



European Economic and Social Committee

TEN/534

**New measures on the EU
single market for telecoms**

Brussels, 21 January 2014

OPINION

of the

European Economic and Social Committee

on

New measures on the EU single market for telecoms

covering the following two documents:

Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012

COM(2013) 627 final – 2013/0309 (COD)

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Telecommunications Single Market

COM(2013) 634 final

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Rapporteur: **Anna Nietyksza**
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On 23 September and 12 September 2013, the Commission, the Council and the European Parliament respectively decided to consult the European Economic and Social Committee, under Articles 114 and 304 TFEU, on

New measures on the EU single market for telecoms

covering the following two documents:

Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012

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COM(2013) 634 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 December 2013.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 152 votes to 2 with 5 abstentions.

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1. **Conclusions and recommendations**

1.1 The EESC supports the European Commission's proposal for a regulation and the specific measures to accelerate the establishment of a single market for electronic communications as a basis for the dynamic and sustainable growth of all sectors of the economy and the creation of new jobs. It will also assure the high level of consumer protection.

1.2 The EESC considers that the proposed reduction in barriers for European electronic communication service providers through:

- the introduction of a single European authorisation valid throughout the EU,
- the harmonisation of regulatory conditions and spectrum management,

will make it easier for providers to offer competitive, secure electronic communication services for individuals, businesses and institutions throughout the EU.

- 1.3 The EESC points out that the Commission should reconsider including broadband services in the scope of Universal Service Provision.
- 1.4 At the same time the EESC stresses that reducing regulatory barriers will open up markets for smaller providers of electronic communications. The major stimulus for the development of providers will be:
 - the single authorisation,
 - the simplification of the process of investing in networks,
 - the opportunity to provide cross-border services in every EU country,
 - the incentives for investments.
- 1.5 The EESC points out that the Commission's regulations and general incentives have to prevent further fragmentation of the market, as these would hamper development of cross-border services and weaken the EU vis-à-vis international competitors.
- 1.6 The EESC considers that improved accessibility and reduced costs of building and operating high-speed networks will:
 - create jobs at European companies, including SMEs and start-ups developing and providing innovative products and services on the global market,
 - accelerate the development of modern services in the areas of e-commerce and e-education, as well as advanced public services such as e-government and e-health,
 - accelerate the development of modern European cloud computing services, as described in the Committee opinion "Towards an EU Cloud Computing Strategy" (TEN/494),
 - enable the huge opportunities for creating new services to be used in areas where rapid development is expected, such as the Internet of Things (IoT) and machine-to-machine (M2M) communication.
- 1.7 The EESC recognises that harmonising regulatory conditions will stimulate investments in European electronic communication service providers.
- 1.8 The EESC supports the proposed harmonisation of guarantees of consumer and user rights, including:
 - easier choice of service provider and facilitating change of providers,
 - elimination of the high costs of mobile roaming calls and intra-EU cross-border fixed-line calls (Cf. EESC Information Report on "Stop Roaming Charges Now", CES5263-2013, rapporteur: Mr Hencks).

- 1.9 The EESC is in favour of harmonising contract conditions for end-users of electronic communication services in all Member States.
- 1.10 The EESC considers that open access to the network and the possibility of using advanced electronic communication services throughout the EU will increase the mobility of consumers and entrepreneurs, and also facilitate access to European cultural assets and the development of creative industries.
- 1.11 The future regulation has to provide more financial and legal security for the operators. In return, the EESC recommends that it provide the users with more legal security by better safeguarding their rights.
- 1.12 The EESC stresses the importance of the right to proper personal data protection, the right to be forgotten and other rights of end-users of electronic communication services pointed out in previous EESC opinions¹.
- 1.13 The EESC points out that information and communication technologies (ICT) are a source of sustainable economic growth, contributing to 50% productivity growth in all sectors of the economy in which they are employed. Even if their use leads to the loss of certain jobs, for every two jobs lost five new jobs are created (Cf. Proposal for a Regulation of the European Parliament and of the Council, COM(2013) 627 final 2013/0309 (COD), p. 2). The EESC stresses the need to provide education, retraining and life-long learning for all, implementing new educational mechanisms.
- 1.14 The EESC stresses the need to comply with competition rules and net neutrality, especially with reference to providers of electronic communication services belonging to the SME sector – as the strengthening of the biggest providers of electronic communication services and consolidating spectrum resources may jeopardise competitiveness in the markets of the Member States.
- 1.15 The regulation of *virtual broadband access products (a type of wholesale access to broadband network that consists of a virtual access link to any fixed or wireless network architecture, excluding physical unbundling of the local loop, together with a transmission service to a defined sets of points of handover together with specific network elements and functionalities and ancillary IT systems)* appears to be premature. The EESC believes that it would be better to wait until the conditions for the provision of these services and prices have been regulated by the market. However, the requirement to provide an ASQ connectivity product must be regulated in a way which ensures balanced burden-sharing between large operators and smaller service providers from the SME sector.

