

The Framework Directive 2002/21/EC

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Creating the 'right' regulatory framework

A successful legal framework will:

- **Attract investment, by**
 - encouraging market entry
 - providing legal certainty
 - restraining firms with undue market power
 - keeping regulation to the minimum necessary
- **Promote choice and competition**
- **Safeguard users interests, where market forces do not**



The regulatory framework

**Commission
Competition
Directive
(Art. 86)**

**Spectrum
Decision
(Art. 95)**

**Framework
Directive
(Art 95)**

Authorisation Directive

**Access & Interconnection
Directive**

Universal Service Directive

E-Privacy Directive



Framework Directive

- Definitions and scope
- National regulatory authorities
- Right of appeal
- Regulatory objectives
- Transparency and consultation procedures
- Numbering naming addressing; rights of way; co-location & facility sharing
- SMP and market analysis
- Standardisation
- Dispute resolution procedures
- Communications committee

Key issues

- **NRA independence, powers, appeals, allocation of tasks**
- **Regulatory objectives (Art 8)**
 - promotion of competition
 - contribution to the development of the internal market
 - promoting the interest of the citizens of the EU
- **Market analysis procedures**
 - Timely
 - Cooperation with NCAs
 - Consultation
- **Frequency management**
 - Spectrum trading (permissive)
- **Transitional measures - Starting conditions**

NRA independence

- **Independence from**
 - Operators
 - Shareholding
- **Impartiality & Transparency**
- **Resources**
 - Human
 - Skills
 - Financial

Relevant aspects NRA

- **Clarity of tasks - published**
- **Resolution of disputes**
- **Transparency/consultation**
- **Avoidance of regulatory capture**
- **Avoidance of political influence**
- **Cooperation with National Competition Authorities**

Objectives governing NRA decisions

- Take all reasonable decisions aimed at achieving the policy objectives and regulatory principles set out in **Article 8**:
 - ❖ Promotion of competition
 - ❖ contribution to the development of the internal market
 - ❖ Promotion of the interest of the EU citizens
 - ❖ Principle of technological neutrality
- Need to justify the intended measures on the basis of these objectives

Appeals

- Those affected by NRA decision
- Body independent of parties
- Appropriate Expertise
- Merits of case
- NRA decision stands, in principle

SMP / Market analysis

- **Article 6**
 - Consultation and transparency mechanism
- **Article 7**
 - When a measure falls within scope of articles 15, 16 of FD, 5 or 8 of Acc.D, or 16 of USD and would affect trade between Member States: Commission and EU NRAs involved
- **Articles 14-16**
 - SMP (Art 14)
 - Market definition procedure (Art 15)
 - Market analysis procedure (Art 16)

Key elements of the regulatory procedure

■ **Flexibility**

- Less imperative provisions more permissive ones
- Market review based on competition law principles
- Justified and proportionate remedies imposed

■ **Clear Objectives**

- Governing principles set out in Art. 8 of the Framework Directive

■ **Strong control on NRA's**

- Right of appeal against its decisions
- National and Community consultation mechanism provided

Numbering, Naming and Addressing

- NRAs control assignment of all national number sources & management of national numbering plans
- NRAs shall establish objective, transparent and non-discriminatory assignment procedures
- Numbering plans are published
- Member State has task to harmonise (for development of pan-European services) and co-ordinate (in int'l organisations)

Rights of Way

- Competent authority
 - Transparency
 - Non-discrimination
 - Publicly available procedures
 - Without delay
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- If public or local authorities retain ownership or control of undertakings, there needs to be effective structural separations of the functions
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- Effective appeal mechanism



Co-location and facility sharing

- When there is a right under national legislation to install facilities, NRAs should encourage the sharing of such facilities
- Deprivation of viable alternatives: Member States may impose the sharing of facilities or properties (including physical co-location) or facilitate co-ordination of public works
- Sharing or co-ordination arrangements may include rules for apportioning costs



Dispute resolution

- Disputes between undertakings
- Within 4 months
- Member States may provide for alternative resolution mechanisms
- Objectives Article 8 !
- Decisions made available to the public
- Parties concerned shall receive full statement of reasons

Starting conditions

- Transitional measures maintained until the findings of the first market analysis will not be effective
- Based on key provisions of the 1998-2000 EU regulatory framework
- Issues relating to Access and Interconnection (Art 7 Access Dir)
- Issues relating to the relations between operators and end-users (Art 16 USD)

Access related starting conditions

- **Right and obligations for interconnection**
- **Non discrimination and transparency**
- **Principles for interconnection charges and cost accounting systems**
- **Accounting separation and financial reports**
- **Collocation and facility sharing**
- **Numbering**
- **Publication of and access to information**
- **Special network access**
- **Provision of minimum set of leased lines**
- **Control by the NRA**

End user related starting conditions

- Retail tariffs for the provision of access to and use of the public telephone network
- Carrier selection and pre-selection
- Leased lines

Framework Directive

**Thank you for your
attention!!**

