



Brussels, 24 November 2008

BACKGROUND ¹

TRANSPORT, TELECOMMUNICATIONS and ENERGY COUNCIL

Thursday 27 November 2008, Brussels

(Telecommunications items only)

The meeting will start at 09.00 on Thursday 27 November under the Presidency of M Luc Chatel, Minister of State with responsibility for Industry and Consumer Affairs and Mr Eric Besson, Minister of State with responsibility for Forward Planning, Assessment of Public Policies and the Development of the Digital Economy.

*The Council will seek, in a public debate, to reach political agreement on the **review of the EU regulatory framework** for electronic communications networks and services.*

*The Council will seek, in a public debate, to reach a general approach on a proposal to extend the first **Regulation on roaming** and to widen its scope to cover SMS and data..*

*In addition, following presentation by the Commission of its communication, the Council will hold an exchange of views on the **second periodic review of the scope of universal service and more specifically the question of extending the coverage to broadband**.*

*It will also adopt conclusions on **future networks and the Internet**.*

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Press conferences: before lunch (about 13.00) and at the end of the session (about 18.00)

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Press conferences and public events can be followed via video streaming:

<http://www.consilium.europa.eu/videostreaming>

¹ This note has been drawn up under the responsibility of the press office.

Review of the Community regulatory framework for electronic communications – public debate

The Council will seek to reach **political agreement** on the review of the EU regulatory framework for electronic communications networks and services.

The set of measures to reform the telecommunications sector¹ was adopted by the Commission on 13 November 2007. It aims to enable citizens, wherever they live or travel in the EU, to enjoy better quality communications services at lower cost.

Following the political agreement, the Council is expected to adopt by the end of 2008 its common positions on all the Commission proposals which will serve as a basis for negotiations with the European Parliament in order to reach an agreement between the two institutions at second reading by the end of the legislative period.

– **Better Regulation Directive**

This Commission proposal aims to amend the regulatory framework for e-communications by improving its effectiveness, reducing the administrative resources needed for implementing economic regulation and making access to radio frequencies simpler and more efficient. It amends the existing Framework, Authorisation and Access Directives.

Framework Directive

The Council will be asked to state its view on a Presidency compromise text ([15758/08](#)) on the Framework Directive which is a consolidated version of the proposal for a Directive amending Directive 2002/21/EC. The text submitted to ministers includes all the provisions of the proposal, even those for which no modifications were suggested.

The Council bodies have reached a broad consensus on the text. The detailed discussions focused in particular on the provisions on national regulatory authorities, consolidating the internal market for electronic communications (Article 7 procedure), strategic planning and coordination of radio spectrum policy and the management of radio frequencies.

¹ It contains the following legislative proposals:

- a proposal for a **Better Regulation** Directive amending Directives 2002/21/EC (Framework Directive), 2002/19/EC (Access Directive), and 2002/20/EC (Authorisation Directive) ([15379/07](#));
- a proposal for a **Citizens' Rights** Directive amending Directive 2002/22/EC (Universal Service Directive), Directive 2002/58/EC (Privacy Directive) and Regulation (EC) No 2006/2004 on consumer protection cooperation ([15387/07](#));
- a proposal for a Regulation establishing the **European** Electronic Communications Market **Authority** ([15408/07](#)).

- *National regulatory authorities (NRAs)*: the point which was most at issue was the strengthening of the independence of NRAs, already guaranteed in the existing text. The Council also discussed in detail the procedures governing the dismissal of the head of the NRA and of the other members of the board.
- *Consolidating the internal market*: the Presidency's compromise text takes account of the view expressed by most of the Council that the Commission should issue opinions on the regulators' draft remedies and any regulator which did not comply with the Commission's opinion would then have to justify its position.
- *Management of radio frequencies*: most Member States can accept the proposals concerning technology neutrality and spectrum management services and the Presidency text also provides for undertakings to be able to transfer or lease their individual rights to use radio frequencies to other undertakings.

Authorisation Directive

Ministers will be asked to state their views on the Presidency compromise text ([15702/08](#)) which is a consolidated version of the proposal for a Directive amending Directive 2002/20/EC.

The Council's bodies have examined in particular the following provisions of the Commission's initial proposal:

- *granting of individual rights of use for radio frequencies*: the Presidency compromise text provides that Member States may grant individual rights of use for radio frequencies rather than issuing general authorisations for certain precise reasons. The text also contains a new provision to prevent competition being distorted by any transfer or accumulation of radio frequency usage rights.
- *measures to harmonise the use of the radio spectrum*: the Council felt that there was no need to introduce new measures to harmonise certain aspects of the use of the radio spectrum, or a common selection procedure for issuing rights.
- *existing authorisations*: the Presidency text requires Member States to bring general authorisations and individual rights of use already in existence into conformity with the new provisions of the Directive.
- *transparency obligations*: Annex I of the Presidency text, which contains the maximum list of conditions which may be attached to general authorisations, proposes imposing transparency obligations on undertakings providing public electronic communications services to ensure end-to-end connectivity.