¹ [OJ C 271, 19.9.2013, pp. 133-137](#), [OJ C 229, 31.7.2012, pp. 1-6](#), [OJ C 351, 15.11.2012, pp. 31-35](#).

- 1.16 The EESC is seriously concerned about the detailed solutions concerning local radio access networks, in particular the possibility of end-users being able to make radio networks available to other, unknown, anonymous users.
- 1.17 The EESC warns that the proposed regulation sets very ambitious goals. The short timeframe for its introduction (from 1 July 2014), will require a major effort from the main stakeholders, i.e. the European Commission, national electronic communications regulators, competition authorities and European electronic communication service providers.
- 1.18 Given the need to coordinate scope and procedures for issuing European authorisations and reservations and the conditions for using radio spectrum, the EESC recommends boosting the role of BEREC until the decision on creating a single European regulator has been taken.

2. **Introduction and background**

- 2.1 Major operators in the United States, Japan and South Korea have made huge investments in infrastructure for fast broadband internet connections, both fixed and wireless. An extremely important issue for the European Union is maintaining global competitiveness in the area of electronic communications.
- 2.2 Reliable and fast broadband access is especially important for the provision of innovative electronic communication services, including cloud computing. It is therefore in the EU's strategic interest for the electronic communications sector to be in a good state of health, to have home-grown potential to provide modern services for the public and to maintain considerable scope to create electronic communications equipment, solutions and services.
- 2.3 The digital economy and the products it provides represent an increasing share of GDP, and electronic communication services are key to the growth in productivity in all sectors of the economy - from healthcare to energy and public services. Another key factor in development is the possibility to invest in wireless networks (i.e. the fourth generation and subsequent technologies of mobile communication technology providing high-speed mobile Internet access) and fast fixed-line networks (e.g. FTTH –fiber-to-the-home –fiber-optic networks).
- 2.4 In order to make electronic communication networks highly profitable, sufficient scale is needed. However, the electronic communications market of the EU's Member States is very fragmented: it includes more than 1 000 fixed-line operators and several hundred operators of mobile networks. Even the largest operator groups provide services in individual countries, not offering cross-border services to consumers and smaller end-users (cross-border services are offered only to the largest corporate customers). No operator is active in more than half the Member States. The market for cable television networks is also fragmented – it includes over 1 500 operators.

- 2.5 The fragmentation of the market translates into high prices, especially for calls between individual EU countries (roaming in mobile networks and international fixed-line calls).
- 2.6 Radio spectrum is a limited resource. How effectively it is used has a considerable impact on the implementation of the Digital Agenda for Europe (DAE) and the operating conditions of service providers. At the same time, the conditions for using spectrum (such as assignment rules, duration of reservations, possibilities of spectrum refarming (change in spectrum management aimed, inter alia, at meeting market requirements or increasing the efficiency of spectrum use) and sharing) vary significantly between individual Member States. There are differences in the assignment conditions, time of expiry and the possibility of renewing spectrum reservations. These differences make it difficult to invest and create integrated cross-border wireless networks.
- 2.7 Although in the 1990s Europe was the world leader in GSM mobile telephony, it currently lags behind the countries referred to above in implementing the latest mobile transmission technologies.
- 2.8 The rate of development in Europe's ICT sector has been very low in recent years (0.3% annually), especially in comparison to growth in the USA (15%) and in leading Asian countries (26%).
- 2.9 The proposed changes concern areas which are regulated by acts underpinning the regulation of electronic communications in the EU, namely Directives 2002/20/EC (authorisation directive), 2002/21/EC (framework directive), 2002/22/EC (universal service and users' rights directive), 2002/58/EC (directive on privacy and electronic communications), Regulations (EC) No 1211/2009 (establishing BEREC) and (EU) No 531/2012 (on roaming) and Decision 243/2012/EU (radio spectrum policy programme)².

