



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 20 November 2008 (21.11)
(OR. fr)**

15901/08

**Interinstitutional File:
2007/0249 (COD)**

**TELECOM 204
MI 461
COMPET 491
DATAPROTECT 95
CONSOM 183
CAB 56
CODEC 1584**

REPORT

from : COREPER
to : COUNCIL

No. Cion prop. : 15408/07 TELECOM 153 MI 299 COMPET 393 DATAPROTECT 51 CONSOM
134 CAB 46 CODEC 1298
15419/08 TELECOM 185 MI 426 COMPET 453 DATAPROTECT 87 CONSOM
169 CAB 54 CODEC 1506
No. prev. doc. : 15111/08 TELECOM 178 MI 416 COMPET 440 DATAPROTECT 82 CONSOM
166 CAB 53 CODEC 1472

Subject : Re-examination of the EU regulatory framework for electronic communications
networks and services
Proposal for a Regulation of the European Parliament and of the Council
establishing the European Electronic Communications Market Authority
– Political agreement

I. INTRODUCTION

1. On 19 November 2007 the Commission forwarded to the Council its proposal for a Regulation establishing the European Electronic Communications Market Authority (EECMA).

This proposal has been discussed on several occasions by the Working Party on Telecommunications and the Information Society. It was debated by the ministers at the Council meeting on 12 June 2008 and was discussed again by Coreper on 17 October 2008 and 14 November 2008.

2. The European Economic and Social Committee (EESC) and the Committee of the Regions delivered their opinions on 29 May and 19 June 2008 respectively.
3. The European Parliament adopted its opinion at first reading on 24 September 2008.
4. On 6 November 2008 the Commission adopted the proposal as amended following the European Parliament's first reading (15419/08).

II. OUTCOME OF THE PROCEEDINGS

All Member States wish to give the ERG (European Regulators Group) a formal status within the Community regulatory framework and to lay down a more precise definition of its tasks, its functioning and its relations with the Community institutions. A majority of Member States, however, do not wish to see a new Community agency established. The Presidency therefore proposed that the ERG be given formal status by a Community Regulation. The new body will now be designated GERT (Group of European Regulators in Telecoms).

The Presidency's compromise proposal annexed to this document was discussed by Coreper on 14 November 2008 and is generally acceptable to delegations. BE has a general reservation on the annexed text. ES has a reservation on Article 2(1)(a) of the proposed Regulation and suggests that the words "*in accordance with Article 1(2)*" be added at the end of the provision. IT has a reservation on recital No 5. UK and SE have reservations on the word "opinions" in connection with reservations on Article 7 of the Framework Directive. The Commission has a general reservation. All delegations have linguistic reservations.

III. THE COUNCIL'S TASK

The Council is therefore requested to examine the issues still outstanding with a view to reaching a political agreement. The text will then be submitted to the Legal/Linguistic Experts for finalisation prior to the adoption of the Council's common position.

**PRESIDENCY COMPROMISE PROPOSAL FOR A
REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

Establishing the Group of European Regulators in Telecoms

(Text with EEA relevance)¹

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ²,

Having regard to the opinion of the European Economic and Social Committee ³,

Having regard to the opinion of the Committee of the Regions ⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁵,

Whereas:

[...]

¹ BE has a general reservation on the text.

² COM(2007) 699 final.

³ TEN/327-329.

⁴ OJ C 257, 9.10.2008, p. 68.

⁵ OJ C

- (1) *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 (Framework Directive)⁶, 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 (Access Directive)⁷, 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 (Authorisation Directive)⁸, Directive 2002/22/EC 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 (Universal Service Directive)⁹ and Directive 2002/58/EC 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 sector (Directive on privacy and electronic communications)¹⁰ (hereinafter together referred to as "the Framework Directive and the Specific Directives") aim to create an internal market for electronic communications within the Community while ensuring a high level of investment, innovation and consumer protection through enhanced competition.*
- (2) ***The need for the common regulatory framework to be consistently applied in all Member States is essential for the successful development of an internal market for electronic communications networks and services. The regulatory framework sets out objectives to be achieved and provides a framework for action by national regulatory authorities, whilst granting them flexibility in certain areas to apply the rules in the light of national conditions.***
- (3) ***In view of the need to ensure the development of consistent regulatory practice and the consistent application of the common regulatory framework, the Commission established the European Regulators Group (ERG) by Commission Decision 2002/627/EC¹¹ to advise and assist the Commission in the development of the internal market and, more generally, to provide an interface between national regulatory authorities and the Commission.***

⁶ OJ L 108, 24.4.2002, p. 33.

⁷ OJ L 108, 24.4.2002, p. 7.

