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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Report on the outcome of the Review of
the EU regulatory framework
for electronic communications networks and services
in accordance with Directive 2002/21/EC
and
Summary of the 2007 Reform Proposals**

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(Text with EEA relevance)

1. INTRODUCTION

Electronic communications networks and services underpin the economic and social fabric of the European Union. The widespread availability of affordable and secure broadband communications networks is a key condition for realising the growth and job-creation potential of the European Union — an objective that lies at the heart of the renewed Lisbon strategy. As part of this strategy, the i2010 initiative launched by the Commission in June 2005¹ promotes an open and competitive digital economy and calls for the creation of a Single European Information Space. The main instrument envisaged for this is the reform of the EU regulatory framework for electronic communications.

This reform will be an important pillar of the Review of the Single Market as electronic communications have the capacity to make key contributions to market integration by:

- delivering more results for citizens and small business;
- taking better advantage of globalisation;
- opening new frontiers of knowledge and innovation;
- encompassing a strong social and environmental dimension.

This Communication reports on the results of Commission's Review of the regulatory framework for electronic communications under Article 25 of Directive 2002/21/EC², and explains the main policy changes proposed by the Commission (hereinafter the 2007 Reform Proposals). Further details can be found in the Commission's legislative proposals³ and associated Impact Assessment⁴.

¹ COM(2005) 229.

² OJ L108, 24.04.2002, p. 33.

³ COM(2007) 697; COM(2007) 698; COM(2007) 699.

⁴ SEC(2007) 1472.

2. OBJECTIVES OF THE REVIEW AND CONSULTATION PROCESS

2.1 Background and objectives of the Review

The EU regulatory framework for telecommunications was created in the 1990s to open up to competition national markets, which until then had been dominated by state-owned monopolies. This process culminated in the liberalisation of national markets in 1998. A further step was taken in 2002 with the adoption of the current set of rules, which take account of the convergence of technologies and apply to all forms of ‘electronic communications’. The regulatory model under the 2002 framework essentially relies on implementation of a common set of EU rules by different national regulatory authorities (NRAs) to which responsibility for overseeing markets has been entrusted. The 2002 framework also introduced the competition law concept of dominance as the threshold for ‘ex-ante’ regulation, to ensure that regulation is imposed only on firms with significant market power.

In 2006 and 2007, the Commission has reviewed the functioning of the EU framework against its main objectives, which are to promote competition, to consolidate the internal market and to promote the interests of the citizen. In the light of technological and market developments, especially improved competition in some areas, but also continued dominance by one or a few operators on a number of key markets as well as a continued lack of a single market for electronic communications and increasing divergence of regulatory approaches in the enlarged EU, a substantial reform of the regulatory framework is considered necessary by the Commission. The 2007 Reform Proposals of the Commission can be grouped under the three pillars of better regulation, completing the single market and connecting with citizens.

i) Better regulation for competitive electronic communications

With its 2007 Reform Proposals, the Commission first of all wants to simplify and improve the quality of the regulatory environment, by reducing ex-ante regulation where market developments allow and by simplifying the market review procedure. In addition, better regulation of radio spectrum — by simplifying access to and use of this scarce resource and moving to a more market-oriented allocation of spectrum — will improve competition in wireless services and release the economic potential of spectrum.

ii) Completing the single market in electronic communications

Under the present set of rules, NRAs exercise considerable discretion in implementing the regulatory framework but their perspective has remained largely confined to national borders, despite the efforts made to improve coordination via the European Regulators Group (ERG), a forum bringing together national regulators. This has led to regulatory inconsistency and distortions of competition, hindering the development of a single European market in which undertakings can operate seamlessly across borders and where private and business consumers can profit from the availability of comparable communications services independently of geographic location. The Commission therefore proposes the establishment of an independent European Electronic Communications Market Authority, which will build on the combined expertise of NRAs and improve the existing coordination mechanisms. At the same time, it is proposed to strengthen the independence and enforcement powers of national authorities. This will ensure consistent implementation of (de-)regulation

across the EU, under the supervision of the Commission, and a level playing field for operators in the single market.

iii) Connecting with citizens

In a rapidly changing market environment, new measures are needed in order to preserve and enhance consumer protection and user rights and ensure that consumers can reap the full benefits of a dynamic and increasingly borderless communications market. The Commission proposals aim in particular to strengthen security and privacy, to make number portability speedier and more efficient, and to promote a high quality of service and unobstructed access to digital and online content. The reform proposals will also ensure that users with disabilities, elderly users and people with special needs have better access to electronic communications services.