3. **General objective of the European Commission's regulation**

- 3.1 The basic objective of the European Commission's regulation is to establish a single market for electronic communications in which:
- the public, institutions and businesses can access electronic communication services throughout the EU under equal conditions, without restrictions or additional costs,
 - operators and providers of electronic communication services can provide services on competitive conditions outside the borders of the Member State in which they are established and reach consumers throughout the EU,
 - the basis of the digital transformation of the economy is developed, which should result in the restoration and maintenance of economic growth, the increased global

² [OJ C 123, 25.4.2001, pp. 55-56](#); [OJ C 123, 25.4.2001, pp. 56-61](#); [OJ C 123, 25.4.2001, pp. 53-54](#); [OJ C 24, 28.1.2012, pp. 131-133](#); [OJ C 133, 9.5.2013, pp. 22-26](#).

competitiveness of the EU countries, and the creation of new jobs in the digital economy, the creative industries and all areas of the economy in which electronic communications play an important role.

3.2 In the proposal for a regulation, the European Commission has proposed the following solutions:

- a single EU authorisation for European electronic communications providers based on a single notification system in the Member State of main establishment of the provider;
- harmonisation of the conditions of availability, assignment conditions and the duration of spectrum use rights;
- the introduction of virtual broadband access products and harmonised electronic communication products with assured service quality (ASQ);
- harmonisation of rules regarding the rights of end-users/consumers (requirement for transparent information and contracts, clearly defined conditions for entering into and terminating contracts, net neutrality, assured service quality, easier switching and number portability);
- sanctioning powers of the competent national authorities and rules on the Commission's power to adopt delegated or implementing acts;
- rules on roaming calls in mobile networks;
- limiting the cost of intra-EU fixed-line calls, which is not to exceed the tariff for domestic long-distance communications;
- increased stability for BEREC as an advisory body to the European Commission on electronic communications.

3.3 As the European Council stressed in its Conclusions of 24-25 October 2013, overcoming the fragmentation of the electronic communications market, promoting effective competition and attracting private investment through a predictable and stable legal framework, while ensuring a high level of consumer protection, as well as harmonising spectrum assignment are crucial for the economic and social development of the Member States (European Council document of 25 October 2013 (EUCO 169/13, CO EUR 13 CONCL 7), points 5 and 9).

3.4 Increased availability and lower costs for using fast connections will enable all service providers, including European SMEs, to create and offer innovative products and services on the global market.

4. **Specific comments on the European Commission regulation**

4.1 **Single EU authorisation**

4.1.1 The EESC considers that the provision of cross-border services is currently hampered by red tape stemming from fragmentation of national systems for granting authorisations, radio spectrum assignment, regulation of access products and rules on consumer rights.

- 4.1.2 Operators exploit the fragmentation of the market at the expense of end-users, by providing more expensive cross-border services.
- 4.1.3 The EESC considers that the proposal for a regulation will promote consolidation of operators and the emergence of pan-European providers of electronic communication services. This process is beneficial from the point of view of the competitiveness of the Member States' economies on global markets.
- 4.1.4 Strengthening electronic communication service providers and uniform legal conditions will increase European service providers' attractiveness to institutional investors, including private equity funds. The provision of additional capital to operators will increase their investment capacity.
- 4.1.5 The EESC welcomes the introduction of a single EU authorisation as an essential condition for improving the operation of the system. Cooperation procedures and principles need to be clearly defined.
- 4.1.6 The EESC would have welcomed the proposal taking a position in favour of a single European regulator, as proposed and defended by the Committee in several of its opinions.

4.2 **Coordination of the use of radio spectrum**

- 4.2.1 The harmonisation of spectrum management on the basis of uniform conditions for spectrum use (assignment rules, duration of reservations, possibilities of spectrum "refarming" and sharing) will facilitate the introduction of new wireless broadband access technologies (4G and subsequent technologies).
- 4.2.2 In the EESC's view, the regulation pre-empts the planned 2016 review of the effectiveness of the existing rules on roaming and the decisions on allocation of bands which are expected to be taken at the ITU-R (ITU-R – (ITU Radiocommunication Sector) – one of the three sectors (units) of the International Telecommunication Union (ITU), responsible for radio communication) World Radio communication Conference in 2015 (WRC 2015).

