



# **EUROPEAN REGULATORS GROUP**

## **ANNUAL REPORT 2008**

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## **I. Introduction by the Chairman**

The European Regulators Group (ERG) - comprising of the European national telecoms regulators - can look back at an intense and successful year. 2008 was dominated by heightened political focus on Europe's electronic communications sector and the regulatory challenges. As rapidly evolving communications technologies transform the way citizens and businesses operate, Europe needs to ensure that its regulatory framework remains up to the task.

The ERG has continued to develop into a decisive driver for regulatory change and a stronger voice of professional advice in the broader policy debates shaping the European electronic communications sector. This is evidenced by our successful efforts to ensure operational excellence, and working methods, delivery of an ambitious work program, the steady stream of expertise and advice we provide to the European Commission and stakeholders, as well as our increasingly assertive role at the European level.

### **Reflection on the Work Program 2008**

In our work program for 2008 we had committed to focus on the *review process*, better *harmonisation* and *innovation*. All three areas were also to ensure continuity with the earlier work of the Group.

Furthermore, our work in 2008 also concentrated on the formulation and articulation of the Group's common view on governance issues in the context of proposals for a successor to the ERG, to ensure the best representation of the Group's interests.

### **Developments in light of the review of the electronic communications package**

2008 has been a year of important regulatory reforms for the EU telecommunications sector. On every key legislative dossier, the ERG actively played its advisory role, based on its in-depth knowledge of the sector and the local markets. In the review of the EU's telecommunications regulatory framework, especially with regard to the proposed new European institutional design of telecommunications regulation, the ERG's proportionate, reasonable and evolutionary approach based on the principle of independence received an open ear in Brussels. In line with a balanced approach to regulation, the ERG successfully promoted the principles of proportionality and subsidiarity in European telecoms regulation. We continue to believe that harmonisation is best achieved 'bottom-up' through effectively regulated national markets.

Last year saw the cooperation between the ERG and the European Commission growing stronger. Through this the ERG has further strengthened its role as an important and reliable partner of the Commission in providing national expertise and proactive, evidence-based policy advice. In the area of roaming the European Commission based its actions on our extensive collection of data as well as on our recommendations on necessary actions to further strengthen competition and drive down prices. Regarding termination rates, the ERG's analytical work stressed the need to strike the right balance between harmonisation and the necessary flexibility

to fit national market circumstances. We have also been working together with the Commission on the regulatory approach towards the development of 'Next Generation Access Networks', where we have advocated a pragmatic and flexible approach to this long-term challenge, a challenge which is characterised by very strong national specificities.

### **Striking the regulatory balance**

Whether on roaming, next generation networks or termination rates, the ERG in 2008 managed to strike a fine balance between advocating increasingly fierce competition to drive down prices for consumers and preserving market stability and predictability for operators to adapt and continue to invest in infrastructure and innovation. In the end, consumers will also benefit from the investments generated in a stable market environment. Thanks to this approach, the ERG has established itself as a pragmatic and reasonable player in the regulatory debate. We have consistently argued for evolutionary, not revolutionary, change to reconcile consumer interests with market interests. Striking this balance is only possible when regulators enjoy full independence to properly perform their tasks. That is why regulatory independence is a key principle underlying the ERG's work.

As the Chairman of ERG, I am honoured to present the Group's annual report for 2008. I would also like to wish my successor, Mr. Matthias Kurth, every success in chairing ERG during 2009.

**Daniel Pataki, *ERG Chairman 2008***

## **II. Overview**

The European Regulators Group for electronic communications networks and services (ERG) was set up by the Commission in July 2002 to help implement the telecommunications regulatory framework. The ERG is composed of the 27 heads of the independent national telecoms regulatory authorities of EU member states, with observers from the four EFTA states and three EU candidate states, making it the largest network of regulators worldwide.

At the same time, the ERG is more than the sum of its parts: the Group is the primary forum in Europe for advising on regulatory issues in the EU Member States working towards solutions for the European telecoms market and for better addressing the needs of EU citizens for communications services.

