



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 November 2013

16332/13

**Interinstitutional File:
2013/0080 (COD)**

**TELECOM 312
COMPET 835
CODEC 2616**

NOTE

from: Presidency
to: Delegations

No. Cion prop.: 7999/13 TELECOM 60 COMPET 177 CODEC 686
+ ADD1 +ADD2 +ADD3 +ADD4 +ADD5 + ADD6

No. prev. doc.: 12318/13 TELECOM 202 COMPET 566 CODEC 1760

Subject: 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 Lithuanian 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 proposal.

PROCEDURAL ASPECTS

1. Following the publication in 2010 of a Commission Communication on *European Broadband: investing in digitally driven growth*¹, on the basis of which the TTE Council of 2-3 December 2010 adopted conclusions², 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* with art. 114 TFEU as legal basis.³ The proposal is part of the EU's efforts to realise the Digital Agenda for Europe (DAE) targets for the roll-out and take-up of high-speed broadband by 2020. The TTE Council of 6 June 2013 took note of the progress made with the examination of this proposal.⁴ The European Council, in its conclusions of 25 October⁵, noted that "Legislative measures to reduce the cost of broadband roll-out should be adopted rapidly."
2. The Committee of the Regions⁶ and the European Economic and Social Committee⁷ adopted opinions on the proposal on 3-4 July and 10 July respectively and the industry (ITRE) committee of the European Parliament [adopted a report and a set of amendments on 28 November].

¹ Doc. 13874/10.

² Doc. 16836/10 and 17068/10.

³ Doc. 7999/13.

⁴ Doc. 10088/13 and doc. 10457/13.

⁵ Doc. EUCO 169/13

⁶ 2013/C 280/10.

⁷ TEN/519.

3. Under the Lithuanian Presidency, the Working Group on Telecommunications and the Information Society (WP TELE) examined the proposal in 4 meetings⁸ on the basis of a number of clusters: access to existing infrastructures, coordination of civil engineering works, (access to) in-building equipment, and institutional aspects (permit granting, competent bodies).⁹ In many cases, the examination in the WP TELE proceeded in parallel to national consultations being carried out, with the consequence that quite a number of delegations maintained scrutiny reservations on (parts of the) text and were only able to express preliminary views. For these reasons, it has not been possible for the Lithuanian Presidency to put together a revised text. However, on the basis of the discussions, a number of key issues and themes can be identified and on which a further approximation of positions will be required, as set out below.

SUBSTANCE

4. 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 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. Delegations generally support the objective of cutting down civil engineering costs, 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 (capex) savings could be 20-30% of total investment costs, which would translate in achieving savings of up to €63 bn by 2020 on an estimated €221 bn of total NGA investments.

⁸ On 5/9, 3/10, 22/10 and 12/11/2013.

⁹ Doc. 12318/13.

5. When it comes to the details of the proposal and in general terms, not all delegations are convinced whether the proposed measures are proportionate to the objective pursued and whether the perceived benefits will outweigh the potential costs and increased administrative burdens. Regarding the implementation of the proposal, many delegations point to the consequences for building owners and landlords and the implications on property rights, whereas the proposed measures might also be difficult to implement in countries with a federal structure. For these reasons, the choice of a Regulation rather than a Directive is an issue, which keeps coming back in the discussions.
6. With regard to the cluster on *access to existing infrastructures* (Articles 2 and 3 and Recitals 11-16) and the corresponding *transparency requirements* (Article 4 and Recitals 17-20), the proposal sets out that utility companies (such as electricity, gas and transport but also water) should meet all reasonable requests by telecoms companies for access to their physical infrastructure in order to deploy high-speed fixed and wireless broadband networks (above 30 Mbps). Delegations are seeking clarifications on the definitions used and their link to those contained in other relevant pieces of EU legislation, such as in the EU regulatory framework for electronic communications. Further discussion will be needed on the definitions of 'network operator' (e.g. should drinking water utilities be included?) and 'physical infrastructure' (e.g. includes active/non-active and underground/above the ground elements?) in particular. Some delegations also argue for the inclusion of additional definitions, such as on 'concentration point', 'single information point' and 'national dispute settlement body'. Furthermore, the meaning of, and conditions for, 'reasonable' requests for access needs further clarification as well as the procedure for submitting requests for access to the physical infrastructure of network operators. A number of delegations believe that the list of criteria to refuse access to networks should be extended, e.g. for reasons of protection of property rights, the environment, public safety or public health. Finally, the discussion on the modalities for the settlement of disputes under the auspices of a 'competent national dispute settlement body' has not come to a conclusion.

