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NOTE

From: Presidency
To: Permanent Representatives Committee

No. prev. doc.: 14314/16 TELECOM 226 FC 72 CODEC 1634
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Subject: **PREPARATION FOR THE TRANSPORT, TELECOMMUNICATIONS
AND ENERGY COUNCIL ON 2 DECEMBER 2016**
Proposal for a Regulation of the European Parliament and of the Council
amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as
regards the promotion of Internet connectivity in local communities
- Partial general approach

1. On 14 September 2016 President Juncker's speech on the State of the Union announced the proposal regarding the promotion of Internet connectivity in local communities and the Commission adopted and transmitted to the Council and to the European Parliament the proposed amendments to Regulation (EU) 1316/2013 establishing the Connecting Europe Facility (CEF) and to Regulation (EU) 283/2014 on guidelines for trans-European networks (TEN) in the area of telecommunications infrastructure.
2. The main elements of the Commission's proposal are:
 - the review of the **funding available** to the CEF / TEN projects, which is **out of the scope** of this proposal for a partial general approach and therefore put between brackets in the annexed text;

- the creation of a new field for projects related to the deployment of free local wireless very high speed connectivity in local communities by entities with a public mission.
- the possibility to finance these projects through simple financing tools such as vouchers;
- the simplification of procedures for Member States for these projects which can be monitored centrally by the Commission;
- the allocation of the related budget on a first come first serve basis, but respecting geographical balance across Member States.

WORK WITHIN THE COUNCIL PREPARATORY BODIES

3. The Commission presented this proposal to the Working Party on Telecommunication and Information Society (hereinafter referred to as the "Working Party") on 4 October 2016. Throughout October and November 2016, the Working Party examined, on four additional occasions, the Commission's proposal and alternative Presidency compromise proposals.
4. In general, delegations welcomed the proposal in the context of the 2016 State of the Union Speech of President Juncker, but also raised several points on the proposal, in particular:
 - their surprise as this proposal was not part of the European Commission's work programme;
 - the lack of an Impact Assessment;
 - the lack of clarity on the source of the funds, on the entities eligible, on the procedures to be followed at European or National level, and on the resources required to maintain the access points over time;

- the potential impact on competition;
- the lack of clarity on how the "first come, first serve" principle would be compatible with the needed geographical balance across Member States;
- the need to already include the procedural simplifications foreseen in the amendments to the Omnibus regulation to avoid any delay in the implementation of this regulation;
- the need to avoid widening the digital divide by discriminating applicants which do not yet benefit from very high connectivity speeds.

OUTSTANDING ISSUES

5. During the past two months, the Working Party examined, on several occasions, the Commission's proposal and alternative Presidency compromise proposals.
6. The discussions at the level of the Working Party have been very constructive as Member States supported the Presidency's fast track approach on this file.
7. Most of the changes made were to improve the clarity and legal certainty of the Commission's proposal.
8. The main discussions were on the following elements of the proposal:
 - (a) **The definition of entities/beneficiaries:** Many Member States supported a better legal definition of the scope, based on the notion of public sector bodies as set in the Directive on the Accessibility of Public Website and Mobile Applications and similar to the one in the Public Procurement Directive that has already been implemented by Member States. The side effect of this improved definition is that it might slightly decrease the number of potential applicants.
 - (b) **The minimum speed required for the connectivity:** Even if Member States support the shift towards a Gigabit society and the need for actions to develop the demand for very high speed connectivity, they expressed a strong preference not to limit the scope of this initiative only to entities that would already have very high speed connectivity. With this change, this initiative could also help reduce the digital divide.