Access Directive

The Council will be asked to state its view on the Presidency compromise ([15695/08](#)) text which is a consolidated version of the proposal for an amendment to the Directive amending the current Directive 2002/19/EC.

The Council has reached a broad consensus on the essential features of the Commission proposal and has taken due account of the European Parliament's first reading opinion. The Council's bodies have discussed in particular the provisions concerning functional separation. The Commission proposed adding functional separation as a remedy available to national regulators, which could then as a last resort impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business entity.

Ministers will be asked to state their views on a Presidency compromise text on this issue. The text submitted to ministers allows functional separation, stresses the exceptional nature of this measure and provides a framework for its implementation.

– *Citizens' Rights Directive*

The Commission proposal amending the Privacy and Universal Service Directives aims to ensure a high level of consumer protection and users' rights, in particular the right to privacy and data protection, whilst enabling the development and diffusion of new services and innovative applications.

The Commission proposal also provides for the amendment of Regulation (EC) No 2006/2004 on consumer protection cooperation; this was accepted without discussion.

Privacy Directive

Ministers will be asked to state their views on a Presidency compromise text ([15899/08](#)) concerning the proposal to amend Directive 2002/58/EC.

The aim of the EU regulatory framework is to promote the interests of citizens by, among other things, ensuring a high level of protection of personal data and privacy and ensuring that the integrity and security of public communications networks are maintained. The growing number of new electronic threats in recent years such as viruses, spam, spyware and phishing has further increased the importance of these objectives.

The Commission proposal on this issue addresses such issues as ensuring that consumers are informed if their personal data have been compromised as a result of a breach of network security, giving operators and NRAs more responsibility with respect to the security and integrity of all electronic communications networks and services, strengthening implementation and enforcement powers for competent authorities, in particular in the fight against "spam", and clarifying the application of the EU rules to data collection and identification devices using public electronic communications networks.

When the Council examined this proposal, delegations focused in particular on the provisions concerning security of data processing and enforcement.

Universal Service Directive

The Council will be asked to state its view on a Presidency compromise text ([15896/08](#)) concerning the proposal to amend the current Directive 2002/22/EC on Universal Service.

This Commission proposal concerns in particular the following areas: transparency and publication of information for users, improved accessibility for users with disabilities, emergency services and access to 112; and basic connectivity and quality of services.

When the Council examined this proposal, delegations focused in particular on the provisions concerning the definition of publicly available telephone service and the information contained in consumer contracts.

– ***Regulation establishing the European Electronic Communications Market Authority***

Discussion by the Council has demonstrated that the Member States wish to give the existing European Regulators Group (established under Commission Decision 2002/627/EC) a formal status, but that a majority of delegations were against establishing a new Community agency in this context.

The Presidency will therefore submit to ministers a compromise proposal ([15901/08](#)) which gives formal status to the European Regulators Group in the Community Regulation. The new body will be designated Group of European Regulators in Telecoms.

The principal aim of the Group will be to contribute to developing the internal market in electronic communications networks and services and improving its functioning, with a view to ensuring consistent application of the regulatory framework. In addition, it will encourage cooperation between national regulatory authorities and between them and the Commission, and will advise the European Parliament, the Council and the Commission.

The Group will be composed of heads or senior representatives of the national regulatory authorities set up in each Member State and comprise one member per Member State..

The draft Regulation should enter into force on 31 December 2009.

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The Council held an initial public exchange of views on the review of this regulatory framework at its meeting on 12 and 13 June 2008 and took note of the Slovenian Presidency's three progress reports on the work carried out so far in its preparatory bodies (*see press release [10410/08](#)*).

The European Parliament adopted its first reading opinions on all these legislative proposals on 24 September 2008.

Legal basis for the three proposals: Article 95 of the EC Treaty, qualified majority voting in accordance with the Parliament/Council co-decision procedure.

Amendment of the first roaming Regulation – public deliberation (14866/08, [13531/08](#))

The Council will seek to work out a **general approach** on a proposal for a Regulation amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community ([13531/08](#)).

The proposal provides for a three-year extension to the Regulation currently in force which is due to expire on 2010, a further reduction in charges and an extension of pricing limits to cover SMS and data services in addition to voice calls.

The Commission proposal was generally well received by the Member States. In the compromise text which will be submitted to ministers ([15898/08](#)) the Presidency retains the same pricing ceilings as were originally proposed by the Commission. In addition, certain delegations would also like to set limits on retail prices for data services, in order to correct the excessive charges for roaming data services in relation to domestic rates. To meet this concern, the Presidency compromise contains provisions to protect consumers from excessive bills. Thus the operator will offer all its subscribers the possibility of deliberately opting, free of charge, for a cut-off limit. This option will protect consumers by warning them when the cut-off limit is about to be reached. That cut-off limit may not exceed EUR 50 (excluding VAT).