7. With regard to the issue of *transparency*, the establishment and function of the proposed 'single information point' (SIP) will need further consideration. Member States would be obliged to make information available to telecoms operators on existing and planned infrastructures through such a single SIP (a role for the NRA, unless otherwise decided). Rather than centralising information in such a SIP, some delegations appear to prefer to see the SIP more as a 'portal' for the exchange of (contact and registration) information on physical infrastructure, which would be less costly and less cumbersome from an administration point of view. Delegations also inquire whether or not fees can be charged by the SIP for the making available of 'minimum information' to be provided by relevant bodies and operators according to set deadlines. Also here, there are provisions for the settlement of disputes in case the 'minimum information' is not provided or made available, the modalities for which require further consideration. In general, further discussion on this point will be required, taking into account the current practice in Member States as well as the general orientation of the delegations of keeping costs and administrative burden to the minimum.
8. According to the proposed provisions for the *coordination of civil engineering works* (Article 5 and Recitals 21 and 22) and the corresponding *transparency requirements* (Article 4), network operators shall have the right to negotiate agreements concerning coordination of civil works and shall meet any reasonable request by telecoms operators in this regard, subject to certain conditions. Also in this context, delegations are pointing out that in the proposed process, due account shall need to be taken to the protection of property rights, the environment, public health and public security and other reasons of general interest. They also seek for further clarification on the possible exemptions from the proposed obligations for civil works of 'insignificant value' (a threshold for which is not specified in the proposal) and, again, on the modalities for dispute settlement in case parties cannot reach an agreement.
9. On the *transparency provisions* on on-going or planned civil works, the inquiries from delegations are in broad lines similar to what is mentioned under point 7 above and concern *inter alia* the 'set of minimum information' to be made available by network operators to telecoms operators and the role and function of the SIP in this regard.

10. On *in-building equipment* (Article 7 and Recital 27) as well as the *access* to such equipment (Article 8 and Recitals 27-28), some obligations are proposed regarding the installation of equipment in newly-constructed buildings and buildings that undergo major renovation (i.e. where a building permit is required). For instance, high-speed-ready infrastructure up to the network termination point should be installed in newly constructed or significantly renovated buildings and multi-dwelling buildings should be provided with a 'concentration point' inside or outside the building and which shall be accessible to telecoms operators. Apart from inquiries about the terminology used in the proposal, such as 'major renovation', 'network termination point' or 'concentration point', delegations are expressing concern about the fundamental issue of the rights of building owners and landlords and the costs they will be faced with as a result of the proposed obligations. Although the proposal foresees exemptions to the obligations where the costs would be disproportionate, some delegations argue that not only economic reasons could be a ground for exemptions but also cultural and historic considerations, for example. In general, it appears that further discussion will be needed on both the practical implications of the proposed measures as well as on the possible legal consequences, taking into account the numerous parties involved in the process.
11. On the issue of *access to in-building equipment*, delegations' inquiries are of a both technical, practical and legal nature and relate to the conditions according to which telecoms operators would be able to terminate high-speed broadband networks at the 'concentration point' or get access to high-speed-ready in-building infrastructure or, in case a building is not high-speed-broadband-ready, terminate their network at the subscriber's premises. There appears to be widespread concern among delegations about these provisions in relation to (the protection of) property rights of owners of buildings and the infrastructure therein. Some delegations suggest exemptions from the obligations for certain types of buildings, such as monuments and vacation homes, and questions remain also on the modalities and deadlines for the proposed dispute settlement procedure.

12. Finally, with regard to *institutional aspects -- permit granting* (Article 6 and Recitals 23-25) and *competent bodies* (Article 9 and Recitals 29-31), delegations are not yet clear on the proposed process to access information on specific civil works and the submission of applications for permits via the 'single information point', which is supposed to facilitate and coordinate the permit granting process and to monitor compliance with deadlines, such as the proposed but questioned 6-months deadline for local authorities to grant or refuse a permit for civil works to deploy high-speed broadband networks. Also in this context, a number of delegations argue against the integrated SIP solution and propose instead a less complex and less costly information 'portal', where relevant entities and authorities could get in touch and which would also allow to apply directly to the relevant authority rather than via the SIP. Unless the Member States decide otherwise, the NRA shall perform the functions of the national dispute settlement body and of the SIP and shall have the power to impose sanctions; some delegations fear the increased administrative burden and costs for their NRAs in this regard and other delegations question the appropriateness of putting the (telecoms) NRA in the middle of all these cross-sector activities the proposal addresses.

OUTLOOK

13. Taking into account that the general interventions from the delegations during the examination of the proposal were so far mainly meant to seek further clarifications on the provisions, further work will need to be carried out in the WP TELE, particularly in view of allowing the Presidency to put together a text, reflecting the Council's main orientations on the proposal. Delegations are encouraged to support the Presidency in this regard and any drafting suggestions Member States may have would be given due consideration. Taking into account that the form of the legal instrument (Regulation vs. Directive) is a recurring issue throughout the proposal, which after all mainly and directly concerns measures at the local level with only indirect cross-border effects, it would be useful if the emerging orientation in favour of a Directive could be confirmed at the TTE Council of 5 December.

14. Following the envisaged vote in the European Parliament's industry (ITRE) committee on 28 November, the Presidency intends to bring Parliament's amendments to the WP TELE for discussion so as to determine whether it would be feasible to start exploratory talks with the Parliament in view of concluding this file in first reading and before the end of the current legislature.

*

* *

Following its consideration by Coreper on 27 November, the Presidency presents this progress report to Council with the invitation to take note of it.