2.2 Consultation process

The consultation was in two phases: Phase I, which started at the end of 2005, was a ‘call for input’, which resulted in around 160 written submissions⁵. These views were taken into account in the preparation of the Commission Communication of June 2006 on the Review⁶, the accompanying Staff Working document and the Impact Assessment. With these documents, the Commission launched Phase II of the consultation, which ran until October 2006 and included a public workshop.

A total of 224 responses were received, from inside and outside the EU⁷. 52 industry associations, 12 trade associations and worker’s unions, and 15 user associations submitted written comments, as did 18 EU Member States and the ERG, which comprises the 27 NRAs. The Commission followed up the ERG submission with a regulatory dialogue between November 2006 and February 2007 to explore options for reducing regulatory inconsistencies and obstacles to the single market in a spirit of better regulation⁸.

3. BETTER REGULATION FOR COMPETITIVE ELECTRONIC COMMUNICATIONS

3.1 Ex-ante regulation refocused on remaining market competition problems

Background and objectives

Over the last decade, the EU rules have been quite successful in opening up national telecommunications markets to competition, stimulating investment and innovation by both new entrants and incumbents, and increasing choice for business and private consumers⁹. In the June 2006 Communication, the Commission concluded that the overall principles of the EU Framework were well-balanced and supported new investment.

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http://ec.europa.eu/information_society/policy/ecomm/info_centre/documentation/public_consult/review/index_en.htm.

⁶

COM(2006) 334.

⁷

http://ec.europa.eu/information_society/policy/ecomm/info_centre/documentation/public_consult/review_2/index_en.htm.

⁸

Commissioner Reding’s letter to the ERG of 30.11.2006, the ERG response and the joint statement of Commissioner Reding and Chairman Viola of 27.2.2007 can be found at: http://erg.eu.int/whatsnew/index_en.htm.

⁹

Further evidence and quantitative data can be found in the associated Impact Assessment.

The EU framework provides a mechanism whereby the markets that may warrant ex-ante regulation are identified in a Commission Recommendation¹⁰. This Recommendation is an important starting point for NRAs to analyse markets in order to determine whether they warrant ex-ante regulation. NRAs must notify the results of their market analyses to the Commission. The regulatory framework requires ex-ante obligations to be removed once competition in a market becomes effective.

Incumbent operators remain dominant on many markets, in particular in the area of fixed telephony (average market share of incumbents: 65.8%¹¹) and in most countries also in broadband (market shares of incumbents mostly over 55% and often over 65%¹²). In mobile markets, the number of operators has — with some exceptions — remained static, but the trend is towards consolidation.

Based on experience with this system over the last four years (with over 600 notifications), the Commission suggested in June 2006 simplifying the notification procedures and removing most retail markets from the list, on the grounds that effective wholesale regulation would be sufficient to protect retail users.

Forms of separation between the access network and the services offered by operators were discussed in the Impact Assessment of June 2006. Since then, the impact of functional separation in the UK has become clearer, and the imposition of similar measures is also being considered in Italy, Sweden and Poland. Competition problems usually stem from the presence of enduring bottlenecks in the access network characterised by the dominance of the vertically integrated incumbent network operator and the persistent difficulty to apply non-discrimination remedies in an effective manner.

The transition to "Next Generation Access Networks" might reinforce the importance of economies of scale and scope, thereby diminishing the degree of infrastructure replicability. However, assessment also needs to be given to the impact of behavioural or structural remedies on new investments by both incumbents and new entrants and on consumer welfare before such remedies are implemented.

Results of the public consultation

New entrants as well as Member States and NRAs supported the Commission's view that, in general, the current EU framework promotes competition and investment, and rejected the call by some incumbent operators for 'regulatory holidays'. There was a broad consensus that the use of new technology does not in itself imply a new market, and that the market-based approach of the framework allows investment risks to be taken into account. NRAs in particular called for adding functional separation to the 'toolbox' of possible remedies to address persistent competition problems.

