















# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2013/0309(COD) Procedure completed
Open internet access Amending Directive 2002/22/EC <a href="#">2000/0183(COD)</a> Amending Regulation (EU) No 531/2012 <a href="#">2011/0187(COD)</a> Amended by <a href="#">2016/0286(COD)</a>	
Subject 2.40 Free movement of services, freedom to provide 3.30.03.04 Telecommunication networks 3.30.05 Electronic and mobile communications, personal communications 3.30.06 Information and communication technologies, digital technologies 3.30.20 Trans-European communications networks 3.30.25 International information networks and society, internet 4.60.06 Consumers' economic and legal interests	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Industry, Research and Energy	 <a href="#">DEL CASTILLO VERA</a> Pilar	22/07/2014
		Shadow rapporteur	
		 <a href="#">TOIA Patrizia</a>	
		 <a href="#">FORD Vicky</a>	
		 <a href="#">ROHDE Jens</a>	
	 <a href="#">REIMON Michel</a>		
	 <a href="#">TAMBURRANO Dario</a>		
	Former committee responsible		
 Industry, Research and Energy	 <a href="#">DEL CASTILLO VERA</a> Pilar	10/10/2013	
	Former committee for opinion		
 Internal Market and Consumer Protection (Associated committee)	 <a href="#">HARBOUR Malcolm</a>	25/09/2013	
 Regional Development		24/09/2013	
	Verts/ALE <a href="#">ALFONSI François</a>		
		09/10/2013	

	<b>CULT</b> Culture and Education	S&D <a href="#">KAMMEREVERT Petra</a>	
	<b>JURI</b> Legal Affairs	PPE <a href="#">BOULLIER GALLO Marielle</a>	04/11/2013
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	PPE <a href="#">SEDÓ I ALABART Salvador</a>	14/11/2013
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3350</a>	27/11/2014
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3318</a>	05/06/2014
European Commission	Commission DG	Commissioner	
	<a href="#">Communications Networks, Content and Technology</a>	KROES Neelie	
European Economic and Social Committee			

Key events			
11/09/2013	Legislative proposal published	COM(2013)0627	Summary
12/09/2013	Committee referral announced in Parliament, 1st reading		
21/11/2013	Referral to associated committees announced in Parliament		
05/12/2013	Debate in Council	<a href="#">3278</a>	Summary
18/03/2014	Vote in committee, 1st reading		
20/03/2014	Committee report tabled for plenary, 1st reading	<a href="#">A7-0190/2014</a>	Summary
02/04/2014	Debate in Parliament		
03/04/2014	Results of vote in Parliament		
03/04/2014	Decision by Parliament, 1st reading	<a href="#">T7-0281/2014</a>	Summary
05/06/2014	Debate in Council	<a href="#">3318</a>	Summary
02/09/2014	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
27/11/2014	Debate in Council	<a href="#">3350</a>	Summary
15/07/2015	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations		
02/10/2015	Council position published	<a href="#">10788/2/2015</a>	Summary
08/10/2015	Committee referral announced in Parliament, 2nd reading		
13/10/2015	Vote in committee, 2nd reading		

16/10/2015	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A8-0300/2015</a>	Summary
27/10/2015	Debate in Parliament		
27/10/2015	Decision by Parliament, 2nd reading	<a href="#">T8-0367/2015</a>	Summary
25/11/2015	Final act signed		
25/11/2015	End of procedure in Parliament		
26/11/2015	Final act published in Official Journal		

### Technical information

Procedure reference	2013/0309(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Directive 2002/22/EC <a href="#">2000/0183(COD)</a> Amending Regulation (EU) No 531/2012 <a href="#">2011/0187(COD)</a> Amended by <a href="#">2016/0286(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 114
Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a>
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/8/00566

### Documentation gateway

Legislative proposal		COM(2013)0627	11/09/2013	EC	Summary
Document attached to the procedure		SWD(2013)0331	11/09/2013	EC	
Document attached to the procedure		SWD(2013)0332	11/09/2013	EC	
Document attached to the procedure		<a href="#">N7-0066/2014</a> <a href="#">OJ C 038 08.02.2014, p. 0012</a>	14/11/2013	EDPS	Summary
Committee draft report		<a href="#">PE522.762</a>	14/11/2013	EP	
Amendments tabled in committee		<a href="#">PE524.835</a>	19/12/2013	EP	
Amendments tabled in committee		<a href="#">PE526.176</a>	19/12/2013	EP	
Committee opinion	<b>JURI</b>	<a href="#">PE524.714</a>	22/01/2014	EP	
Committee opinion	<b>CULT</b>	<a href="#">PE522.810</a>	23/01/2014	EP	
Committee opinion	<b>REGI</b>	<a href="#">PE524.757</a>	23/01/2014	EP	
Committee opinion	<b>IMCO</b>	<a href="#">PE522.939</a>	29/01/2014	EP	
Committee of the Regions: opinion		<a href="#">CDR5960/2013</a>	30/01/2014	CofR	
Committee opinion	<b>LIBE</b>	<a href="#">PE523.069</a>	19/02/2014	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0190/2014</a>	20/03/2014	EP	Summary

