

**PRACTITIONER AND INDUSTRY SEMINAR:
REGULATORY DEVELOPMENTS IN SATELLITE SERVICES**

CHARLES CLORE HOUSE
9 TO 10.30 AM 10 DECEMBER 2008

**EU COMMISSION PROPOSALS FOR COMMUNICATIONS REFORM PACKAGE
SA'ID MOSTESHAR**

In 2002 the Commission issued one general¹ and four specific Directives², a major step in creating a single market in communications, and harmonising the Member States' regimes to authorise, regulate and facilitate interconnections between providers. This process was followed with the Proposal for a Directive³ to amend and bring together the European rules⁴ governing electronic communication networks and services. The Commission's aim is to improve the regime's effectiveness, reducing the administrative resources needed for implementing economic regulation and making access to radio frequencies simpler and more efficient.

This process culminated in the adoption of 126 amendments by the European Parliament on 24 September 2008. The Commission followed with a revised Proposed Directive⁵ to amend the earlier Directives. The Commission's intent behind the original 2007 Proposal was to introduce more competition in the telecommunications sector to increase investment, greater innovation, and to lower prices⁶. The Commission declared its intention to maintain ex-ante regulation in markets where competition was not yet effective, and to be watchful of markets that it considers crucial for Europe's competitiveness, such as broadband.

¹ The Framework Directive of the European Parliament and of the Council of 7 March 2002, establishing the common regulatory framework, 2002/21/EC, OJ L 108, p. 33.

² Authorisation Directive, on authorisation of electronic communication networks and services, 2002/20/EC, OJ L 108, p. 21; Access Directive of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, 2002/19/EC, OJ L 108, p. 7; Universal Service Directive of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services, 2002/22/EC, OJ L 108, p. 51; and Privacy Directive of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications, 2002/58/EC, OJ L 201, p. 37.

³ Proposal for a Directive of the European Parliament and of the Council 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 services, and 2002/20/EC on the authorisation of electronic communications networks and services, Brussels 13 November 2007, COM (2007) 697 final, 2007/0247 (COD).

⁴ The Directives being amended are the Framework Directive, the Authorisation Directive and the Access Directive.

⁵ Amended proposal for a Directive of the European Parliament and of the Council 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 services, and 2002/20/EC on the authorisation of electronic communications networks and services, Brussels 6 November 2008 COM (2008) 724 final, 2007/0247 (COD).

⁶ e-Communications: Proposals for Reform / Europa – Information Society,
http://ec.europa.eu/information_society/policy/ecommm/tomorrow/reform/index_en.htm.

The Commission also proposed to replace the European Regulators Group, comprising regulators from the 27 Member States, with a European body, the European Telecom Market Authority, (ETMA), with the national regulators at its heart, but with power to act across the European Union. It was proposed that security would be handled by a Chief Network Security Officer, within ETMA⁷.

On 24 September 2008, the European Parliament had its first reading of the Proposal, and approved in plenary session the Commission's proposal of November 2007 to reform the rules governing the Internet and telecoms sectors in place since 2003⁸. Reforms were adopted to better exploit radio frequencies freed by the gradual transition from analogue services to digital ones. The Parliament, backing more flexibility and harmonisation in spectrum use, agreed that its management and allocation should be controlled mainly by the Member States, with only some frequencies managed at EU level. MEPs rejected the Commission's proposal to establish a strong, centralised new EU Regulator authority and voted in favour of a weaker one - Body of European Regulators in Telecoms (BERT), which would share veto powers with the Commission.

Following this consideration of the latest Commission proposals by the European Parliament, the Commission on 6 November 2008 presented a revised text⁹.

The Amending Proposal of 6 November 2008 outlines the procedural steps leading to it and the aims of the Amending Proposal:

1. PROCEDURAL STAGES

The proposal — COM(2007) 697 – 2007/0247 (COD) — was adopted by the Commission on 13 November 2007 and was sent to the European Parliament and to the Council on 16 November 2007.

The European Economic and Social Committee adopted its opinion on the proposal from the Commission on 29 May 2008.

The Committee of the Regions adopted its opinion on the Commission's proposal on 18 June 2008.

The European Parliament adopted 126 amendments at first reading on 24 September 2008.

⁷ Parliament had reservations about the nature of the Authority, but in its revised Proposal of 6 November 2008, the Commission continued to press for a European Authority of similar nature; Section 4.2.

⁸ *Reform of EU Telecom Rules Gets First Approval*, Bapco Journal, 26 September 2008; www.bapcojournal.com/news/fullstory.php/aid/1265/Reform_of_EU_telecom_rules_gets_first_approval.htm.

⁹ Amended proposal for a Directive of the European Parliament and of the Council 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 services, and 2002/20/EC on the authorisation of electronic communications networks and services, Brussels 6 November 2008 COM (2008) 724 final, 2007/0247 (COD); http://www.aereurope.org/content/view/429/66/lang,en_GB/.

2. **OBJECTIVE OF THE PROPOSAL**

The objective is to adjust the regulatory framework for e-communications, notably the Framework¹⁰, Authorisation¹¹ and Access Directives¹², by improving its effectiveness, reducing the administrative resources needed for implementing economic regulation and making access to radio frequencies simpler and more efficient. It is in line with the Commission's Better Regulation Programme, which is designed to ensure that legislative intervention remains proportionate to the political objectives pursued, and forms part of the Commission's overall strategy to strengthen and complete the internal market.

