

Viviane Reding

Member of the European Commission responsible for Information Society and Media

**Towards a True Internal Market
for Europe's Telecom Industry
and Consumers – the Regulatory
Challenges Ahead**

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

20th Plenary Meeting of the European Regulators Group

Brussels, 15 February 2007

Dear Chairman Roberto Viola,

dear Kip Meek, dear Daniel Pataki,

dear friends and colleagues from the national telecom regulators from all over Europe,

I am glad to have this opportunity to address you today at the occasion of the 20th plenary meeting of the European Regulators Group for Electronic Communications Networks and Services (ERG)¹. The issues you are deliberating today will have an important impact on the legislative work of the European Commission, the European Parliament and the Council of Ministers in the months ahead. Your meeting in Brussels today also demonstrates your awareness about the growing European responsibility that national regulators and the ERG itself are starting to assume – a process which I very much welcome.

The evolution of the ERG

The ERG is still a young institution. Established on 29 July 2002 by a decision of the European Commission, the task of the ERG is to advise and assist the Commission in consolidating the internal market for electronic communication networks and services. It took some time until the Commission and the ERG started to work together as foreseen by the Commission decision of 2002.

The ERG, on the one hand, first had to set up its internal structures, find its own working methods and identify the best ways to assist the European Commission in exercising its responsibilities for electronic communications networks and services in the EU. We in the Commission, on the other hand, first had to get used to our new advisor. Would the ERG be able to offer an added value for the Commission? Or would it rather lead to delay in well-functioning procedures? Would ERG advice only represent the “lowest common denominator” of very diverse national regulatory interests? Or would the ERG be able to find to a European role, acting solely with the Community interest in mind?

In the relationship between the Commission and the ERG, the year 2006 was certainly a decisive year in this respect. For the first time, the ERG moved to assume a stronger European role and responsibility. I applaud in particular Kip Meek, the 2006-Chair of the ERG, for his leadership in ensuring that the ERG has started working concretely on the consolidation of the internal market.

In this sense, the ERG has made important contributions as regards international mobile roaming which have had a strong influence on the thinking and work of the European Commission in this field. The ERG has also started to make “targeted harmonisation” of national regulatory practices an integral part of its work, in spite of the obvious difficulties to find agreements among 25 and now 27.

The outcome of the ERG plenary meeting in Madeira in October last year is particularly noteworthy in this respect, as the ERG there also has shown its intention to increase its effectiveness as an **agent for harmonisation**. One of the results of your Madeira meeting is that today, a permanent secretariat staff of the ERG is on the way to be set-up in Brussels, and the Commission has been closely cooperating with the ERG to support this important institutional progress.

¹ The ERG brings together the Heads of the national regulators for electronic communications from all 27 EU Member States, with also the regulators from the accession countries and the EFTA countries attending as observers.

The beginning of a new partnership

Impressed by the progress made within the ERG, I have decided in autumn last year, following meetings with the ERG troika, to involve the ERG very closely in the preparation of the reform of the EU telecom rules, planned for July this year. **I have requested the advice of the ERG on the issue that, as our public consultation has shown, is of utmost importance for the electronic communications sector in Europe: the completion of Europe's internal market for electronic communications also in regulatory terms.** I am grateful that the ERG, under the leadership of its 2007 chair Roberto Viola, has taken on the challenge to respond to my request for advice. This could very well become the beginning of a new partnership between the Commission and the ERG as its trusted advisor.

I know that you are in the mid of a very intensive work phase, and I will therefore limit myself today to some general remarks before I leave you again to concentrate on your important work. But let me make use of this opportunity to recall the political framework and the time-table for the reform of the EU telecom rules.

No time for complacency!

The EU's regulatory framework for electronic communications was last revised and modernised in 2002. The EU can be quite proud about the achievements of this framework. Its emphasis on competition and open markets as well as its technologically neutral regulatory approach are seen in the whole world as a best regulatory practice that is followed in many countries. Substantial progress has been made over the past 5 years as regards competition, investment and consumer benefits on Europe's electronic communications markets. This is shown especially in the development of broadband where the best-performing EU countries are world leaders.