Text adopted by Parliament, 1st reading/single reading	<a href="#">T7-0281/2014</a>	03/04/2014	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2014)471</a>	09/07/2014	EC	
Council statement on its position	<a href="#">12279/2015</a>	28/09/2015	CSL	
Committee draft report	<a href="#">PE567.840</a>	29/09/2015	EP	
Council position	<a href="#">10788/2/2015</a>	02/10/2015	CSL	Summary
Commission communication on Council's position	<a href="#">COM(2015)0489</a>	02/10/2015	EC	Summary
Committee recommendation tabled for plenary, 2nd reading	<a href="#">A8-0300/2015</a>	16/10/2015	EP	Summary
Text adopted by Parliament, 2nd reading	<a href="#">T8-0367/2015</a>	27/10/2015	EP	Summary
Draft final act	<a href="#">00066/2015/LEX</a>	25/11/2015	CSL	
Follow-up document	<a href="#">COM(2018)0822</a>	12/12/2018	EC	
Follow-up document	<a href="#">COM(2019)0203</a>	30/04/2019	EC	Summary
Follow-up document	<a href="#">COM(2019)0616</a>	29/11/2019	EC	
Follow-up document	SWD(2019)0416	29/11/2019	EC	
Follow-up document	<a href="#">COM(2023)0233</a>	28/04/2023	EC	
Follow-up document	SWD(2023)0144	15/05/2023	EC	

#### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

#### Final act

<a href="#">Regulation 2015/2120</a> <a href="#">OJ L 310 26.11.2015, p. 0001</a> Summary
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## Open internet access

**PURPOSE:** to lay down measures concerning the European single market for electronic communications.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** connected technologies account for 50% of productivity gains in recent years across all sectors. The Commission considers that they are the key for Europe to emerge stronger from the crisis, if impediments to growth arising from ongoing fragmentation are addressed.

After over a decade of Union legislative interventions to liberalise and integrate the telecommunications market, Europe is fragmented into 28 separate national communications markets, each with a limited number of players. This patchy scenario raises barriers to entry and increases the costs for operators wanting to provide cross-border services thereby impeding their expansion. EU rules on, for example, authorisations, regulatory conditions, spectrum assignment and consumer protection are implemented in diverging ways.

As a consequence, while no operator is present in more than half of the Member States, most in far fewer, overall more than 200 operators serve a market of 510 million of customers.

This stands in stark contrast with the US or China who have one single market of 330 and 1400 million customers respectively, served by four to five large operators, with one legislation, one licensing system, and one spectrum policy.

The untapped potential of an EU single market in electronic communications is estimated at up to 0.9% GDP, or EUR 110 billion per year. The benefits from a single market for business communication services alone amount to almost EUR 90 billion per year.

In the wider economy, increasing ICT investment, improving e-skills in the labour force and reforming the conditions for the Internet economy could boost GDP by an additional 5% up to 2020, and create 3.8 million jobs.

The [Digital Agenda for Europe](#) (DAE), one of the flagship initiatives of Europe 2020 Strategy, has already recognised the role of ICT and network connectivity as an indispensable basis for the development of our economy and society. The 2013 Spring European Council stressed the importance of the digital single market for growth and called for concrete measures, in order to establish a single market in information and communications technology (ICT) as early as possible.

**IMPACT ASSESSMENT:** in order to tackle these sources of fragmentation, three policy options were selected for further analysis:

- option 1 was based on the regulatory framework for electronic communications as it stands;
- option 2 considered a single legislative instrument (a Regulation) adjusting the regulatory framework only where necessary for a single EU market for electronic communications, based on enhanced EU coordination;
- option 3 included the substance of the second option, but replaced the current governance structure by a single EU regulator in order to achieve full regulatory coordination.

The impact assessment report concludes that the second option is the best available.

**LEGAL BASIS:** Article 114 of the Treaty on the Functioning of the European Union.

**CONTENT:** the general objective of the proposal is to move towards a single market for electronic communications in which:

- citizens and businesses can access electronic communications services wherever they are provided in the Union, without cross-border restrictions or unjustified additional costs;
- companies providing electronic communications networks and services can operate and provide them wherever they are established or their customers are situated in the EU.

The proposal builds upon and advances the main directives of 2002 governing the provision of electronic communications, as amended in 2009, by introducing directly applicable legislative provisions which shall operate in conjunction with the provisions of the directives on subjects such as authorisation, spectrum assignment and access to networks.

The main elements of this proposal are as follows:

**A single EU authorisation mechanism:** operators wanting to provide services in several Member States must currently be authorised in each of them. The proposed Regulation introduces a single EU authorisation based on a single notification system in the Member State of main establishment of the European electronic communication provider (the home country) and sets out the conditions applicable to it.

**European inputs:** mobile providers in Europe today lack the necessary predictability regarding spectrum availability across the EU and must deal with diverging assignment conditions. It is thus more difficult to plan long-term, to invest across borders and eventually to gain scale. Such a patchy situation means that device manufacturers design their products for other markets with greater scale and growth prospects. To put an end to this unsustainable situation, harmonisation of spectrum inputs must be ensured by:

- guaranteeing mobile operators predictable assignment conditions and coordinated timeframes to access spectrum for wireless broadband across the EU;
- harmonising ways to access European fixed networks so that providers can more easily offer their services across the single market.

The proposal also ensures harmonised, high-quality virtual access to fixed networks would facilitate market entry and the provision of cross-border services both to end-users and businesses, and would help drive competition and investment.

**Rights of end-users:** to guarantee an appropriate level of consumer protection across the EU, rules defining the rights of end-users are harmonised, including:

- non-discrimination between certain domestic and intra-EU (international) communications (unless differences are objectively justified);
- mandatory pre-contractual and contractual information;
- increased transparency and facilities to avoid "bill shocks";
- the right to terminate the contract after six months without costs (excluding the residual value of any subsidised equipment or other promotions);
- the obligation on providers to provide unhindered connection to all content, applications or services being accessed by end-users also referred to as Net Neutrality - while regulating the use of traffic management measures by operators in respect of general internet access. At the same time, the legal framework for specialised services with enhanced quality is clarified.

**Facilitating change of provider:** the proposal provides for harmonised principles applicable to switching procedures are provided, such as cost-orientation, receiving provider-led process, automatic termination of contract with the transferring provider.

