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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities – Outcome of the European Parliament's first reading (Strasbourg, 11 to 14 September 2017)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Carlos ZORRINHO (S&D, PT) presented one compromise amendment (amendment 30) to the proposal for a Regulation, on behalf of the Committee on Industry, research and energy. This amendment had been agreed during the informal contacts referred to above. The Committee also submitted one amendment (amendment 29) for a joint statement by the European Parliament, the Council and the Commission to be annexed to the Parliament's legislative resolution.

¹ OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 12 September 2017, the plenary adopted the compromise amendment (amendment 30) to the proposal for a Regulation as well as the amendment 29 for the statement to be annexed to the Parliament's legislative resolution². The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto³.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² Please see page 31 of this present document

³ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Promotion of internet connectivity in local communities ***I

European Parliament legislative resolution of 12 September 2017 on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities (COM(2016)0589 – C8-0378/2016 – 2016/0287(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0589),
 - having regard to Article 294(2) and Article 172 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0378/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 26 January 2017⁴,
 - having regard to the opinion of the Committee of the Regions of 8 February 2017⁵,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 7 June 2017 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Budgets, the Committee on Transport and Tourism and the Committee on Regional Development (A8-0181/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Approves the joint statement by Parliament, the Council and the Commission annexed to this

⁴ OJ C 125, 21.4.2017, p. 69.

⁵ OJ C 207, 30.6.2017, p. 87.

resolution;

3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P8_TC1-COD(2016)0287

Position of the European Parliament adopted at first reading on 12 September 2017 with a view to the adoption of Regulation (EU) 2017/... of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of internet connectivity in local communities

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the ordinary legislative procedure⁸,

⁶ OJ C 125, 21.4.2017, p. 69.

⁷ OJ C 207, 30.6.2017, p. 87.

⁸ Position of the European Parliament of 12 September 2017.

Whereas:

- (1) The *Commission Communication of 14 September 2016 entitled 'Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society'*, sets out a European vision of internet connectivity for citizens and business in the digital single market and describes a number of possible measures capable of enhancing connectivity in the Union.

- (2) *In its Communication of 26 August 2010 entitled 'A Digital Agenda for Europe', the Commission recalls that the Europe 2020 Strategy underlined the importance of broadband deployment to promote social inclusion and competitiveness in the Union and reaffirmed the goal of ensuring that, by 2020, all Europeans have access to internet speeds of above 30 Mbps and 50 % or more of European households subscribe to internet connections above 100 Mbps.*

- (3) Among measures to support the vision of **■** internet connectivity *across the Union*, the **Commission** promotes, *in its Communication of 14 September 2016*, the deployment of local wireless access points through simplified planning procedures and reduced regulatory obstacles. Such access points, including those that are ancillary to the provision of other public services or non-commercial in character, can make an important contribution to the improvement of current *wireless communication networks* and *to* the deployment of future generations of *such* networks by facilitating more granular coverage in line with evolving needs. *Those access points should be able to form part of a network with a single authentication system that is valid across the whole Union and other free local wireless connectivity networks should be able to join the system. That system should comply with Union data protection requirements and with Regulation (EU) 2015/2120 of the European Parliament and of the Council*⁹.

⁹ *Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1).*

- (4) *In the context of this Regulation, local wireless connectivity that is free of charge and without discriminatory conditions means, with regard to being free of charge, that it is provided without corresponding remuneration, whether by direct payment or by other types of consideration, such as commercial advertising or the provision of personal data for commercial purposes. With regard to being without discriminatory conditions, it means that it is provided without prejudice to restrictions required under Union law, or under national law that complies with Union law, as well as being subject to the need to ensure a smooth functioning of the network and, in particular, the need to ensure a fair allocation of capacity between users at peak times.*
- (5) *A competitive market, and a legislative framework which can adapt to developments and which encourages competition, investment and the widespread availability and take-up of very-high-capacity connectivity, as well as trans-European networks and new business models, are important drivers for investment in high and very-high-capacity networks that can deliver connectivity to citizens throughout the Union.*

- (6) In light of *the Commission's* Communication of 14 September 2016 and in order to promote digital inclusion, the Union should support the provision of *high-quality* local wireless connectivity *that is free of charge and without discriminatory conditions* in centres of local public life, including outdoor spaces accessible to the general public¹⁰. Such support is not covered by *Regulation* (EU) No 1316/2013¹⁰ *or* (EU) No 283/2014¹¹ *of the European Parliament and of the Council*.
- (7) *Such support* should encourage ¹² public sector bodies, as defined in *Directive (EU) 2016/2102 of the European Parliament and of the Council*¹², to offer ¹³ local wireless connectivity *that is free of charge and without discriminatory conditions* as an ancillary service to their public mission so as to ensure that *people in* local communities can benefit from ¹⁴ high-speed broadband *and have the opportunity to improve their digital skills* in centres of public life. Such *bodies* could include municipalities, *associations formed by municipalities*, other local public authorities *and institutions*, libraries and hospitals.

