Council of the
European Union

Brussels, 4 October 2016
(OR. en)

12252/16
ADD 5

Interinstitutional File:
2016/0288 (COD)

TELECOM 165
COMPET 486
MI 578
CONSOM 215
IA 72
CODEC 1269

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 September 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2016) 304 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document Proposals for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) and a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications

Delegations will find attached document SWD(2016) 304 final.

Encl.: SWD(2016) 304 final

EUROPEAN
COMMISSION

Brussels, 14.9.2016
SWD(2016) 304 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposals for

a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) and a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications

{COM(2016) 590}
{COM(2016) 591}
{SWD(2016) 303}

Executive Summary Sheet

Impact assessment on the review of the regulatory framework for electronic communications

A. Need for action

Why? What is the problem?

Over the past few years, the role of the electronic communications sector as an enabler of the online economy has significantly increased. Consumers and businesses are increasingly relying on data and internet access services instead of traditional telephone services. This means that the sector needs to contribute to meeting increasing user demand and socio-economic needs and to react to new internet-based competitors. The review of the regulatory framework can help address these issues. The public consultation, the impact assessment support study, the evaluation of the current regulatory framework and the continuous dialogue with stakeholders, helped identify **three sets of problems**. They are (i) the obstacles to **unconstrained connectivity** by means of ubiquitous, very-high-capacity (VHC) fixed and mobile infrastructures for a digital single market, (ii) the fitness of the framework to deal with **rapid market and technological changes** and (iii) **regulatory redundancies and inefficiencies and a lack of coherence**, resulting in unnecessary administrative burdens.

What is the review expected to achieve?

The **general objective** of the review is to ensure that the pro-competitive framework leads to ubiquitous unconstrained connectivity as the basis for a digital single market. This means introducing a new VHC connectivity objective in addition to the existing ones relating to competition, the internal market and end-user interests. The analysis carried out identified three **specific objectives** for the review that are related to the general one. The first is to contribute to ubiquitous connectivity in the internal market. The second is to promote competition and user choice in the internal market. The third is to simplify the regulatory intervention and to achieve internal market coherence. The internal market remains an objective of the framework and underpins each objective of the review. A number of potential synergies and trade-offs between objectives have also been identified.

What is the added value of EU action?

Developing **common and consistent regulatory approaches** and sharing regulatory knowledge and resources can achieve better regulatory results at a lower cost for the whole EU, especially in areas of regulation with a cross-border dimension. Improvements to the framework to respond to today's challenges and future market developments can benefit Member States, as VHC connectivity networks become available in the EU. While there must be some flexibility to adapt to local circumstances, national regulators will only best be able to achieve their expanded objectives by cooperating with each other and with the Commission to devise the best solutions to similar problems.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred option or not? Why?

All areas considered have a preferred option. The preferred option for **access to networks** is the roll-out of VHC networks while preserving access regulation of dominant market players to ensure competitive markets and end-user take-up. The preferred option for **spectrum** involves binding and enforceable enhanced coordination of spectrum management to adapt to 5G needs in the EU. The preferred option for **universal service** brings it into line with market trends and broadband affordability. The preferred option for **services** streamlines sector-specific regulatory needs, taking into account developments in horizontal consumer protection legislation. It also links regulation mainly to the provision of internet access service and communications services relying on the use of public numbering resources, with a targeted extension of specific regulatory obligations to all internet-based communications services on the grounds of end-user protection and public policy interests. The preferred option for **must-carry rules** and obligations for electronic programme guides (EPG) is to leave matters as they are, with only some slight changes. The preferred option for **numbering** is to modify the EU framework in order to address harmonisation and competition issues on the machine-to-machine market. The preferred option for **governance** is to amend the competences of independent regulators and change the current structure of BEREC to make it a fully-fledged agency with more tasks, including the exercise of certain powers and better market review, numbering and spectrum assignment processes. The Radio Spectrum Policy Group (RSPG) will continue to be an EC Expert Group advisory body articulating and coordinating national administrations' views on high-level strategy issues in spectrum policy and related developments.

Who supports which option?

