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.