Proposals for streamlining notification procedures received broad support from the majority of stakeholders.

¹⁰ Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex-ante regulation in accordance with Directive 2002/21/EC, OJ L114, 08.05.2003, p. 45.

¹¹ Commission, 12th Report: European Electronic Communications Regulation and Markets 2006, Annex 2, p. 13. Figures in terms of retail revenue for all types of calls, EU25 as of December 2005.

¹² Ibid. Annex 2, p. 66. EU25 Figures as of October 2006, resale included.

The proposed reduction of the number of markets in the Recommendation was welcomed by incumbent operators, while new entrants and consumers as well as a number of NRAs were more cautious.

Some incumbents and some NRAs suggested that the Commission should give regulatory guidance on the issue of sub-national geographic markets.

Policy Proposals — Refocused regulation on remaining market competition problems

1. A first substantial deregulation of the sector is now possible

The Commission has revised its Recommendation on relevant markets to phase out ex-ante regulation. The list of markets is reduced from 18 to 7 markets.

The Commission will intensify its oversight of markets where competition is not yet effective and will monitor carefully those markets that are crucial for Europe's competitiveness, in particular markets associated with the delivery of broadband access.

2. Market review procedures can be rationalised and simplified

The legislative proposals would allow for the notification requirements in the system of market reviews to be simplified.

3. Introduction of functional separation as a remedy for NRAs to tackle persistent competition problems.

The legislative proposals provide NRAs with the additional remedy of functional separation, i.e. forced separation of activities without divestiture of assets, as an exceptional remedy subject to Commission oversight.

4. Commission guidance

The Commission will enhance legal certainty for stakeholders by issuing, by summer 2008, guidance on the application of the regulatory framework to aspects of new fibre investment in the local access network. The Commission will also examine the possibility of issuing guidance in other areas, in particular on sub-national geographic differentiation.

3.2 Spectrum management in Europe - The case for reform

Background and objectives

The rapid development of wireless technology and the increasing demand for bandwidth, in particular for mobile and nomadic use, have drastically raised the importance of access to radio spectrum for the economy and society as a whole. It is estimated that the total value of services dependent on radio spectrum in the EU is around €250 billion¹³. The European Council has concluded¹⁴ that immediate priorities for fostering innovation and competitiveness include the development of spectrum allocation models meeting all objectives, the fast promotion of advanced mobile services, and a coordinated approach to the use of spectrum capacity that is becoming available as a result of digital switch-over.

¹³ See the Commission Communication "Reaping the full benefits of the digital dividend in Europe: a common approach to the use of the spectrum released by the digital switchover", COM(2007) 700.

¹⁴ Brussels European Council, 14-15/12/06, Presidency Conclusions 16879/1/06 rev. 1.

Moreover, the European Parliament has emphasised the need for efficient use of spectrum by all stakeholders, and has identified the need for EU harmonisation of spectrum combined with the removal of over-prescriptive regulatory constraints. The European Parliament also stated that social, cultural and political considerations must be taken into account in line with Article 151(4) of the Treaty¹⁵.

In this fast-evolving environment, the current spectrum management system, where decisions on the use of spectrum are predominantly taken by public administrations and often constrain the technology and service that can be deployed, has reached its limits. Whereas national borders are increasingly irrelevant in determining optimal radio spectrum use, the fragmentation of approach inherent in the current spectrum management system results in increased costs and lost market opportunities for spectrum users, and slows the take-up of innovative applications and services. If it remains unchanged, it will constrain the growth and innovation potential of wireless systems in Europe, particularly in the context of the ongoing switch from analogue to digital television, which will free up a large number of frequencies in the most valuable part of the radio spectrum for new uses, both in broadcasting, such as mobile TV, and for other applications, such as wireless broadband.

Access to broadband communications can have a significant impact on the competitiveness and cohesion of the European Union¹⁶ in terms of productivity gains and social impacts. Wireless access is one of the most promising means to bridge the "broadband gap" and overcome the "digital divide", especially in remote and rural areas¹⁷.