¹⁰ Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

¹¹ Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC (OJ L 86, 21.3.2014, p. 14).

¹² *Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016. p. 1).*

- (8) *Local wireless connectivity that is free of charge and without discriminatory conditions could contribute to bridging the digital divide, especially in communities that lag behind in terms of digital literacy, including in rural areas and remote locations.*
- (9) *Improving access to high-speed and very-high-speed broadband and consequently to online services, especially in rural areas and remote locations, could increase quality of life by facilitating access to services, for example e-Health and e-Government, and could promote the development of local small and medium-sized enterprises.*

- (10) *To guarantee the success of the support to be provided under this Regulation and to promote Union action in this area, the Commission should ensure that the entities that pursue projects benefitting from Union financial assistance available under this Regulation provide end-users with as much information as possible on availability of the services and should draw attention to the fact that the Union has granted financing. Such information could also provide end-users with easy access to information about the Union.*
- (11) Considering its specific purpose and that it addresses local needs, the *promotion of local wireless connectivity that is free of charge and without discriminatory conditions in centres of public life* should be identified as a distinct project of common interest in the telecommunications sector within the meaning of Regulations (EU) No 1316/2013 and (EU) No 283/2014.
- (12) To provide appropriate financing for the promotion of internet connectivity in local communities and to ensure its successful implementation, the financial envelope for the implementation of the Connecting Europe Facility in the telecommunications sector should be increased by EUR 25 000 000, and may be increased to EUR 50 000 000.

- (13) Given the non-commercial nature of *the support to be provided under this Regulation* and the expected small scale of individual projects, the administrative burden should be limited to a minimum *and should be proportionate to the benefits envisaged, taking into account the need for accountability and a proper balance between simplification and control.* *This Regulation* should therefore be implemented by the most appropriate forms of financial assistance, *in particular* grants, *for instance by way of vouchers*, available under Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council¹³, now or in the future. *The support to be provided under this Regulation* should not rely on financial instruments. *The principle of sound financial management should apply.*

¹³ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

- (14) *Given the limited volume of financial appropriations measured against the potentially high number of applications, administrative procedures should be simplified so that decisions can be taken in a timely manner. Regulation (EU) No 1316/2013 should be amended to allow Member States to agree to categories of proposals in line with the criteria defined in Section 4 of the Annex to Regulation (EU) No 283/2014 in order to avoid the individual approval of applications and ensure that certification of expenditure and annual reporting to the Commission are not obligatory for grants or other forms of financial assistance awarded under this Regulation.*

- (15) Due to the limited reach of any single local wireless access point and the small value of individual projects covered, access points benefitting from financial assistance under this Regulation are not expected to challenge commercial offers. In order to further ensure that such financial assistance does not unduly distort competition, crowd out private investments or create disincentives for private operators to invest, the *support provided for under this Regulation* should be limited to projects that do not duplicate already existing *free* private or public offers of similar characteristics in the same public space. *This Regulation should not prevent the setting of limitations in the user's terms and conditions, such as limiting connectivity to a period of time or to a reasonable maximum data consumption.*
- (16) *Additional support could contribute to making a more significant impact and should therefore not be excluded. Such additional support could be provided from either public sources of funding, such as Union or national funds, including the European Regional Development Fund, or from private sources of funding.*

- (17) *The available budget should be allocated in a geographically balanced manner across Member States to projects and, in principle, on a 'first come, first served' basis. The mechanism aiming to ensure geographical balance should be included in the relevant work programmes adopted pursuant to Regulation (EU) No 1316/2013, and should be further specified in calls for proposals adopted in accordance with that Regulation, if necessary, by, for example, enabling the enhanced participation of applicants from Member States where the take-up of grants or other forms of financial assistance has been comparatively low.*
- (18) To ensure that connectivity in accordance with this Regulation is provided quickly, financial assistance should be implemented using to the fullest extent possible on-line tools that allow for the swift submission and handling of applications and support the implementation, monitoring and auditing of the local wireless access points installed. ***The Commission and the relevant authorities in the Member States should promote the project of common interest.***

- (19) *This Regulation is without prejudice to national law that complies with Union law, such as national provisions preventing municipalities from providing wireless connectivity that is free of charge directly, while allowing them to provide such connectivity through private entities.*
- (20) Given the urgent need for internet connectivity within the Union and for promoting access to networks that can deliver, throughout the Union, ***including in rural areas and remote locations***, an internet experience of high quality based ***at least*** on ■ high-speed broadband services, ***and preferably also achieving the objectives of the European Gigabit Society***, financial assistance should seek to attain a geographically balanced distribution.
- (21) *Beneficiary entities should be required to provide the wireless connectivity for not less than three years.*
- (22) *Actions financed pursuant to this Regulation should use the most recent and best available equipment, capable of delivering easy-to-access and appropriately secured high-speed connectivity that is free of charge and without discriminatory conditions to its users.*

