Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the Review of the EU Regulatory Framework for electronic communications networks and services

(2007/C 97/10)

On 29 June 2006 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 January 2007. The rapporteur was Mr McDonogh.

At its 433rd plenary session, held on 15 and 16 February 2007 (meeting of 16 February), the European Economic and Social Committee adopted the following opinion by 139 votes in favour with 1 abstention.

1. Background

1.1 Summary

The communication reports on the functioning of the directives of the regulatory framework for electronic communications networks and services (1). It explains how the framework has delivered on its objectives, and identifies areas for change. The proposed changes are discussed in the associated Commission Staff Working Document (2). The associated Impact Assessment (3) captures the broader range of options considered prior to drawing the conclusions presented in the communication.

1.2 Structure of the framework

Creating a single European information space with an open and competitive internal market is one of the key challenges for Europe (4), within the broader strategy for growth and jobs. Electronic communications underpins the whole of the economy, and at EU level is supported by a regulatory framework that entered into force in 2003.

The framework provides a single, common set of rules for all communications that are transmitted electronically, whether wireless or fixed, data or voice, Internet-based or circuit switched, broadcast or personal (5). Its objectives are to encourage competition in the electronic communications markets, to improve the functioning of the Internal Market and to protect the interests of European citizens (6).

The main elements of the framework’s legislative instruments can be summarised as follows:

— Framework Directive setting out the main principles, objectives and procedures for an EU regulatory policy regarding the provision of electronic communications services and networks.

— Access and Interconnection Directive stipulating procedures and principles for imposing pro-competitive obligations regarding access to and interconnection of networks on operators with significant market power.

— Authorisation Directive introducing a system of general authorisation, instead of individual or class licences, to facilitate entry in the market and reduce administrative burdens on operators.

— Universal Service Directive requiring a minimum level of availability and affordability of basic electronic communications services and guaranteeing a set of basic rights for users and consumers of electronic communications services.


(5) Regulation of commercial content services — such as Information Society Services and broadcasting — that may be offered over transmission infrastructures are covered by other Community instruments (such as the e-Commerce Directive 2000/31/EC and the TV Without Frontiers Directive 89/552/EEC). Information society services are defined in Directive 2000/31/EC laying down a procedure for the provision of information in the field of technical standards and regulations as ‘any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing and storage of data, and at the individual request of a recipient of a service’ (Art. 17).

— Commission Competition Directive consolidating the legal measures based on Article 86 of the Treaty that have liberalised the telecommunications sector over the years (not covered by this review).

— The Commission recommendation on relevant markets defining a list of 18 sub-markets to be examined by national regulatory authorities.

In addition, the Commission has adopted Radio Spectrum Decision (622/2002/EC) that seeks to ensure availability and efficient use of spectrum within the Internal Market.

1.3 Assessment of the framework — achievement of objectives

Market development

Since markets were fully opened up to competition in 1998, users and consumers have benefited from more choice, lower prices and innovative products and services. In 2005 the ICT sector was valued at EUR 614bn (7). ICT also contributes macro-economically to productivity growth and increased competitiveness of the European economy as a whole, and thus is a factor in growth and job creation.

Stakeholder consultation

Responses to the Commission's 'Call for Input' (8) were generally positive about the impact of the regulatory framework. Consumers and industry groups supported the framework's approach, albeit with criticisms concerning its implementation. Many called for a simplification of the market review procedures and generally welcomed the new institutional arrangements for spectrum harmonisation (9).

Innovation, investment and competition

European investment in this sector over recent years has been higher than in other world regions (EUR 45bn in 2005) (10). Competition remains the main driving force. Countries that have applied the EU regulatory framework in an effective and pro-competitive manner have attracted most investment (11). Countries with strong competition between incumbents and cable operators tend to have the highest broadband penetration (12).

Summary

The Commission considers that more effective management of spectrum would release its full potential to contribute to offering innovative, diverse and affordable services to the European citizen and to strengthen the competitiveness of European ICT industries. In other respects, the Commission considers that the principles and flexible tools in the regulatory framework, when applied fully and effectively, offer the most appropriate means of encouraging investment, innovation and market development.

1.4 Changes proposed overall

The current regulatory framework has produced considerable benefits, but it needs attention in a number of areas in order to remain effective for the coming decade. The two main areas for change are:

— application to electronic communications of the Commission's policy approach on spectrum management, as set out in the Communication of September 2005 (13);

— reduction of the procedural burden associated with the reviews of markets susceptible to ex-ante regulation.