The general principles of the EU strategy for a forward-looking spectrum policy were outlined by the Commission in a number of Communications¹⁸, and endorsed by Member States and most stakeholder groups¹⁹. Accordingly, the Commission proposed in its Communication of June 2006 a reform of spectrum management to:

- remove unnecessary restrictions on spectrum use by strengthening the principles of technological neutrality (freedom to use any technology in a spectrum band) and service neutrality (freedom to use spectrum for any electronic communications service)
- improve access to spectrum by allowing more unlicensed use of spectrum and the transfer of exclusive usage rights in agreed bands (secondary trading);
- set up a more efficient and coordinated system for the authorisation of wireless systems with a pan-European potential or with a substantial cross-border dimension.

Results of the public consultation

On the principle of service neutrality, the public consultation revealed a broad agreement among stakeholders, especially mobile operators and the wireless industry. In contrast, some

¹⁵ Resolution (P6_TA-PROV(2007)0041) available at: http://ec.europa.eu/information_society/policy/radio_spectrum/docs/ep_dr_res_spectrum_14_02.pdf.

¹⁶ Broadband is the basic infrastructure of the knowledge economy and has significantly contributed to the economic impact of ICT, driving half of the productivity gains in modern economies in the past decade.

¹⁷ On average, in EU 25, broadband was available to more than 90% of urban population, but was limited to 71% of rural population (Commission, estimates, January 2007)

¹⁸ COM(2005) 411, COM(2005) 400, COM(2005) 461.

¹⁹ See notably Opinions of RSPG on the Digital Dividend, on Spectrum Trading and on the Wireless Access Policy for Electronic Communications Services (WAPECS); texts available at <http://rspg.ec.europa.eu>.

broadcasters and operators of terrestrial TV distributions networks expressed concerns regarding the impact that this could have on existing rights.

The principle of technology neutrality was also viewed favourably by most respondents. The progressive removal of technical restrictions was welcomed. The issue of interference management was a concern for many, especially in the context of unlicensed spectrum, while some respondents indicated that technical solutions to address the problem were imminent.

The public consultation revealed growing support for secondary trading. Most Member States, industry associations and companies were in favour, although prevention of spectrum hoarding was seen to be necessary. The opposing view was expressed mainly by terrestrial broadcasters and some Member States concerned that trading would affect broadcasting.

Policy Proposal - Spectrum

5. Simplify access to spectrum and remove unnecessary restrictions on spectrum use

The Commission's legislative proposals strengthen the principles of technology and service neutrality, and create a mechanism to designate certain bands where, across the EU, rights acquired to use spectrum are allowed to be traded (secondary trading). Regulatory provisions to encourage licence-free spectrum use and to reinforce the coordination of conditions for spectrum authorisations are also proposed.

The proposals take into account the policy objective to achieve economies of scale, but also the need to avoid harmful interference and the achievement of general interest objectives such as social and regional cohesion, ensuring safety of life, avoiding inefficient spectrum use, and promoting cultural and linguistic diversity and media pluralism.

4. THE SINGLE MARKET FOR ELECTRONIC COMMUNICATIONS

4.1 Background and objectives

In recent years, technological and market developments have increased the potential for deploying electronic communications services beyond the geographical frontiers of individual Member States. Already today there is a business interest in providing satellite personal communication systems and mobile communications on board aircraft and ships beyond national borders. In addition, important services such as mobile broadband and voice over IP require coherent regulatory conditions in order to realise their full potential across the single market.

However, in spite of competitive pressure from other economic regions, Europe does not yet have a single market for electronic communications networks or services. Implementation of the EU rules via 27 separate national regulatory systems has resulted in two major drawbacks: the artificial segmentation of markets on a national basis and a fundamental lack of consistency in the way the EU rules are applied.

In order to address this lack of a single market, the Commission outlined a number of proposals in its 2006 consultation documents, namely to:

- i) improve efficiency and consistency of regulation in the EU by strengthening the Commission's oversight of remedies imposed by NRAs;

- ii) improve the efficiency and speed of enforcement mechanisms by strengthening the independence and effective powers of national authorities;
- iii) establish a simpler procedure for the selection and authorisation of operators for the provision of cross-Community services;
- iv) reinforce institutionally the cooperation between NRAs and the Commission.

