

COVER SHEET

Public consultation on the review of

EU regulatory framework for electronic communications network and services

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|---|---|---|
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A. General comments

In this section, respondents are invited to express below their general comments on the Review of the EU Regulatory Framework for electronic communications networks and services.

- Spectrum management

The utilization of spectrum must be managed in order to accomplish different and sometimes even diverging policy goals. On the one hand, stimulating competition, enabling innovation and promoting the development of new services can have an influence on spectrum usage and management. On the other hand, services demand safeguards for uninterrupted and secure operation and the minimization of disturbance/interference.

The utilization of the same portion of the spectrum in the same geographical area by multiple users requires that they comply with measures which make it possible to avoid harmful interference. These measures may be:

- of a technical nature (e.g. limitation of transmitting power, limitation of transmit cycle times, dynamic channel selection), and/or
- of a legal nature (e.g. limitation of the number of users).

Utilization of the spectrum often requires considerable financial investment from its service providers and users in the form of hardware. Often onerous investments have also been agreed to by those who have developed and who produce radiocommunication equipment. Regulators must therefore balance the promotion of new and innovative spectrum usages with the protection of taken investments in this field.

The spectrum also represents a limited public asset which must be managed in long term view.

This means that OFCOM cannot associate itself with proposals for which it has not been demonstrated that they bring tangible benefits in the medium and long term and which ostensibly violate elementary principles such as investment security or legal security.

B. Position on proposed changes

The Commission Staff Working Document accompanying the Communication from the Commission on the Review of the EU Regulatory Framework for electronic communications networks and services summarises the changes being proposed.

In this section, respondents are invited to give comments on these specific proposals

Respondents are requested to express very clearly their position on proposed changes. Please *limit your response to no more than one page per item.*

1. New approach to spectrum management

1.1 Introduce freedom to use any technology in a spectrum band (technology neutrality)

As a principle, utilization of the spectrum requires criteria of apportionment and compatibility. These may be of a technical (e.g. limiting out-of-band emissions) or regulatory (e.g. limiting the number of users) nature or they may be mitigation functions integrated into the radiocommunication equipment (e.g. searching automatically for free channels).

The Commission has recently mandated the CEPT to determine the minimal technical criteria for the implementation of the WAPECS concept ('Wireless Access Platforms for Electronic Communication Services'). Application of this concept will make it possible to determine the extent to which and the point to which technological neutrality can be implemented.

Furthermore, OFCOM points out that the ban on state-controlled impulses to ensure interoperability may in certain cases turn out to be risky in networked economies (radiocommunication systems are often an integral part of these). In particular, for the pan-European radiocommunication services, the absence of preliminary definition of a common single standard might result in the disappearance of positive network externalities (e.g. production economies of scale) and in the stimulation of negative externalities. Meanwhile demand side effects also play an important role and could lead to situations where technical prescriptions fail to meet market demand and block spectrum for new innovative types of usages.

Interoperability is also a problem of industrial policy and in particular of standardisation. Deeper reflection would therefore be required before a decision is taken.

This OFCOM position is not to be interpreted as support for the idea that the regulator must impose a specific technology in each frequency band. OFCOM supports the principle of technological neutrality to the extent that the usefulness of criteria of apportionment and compatibility is not called into question.

1.2 Introduce freedom to use spectrum to offer any electronic communications service (service neutrality)

The meaning of the concept of 'service neutrality' is not clear; a definition would be welcome.

An initial rudimentary sub-division of frequency bands by means of “radiocommunication services” in order to ensure that radiocommunication applications which are clearly incompatible do not operate within the same bands is entirely sensible.

Moreover, the allocation of frequencies under the aegis of the ITU with reference to emergency and safety applications, in particular those operating at a global level, is still entirely justified. However, at ITU level, OFCOM would be prepared to support a proposal to examine the existing “radiocommunication services” which are defined as a function of content (e.g. broadcasting, satellite broadcasting) within the framework of an amendment to the Radiocommunication Regulations (RR).

Furthermore, the frequency spectrum also plays an essential role in performing tasks relating to the public service. The state must have the option of reserving spectrum for performing such tasks, for example for broadcasters subject to a mandatory service (‘must-carry’) provision. In such cases, service neutrality cannot apply.

If the definition of the principle of ‘service neutrality’ were to mean that it should be permitted to transport any information whatsoever over any transmission system, OFCOM’s opinion would be that in numerous areas because of the process of digitisation this result will occur in and of itself, because modern digital systems can transmit information of all kinds. Thus the transport medium increasingly becomes irrelevant. This means that in the digital world, on this issue, full ‘service neutrality’ should exist in the sense in which it is used here.

1.3 Coordinated introduction of trading in rights of use

The opportunity of a coordinated introduction of spectrum trading in the European Union is an internal question for the Union on which OFCOM will not be pronouncing. OFCOM is currently verifying, as part of the revision of the “spectrum management strategy” whether, for example, “secondary trading” is an option with a view to achieving the desired goals in selected frequency ranges. As a matter of course OFCOM will take developments within the EU into account.

It is self-evident that frequency trading cannot be introduced in frequency bands which are subject to general authorisation.

We would like to point out that a common framework for trading in frequency usage rights does not guarantee that a common market will be established. One example of a restrictive factor may be different national environmental protection legislation. If strict limits regarding protection from non-ionising radiation are laid down in law in one member state, this may mean that constructing a network is practically impossible or can only be achieved with difficulty, because of the complications concerning the construction of transmitters arising from the obligation to comply with these limits. In this member state, the attractiveness of acquiring a frequency usage right would presumably be lower than in other member states.