This proposal, together with the [Commission Recommendation](#) on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment, forms a set of balanced measures aimed at moving towards a Single Market in Telecommunications and fostering investment.

**BUDGETARY IMPLICATION:** the proposal has no implication for the EU budget.

**DELEGATED ACTS:** this proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

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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.

The EDPS recalls that respect for the rights to privacy and the protection of personal data, and for the confidentiality of communications, is crucial to building consumer trust and confidence in the European single market for electronic communications.

In that regard, the EDPS provides the following key recommendations:

- traffic management measures constitute a restriction to net neutrality. Using traffic management for the purposes of implementing a legislative provision or preventing and impeding serious crimes may entail a wide-scale, preventive and systematic monitoring of communications content which would be contrary to the EU Charter of Fundamental Rights, as well as Directive 2002/58/EC and Directive 95/46/EC. Reference to these grounds should be removed from the proposal;
- the proposal should provide clear information on communications inspection techniques that are allowed within the context of traffic management measures;
- whenever sufficient for the achievement of one of the aims set out in that provision, traffic management measures will involve communications inspection techniques based on the sole analysis of the IP-headers, as opposed to those involving Deep Packet Inspection;
- the proposal should require the providers to indicate the communications inspection techniques underlying such traffic management measures, as well as explain the effect of such techniques on end-users privacy and data protection rights;
- as regards the powers of national regulatory authorities to, inter alia, supervise the application of traffic management measures, the proposal should include the possibility for the latter to cooperate with national data protection authorities;
- the proposal should be amended to include the requirement for the European virtual broadband access product and the European ASQ connectivity product, respectively, to comply with the principle of data protection by design.

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The Council held a policy debate on a proposal aimed at amending the EU telecommunications regulatory framework.

Ministers welcomed the proposal's objectives of incentivising investment, enhancing consumer rights and addressing net neutrality.

However, many of them expressed their concerns about the process followed for the preparation of the proposal, the timeline envisaged for its adoption, the legal form of the act proposed and its substance. Some delegations have even called into question the whole proposal.

Process and timeline: delegations pointed in particular to the lack of substantive public consultation and to what they see as a defective impact assessment. Several also noted the premature nature of the proposal given the very recent implementation of the current telecommunications framework as well as the recent adoption of some of its constituents (Roaming III, the RSPP).

Given the complexity and ambition of the proposal, amending five existing acts, it also appears unrealistic to complete its examination and negotiation with the EP in a few months.

Legal form of the act: concerns were expressed about the choice of a Regulation as it will amend not only Regulations but also Directives, as the harmonisation a Regulation implies does not appear to be justified in all the areas covered by the proposal, e.g. if this would lead to reduced consumers protection, or because the same outcome, e.g. better coordination of spectrum allocation -- largely acknowledged as a worthwhile objective -- or international calls, could be achieved using means under the existing framework (spectrum) or by letting the market play as it is fairly competitive (international calls).

Many delegations underlined the need for stability and predictability for investors and considered that the same objectives could be furthered by making better use of current instruments.

Regarding the substance: concerns have been expressed inter alia about:

- the approach envisaged for the single EU authorisation given the uncertainty it entails regarding the powers of the regulatory authorities involved in different Member States, other important aspects for operators (e.g. consumer and tax legislation) which are not differing across Member States, and the limited interest expressed by operators for such provisions;
- the consequences that several of the provisions could have on the investment climate (e.g. roaming, extensive harmonisation of end-users protection), stressing the need to strike an appropriate balance between consumers and operators;
- the choice of approach for improved spectrum management, which should in any event preserve the value of spectrum and acknowledge national circumstances and competences and for which some would prefer the focus to be on common end dates for allocation rather than on a one-size-fits-all harmonisation process at EU level;
- the imposition of one specific means (European virtual broadband access products) to improve access to network;
- the legal uncertainty that could result e.g. from provisions on roaming while Roaming III is about to be implemented as well as possible impact on domestic tariffs;
- the net neutrality provisions where the envisaged extensive requirements on service quality might impair the further development of service providers, disproportionately affects small providers and relies on means (monitoring of speed access) affected by factors beyond the control of the providers;
- disproportionate administrative burden, e.g. for regulators and operators involved in the single authorisation procedure;
- smaller operators and markets as several provisions are seen as conducive to market consolidation and more beneficial to larger incumbents, which also puts into question the underlying approach of the proposal which instead of promoting efficient competition, as under the existing framework, seems to rely on market consolidation;
- the shift of decision-making power to the Commission away from the national level, e.g. with respect to spectrum or market remedies, which appears unwarranted.

While protecting consumers was considered an important issue, several ministers pointed out that the level of consumer protection in their country was higher than that put forward by the Commission.

As regards spectrum allocation, Ministers recognised the importance of promoting cloud computing and big data, but they did not see any need to create an EU regulatory framework in this area.

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The Committee on Industry, Research and Energy adopted the report by Pilar del CASTILLO VERA (EPP, ES) on the proposal for a 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, 2002/22/EC, and Regulations (EC) No 1211/2009 and (EU) No 531/2012.

The committee recommended that the position of the European Parliament adopted in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Objectives: the Regulation should establish rules necessary to:

- facilitate the practical exercise of the right of providers of electronic communications services and networks to provide services through a harmonised and simplified notification system based on a harmonised template;
- facilitate the practical exercise of the right of citizens and businesses to access competitive, secure and reliable electronic communications services, with common rules to guarantee high standards of protection, privacy and security of their personal data,
- achieve a more coordinated Union framework for harmonised radio spectrum for wireless broadband communications services;
- address the phasing out of unjustified surcharges for roaming communications within the Union.