4.2 Results of the public consultation

Many stakeholders had major concerns about the differences that exist in the way the current framework is implemented at national level and which prevent the full benefits of the internal market from being achieved. Some called for more regulation at EU level. Industry in particular, but consumer associations as well, deplored the continued lack of a single market and a level playing field for businesses and users in the electronic communications sector. Furthermore, the limitations of the ERG — which, despite some efforts made in 2006 and 2007, allows only for loose coordination among regulators — were mentioned by stakeholders. While Member States had reservations about “ceding powers” to the Commission, several industry groups (new entrants, but also some incumbents) either favoured an institutional reform of the ERG and/or asked for a stronger role for the Commission in order to avoid a “lowest common denominator” approach, seen by some as inherent in a regulatory mechanism that essentially relies on consensus among 27 NRAs.

In addition, a number of views reflected the fact that the current approach for selecting and authorising operators is not compatible with exploitation of the economies of scale needed for the development of new services. In particular, for cross-Community services and those with the potential to become such, there is a case for establishing a single unified system for the authorisation of rights of use for spectrum and numbers.

With respect to enforcement mechanisms, the vast majority of Member States and the new entrants association agreed with the proposal to strengthen the enforcement powers of national authorities, while incumbents and the mobile operators association disagreed with this proposal.

Policy Proposals — Internal Market

6. Strengthen the independence and enforcement powers of national authorities

This will improve the effective and speedy implementation of the regulatory framework.

7. Complete the single market by establishing an independent European Electronic Communications Market Authority

It is proposed to establish an independent European Electronic Communications Market Authority, bringing together the NRAs currently meeting within the ERG. It would advise the Commission, have a clear mandate to act in furtherance of the single market, and be accountable to the European Parliament. The new Authority would thus replace today’s loose cooperation among NRAs inside the ERG by a more efficient, more authoritative and more accountable system.

The new Authority would:

- reinforce the coherence and consistency of the application of the EU rules in the internal market by making better use of the combined expertise of national regulators in the Community system;
- assist the Commission in other fields related to electronic communications such as the analysis of trans-national markets and the selection of undertaking(s) for the provision of cross-border services;
- serve as an entry point for firms seeking to acquire rights of use for spectrum and numbers to provide cross-border services in the EU;
- take over the functions of the European Network and Information Security Agency (ENISA) and act as a centre of expertise at European level on network and information security issues.

8. Strengthen the Commission's oversight on remedies in order to improve consistency

The legislative proposals extend the Commission's power under the market review procedure to oversee remedies proposed by NRAs, in close cooperation with the new European Authority, with a view to contributing to a more consistent, efficient and speedy application of remedies across the EU.

9. More technical harmonisation in a number of key areas

In order to reduce divergence in the implementation of the regulatory framework, it is proposed that the Commission, drawing upon the expertise of the Authority, should be able to adopt technical harmonisation measures in areas such as costing methodologies, implementation of number portability, consumer protection, and accessibility to electronic communication services and equipment for end-users with disabilities.

5. CONNECTING WITH CITIZENS

5.1 Users' rights and consumer protection

Background and objectives

The combined effects of technological change and enhanced competition have started to give citizens more choice as well as better and cheaper services. However, more can be done to ensure that consumers can reap the full benefits of a truly single market for electronic communications.

In its Communication of June 2006 the Commission identified four main areas for change, namely:

- Transparency and publication of information for users;
- Improved accessibility for users with disabilities;
- Emergency services and access to 112; and
- Basic connectivity and quality of services ('net neutrality').

In addition, long-term issues such as the concept and scope of universal service, which have already been identified by the Commission²⁰, will be addressed in a Commission Communication to be published in 2008.

Results of the public consultation

While consumers and associations of users with disabilities welcomed the Commission proposals in all areas, many operators argued that mandatory measures can negatively affect their ability to innovate, and preferred to rely on self-regulation. Equipment manufacturers and software companies were supportive of strengthened harmonisation at EU level. A majority of the Member States that submitted comments supported the proposals in the areas of eAccessibility, transparency of information and quality of service. The ERG also supported the proposals in the areas of transparency of information, caller location and eAccessibility.