For each policy area, the impacts on the following are assessed: telecoms operators (incumbents, alternative and local providers), OTT providers, business users, SMEs, consumers, Member State authorities and NRAs, taking into account their answers to the public consultation. The report reflects their different views, including critical ones. While incumbent operators and OTTs tend to favour options resulting in less burdensome regulatory arrangements, consumers, alternative operators and NRAs tend to support solutions that involve more regulation. Member States and NRAs are in general weary of radical pan-European governance solutions.

C. Impacts of the preferred options

What are the benefits of the preferred options?

The preferred option(s) will contribute to connectivity through VHC networks, faster time-to-market for spectrum resources and timely 5G deployment, alongside the take-up of 'Internet of Things' applications and innovative services. This will boost EU global competitiveness as the benefits from connectivity and 5G spill over into other industries, such as the automotive industry and agriculture, health and transport. They will strengthen the internal market, by creating a standard EU access product space to ensure that every operator can compete in the EU, lifting barriers to entry. They will ensure that connectivity for EU citizens and businesses is at affordable prices, through sustainable competition and universal service when needed. They will provide better protection for end-users, addressing new and emerging rights issues based on market developments. They will simplify regulatory intervention and adapt the governance structure to ensure greater consistency in spectrum assignment and a harmonised minimum set of competences for independent NRAs, in line with BEREC's tasks. The **benefits and costs** of the preferred options were assessed, but for some areas (universal service, numbering, must-carry and to an extent services and governance) it was not possible to quantify the impacts. The model run for this impact assessment predicts — with qualifications — that if all the preferred options are jointly put into practice, investment and consumption will increase and there will be a cumulative effect on growth of 1.45 % and on employment of 0.18 % by 2025, assuming the reforms are implemented by 2020. Labour productivity is also expected to increase by 0.8 % during the period 2020-2025.

What are the costs of the preferred options

The main institutional cost is likely to be the additional resources required by BEREC in order to fulfil its expanded remit and for the NRAs to contribute to BEREC activities. Costs under **intermediate assumptions concerning efficiencies** would result in total costs of €208.5 m. Access provision related to mapping may give rise to new costs for those NRAs who do not already carry out surveys. Introducing symmetrical access provision may also give rise to some costs in countries without experience of doing so. More consistent spectrum assignment will enable **timely and adequate availability of spectrum for the introduction of 5G across the EU**, generating total benefits of €146.5 bn a year. Most of the benefits will be distributed across four strategic sectors that rely on 5G capabilities — the automotive sector, healthcare, transport and utilities. The preferred option for services might give a significant boost to the 'Internet of Things' and the digitalisation of industry, contributing to cost savings in the telecoms and many other industries. The only foreseeable additional costs are associated with the number-related obligations imposed on providers of OTT communication services and those related to access to emergency services when a standardised technical solution is available. Confidentiality and privacy obligations are assumed to be the same as the numbering-related costs. They may also make it necessary for some of the current OTT business models to evolve.

How will businesses, SMEs and micro-enterprises be affected?

Micro-enterprises and smaller enterprises outside central business districts (including SMEs in rural areas) are likely to benefit from strategies that boost availability of VHC connectivity. That is because today these businesses may be under-served compared to larger corporations that may already have VHC connectivity installed on their premises. By focusing more on the general authorisation of spectrum than individual licensing and accelerating 4G and 5G coverage across the digital single market, the preferred spectrum option will also facilitate innovation and entrepreneurship. This benefits primarily (but not only) start-ups and smaller companies.

Will there be significant impacts on national budgets and administrations?

Already existing structures will enforce the planned measures. It is not planned to set up any new body, but some of the competences of the existing bodies may change. No significant impact on national budgets or administrations is expected in addition to the cost items mentioned above.

Will there be other significant impacts?

No, the telecoms regulatory framework for electronic communications will continue to be based on the principles of access arrangements based on competition principles. It is not expected to have any effect on third countries.

D. Follow-up

When will the policy be reviewed?

A comprehensive review of the telecoms regulatory framework for electronic communications should take place seven years after its entry into force.