Ending roaming charges in 2015: the date of 15 December 2015 should be set for the final phasing out of retail roaming surcharges for voice, SMS and data, which began with Regulation (EC) No 717/2007. In addition, the Commission should by 30 June 2015, in advance of that final abolition of retail surcharges, report on any necessary changes to the wholesale rates or wholesale market mechanisms, taking into account also mobile termination rates (MTR) applicable to roaming throughout the Union.

However, to prevent anomalous or abusive usage of retail roaming services, roaming providers may apply a "fair use clause" to the consumption of regulated retail roaming services provided at the applicable domestic price level, by reference to fair use criteria. These criteria should be applied in such a way that consumers were in a position to confidently replicate the typical domestic consumption pattern associated with their respective domestic retail packages while periodically travelling within the Union.

The maximum eurotariff price caps should continue to serve as a safeguard limit for charges for consumption in excess of fair use limits until the expiry of the Regulation (EU) No 531/2012.

Unlike the Commission, the committee saw no need regulate prices for international phone calls made from the callers home country, stating that fixed and mobile international calls were currently deregulated competitive markets that did not require regulation through EU intervention.

Net neutrality: the amended text stated that the principle of net neutrality means that equivalent traffic should be treated equally, without discrimination, restriction or interference, independent of the sender, receiver, type, content, device, service or application. Members stressed that in an open internet, providers of internet access services should, within contractually agreed limits on data volumes and speeds for internet access services and the general characteristics of the service, not block, slow down, degrade or discriminate against specific content, applications or services or specific classes thereof except for a limited number of traffic management measures.

Specialised services: this was defined as an electronic communications service optimized for specific content, applications or services, or a combination thereof, provided over logically distinct capacity with a view to ensuring enhanced quality and that is not marketed or usable as a substitute for internet access service.

The committee specified that providers of internet access, of electronic communications to the public and providers of content, applications and services should be free to offer specialised services to end-users.

Such services should only be offered if the network capacity were sufficient to provide them in addition to internet access services and they were not to the material detriment of the availability or quality of internet access services. Providers of internet access to end-users should not discriminate against services from other sources that were competing with their own specialised services.

Freedom to provide and avail of open internet access, and reasonable traffic management: end-users should be free to access and distribute content, run and provide applications and services and use terminals of their choice, irrespective of the end-users or providers location or the location, origin or destination of the service, information or content, via their internet access service.

Traffic management: it was specified that within the limits of any contractually agreed data volumes or speeds for internet access services, and subject to the general quality characteristics of the service, providers of internet access services should not restrict these freedoms by blocking, slowing down, altering or degrading specific content, applications or services, except in cases where it is necessary to apply traffic management measures. The latter should not be applied in such a way as to discriminate for commercial reasons against services competing with those offered by the provider of internet access.

BEREC: within six months of adoption of this regulation, BEREC shall lay down general guidelines defining uniform conditions for the implementation of the obligations of national competent authorities regarding provisions on safeguards for quality of service, including with respect to the application of traffic management measures and for monitoring of compliance.

Harmonisation of certain aspects relating to transfer or lease of individual rights to use radio frequencies and their duration: the committee felt that trading and leasing of spectrum harmonised for wireless broadband communications increased flexibility and lead to more efficient allocation of spectrum resources and consequently proposed measures to further facilitate and stimulate the dynamism of spectrum use.

Members introduced a new clause, stating that Member States:

- may not refuse to allow a transfer or lease to an existing holder of such rights of use;
- may refuse a transfer only where it is found that there is a clear risk that the new holder would be unable to meet the existing conditions for the right of use;
- may not refuse a lease where the transferor undertakes to remain liable for meeting the existing conditions for the right of use.

All rights of use of spectrum should be granted with a minimum duration of 25 years, and in any case for a duration appropriate to incentivise investment and competition and discourage the under-use or "hoarding" of spectrum. Member States may grant rights of use of indefinite duration.

Supervision and enforcement: national regulatory authorities should:

- have the necessary resources to monitor and supervise compliance with the Regulation within their territories;
- make up-to-date information on the application of the Regulation publicly available in a manner that enabled interested parties to have easy access to it;
- have the power to require undertakings subject to obligations under the Regulation to supply all information relevant to the implementation and enforcement of the Regulation;
- put in place appropriate, clear, open and efficient procedures to address complaints alleging breaches of provisions on the freedom to provide and avail of open internet access, and reasonable traffic management.

Review of regulatory framework: the Commission should perform a comprehensive evaluation and review of the entire regulatory framework for electronic communications, and submit a report with appropriate proposals by 30 June 2016.

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The European Parliament adopted by 534 votes to 25, with 58 abstentions, a legislative resolution on the proposal for a 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, 2002/22/EC, and Regulations (EC) No 1211/2009 and (EU) No 531/2012.

Parliament adopted its position at first reading following the ordinary legislative procedure which amends the proposal as follows:

Objectives: according to Parliament, the Regulation should establish rules necessary to:

- facilitate the practical exercise of the right of providers of electronic communications services and networks to operate their networks and to provide services irrespective of where the provider is established or its customers are situated in the Union through a harmonised and simplified notification system based on a harmonised template ,
- facilitate the practical exercise of the right of citizens and businesses to access competitive, secure and reliable electronic communications services, with common rules to guarantee high standards of protection, privacy and security of their personal data, without being hampered by cross-border restrictions or unjustified additional costs and penalties;
- achieve a more coordinated Union framework for harmonised radio spectrum for wireless broadband communications services;
- address the phasing out of unjustified surcharges for roaming communications within the Union.

Ending roaming charges in 2015: Parliament recommended that the date of 15 December 2015 be set for the final phasing out of retail roaming surcharges for voice, SMS and data.

