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COVER NOTE

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Delegations will find attached Commission document SWD(2013) 74 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

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

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COMMISSION STAFF WORKING DOCUMENT

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on measures to reduce the cost of deploying high speed electronic communications networks

1. PROBLEM DEFINITION

Smart, sustainable and inclusive growth as envisaged in the Europe 2020 Strategy will very much depend on the availability and widespread use of the high-speed Internet. A high quality digital infrastructure underpins virtually all sectors of a modern and innovative economy. It is the backbone of the Single Market, a major and still to a large extent untapped source of growth, and a key factor for the EU's competitiveness.

The Digital Agenda for Europe, one of the flagship initiatives of the Europe 2020 Strategy, sets ambitious broadband coverage and speed targets. Yet, while significant investments in the telecom sector are already undertaken by companies, it appears that the efforts to stimulate broadband rollout need to be reinforced.

This impact assessment accompanies a legislative proposal that would, if adopted by the European Parliament and the Council, make the deployment of high-speed broadband networks cheaper and easier. It would do so by ensuring an improved access to passive infrastructure suitable for broadband rollout, more opportunities for cooperation in civil engineering works, streamlined permit granting procedures, and more buildings high-speed ready. The proposal has been prepared following a call from the 2012 Spring Council for steps to be taken at EU level to achieve costs savings as part of efforts to complete the Digital Single Market by 2015. It forms part of the Single Market Act II.

The problem addressed by this initiative derives from the various inefficiencies and bottlenecks in the process of rolling out broadband networks. These inefficiencies and bottlenecks lead to high costs and heavy administrative burdens for undertakings wishing to deploy networks. It should also be noted that the dominant cost (up to 80%) in deploying new networks is linked to civil engineering.

Based on studies and extensive feedback from stakeholders, four areas of action have been identified: (1) inefficiencies or bottlenecks concerning the use of existing passive infrastructure (such as for example ducts, conduits, manholes, cabinets, poles, masts, antennae installations, towers and other supporting constructions), (2) bottlenecks related to co-deployment, (3) inefficiencies regarding administrative permit granting, and, (4) bottlenecks concerning in-building deployment in view of connecting customers.

It is believed that savings between 20 and 30% could be achieved by adopting a set of coherent and mutually reinforcing measures throughout these areas.

2. ANALYSIS OF SUBSIDIARITY

These measures are necessary at the level of the Union to improve the conditions for the establishment and functioning of the internal market, as a complement to the regulatory framework for electronic communications, in order to:

– remove barriers to the functioning of the Single Market caused by the patchwork of rules at national and sub-national levels, which impedes the further development and growth of European companies, has a negative impact on European competitiveness, and creates barriers to invest and operate cross-border, and thus obstructs the freedom to provide electronic communications services and networks as guaranteed under existing Union legislation;

– stimulate ubiquitous broadband coverage, which is a pre-condition for the development of the Digital Single Market, thus contributing to the removal of an important obstacle to the completion of the Single Market;

– realise the significant untapped potential of cost-reduction and facilitation of broadband rollout.

3. OBJECTIVES

The specific objective of this initiative is to reduce costs and increase efficiency in the deployment of high-speed broadband. More precisely, the costs of high-speed broadband rollout should be reduced by 25%. At the same time, acting in this area at EU level will also consolidate the Single Market.

This twofold specific objective must be seen within the general context of stimulating broadband rollout throughout the EU, in line with the Digital Agenda targets.

The operational objectives of this initiative are as follows:

(1) Increasing the use of existing passive infrastructure suitable for broadband rollout, by achieving more transparency concerning this infrastructure, as well as a more consistent and effective regulatory regime concerning access to it, regardless of the owner;

(2) Increasing cooperation in civil engineering projects relevant for broadband rollout through the EU, in particular by ensuring transparency and by increasing legal certainty for cross-sector / cross-utility cooperation;

(3) Streamlining the administrative procedures related to network rollout throughout the EU, mainly by increasing the transparency and coordination of the permit granting processes, while ensuring the enforcement of deadlines as well as minimum standards as regards "reasonable conditions"; and

(4) Increasing the provision of buildings with open high-speed ready infrastructure throughout the EU, so as to reduce the costs and burdens associated with retro-fitting

4. POLICY OPTIONS

Four broad policy options were chosen for further analysis, based upon their potential to reduce the costs of broadband rollout and facilitate it, upon their overall coherence and completeness, and finally upon the technologically neutral character.