In addition to these two, the Communication identifies other changes that seek to:

— consolidate the single market,

— strengthen consumers and user interests,

— improve security and

— remove outdated provisions.

This Communication, and the staff working paper which accompanies it (14), set out the Commission's analysis and current ideas for change.

(9) The Radio Spectrum Decision 676/2002/EC allows for technical harmonisation of spectrum usage condition (via the Radio Spectrum Committee); strategic advice on radio spectrum policy via the Radio Spectrum Policy Group.
(10) See footnote 6.
2. Introduction

2.1 The Committee is mostly supportive of the Commission’s proposals on the review of the Regulatory Framework for electronic communications networks and services. The Committee also recognises the comprehensive work carried-out by the Commission in the review process, where expert studies and the input of consultations with all vested interests have been synthesised to arrive at the recommendations in the Communication COM(2006) 334 ‘Review of the EU Regulatory Framework for electronic communications networks and services’ and the associated Staff Working Document SEC(206) 816. However, the Committee would like the Commission to take note of the reservations in this opinion and the recommendations listed below.

2.2 The Regulatory Framework must be aligned with the strategy for development of the ICT sector and support the critical contribution that electronic communications make to the economic and social life of the Union. Therefore, the Committee strongly endorses the objectives of the Framework review to further the ‘i2010 Initiative: European Information Society 2010’ (15), which sets out the contribution of the ICT sector to the Lisbon strategy to stimulate growth, competitiveness and employment. Specifically, we recognise the importance of the Regulatory Framework to the creation of a Single European Information Space offering affordable and secure high bandwidth communications with rich and diverse content and digital services; world class performance in research and innovation in ICT by closing the gap with Europe’s leading competitors; and an Information Society that is inclusive, provides high quality public services and promotes quality of life.

2.3 The Committee recognises the success of the framework since its introduction. We note the emergence of a pan-European telecom industry; increased competition for services in many markets; high levels of innovation; and reductions in the real costs of EU telecommunications services. We also note the growth in investment in the market in recent years and that the level of investment in Europe has overtaken investment in the US and the Asia Pacific Region. The fact that the highest rates of investment have occurred in those countries that have applied the framework in a timely and efficient manner is testament to its beneficial effect. Notwithstanding these positive effects, the Committee also notes that, across Europe, the problem of the Digital Divide has continued to grow.

2.4 The Committee directs the attention of the Commission to previous Opinions by the EESC which support the Regulatory Framework and make recommendations on how the policies for development and growth of the electronic communications sector could be improved (16) to advance the i2010 strategy.

In this opinion, the Committee wants to comment on areas of specific concern and to make some recommendations.

3. Recommendations

3.1 As a general principle of regulation, the public interest — the ‘public good’ — should have primacy over private and business interests. The Committee also believes that the market alone cannot properly regulate itself for the benefit of the public good. Therefore, a strong regulatory framework is needed to promote the interests of the greater number of citizens, as intended by the Lisbon strategy.

3.2 Taking due account of the caveat at 3.1, Europe should move as quickly as possible towards a more market-based approach to spectrum management, with more empowerment of market players and the introduction of more widespread spectrum trading, and with less national bureaucratic prescription on bandwidth allocation.

3.3 A European Spectrum Agency should be established to create a coherent and integrated regime for pan-European spectrum management.

(15) Including EESC opinions on:
— Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Connecting Europe at high speed: recent developments in the sector of electronic communications — OJ C 120 of 20.5.2005 p. 22.
— Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Bridging the Broadband Gap — CESE 1181/2006.
— Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — A strategy for a Secure Information Society — Dialogue, partnership and empowerment — R/CESE 1474/2006 still ongoing.
3.4 In tandem with relaxing the notification requirements under the Article 7 procedure, the Commission should increase its vigilance re the regulatory measures enforced by National Regulatory Authorities (NRA) to encourage the diversity of supply.

3.5 The Commission should respect the differences in conditions that apply in the various national markets and the special expertise to deal with those conditions within the NRAs. Therefore, the Committee has serious reservations about the proposed veto power for the Commission under the Article 7 procedure, and it stresses the need for extreme caution before exercising such power.

3.6 The Committee is concerned that undue bias in the Regulatory Framework towards large multinational service and network providers could eventually lead to oligopoly. The Regulatory Framework should take due cognizance of this concern and should not unfairly favour pan-national companies.

3.7 To advance the development of the Internal Market, the harmonisation of policy and consistency in the regulatory approach, the Commission should make greater use of the Communications Committee and the Radio Spectrum Committee, as well as the European Regulators Group and the Radio Spectrum Group.