However, the good results of the EU's regulatory approach and of the joint efforts by national regulators and of the European Commission are no reason for complacency. It is easy to say: things work fine, therefore why change them? The regulatory framework is basically sound after 5 years – so let's leave all as it is. For regulators at European and at national level, this is certainly the most convenient solution.

Ladies and gentlemen,

In a rapidly globalising world, with increased competition from outside Europe, we cannot afford to rely on convenient solutions. This is why the European Council of Heads of State or Government has renewed in 2005 the Lisbon commitment to enhance Europe's competitiveness. The European Commission under President Barroso has made the promotion of growth and jobs in Europe the clear policy priority. We have chosen two main instruments for our work in this respect: firstly, **to complete Europe's internal market** wherever it is still deficient – because a true internal market encompassing 27 countries is the best instrument to strengthen Europe in global competition. Secondly, to commit to **better regulation**, which means more focused and more effective regulation. Both policy objectives will lead the work of the EU institutions also when we will reform this year our regulatory framework for electronic communications. Because the telecom and ICT sector is key for Europe's competitiveness.

The need for consolidating the internal market for telecoms

Let me first stress that in the electronic communications sector, two decades after we started to open national markets formerly dominated by state-owned monopolies, to competition, **we still do not have an internal market for telecoms. The reason for this is mainly a regulatory one: the fragmentation of the internal market into 27 different regulatory systems.** The public consultation which the European Commission launched last year in the context of the review of the regulatory framework has made this lack of a true internal market very apparent. Let me quote from some of the over 220 contributions submitted by industry and stakeholders (all of which are published on the Commission's website²) which express serious concern about this.

- UNICE, Europe's main industry organisation, says: "Within the Internal Market, telecoms liberalisation has been a major success, but inadequate enforcement and widely diverging application of the rules are preventing the full benefits from being achieved. [...] The current system has not delivered a true internal market, with businesses facing different regulatory approaches in different countries"³.
- BEUC, Europe's consumer organisation, expresses a related important concern: "The success of the current framework depends to a large extent on national regulatory authorities. It is therefore important that national regulatory authorities are really independent and have the required legal mandate to carry out their mandated tasks [...]. This is sadly not the case for all national regulatory authorities and there are huge differences among them. This reflects on the efficiency of the implementation and the benefits consumers enjoy. [...] Because of the sluggish, sometimes incoherent implementation of the framework by national regulatory authorities, we would welcome any procedural reform that would speed up and improve implementation."
- New market entrants state in their joint contribution that "it is clear that the current approach is fragmented to the detriment of consumers and businesses, which are often unable to receive uniform solutions across the single market."

² http://ec.europa.eu/information_society/policy/ecommm/tomorrow/index_en.htm.

³ Cf. also the study, "Preparing the Next Steps in Regulation of Electronic Communications", made by Hogan & Hartson and Analysys, which reveals that "the majority of our respondents do not believe the Internal Market for electronic communications is complete, for reasons including the weakness of some national regulatory authorities, unharmonised implementation, lack of pan-European services in general, problems of *ex ante* regulation as well as the effectiveness of *ex post* regulation, and allegedly asymmetric regulation. [...]. Respondents argue that having different regulatory approaches in different countries adds to the costs of firms operating across multiple countries."

- A Voice over IP-provider states: “Our experience is that a consistent pan-European cross border electronic communications market is not emerging. It is very difficult to implement pan-European strategies and commit to cross-border investment when national regulatory authorities rules vary so widely.”
- One telecom incumbent, which has important business activities also in other EU Member States, writes: “Differences and inadequacies in the application of remedies hinder the creation of a single market - greater consistency in the application of remedies is needed.” This incumbent believes “that the possibility of a Commission veto, coupled with further focused ERG activity, will give a greater assurance of harmonised outcomes.” Another telecom incumbent expresses as its foremost concern “that a mechanism can be designed which ensures a greater harmonisation of the implementation of the rules across European countries, for instance by strengthening and making more transparent the coordination of national regulators through ERG, in a way similar to the one adopted by European central banks in a different context.”

