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From: Presidency  
To: Permanent Representatives Committee/Council  
Subject: Review of the Regulatory Framework  
- Policy debate

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***Introduction***

The aim of the policy debate during the Telecom Council is to provide political guidance for the proposal of the European Commission for the review of the telecom framework, which is expected to be presented in autumn. The debate will be a follow-up to the high-level meeting on telecom “Connecting the Internal Market through Modern Regulation” that took place in Amsterdam on 20 April. During this meeting there was broad support among member states for the overarching objective of the framework review; to set the right conditions for reliable, high-capacity and affordable connectivity. Member States underlined the need for both incentivizing investment and safeguarding competition. The debate focused on the three main themes of the review: 1) Access to fixed communication networks; 2) Management of spectrum for mobile communication networks; 3) Rules for providers of communication services.

### *Access regulation*

Member states emphasised the need to make rules for access to fixed communication networks suitable for different types of areas within the EU, including areas with no fast network and areas with two fast networks. The continued necessity for regulating access to networks was underlined in order to preserve the competition dynamics created over the past decades. Member states underlined it will be up to national regulators to decide on the right solutions for their national market dynamics. The current access framework, based on an assessment of Significant Market Power, however does not seem to align with the complexities of different areas in the EU. Some Member states therefore emphasized the need to supplement the framework to create more regulatory tools. In commercially less attractive - predominantly rural – areas with no fast network, Member states acknowledged the role that access regulation could play in making private investment in network upgrades more worthwhile, for instance by allowing for co-investment. In these areas, access regulation should be looked at in conjunction with other measures like demand aggregation and public support. In areas with two networks more regulatory options could provide room for regulating areas with two networks where competition is at stake and where the current threshold for intervention is too high, or for regulating local monopolies in local markets.

### *Spectrum management*

In the debate on spectrum management, member states expressed support for technical harmonisation of conditions for using spectrum bands, as this helps to respond to demand for mobile connectivity, including through 5G technology. Member states emphasised the need to use a scarce resource like spectrum in the most efficient way, and re-affirmed their wish to adapt national auction design and licence conditions to different national circumstances and preferences. Member states also acknowledged the need for more coordination of spectrum management between Member states in order to improve regulatory certainty and predictability. Suggestions were given for making this coordination operational, such as the exchange of best practices, peer reviews of auction designs, common deadlines for the release of new spectrum bands and publishing of long term spectrum strategies. Member States supported a strengthened role of the Radio Spectrum Policy Group, and saw the need to agree on a common long-term European spectrum strategy.

## ***Rules for providers of communication services***

Some countries stated that OTT-services that compete with traditional electronic communications services and are in fact substitutes should fall under the same rules in order to create a level playing field. Creating a level playing field was, however, not seen as the main goal of the review of rules for communication services. Promotion of innovation and competition, and empowerment and protection of end users were also mentioned as important goals, among others. There was general support for lifting sector-specific rules where horizontal rules offer sufficient safeguards, as this would also contribute to a more equal – besides a light – regulatory environment. Several Member states warned against automatically extending rules for traditional communication services to communication services offered over the internet. The two may look the same to end-users, they are also different. Many Member States stated that a case-by-case evaluation is necessary to see if regulation is desirable and possible. Proportionality and usefulness are crucial in this analysis. Finally, suggestions were made for re-organising rules, as this could help in creating a more agile framework that matches the reality of modern times, for instance by distinguishing between networks, access services, and communication services (be it traditional or OTT).

In order to move the debate forward and to gain political guidance, ministers are asked to reflect on the following questions.

### ***Questions for discussion***

- 1. Do you agree that ubiquitous, reliable, affordable, high-capacity connectivity, enabled by fair competition, should become the overarching objective of the revised framework? In light of this objective, do you find that the current access regulation framework, based on an assessment of Significant Market Power, can sufficiently cope with the complexities of different areas in the EU?*
- 2. Whilst respecting national competence on spectrum assignment, do you agree that there is a need to work together to coordinate efforts in areas which have the greatest impact on network deployment, with a view to ensure timely and efficient use of spectrum? If so, what kind of coordination do you support?*
- 3. Do you agree that proportionate rules for communication service providers call for a careful case-by-case weighing of multiple objectives, such as protecting public interests, leaving space for innovation and creating a level playing field between services? Do you agree that this approach entails that, whilst certain rules could apply to all communications service providers, others may be limited in scope by reference to other parameters such as use of public resources?*