- (c) **The link between 'geographical balance' and the 'first come / first serve' principle:** Member States broadly supported the need to clarify this link. The Presidency compromise proposal makes it possible to further specify the geographical balance at Work Programme level and/or at the level of each call.
 - (d) The need to already include **the explicit simplification changes proposed in the latest amendments to the Omnibus regulation.** With these amendments, this initiative does not rely anymore on upcoming discussions on Omnibus to enter into force with a complete framework.
 - (e) The need to more explicitly **limit the potential impact on competition and investments,** for instance not to jeopardise the roll-out of 5G.
9. The outcome of the discussions held on 15 November 2016, as well as the new Presidency compromise text appears in the Annex to this Note. Changes compared to the Commission proposal are in bold or strikethrough. Changes compared to the latest Working Party document 14314/16 are underlined.
10. The changes compared to document 14314/16 and are as follows:
- (a) In recital (2), the world unique is deleted to be as open as possible, and more in line with the eIDAS regulation;
 - (b) Recital (3) is amended to emphasize the subsidiarity principle;
 - (c) In recital (5), "in the context of this Regulation" is added so that Member States have more financing flexibility;
 - (d) Recital (8a) is clarified and aligned with the new paragraph (5) in Article 1;
 - (e) Recital (9) is reinforced to explain how the risks of impacts on competition could be further reduced;
 - (f) Recital (9a) is clarified to further clarify how the 'first come, first serve' principle and the geographical balance will be respected;
 - (g) Recital (11) is amended to better reflect the intention of the Member States regarding the connectivity objectives;

- (h) A new paragraph (5) is added to Article 1. It is based on the Commission's recent proposal for amendments to the Omnibus regulation, and also reflects the simplification expected on the provision of annual information.
- (i) Article 2(6) is amended to clarify that beneficiaries should be able to support the operating costs, that the funds can be used for the installation services, and to avoid legal uncertainty regarding the overlapping of the new wireless connectivity with other offers.

CONCLUSION

- 11. Based on the latest discussions held in the Working Party on 15 November 2016¹, and with the new changes now proposed, the Presidency is of the view that it should be possible to reach a partial general approach covering all substance except the financial figures, in the TTE Council of 2 December 2016.
- 12. In the light of the above, the Permanent Representatives Committee is invited to examine and confirm the Presidency compromise text as set out in the Annex to this Note and forward it to the TTE Council in order to adopt a partial general approach at its meeting on 2 December 2016.

¹ Doc. 13754/16

2016/0287 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Commission Communication setting out a European vision of Internet connectivity for citizens and business in the Digital Single Market⁴ describes a number of possible measures capable of enhancing connectivity in the European Union.

² OJ C,, p...

³ OJ C,, p..

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Connectivity for a Competitive Digital Single Market - Towards a European Gigabit society (COM(2016)587).

- (2) Amongst measures to support the vision of European connectivity, it promotes the deployment of local wireless access points through simplified planning procedures and reduced regulatory obstacles. Such access points including those ancillary to the provision of other public services or non-commercial in character, can make an important contribution to the improvement of current and the deployment of future generations of wireless communications networks by facilitating more granular coverage in line with evolving needs. **These access points may develop into a network with an unique authentication system valid in the whole European territory.**
- (3) Following the Communication setting out a European vision of Internet connectivity for the Digital Single Market and in order to promote digital inclusion, the Union should support the provision of free local wireless connectivity in the centres of local public life, including outdoor spaces accessible to the general public, through targeted support **in accordance with the principles of subsidiarity and proportionality, as set out in the Treaty on European Union**. Such support is so far not covered by Regulations (EU) No 1316/2013⁵ and (EU) No 283/2014⁶.
- (4) Support of this kind should encourage ~~entities with a public mission such as public authorities and providers of public services~~ **public sector bodies** to offer free local wireless connectivity as an ancillary service to their public mission so as to ensure that local communities can experience the benefits of ~~very~~ high-speed broadband in the centres of public life. Such ~~entities~~ **bodies** could include municipalities and other local public authorities, libraries and hospitals.
- (5) **In the context of this Regulation**, local wireless connectivity should only qualify as free, where it is provided without corresponding remuneration, whether by direct payment or other types of consideration, including, but not limited to, **commercial** advertising and the provision of personal data **for commercial purposes**.
- (6) Considering its specific purpose and targeted nature toward local needs, the intervention should be identified as a distinct project of common interest in the telecommunications sector within the meaning of Regulations (EU) No 1316/2013 and (EU) No 283/2014.

⁵ Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010, OJ L 348, 20.12.2013, p. 129, as last amended by Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015, OJ L 169, 1.7.2015, p. 1.

⁶ Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC, OJ L 86, 21.3.2014, p. 14.

