

COMMISSION RECOMMENDATION

of 23 July 2003

on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services

(notified under document number C(2003) 2647)

(Text with EEA relevance)

(2003/561/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) ⁽¹⁾ and in particular Article 19(1) thereof,

Whereas:

- (1) Under the new regulatory framework for electronic communications networks and services, national regulatory authorities have an obligation to contribute to the development of the internal market by, *inter alia*, cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of the Directives making up the new regulatory framework.
- (2) In order to ensure that decisions at national level do not have an adverse effect on the single market or the objectives pursued by the new regulatory framework, national regulatory authorities must notify to the Commission and other national regulatory authorities those draft measures identified in Article 7(3) of Directive 2002/21/EC (Framework Directive).
- (3) As an additional requirement, national regulatory authorities must obtain Commission authorisation for obligations covered by the second subparagraph of Article 8(3) of Directive 2002/19/EC of the European Parliament and of the Council (Access Directive) ⁽²⁾, which constitutes a separate process.
- (4) The Commission will give national regulatory authorities, if they so request, an opportunity to discuss any draft measure, before formal notification thereof under Article 7 of Directive 2002/21/EC (Framework Directive) and Article 8(3) of Directive 2002/19/EC (Access Directive). If, pursuant to Article 7(4) of Directive 2002/21/EC (Framework Directive), the Commission has indicated to the national regulatory authority that it considers that

the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with the Community law, the national regulatory authority concerned will be given an early opportunity to express its views in relation to the issues raised by the Commission.

- (5) Directive 2002/21/EC (Framework Directive) lays down certain binding time limits for the consideration of notifications under Article 7.
- (6) In order to facilitate and ensure the effectiveness of the cooperation and consultation mechanism set out in Article 7 of Directive 2002/21/EC (Framework Directive) and in the interests of legal certainty, clear rules are needed for the notification process and the examination by the Commission of a notification and for calculating the legal time limits referred to above.
- (7) It would likewise be beneficial to clarify procedural arrangements in the context of the second subparagraph of Article 8(3) of Directive 2002/19/EC (Access Directive).
- (8) In order to simplify and expedite the examination of a notified draft measure, it is desirable for national regulatory authorities to use a standard format for notifications (summary notification form).
- (9) The European Regulators Group established by Commission Decision 2002/627/EC ⁽³⁾ has recognised the need for these arrangements.
- (10) In order to comply with the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive), and in particular with the need to ensure the development of consistent regulatory practices and the consistent application of that Directive, it is essential that the notification mechanism laid down in Article 7 thereof is fully respected and as effective as possible.
- (11) The Communications Committee has delivered its opinion in accordance with Article 22(2) of Directive 2002/21/EC (the Framework Directive),

⁽¹⁾ OJ L 108, 24.4.2002, p. 33.

⁽²⁾ OJ L 108, 24.4.2002, p. 7.

⁽³⁾ OJ L 200, 30.7.2002, p. 38.

HEREBY RECOMMENDS THAT:

1. Terms defined in Directive 2002/21/EC (Framework Directive) and the specific directives have the same meaning when used in this Recommendation. In addition:

— 'recommendation on relevant markets' means Commission Recommendation 2003/311/EC on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services ⁽¹⁾;

— 'Notification' means the notification to the Commission by a national regulatory authority of a draft measure pursuant to Article 7(3) of Directive 2002/21/EC (Framework Directive) or a request pursuant to the second subparagraph of Article 8(3) of Directive 2002/19/EC (Access Directive), accompanied by the summary notification form as provided in this Recommendation (Annex I).

2. Notifications should be effected, where possible, by electronic mail with a request for acknowledgement of receipt.

Documents sent by electronic mail will be presumed to have been received by the addressee on the day on which they were sent.

Subject to point 6 below, notifications and supporting documents will be registered in the order in which they have been received.

3. Notifications will become effective on the date on which the Commission registers them ('date of registration'). The date of registration will be the date on which a complete notification is received by the Commission.

Notice will be given on the Commission's website and by electronic means to all national regulatory authorities of the date of registration of the notification, the subject matter of the notification and of any supporting documentation received.

4. Notifications should be in any of the official languages of the Community. The accompanying summary notification form (Annex) may be in a language other than that of the draft measure in order to facilitate the effective consultation of all other national regulatory authorities.

Any comments made or decision adopted by the Commission pursuant to Article 7 of Directive 2002/21/EC (Framework Directive) will be in the language of the notified draft measure, translated where possible into the language used in the summary notification form.

5. Draft measures notified by a national regulatory authority should be accompanied by the documentation necessary for the Commission to carry out its tasks. Draft measures should be sufficiently reasoned.

