

European Electronic Communications Code. Recast

2016/0288(COD) - 14/09/2016 - Legislative proposal

PURPOSE: to establish a European Electronic Communications Code in order to create future networks.

PROPOSED ACT: Directive of the European Parliament and of the Council.

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

BACKGROUND: since the last revision of the regulatory framework for electronic communications in 2009, the sector has significantly evolved and its role as an enabler of the online economy has grown. Market structures have evolved, with monopolistic market power becoming increasingly limited, and at the same time connectivity for citizens and businesses has become a widely pervasive feature of economic life. These usage and operational changes must be factored into a review of the regulatory framework for electronic communications.

The review needs to be seen in light of the [Digital Single Market strategy for Europe](#), in which the Commission announced that it would present proposals in 2016 for an ambitious overhaul of the regulatory framework focusing on:

- a consistent single market approach to spectrum policy and management;
- delivering the conditions for a true single market by tackling regulatory fragmentation to allow economies of scale for efficient network operators and service providers and effective protection of consumers;
- ensuring a level playing field for market players and consistent application of the rules;
- incentivising investment in high-speed broadband networks; and
- a more effective regulatory institutional framework.

IMPACT ASSESSMENT : the preferred option are as follows:

- focusing regulation on high-quality connectivity;
- binding and enforceable rules for enhancing coordination of spectrum management in the EU with greater focus on adapting spectrum rules to the future 5G challenges;
- incremental adaptation to trends with the focus on voice and broadband affordability;
- Internet Access Services (IAS) and regulatory obligations for electronic communications services mainly linked to the use of numbering resources;
- adapting the EU framework on numbering to address competition issues on the market;
- advisory role for the Body of European Regulators for Electronic Communications ([BEREC](#)), with certain normative powers for BEREC and improved process for market review and spectrum assignment.

CONTENT: the proposal for a European Electronic Communications Code consists of a horizontal recasting of the four existing Directives (the Framework Directive, the Authorisation Directive, the Access Directive and the Universal Service Directive), bringing them all under a single Directive.

The proposal focuses on the following points: (i) the new objective of ubiquitous and unconstrained connectivity, (ii) the harmonisation of the competences of national regulatory authorities (NRAs), and (iii) the harmonisation of spectrum-related issues and revised rules on services.

Amendments related to access regulation: the amendments aim at reinforcing and improving the SMP access regime currently in place, to further promote infrastructure competition and network deployment by all operators and to sustain the deployment of very high capacity networks throughout the Unions territory.

The proposal amends market analysis procedures, to ensure that access obligations are imposed only when and where necessary to address retail market failures and to assure end-user outcomes. To sustain the deployment of very high capacity networks throughout the Union territory the amendments:

- require national regulators to survey the state of broadband networks and investment plans across their national territory, and identify digital exclusion areas where no operator or public authority has deployed or plans to deploy a very high capacity network;
- clarify the circumstances in which pricing flexibility can be granted to SMP operators, without compromising competition;
- introduces provisions to facilitate commercial co-investment in new infrastructures and to draw the necessary regulatory consequences.

Spectrum management: the proposal provides a clarification of the general objectives and principles to guide Member States when managing spectrum at national level. These objectives and principles address the following points:

- consistency and proportionality in authorisation procedures;
- the importance of ensuring appropriate coverage;
- timing considerations when making spectrum available, the prevention of cross-border or harmful interference, establishing the use it or lose it principle, and
- fostering shared spectrum use.

The proposal targets key aspects of spectrum authorisation with a view to enhancing consistency in Member States practice, such as (i) minimum licence durations (25 years); (ii) clear and simpler process for spectrum trading and leasing, (iii) processes to improve consistency and predictability when granting and renewing individual spectrum usage rights; (iv) clearer conditions for the restriction or withdrawal of existing rights.

WiFi access: the proposal simplifies conditions for access to Wi-Fi, to meet the exponential demand for connectivity and for the deployment

and provisions of low-power wireless broadband access (small cells) to reduce costs of deploying very dense networks.

Universal service: the proposal aims at modernising the universal service regime by removing the mandatory inclusion at EU level of legacy services (public payphones, comprehensive directories and directory enquiry services) from the scope and focusing on the basic universal service broadband. Member States should ensure affordable access to all end-users to functional broadband internet access and voice communications services at least at a fixed location.

Services and end-user protection rules: new provisions are proposed, including:

- better readability of contracts through a short-form summarising the essential contract information;
- the provision of consumption control tools to inform end-users about their current communications usage;
- enhanced provisions on price and quality comparison tools, switching rules for the rapidly increasing number of bundles to avoid lock-in effects (key sector-specific provisions, such as maximum contract duration and rights to contract termination, would apply to the entire bundle) and
- a provision prohibiting discrimination based on nationality or the country of residence.

Additionally, in the event of an actual threat to end-to-end connectivity or to effective access to emergency services, the Commission may identify a need for measures to ensure interoperability, for instance through the launch of a standardisation process. Such standards could be imposed by NRAs where necessary.

Numbering provisions: in order to address competition issues in the market, the proposal allows national regulators to assign numbers to undertakings other than providers of electronic communications networks and services. It also requires national regulators to determine certain numbering resources for the extraterritorial use of national numbers within the EU.

Emergency communications provisions: legal clarity is brought about regarding access to emergency services (single European emergency number 112 by all number-based interpersonal communications service providers. Such an approach ensures cross-border deployment and functioning of technical solutions for emergency communications.

Governance: the amendments strengthen the role of independent national regulators by establishing a minimum set of competences for those regulators across the EU and enhance their independence requirements.

As regards the procedure for general authorisation, providers should submit notifications to BEREC, which should act as a single contact point and forward the notifications to relevant national regulatory authorities. BEREC should establish a register at EU level.

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