Ladies and gentlemen,

In view of such very clear contributions to the public debate on the reform of the EU telecom rules, we as regulators should recognise that so far, the EU regulatory framework, in spite of its merits, has failed to deliver sufficient consistency of regulatory approaches. **We cannot ignore it: there is a clear consistency problem.** Regulators committed to a “better regulation”-approach, cannot afford not to listen to such quite alarming statements. **The problem is clear: similar competition problems are often not addressed by similar remedies in the electronic communications markets of the 27 Member States.**

Instead, there is a fragmentation of regulation across the 27 Member States, lack of independent regulators in several EU Member States, sometimes also a lack of properly resourced regulators, delays in applying remedies, as well as problems caused by inefficient remedies.

These regulatory problems threaten to become a serious obstacle for the development of a competitive internal market which benefits industry and consumers. They also go against the clear trend of an industry which increasingly is developing cross-border business interests. The search for economies of scale and the implementation of pan-European strategies has led to cross-border investment and has driven merger and acquisition activity in the EU to above 70 billion Euros in 2005, the highest level since 2000. Incumbents today are receiving between 5 and 27% of their income from European business outside their home country. In addition the growth of pan-European services (like Voice over IP) imperatively demands more consistency.

It would be an illusion to believe that the deficiencies of the internal market criticised in the public consultation will simply go away by themselves. They are regulatory in nature and can therefore only be tackled by adapting the regulatory system to the needs of the internal market. However, the current institutional set up does not allow us to achieve, even with the best intentions, a consistent application of remedies by national regulatory authorities: the Commission has no real say on remedies under today’s framework, while the ERG lacks a mechanism to arrive at sufficiently ambitious common positions.

It therefore seems crucial for the reform of the EU telecom rules to succeed in making a decisive step towards the completion of the internal market. I intend to submit legislative proposals in this direction for the reform of the EU's regulatory framework, which could be adopted by the Commission by July this year. Afterwards, the European Parliament and the Council of Telecom Ministers will have to decide about these Commission proposals, which would become law across the EU in 2009/2010 – we need therefore to keep in mind that our rules have to be designed for the next decade. The legislative proposals in July will of course be backed by an Impact Assessment and by a Communication reporting on results of the 2006 public consultation.

Policy options for solving the internal market problem

Last June, when the Commission opened the public consultation to collect stakeholder views on the reform of the EU telecom rules, our Impact Assessment summarised the issue at stake as follows: *"The objective is to find the best model for delivering a single market in eCommunications, in the light of the prevailing political and institutional context."* The Impact Assessment then went on to explore the two main options for ensuring greater consistency of regulatory approaches across the EU:

- The **first option** is to **strengthen the Commission's role to achieve the internal market objective in selected areas**. The Commission indicated in June last year that this option is its favoured option and submitted it for public consultation. I have also explained to you in my letter of 30 November 2006 that I envisage to propose including in the new regulatory framework a clause allowing the Commission to request a national regulatory authority to replace an inappropriate measure by a regulatory action that will remedy the competition problem effectively; and to request a national regulatory authority to undertake an analysis of a market and/or to adopt a remedy within a reasonable time-frame. You may call this proposal "**Commisison say on remedies**".
- As **second option**, the Commission's Impact Assessment of last June explored the possibility of establishing "a single European regulatory body". I recall that this idea is not entirely new. Already in 1997, the European Parliament had expressed its preference for this idea⁴.

