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

2000/0184(COD) - 18/09/2001 - Commission communication on Council's position

The Commission notes that the Council has decided to make substantive alterations to the initial proposal, which in effect, significantly modify the provisions and requirements of the Directive. Most controversial are changes made to Article 6 relating to "mechanisms for consultancy and transparency" and subsequent articles relating to this matter. Article 6 establishes requirements for National Regulatory Authorities (NRAs) to consult draft decisions at the national level. It sets up so-called "transparency mechanisms" whereby the Commission would have the power, in certain circumstances, to require NRA's to amend or withdraw its draft decision. Any changes to such a provision significantly weakens and reduces the likelihood of consistency of regulation. The Commission therefore considers it critical to maintain the original wording of the Article. The Commission also notes that it can not support the Council's decision to remove radio spectrum matters from the text. It cites the recent difficulties in third Generation mobile markets as a reason for maintaining radio spectrum matters in this Framework Directive. Furthermore, the Council has replaced the Commission·s power to require NRAs to amend or withdraw a measure with the publication of a non-binding "detailed opinion". The Commission does not believe that this non-binding opinion would be effective in preventing national decisions being taken that are contrary to Community law. Other areas of disagreement include: - The Council's decision to include audio-visual policy under the scope and aims of the Directive. The Commission is of the view that this is unnecessary. In areas of appeal, the Council has, in the interests of subsidiarity, considerably weakened the role of the Commission. The Commission believes these amendments reduce legal certainty for the sector and as a result can not support the Council on this matter. - Under the heading of Policy Objectives and Regulatory Principles, the Commission expresses reservation over the changes introduced arguing that they could reduce consistency of regulatory action. - In terms of market definition procedures and market analysis procedure, the Commission notes that the Council has replaced the Common Decision on Relevant Product and Service Markets with a Recommendation. The Commission is concerned that this change, taken with the weakening of Article 6, will substantially reduce the Commission's ability to ensure legal certainty for undertakings via consistent regulatory action across the EU. Areas where the Commission agrees with the Council Common Position include: - Changes made to the provision of information and the strengthening of confidentiality/transparency. - The deletion of numbering, naming and addressing from the scope of this Directive, transferring it instead to the Universal Service Directive. - Broadening the scope of "Rights of Way" to includeprivate sector network operators. - The inclusion of an Annex in relation to Undertakings with Significant market power. - Clarifications made to the text regarding market definition and market analysis. - Clarification of dispute resolution between undertakings. Lastly, the Council has deleted provisions related to the High Level Communications Group, on the advice of the Council Legal Service. The Commission can reluctantly accept this, and will examine the possibility of setting up such a group at its own initiative. Although the Commission has expressed its support for some of the changes, certain changes made by the Council mark a clear departure from the most critical principles guiding the reasoning of the Directive. Accordingly, the Commission feels it is unable to support or accept the Council's Common Position. Its views on this are expressed in a Commission Declaration, which has been annexed to the conclusions of the Telecommunications Council.