

CLIENT ALERT

Electronic Communications & IT

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The new EU telecom rules entered into force

On 18 December 2009, the new EU telecoms rules were published in the EU's Official Journal. They entered into force on 19 December 2009, the day following their publication, and need to be transposed into national law by June 2011. The new Regulation establishing the new European Telecoms Authority called "Body of European Regulators for Electronic Communications (BEREC)" has direct effect and entered into force on 7 January 2010.

As discussed in our [previous newsletter](#), the European Parliament and Council of Ministers agreed in November 2009, after two years of discussion, on the reform of the EU telecom package of 2002. This resulted in the publication of the following legislative documents on 18 December 2009 in the Official Journal of the EU (the text is available through the link below):

- **Regulation (EC) No 1211/2009** of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office
- **Directive 2009/136/EC** of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws
- **Directive 2009/140/EC** of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorization of electronic communications networks and services

Both Directive 2009/136 and Directive 2009/140 entered into force on 19 December 2009, the day following their publication. They have to be transposed by the 27 Member States into national law by June 2011. Regulation 1211/2009 establishing the new European Telecoms Authority is directly applicable. The Regulation entered into force 20 days following its publication, *i.e.* on 7 January 2010. The BEREC has scheduled its first meeting for 28 January 2010 in Brussels.

For more information on the content of the telecoms reform, we refer to our [previous newsletter](#).

References: OJ L 337, 18.12.2009

Links: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:FULL:EN:PDF>

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Microsoft and Commission agree on browser choice for Windows users

The European Commission's investigation of Microsoft bundling Internet Explorer with Windows operating systems, has ended as the Commission and Microsoft reached an agreement.

Introduction

In January 2009, the European Commission announced it would investigate the bundling of Internet Explorer with Windows operating systems from Microsoft, saying Microsoft's tying of Internet Explorer to the Windows operating system harms competition between web browsers, undermines product innovation and ultimately reduces consumer choice. The Commission now reached a settlement agreement with Microsoft.

The agreement between Microsoft and the Commission

As part of this agreement, Microsoft commits to provide Windows users with a choice screen showing various browsers that can be installed on top of Windows. The user is free to choose his default browser. This system will not only be available on new computers. In the European Economic Area, the choice screen will also be available on existing computers for a period of five years through the Windows Update mechanism for users of Windows XP, Windows Vista and Windows 7.

Microsoft is legally bound by the agreement and might be imposed a fine of up to 10% of its total annual turnover, if it were to break its commitments. The Commission would not have to prove any violation of EU antitrust rules for this.

Other investigations

The Commission's antitrust investigation regarding interoperability between third party products and several Microsoft products is still pending. However, Microsoft made proposals in relation to disclosures of interoperability information. The Commission welcomed Microsoft's initiatives in this regard, but did not reach a formal agreement about interoperability with Microsoft. Nevertheless, Microsoft's public undertaking to publish more information about interoperability on its website offers assurances to third parties that can be privately enforced. The Commission announced it would carefully monitor the impact of this undertaking on the market.

References: Microsoft's final commitments of 16 December 2009

Links: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39530;
<http://www.microsoft.com/interop/default.aspx>.

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