



Brussels, 22 May 2017
(OR. en)

9356/17

Interinstitutional Files:
2016/0288 (COD)
2016/0286 (COD)

TELECOM 130
COMPET 421
MI 433
CONSOM 222
CODEC 842

NOTE

From: Presidency
To: Permanent Representatives Committee/Council

No. Cion doc.: 12252/1/16 TELECOM 165 COMPET 486 MI 578 CONSOM 215 IA 72
CODEC 1269 REV 1
12257/16 TELECOM 166 COMPET 489 MI 579 CONSOM 216 IA 73
CODEC 1273

Subject: Proposal for a Directive of the European Parliament and of the Council
establishing the European Electronic Communications Code (Recast)
Proposal for a Regulation of the European Parliament and of the Council
establishing the Body of European Regulators for Electronic
Communications
- Policy debate

In the TTE Council of 2 December 2016, Member States were virtually unanimous in welcoming the ambitious connectivity objectives identified by the Commission (including for 5G) and in acknowledging the importance of high speed digital connectivity for economic and social progress in Europe. Many also recognised the need for enhanced incentives for investment in very high capacity digital infrastructure, and highlighted the importance of competition as the primary means of delivering benefits for end-user benefits.

Member States, and different regions within them, are at quite different stages of development of fixed and wireless connectivity infrastructures. Some are world leaders, with significant take-up and intensive end-user usage of advanced networks, while others have much ground to make up, and are doing so at quite different paces. Fixed Next Generation Access broadband is available to 76% of Europeans, but this number hides major differences within the EU where the number ranges from 99% to 44%. The same pattern can be observed for the take-up where the EU average of 27% masks a variation between 67% and 3%. 4G coverage finally reached 96% of Europeans in mid-2016, but this came after a long journey: the coverage was still at 79% at the end of 2014 (at that time the US had already achieved 98% coverage). In 2013, while the best performing Member State had already 98% coverage, three Member States did not have 4G at all and another ten had less than 40% coverage. Considering that the first 800 MhZ auctions in the EU took place as early as 2010, it took us more than 6 years to achieve almost universal EU coverage. This should not happen for 5G if we want the EU to be an attractive and fertile ground for innovation and growth.

While national or local specificities can explain quite a lot of this variation, differences in regulatory practices also contribute to these differences. **There is therefore clear scope to replicate or adapt some regulatory success factors. There is also scope to avoid regulatory practices that could deter the upgrade of existing networks or the deployment of substantially new ones**, by either the incumbents or the alternative investors.

Member States have supported the objectives of the Commission's proposal and the important role of co-ordination and co-operation in telecoms regulation that has supported progress in the Digital Single Market to date. In addition, in its conclusions of June 2016, the European Council called for better coordinating spectrum assignment modalities so as to help ensure Europe's leadership in the roll-out of 5G networks.

The Commission, in its proposal for reforming telecom rules, has put forward a number of measures to enhance competitive investments in both fixed and wireless networks. The proposal is based on the idea that investments and competition increasingly take place in diversified local conditions, and that flexibility is needed to take national and often even more local specificities into account. At the same time, it argues that this needs to be combined with enhanced co-ordination at the European level to enhance regulatory transparency, predictability and thus investor certainty – including for international providers of investment capital - in the whole EU. This implies that discussion on the institutional set up cannot be held in isolation from the overall objectives of the CODE and from the substantive measures proposed to achieve these objectives.

To enhance coordination at the European level, the Commission proposes to reform the institutional set-up, including by amending both the tasks and organisational structure of BEREC. BEREC has the advantage of being composed of independent and specialised national authorities, familiar with their markets and sensitive to relevant differences between them, and thus is likely to resist excessive centralisation. In addition, the Commission proposes to increase the role of BEREC so that it could ensure that broader European lessons for pursuing the shared objective of enhanced connectivity are identified and more systematically applied.

Ensuring that the European best practices are shared and followed, taking local circumstances into account in all Member States without undue delays could be achieved by reinforced enforcement of applicable rules. However, this would imply detailed, more easily enforceable, rules. The alternative is to leave sufficient flexibility for Member States but reinforce the current EU-level co-ordination mechanism. The ongoing discussion at the working level has already suggested a need for flexibility in the framing of key rules and therefore an important issue for the TTE Council is in what areas and to what extent reinforcement of co-ordination mechanisms is required.

Therefore we would like to invite Ministers to express their views on the above by focusing on the following questions:

- 1. Do you agree that investment certainty in the single market requires a clear and comprehensive framework of rules and effective co-ordination regarding their application in practice?**
 - 2. What co-ordination mechanism could provide adequate reassurances of predictability for investors and competitors by giving confidence that proven best practices are shared and followed ?**
-