In addition, the Commission should by 30 June 2015, in advance of that final abolition of retail surcharges, report on any necessary changes to the wholesale rates or wholesale market mechanisms.

However, to prevent anomalous or abusive usage of retail roaming services, roaming providers may apply a "fair use clause" to the consumption of regulated retail roaming services provided at the applicable domestic price level, by reference to fair use criteria.

The maximum euro-tariff price caps should continue to serve as a safeguard limit for charges for consumption in excess of fair use limits until the expiry of the Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

Unlike the Commission, Parliament saw no need regulate prices for international phone calls made from the caller's home country, stating that fixed and mobile international calls were currently deregulated competitive markets that did not require regulation through EU intervention.

Net neutrality: Members stipulated that the principle of "net neutrality" in the open internet means that traffic should be treated equally, without discrimination, restriction or interference, independent of the sender, receiver, type, content, device, service or application. As stated by the [European Parliament resolution of 17 November 2011 on the open internet](#) and net neutrality in Europe, the internet's open character has been a key driver of competitiveness, economic growth, social development and innovation.

In an open internet, providers of internet access services should, within contractually agreed limits on data volumes and speeds for internet access services and the general characteristics of the service, not block, slow down, degrade or discriminate against specific content, applications or services or specific classes thereof except for a limited number of traffic management measures.

Freedom to provide and avail of open internet access: end-users should be free to access and distribute content, run and provide applications and services and use terminals of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content, via their internet access service.

According to the amended text, providers of internet access services should be free to offer specialised services to users. Such services shall only be offered if the network capacity is sufficient to provide them in addition to internet access services and they are not to the detriment of the availability or quality of internet access services. Providers of internet access to end-users shall not discriminate between functionally equivalent services and applications.

Traffic management: end-users should be provided with complete information on any traffic management measures applied that might affect access to and distribution of information, content, applications and services.

Providers of internet access services and end-users may agree to set limits on data volumes or speeds for internet access services. Traffic management measures should be transparent, non-discriminatory, proportionate and necessary, in particular to prevent or mitigate the effects



of temporary and exceptional network congestion provided that equivalent types of traffic are treated equally.

Traffic management measures should not be maintained longer than necessary and should only entail such processing of personal data that is necessary in particular with respect to confidentiality of communications. In this context, providers of internet access services should put in place appropriate, clear, open and efficient procedures aimed at addressing complaints alleging breaches.

BEREC (Body of European Regulators for Electronic Communications): no later than six months of adoption of this regulation, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, lay down general guidelines defining uniform conditions for the implementation of the obligations of national competent authorities, as regards quality of service, in particular with respect to the application of traffic management measures and for monitoring of compliance.

Harmonisation of certain aspects relating to transfer or lease of individual rights to use radio frequencies and their duration: Parliament considered that trading and leasing of spectrum harmonised for wireless broadband communications increased flexibility and lead to more efficient allocation of spectrum resources. That is why it proposed measures to facilitate the transfer and leasing of rights with the aim of using certain radio frequencies.

Thus, the amended text provides that Member States may not refuse to allow a transfer or lease to an existing holder of such rights of use. Member States may refuse a transfer only where it is found that there is a clear risk that the new holder would be unable to meet the existing conditions for the right of use. They may not refuse a lease where the transferor undertakes to remain liable for meeting the existing conditions for the right of use.

All rights of use of spectrum should be granted with a minimum duration of 25 years, and in any case for a duration appropriate to incentivise investment and competition and discourage the under-use or 'hoarding' of spectrum. Member States may grant rights of use of indefinite duration.

Transparent contracts for end-users: providers should allow end-users access to comparable information on the coverage of the mobile networks, including different technologies in their Member State, prior to the conclusion of the contract. Contracts should also specify the types of after-sales services, maintenance services and customer support services provided.

In order to avoid bill shocks, for all post-paid services, users should be able to set a predefined maximum financial limit for the charges related to their usage of calls and internet access services. This facility should include an appropriate notification when the limit is being approached.

Supervision and enforcement: national regulatory authorities should:

- have the necessary resources to monitor and supervise compliance with the Regulation within their territories;
- make up-to-date information on the application of the Regulation publicly available in a manner that enabled interested parties to have easy access to it;
- have the power to require undertakings subject to obligations under the Regulation to supply all information relevant to the implementation and enforcement of the Regulation;
- put in place appropriate, clear, open and efficient procedures to address complaints alleging breaches of provisions on the freedom to provide and avail of open internet access, and reasonable traffic management.

Review of regulatory framework: the Commission should perform a comprehensive evaluation and review of the entire regulatory framework for electronic communications, and submit a report with appropriate proposals by 30 June 2016.

## Open internet access

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The Council took note of the state of play regarding a proposal aimed at amending the EU telecommunications regulatory framework. The draft Regulation is part of the Connected Continent package.

During the December 2013 policy debate, ministers generally welcomed the proposal's aims, such as providing incentives for investment, enhancing consumer rights and addressing net neutrality, but expressed concerns and doubts about a large number of issues.

A report drawn up by the Greek Presidency sets out the progress made on the proposal since the policy debate and draws attention to issues that require further work.

Many concerns mentioned in the December 2013 report for example, that the same objectives could be achieved by making better use of current instruments remain valid.

Objective and scope: the main concern was the unclear link to and possible inconsistencies with the current telecom framework and its objectives as well as the risk of inconsistency between the two.

Clarifications were sought regarding some unclear wording, such as 'global competitiveness', 'sustainable competition' or 'highly efficient use of radio spectrum' (which would add to the complexity of regulatory principles to be taken into account by national competent bodies). Some delegations still have doubts about the legal instrument.

