

Electronic Communications

How the New Regulatory Package Works

The electronic communications regulatory regime, which came into force in July 2003, is based on close partnership between EU Member States and the Commission. New collaborative mechanisms provide maximum national regulatory discretion while ensuring coherence throughout the EU's single market.

The EU's new eCommunications regulatory framework encourages innovation and competition in Europe's communications sector, while ensuring all Europeans share the benefits (see Fact sheet 13 for more on the framework's underlying principles).

The speed of technological development and the rapid emergence of new services in the electronic communications industry means that any Europe-wide regulation must be very flexible, with a close focus on local circumstances.

On the other hand, operators require a degree of legal certainty regarding the regulatory approach throughout the EU if they are to draw up business plans which benefit from the European single market. They need to know that a harmonised approach to regulatory legislation and practice will be adopted by Member States and that there will be no fragmentation of the single market into a patchwork of differing national regimes.

Hence the processes created by the new regulatory framework depend heavily upon the work of the independent national regulatory authorities (NRAs) in each Member State, and yet ensure coordination and harmonisation of national efforts to create a consistent European market.

Action by the Member States

Analysis of national and local markets: the regulatory framework aims to establish flourishing and competitive markets in the e-communications industry throughout the EU. NRAs are best placed to identify competitive blockages at local and national level. Their involvement is therefore essential to adapt general European Community principles to local conditions.

NRAs are required to examine eighteen product and service markets where competitive conditions are likely to be imperfect. The markets concerned are identified by the "*Commission recommendations on relevant markets*". Only exceptionally, with the agreement of the Commission, can an NRA consider a market outside those specified by these recommendations.

What is "significant market power"? The NRAs must determine whether or not any operators in these relevant markets hold "significant market

power" – a dominant market position which might give them unfair advantage vis-à-vis new market entrants.

Common principles and a methodology for this market analysis, based on European competition law, are provided in the "*Commission guidelines on market analysis and assessment of significant market power*".

Where an NRA finds an operator with such "significant market power" in one of the identified markets, it must propose an appropriate measure to tackle the problem within its own jurisdiction.

If, however, the NRA finds a market to be competitive, it must withdraw any already existing regulation.

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Ensuring Consistency

This decentralised process ensures that Member States identify imperfect markets at appropriate regional or national level and devise appropriate remedies.

The framework, however, also provides for coordination and harmonisation of national efforts through a number of newly established collaborative fora and consultation processes.

What is the "Article 7" procedure? Under the new "Article 7" procedure of the regulatory framework, a draft regulatory measure of one country which may affect trade between Member States is submitted for consultation to the Commission and to NRAs of other Member States.

Each NRA must take full account of the opinions of other national authorities and of the Commission, and adapt their proposals accordingly. The Commission ultimately has power to veto a notified measure if it has serious doubts as to its compatibility with European Community law.

Member states began using the Article 7 notification procedure in August 2003. Experience shows the process to be working well, with national authorities generally taking full account of the comments of

their counterparts in other Member States and of the Commission.

A body of common experience and good practice is steadily evolving. Regulation is sometimes rolled back, since the new regulatory regime only requires regulation where markets are functioning imperfectly. In other cases, regulatory measures have become more focused as areas of market failure are identified.

A European Partnership

What is the European Regulators Group? The ERG, established by the Commission in 2002, is a mechanism for achieving European consensus on regulatory issues. It brings together the heads of national authorities responsible for regulating electronic communications markets.

The ERG may adopt “common positions” or opinions to guide national authorities on regulatory implementation.

Other bodies representing national administrations and chaired by the Commission further enhance EU-wide collaboration and include:

- the **Communications Committee**, which advises on implementation issues;
- the **Radio Spectrum Committee** and the **Radio Spectrum Policy Group**, which play an important role in coordinating policy and technical issues around radio spectrum – a vital component of the electronic communications landscape.

Ensuring Effective and Timely Implementation

A partnership has now been established between Member States and the Commission through the creation of these advisory bodies and consultative mechanisms. A harmonised and consistent approach to regulation is ensured across the European Union, reinforcing the single market yet benefiting fully from the expertise and local knowledge of national regulatory agencies.

Why is the Commission taking some countries to the courts? The potential benefits of the regulatory package, however, risk being undermined by delays in full implementation of the regulatory framework by some Member States.

Directives must be “transposed” – or incorporated - into the national legislation of Member States before they can be implemented. Nine months after the July 2003 deadline for transposing some of the principal regulatory directives, a number of Member States had still not submitted national legislation for transposition.

The Commission therefore began proceedings in the European Court of Justice against six Member States for not fully implementing the new rules.

Other court actions are undertaken as necessary to ensure complete and correct transposition and also effective application of the regulatory rules at national level.

The decision to inaugurate legal proceedings sent a clear signal to businesses and citizens throughout Europe that the Commission intends to ensure the full implementation of these reforms without delay. Such delays at a critical time for the electronic communications industry slow investment and rob businesses and consumers of the benefits of reform in this key sector of the European economy.

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See Also:

- Fact sheet 13: Principles of the New Regulatory Framework
- Fact sheet 22: Radio Spectrum Policy

All Fact sheets and more can be downloaded from “Europe’s Information Society: Thematic Portal”, below.

Further Information

- **eCommunication Regulatory Framework:**
http://europa.eu.int/information_society/policy/ecom/index_en.htm
- **Europe’s Information Society: Thematic Portal**
http://europa.eu.int/information_society/
- **Information Society and Media Directorate-General:**
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info-desk@cec.eu.int
http://europa.eu.int/comm/dgs/information_society/index_en.htm