Under Option 1, the Commission would proceed doing business as usual, as such measures are not entirely new and best practices are already emerging. Action would include providing monitoring, enforcement of existing rules and further guidance on certain articles.

Option 2 promotes a more intensive, coherent and harmonised application of the existing provisions and tools of the regulatory framework for electronic communications. Concretely, the Commission would issue a Recommendation clarifying the application of these provisions.

Under Option 3, the Commission would propose more holistic and more ambitious cost reduction measures throughout the EU, applicable to non-telecom players, too. Concretely, the following measures are proposed:

(1) a general right to offer and to use the existing physical infrastructures suitable for the deployment of broadband under fair terms and conditions, regardless of whether they are owned or used by electronic communications network providers. The terms of use would be left to commercial negotiation, with the possibility for intervention by a dispute settlement mechanism only where commercial negotiation fails without any reasonable justification;

(2) a right to access transparent information regarding existing physical infrastructures suitable for broadband rollout, regardless of their owner (telecom or non-telecom operators, private or public parties);

(3) specific rights and obligations aiming at enabling an increased coordination of civil engineering works (a general right to negotiate co-ordination of civil engineering works coupled with a general right to access information on planned civil works; additional obligations are foreseen in case of works financed with public money);

(4) increased transparency and timeliness as regards permit granting procedures, coupled with safeguards aimed to ensure non-discriminatory, transparent, objectively justified, and proportionate requirements and/or conditions;

(5) an obligation to provide new buildings as well as old buildings that undergo major renovation works with high-speed-ready in-building physical infrastructure (e.g. sufficient space in mini ducts), while ensuring technological neutrality, and an obligation to provide new or majorly renovated multi-dwelling buildings with a concentration point located in or outside the building.

Option 3 further breaks down into two sub-options, 3a and 3b, which differ in function of the instrument proposed to implemented the measures described above.

Under Option 4, the Commission would propose a new binding instrument, establishing infrastructure atlases following EU standards, mandated access to all infrastructures suitable for broadband rollout at cost-oriented prices, further obligations to cooperate in civil engineering works, the creation of a full one-stop-shop concentrating all the permits needed

for the deployment of new infrastructure, and mandatory provision of all buildings with high-speed ready infrastructure by 2020.

5. ASSESSMENT OF IMPACTS

As this initiative is mainly of an economic nature, the most important impacts are the economic ones. The social and environmental impacts have mostly indirect character as they depend on the resulting network investment and on the rest of the indirect economic impacts. The impact on fundamental rights of the proposed measures has been analysed.

The "business as usual" scenario (Option 1) can be expected neither to significantly reduce the costs of broadband roll-out all over Europe, nor to have a strong effect on investment. As only a very limited impact on investment is anticipated throughout the EU, its spill-over effects would also be limited. In addition, it is very likely that the current fragmentation of rules in the EU will increase. Given the limited impact on investment, the social and environmental effects would be marginal, too.

Given the costs and benefits for the main stakeholders involved and the stronger effects of a Recommendation as compared to guidance and exchange of best practice, an overall moderate positive impact on investment in networks is expected under Option 2. In consequence, a somewhat higher broadband coverage and competition can be expected. However, under this option, the full cost-saving potential of cross utility infrastructure cooperation (as regards mapping and sharing infrastructure and coordination of civil works) would remain underexploited, affecting the cost-benefit ratio of the entire exercise. Moderate positive macro effects on the economy are to be expected too. As far as the Single Market is concerned, a Recommendation is likely to increase only to a certain extent, consistency across the EU since the implementation of the provisions of the regulatory framework would be further promoted. As far as social impacts are concerned, the moderate positive effect on investment in networks is expected to translate into a small positive effect on job creation. The increased transparency and coordination of works within the telecom sector would also lead to a modest positive impact on the environment (mainly due to avoiding duplication of works).

Option 3 ("enabling efficiency gains") would create high net benefits for all EU undertakings wishing to deploy broadband, mainly due to significant capital expenditure savings on network investments resulting from increased transparency, opportunities to use much more existing passive infrastructure, opportunities to co-deploy across sectors, faster, easier and cheaper deployment including through streamlined permits and high-speed ready buildings. For owners of passive infrastructure, the option would entail an obligation to provide information and to grant access on their infrastructures, which as such produces certain costs. Yet benefits would be higher than the costs, in particular given that access would be granted following commercial negotiations, allowing for additional revenues. As concerns public authorities, although the costs of these measures seem high, there are many synergies between these measures and other measures required by national policy (e.g. disaster prevention) or EU law (e.g. INSPIRE Directive) which would reduce the overall costs.