Single EU authorisation: in general, it seems that delegations support the deletion of the whole Chapter. They questioned its added value and feared that it would increase complexity, administrative burden and related costs. They also warned against the risk of unequal treatment of EU and national providers, risk of racing at most offering (forum-shopping) and the impact on competences of host/home National Regulatory Authorities (NRAs).

Delegations raised also a number of specific issues, such as:

- the thresholds for the European electronic communications provider to be subject to administrative charges or contributions in the host Member State;
- the involvement of the home NRA in the case of disputes involving European electronic communications providers in the host Member State;
- the one-way provision of information on measures adopted for European electronic communication providers between the host and

home NRAs.

There was basically no support for Article 6 (suspension and withdrawal) and Article 7 (coordination of enforcement measures).

Coordination of use of radio spectrum: several delegations found many of the new provisions too prescriptive and often overlapping or even conflicting with provisions of EU or national legislation.

Delegations' concerns included a possible conflict between the proposal and the Authorisation Directive, reference to compensation and doubts whether establishing minimum technology performance levels was technology neutral.

Most Member States consider that the provisions aimed at harmonising radio frequencies for broadband synchronisation delays and introducing a European mechanism for coordination of rights of use of radio frequencies go too far, in particular with regard to the proposed competences and the veto right of the Commission.

European virtual broadband access products: delegations found the provisions too detailed and unclear at the same time and stressed the need for a thorough market analysis before any such regulation is introduced.

With regard to assured service quality connectivity products, most Member States believed that there was no proven market failure that would justify a new regulatory burden and that regulation of business models should be avoided. The development of such products should be left for the industry without unnecessary regulatory intervention.

Harmonised rights of end-users: on the consumer provisions Member States prefer minimum harmonisation to the proposed full-scale harmonisation, as this would allow them to keep or adopt more stringent national measures.

Open Internet: several delegations underlined the need for the text to be future-proof and to be clear. For example, definitions of 'internet access service' and 'specialised service' should be clarified. In addition, the list of allowed traffic management measures was not considered satisfactory.

While delegations agreed that the right balance needs to be struck between net neutrality and reasonable traffic management, they had different views on how to achieve it. The common underlying principles relating to net neutrality have yet to be agreed on.

The draft articles on roaming, which are to be found towards the end of the Commission proposal, have not yet been examined in detail.

The Presidency advocated that to continue the work, future efforts should focus on those provisions of the proposal that gathered at least some support among Member States and where solid progress is achievable.

## Open internet access

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The Council discussed the state of play regarding a proposal to amend the EU telecommunications regulatory framework ("Connected continent").

The discussions focused in particular on roaming charges and net neutrality without introducing obstacles to innovation and investment.

Roaming: most delegations expressed the need to have more time to analyse what would be the best approach to avoid unintended side-effects.

The presidency proposed a new revised text on roaming. Many delegations pointed out that any "roam like at home" provision needed further examination, including as regards:

- the level of regulated wholesale prices;
- the definition of any "fair use" criterion, including whether any such criterion should apply at both retail and wholesale levels and whether it should be based on domestic or EU-wide usage; the definition of any "roam like at home" provision;
- the implications on national markets, including the risk of a "water bed" effect (i.e. increased domestic prices to compensate for any losses on roaming services incurred by the visited or home operator), and on investment;
- the impact on flat-rate offerings;
- the relationship to the structural remedies, intended to promote competition, in the Roaming Regulation.

Open internet/net neutrality: issues relating to open internet/net neutrality are highly complex, involving fundamental rights, economic and technical aspects, content of communications, and also questions relating to appropriate scope (providers of electronic communications services/networks/other types of providers etc) and effectiveness.

The Presidency proposed a new text setting out an approach in principle to open internet/net neutrality.

Discussions on open internet/net neutrality appear to be converging around the following core elements:

- a simplified principles-based approach, in order not to inhibit innovation and to avoid technological developments making the regulation obsolete;
- not regulating "specialised services" (while not prohibiting them);
- allowing necessary flexibility regarding traffic management measures (while not including measures relating to content lawfulness);
- allowing scope for national NRAs, coordinated by BEREC, to provide guidance.

The presidency will continue to work on the proposal until the end of the year, based on the guidance given by ministers. Talks with the European Parliament would only start when the time is ripe.

## Open internet access

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The Council's position at first reading first reading concerning the European single market for electronic communications focused on two core issues: roaming and net neutrality, including the consumer rights related to each of these issues.

The Regulation aims at establishing common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and safeguarding end-users' rights.

In the field of roaming, the Regulation sets up a new retail pricing mechanism for Union-wide regulated roaming services in order to abolish retail roaming surcharges without distorting domestic and visited markets.

The main elements of the compromise reached with the European Parliament are outlined below:

Roaming: under the compromise, retail roaming surcharges in the European Union will be abolished as of 15 June 2017. However, the compromise defines two situations when the application of surcharges is still authorised, subject to specific criteria:

1. roaming providers will be able to apply a 'fair use policy' to prevent abusive or anomalous usage of regulated retail roaming services. Once the fair use policy has been exceeded, a surcharge may be applied. The surcharge cannot be higher than the maximum wholesale charges. The detailed rules on the application of the fair use policy will be defined by the Commission in an implementing act by 15 December 2016.
2. with a view to ensuring the sustainability of the domestic charging model, in specific and exceptional circumstances, where roaming providers will not be able to recover overall costs of providing regulated roaming services from overall revenues of providing such services, they, subject to the authorisation by the national regulatory authority, may apply a surcharge, but only to the extent necessary to recover those costs.

The abolition of the roaming surcharges of 15 June 2017 is subjected to the adoption by that date of a legislative proposal amending the maximum wholesale charges currently regulated under [Regulation 531/2012](#) or providing for another solution to address issues identified at wholesale level. The Commission, before submitting such a legislative proposal, is required to conduct a review of the wholesale roaming market with a view to assessing measures necessary to enable abolition of retail roaming surcharges.

