

TRANSPARENCY AND THE ELECTRONIC COMMUNICATIONS PACKAGE

UNICE Statement

In preparation for the national implementation of the new Framework for Electronic Communications Networks and Services in July 2003, a new institutional structure is being established at EU-level, in the form of the Communications Committee (CoCom) and the European Regulators Group (ERG). UNICE has previously expressed its support for the maximum level of transparency for both bodies, but now that they have both started to meet we believe that the concerns of industry are not being adequately met. In practice the new framework appears to be less transparent than the previous one.

The new EU electronic communications "Framework Directive" includes basic requirements for openness: Recital 18 requires National Regulatory Authorities (hereafter NRAs) to consult all interested parties, while Article 8.3(d) requires NRAs to co-operate "with each other and with the Commission in a transparent manner (...)". We believe that users are to be considered as an "interested party". Openness and transparency are necessary for several reasons:

Better regulation: Principles of better regulation mean that decisions affecting industry should not be taken "*behind closed doors*". Companies, and other interested parties, have the right to understand how and why decisions affecting them and their customers are made, and why new regulation is being introduced.

Market dynamics: The rapidly changing nature of the telecommunications market place increases the need for regulatory decisions to be informed by as close an understanding of market dynamics as possible. While the Directives provide for national consultation by NRAs, the exclusion of industry from the Communication Committee discussions removes an important check that final decisions fully reflect market realities.

Single Market: The Directives provide measures to encourage consistency in the Single Market. Where the Communications Committee is considering issues relevant to this, it is essential that the companies affected can observe those discussions and understand how the principles and application of consistency will affect them and their customers in practice.

Communications Committee

The Communications Committee has a pivotal role in supporting effective and consistent application of the Directives across the EU. It will be an important forum for assessing the impact of regulation in the sector as well as reviewing market definitions and the assignment of SMP status.

UNICE recognises that existing comitology rules already provide for procedures under which observers may not be present, but there can be no justification for the wholesale exclusion of industry observers or restriction to *ad hoc* invitations.

The formula used under the Advisory Committee on the implementation of Open Telecommunications Network Provision (the ONP Committee), which the Communications Committee replaces, allowed industry participation as observers in a manner which kept industry informed and allowed them to input more constructively to the policy making process.

UNICE urges Ministers to reconsider the approach of their Ministries to the new Communications Committee and ensure in particular:

- direct representation of industry at Communications Committee meetings as observers;
- representation of relevant industry associations at meetings as observers, on a standing basis rather than ad-hoc invitation;
- publication in advance (on the Internet) of agendas and documents relating to the meetings;
- publication of minutes of the meetings.

European Regulators Group

In addition, UNICE urges that NRAs be encouraged to participate actively in the European Regulators Group and to allow an equivalent level of transparency to the industry and other interested parties.

The EEA/EFTA states should be allowed full participation in the European Regulators Group and the Communications Committee with the same rights as any EU Member State

* * *