- (23) *Since the objective of this Regulation, namely to support the provision of high-quality wireless connectivity in local communities across the Union, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.*
- (24) Regulations (EU) No 1316/2013 and (EU) No 283/2014 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 1316/2013

Regulation (EU) No 1316/2013 is amended as follows:

(1) *in Article 2, point (1) is replaced by the following:*

'(1) "project of common interest" means a project identified in Regulations (EU) No 1315/2013, (EU) No 347/2013 or (EU) No 283/2014 of the European Parliament and of the Council;*

** Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC (OJ L 86, 21.3.2014, p. 14).';*

(2) *in Article 4, paragraph 4 is replaced by the following:*

'4. In the telecommunications sector, the CEF shall support actions that pursue the objectives specified in Regulation (EU) No 283/2014.';

(3) in the first subparagraph of Article 5(1), point (b) is replaced by the following:

'(b) telecommunications sector: EUR **1 066 602 000**;;

(4) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Only actions contributing to projects of common interest in accordance with Regulations (EU) No 1315/2013, (EU) No 347/2013 and **(EU) No 283/2014**, as well as programme support actions, shall be eligible for support through Union financial assistance, in particular in the form of grants, procurement and financial instruments.';

(b) paragraph 4 is replaced by the following:

- '4. In the telecommunications sector, all actions implementing the projects of common interest and programme support actions identified in **Regulation (EU) No 283/2014** and meeting eligibility criteria and/or conditions laid down in accordance with that Regulation shall be eligible to receive Union financial assistance under this Regulation, as follows:
- (a) generic services, core service platforms and programme support actions shall be financed through grants and/or procurement;
 - (b) actions in the field of broadband networks shall be financed through financial instruments;
 - (c) actions in the field of providing **■** local wireless connectivity ***that is free of charge and without discriminatory conditions*** in local communities shall be financed through grants or ***other*** forms of financial assistance, not including financial instruments.';

(5) in Article 9, the following paragraph is inserted:

'1a. Where justified by the need to avoid an undue administrative burden, in particular in the case of low value grants within the meaning of Article 185 of *Delegated Regulation* (EU) No **1268/2012**, *the Member States referred to in paragraph 1 of this Article* may agree to a category of proposals under the work programmes *adopted* pursuant to Article 17 *of this Regulation*, without indicating individual applicants. *Such an agreement shall eliminate the need for Member States to approve each individual application.*';

(6) in Article 10(4), the following **■** subparagraph is added:

'Actions in the field of providing **■** local wireless connectivity *that is free of charge and without discriminatory conditions* in local communities shall be funded by Union financial assistance *covering* up to 100 % of the eligible costs, without prejudice to the principle of co-financing.';

(7) *in Article 14, paragraph 1 is replaced by the following:*

'1. Financial instruments set up in accordance with Title VIII of Regulation (EU, Euratom) No 966/2012 may be used to facilitate access to finance by entities implementing actions contributing to projects of common interest as defined in Regulations (EU) No 1315/2013, (EU) No 347/2013 and (EU) No 283/2014, and to the achievement of their objectives. Those financial instruments shall be based on ex-ante assessments of market imperfections or sub-optimal investment situations and investment needs. The main terms, conditions and procedures for each financial instrument shall be those laid down in Part III of Annex I to this Regulation.'

(8) *in Article 17, paragraph 5 is replaced by the following:*

'5. The Commission, when adopting multiannual and sectoral annual work programmes, shall establish the selection and award criteria in line with the objectives and priorities laid down in Articles 3 and 4 of this Regulation and in Regulations (EU) No 1315/2013, (EU) No 347/2013 and (EU) No 283/2014. When setting the award criteria, the Commission shall take into account the general orientations laid down in Part V of Annex I to this Regulation.'

(9) *in Article 22, the following paragraphs are added:*

'The certification of the expenditure referred to in the second paragraph of this Article is not mandatory for grants or other forms of financial assistance awarded pursuant to point (c) of Article 4(1) of Regulation (EU) No 283/2014.

The requirement to inform the Commission annually referred to in the third paragraph of this Article shall not apply for grants or other forms of financial assistance awarded pursuant to point (c) of Article 4(1) of Regulation (EU) No 283/2014.'