In order to ensure a smooth transition to the abolition of roaming surcharges, the compromise provides for a transitional period, which will start as of 30 April 2016. From this date roaming surcharges will be significantly reduced. The maximum surcharge will then be limited to the current maximum wholesale charges laid down in Regulation 531/2012. For calls received, the maximum surcharge will be the weighted average of maximum mobile termination rates across the EU, to be set out by the Commission by means of an implementing act by the end of 2015.

Network Neutrality: providers will be required to treat all traffic equally when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used.

They may use reasonable traffic management measures, but such measures must be transparent, non-discriminatory, proportionate and not be based on commercial considerations. Traffic management measures must not monitor specific content and must not be maintained longer than necessary. Measures going beyond such reasonable traffic management (for example, blocking or throttling) will be prohibited, except for a limited number of cases defined in the Regulation.

Agreements on services requiring a specific level of quality will be allowed, provided that those services are not usable or offered as a replacement for internet access service and they are not to the detriment of the availability or general quality of internet access services for end users.

End-users' rights: the provisions on safeguarding of open internet access and roaming are complemented by end-users' provisions which, in particular, enable end-users to make informed choices. For example:

- in relation to network neutrality, providers of internet access services should: (i) inform end-users in a clear manner about how traffic management practices and any services other than internet access services may impact on the quality of the internet access service; (ii) inform end-users of the speed normally available and the remedies in case of non-compliance;
- in the area of roaming, the compromise stipulates that customers will need to be notified about the applicable fair use policy or when consumption volumes are reached.

## Open internet access

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As all amendments to the Commission proposal were discussed during the informal tripartite discussions, the Commission can accept the amendments that the Council adopted in its first reading position.

The Commission supported the Council position which limits the scope of the proposal to net neutrality and roaming, and this was confirmed in the negotiations with the European Parliament. The Commission recalled that the [Digital Single Market strategy](#) announced by the Commission on 6 May 2015 makes clear that spectrum will be part of the telecom review to be presented in 2016.

Overall the Council's position endorses the core objectives of the Commission proposal, namely to abolish retail roaming surcharges and ensure open internet access while allowing innovative services. However, the Council makes some changes regarding how to achieve these goals. Its amendments involve:

- defining a clear end-date for roaming surcharges while ensuring the sustainability of such abolition, in particular by appropriately timing the review of wholesale roaming markets and establishing an appropriate mechanism to address exceptional and specific cases where domestic charging models would be unsustainable even after the review of wholesale roaming markets;
- clarifying that equal treatment of traffic allows for reasonable day-to-day traffic management based on justified objective technical requirements and independently of the traffic's origin or destination;
- a ban on blocking, throttling and discrimination against specific content, services or applications, or categories thereof, with three narrowly circumscribed necessary exceptions, namely for compliance with EU or national laws or measures giving effect to such laws, for network security purposes, and for management of temporary or exceptional network congestion;
- establishing that services other than internet access services, which are optimised for specific content, applications or services, may be provided under certain conditions: (i) that optimisation is necessary to meet the quality requirements of these content, applications or services; (ii) that they are not marketed or usable as a substitute to internet access services; (iii) that sufficient capacity is available; and (iv) that their provision is not detrimental to the quality of internet access services for end-users;
- obliging the competent regulatory authorities to ensure, through monitoring and enforcement action, compliance with the rules of the Regulation and that the rights of end-users, including providers of content, services and applications, are not impaired;

- establishing certain end-users rights which are necessary to apply the provisions on roaming and net neutrality effectively.

## Open internet access

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The Committee on Industry, Research and Energy adopted a recommendation for second reading contained in the report by Pilar del CASTILLO VERA (EPP, ES) on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

The committee recommended the European Parliament to approve, without amendment, the Council position at first reading.

The proposed Regulation will introduce harmonised rules to safeguard open internet access, to protect users' rights and to end roaming surcharges.

The Parliament adopted its first reading position on 3 April 2014. The Council's first reading position is in conformity with the agreement reached in the inter-institutional negotiations (trilogues).

## Open internet access

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The European Parliament adopted a legislative resolution on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

In line with the recommendation for second reading by the Committee on Industry, Research and Energy, Parliament approved, without amendment, the Council position at first reading.

## Open internet access

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**PURPOSE:** to establish common rules necessary for safeguarding open internet access and abolishing retail roaming surcharges.

**LEGISLATIVE ACT:** Regulation (EU) 2015/2120 of the European Parliament and of the Council laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

**CONTENT:** the Regulation:

- establishes common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users rights;
- sets up a new retail pricing mechanism for Union-wide regulated roaming services in order to abolish retail roaming surcharges without distorting domestic and visited markets.

**Abolition of retail roaming surcharges (amendments to [Regulation \(EU\) No 531/2012](#)):** this Regulation sets out that retail roaming surcharges in the EU will be abolished as of 15 June 2017. However, the compromise defines two situations when the application of surcharges is still authorised, subject to specific criteria:

- First of all, roaming providers will be able to apply a 'fair use policy' to prevent abusive or anomalous usage of regulated retail roaming services. Once the fair use policy has been exceeded, a surcharge may be applied. The surcharge cannot be higher than the maximum wholesale charges. The detailed rules on the application of the fair use policy will be defined by the Commission in an implementing act by 15 December 2016.
- Secondly, with a view to ensuring the sustainability of the domestic charging model, in specific and exceptional circumstances, where roaming providers will not be able to recover overall costs of providing regulated roaming services from overall revenues of providing such services, they, subject to the authorisation by the national regulatory authority, may apply a surcharge, but only to the extent necessary to recover those costs.