We – the Commission as well as the ERG – have to solve a fundamental problem: the inexistence of an internal market in one of Europe's most promising economic sectors which at the same time has a direct bearing on consumer interests. **The Commission is looking not for more powers, but for a better system to deliver the benefits of the internal market to industry and citizens alike.** Look what the Commission has put on the table this January as regards another important network industry: in its strategy for the energy sector, the Commission has indicated its readiness to create a single Community body. **This is a clear signal that the Commission does not hold on to power at any price, but sees the completion of the internal market as its primary priority.**

⁴ This is why Article 22 of the Interconnection Directive 97/33/EC stated explicitly: "The Commission shall also investigate the added value of the setting up of a European regulatory Authority to carry out those tasks which would prove to be better undertaken at Community level."

There is only one element that is non-negotiable for the Commission: **whatever system is found for regulating better, more effectively and more consistently in the telecom sector, must be a system based on the Community method.** This means first of all that decisions taken at European level should be taken as a rule by majority, to avoid the danger of a “lowest common denominator” approach. This means also that decisions taken at European level must be capable of being enforced throughout the 27 Member States. This is why I have explained from the beginning to you in our meetings and in my letter to the ERG that mere voluntary agreements between national regulators in a system based on consensus only, can never offer a workable alternative to the effective exercise of internal market competences by the European Commission. More is required from the ERG in this respect.

My objective is also to find a system that will allow us to speed up the move of the telecom sector to full competition, including cross-border competition. **I do not believe that at the end of the next decade, ex ante-regulation should still be required in the telecom sector.** For this, we must make a decisive step now to more effective regulation.

The Commission is already considering phasing out at least 1/3 of the 18 markets currently susceptible to ex ante-regulation this year. **The system we will propose by July for regulating more effectively the remaining markets – be it enhanced Commission powers, an “ERG with teeth”, or a combination of both – should be capable of making ex ante-regulation practically superfluous by 2018 at the latest.**

Here, I again trust the forces of competition that a true internal market for electronic communications would unfold. **Greater consistency in regulatory approaches will trigger cross-border competition and therefore help us to move to a situation where the telecom sector is essentially left to market forces, subject to control only of competition law.**

If we succeed in this endeavour, both your and my job could therefore very well become redundant by 2018. **What could be a better result of better regulation than making regulators superfluous!**

The independence of national regulators

Let me address a final issue of great importance: the need for truly independent regulators. **Whatever the solution found for ensuring consistency in the internal market, it appears to me crucial for an efficient implementation of the new regulatory framework that the full independence of national regulators is made a requirement under EU law.**

Basic elements for personal, financial and instrumental independence of national regulators can already be found in other parts of EU law. In addition, as some among of you are also regulators for audiovisual media, you are certainly aware that the Commission made a proposal to this extent already in the context of the modernisation of the “Television without Frontiers Directive”. This proposal received strong support in the European Parliament, which voted with a strong majority in favour of it in December last year. This Monday, at an informal ministerial meeting in Berlin, I got the impression that also in the Council, there is now a clear majority for my proposal. It could therefore be a workable proposal to include the requirement of fully independent national regulators also in the reform of the EU telecom rules.

Dear Roberto, dear Kip, dear Daniel, dear colleagues,

The ERG is defined in the Commission Decision setting up the ERG as “advisory group of *independent* national regulatory authorities”. In respect of this independence, I will leave you now for your further deliberations over lunch – not because I would not like to share lunch with you, but because I believe that partners have to respect very clearly each others sphere in order to continue working together fruitfully.

I wish you good discussions this afternoon, the result of which the Commission will of course read with great interest. I see the work that the ERG will deliver to the Commission only as the beginning of a new partnership. It is my intention to develop this partnership further by closely associating the ERG to the further evolution of the Commission’s thinking on the reform of the EU telecom rules. I would be glad if the ERG would continue to work with me, my Cabinet and my services in this sense and be open and flexible for exploring new avenues in the best interests of the Community.

Thanks a lot for your time and your cooperation.