

Draft of the ERG/IRG Work Programme 2007 for public consultation

Introduction

The document sets out for public consultation a draft Work Programme 2007 for the European Regulators Group, focussing on the following topics:

1. Challenges: to be at the forefront of the evolution of regulatory processes ongoing at the European level.
2. Harmonization: to boost harmonisation among ERG members and effectively contribute to single market. This will be pursued by identifying priority areas and effectively sharing regulatory best-practices.
3. Innovation: to address new issues driven by technology development that, here and now, are changing the electronic communications markets.

ERG will closely follow established good practices in place, ensuring maximum transparency and consultation by the stakeholders.

In order to improve efficiency in delivering the WP (especially with the aim of harmonisation) ERG will devote specific attention to the level and organisation of structure and resources. An efficient organisation and mutual assistance among members and information sharing systems is also envisaged as helpful for the work on substance.

The draft WP 2007 is intended to be a joint ERG/IRG effort.

Major themes for 2007

I. Challenges

The Review of the Electronic Communications Framework (ECF) will continue to be the core issue in 2007 and a major source of input for WP 2007. As the review process enters into its final stage, procedural and institutional issues, as well as policy and regulatory aspects will remain to be closely investigated by ERG/IRG.

With regard to the Regulation on international roaming (not part of the Review); the discussion on the proposal issued by the Commission last July is already in place at the EU Council and Parliament and is expected to continue at least through the first half 2007.

Early on in 2007, the Commission is also expected to publish a Green Paper on Universal Service

1) Overview of Review 2006 work items (Background)

During last summer, the Commission unveiled its proposals for the Review¹. Legislative proposals are expected for the first quarter of 2007. The Commission's proposals have been developed alongside few major areas:

- A first main area of proposed change is to reduce the procedural burden associated with the reviews of markets susceptible to *ex ante* regulation.
- Another main area for change would aim to consolidate the internal market.
- A third area for proposed change is the application of a common EU approach to spectrum management which is less restrictive and more responsive to increasing demands for this critical resource and to rapid technological progresses².
- Other topics covered by the Commission proposals, namely, consumer protection and security are becoming increasingly more important due to the sophistication of the electronic communications markets. They will certainly attract a significant amount of time and resources from NRAs side.

2) Date Milestone

The provisional 2007 timetable for the Review is as follows:

- 1Q 2007: adoption of a Communication reporting on the public consultation on the revision of the regulatory framework.
- 1Q 2007: adoption of Proposals for amending the existing Regulatory Framework.
- 2007-2009: political agreement in the Council and the Parliament on the revised Regulatory Framework.
- 2009-2010: entry into force of the new Regulatory Framework.

Other regulatory processes include:

- The International roaming regulation
- Green Paper on Universal Service

¹ Communication COM(2006)334, Working document on proposed changes SEC (2006) 816, Impact Assessment SEC(2006)817.

² While it can be noted that the topics in the third area are largely out of the current ERG practice, it is also worth pointing out that these topics are not outside the competences of many amongst the regulators within the ERG. Thus they will impinge on the overall workload of NRAs for the future.

3) Work Programme 2007 and the Review

The ERG welcomes the Review at this time and will endeavour to ensure that the Regulatory Framework is adjusted where necessary in order to effectively deliver and according to its objectives.

In February 2006, in response to the Commission Call for input, the ERG delivered its initial vision (http://erg.eu.int/doc/whatsnew/irgerg_call_for_input_final_pdf.pdf) of the key issues at stake in the Review. In October 2006, ERG will deliver its response on the consultation launched by the Commission in June 2006.

It should also be mentioned that ERG mandate is to advise and assist the Commission and that such advisory duty formally ends up when the power of legislative initiative has been exercised by the Commission itself. At that stage, ERG will no longer be requested to provide advice and opinions on final legislative proposals issued by the Commission.

On the other hand, monitoring of legislative processes and investigations, and impact analysis of the legislation in place are of utmost interest to NRAs. Such lines of activity would therefore continue within the IRG side if necessary.

The following deliverables are proposed:

1a) Response to proposed legislation: This will be the general IRG view on proposed legislation by the Commission

Deliverable: Give advice to the Commission, where appropriate in relation to the legislative proposals (up to their finalisation in the EU Council and Parliament). Following adoption, analysis of the legislative process, including expert opinions.

Deadline: continuous

Consultation: No

1b) The changes in legislation will also have implications for the application of the legislation by NRAs and processes (e.g. authorisation regime, spectrum regulation etc., SMP assessment methodologies) and will be analyzed by ERG.

Deliverable: ERG Report

Deadline: Q4/2007

Consultation: No

2a) Functioning of the Art. 7 process (changes on the level of the Directives and/or possible modifications of the Art.7-Recommendation on Rules of procedure).

Deliverable: ERG Opinion (upon request from the Commission) on the Draft revised version of the procedural Recommendation

Deadline: Q2 2007

Consultation: No

2b) Revision of the Recommendation on relevant markets and consequences thereof. Even if the work on the draft Recommendation, as such might have been completed by the end of 2006, the transitional provisions need to be looked at carefully and implemented.

Deliverable: ERG Opinion (on the request of the Commission). Following adoption, ERG Report.

Deadline: Q2 2007

Consultation: No

3) Consumer protection, net cost and USO financing, enforcement and technological neutrality, numbering, network neutrality and integrity in the context of the Universal Service Directive.

Deliverable: ERG Opinion (on the request of the Commission) – Detailed reply to Commission’s Consultation Documents and proposed legislation

Deadline: Q2 2007, pending publication of the Green Paper on USO

Consultation: No

4) Implementation of the proposed Regulation on International Roaming.

Deliverable: ERG Report on technical and regulatory aspects of the proposed regulation.