- (7) [To provide this intervention with appropriate financing, the financial envelope for the implementation of the CEF in the telecommunications sector should be increased by an amount of EUR 50 000 000].
- (8) Given the non-commercial nature of this intervention and the small scale of individual projects foreseen, the administrative burden should be limited to a minimum. Therefore, the intervention should be implemented by the most appropriate forms of financial assistance, notably grants, **for instance by way of vouchers**, available under the Financial Regulation, now or in future. The intervention should not rely on financial instruments.

(8a) Given the limited volume of financial assistance awarded to each, but the significant total number of potential applicants, it is important to ensure that administrative procedures are streamlined to enable lean and swift decision-making. The CEF Regulation should therefore be amended in order to enable Member States to endorse categories of proposals under this intervention Regulation in compliance with the criteria set out in Section 4, rather than having to give their agreement on individual applicants, and to provide that certification of the expenditure and annual information of the Commission are not mandatory for grants awarded pursuant to this Regulation.

- (9) Due to the limited reach of any single local wireless access point and the small value of individual projects covered, access points benefitting from financial assistance under this Regulation are not expected to challenge commercial offers. In order to further ensure that such financial assistance does not unduly distort competition, crowd out private investments or create disincentives for private operators to invest, the intervention should be limited to projects that do not duplicate already existing private or public offers of similar characteristics in the same area. This should not exclude additional support to deployments under this initiative from public or private sources of funding, **nor should it prevent the setting of limitations, in the user's terms and conditions, such as providing connectivity for a limited period of time or up to a reasonable data consumption.**

(9a) The available budget should be allocated in a geographically balanced manner across Member States to projects and in principle, on a 'first come, first served' basis.' The ~~principles~~ mechanism aiming at ensuring geographical balance should be included in the relevant Work Programmes adopted pursuant to Regulation (EU) 1316/2013, and be further specified in Calls for Proposals, if necessary, for instance by enabling enhanced participation by applicants from Member States whose take-up of vouchers has been comparatively low.

- (10) To ensure that connectivity in accordance with this Regulation is provided quickly, financial assistance should be implemented using to the fullest extent possible on-line tools that allow for the swift submission and handling of applications and support the implementation, monitoring and auditing of the local wireless access points installed.
- (11) Given Internet connectivity needs within the Union and the urgency of promoting access networks that can deliver, throughout the EU, an Internet experience of high quality based **at least** on ~~very~~ high-speed broadband services, **while preferably reaching the objectives of the European Gigabit Society**, financial assistance should seek to attain a geographically balanced distribution **and help address the digital divide**.
- (12) Regulations (EU) No 1316/2013 and (EU) No 283/2014 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 1316/2013

Regulation (EU) No 1316/2013 is amended as follows:

1. In the first subparagraph of Article 5(1), point (b) is replaced by the following:

–'(b) telecommunications sector: [EUR 1 091 602 000];'

2. Article 7 is amended as follows:

a) paragraph 1 is replaced by the following:

'1. Only actions contributing to projects of common interest in accordance with Regulations (EU) No 1315/2013, (EU) No 347/2013 and a Regulation on guidelines for trans-European networks in the area of telecommunications infrastructure, as well as programme support actions, shall be eligible for support through Union financial assistance, in particular in the form of grants, procurement and financial instruments.'

b) paragraph 4 is replaced by the following:

'4. In the telecommunications sector, all actions implementing the projects of common interest and programme support actions identified in a Regulation on guidelines for trans-European networks in the area of telecommunications infrastructure and meeting eligibility criteria and/or conditions laid down in accordance with that Regulation shall be eligible to receive Union financial assistance under this Regulation, as follows:

(a) generic services, core service platforms and programme support actions shall be financed through grants and/or procurement;

(b) actions in the field of broadband networks shall be financed through financial instruments;

(c) actions in the field of providing free local wireless connectivity in local communities shall be financed through grants or forms of financial assistance other than financial instruments.'

3. In Article 9, the following paragraph is added:

'1a. Where justified by the need to avoid undue administrative burden, in particular in case of low value grants within the meaning of Article 185 of Regulation (EU) No 1286/2012, Member States' agreement may be given to a certain category of proposals under the work programmes pursuant to Article 17, without indicating individual applicants. **Such agreement eliminates the need for Member States to provide an agreement to each individual applicant.**'

4. In Article 10(4), the following third subparagraph is added:

'Actions in the field of providing free local wireless connectivity in local communities shall be funded by Union financial assistance up to 100 % of the eligible costs, without prejudice to the co-financing principle.'