4.3 **European virtual access products**

- 4.3.1 The EESC considers that rules on virtual broadband access are being proposed against a background of great uncertainty regarding the regulation of the NGN/NGA networks (high-speed Next Generation Networks/Next Generation Access) and differences in the regulatory practices of individual Member States. Stable regulatory principles which encourage operators to invest in costly NGN/NGA infrastructure must be introduced very cautiously, as regulatory practices for these issues are only beginning to take shape.

Wholesale products must be developed bearing in mind the needs of customers in the individual national markets and should not be designed for the "average European country".

4.4 **Assured service quality (ASQ) connectivity product**

4.4.1 The introduction of an assured service quality (ASQ) connectivity product may turn out to be very useful for creating and providing specialist, advanced digital services.

4.4.2 In the EESC's view, the obligation to provide ASQ must be regulated in such a way as to ensure balanced burden sharing between major operators and smaller service providers from the SME sector.

4.5 **Harmonised rights of end-users**

4.5.1 In the EESC's view, harmonisation of end-user rights, obligations regarding transparency and clear consumer information about conditions, quality, rights, tariffs and rules on facilitating a change of provider will bring major benefits for consumers of electronic communication services. It will strengthen their position vis-à-vis service providers and reduce information asymmetry.

4.5.2 The EESC approves the provision of specific information and contract obligations covering:

- provision of services for disabled end-users, details of products and services,
- the type of action that might be taken by the provider in response to security or integrity incidents or threats and vulnerabilities,
- control by end-users of their consumption of electronic services.

4.5.3 EESC approves the proposed obligation on electronic service providers to distribute public interest information on:

- the most common uses of electronic communications services for engaging in unlawful activities or disseminating harmful content and their legal consequences;
- the means of protection against risks to personal security and unlawful access to personal data when using electronic communications services.

4.5.4 The EESC regrets, however, the ambiguous way in which chapters IV and V of the proposed Regulation have been drafted, in particular when it comes to the subjective factors on which certain consumer rights continue to depend; it was hoped that these would become binding guarantees, and this concerns especially Articles 23(3), 27, 28 and 30 of the proposal.

4.6 **Roaming and international calls**

- 4.6.1 Although the ultimate objective set under the Digital Agenda for Europe is to eliminate the difference between domestic prices and roaming charges in order to establish an internal market for mobile communication services, the prices charged for roaming mobile communications within Europe continue to be inflated and significantly higher than the rates charged for the same service domestically.
- 4.6.2 Since, despite the introduction of a cap on charges within Europe, the average charges applied by operators are not far short of the caps imposed by legislation and are preventing healthy competition, the Commission says that it has been obliged to introduce a new legislative package proposing the abolition of surcharges for roaming calls received while abroad, whilst the other roaming charges are supposed to be phased out by encouraging competition between operators, or at least between alliances of operators.
- 4.6.3 The EESC is, in principle, in favour of the abolition of all roaming charges (for voice calls, text messages and data transmission), not just charges for calls received. In addition, it considers that, in order to create a genuine European internal market for mobile electronic communications, the charges applied for transit mobile communications within the EU should also be reviewed.
- 4.6.4 Nevertheless, given that the structural reforms will not be in place until July 2014, the EESC considers that the date set for the abolition should depend on the outcome of the structural reforms provided for in the 2012 Regulation, once these have been fully implemented.
- 4.6.5 This schedule should allow the regulatory authorities to take advance measures to prevent operators from compensating for the drop in revenue resulting from the abolition of roaming charges by increasing domestic charges. Any such increases would penalise all consumers, especially people who, for whatever reason, do not travel outside their own country of residence and have no occasion to make roaming calls.
- 4.6.6 The EESC also proposes that, to make charges more transparent, particularly where bundled offers are concerned, the regulatory authorities should work with consumer organisations to develop a standard format for presenting the breakdown of charges to allow comparisons to be made between the various bundles and make it easier to find the best deal.
- 4.6.7 Lastly, the Commission will have to be extremely rigorous when it comes to ensuring that the partnerships between operators it advocates so strongly do not give rise to agreements or oligopolies that would result in the abuse of dominant market positions.

4.7 Change in the status of BEREC

- 4.7.1 In the EESC's view, the proposed changes regarding the status of BEREC, e.g. a full-time post of chairperson of the Board of Regulators, may prove insufficient in the light of competitiveness challenges and the need to create investment incentives, particularly regarding broadband communications and the NGN/NGA network.

Brussels, 21 January 2014.

The President
of the
European Economic and Social Committee

Henri Malosse