Deadline: Q3 2007

Consultation: No

II. Harmonization

Harmonisation is a clear mission for the ERG (see ERG Decision, Article 3); all of the ERG initiatives, over the years, have been specifically targeted to improve harmonization and to disseminate best regulatory practices across Europe. Several requests towards greater harmonization emerge also from stakeholders. Moreover, harmonization is bound to be a major issue within the Review process and it is expected to address the Commission proposals for amendments, especially on article 7.

During 2007, it will be an objective of the ERG to improve work undertaken in 2006 to deliver clear and concrete input towards harmonization; the Work Programme for 2007 will therefore devote specific attention to this end. The ERG believes that effective and targeted harmonization is the best way to work towards the Framework’s single market goals. This starts with an assessment of the degree of in the areas where harmonization is necessary and desirable. In close collaboration with stakeholders, the ERG intends to identify key areas where a common approach might significantly help deliver benefits of a single market for electronic communications products and services.

To complement its existing Common Position on regulatory remedies, the ERG will develop guidance dealing with the choice of remedies in specific markets, starting with priority areas.

ERG will continue to develop “best practice indicators” against which the results of regulation in terms of competitive levels can be measured, taking into account national circumstances. The following priority areas have been identified:

- “Wholesale broadband access” (incl. naked DSL), continue building up on work undertaken in 2006;
- “Local Loop Unbundling implementation rules”, including update of existing Principles of Best Practices and Implementation on LLU, Key Performance Indicators etc.;
- “VoIP”, both in terms of interconnection and horizontal issues of retail services provision;
- Mobile Termination Rates regulation³;
- “Fixed termination rates” (with a specific focus on symmetry⁴);
- “Regulatory Accounting Systems to be used for the price regulation of different wholesale services” (based on the existing report on accounting regulation in practice);
- “Transparency and information for consumers”.

Deliverable: Common positions on regulatory models and identified best practices
 Deadline: Q2 2007: Interim Reports analysing different regulatory models in place for different items, identifying those who best achieve the aim of effective and proportionate regulation, suggesting them as best practice across ERG members.
 Q4 2007: Final Common Position suggesting best practices on different items. (based on a thorough evidence-based analysis of the agreed indicators).
 Consultation: Yes

III. New issues / Innovation

1) **NGN**'s deployment and its related regulatory impact will be investigated in 2007. While the revised regulatory framework is expected to come fully into force by 2009-2010, NRAs have already been facing NGNs regulatory challenges, therefore clear and timely guidelines for a harmonised regulatory approach on this issue are needed.

The recent fast technological developments and the actual market trends anticipate the successful strategy of the earlier introduction of Next Generation Network where the evolution of former separate services and networks are going towards a converged platform which will be able to provide different mobile or fixed, voice or data services via the same platform (possibly implying changing market borders). The development of this also means a challenge for the individual NRAs in order to find the balance between the different national market

³ In several comment's letter to NRAs notifications, The Commission has indicated its view on the symmetry of MTR and has suggested that a common work between NRAs could be lead on cost modelling. Given this context, a Common Position will identify:

- identification of cross-border effects resulting from different average rates in different Member States (addressing the question of why/to which extent MTR harmonization is needed?);
- Report on MTR regulation and asymmetric/symmetric rates (reasons for, calculation elements of, transitional or lasting differences etc.);
- When considering a convergence to symmetric MTRs, what relevant target level has to be considered, and via which costing method? Which reasonable timescale can be considered to reach symmetry?

⁴ As in the case of MTRs, the Commission has requested ERG to work on a harmonised cost model for determining termination rates of efficient operators is concerned. The correct calculation of termination rates of alternative operators is at this moment a debated topic at European level. Therefore, for harmonization purposes, it would be advisable to identify a coherent approach and follow a common path to determine termination tariffs.

development trends or actual situations and the necessary harmonized way in regulating in order to promote competition.

After some first-hand experiences in the early implementation of NGN and in between the review process of the regulatory framework this is the right time to:

- list and describe the potential technical, economical and legal problems which could continue to exist in an NGN environment;
- to investigate blurring of boundaries between access and core networks, and its regulatory impacts.

Depending on the outcome of the consultation on the IP-IC draft document, there may be a need to continue the work in this closely related area.

Deliverable: CP on NGN regulatory principles (based on the Report on NGN)

Deadline: Q2 2007

Consultation: Yes

2) ERG will consider the processes of **convergence** and the development towards a multi-play communications market as a topic for 2007. Convergence also impacts relationship between communications and broadcasting markets (mobile-TV). Access to content (related to access to, not the content itself, which falls outside the scope of the framework), net-neutrality, interoperability, bundling of broadband services (flat-rate, triple and quadruple play offers) and consumer protection issues could be successfully investigated by ERG WGs and PTs.

Major topics include:

- access to networks;
- access to content (related to “access to”, not “the content” itself, which falls outside the scope of the framework);
- bundling of broadband services (flat-rate, triple and quadruple play offers) and related consumer protection issues.

Deliverable: Report/CP

Deadline: Q3 2007

Consultation: Yes

IV. Carry-over from WP 2006

A number of WP 2006 items might not be finalized by the end of 2006 and must therefore be carried over. The intention is to finalize all carry-over items by Q1 2007.

V. Ongoing activities / Regular Reporting (*Second Category: regular and second priority work*)

The Group will continue to benchmark mobile termination and SMS rates and to regularly publish an update a snapshot of mobile termination rates across the countries represented in the ERG.

The Group will continue to publish its report on “Accounting regulation in practice” once a year.

The ERG will continue to act as a forum where NRAs can collect and publish data and share experiences on implementation of the regulatory framework.

Also, in case the WG/PT have resources left after having worked on the priority areas as outlined under I. – III. they can pick up their own topics of self interest.