Policy proposals — Consumer protection

10. Update and strengthen the general provisions of the framework in the area of consumer protection

The legislative proposals include:

- Improving the transparency of information from service providers to consumers, including information on supply conditions and on tariffs.
- Setting a time limit of one working day for ‘porting’ (transferring) a telephone number following a change of fixed or mobile operator.
- Enhancing the implementation of ‘112’ emergency services in the EU, in particular by ensuring more efficient access to caller location information.
- Enabling NRAs to impose minimum requirements for the quality of services based on standards drawn up at Community level.

11. Update and strengthen provisions in the area of eAccessibility and the rights of users with disabilities

The legislative proposals include

- Facilitating access by users with disabilities to 112 emergency services.
- Strengthening the existing provisions to ensure that users with disabilities, elderly users and people with special needs are not prevented from using and accessing eCommunications services.

5.2 Privacy and security

Background and objectives

One of the central goals of the regulatory framework is to promote the interests of EU citizens by, among other things, ensuring a high level of protection of personal data and privacy and ensuring that the integrity and security of public communications networks are maintained.

²⁰ See the two Communications on the Review of the scope of universal service, COM(2005) 203 and COM(2006) 163.

The growing number of new electronic threats in recent years such as viruses, spam, spyware and phishing has further increased the importance of these objectives.

The June 2006 consultation documents outlined a number of proposals to strengthen the existing security-related provisions of the regulatory framework. These changes are designed to strengthen the resilience of current networks and systems, complementing other legislation that criminalises certain activities²¹, and to enhance the security of personal data in the electronic communications sector.

Results of the public consultation

The results of the public consultation showed that Member States are cautiously supportive of the Commission proposals. On the other hand, several operators and service providers are concerned about potential cost implications. Consumer organisations are in favour, while Data Protection Authorities want the Commission to go further in its proposals.

Policy proposal — Privacy and security

12. Strengthen the security of networks and services and user privacy

The Commission's legislative proposals address a range of issues, including

- Ensuring that consumers are informed if their personal data have been compromised as a result of a breach of network security;
- Giving operators and NRAs more responsibility with respect to the security and integrity of all electronic communications networks and services;
- Strengthening implementation and enforcement powers for competent authorities, in particular in the fight against 'spam';
- Clarifying the application of the EU rules to data collection and identification devices using public electronic communications networks.

Achieving these objectives will be facilitated by incorporating ENISA into the new Electronic Communications Market Authority.

7. CONCLUSION

With the 2007 Reform of the EU regulatory framework, the Commission proposes to adapt the present set of rules to technological and market developments.

In line with its commitment to better regulation, the Commission is prepared to take a first major step towards de-regulation of the sector by reducing the number of markets that warrant ex-ante regulation from 18 to 7. At the same time, the Commission intends to enhance competition in the remaining bottlenecks, by for example introducing the new remedy of functional separation.

²¹ Council Framework Decision 2005/222/JHA on attacks against information systems, OJ L69, 16.03.2005, p. 67.

The Commission also proposes making a decisive step towards a single European market for electronic communications to ensure that businesses and consumers can provide and use electronic communications in a seamless manner across borders. The limitations of managing Europe's electronic communications via 27 separate national regulatory systems are becoming increasingly apparent and are hurting Europe's competitiveness. The Commission therefore proposes completing the single market in regulatory terms by establishing an independent European Electronic Communications Market Authority, which, together with the Commission, will help level the regulatory playing field in Europe and enhance Europe's ability to deal with network information and security issues.

In addition, the Commission considers it essential to strengthen citizens' rights, for example by ensuring that, as markets offer increasing choice, consumers are better informed about supply conditions and tariffs and can more easily switch providers.

With its 2007 Reform Proposals, the Commission is also tackling the area it sees as the key weakness of the EU framework in looking to the future, namely the management of radio spectrum, by proposing reforms to enhance innovation and investment in wireless technologies.

Electronic communications provide the foundations for the EU economy as a whole. A functioning single market is Europe's best asset in its quest for global competitiveness. Europe has no time to lose. This is why the Commission believes that the 2007 Reform Proposals should become law before the end of 2009.