BACKGROUND[1]
Brussels, 6 June 2017

Transport, Telecommunications and Energy Council (Telecommunications issues) Luxembourg, 9 June 2017

The **meeting** will **start** at 9.30.

The Council aims to agree on a general approach on a draft regulation to increase regulatory oversight and price transparency for **cross-border parcel delivery services**. The proposal is intended to bring down prices and improve competition on the market.

Ministers will take stock of the progress made and hold a policy debate on the reform of the **EU telecoms rules.** The reform aims to improve fixed and mobile connectivity for everyone in Europe by encouraging investment, competition and innovation, while also protecting consumers. The debate will steer future work on the proposals.

Ministers will also look at the progress made on a proposal to update **privacy rules for electronic communications** (**ePrivacy**).

The presidency will brief ministers on the state of play of two other legislative files: the **wholesale roaming** regulation, which will be published in the EU Official Journal on 9 June, the day of the Council, and the draft **WiFi4EU** regulation on EU-funded internet hotspots.

The Commission will brief ministers on the state of play of the **digital single market strategy**, **cybersecurity** issues and the report entitled '**Europe's digital progress'**.

Lastly, the incoming presidency will present its **work programme**.

Press conference: +/- 13.00

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[1] This note has been drawn up under the responsibility of the Press Office.

Cross-border parcel delivery services

The Council will be invited to **agree its position** (a 'general approach') on new rules to **improve cross-border parcel delivery services** (draft general approach). The draft regulation aims to strengthen the regulatory oversight of the parcel sector and encourage competition between delivery firms. It sets out to increase the transparency of tariffs in order to reduce tariff differences which cannot be fully justified by objective factors such as wages or geographical distance. More effective oversight and increased transparency should bring down prices paid by citizens and small businesses, especially in remote areas.

The proposal is part of EU efforts to **boost e-commerce** under the digital single market. Almost four billion parcels are ordered online and delivered every year in the EU, but the potential for e-commerce is much greater. While 44% of consumers buy online in their own country, only 15% order online from another member state, giving high delivery prices as one of the main reasons for avoiding cross-border purchases. On the market, large retailers enjoy discounts while smaller players pay the full price. Rural delivery is particularly costly. Cheaper and more transparent pricing could also encourage more retailers to sell online.

The draft rules to be discussed by the Council build on and complement the rules on cross-border parcel delivery services contained in the postal services directive.

Presidency compromise proposal

The presidency's compromise text clarifies the scope of the measures, including with a new definition of 'parcel'. At present this definition varies from one EU country to another.

Under the draft general approach, all providers of cross-border parcel delivery services with at least 50 employees working in this sector will have to provide their national regulator with various sets of data such as general terms and conditions and annual turnover. On the basis of this information, regulators will be able to better monitor market developments, identify market failures and assess prices. Regulators in several countries currently do not have the powers to collect such data, which hampers the monitoring of competition in the parcel markets.

To improve the transparency of rates offered on the market, delivery companies will have to send their public list of tariffs applicable on 1 January to the national regulator. The Commission will then publish these tariffs on a dedicated website by 31 March each year. These transparency measures would concern all providers of cross-border parcel delivery services, not just universal service providers as originally proposed by the Commission. This will make it easier for consumers and companies to compare the prices offered by various operators. Here again, operators with fewer than 50 people working for them in this sector are excluded.

The national regulator will also monitor the tariffs offered by universal service providers for postal items falling under the universal service obligation in order to identify those tariffs which should undergo specific assessment to check if they are unreasonably high. Special provisions for universal service providers are justified by the fact that they are under obligation to provide affordable and cost-oriented services for which they receive certain concessions in turn, such as VAT exemption. Where the initial monitoring and a specific pre-assessment filtering procedure lead to an assessment, the Commission will publish a non-confidential version of the assessment on the dedicated website by 30 June each year.

The provisions on access to networks as proposed by the Commission have been deleted as unnecessary. Any market failure in this area could be addressed by general EU competition law.

How will the text become law?

Both the Council and the European Parliament have to agree on the text before it can enter into force. The Parliament has not yet adopted its position.

Parcel delivery in the EU

Review of EU telecoms rules

The Council will **take stock of the progress made** and hold a **policy debate** on the **revision of the EU telecoms rules** (progress report, discussion paper). The review sets out to improve fixed and mobile connectivity for all users across Europe. This will be achieved by spurring investment to roll out high-capacity digital networks and by encouraging competition and innovation. The draft rules also include measures to safeguard solid consumer protection.

The proposal for new telecoms rules, a **'European Electronic Communications Code'**, merges four existing telecoms directives (framework, authorisation, access and universal service). Another proposal updates the rules for the **body of European regulators, BEREC**. These proposals were presented by the Commission in September 2016 under the 'connectivity package', designed, among other things, to ensure that by 2025 all European households have access to a very high speed internet connection and all urban areas and major roads and railways have uninterrupted 5G mobile broadband coverage.

The European Electronic Communications Code applies to providers of both networks and services. Key measures include making some regulation more proportionate in return for investment in networks, widening of the scope of the rules to new communication tools (over-the-top services such as VoIP, instant messaging apps and web-based email) and introducing new rules to support the roll-out of next generation networks such as 5G.

Work in the Council

In the December 2016 Telecommunication Council member states welcomed the ambitious connectivity objectives set by the Commission. They also broadly acknowledged the need for enhanced incentives for investment in high-capacity networks and the importance of effective competition as the primary means to ensure delivery and take-up of such networks to the benefit of end-users.