6. Notifications should include each of the following where applicable:

- (a) the relevant product or service market;
- (b) the relevant geographic market;
- (c) the main undertaking(s) active on the relevant market;
- (d) the results of the analysis of the relevant market, in particular the findings as to the presence or absence of effective competition therein, together with the reasons therefore;
- (e) where appropriate, the undertaking(s) to be designated as having, individually or jointly with others, significant market power within the meaning of Article 14 of Directive 2002/21/EC (Framework Directive) and the reasoning, evidence and/or any other relevant factual information in support of such designation;
- (f) the results of prior public consultation carried out by the national regulatory authority;
- (g) the opinion issued by the national competition authority, where provided;
- (h) elements to show that at the time of notification to the Commission, appropriate steps have been taken to notify the draft measure to national regulatory authorities in all other Member States;
- (i) in the case of notification of draft measures which fall within the scope of Articles 5 or 8 of Directive 2002/19/EC (Access Directive) or Article 16 of Directive 2002/22/EC of the European Parliament and of the Council (Universal Service Directive) ⁽²⁾, the specific regulatory obligation(s) proposed to address the lack of effective competition in the relevant market concerned or, in the case where a relevant market is found to be effectively competitive and such obligations have already been imposed in relation to it, the measures proposed to withdraw those obligations.

7. Where a draft measure defines, for the purposes of the market analysis, a relevant market which differs from those in the Recommendation on relevant markets, national regulatory authorities should provide sufficient reasoning as to the criteria relied upon for such a market definition.

8. Notifications made in accordance with the second paragraph of Article 8(3) of Directive 2002/19/EC (Access Directive) should also contain adequate reasoning as to why obligations other than those listed in Articles 9 to 13 thereof should be imposed on operators with significant market power.

9. Notifications falling within the scope of Article 8(5) of Directive 2002/19/EC (Access Directive) should also contain adequate reasoning as to why the intended measures are required in order to comply with international commitments.

⁽¹⁾ OJ L 114, 8.5.2003, p. 45.

⁽²⁾ OJ L 108, 24.4.2002, p. 51.

10. Notifications that include the applicable information within the meaning of point 6 will be presumed complete. Where the information, including documents, contained in the notification is incomplete in a material respect, the Commission will within five working days of receipt inform the national regulatory authority concerned and specify the extent to which it considers the notification to be incomplete. The notification will not be registered for so long as the national regulatory authority concerned has not provided the necessary information. In such cases for the purposes of Article 7 of Directive 2002/21/EC (Framework Directive) the notification will become effective on the date on which the Commission receives the complete information.
11. Without prejudice to point 6 above, following registration of a notification, the Commission, in accordance with Article 5(2) of Directive 2002/21/EC (Framework Directive), may seek further information or clarification from the national regulatory authority concerned. National regulatory authorities should endeavour to provide the information requested within three working days, where this is readily available.
12. Where the Commission makes comments in accordance with Article 7(3) of Directive 2002/21/EC (Framework Directive), it will notify the national regulatory authority concerned by electronic means and publish such comments on its website.
13. Where a national regulatory authority makes comments in accordance with Article 7(3) of Directive 2002/21/EC (Framework Directive), it shall communicate those comments by electronic means to the Commission and the other national regulatory authorities.
14. Where the Commission in applying Article 7(4) of Directive 2002/21/EC (Framework Directive) considers that a draft measure would create a barrier to the single market or it has serious doubts as to its compatibility with Community law, and in particular the objectives referred to in Article 8 of Directive 2002/21/EC (Framework Directive); or subsequently
- withdraws the objections mentioned above, or
 - takes a decision requiring a national regulatory authority to withdraw the draft measure,
- it will notify the national regulatory authority concerned by electronic means and post a notice on its website.
15. With regard to notifications made pursuant to the second paragraph of Article 8(3) of Directive 2002/19/EC (Access Directive), the Commission, acting in accordance with Article 14(2) thereof will normally take a decision authorising or preventing the national authority from adopting the proposed draft measure within a period not exceeding three months. The Commission may decide to extend this period for a further two months in view of the difficulties raised.
16. A national regulatory authority may at any time decide to withdraw the notified draft measure, in which case the notified measure will be removed from the register. The Commission will publish an appropriate notice to that effect on its website.
17. Where a national regulatory authority that has received comments from the Commission or another national regulatory authority made in accordance with Article 7(3) of Directive 2002/21/EC (Framework Directive), adopts the draft measure, on the Commission's request it shall provide information to the Commission and other national regulatory authorities of the manner in which it took the utmost account of the comments made.
18. When requested by a national regulatory authority, the Commission will informally discuss a draft measure prior to notification.
19. In accordance with Council Regulation (EEC, Euratom) No 1182/71⁽¹⁾, any period of time referred to in Directive 2002/21/EC (Framework Directive) or in this Recommendation will be calculated as follows:
- where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs, the day during which that event occurs shall not be counted as falling within the period in question;
 - a period expressed in weeks or in months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event from which the period is to be calculated occurred. If in a period expressed in months the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
 - time periods shall include official holidays, Saturdays and Sundays;
 - working days means all days other than official and/or public holidays, Saturdays and Sundays.
- Where the time period would end on a Saturday, Sunday or official holiday, it shall be extended until the end of the first following working day. The list of official holidays as determined by the Commission is published in the *Official Journal of the European Union* before the beginning of each year.
20. The Commission, together with the national regulatory authorities, will evaluate the necessity of reviewing these rules, in principle no earlier than 25 July 2004.
21. This Recommendation is addressed to the Member States.