More specifically, the proposal aims to:

1. Move towards a more efficient management of spectrum so as to facilitate access to spectrum for operators and to foster innovation.
2. Ensure that where regulation remains necessary, this is more efficient and simpler both for operators and for national regulatory authorities (NRAs).
3. Make a decisive step towards more consistency in the application of EU rules in order to complete the internal market for electronic communications.

3. **OBJECTIVE OF THE AMENDED PROPOSAL**

The amended proposal adapts the original proposal on a number of points as suggested by the European Parliament. The main points of the new text are¹³:

- a. Each Member State is to create an independent national telecom regulator.
- b. The European Telecoms Authority proposed by the EC will be substantially smaller in size and competences than initially envisaged. Following the wishes expressed by EP and Council, it will be a lean and efficient office that will focus on telecoms regulation and have no competence regarding spectrum or network security. Taking into account the recent position adopted by the European Regulators Group (ERG), independent national regulators will form the heart of the new office, which will be called "Body of the European Telecoms Regulators" and which will appoint not more than 20 experts.

¹⁰ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ L 108, 24.4.2002).

¹¹ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ L 108, 24.4.2002).

¹² Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (OJ L 108, 24.4.2002).

¹³ http://www.aereurope.org/content/view/429/66/lang,en_GB/.

- c. Telecom operators need to notify regulators and the public about security breaches. The Commission reaffirms that notifications must, as a matter of principle, be sent to the individuals affected by them and that the notification procedure must remain swift, simple and effective. In order to clarify, in an objective manner, the cases where such notifications will be required.
- d. With regard to radio spectrum policy, the EP and the Council will strengthen the strategic coordination of radio spectrum policy at political level through a process whereby the EC submits a multi-annual EU radio spectrum policy programme to be jointly adopted. The promotion of cultural and media policy objectives has also been strengthened in line with the EP amendments, even though the EC has made sure in its modified proposal that this does not unduly restrict the increased flexibility in the use of spectrum and does not call into question the promotion of wireless broadband in rural and other non-metropolitan areas, in line with the EC's "broadband for all" policy. The EC's role in coordinating conditions and procedures to use spectrum is now clearly focused on "pan-European services," as proposed by the EP. The creation of a new advisory body for radio spectrum policy, as suggested by the EP, has however not been retained by the EC, in order to avoid duplication of work with the existing Radio Spectrum Policy Group (RSPG).

SATELLITE OPERATOR CONCERNS

The Amending Proposal of November 2008 also incorporated changes to resolve some of the concerns of satellite operators. In the earlier Proposal the Commission did not fully recognise the role of the ITU and the obligations of Member States to adhere to its Radio Regulations. Several amendments were proposed to rectify this shortcoming and to accommodate the international obligations of Member States¹⁴.

One of the pressing issues for the satellite industry was the proposal for a five yearly review of licences¹⁵. This was modified to correspond more closely with the practical realities of establishing and operating a satellite service¹⁶.

An area not yet resolved is the use of C-Band frequencies for WiMax. This is a potential source of harmful interference with satellite services. The application of technology neutrality advanced by the Commission, and largely supported by the communications industry, could result in such interference.

¹⁴ *Satellite Operators Gain Valuable Amendments to EU Telecoms Package*, Telecom Finance, Oct 08, p.5.

¹⁵ Proposal of 13 November 2007, Article 1(10) introducing Article 9a of the Framework Directive.

¹⁶ Amending Proposal of 6 November 2008, Amendment 65.

CURRENT POSITION

The Telecoms Council considered the Commission's Amending Proposal on 27 November 2008. The outcome of the review was summarised by the Telecoms Commissioner, Viviane Redding, in the following release¹⁷:

Telecoms Council: Commission sees improved Council position on the EU Telecoms Reform as good basis for negotiations with the European Parliament
Following the Telecoms Council's deliberations this morning, Viviane Reding, the EU Telecoms Commissioner, commented on the Council's results for the EU Telecoms Reform as follows: "There was a constructive crisis this morning at the Council meeting, as several delegations felt that the Council text agreed so far was not ambitious enough. I applaud Secretary of State Luc Chatel for having resolved this crisis with skill and a pro-European intention. The new text now agreed by Ministers is an improvement compared with the initial text of this morning, even though I continue to believe that Europe's telecoms sector requires better rules than those now on the table here. Nevertheless, the new Council text is a basis now for the negotiations between Council and the European Parliament, which co-decides on the EU-Telecoms Reform. However, if we want to reach an agreement under this Parliament, all three institutions – Parliament, Council and Commission – must sit down together without delay and get down to work on a common approach. Europe has no time to lose: our operators need a single market for telecoms; our rich spectrum resources need to be managed more effectively in the interests of our economy and the goal of 'broadband for all' – especially in these difficult economic times; and European consumers should have a clear bill of rights. I therefore ask the French Presidency to call a meeting of the three institutions early in December. Only this can pave the way for a second reading agreement in spring 2009."

We need to wait for the publication of the new text. The second reading of the Proposed Directive amendments is scheduled for April 2009.

¹⁷ MEMO/08/744, 27 November 2008, <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/744&format=HTML&aged=0&language=EN&guiLanguage=en>.