



Council of the European Union  
General Secretariat

Brussels, 12 February 2018

WK 1664/2018 INIT

LIMITE

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WORKING PAPER

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**CONTRIBUTION**

|          |                                       |
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| From:    | General Secretariat of the Council    |
| To:      | Delegations                           |
| Subject: | CODE : BE comments on end user rights |

Delegations will find in annex BE comments on CODE end user rights.

## Written comments of BE with regards to end user rights – February 2018

BE agrees with the approach as suggested by the Presidency in the covernote. We have a couple of remarks/suggestions outlined below:

Linkage with DCD: We don't see how this proposal, as it is described here, helps to avoid contractual "lock-in" (see explanation in recital 252). On the contrary, doesn't the proposed solution (especially the part: "therefore the consumer shall not be able to terminate the contract for the ECS bundle") deteriorate the situation of consumers who have digital content (e.g. Digital TV) in their bundle? **There is no conflict between the EECC and the DCD and therefore we do not see the need to adapt the text.** When NI ICS are included in the bundle, the EECC prevails over the DCD, there's no need to exclude NI ICS out of the scope of the EECC. In BE and DK, the consequence would be that the commitment period for NI ICS is 12 months, whereas our standard commitment period for other ECS is 6 months.

Art. 95§5f (line 18): BE is of the view that including the **letter (e of Art. 4.1 of the NN Regulation is too detailed for a contract summary.** (=explanation of the remedies available to the consumer in the event of any continuous or regularly recurring discrepancy between the actual performance of the internet access service regarding speed or other QoS parameters and the performance indicated in the contract).

Art. 95§6 (line 23): "before any predefined volume" should be clarified. If it is meant that the consumer should be able to get a notification before the volume of the bundle is reached, this could be a burdensome measure. More important however, is the reference to the **best-tariff advice**. BE has such a provision in our national law but our experience is mixed. If this provision means that the provider should be able to advise the consumer, upon its own initiative, this provision does not automatically have an added value for the customer – the result could lead to a complex situation (with a long list of options) in which the provider needs to make assumptions with regards to the number of TV channels or speed the customer would have preference to, which is not informative for the customer. **We prefer to stimulate interaction between provider and customer over this one-sized approach, by focusing on the price comparison tool in which the customer can simulate its own usage and preferences.** Another option is to add to the text that the best tariff advice can be given 'upon request'.

Art. 96 & recital 230:

- Line 78: we have strong reservations regarding expanding the scope of the comparison tool to business users, which are often served by niche players. **Business users have specific needs; including these offers would render the comparison tool very complex.**
- Recital 230: we feel it is important that recital 230 of the EECC stays as close as possible to the one adopted in the Council position, especially if Council and EP do not want to bring transmission services for broadcasting under the scope of Article 99 (which we still request, in order to have more sound guarantees). For more explanation, see below (at the end).

Annex VIII (line 94): we support the Presidency proposal for NI ICS to inform whether they provide 112 services or not. If one wants to be coherent with the scope as determined in line 62 en 63, this information should not only be mentioned on the website but also in the contract.

Art. 98§2 (line 109): [as determined by the MS]. We learned that it is EPs intent for the customers to request when the contract should be terminated. BE wants to highlight that it is important to keep the wording between brackets: it should be specified that it not up to the providers to determine when the contract can be terminated, but up to the MSs, which than can determine in their national law that customers can determine the termination day themselves. This approach would also be in line with Art. 99 (line 127) which stipulates an automatic termination of the contract when the switching process is completed.

Art. 98§4: is solved during the discussion in the WP.

Art. 100§1 (line 139): BE is of the views that limiting the scope of Art. 100 to 99.1 & 99.6 only (and not the entire article 99), is a missed opportunity to facilitate switching of bundles that include telephony and TV. We prefer the EP text.

With regards to recital 230: Belgium seeks the strongest possible form of reassurance it can maintain its recent initiative called “Easy Switch” which (also) aims to facilitate (through a recipient led, back-to-back synchronized process) the switching between providers of (network) access to television and radio content provided by broadcasting companies.

Easy Switch covers these players, irrespective of whether they sell their services in a single play modus or in a bundle with another ECS service (so not only in bundle with an IAS but also in a (2 Play) bundle with a voice telephony service, see also our comment on art. 100).

In a situation where it was not possible to convince other relevant parties to bring these players (with regard to a single play offer) into the scope of Article 99, we insisted to have a considering confirming countries, like Belgium, are free to adopt or maintain legislations that facilitates the switching between (network or service) providers who give access to the offers of broadcasting companies they have decided to include in their bouquet.

In the Council position this was done by stating those legislations are out of the scope of the maximum harmonization of the EECC in the following wording:

“Member States can provide for end-user protection facilitating the switching between undertakings who commercialise an offer of sound or television broadcasting content services delivered over an electronic communications network.”

In terms of wording this was done by including elements of considering (20) of Directive 2002/20/EC (the Authorisation Directive) into recital (230) of the EECC.

Indeed, this considering 20 states: *“The same undertaking, for example a cable operator, can offer both an electronic communications service, such as the conveyance of television signals, and services not covered under this Directive, such as the commercialisation of an offer of sound or television broadcasting content services, and therefore additional obligations can be imposed on this undertaking in relation to its activity as a content provider or distributor, according to*

*provisions other than those of this Directive, without prejudice to the list of conditions laid in the Annex to this Directive.”<sup>1</sup>*

We feel the recent amendments to considering 230 have the effect of a moving this part of the considering away from the core concerns Belgium has (we do not seek a considering which states television content is out of scope of the EECC).

We reiterate we want to continue to facilitate the switching between the distributors (like Proximus and Telenet<sup>2</sup>) mentioned in considering 20 of Directive 2002/20/EC.

Therefore we feel it is important considering 230 of the EECC stays as close as possible to the one adopted in the Council position, especially if Council and EP do not want to bring transmission services for broadcasting under the scope of Article 99 (which we still request, in order to have more sound guarantees).

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<sup>1</sup> Since point A.8 of this Annex refers to “*Consumer protection rules specific to the electronic communications sector including conditions in conformity with Directive 2002/22/EC (Universal Service Directive)*” we are of the opinion this Directive is relevant in a discussion on end-user rights.

<sup>2</sup> “Télédistributeurs” in French. See <http://acteurs.csa.be/pages/270>