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Subject: ***PREPARATION OF THE TTE COUNCIL MEETING (TRANSPORT, TELECOMMUNICATIONS, ENERGY) ON 7-8 JUNE 2012***

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

- *Progress report*

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

## 1. INTRODUCTION

1. On 26 October 2011, the Commission submitted to the Council its 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.<sup>1</sup> This proposal was adopted by the Commission as part of a package of proposals, the main one being the proposal for a Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility.<sup>2</sup> The Connecting Europe Facility aims to fund €50 billion worth of investment to improve Europe's transport, energy and digital networks; €9.2 billion is foreseen to support investment in fast and ultra fast broadband infrastructure and pan-European digital services with the bulk of the money (at least €7 billion) going to broadband infrastructure.
2. The finance under the Connecting Europe Facility (hereinafter: "CEF Regulation") aims to leverage other private and public money by giving infrastructure projects credibility and lowering their risk profiles. The Commission considers that the ICT network infrastructure finance could stimulate investment worth more than €50 billion, money necessary to meet the Digital Agenda for Europe targets for 2020 of broadband access for all at speeds of at least 30 Mbps, with at least 50% of households subscribing to speeds above 100 Mbps. As regards digital services, the money would be used for grants to establish infrastructure needed to roll-out trans-European services such as e-identification, e-procurement, electronic health care records, Europeana and e-justice. The money would serve to remove existing bottlenecks in terms of service deployment which in turn will contribute to the realisation of the digital single market.

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<sup>1</sup> Doc. 16006/11.

<sup>2</sup> Doc. 16176/11.

3. The proposed financial support under the CEF Regulation is complemented by proposed guidelines for trans-European telecommunications networks (hereinafter: "Telecoms Guidelines"), which are the subject of the present progress report.
4. The Commission adopted its proposal for Telecoms Guidelines on the basis of article 172 of the TFEU, which stipulates that these Guidelines shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the European Economic and Social Committee (hereinafter: "EESC") and the Committee of the Regions. The Council has sent letters of consultation to these latter two EU institutions on 30 November 2011. The EESC delivered its opinion on 20 March 2012. The Committee of Regions adopted their opinion on 4 May 2012.
5. The European Parliament has started its first reading on the Telecoms Guidelines proposal and Mr. Evzen TOSENOVSKY, rapporteur in the industry (ITRE) committee of the Parliament, is expected to present his draft report on 20 June 2012. Parliament's culture, environment, regional and internal market committees are expected to deliver opinions to the ITRE committee. The vote in the ITRE committee is scheduled to take place on 5 November 2012 and the Plenary vote is indicatively scheduled to take place in January 2013.

## 2. THE COMMISSION'S PROPOSED TELECOMS GUIDELINES

1. The purpose of the proposed Telecoms Guidelines is to establish a series of guidelines covering the objectives and priorities envisaged for broadband and digital service infrastructures in the telecommunications sector in the context of the Connecting Europe Facility. In accordance with TFEU, these guidelines shall cover the objectives, priorities and broad lines of measures envisaged in the sphere of broadband and digital service infrastructures and they shall identify projects of common interest. These projects of common interest shall be eligible for EU financial support under the instruments available under the Connecting Europe Facility.
2. In the field of broadband infrastructure, actions contributing to projects of common interest shall support investments in infrastructure capable of achieving, by 2020, the Digital Agenda for Europe targets of universal coverage at 30 Mbps; or having at least 50% of households subscribing to speeds above 100 Mbps. A balanced portfolio of 30 and 100 Mbps projects across the European Union will be created.
3. The list of projects of common interest in the field of digital service infrastructures would include trans-European high-speed backbone connections for public administrations, cross-border delivery of eGovernment services based on interoperable identification and authentication (e.g. Europe-wide electronic procedures to set up a business; cross-border e-procurement, e-Justice, cross-border eHealth services; interconnection of European business registers); enabling access to public sector information (digital resources of European heritage; re-use of public sector information), multilingual resources; safety and security (safer internet and critical service infrastructures) and smart energy services.

### 3. EXAMINATION OF THE PROPOSED TELECOMS GUIDELINES IN THE COUNCIL

1. The Council's Working Party on Telecommunications and the Information Society (Hereinafter: "WP TELE") has initiated its examination of the proposed Telecoms Guidelines and, at the request of the Presidency, delegations provided their initial reactions in both oral and written form, on the basis of which the Presidency put together the present progress report.
  
