

## Open internet access

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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.