An overall significant positive impact on investment in high-speed networks can therefore be expected under Option 3, and, in consequence, a higher broadband coverage and higher competition. Broadband networks would reach areas which would otherwise be thought of as being commercially unattractive. Due to the increased network investment, positive macro-effects on the economy would become visible, both in terms of spillovers to related industries

(equipment manufacturers, civil works companies), and increased innovation and productivity for all undertakings including SMEs. This could have a positive overall effect on the EU competitiveness through faster smart grid and intelligent transportation systems deployment and related energy efficiency gains.

Such harmonisation measures would also lower barriers to entry especially for smaller operators and would significantly reduce fragmentation in the Digital Single Market.

As far as social impacts are concerned, Option 3 ensures significant positive impacts on investment and thus also on the labour market. The increased infrastructure sharing and coordination of civil works would also guarantee a reduction of public nuisance.

Given the cross-sector character of the measure, increased synergies could lead furthermore to a significant environmental impact, through faster deployment of smart grids and intelligent transportation systems and therefore to energy efficiency gains.

With respect to the impacts of Option 4, mandating access to passive infrastructures across utilities at cost oriented prices would maximise sharing, but would also bring a significant risk to dis-incentivise investment in physical infrastructures. Additionally, some of the measures seem too difficult to implement and risk duplicating costs and administrative efforts. As a result the economic impacts are estimated to be lower than under the previous policy option. On the other hand, this option presents clear benefits from a Single Market perspective.

Positive social and environmental impacts are also expected under Option 4.

6. COMPARISON OF OPTIONS

The options were compared taking into account their effectiveness, their efficiency (including the costs and benefits described above), and their coherence (balance among economic, social and environmental effects, coherence with overarching EU policy objectives).

In view of this lack of effectiveness, therefore, Option 1 falls short to achieve the desired objectives and therefore does not appear proportionate.

Option 2, promoting a more intensive, coherent, and harmonised application of the existing provisions and tools under the current telecoms regulatory framework would have some positive effects compared to the baseline scenario but would however not deliver the expected efficiency gains, in particular as it would leave untapped the cost reduction potential linked to cross-sector cooperation and to the coordination of the permit granting procedures.

In contrast, Option 3 truly exploits the cost reduction potential by extending the scope of the binding measures across sectors and throughout the broadband deployment steps. At the same time, Option 3 would preserve commercial negotiations, an incentive on its own, and would respect the organisational autonomy of Member States. The implementation costs would depend very much on the structures and systems in place in Member States, therefore savings can be achieved. More importantly, these costs appear to be offset by the significant benefits expected in inscreasingly efficient broadband deployment by operators and better broadband coverage for the society as a whole. Overall, option 3 ensures effectiveness in the view of identified objectives with a very good ratio of costs and benefits and coherence with general objectives of the EU policy (such as the Guidelines for Broadband State Aid and the INSPIRE Directive).

Option 4 appears to maximise the benefits for undertakings seeking to deploy broadband networks. However, it would entail a number of obligations and constraints which may be unnecessary or disproportionate to the achievement of the desired objectives. Option 4 would add significant institutional complexity including transfers of competences, too. Moreover, business choices might be seriously impaired, with the risk of associated disincentives to invest, leading to fewer social benefits and for the environnement, thus impeding the general objectives of the EU and the overall coherence of this option.

In view of the above, it appears that Option 3 is the best option available, given its effectiveness towards the identified objectives, its efficiency and its coherence in exploiting the cost reduction potential within the general EU policy objectives.

7. MONITORING AND EVALUATION

A series of indicators corresponding to the general and specific objectives of this initiative will be monitored in the framework of the Digital Agenda Scoreboard exercise. In particular, the general objective (stimulate broadband rollout) and the specific objective (increase efficiency and decrease the costs of broadband rollout) will be monitored by analysing annual network investments.

An evaluation exercise concerning the impact of the instrument is foreseen every three years, based on the information obtained through monitoring and on in-depth studies, with a view to proposing necessary adjustments, if necessary.