The abolition of the roaming surcharges of 15 June 2017 is subjected to the adoption by that date of a legislative proposal amending the maximum wholesale charges currently regulated under Regulation 531/2012 or providing for another solution to address issues identified at wholesale level. By 29 November 2015, the Commission shall initiate a review of the wholesale roaming market with a view to assessing measures necessary to enable abolition of retail roaming surcharges by 15 June 2017 and shall propose new legislation by 15 June 2016.

**Additional cost of the transitional period:** in order to ensure a smooth transition to the abolition of roaming surcharges, the Regulation provides for a transitional period, which will start as of 30 April 2016. From this date:

- roaming surcharges will be significantly reduced. The maximum surcharge will then be limited to the current maximum wholesale charges laid down in Regulation 531/2012;
- the sum of the domestic retail price and any surcharge applied for regulated roaming calls made, regulated roaming SMS messages sent or regulated data roaming services shall not exceed EUR 0,19 per minute, EUR 0,06 per SMS message and EUR 0,20 per megabyte used, respectively.

For calls received, the maximum surcharge will be the weighted average of maximum mobile termination rates across the EU, to be set out by the Commission by means of an implementing act by the end of 2015.

Network Neutrality: under the new EU-wide rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services, providers will be required to treat all traffic equally when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used.

They may use reasonable traffic management measures, but such measures must be transparent, non-discriminatory, proportionate and not be based on commercial considerations.

Traffic management measures must not monitor specific content and must not be maintained longer than necessary. Measures going beyond such reasonable traffic management (for example, blocking or throttling) will be prohibited, except for a limited number of cases defined in the Regulation.

Agreements on services requiring a specific level of quality will be allowed, provided that those services are not usable or offered as a replacement for internet access service and they are not to the detriment of the availability or general quality of internet access services for end users.

End-users' rights: in relation to network neutrality, providers of internet access services should:

- inform end-users in a clear manner about how traffic management practices and any services other than internet access services may impact on the quality of the internet access service;
- inform end-users of the speed normally available and the remedies in case of non-compliance.

In the area of roaming, the Regulation lays down transparency requirements on the specific tariff and volume conditions that will apply once roaming surcharges are abolished. In particular, provision should be made for roaming customers to be notified, in a timely manner and free of charge, of the applicable fair use policy, when the applicable fair use volume of regulated voice, SMS or data roaming services is fully consumed, of any surcharge, and of accumulated consumption of regulated data roaming services.

ENTRY INTO FORCE: 29.11.2015. It shall apply from 30 April 2016 with the exception of certain provisions.

## Open internet access

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In line with Regulation (EU) 2015/2120 laying down measures concerning open internet access and retail charges for regulated intra-EU communications, the Commission presents a report on the implementation of the Regulation.

In particular, it assesses its implementation since it entered into force and compares the state of play regarding access to the open internet in the Union today, including in the light of market and technological developments, against the situation that existed before the regulation became applicable.

The Commission's assessment shows the objectives of the Regulation remain as relevant today as when they were first adopted and are not contested: there is broad consensus that consumers and businesses should have a right to access an open internet. It helps them to acquire information, communicate, innovate and compete in the global digital economy and is an increasingly important means for citizens to participate fully in society.

Implementation of the Regulation after December 2016

The supervision and enforcement of the Regulation is still comparatively recent and work in progress. A number of investigations by individual national regulatory authorities into certain topics are under way. Yet, the implementation has been consistent throughout the Union. The issues that have arisen were mainly transparency (contract information), zero-rating and traffic management measures. National regulatory authorities are addressing them in a coordinating manner. Indeed, within BEREC they established a working group to exchange practices and strive to maintain consistency in their application of the regulation. This coordination process led the decision-making in the Member States to converge widely.

Sanctions

Sanctions differ widely between Member States. For example, in some Member States, penalties are linked to a company's turnover, others have a fixed maximum amount and some have a combination of the two. For similar violations, the fixed maximum amounts range from around EUR 15 000 to EUR 3 million and turn-over related maximum fines range from 0.5 % to 10 %. The type of penalties imposed (fines and/or periodic penalty payments with or without the possibility to impose other sanctions such as suspension of activities) also differ between Member States.

Only very few penalties have been imposed to date and all of them were well below the applicable maximum.

Since effective, dissuasive and proportionate sanctions are crucial for the correct implementation of the regulation, the Commission is monitoring the implementation of this provision in the Member States.

Conclusion

The report concludes that compared with the situation in 2015, before the Regulation applied, end-users and content application providers express great satisfaction with today's state of affairs. Internet service providers also support the principles of an open internet and do not consider that it is necessary to amend these principles.

One of the Regulation's objectives was to support the internet as an engine of innovation. Today, digital businesses are clearly flourishing as evidenced by start-up clusters in very dynamic places across Europe. The emergence of these start-ups is, in part, thanks to their ease of access to their customers, which the Regulation supports.

From the assessment of the first two and a half years of implementation, the Commission concludes that the regulation's principles are appropriate in light of the development of the market and that they are effective in protecting the end-user and promoting the internet as an innovation engine.

Experience of how the Regulation is applied is still limited due to the relatively short time it has been in application. A further period of regulatory stability will enable regulators, stakeholders and end-users to become more familiar with its application. Such stability is ensured in

the EU through directly applicable, principles-based legislation, supported by all relevant stakeholder communities, and underpinned by flexible mechanisms to ensure consistent decision-making at national level.

Therefore, the Commission concludes that it would not be appropriate to propose amendments to the Regulation at this stage.

The Commission shall continue to monitor developments in the market, in light of the developments in technology and services.

In particular, it shall work closely with BEREC, which is carrying out a coordination process that has successfully led Member States to converge their decision-making.