5. In Article 22, the following subparagraph is inserted after the third subparagraph:

'The above-mentioned certification of the expenditure and annual information of the Commission are not mandatory for grants awarded pursuant to Article 4(1), point c), of Regulation 283/2014 on guidelines for trans-European networks in the area of telecommunications infrastructure.'

Article 2

Amendments to Regulation (EU) No 283/2014

Regulation (EU) No 283/2014 is amended as follows:

1. In Article 2(2), the following point (h) is added:

'(h) 'local wireless access point' means a low power equipment of small size operating within a small range, using on a non-exclusive basis radio spectrum for which the conditions of availability and efficient use for this purpose are harmonised at Union level, and which allows wireless access by users to an electronic communications network.'

2 In Article 4(1), the following point (c) is added:

'(c) support the provision of free local wireless connectivity in local communities.'

3. Article 5 is hereby amended as follows:

a) paragraph 7 is replaced by the following:

'7. The total amount of the budget allocated to financial instruments for broadband networks shall not exceed the minimum necessary to establish cost-efficient interventions which shall be determined on the basis of ex-ante assessments as referred to in Article 14(1) of Regulation (EU) No 1316/2013.

That amount shall be up to 15 % of the financial envelope for the telecommunications sector referred to in point (b) of Article 5(1) of Regulation (EU) No 1316/2013.'

b) the following paragraph is added:

'5a. Action contributing to the projects of common interest in the field of providing free local wireless connectivity in local communities shall be supported by:

(a) grants; and/or

(b) forms of financial assistance other than financial instruments.'

4. In Article 6, the following paragraph 8a is added:

'8a. Actions contributing to projects of common interest in the field of providing free local wireless connectivity in local communities shall meet conditions set out in Section 4 in the Annex.'

5. In Article 8(9), the following point (d) is added:

'(d) the number of connections to local wireless access points established under actions implementing Section 4 of the Annex.'

6. In the Annex, the following section shall be inserted:

'SECTION 4. WIRELESS CONNECTIVITY IN LOCAL COMMUNITIES

Actions aiming at the provision of free local wireless connectivity in the centres of local public life, including outdoor spaces accessible to the general public that play a major role in the public life of local communities, shall be eligible for financial assistance.

Financial assistance shall be available to ~~entities with a public mission such as local authorities and providers of public services~~ **public sector bodies, as defined by Article 3(1) of the Directive on the accessibility of the websites and mobile applications of public sector bodies**, undertaking to provide free local wireless connectivity through the installation of local wireless access points.

Projects for the provision of wireless connectivity through freely accessible local wireless access points may receive funding if they:

- 1) are implemented by ~~an entity with a public mission~~ **a public sector body** capable of planning and supervising the installation, **as well as ensuring the financing of operating costs**, of indoor or outdoor local wireless access points in public spaces;
- 2) build on ~~very~~ high-speed broadband connectivity, **capable of delivering broadband access services at speeds of at least 30 Mbps**, enabling delivery of high quality Internet experience to users that
 - a. is free, easy to access, and uses state-of-the-art equipment, and
 - b. supports access to innovative digital services, such as those offered via digital service infrastructures;
- 3) use the common visual identity to be provided by the Commission and link to the associated online tools.
- 4) **commit to procure the necessary equipment and/or related installation services in accordance with applicable law to ensure that projects do not unduly distort competition.**

Projects duplicating already existing private or public offers of similar characteristics, including quality, in the same area shall not be covered. **Such duplication may be avoided by ensuring that the range of the access points funded under this Regulation is designed so as to cover primarily public spaces and not to significantly overlap with that of existing private or public offers of similar characteristics.**

The available budget shall be allocated in a geographically balanced manner **across Member States** to projects meeting the above conditions in view of the proposals received and, in principle, on a 'first come, first served' basis.' **As long as projects eligible under this Section are presented, the total allocation of funds under this Section shall include all Member States.**

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President