The ERG's strength is to combine and harness the expertise of its Members to promote the EU single market to the benefit of EU consumers and operators.

The ERG's primary aims are:

- To promote competition and the development of the internal market for electronic communications networks and services
- To ensure consistent application in all Member States of the 2002 regulatory framework for electronic communications and services established in accordance with European Parliament and Council Directives
- To advise the European Commission on a broad range of issues affecting the EU telecoms market and assist with implementation of EU regulatory decisions
- To encourage cooperation and coordination between key stakeholders in areas where the regulatory framework gives considerable discretionary powers in application of the rules

In 2008 the ERG's Work Program was designed along three pillars; 1. The Framework Review; 2. Further harmonisation of the internal market; and 3. Response to emerging challenges to the development of the internal market. Major results have been achieved in these three areas.

### **1. Framework review**

The ERG was asked on several occasions by the European Institutions to submit expert views on issues under discussion in the context of the Framework Review. The Group provided input via high-level papers and ERG statements as part of its work on the assessment of the review package. The high-level papers were designed to assist individual NRAs in briefing national Ministries and help the ERG's members to have a common voice on the most crucial elements of the Framework Review. For example, the ERG has developed a clear and definite opinion on the principles which should guide the governance and the operation of the new European Regulatory Body. These principles are: its independence, stable financing, that NRAs to be in

control of both governance and operation of the body and that it must be a lean and professional group. The Group also provided an answer to the Commission concerning its proposals on the Article 7 process. Finally, the ERG remains strongly committed to the maintenance of the current regulatory balance in relation to remedies and does not support any extension of the Commission's veto powers.

## **2. Further harmonisation of the internal market**

The ERG believes in the consistency of national practices in order to promote the development of the single European electronic communications market.

In 2008 the Group adopted three common positions (CPs): on MTR and FTR symmetry, on Wholesale Leased Lines (WLL), and on geographic aspects of market analysis.

In addition to the CPs already mentioned, additional documents were adopted as instruments for harmonising regulation across Europe, such as the:

- ERG Report on best practices on regulatory regimes in wholesale unbundled access and bitstream access,
- Report on the application of the so-called three criteria test,
- Report on regulatory accounting in practice,
- ERG Response to EC International Roaming Consultation
- ERG Response EC Termination Rates Consultation,
- ERG's Response to EC NGA Consultation,
- ERG Report on a methodology proposal for the comparison of broadband retail prices and the
- ERG's statement on NGA development,

Besides this, two Benchmark reports were published showing the level of MTRs in January 2008 and July 2008. The latter report also includes a projection of future MTRs for Member States where MTRs are already set for the coming years, based on glide-paths.

As a consequence of the success of the NRAs' voluntary commitment to assist NRAs in second phase procedures under Article 7 of the Framework Directive, ERG decided to automatically set up expert groups upon the opening of a second phase procedure, in order to draft an expert report which could also be used by the Commission. In 2008 there were 4 occasions when the NRAs dedicated experts to such phase II investigations: in the case of two Polish notifications in May 2008 (PL/2008/0772, transit services in the fixed public telephone network and PL/2008/0766, wholesale national market for trunk segments of leased lines) for a Spanish notification (ES/2008/0805, wholesale broadband access) and for a Slovenian notification (SI/2008/0886, Access and call origination on public mobile telephone networks wholesale market), both in December.

### **3. Response to emerging challenges on the internal market**

Beyond short-term issues the Group took on a proactive role on several forward-looking challenges.

The ERG investigated future interconnection regimes in a detailed Common Statement on IP-IC/NGN Core. It emphasises the potential for innovative services, the separation of transport and service of NGN have if realized through pro-competitive regulation and agreed that “Bill and Keep” has promising properties for a future interconnection regime which the Group will continue to examine and to work on in the future. The Group discussed its first detailed piece of work on consumer empowerment and continued its discussions in the field of convergence.

The ERG has also started a promising cooperation with the Radio Spectrum Policy Group (RSPG) on spectrum usage, one of the most important issues in the future development of telecommunications.

