Electronic communications: common regulatory framework for networks and services. Framework Directive

2000/0184(COD) - 17/09/2001 - Council position

The Council's common position reflects Member States' wish to significantly realign the substance and the wording of the originally proposes Framework Directive. In many instances the changes introduced are done so in order to clarify and improve the legal text itself. Nevertheless, a number of important disagreements between the European Parliament and the Commission on the one hand and the Council on the other remain. Most notably these relate to 'Significant market power', 'Mechanisms for consultancy and transparency', 'The relationship to audio-visual policy', 'Management of Radio Frequencies' and 'Rights of way'. On the matter of 'Significant market power', the Council's common position introduces a number of technical improvements to clarify the text. This is deemed necessary to increase the legal certainty for National Regulatory Authorities (NRAs) dealing with markets where two undertakings with no economic links are exercising joint dominance. A clear set of criteria on joint dominance is set out in Annex 2. On the matter of 'Consultancy and Transparency' (Article 6 and 14) the Council's common position marks a distinct U-turn from that of the Commission. Specifically, the Council can not accept that the Commission would have the power to intervene a priori to prevent National Regulatory Authorities (NRAs) from taking certain measure. The Council considers that the original Commission proposal runs counter to the institutional balance established in the Treaty. In its place, the Council proposes a compromise solution whereby the Commission may delay the implementation of an NRA measure whilst it issues a detailed opinion. Further, the Council common position does not, unlike the Commission proposal, include radio spectrum matters within the sphere of Article 6. In terms of market definition, the Council considers it important to reinforce the role of NRAs in defining relevant markets within its territory, given that many markets are still primarily of national or regional nature. On the matter of 'audio-visual policy, the Council's changes to the Commission text aim to clarify the separate question of audio-visual policy and content regulation. Other changes aim to promote cultural and linguistic diversity as well as media pluralism. On the matter of 'Management of Radio Frequencies', the Council has chosen to delete provisions specifically legitimising the use of auctions as well as administrative pricing for the assignment of frequencies. On the matter of 'Rights of Way', the Council has broadened the text of this Article to cover private network operators, whilst also redrafting it to clarify different types of procedures - depending on whether the network is public or private.