The general aim of the proposed rules is to ensure that the price paid by users of mobile communication networks for community-wide roaming services, i.e. when travelling within the EU, is not abnormally high in relation to the price paid for making a call, sending an SMS or transferring data in their country of origin. It also aims to ensure that users have the information needed to understand and control their roaming expenditure.

The main details of the Commission proposal are as follows:

- voice calls:
 - wholesale and retail prices to continue to fall, in several stages;
 - billing per second for all roaming calls made and received (as from the 31st second for calls made);
- SMS:
 - wholesale prices limited to EUR 0,04 and retail prices limited to EUR 0,11 (exc. VAT);
- packet switched data:
 - wholesale charges limited to EUR 1/Mbit. The Commission is not proposing to limit retail prices to give this emerging market the chance to regulate itself.

According to the Commission proposal, the new Regulation should enter into force on 1 July 2009. The measure will be time-limited, expiring *a priori* on 30 June 2013.

The Commission submitted its proposal at the end of September 2008, after reviewing the operation of the first Regulation on the matter, adopted last year. That review, the details of which can be found in a Commission communication ([13521/08](#)), led to the conclusion that, despite the price reductions achieved through that Regulation, charges were still much too high in comparison with operators' costs. In addition, a study of price trends for SMS and data services revealed that these services also needed regulating along with voice call services, which were the only aspect on which a pricing limit was imposed in the first Regulation.

The European Parliament should adopt its first reading opinion in April 2009.

Legal basis for the proposal: Article 95 of the EC Treaty, vote by qualified majority under the Parliament/Council co-decision procedure.

Second periodic review of the scope of universal service and question of including broadband in its coverage

The Council will hold an **exchange of views** on the second periodic review of the scope of universal service¹ in electronic communications networks and services.

The Commission sent its communication on this subject to the Council in October 2008 ([13775/08](#)). The second review is provided for in Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services.

The communication more specifically examines the question of including mobile telephony and broadband. In the case of mobile telephony, it concludes that the market does overall provide access. However, in the case of broadband it recognises that it is unlikely that the market will provide broadband internet access within a reasonable period of time to the most isolated regions of the European Union. It stresses, moreover, that more and more social and economic transactions are taking place online and that broadband internet access is becoming widely available. Finally, it notes like the Presidency that broadband is proving more and more of a necessity for accessing a whole range of services and therefore its impact on competitiveness and economic growth is gradually turning this infrastructure into an essential commodity and is an argument for strengthening Community and national strategies to provide access. Nevertheless, the communication does not conclude that it is advisable to extend the coverage of this Directive to broadband, but does raise a number of questions concerning the place of this mechanism among other Community and national instruments which may be mobilised today to complete broadband cover of the EU.

Ministers will be invited to give their views on universal broadband access, notably by answering the following questions suggested by the Presidency ([15116/08](#)):

- *is broadband access becoming an "essential good"?*

¹ Universal service in the electronic communications sector means ensuring that all who so request are provided with those services essential for participation in society and already available to the great majority of citizens, either by the market or in the case of market failure by public intervention. It is defined as a minimum set of e-communications services available to all end-users upon reasonable request at an affordable price and specified quality, independently of geographical location within a Member State.

- *in view of the increasing deployment of infrastructures, is the market likely to satisfy the coverage needs of all users?*
- *how can we reconcile a harmonised approach at European level with the degree of flexibility required to take account of different national circumstances, and in particular the disparities between Member States in terms of infrastructure deployment?*
- *which of the following scenarios could best meet the broadband access needs of the population:*
 - *making the most of every possibility offered by the existing framework;*
 - *allowing individual Member States to determine which access speed to guarantee for their citizens;*
 - *extending the scope of universal service to broadband without changing its concept or financing conditions;*
 - *extending the scope of universal service to broadband by amending the concept and financing conditions?*

Future networks and the Internet

The Council will adopt **conclusions** on future networks and the Internet.

These conclusions are the Council's response to the Commission communication with the same title sent to the Council in October 2008 ([13737/08](#)).

The aim of the communication is to broach the issue of the transition to the Internet and very high-speed networks and to develop strategies for dealing with it at European level.

The Commission notes that the Internet has become a strategic infrastructure which, for a decade now, has played a major economic and societal role. It therefore considers it essential to take the necessary action to:

- stimulate investment in high-speed broadband access
- promote an inclusive digital economy by taking active steps towards "broadband for all"
- guarantee open and non-discriminatory access to the Internet *inter alia* by ensuring interoperability between equipment and services
- emphasise personal data protection and promoting security.

All these measures should unlock the potential of the Internet and future networks and promote healthy competition and an innovation-friendly environment.

In its draft conclusions, the Council welcomes this communication and sets out the strategic steps to be taken by the Commission, the Member States and all interested parties.