3.8 To provide consumers with good information on the choice of services available to them, the Committee proposes that NRAs be encouraged to publish web-based tools to facilitate consumer comparisons of the electronic communication offerings (services and pricing) available from competing providers in their market.

3.9 The proposed Green Paper in 2007 on universal service should recognise the need to bridge the widening gap in infrastructure and services between the most developed and least developed regions of the EU. If an analysis — based on tools and an actually specified schedule — shows that this gap is not addressed by the Universal Service Obligation, then alternative means must be found; perhaps through national investment programmes, supported by EU structural funds.

3.10 The Committee believes that because of the growing importance of broadband service to economic and social development, broadband connectivity should be included within the scope of the universal service definition (18).

3.11 Furthermore, repeating the recommendation in the Opinion of the Committee on Bridging the Broadband Gap (19), the Commission should specify the minimum transmission speeds and quality of service which should apply to the definition of ‘broadband’.

3.12 The Committee urges the Commission to work with the NRAs on the formulation of a Community-wide penalty regime for electronic communication security crimes. Consideration should also be given to mechanisms which would facilitate a fast-track, EU-wide ‘right of action’ by consumers (an individual or collective action) against individual perpetrators.

3.13 Beyond the scope of the Regulatory Framework, the Committee urges the Commission to systematically investigate security offences — such as spam, phishing and hacking — perpetrated by wrongdoers outside of the EU, and to pursue remedies at inter-government level.

4. Comments

4.1 Support for the Framework and the Review

4.1.1 The creation of a coherent, pan-European market for electronic communications networks and services requires a good regulatory framework to knit together the complex political, and socio-economic factors that must be harmonised. The current framework has proven to be effective at creating a competitive, innovative and high growth market for communications services in Europe, while at the same time it has declared its intention to balance the needs of service providers, consumers and national interests.

4.1.2 The current framework entered into force 3 years ago and it is time to review its terms in the light of experience and consideration of future challenges. The expert studies (19) considered by the Commission and the extensive process of consultation with all interested parties, have comprehensively informed the review process and the Commission’s proposals show that a considered view has been taken of all factors.

4.1.3 The proposals contained in the Communication and the associated Staff Working Document introduces well-balanced and appropriate changes to the current framework.

4.1.4 The Committee notes the proposals to remove certain obsolete provisions in the Framework.

4.2 Spectrum management

4.2.1 The importance of radio spectrum as a production factor for electronic communications services and networks (such as mobile, wireless and satellite communications, TV and radio broadcasting) and other applications (short range devices, defence, transport, radio location and GPS/Galileo satellite system) has increased dramatically during the last decade. It is estimated that the total value of radio spectrum dependent services in the EU is in excess of EUR 200 billion, i.e. between 2% and 2.5% of annual European gross product.


(19) Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Bridging the Broadband Gap — CESE 1181/2006.

4.2.2 Since most spectrum in the EU is already allocated to some usage or users, any new allocation can only be made at the expense of existing users. Spectrum policy must take into account not only the needs of electronic communications, but all other spectrum uses, including research, aeronautical, maritime, space, audio visual (content), defence industry, earth observation, medical, inclusion, road safety, scientific, etc. Policies competing for radio spectrum are increasingly developed and agreed for the European Union as a whole.

4.2.3 Rapid technological development in combination with the digitalisation of transmission as well as the convergence of communication services has blurred the link between radio access platforms and the services on which spectrum management was traditionally based.

4.2.4 Technological innovation is significantly reducing the risk of interference between different spectrum users, reducing the need for granting exclusive access to spectrum resources and allowing a more extensive application of general authorisations incorporating light technical spectrum usage constraints. The application of these innovative technologies could thereby lower access barriers to spectrum and increase its efficient use.

4.2.5 The critical need to provide for the huge demand for pan-European spectrum by emerging electronic communication service technologies, and the equally important need to protect spectrum required for other critical applications, necessitates a comprehensive overhaul of the spectrum management mechanisms in the EU.

4.2.6 It is impractical to expect all the different regulatory authorities in Europe who currently manage spectrum allocation to deliver a unified spectrum regime for Europe. It makes sense to authorise a central authority — a European spectrum Agency — to coordinate, steer and control the management of this critical resource. Since the activities of this agency would touch closely upon the basic public freedoms, it would have to report on its activities to the European Parliament and to the Council.