Done at Brussels, 23 July 2003.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 124, 8.6.1971, p. 1.

ANNEX

FORM RELATING TO NOTIFICATIONS OF DRAFT MEASURES PURSUANT TO ARTICLE 7 OF DIRECTIVE 2002/21/EC (FRAMEWORK DIRECTIVE)**(“Summary Notification Form”)****Introduction**

This form specifies the summary information to be provided by national regulatory authorities to the Commission when notifying draft measures in accordance with Article 7 of Directive 2002/21/EC (Framework Directive).

The Commission intends to discuss with national regulatory authorities issues related to the implementation of Article 7, especially during pre-notification meetings. Accordingly, national regulatory authorities are encouraged to consult the Commission on any aspect of this form and in particular on which kind of information they are requested to supply or conversely the possibility to dispense with the obligation to provide certain information in relation to the market analysis carried out by national regulatory authorities pursuant to Articles 15 and 16 of Directive 2002/21/EC (Framework Directive).

Correct and complete information

All information submitted by national regulatory authorities should be correct and complete and reproduced in a summarised manner in the form prescribed below. The form does not intend to replace the notified draft measure but should enable the Commission and the national regulatory authorities of other Member States to verify that the notified draft measure does indeed contain, by reference to the information contained in the form, all information which is necessary in order for the Commission to carry out its tasks under Article 7 of Directive 2002/21/EC (Framework Directive) within the time period prescribed therein.

The information required by this form should be set out in the sections and paragraph numbers of the form with cross-references to the body of the draft measure where this information is to be found.

Language

The form should be completed in one of the official languages of the European Community and may be different from the language used in the notified draft measure. Any opinion issued or decision taken by the Commission in accordance with Article 7 of Directive 2002/21/EC (Framework Directive) will be in the language of the notified draft measure, translated where possible into the language used in the summary notification form.

SUMMARY NOTIFICATION FORM

SECTION 1

Market definition

Please state where applicable:

- 1.1. the affected relevant product/service market. Is this market mentioned in the recommendation on relevant markets?
- 1.2. the affected relevant geographic market;
- 1.3. a brief summary of the opinion of the national competition authority where provided;
- 1.4. a brief overview of the results of the public consultation to date on the proposed market definition (for example, how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it);
- 1.5. where the defined relevant market is different from those listed in the recommendation on relevant markets, a summary of the main reasons which justified the proposed market definition by reference to Section 2 of the Commission's Guidelines on the definition of the relevant market and the assessment of significant market power⁽¹⁾, and the three main criteria mentioned in recitals 9 to 16 of the recommendation on relevant markets and Section 3.2 of the accompanying Explanatory Memorandum.

SECTION 2

Designation of undertakings with significant market power

Please state where applicable:

- 2.1. the name(s) of the undertaking(s) designated as having individually or jointly significant market power.
Where applicable, the name(s) of the undertaking(s) which is (are) considered to no longer have significant market power;
- 2.2. the criteria relied upon for deciding to designate or not an undertaking as having individually or jointly with others significant market power;
- 2.3. the name of the main undertakings (competitors) present/active in the relevant market;
- 2.4. the market shares of the undertakings mentioned above and the basis of their calculation (e.g., turnover, number of subscribers).

Please provide a brief summary of:

- 2.5. the opinion of the national competition authority, where provided;
- 2.6. the results of the public consultation to date on the proposed designation(s) as undertaking(s) having significant market power (e.g., total number of comments received, numbers agreeing/disagreeing).

SECTION 3

Regulatory obligations

Please state where applicable:

- 3.1. the legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC (Access Directive));
- 3.2. the reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found;
- 3.3. if the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC (Access Directive), please indicate which are the 'exceptional circumstances' within the meaning of Article 8(3) thereof which justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.

⁽¹⁾ Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications and services, OJ C 165, 11.7.2002, p. 6.

SECTION 4

Compliance with international obligations

In relation to the third indent of the first subparagraph of Article 8(3) of Directive 2002/19/EC (Access Directive), please state where applicable:

- 4.1. whether the proposed draft measure intends to impose, amend or withdraw obligations on market players as provided for in Article 8(5) of Directive 2002/19/EC (Access Directive);
 - 4.2. the name(s) of the undertaking(s) concerned;
 - 4.3. which are the international commitments entered by the Community and its Member States that need to be respected.
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