1.4 Establish transparent and participative procedures for allocation

OFCOM supports the efforts with a view to a process of establishing more transparent and more participatory national frequency allocation plans. It is also studying strengthening these aspects in Switzerland.

1.5 Introduce a procedure for coordinated spectrum management at EU level (comments related to specific options identified in the Impact Assessment can also be made in section C.2. "Radio spectrum" of this template)

Switzerland is geographically situated at the heart of the European Union. It is therefore directly affected by the decisions taken within the EU regarding frequency management. Likewise, neighbouring countries are directly concerned by Swiss decisions on spectrum management. The introduction of new pan-European services therefore requires a coordinated approach between Switzerland and the European Union. In the event of the establishment of a specialised agency or an intensification of comitology, it would be in the interest of both the EU and Switzerland to explore means of strengthening cooperation between the EU and Switzerland in the area of spectrum management.

OFCOM considers that the work within the CEPT and ECC respectively is extremely useful and is worth supporting in future.

1.6 Ensure that the use of spectrum is subject to general authorisations only, whenever possible

OFCOM supports the principle of increasing the number of frequency bands which do not require the acquisition of individual authorisations before they are used. However, it is useful to recall that users of bands which are subject to the general authorisation system are not able to demand interference-free operation.

In order to be able to implement the principle of general authorisation, strict sharing rules are needed. The regulatory arrangements relating to the co-existence of different applications may refer to technical parameters of the radio infrastructure used (e.g. a power limit) or in relation to a predetermined frequency range. Unconditional provision of frequency ranges cannot be implemented for reasons of compatibility. Unlimited technology neutrality cannot be implemented under a regime of general authorisation.

In conclusion, OFCOM supports general authorisations for systems and applications which do not need guarantees of interference-free operation, i.e. typically short-range radiocommunication systems. On the other hand, when interference-free operation and/or investment protection is necessary, OFCOM is of the opinion that the system of granting individual licences remains appropriate.

2. Streamlining market reviews

2.1 Relaxing notification requirements for the Article 7 procedures

2.2 Rationalising the market review procedures in a single instrument

2.3 Introduce minimum standard for notifications

2.4 Require re-notifications after vetoes within a given deadline

3. Consolidating the internal market

3.1 Commission to review the timeliness and effectiveness of remedies

3.2 Making the appeals mechanism more effective

3.3 Common approach to authorisation of services with pan-European or internal market dimension

3.4 Amend Article 5 of the Access Directive: non-Significant Market Power access and interconnection

3.5 Introduce a procedure for Member States to agree common set requirements related to networks or services

3.6 Broadening the scope of technical implementing measures taken by the Commission on numbering aspects

3.7 Amend Article 28 of the Universal Service Directive on non-geographic numbers

3.8 Improving enforcement mechanisms under the framework

3.9 Strengthen the obligation on Member States to review and justify ‘must carry’ rules

3.10 Adapting the regulatory framework to cover telecommunications terminal equipment, ensuring constancy with the R&TTE Directive

We support re-examination of the definition of the NTP with a view to clarification and simplification. However, we consider that the proposal in relation to examining a possible relaxation of the publication obligation criteria goes against a transparent and competitive market for terminal equipment. Such a proposal could lead to captive customers who, having invested in proprietary equipment, would not be able to change operator without having to renew their stock of equipment. As an alternative to relaxation, we would recommend introducing the possibility of delaying publication of the specifications for innovative services. The operator would be obliged to publish his interface, for example, one year at the latest after launching his service.

4. Strengthening Consumer Protection and User Rights

4.1 Improve the transparency and publication of information for end-users

4.2 Strengthen the obligation for network operators to pass caller location information to emergency authorities

4.3 Separate the provision of access to public communications networks from the provision of telephone services

4.4 Remove provisions on universal directories and directory inquiry services from the scope of universal service

4.5 Adapt ‘telephone service’ specific’ provisions to technology and market developments

4.6 Update the provisions on number portability to ensure transfer of all relevant data

4.7 Ensure that regulators can impose minimum quality of service requirements

4.8 Strengthen the right of disabled users to access to emergency services via the number '112'

4.9 Introduce a Community mechanism to address eAccessibility issues

5. Improving Security

5.1 Oblige operators to take security measures, and grant powers for NRAs to determine and monitor technical implementation

5.2 Require notification of security breaches by network operators and ISPs

5.3 Future-proof network integrity requirements

6. Better regulation: Removing outdated provisions

6.1 Delete the minimum set of leased lines

6.2 Withdrawal of Article 27(2) of the Universal Service Directive on ETNS

6.3 Repeal of Regulation 2887/2000 on unbundled access to the local loop

6.4(a) Delete Annex I of the Framework Directive

6.4(b) Delete Article 27 of the Framework Directive

6.4(c) Delete Article 5(4) of the Access and Interconnection Directive

C. Comments to the Impact Assessment Report

The Impact Assessment Report accompanying the Communication on the functioning of the Regulatory Framework for electronic communications network and services identifies some broader policy issues - other than those listed in the above Section B.

In this section respondents are invited to clearly express their position on these policy options -. *Please keep you response to one page per item.*

1. Investment and growth

2. Radio Spectrum

[We refer to our observations in point 1.5 of chapter B.](#)

3. Regulatory models and the Internal market

4. Market review procedures

5. Consumer protection and universal service

6. Security

7. Other areas

D. Other comments

Respondents wishing to address any additional issues/topics in relation with the Review of the EU Regulatory Framework for electronic communications networks and services are invited to express their views below.

Please keep responses short and concise.