2. The proposed Telecoms Guidelines and the proposed umbrella CEF Regulation are being examined in parallel, the latter in the Council's Budget Committee. At the request of the Budget Committee and in order to ensure consistency between the umbrella CEF Regulation and the Telecoms Guidelines, the WP TELE put together a contribution to the work of the Budget Committee. Main challenges in this regard were to define which elements should be addressed in which legislative instrument and where to strike a balance in the level of detail to be covered in the various acts, for example whether and to which extent the CEF Regulation should refer to specific sectoral objectives to be achieved in the telecommunications sector and whether and to which extent this instrument should annex a list of pre-identified priorities and areas of intervention. There was broad support in the WP TELE for moving the specific sectoral objectives from the CEF Regulation to the Telecoms Guidelines while including a reference to these in the CEF Regulation. The Commission strongly maintained its preference for the original proposal. The WP TELE did not come to a conclusive view on the issue of the CEF Regulation annex part III on telecommunications and the functional link proposed by the Presidency between the CEF Regulation and its annex. The issue of the text in the CEF Regulation is closely linked to the discussions on the Telecoms Guidelines and the WP TELE intends to come back to this matter. Some delegations still argue that there should only be an annex attached to the Telecoms Guidelines.

3. Regarding the substance of the proposed Regulation on Telecoms Guidelines, a number of delegations still maintain scrutiny reservations concerning various issues. This is because the Connecting Europe Facility is a new instrument in the telecoms sector and because of the complexity of the proposal. Nevertheless, the majority of delegations welcome the Connecting Europe Facility in general even though some delegations would have preferred a different programme with a regional structure and with the aim of supporting the Digital Agenda for Europe.
4. Delegations have sought clarification of Member State involvement in the preparatory steps of project selection, e.g. drafting of annual and multiannual work programmes and the specification of selection and award criteria in the work programmes. Many delegations have also stressed that guidelines and projects of common interest, which relate to the territory of a Member State, shall require, in accordance with article 172 of the TFEU, the approval of the Member State concerned.
5. Related to the issue mentioned above, a question requiring further consideration is whether, to which extent and through which procedure and criteria the modification of the description of projects of common interest included in the annex to the proposed Telecoms Guidelines should be carried out by adding new projects or removing obsolete projects. In this regard, many delegations were opposed to, or put a reservation against, the Commission's proposal for it to be empowered to adopt delegated acts to modify the annex. These delegations argued that, taking into account that projects of common interest which relate to the territory of a Member States shall require the approval of the Member State concerned, the modification of the list of possible projects would require the full involvement of the Member States. Some delegations questioned whether and under which conditions implementing acts would be an appropriate instrument in this regard. Other delegations argued that an approach with neither delegated acts nor implementing acts would be preferable.

6. Delegations also questioned the Commission about the proposed Expert Group, which would assist the Commission in the monitoring of the implementation of the Guidelines, the planning through the national strategies for high speed internet and mapping of infrastructures and in exchanging of information. Delegations sought more clarity on the exact role of the Expert Group, for instance with regard to the drawing up of the annual work programmes. Some delegations questioned the Expert Groups status as an advisory body only with some delegations looking to extend its capacity to allow a broader view on telecommunications.
7. The annex to the proposed Telecoms Guidelines contains a listing of types of projects of common interest covering "horizontal priorities", "broadband networks" and "digital service infrastructures", which shall be eligible for EU financial support in accordance with the CEF Regulation. Many delegations appeared to accept the annex as a framework for establishing future projects but some considered that the text should spell out in more detail which projects are envisioned and how member states could get involved in such projects. Some delegations expressed the view that the annex could possibly make it clearer with regard to projects in the area of broadband infrastructure which methods of intervention (financial instruments, grants or a combination thereof) could be available in which geographical areas (e.g. rural or urban areas, islands, landlocked regions). Other delegations would prefer a more open and flexible approach.
8. A large number of delegations sought clarification on how the actions under the CEF Regulation and the Telecoms Guidelines would relate to other financial instruments, such as the Structural and Cohesion Funds. With regard to the deployment of broadband infrastructure in less developed regions in particular, delegations questioned where the financing will come from and in which priority and they sought clarification from the Commission about the complementarity of funds as well as the proposed "coordination mechanism" between CEF actions and the support from the Structural and Cohesion Funds. The Commission explained that less developed regions will have access to CEF support on the same terms and conditions as other regions.

9. There is still a substantial need for clarification and discussions in WP TELE with regard to the processes envisioned in general for the working of the Connecting Europe Facility as well as more specific issues relating to e.g. the list of projects of common interest in the Telecoms Guidelines annex and the list of pre-identified priorities and areas of intervention in the CEF Regulation annex, as follows from the issues mentioned above.
  
  10. The Coreper is invited to agree to submit this progress report to the Council in view of its meeting on 8 June 2012.
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