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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Gigabit Infrastructure Act - discussion paper on intra-EU communications

With a view to the Telecommunications and Information Society Working Party meeting on 11 December 2023, delegations will find in Annex a discussion paper from the Presidency.

Discussion paper on intra-EU communications, as established in Art. 16a of the Parliament's position within the Gigabit Infrastructure Act

I. Introduction

The opening trilogue on 5 December mandated the technical level to work on the entire proposal. During the Working Party of 11 December, the Presidency will inform Member States about the main political priorities of the Parliament and the agreed timeline for the inter-institutional negotiations. The Presidency would also like to seek the views of the delegations on Art. 16a of the Parliament's text, regarding the abolishment of retail surcharges for regulated intra-Union communications.

II. State of play

The Parliament has introduced a new Article 16a, with the view of amending Regulation (EU) 2015/2120, to abolish retail surcharges for regulated intra-Union communications (cf. line 251c to 251k in the four-column document).

The current retail price (excluding VAT) charged to consumers for regulated intra-EU communications is capped at EUR 0,19 per minute for calls and EUR 0,06 per SMS message. This provision, which was introduced in 2018 into Regulation (EU) 2015/2120 (via the BEREC Regulation) at Parliament's request, expires after 5 years on 14 May 2024. The Parliament wishes to adopt the Gigabit Infrastructure Act in April 2024 including Art. 16a, and lower the currently established retail price cap to zero, unless providers of electronic communications can demonstrate the existence of direct costs that are objectively justified. The Parliament's proposal aims to ensure that consumers are not charged excessive prices for making number-based interpersonal communications originating in the Member State of the consumer's domestic provider and terminating at any fixed or mobile number in another Member State. It is an important political priority for the Parliament.

It should be noted that, departing from the current legislation, the Parliament does not provide for any expiry date, which means that this price regulation would become permanent. Moreover, the Parliament has not drafted any recitals explaining how such a permanent price regulation is proportionate¹ and how it could be deemed to be evidence-based and contribute to the objective of creating a single market.

III. Question for discussion

The Presidency would like to consult the views of the Member States on the way forward related to this proposal of the Parliament. The Presidency identifies the following options:

1. Reject the proposal of the Parliament. This would result in the expiry, on 14 May 2024, of the currently applicable retail price caps for intra-EU communications.
2. Agree to extend - for a number of years (number to be negotiated) - the current retail price caps for intra-EU communications as set out in Article 5a of Regulation (EU) 2015/2120, after having identified the flexibility the Parliament is willing to provide to towards the main political priorities for the Council. Appropriate justification for such an extension would have to be provided in the Recitals.
3. Agree to the Parliament's proposal but amend it with an objectively defined (linear or non-linear) mechanism to systematically abolish the surcharges over a certain period (e.g. a glidepath). This option could be considered after the Parliament can show significant flexibility towards the Council's main priorities.

¹ See, by contrast, Rec. 43-51 of the BEREC Regulation.

In general, it should be noted for options 2. and 3 that permanent price regulation would depart from the approach followed up until now in the telecommunications sector, where price regulation is only agreed for a specific period (see e.g. roaming).

Delegations are asked to provide their views on the options set out above.

IV. Next steps

On 8 January 2024, Member States will be asked to indicate their flexibility on a number of topics for which both co-legislators identified that our respective positions are divergent.