⁸ OJ L 108, 24.4.2002, p. 21.

⁹ OJ L 108, 24.4.2002, p. 51.

¹⁰ OJ L 201, 31.7.2002, p. 37. Directive as amended by Directive 2006/24/EC (OJ L 105, 13.4.2006, p. 54).

¹¹ OJ L 200, 30.7.2002, p. 38.

- (4) *The ERG has made a positive contribution by assisting moves towards consistent regulatory practice through cooperation between national regulatory authorities ("NRAs"), and between NRAs and the Commission. This approach to build greater consistency among NRAs by exchanging information and knowledge on practical experiences has proved successful in this short period following its deployment. Continued and intensified cooperation and coordination between NRAs will be required to further develop the internal market in electronic communication services.*
- (5) *This calls for the strengthening of the ERG and its recognition in the framework as the Group of European Regulators in Telecoms (hereinafter the "group"). The group would neither have the nature of an agency nor a legal personality. The group would replace the ERG, provide expertise and would establish confidence by virtue of its independence, the quality of the advice it delivers and the information it disseminates, the transparency of its procedures and methods of operation, and its diligence in performing the tasks assigned to it.*¹²
- (6) *The group should, through the pooling of expertise, assist the national regulatory authorities without replacing their existing functions or duplicating work already being undertaken, and assist the Commission in the execution of its responsibilities.*
- (7) *The group should continue the work of the ERG, pursuing cooperation between national regulatory authorities, and between national regulatory authorities and the Commission, so as to ensure the consistent application in all Member States of the regulatory framework for electronic communications networks and services, and thereby to contribute to the development of the internal market.*
- (8) *The group should also serve as a body for reflection, debate and advice for the European Parliament, Council and Commission in the electronic communications field. The group should accordingly advise the European Parliament, the Council and the Commission, at their request or on its own initiative.*

¹² IT has a reservation on recital (5).

- (9) *The work of the group should focus on the [...] ex ante regulation of electronic communications markets, in particular in the context of the market analysis procedure. The group should pursue its tasks in cooperation with, and without prejudice to the role of, existing groups and committees such as the Communications Committee, established under the Framework Directive, the Radio Spectrum Committee established under a Decision No 676/2002/EC of the European Parliament and Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision), the Radio Spectrum Policy Group established under the Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group, and the Television Without frontiers Contact Committee, created pursuant to Directive 97/36/EC of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action.*
- (10) *Since the objectives of the proposed action, namely the **further development of consistent regulatory practice through intensified cooperation and coordination between NRAs, and between NRAs and the Commission by, among others, the exchange of information, in order to further develop the internal market in electronic communication services, cannot be sufficiently achieved by the Member States in view of the Europe-wide scope of this Regulation, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.***

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT-MATTER, SCOPE AND TASKS

[...]

Article 1

Subject matter, scope and aims

- 1. An advisory group of the national regulatory authorities (“NRAs”) on electronic communications networks and services, called the Group of European Regulators in Telecoms, hereinafter referred to as the group, is hereby established.**
- 2. The group shall act within the scope of the Framework Directive and the Specific Directives, namely on matters regarding economic regulation of electronic communications markets.**
- 3. The group shall carry out its tasks independently, impartially and transparently. In all its activities, the group shall pursue the same objectives as those addressed to the NRAs by Article 8 of the Framework Directive. In particular, the group shall contribute to the development and better functioning of the internal market for electronic communications networks and services, by aiming to ensure a consistent application of the regulatory framework for electronic communications.**
- 4. The group shall promote cooperation between NRAs, as well as between NRAs and the Commission, and shall advise the European Parliament, Council and Commission.**

Article 2

Role of the group in the application of the regulatory framework

- 1. The group shall:**

- (a) elaborate and disseminate among NRAs regulatory best practice, such as common approaches, methodologies or guidelines on the implementation of the regulatory framework;¹³
 - (b) on request, provide assistance to NRAs on regulatory issues, including by delivering opinions on cross-border disputes in accordance with Article 21 of Directive 2002/21/EC (Framework Directive) or by assisting NRAs in the context of the analysis of relevant markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive);
 - (c) deliver opinions on draft decisions, recommendations and/or guidelines to be adopted by the Commission, as set out in paragraph 2;
 - (d) issue reports or provide advice, at the request of the Commission or on its own initiative, and provide advice to the European Parliament and Council, upon request or on its own initiative, on any matter regarding electronic communications within its competence;
 - (e) on request, assist the European Parliament, Council and Commission and the NRAs in the dissemination of regulatory best practices to third countries.
2. The draft decisions, recommendations and/or guidelines referred to in paragraph 1(c) shall be:
- (a) Decisions and/or opinions on draft measures of national regulatory authorities concerning market definition, designation of undertakings with significant market power and imposition of remedies, in accordance with Article 7 of Directive 2002/21/EC (Framework Directive);¹⁴
 - (b) Recommendations and/or guidelines on the form, content and level of details to be given in notifications, in accordance with Article 7a of Directive 2002/21/EC (Framework Directive);

¹³ ES has a reservation on Article 2(1)(a) and suggests that that the words "*in accordance with Article 1(2)*" be added at the end of this provision.