### **III. Main activities**

The ERG carried out its work in 2008 with the contribution of expert Project Teams (PTs). Preliminary positions were reached at a Project Team level through the contribution of technical and professional teams of experts from the national regulatory authorities. The Contact Network then conducted assessment and provisional approval with the resulting work submitted to the Plenary, which comprises the Heads of all member NRAs. The Plenary provides the final approval of the work in its quarterly meetings.

In 2008, there were four regular Plenary meetings that took place respectively in Gothenburg, Vilnius, Dublin and Budapest. There was also an informal Plenary meeting (so called mini-Plenary) in Brussels in January. The main issues dealt with by the ERG in 2008 are summarised below on the basis of the Project Requirement Documents (PRDs) that were submitted by the respective PTs to the Plenary for approval as the basis for the work for 2008.

#### **Harmonisation**

The ERG reaffirmed its commitment to ensure and deliver on regulatory consistency across the European telecoms market.

Based on its system put in place in 2007 to monitor the implementation of its Common Positions by NRAs, the ERG approved several documents on compliance as regards the application of agreed measures to strengthen Europe's single telecoms market. The following monitoring documents were approved in 2008:

- a broadband CP conformity timetable,
- an action plan to achieve conformity with the CP on MTR/FTR Symmetry,
- a timetable for monitoring of conformity with other ERG CPs.

The Group is pleased to see an increasing level of regulatory consistency which is evidence of the increasing success of its efforts.

Furthermore, based on its two data gathering exercises, the ERG worked closely together with the Commission to evaluate the implementation of the Roaming Regulation through the end of 2008.

#### **Fixed and mobile termination rates**

In 2007, the ERG worked on the question of symmetries and asymmetries for fixed and mobile termination rates within two project teams (one focusing on fixed and the other on mobile termination rates). A draft Common Position had already been adopted by the Plenary in Rome, in December 2007. The document summarises the analyses on symmetry issues: the benefits of symmetric rates and also some conditions that justify asymmetry for a transitional period.



A public consultation was organised between 17 December 2007 and 15 January 2008 during which the ERG received 33 contributions. A note summarising the main comments made is provided along with this Common Position. The Common Position was adopted by the ERG Plenary on 28 February 2008.

In 2008 the ERG worked together with the European Commission to find ways of harmonising termination rates across Europe. The ERG shares with the Commission the strategic objective of ensuring cost-reflective pricing for fixed and mobile termination rates, as this will enable consumers to continue to enjoy the benefits of falling termination charges. A predictable regulatory environment also supports sustainable investment and innovation in the mobile telephony sector.

On 26 June 2008, the European Commission initiated a public consultation of a draft Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rate in the European Union.

In September ERG published its view on this draft in “IRG/ERG Response to Public Consultation on Termination Rates”. Though working together with the Commission the ERG argued that further analysis and evidence is needed to support such a fundamental change of regulatory methodology. The ERG supported the application of cost-based modelling based on established principles, which reflects the costs of an efficient operator, however it insisted that there should be sufficient flexibility in the model and a best practice approach should be also considered.

### **International roaming**

After the Regulation was adopted by the European Parliament and Council in June 2007, the ERG started to manage a comprehensive data collection for NRAs in order to monitor compliance of tariffs in real-life traffic data. The scope of the data model covered voice calls, SMS and data services.

In 2008 ERG published two “International data reports”. The first report was published in January and it covers prices of roaming services for Q2 and Q3, 2007. The second report covers Q4, 2007 and Q1, 2008 and it was published in July 2008. The third “International data report”, published in January 2009, covers also traffic volume figures for Q2 and Q3 2008.

In May 2008 the European Commission launched a public consultation on the functioning and possible extension of the regulation of international roaming services.

In its response to the public consultation in July, the ERG stated that the aim of the measures imposed is being met. Average European wholesale and voice roaming retail prices fell significantly due to the entry into force of the Regulation. Therefore, consumers have benefited directly and promptly from significantly reduced prices under the Regulation. Average retail prices remain at or just below the maximum cap in around two thirds of Member States, at the wholesale level there was clear decrease in the average rate in all countries compared to pre-Regulation.

