms regulators will gain the additional tool of being able to oblige telecoms operators to separate communication networks from their service branches, as a last-resort remedy.
- xi. **Accelerating broadband access for all Europeans:** The reform is intended to allow for better management of radio spectrum by Member States (particularly in areas where building a new fibre infrastructure is too costly). This will include emphasizing the desirability of managing radio spectrum in a technologically neutral fashion. This is intended to lead to more efficient allocation and use of spectrum, and ultimately supports ComReg's higher level objective to achieve competition in electronic communications markets for the benefit of end users. In addition, the reforms allow Member States to

expand universal service provisions beyond narrow-band internet access. It is hoped that this amendment will assist NRAs in addressing the digital dividend.

- xii. **Encouraging competition and investment in next generation access networks:** The new rules bring legal certainty for investment in next generation access (NGA) networks, and will ensure that telecoms operators receive a fair return on their investments. Based on these new rules, the Commission plans to issue a recommendation for the regulation of access to NGA networks in the first half of 2010. The rules also cover the sharing of network elements, such as ducts or in-building wiring, between operators. These rules will assist ComReg in making decisions and statements relating to next generation infrastructure, and will impact upon next generation network deployment and regulation.