4.2.7 Commercial interests should be given greater freedom to trade spectrum, in a regulated way, so that commercial spectrum in the field of electronic communications is efficiently used for the most economically productive purposes.

4.3 Internal Market and Competition

4.3.1 The creation of the Internal Market is one of the main driving forces of the growth in prosperity and improving quality of life in Europe. Through a blending of guidance, direction and enforcement, the regulatory framework has provided the policy backbone for the advancement of the Internal Market electronic communications networks and services. This has been achieved while simultaneously respecting the different circumstances and challenges facing each national state; and encouraging both increasing competition and investment in networks and services.

4.3.2 The process of creating the Internal Market should always ensure that the public interest — the 'public good' — will have primacy over private and business interests. The market alone cannot properly regulate itself for the benefit of the public good. This is particularly true when dealing with service quality and in circumstances where competition is weak. Therefore, a strong regulatory framework is needed to promote the interests of the greater number of citizens, as intended by the Lisbon strategy, by providing them with the best technology at the best price.

4.3.3 The majority of service and network providers operate within a single national market. But the Committee is concerned that undue bias in the Regulatory Framework towards large multinational service and network providers could eventually lead to oligopoly, with a few large companies dominating the EU market. The Regulatory Framework should take due cognizance of this concern and should not unfairly favour pan-national companies at the expense of the national operators.

4.3.4 Whereas a centralised European Regulator, similar to that which operates for banking, would possibly be a quicker and more direct way to bring about the completion of the Internal Market for electronic communications; it is also possible that the loss of expertise and judgement currently provided by the National Regulatory Authorities (NRA) would be to the detriment of some countries, and national resistance might actually hinder progress towards the completion of the Internal Market.

4.3.5 For the moment, it is best if the current regime of decentralised regulation is strengthened by greater use by the Commission of the committee and policy advisory structures that currently exist. Better to agree on a common approach than to try to enforce a 'one-size-fits-all'.

4.3.6 Although it is beyond the scope of the Regulatory Framework, the Committee is concerned that rapid growth in the availability of international media services through electronic communications networks could lead to an undesirable proliferation of low quality media content. The Commission should consider how EU policy might support the production and dissemination of high quality media content, and especially content which respects the rich cultural diversity of the EU.

4.4 Consumer rights

4.4.1 As the complexity of available services increases, and new pan-European services emerge, it is important that consumers are properly informed about their choices. Good information on competing offers must be made available to consumers to provide service quality and price transparency. Also, consumer rights legislation must be kept up-to-date to cope with the new dynamics of the market. The Committee proposes that NRAs be encouraged to publish web-based tools with standardised benchmarks to facilitate consumer comparisons of the electronic communication offerings (services and pricing) available from competing providers in their market.
4.4.2 It is recognised that the Universal Service Directive must be updated and the Commission’s proposal to introduce a Green Paper discussion document next year is welcomed. However, it is important that citizens living in less developed regions are not further disadvantaged by the removal of Universal Service Obligations (USO) from dominant service providers. The problem of the Digital Divide will become even more acute when new business models will drive the growth of WebTV services for those citizens who have high-speed broadband connectivity.

4.4.3 In the event that it is decided that USO is no longer a fair or practical way to guarantee the provision of essential 21st Century electronic communications services, like broadband, then alternative funding mechanisms must be found to bridge the digital divide — perhaps through EU structural funds.

4.5 Security

4.5.1 The Committee refers to the Opinion of the EESC on COM(2006) 251 re the Strategy for a Secure Information Society, and the Committee’s call for an integrated information security strategy linking European initiatives.

4.5.2 Breaches of security on electronic communications networks greatly undermine consumer confidence and enjoyment of the services. In addition, security breaches can attack the rights of EU citizen’s to privacy. It is vital to the Commission act forcibly to protect the security of networks and the rights of citizens. We welcome measures proposed in the review of the framework to address these concerns.

4.5.3 The security of electronic communications is vital to the adoption and growth of information technologies and services. Strong penalties are needed across the EU to prevent this type of crime from undermining consumer confidence and retarding the development of the Information society. The Committee urges the Commission to work with the NRAs on the formulation of a Community-wide penalty regime for electronic communication security crimes. Consideration should also be given to mechanisms which would facilitate a ‘right of action’ by consumers against perpetrators.

4.5.4 In addition to security problems caused by persons inside the EU, the security of European networks and citizen’s are subject to daily attack from outside the Union. Every step should be taken to pursue the perpetrators of these attacks, including holding the states from which the attacks occur accountable for the damage they do.


The President
of the European Economic and Social Committee

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