

Review of the EU Regulatory Framework for electronic communications networks and services (29 June 2006)

Summary of the relevant parts on appeals

Communication of the Commission

5.3.2. Appeals

A major difficulty with implementation of the framework is the judicial practice of routinely suspending regulatory decisions, despite the provisions of Article 4 of the Framework Directive. Courts vary widely in their treatment of interim relief. The proposal is to tackle the problem of routine suspension of regulatory decisions by some national courts during the appeal period by laying down EU level criteria for granting suspension of regulatory decisions.

Commission Staff Working Document

5.2. Making the appeals mechanism more effective

Article 4 Framework Directive currently requires that an effective appeal mechanism at national level should be available for any party to appeal against an NRA decision. Pending the outcome of such an appeal, the regulator's decision should in principle be maintained. Some countries have relatively efficient national appeal processes. Others have systems that take years to reach a final outcome and systematically suspend regulatory decisions during the appeal process. When courts routinely suspend an NRA decision pending the outcome of appeals, it creates an incentive for undertakings systematically to use the appeal process as a delaying tactic. Delaying the application of regulatory measures can hinder the development of competition in the relevant market as well the consolidation of the internal market, to the detriment of other market players who would benefit from the disputed regulatory measures.

The proposed approach would be to tackle the problem of routine suspension of regulatory decisions by amending the provisions of Article 4 so as to lay down legal criteria, based on European case-law, that national courts must use in deciding whether to suspend NRA decisions on appeal, i.e. NRA decisions should be suspended only where irreparable harm to the appellant can be shown. The effect of this measure would be to harmonise the treatment of requests for suspension as well as to reduce significantly the number of frivolous appeals.

It is proposed to introduce a mechanism for Member States to report on the timing and the number of appeals and suspended opinions to allow the situation across the EU to be monitored.

References to the European Court of Justice remain a fundamental prerogative of national courts and, in some circumstances, are obligatory under Article 234 EC. Other information and cooperation mechanisms will also be used by the Commission to enhance the degree of consistency between national court decisions.