¹⁴ UK and SE have reservations on the term "opinions" in connection with their reservations on Article 7 of the Framework Directive.

- (c) **Recommendations on relevant product and service markets, in accordance with Article 15 of Directive 2002/21/EC (Framework Directive);**
 - (d) **Decisions on the identification of transnational markets, in accordance with Article 15 of Directive 2002/21/EC (Framework Directive);**
 - (e) **Recommendations on harmonisation, in accordance with Article 19 of Directive 2002/21/EC (Framework Directive);**
 - (f) **Decisions authorising or preventing a national regulatory authority from taking exceptional measures, in accordance with Article 8 of Directive 2002/19/EC (Access Directive).**
3. **NRAs and the Commission shall take the utmost account of any opinion, advice or regulatory best practice issued by the group.**

CHAPTER II ORGANISATION OF THE GROUP

Article 3

Composition

The group shall be composed of the heads or high-level representatives of the national regulatory authority established in each Member State with primary responsibility for overseeing the day-to-day operation of the market for electronic communications networks and services.

There shall be one member per Member State.

The Commission shall have observer status and be represented at an appropriate level.

NRAs from EEA States and from those states that are candidates for accession to the European Union shall have observer status and be represented at an appropriate level.

Article 4

Operational arrangements

- 1. The group shall adopt its rules of procedure and make them publicly available.**
- 2. The opinions, regulatory best practice and reports of the group shall be adopted on the basis of a two-third majority of the members. Each member shall have one vote.**

The rules of procedure shall set out in greater detail the arrangements governing voting, including the conditions whereby one member can act on behalf of another, the rules governing quorums, and the notification deadlines for the meetings. The rules of procedures may also set out urgent voting procedures.

Opinions, regulatory best practice and reports adopted by the group shall be made public, and shall [...] indicate reservations of an NRA at its request.

- 3. The group shall elect its Chairperson and its Vice-Chairpersons from among its members, subject to the rules of procedure. The term of office of the Chairperson and Vice-Chairpersons shall be one year. The Chairperson and Vice-Chairpersons shall be responsible for representing the group.**
- 4. Plenary meetings of the group shall be convened by its Chairperson and shall occur at least four times a year in ordinary session. Extraordinary meetings shall also be convened at the initiative of the Chairperson, at the request of the Commission or at the request of at least one third of the group's members. The agenda of the meeting shall be set by the Chairperson and made public.**
- 5. The work of the group may be organised into expert working groups as appropriate.**
- 6. The Commission shall be invited to all plenary meetings of the group and may be invited to attend meetings of its expert working groups.**

7. Experts from EEA States and those states that are candidates for accession to the European Union may participate as observers in the meetings of the group. The group may invite other experts and observers to attend its meetings.

CHAPTER III

GENERAL PROVISIONS

Article 5

Consultation

When appropriate, the group shall, before issuing opinions, regulatory best practice or reports, consult interested parties and give them the opportunity to comment within a reasonable period. The group shall make the results of the consultation procedure publicly available, without prejudice to Article 8.

Article 6

Transparency and accountability

- 1. The group shall carry out its activities with a high level of transparency. The group shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular in relation to the results of its work.**

- 2. Each year, after consulting the European Parliament, Council and Commission, the group shall adopt a work programme for the coming year, shall transmit it to the European Parliament, the Council and the Commission and make it publicly available. The group shall also publish an annual report of its activities.**

- 3. The European Parliament and the Council may request the group to address them on relevant issues relating to the group's activities.**

Article 7

Provision of information to the group

The Commission and NRAs shall provide the information requested by the group in order to perform its tasks. This information shall be managed in accordance with the rules set out in Article 5 of Directive 2002/21/EC (Framework Directive).

Article 8

Confidentiality

The group shall not publish or divulge to third parties information that it processes or receives for which confidential treatment has been requested.

Where the advice requested or the question raised is of a confidential nature, members of the group as well as observers and any other person shall be under an obligation not to disclose information which has come to their knowledge through the work of the group or its expert groups.

Article 9

Entry into force

This Regulation shall enter into force on [31 December 2009].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President