



Council of the  
European Union

Brussels, 4 October 2016  
(OR. en)

---

---

**Interinstitutional File:**  
2016/0288 (COD)

---

---

12252/16  
ADD 6

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) 305 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Executive summary of the evaluation Accompanying the document Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast)

---

Delegations will find attached document SWD(2016) 305 final.

---

Encl.: SWD(2016) 305 final



Brussels, 14.9.2016  
SWD(2016) 305 final

**COMMISSION STAFF WORKING DOCUMENT**

**Executive summary of the evaluation**

*Accompanying the document*

**Proposal for**

**a Directive of the European Parliament and of the Council establishing the European  
Electronic Communications Code (Recast)**

{COM(2016) 590}  
{SWD(2016) 313}

*Executive summary of the evaluation of the regulatory framework for electronic communications*

The purpose of this staff working document is to assess the regulatory fitness of the current rules that make up the regulatory framework for electronic communications and to assess whether they have contributed to the achievement of the framework's main objectives. It is also to identify possible redundancies, inconsistencies and potential for simplification. The regulatory framework consists of a set of complementary instruments covering both sector-specific economic regulation and end-user protection rules. It aims to promote competition — mainly through regulated access to the incumbent's networks and provisions ensuring market entry and efficient access to key resources such as spectrum — in order to maximise end-user benefits.

This evaluation, announced in the Commission's Work Programme, is warranted for two reasons. The first is the legal obligation to periodically review the functioning of the regulatory framework. The second is that there have been a number of structural changes in the sector since the last review in 2009. It draws on the results of a wide-ranging stakeholder consultation, Commission monitoring (e.g. implementation reports, Digital Agenda Scoreboards) and various studies, including those that focus on the evaluation and review of the regulatory framework. The main findings are summarised below.

**Relevance** — Generally speaking, the evaluation has shown that the specific objectives of the framework — promoting competition, realising the single market and protecting consumer interests — remain as valid as before. The single market objective is even more relevant than before. Effective and sustainable competition drives efficient investment and fuels the development of the single market. It ultimately serves the interests of end-users, by encouraging innovation and providing maximum benefit in terms of choice, price and quality.

At the same time, connectivity has emerged as the underlying driving force for digital society and the digital economy, underpinned by technological changes and evolving consumer and market demands. It is a key aspect of the Juncker Commission's political commitment to deliver the digital single market. It is therefore necessary to consider adjusting the current policy objectives and regulatory tools to further support the deployment of infrastructure and wide-spread take-up of corresponding connectivity services in line with future needs.

Most regulatory areas remain as relevant as in 2009, if not more so. In particular, this applies to spectrum management, given the role of spectrum as an essential but scarce input for the deployment of current and next generation mobile and fixed wireless networks. This goes hand in hand with access regulation as a way of tackling the problem of the persisting entry barriers in the networks. For instance, market developments are calling into question the relevance of certain specific components of the universal service regulation. However, the concept of a safety net ensuring that all citizens are included in a fully developed digital society is even gaining in importance in relation to the digital single market. Similarly, while specific provisions under the consumer protection objective might have to be adjusted in view of technological, market or legislative changes, the basic end-user protection needs the provisions meet remain relevant, as do their specific objectives.

**Effectiveness** — It is widely recognised that the regulatory framework has been effective in delivering a competitive sector overall. This has generated significant end-user benefits, such as widely available (basic) broadband, a significant decrease in prices and more choice.

Access and spectrum regulation in particular, but also market entry provisions, have increased competition. Nevertheless, access regulation has delivered competition more at service than at network level. Also, while investments in very-high-capacity networks have advanced, they have not taken place across all Member States at the pace envisaged in the public policy agendas and corresponding to expected future needs. A significant amount of spectrum has been released for wireless broadband, but progress in spectrum management has not been as good as wished for in the last review. This has resulted in delayed and fragmented network roll-out and take-up.

Results in terms of achieving the single market objective are not very impressive. Regulatory consistency has been achieved only to a limited extent, affecting the operations of cross-border providers and reducing predictability for all operators and their investors. The cooperation and consistency tools available have led to a situation in which the best regulatory solutions have not always been chosen, with impacts on end-user outcomes. EU-level consistency checks contribute to the predictability of access regulation throughout the EU, but their influence is significantly restricted with regard to draft regulatory remedies. The lack of consistency in spectrum management has also had negative consequences for end-users, such as delayed 4G deployment in most parts of the EU.

The achievements of the framework in protecting end-users and in ensuring a safety net (universal service) are significant, although progress in consumer satisfaction is relatively slow. It is also clear that not all sector-specific end-user protection provisions are still fit for purpose given technological, market and legislative developments.

**Efficiency** — It has not been possible to do a precise cost calculation, but the evaluation has shown that the benefits of the framework — for most operators, end-users and society as a whole — greatly outweigh the costs of implementing it. A certain level of complexity might be necessary to ensure a well judged intervention (e.g. appropriate access regulation). However, several areas have been identified in which the administrative burden could be reduced without making the provisions less effective — in some cases even making them more effective: e.g. longer *ex ante* market regulation cycles, simplified procedures for analysing very stable markets, streamlining certain overlapping consumer protection provisions.

**EU added value** — The regulatory framework has been instrumental in delivering competition in the single market that, to an extent, would not have been possible or likely at national level. It has brought national regulatory practice in the sector into line with the best models across the EU, with varying success for specific regulation areas. EU action has also contributed to more comprehensive, if not homogeneous, consumer protection than would otherwise be the case.

**Coherence** — Generally speaking, the various instruments making up the regulatory framework have reinforced each other. Two issues would, however, merit specific attention in the review process. They are the coherence between regulation aimed at incentivising competitive network roll-out and the EU financing and State aid rules in the sector, as well as the potential overlaps between certain sector specific provisions and horizontal consumer interest legislation.

In **conclusion**, the regulatory framework has broadly achieved its general objective of ensuring a competitive sector that provides significant end-user benefits. Nevertheless, while its main specific objectives — promoting competition, developing the internal market and promoting the interests of end-users — remain relevant, a review is needed to address the

growing need for increased connectivity of the digital single market and to streamline provisions taking into account market and technological developments.