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Subject: Digital infrastructure and services

- Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European telecommunications networks and repealing Decision No 1336/97/EC

- Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks

- Progress report

The present report has been drawn up under the responsibility of the Irish Presidency. It sets out the work done so far in the Council's preparatory bodies and gives an account on the state of play in the examination of the above mentioned proposals.

Proposal for a Regulation on TEN TELE Guidelines

1. The Europe 2020 Strategy underlined the importance of broadband deployment to promote social inclusion and competitiveness in the EU. It put forward the objective to bring basic broadband to all Europeans by 2013 and proposed that, by 2020, (i) all Europeans should have access to much higher internet speeds of above 30 Mbps and (ii) 50% or more of European households subscribe to internet connections above 100 Mbps.
2. In this context, the Commission submitted on 26 October 2011 a proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European telecommunications networks and repealing Decision No 1336/97/EC (hereinafter TEN TELE Guidelines).¹ The Danish Presidency informed the TTE Council on 7 June 2012 about the progress made with the examination of this proposal² and also the Cyprus Presidency submitted a progress report to the TTE Council on 19 December 2012.³
3. The Irish Presidency continued with the examination of the proposed TEN TELE Guidelines in the Working Party on Telecommunications and the Information Society ("WP TELE") on 18, 24, 31 January on the basis of Presidency proposals for the continuation of work⁴ and revised Presidency texts.⁵ The main changes the Irish Presidency introduced as compared to the latest text⁶ produced under the Cyprus Presidency are explained in detail in the cover Note to doc.6229/13 and were scheduled to be discussed by the WP TELE on 14 February but work on this proposal came to a halt after the European Council meeting of 7-8 February 2013 (see below).

¹ Doc. 16006/11.

² Doc. 10451/12.

³ Doc.17257/12.

⁴ Doc. 5263/13.

⁵ Doc.5527/13, doc. 6229/13.

⁶ Doc. 17034/12.

The purpose of the proposed changes from the IE Presidency was to provide more consistency between the TEN TELE Guidelines, the CEF Regulation and the TEN Transport and TEN Energy Guidelines. More consistency was also needed between the articles of the TEN TELE Guidelines and its Annex on Projects of Common Interest. A substantial new paragraph was proposed in the article on *projects of common interest* by adding a general description of projects of common interest in order to clarify that actions not considered as priorities are also eligible for funding under the CEF. Apart from a number of minor amendments to the article on *methods of intervention*, substantial new paragraphs were proposed concerning the rules applicable to the use of financial instruments and grants in the field of broadband. A new article on *eligibility criteria* was proposed, which would comprise elements which previously were in the broadband part of the Annex and which would bring clarity on the logic behind interventions and avoid pitfalls in the implementation of the Regulation. Also, a new article on *selection criteria* was proposed, which would include a reference to priorities while leaving scope for the establishment of further criteria, subject to the available budget for the telecoms part of the CEF.

4. On 7-8 February, the European Council agreed *inter alia* on a reduction of the proposed budget for the telecoms part of the CEF instrument from € 9.2 billion to € 1 billion and mandated the Irish Presidency to take forward discussions with the European Parliament on the MFF. Following this agreement, views were expressed in the Commission that the telecoms part of the CEF should primarily finance pan-European digital services, i.e. cross-border projects for European citizens, enterprises and public administrations, as the reduction of the proposed budget would not leave room for substantial financing of broadband networks, a view most -- but not all-- delegations supported at the WP TELE meeting of 14 February. Pending further information from the Commission on how to proceed further with this file, the Council suspended its examination of the proposal. Finally, at the WP TELE meeting of 27 March the Commission came back with options on how to proceed further with this file, i.e. proceed on the basis of an amended text leaving scope for broadband network financing or, alternatively, adopt a new Commission proposal exclusively focussing on digital services. At the WP TELE meeting on 24 May, the Commission representative announced that Commission adoption of the new proposal was expected for 28 May.
5. With regard to the umbrella CEF Regulation and further to the establishment of a partial general approach reached at the TTE Council meeting of 7 June 2012⁷, the Cyprus Presidency presented a progress report⁸ to the 7 December TTE Council, noting that a number of items relating to the ongoing MFF negotiations were still open as well as the text of Part II and Part III of the Annex to the proposed Regulation, pending the examination of the Guidelines by the relevant sectoral working groups, including the WP TELE.

⁷ Doc. 11236/12.