Article 2

Amendments to Regulation (EU) No 283/2014

Regulation (EU) No 283/2014 is amended as follows:

(1) in Article 2(2), the following point is added:

'(h) 'local wireless access point' means a low power equipment of small size operating within a small range, using on a non-exclusive basis radio spectrum for which the conditions of availability and efficient use for that purpose are harmonised at Union level, and which allows wireless access by users to an electronic communications network.';

(2) in Article 4(1), the following point is added:

'(c) support the provision of **high-quality** local wireless connectivity **that is free of charge and without discriminatory conditions** in local communities.';

(3) Article 5 is amended as follows:

(a) the following paragraph is **inserted**:

'5a. **Actions** contributing to ■ projects of common interest in the field of providing ■ local wireless connectivity **that is free of charge and without discriminatory conditions** in local communities shall be supported by:

(a) grants; and/or

(b) **other** forms of financial assistance, not including financial instruments.';

(b) in paragraph 7, the second subparagraph is replaced by the following:

'That amount shall be up to 15 % of the financial envelope for the telecommunications sector referred to in point (b) of Article 5(1) of Regulation (EU) No 1316/2013.';

(4) in Article 6, the following paragraph is *inserted*:

'8a. Actions contributing to projects of common interest in the field of providing **high-quality** local wireless connectivity ***that is free of charge and without discriminatory conditions*** in local communities shall meet conditions set out in Section 4 ***of*** the Annex ***in order to be eligible for the funding.***';

(5) in Article 8(9), the following point ■ is added:

'(d) the number of connections to local wireless access points established under actions implementing Section 4 of the Annex.';

(6) In the Annex, the following section is added:

'SECTION 4. WIRELESS CONNECTIVITY IN LOCAL COMMUNITIES

Actions *must aim for* the provision of **■** local wireless connectivity *that is free of charge and without discriminatory conditions* in centres of local public life, including outdoor spaces accessible to the general public that play a major role in the public life of local communities, *to* be eligible for financial assistance. *For the purpose of accessibility, those actions shall provide access to services at least in the relevant languages of the Member State concerned and, to the extent possible, in other official languages of the institutions of the Union.*

Financial assistance shall be available to **■** *public sector bodies as defined in point (1) of Article 3 of Directive (EU) 2016/2102 of the European Parliament and of the Council**, undertaking to provide, *in accordance with national law*, local wireless connectivity *that is free of charge and without discriminatory conditions* through the installation of local wireless access points.

Actions taken for the provision of **local** wireless connectivity **shall be eligible to** receive funding if they:

- (1) are implemented by ■ a public **sector body as referred to in the second paragraph which is** capable of planning and supervising the installation, **as well as ensuring for a minimum of three years the financing of operating costs**, of indoor or outdoor local wireless access points in public spaces;
- (2) build on ■ high-speed broadband connectivity enabling delivery of high-quality internet experience to users that:
 - (a) is free **of charge and without discriminatory conditions**, easy to access, **secured**, and uses **most recent and best available** equipment, **capable of delivering high-speed connectivity to its users**; and
 - (b) supports access to innovative digital services, such as those offered via digital service infrastructures;
- (3) use the common visual identity to be provided by the Commission and link to the associated online tools;

- (4) *respect the principles of technological neutrality at the level of the backhaul, the efficient use of public funding and the ability to adapt projects to the best technological offers;*
- (5) *commit to procure the necessary equipment and/or related installation services in accordance with applicable law to ensure that projects do not unduly distort competition.*

Actions duplicating existing free private or public offers of similar characteristics, including quality, in the same public space shall not be eligible to receive funding. Such duplication may be avoided by ensuring that the range of the access points funded under this Regulation is designed to cover primarily public spaces and not to overlap with that of existing private or public offers of similar characteristics.

The available budget shall be allocated in a geographically balanced manner **across Member States** to **actions** meeting the conditions set out in this Section in light of the number of proposals received and, in principle, on a 'first come, first served' basis. **The total allocation of funds under each call shall include all Member States from which eligible proposals are received.**

Actions financed under this Section shall be in operation and closely monitored by the Commission for at least three years. After the operational period the Commission shall continue to provide an overview of functionality of those actions and possible input for future initiatives.

* *Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016, p. 1).'*

Article 3

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at,

For the European Parliament

For the Council

The President

The President

ANNEX TO THE LEGISLATIVE RESOLUTION

JOINT STATEMENT BY THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION

The European Parliament, the Council and the Commission agree that the WiFi4EU initiative should have meaningful impact and **scalability**. To this end, they note that if an increase of EUR 25 000 000 to EUR 50 000 000 of the financial envelope for the implementation of CEF in the telecommunications sector cannot be secured in full, the Commission might propose reallocations within that envelope in order to facilitate overall funding for the promotion of internet connectivity in local communities of EUR 120 000 000.