In the meantime, the telecommunication working party has concluded its first examination of the entire Code and has subsequently concentrated its efforts on the rules on services and access.

Under the **latest presidency proposal**, number-independent interpersonal communications services (such as instant messaging apps) would be subject to some rules on end-user rights insofar as these services have certain characteristics which are regulated by the new rules (quality of service, price, contract duration etc.). This means that citizens would be protected in the same way when using electronic communications services with similar end-user characteristics and would not need to worry about how, or by whom, the service is delivered. To make the rules future-proof, developments on the market would be monitored so that targeted new rules could be introduced where necessary.

As regards the rules on access to networks, the latest presidency text has retained the overall structure proposed by the Commission, including provisions on encouraging co-investment and on the identification of 'digital exclusion zones' where operators or public authorities have neither rolled out a high-capacity network nor are planning to do so, and where specific measures should therefore be taken. In general, the presidency text adds flexibility for member states to act effectively taking into account their national, and even more local, circumstances. It also reduces administrative burden that the Commission proposal would create.

The Maltese presidency is of the view that its compromise proposals provide a strong foundation for finalising the Council position on all parts of the Code and BEREC regulation under the upcoming Estonian presidency. In order to facilitate this further work, ministers at the 9 June Council will be invited to discuss the key issue of the desired extent of EU-level coordination.

Policy debate

The Commission proposals argue that measures to spur investment and competition need to be combined with enhanced coordination at European level to increase regulatory transparency and predictability and thus investor certainty. For example, the Commission has proposed turning

BEREC into an EU agency and giving it more powers to ensure that systematic efforts are applied in pursuit of the connectivity goals.

Since the proposals for enhanced coordination are central to the new telecoms rules as proposed by the Commission and are intrinsically linked to the substantive measures to achieve the overall objectives of the Code, the presidency would like ministers to consider in what areas and to what extent coordination mechanisms ought to be reinforced. To structure the debate, the presidency has prepared the following questions for ministers:

1. Do you agree that investment certainty in the single market requires a clear and comprehensive framework of rules and effective coordination regarding their application in practice?

2. What coordination mechanism could provide adequate reassurances of predictability for investors and competitors by giving confidence that proven best practices are shared and followed?

Ministers' views will **provide guidance for future work** on the proposals in the Council working party.

How will the texts become law?

If they are to be adopted, the texts must be approved by both the Council and the European Parliament. The Parliament has not yet adopted its position.

Connectivity for a European gigabit society

Digital single market for Europe

EU telecoms rules

ePrivacy

The Council will **look at the progress made** on a proposal to **update privacy rules for electronic communications** (ePrivacy) (progress report). The draft regulation sets out to ensure a high level of protection of private life, communications and personal data in the electronic communications sector. It also aims to create a level playing field for providers of various services and to ensure free movement of electronic communications data and services in the EU. It will replace the current ePrivacy directive, which was last updated in 2009, and complement the general data protection regulation adopted in 2016.

Commission proposal

Under the new proposal on e-privacy (Commission proposal), confidentiality of communications would apply to both the content of the communication and to metadata - for example who was called, the timing and location of the call and websites visited. Metadata would need to be deleted or made anonymous if users did not give their consent, unless such data was needed for billing purposes or for meeting service quality requirements, for instance.

The scope of privacy rules would be extended to cover not only traditional telcos, but also providers of new services such as VoIP or instant messaging apps and web-based e-mail.

Consent would be required to access information on a user's device. New rules on cookies would shift consent to the browser level in order to prevent 'consent fatigue'. No consent would be needed for non-privacy-intrusive cookies that improve internet experience, such as shopping cart history reminders.

Unsolicited commercial communications would require consent irrespective of the technology used. While the current ePrivacy directive allows member states to decide whether users are to opt in or opt out for unsolicited phone calls, the proposed rules would stipulate an opt-in requirement but leave member states the possibility to derogate.

The Commission would like the regulation to start to apply on the same date as the general data protection regulation, that is, on 25 May 2018.

Work in the Council

The telecommunications working party has started a detailed discussion of the text but member states are still analysing the proposal and formulating their respective positions.

In the initial discussions delegations welcomed the general thrust of the proposal and supported the objective of ensuring a high level of protection of privacy in electronic communications. However, in view of the detailed discussions that would be required to finalise a regulation – which is directly applicable in member states – they considered that the proposed date of application of 25 May 2018 would be extremely difficult to achieve.

The working party is continuing its work on the proposal, and the Maltese presidency aims to finalise its first examination by the end of June 2017 so as to provide a solid basis for future progress on the file.

How will the text become law?

For it to be adopted, the text will need to be approved by both the Council and the European Parliament. The Parliament has not yet adopted its position.

Any other business

- Proposal for a regulation amending regulation 531/2012 as regards rules for **wholesale roaming markets**
  - Information from the presidency on the state of play
- Proposal for a regulation amending regulations 1316/2013 and 283/2014 as regards the promotion of **internet connectivity in local communities (WiFi4EU)**
  - Information from the presidency on the state of play
- Digital Single Market Strategy
  - Information from the Commission on the state of play
- Cybersecurity
  - Information from the Commission
- Europe's digital progress report
  - Information from the Commission
- Work programme of the incoming presidency
  - Information from the Estonian delegation