⁸ Doc. 17107/12.

6. The Irish Presidency engaged in some informal contacts with the European Parliament, where the Committee on Industry, Research and Energy (ITRE) adopted at its meeting on 5 November 2012 a large number of amendments on the draft Regulation on the TEN TELE Guidelines. The vote included a mandate for the Rapporteur Mr. Tosenovsky (CZ, ECR) and Shadows, in consultation with the ITRE Chair, to enter into negotiations with the Council and the Commission with a view to reaching agreement on the file (in first-reading). The purpose of the Presidency's contacts with the Parliament was mainly to exchange information on the new situation that had arisen following the European Council meeting of 7-8 February. Initially, earlier in the year, the Presidency had tentatively agreed with Mr. Tosenovsky to informally start technical discussions on the file but this could not materialise because of the suspension of the examination of the file.

Proposal or a Regulation on broadband deployment cost reduction

7. Also in view of the EU 2020 broadband targets, the Commission submitted, on 27 March 2013, a proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks.⁹ The Commission already published in 2010 a Communication on European Broadband: investing in digitally driven growth¹⁰ on the basis of which the TTE Council of 2-3 December 2010 adopted conclusions.¹¹

⁹ Doc. 7999/13.

¹⁰ Doc. 13874/10.

¹¹ Doc. 16836/10 and 17068/10.

8. The proposal is based on article 114 TFEU. Its aim is to reduce costs and to increase efficiency in the deployment of high-speed broadband. According to the Commission, the proposal builds upon best practice in the Member States and aims to improve investment conditions on a cross-border basis. The proposal is focused on civil engineering, which can make up to 80% of the total deployment costs, and on fully exploiting synergies between electronic communications networks and the networks of other utilities. According to the Commission, operators could save around 20-30 % of total investment costs, which would translate into savings of up to €63 billion by 2020 on an estimated €221 billion of total investments in broadband that are needed. The proposed measures should facilitate broadband investment, such as by re-using existing physical infrastructure, making sure that civil engineering works systematically involve potential investors, streamlining permit granting, improving availability of information on passive infrastructure suitable for cabling passive infrastructure suitable for cabling and reducing the cost of access for the end-user by ensuring the existence of appropriate physical infrastructure inside new buildings. The proposal sets rights and obligations with regard to: access to existing physical infrastructure; transparency on physical infrastructure; permit granting; coordination of civil works; in-building physical infrastructure, and dispute settlement.
9. The Commission presented its proposal to the WP TELE on 27 March. On 17 April, a discussion took place on the Impact Assessment accompanying the proposal. While delegations could support the general objectives of the proposal, there appears to be concerns with regard to *inter alia* the nature of the legal instrument, the impact on existing national (and local) measures, the potential costs and increased administrative burdens, such as in relation to the proposed "single contact point". Some Member States believed that the Impact Assessment understated the costs involved in the implementation of the Directive and overstated the potential benefits. According to the proposal, the telecoms NRA should take binding decisions in case of a dispute regarding access to physical infrastructure and the telecoms NRA or other competent authority empowered by the Member State should act as a single information point dealing with information on infrastructures and permit applications.

10. At a more fundamental level, a number of delegations question whether the proposal is in line with the subsidiarity principle and whether the proposed measures are proportionate to the objectives to be reached. In order to better understand how the Commission arrived at its proposal, many delegations would welcome a further, in-depth examination of the Impact Assessment as they are not convinced about the cost/benefit analysis, have concerns on how the proposal could work in Member States with a federal structure, or are not clear on the impact the proposal would have on other stakeholders, such as landlords and building owners, the interests of whom are addressed in the Impact Assessment to a much lesser extent as compared to businesses and citizens.

11. Due to the fact that the Member States are still in the process of formulating national positions on the proposal and because of the limited time available for the examination of this proposal in the WP TELE, this progress report cannot be more specific than as indicated above as to which issues in the proposal will require further discussions and what the perceived preliminary positions of the Member States are. However, both with respect to the further work on the TEN TELE Guidelines as well as on the broadband deployment proposal, indications are that Member States remain supportive in achieving a competitive market for broadband infrastructure and services that will facilitate investments in high speed infrastructure which is operated transparently and on an open access basis enabling a diversity of new and innovative services for consumers and businesses across the single digital market.

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Following its consideration by Coreper on 28 May, the Presidency presents this progress report to Council with the invitation to take note of it.