Regarding transparency, the majority of retail roaming providers were able to resolve technical problems in upgrading systems to permit the transparency provisions of the Regulation to function as expected within the specified timescale. ERG called for urgent action to deal with the “hidden charge” issue caused by unregulated billing units. ERG also highlighted facts showing no changes in market characteristics after the Regulation, therefore, continuation of regulation of voice roaming services is inevitable. When evaluating the benefits of the extension of roaming regulation to sms and data services the ERG concluded that there is a stronger case for regulating sms prices than data prices.

Based on the ERG’s analysis, the European Commission announced its proposals on the extension of the Regulation in autumn, 2008. The discussion then moved to the European Parliament and Council, the ERG chair presenting the views of the Group in the European Parliament at a mini-hearing on 2 December 2008.

### **Next Generation Access Networks**

In 2008 the Group worked together with the Commission on regulatory approaches to the development of Next Generation Access (NGA) Networks, advocating a pragmatic and flexible approach to this long-term challenge, a challenge which is characterised by very strong national specificities.

The ERG submitted a response to the public consultation on the NGA Draft Recommendation. The ERG shares the Commission’s view that predictable regulation is essential for ensuring competition and deployment of NGN. However the ERG believes that regulation has to be more flexible than it is envisaged in the Commission’s proposal in order to better fit the differing national circumstances and opposes the generally excessively prescriptive nature of the recommendation (e.g. when requiring NRAs to impose the development of a reference offer in all cases). The ERG welcomes the recommendations regarding transparency and information requirements on future roll-out plans regarding NGA deployment.

The ERG confirmed that the current Framework is basically fit for purpose to address issues arising from the deployment of NGAs and does not need radical revision. Regulation of NGAs should continue to promote effective competition rather than the development of new monopolies.

In December the ERG issued a statement on the deployment of NGA networks in Europe. The ERG shares the Commission’s view that the long-term aim is to have a broadband connection reaching every European home. The ERG’s view is that Next Generation Networks should be open, standardised and interoperable.

### **Geographic aspects of market analysis**

The ERG adopted guidelines on geographic aspects of market analysis and investigated criteria to be used in this type of regulation through an analysis of recent NRA experience.

Following the UK and the Austrian authorities' notifications including sub-national geographic definitions, and the European Commission's reactions to them, the Group prepared a comprehensive document on how to approach situations when there might be a need for the definition of sub-national markets. In the document the ERG proposes tools for dealing with geographical issues when significant differences in competitive conditions arise. The Group has declared that it is not in favour of/against geographical market segmentation, this is merely an option – as it is already implicitly permitted in the Directives.

## IV. Organisational developments

The ERG needs to be in a position to take effective joint decisions. The Group has therefore strengthened its operations by setting clear internal procedures, making decision-making processes more efficient and, crucially, enabling the Group to more systematically implement its common positions by taking into utmost account their contents in the national sphere.

The Project Team structure has been streamlined in order to be more transparent and was structured as follows:

Framework review	Further harmonization of the internal market	Response to emerging challenges on the market
Framework Review (FR)	Remedies & Benchmark (REM)	Next Gen. Networks (NGN)
Significant Market Power (SMP)	Mobile Term. Rates (MTR)	Convergence (CONV)
International Roaming (IR)	Fixed Term. Rates (FTR)	End User (EU)
Article 7 Expert Teams (Phase II)	Regulatory Accounting (RA)	IRGIS / Visibility

In order to make the management of daily functioning even more smooth and professional, the Board of Directors has been established, a permanent IRG Secretariat and the internal communication platform (IRGNet) have been operational from 2008 and serve to support the Members.<sup>1</sup> The process of institutionalisation significantly contributed to the fact that the Group becomes a more effective professional group to provide expert advice on all the relevant dossiers at stake of the European telecommunications sector.

In order to ensure full transparency, the ERG regularly holds debriefings after each Plenary meeting to inform stakeholders on the outcome.









