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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012 (first reading)

- Adoption
- a) of the Council's position
- b) of the statement of the Council's reasons
- = Statements

Statement by the Republic of Slovenia

Slovenia commends the last few Council presidencies on the work accomplished on the TSM Regulation.

While Slovenia supports the compromise solution on roaming, it cannot support the final text on the protection of Internet neutrality. The Internet is the core of the modern digital society, a facilitator of globalisation, innovation, and the development of entrepreneurship, and a basin for the free flow of information and democracy. In order to maintain its positive role, it must remain free and open. Slovenia emphasises the importance of the neutral character of the Internet and is committed to its strong and clear protection.

Although the final compromise text of the TSM regulation on Internet neutrality contains certain improvements, it fails to eliminate our concerns. Slovenia fears that the new arrangements will result in a two-layer Internet: a slow 'best effort' service model and a high-speed Internet with guaranteed quality for an additional charge. Slovenia believes that this is the wrong response to the competitive challenges facing the European industry in the global digital market.

Also, given the current legal protection of Internet neutrality in Slovenia, we cannot support the final TSM regulation.

Statement by the Netherlands

The Netherlands wishes to thank the presidencies involved for all their efforts to reach a final compromise on the proposal for a Regulation laying down measures concerning the European single market for electronic communications and to achieve a connected continent.

More than two years ago the Netherlands was the first member state to set national rules to protect the open internet. We have since pleaded for European net neutrality rules that effectively safeguard the internet as an open platform for communication and internet services. An open platform that respects the freedom of choice for end-users as a fundamental right and creates a level playing field for providers of services and applications.

The Regulation provides the EU with a harmonised set of net neutrality rules. It contains positive elements like a clear rule against discriminatory traffic management. However effective net neutrality rules also require discriminatory pricing practices to be clearly prohibited. Such a clear ban on price discrimination is unfortunately not included in the final compromise. The Netherlands will therefore be obliged to withdraw this ban from its national net neutrality rules, even though it was applied effectively.

The lack of a clear ban on price discrimination has been a fundamental concern for the Netherlands throughout the negotiations. This fundamental concern is expressed by a vote against the Regulation.

Statement by Finland

Finland welcomes the agreement reached between the Council and the Parliament on the Telecom Single Market Regulation. The Regulation is a step to the right direction as it reduces roaming charges and thus contributes to the overall target of providing well-functioning, reliable and affordable mobile connections to all end-users. However, Finland finds it problematic that the final outcome of this Regulation and benefits achieved are highly dependent on the implementing acts to be prepared by the Commission and the forthcoming legislative proposal for wholesale price regulation.

For the reasons of legal certainty for economic actors and consumers it is very important to prepare following elements as soon as possible: 1) new wholesale price regulation significantly reducing the current level of wholesale charges, 2) implementing acts of the Telecom Single Market Regulation further defining the fair use policy and, 3) the mechanism for roaming providers to recover costs due to the abolitions of roaming charges. Implementation of these instruments in an appropriate manner has a significant impact on the functioning of the whole Telecoms Single Market Regulation.

For Finland, the issue of unlimited subscription packages is also of utmost importance. In Finland, unlimited subscription packages are widely used, prices are low and data usage is high by European standards. The implementing acts should therefore ensure the costs are to be covered in this type of subscriptions without raising domestic price level.

Moreover, Finland emphasizes that in order to avoid administrative burden and uncertainty encumbering consumers, the notification and assessment procedures regarding the coverage of the costs should be as clear and simple as possible.

Statement by the Portuguese Republic, the Republic of Bulgaria and the Republic of Croatia

The Portuguese Republic, the Republic of Bulgaria and the Republic of Croatia welcome the agreement reached on the Regulation laying down harmonised rules for an open Internet and for the reduction of roaming costs for users of mobile communications networks.

The legal framework regarding roaming services on public mobile communications networks within the Union will be completed when the European Commission adopts detailed rules by means of implementing acts; those acts will implement a fair use policy and the methodology for assessing the sustainability of the abolition of retail roaming surcharges. A further step will be the approval of the new legislative proposal to amend the wholesale charges for regulated roaming services or to provide for another solution to address the issues identified at wholesale level. The complete legal framework should fully protect the users of mobile communications services from a possible increase in domestic prices if operators are unable to recover the costs associated with the provision of roaming services.

In this context, the Portuguese Republic, the Republic of Bulgaria and the Republic of Croatia underline that the rules to be approved must ensure that both visited and home network operators recover all the costs associated with the provision of both retail and wholesale services, including direct, joint and common costs and a reasonable rate of return on investment.

In addition, the review of the wholesale roaming market should take into account the impact of seasonality on the cost structure of the service providers operating in tourist areas, as well as all the situations where there are significant traffic imbalances related to seasonality issues or resulting from different travel patterns across Member States, which is likely to be accentuated by the expected surge in demand resulting from the elimination of the surcharges.