In 2008 the ERG carried on with its international cooperation strategy to facilitate the sharing of regulatory experiences between different regions. The Group had two joint meetings with Regulatel (the group of Latin American Telecommunication Regulators) in Latin America. Furthermore, an informal network, the Euro-Mediterranean network of Regulators (EMERG) was set up by individual members of the ERG (mainly those regulators bordering the Mediterranean) for the enhancement of cross-Mediterranean regulatory co-operation.

<sup>1</sup> Implemented by the Independent Regulators Group (IRG), which was registered as a not-for-profit organisation under Belgian law on 27 May 2008.

By ensuring that the Group's daily work and its views are known and understood not only by telecoms stakeholders, but also by the media and the general public, the ERG has strengthened its efforts in communication in 2008, positioning itself with an image as a balanced, efficient, reliable and expert body. This enhanced visibility has reinforced the Group's position by making it a key point of reference and central stakeholder for the EU telecommunications sector.

## Annex A: Meetings of the Group

The Group held four Plenary Meetings in 2008. The agendas and conclusions are available on the ERG's website (the table below provides links to the agendas and conclusions of the meetings).

Date	Place	Agenda	Concl
28/29 February	Göteborg		
29/30 May	Vilnius		
9/10 October	Dublin		
4/5 December	Budapest		

## Annex B: ERG documents published in 2008

### Common Positions:

- ERG (07) 54 Common Position on Best Practice in Remedies Imposed as a Consequence of a Position of Significant Market Power in the Relevant Markets for Wholesale Leased Lines
- ERG (07) 83 Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates
- ERG (08) 20 CP on Geographic Aspects of Market Analysis.

### Consultation reports:

- ERG (07) 53b ERG Report on the Public Consultation on the Report on ERG Best Practices on Regulatory Regimes in Wholesale unbundled Access and Bitstream Access
- ERG (07) 54b ERG report on the Summary of the consultation responses to the Draft ERG Common Position on Best Practice in Remedies Imposed as a Consequence of a Position of Significant Market Power in the Relevant Markets for Wholesale Leased Lines
- ERG (07) 83b Report on the Consultation for the ERG Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates
- ERG (08) 20b Geographic Aspects of Mkt Analysis Cons report
- ERG (08) 26b ERG CS on IP-IC/NGN Core Suppl Document including as Part 1 the Consultation Report on “ERG Consultation Document on Regulatory Principles of IP-IC / NGN Core” (ERG (08)26

### Reports:

- ERG (07) 53 Report on ERG Best Practices on Regulatory Regimes in Wholesale Unbundled Access and Bitstream Access
- ERG (07) 85 International Roaming Report
- ERG (08) 06 ERG Report on Monitoring of Conformity with ERG Common Positions: Lessons Learned from Broadband Questionnaires and Next Steps
- ERG (08) 06c Annex to ERG (08) 06 Report on Monitoring of Application of ERG Common Positions: Wholesale Broadband Access and Wholesale Local Access
- ERG (08) 21 Report on Guidance on the Application of the Three Criteria Test
- ERG (08) 36 International Roaming Report
- ERG (08) 44 Report on BB Retail Prices Methodology 081017
- ERG (08) 47 Regulatory Accounting Report in Practice 2008

### Statements:

- ERG (08) 26 ERG Common Statement on IP-IC/NGN Core

- ERG (08) 26b ERG CS on IP-IC/NGN Core Suppl Document
- ERG (08) 68 ERG's statement on NGA development

**Guidelines:**

- ERG (07) 86rev2 International Roaming Regulation Guidelines

**Other ERG documents:**

- ERG (08) 14 ERG Response to EC on Recommendation on Art. 7
- ERG (08) 17 MTR update snapshot
- ERG (08) 19 ERG Timetable for Monitoring of Conformity with ERG Common Positions.
- ERG (08) 31 rev1 Response to Public Consultation on Termination Rates
- ERG (08) 35rev1 Response to EC International Roaming Consultation
- ERG (08) 38Rev2 I/ERG Response to the Draft Rec NGA
- ERG (08) 41 MTR Snapshot
- ERG (08) 45 Action Plan to achieve conformity with the Common Position on MTR/FTR Symmetry,
- ERG (08) 46 Broadband CP Conformity timetable,