Council of the European Union

PRESS

EN

BACKGROUND[1]
Brussels, 30 November 2016

Transport, Telecommunications and Energy Council (Telecommunications issues) Brussels, 2 December 2016

The Slovak Deputy Prime Minister for Investments and the Information Society **Peter Pellegrini** and the Slovak Minister for Transport, Construction and Regional Development **Arpád Érsek** will chair the meeting.

The European Commission will be represented by Commissioner **Günther Oettinger** and Vice-President **Andrus Ansip.**

The **meeting** will **start** at 9:30.

The Council aims to agree on a general approach on a proposal which regulates **wholesale roaming markets** in the EU. The rules must be in place by 15 June 2017 to enable the abolition of roaming fees on that date, subject to fair use, as laid down in the roaming regulation last year. The general approach will be the starting point for negotiations with the European Parliament.

Ministers will take stock of the progress made on a draft regulation to increase regulatory oversight and price transparency for **cross-border parcel delivery services**. The proposal aims to bring down prices and improve competition on the market.

Ministers will also hold a policy debate on the recent proposals on the reform of the **telecoms regulatory framework**, to steer future work at technical level. The reform aims to improve fixed and mobile connectivity for everyone in Europe, and to further investment, competition and innovation while also protecting consumers.

Over lunch, ministers will provide guidance to the Commission for future work on **free flow of data.** This is becoming a particularly challenging topic, both for our industries and citizens.

The Council will then be invited to adopt a partial general approach on a proposal to promote **high-speed internet connectivity in local communities (WiFi4EU)**. The budget issues relating to the review of the multiannual financial framework will be finalised later.

Lastly, the presidency will brief ministers on digital single market files and on internet governance, and the incoming presidency will present its work programme.

Press conference: +/- 16:00

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

Wholesale roaming

The Council aims to agree on a **general approach** on new rules for **wholesale roaming markets** in the EU. In particular, the text sets caps for how much operators may charge each other for the use of their network to provide roaming services. These caps cover voice calls, sms messages and use of data.

The objective is to find a level of wholesale caps that allows for **surcharge-free roaming in a sustainable manner**, without distorting either home markets or visited markets.

Discussions have sought to find caps that are low enough to make it possible for operators to offer surcharge-free roaming without increasing domestic retail prices, and at the same time high enough so that operators in visited countries are able to recover their costs without resorting to an increase in their domestic retail prices. In addition, the caps should be set at a level which preserves incentives to invest in networks and avoids hampering competition.

The new rules must be **in place by 15 June 2017 so that roaming fees can be abolished** (subject to fair use) on that date, as laid down in the roaming regulation last year. Fair use in roaming will be defined in a Commission implementing act that must be adopted by 15 December 2016.

An essential goal set out in last year's regulation for both wholesale rules and the fair use policy is to prevent permanent roaming. This would be a situation in which a customer takes out a subscription in the cheapest possible country and then uses it on roaming mode on a permanent basis in his home country.

Challenge of different retail markets and travel patterns across the EU

Finding the right level of caps is challenging, given that the EU is not a homogeneous area in terms of mobile use, travel patterns and price levels.

Indeed, some countries have a net outbound roaming traffic, i.e. more people travelling out of the country than into the country. Others receive large numbers of visitors, especially during the tourist season. This requires heavier investment in infrastructure that is only fully used for a couple of months each year.

In addition, pricing models and levels of consumption vary a great deal from one country to another. In certain countries, operators offer bundles with unlimited volumes, which tend to drive up usage. In 2014, data consumption in the country with the highest level was 28 times more than in the country with the lowest level.

Caps for data

The use of data on the go, for instance to view videos, has been increasing exponentially in recent years and is expected to continue soaring. With the end of roaming fees, data consumption abroad is expected to follow a similar trend as consumers will not need to search for wifi hotspots to make surfing affordable. The wholesale **price cap for data is therefore a crucial element** in this review.

On the basis of its analysis, the Commission proposes lowering the data cap from the current level of €c5/MB to €c0.85/MB. Even if this is 82% lower than the previous cap, it is still seen as high by many member states because of the fundamental changes that the abolition of roaming fees introduces in the market.

In its compromise proposal, the presidency suggests a **glidepath** for caps, which would diminish over time. The maximum charge would start from €c1/MB on 15 June 2017 and fall gradually to €c0.5/MB in mid-2021. A declining glidepath reflects the expectation that the cost of providing wholesale roaming services will come down in the coming years. The presidency proposal keeps the Commission figure €c0.85/MB as the average for the first three years of the glidepath.

Caps for calls and text messages

For phone calls, the presidency suggests a maximum surcharge of €0.0353/min. This is slightly lower than the €0.04 proposed by the Commission, which was based on the estimated average wholesale roaming voice price in member states. The current wholesale cap for calls is €0.05.

For text messages, the presidency proposes the same as the Commission: €0.01 per message, down by 50% from the current €0.02.

Wholesale sustainability mechanism

The presidency compromise introduces a new **mechanism at wholesale level to ensure sustainability** in exceptional circumstances. A retail-level sustainability mechanism was already included in the 2015 roaming regulation. The details of the retail sustainability mechanism will be set out in the Commission implementing act on fair use.

The wholesale sustainability mechanism gives operators which are not able to recover their costs the possibility to turn to their national regulator to request authorisation to apply a surcharge on top of the caps. The presidency proposal limits the surcharge for data, so that the total wholesale charge between any pair of operators cannot exceed €c0.85/MB. According to the impact assessment, €c0.85/MB is the level that guarantees maximum sustainability. The authorisation would be valid for a maximum of one year.

Review of the functioning of the market

The Commission would have to report every two years on how the rules work and, if appropriate, propose new rules.

Legal framework of the current revision

The draft regulation amends regulation 531/2012 as regards rules for wholesale roaming markets. The regulation 2015/2120 on roaming and open internet from November 2015 mandated the Commission to review the wholesale roaming market and propose a new law by 15 June 2016, as one of the elements to help make the end of roaming charges sustainable throughout the EU.

Next step after general approach: talks with the Parliament

The general approach will be the **starting point for negotiations with the European Parliament**. The European Parliament's Committee on Industry, Research and Energy approved a mandate for the talks on 29 November 2016. Both institutions must agree on the final text before it can be adopted.

The Council supports a quick agreement so that roaming fees can be abolished on 15 June 2017 as agreed.

Wholesale roaming markets - draft general approach

Roaming - digital single market

WiFi4EU

The Council will be invited to agree on a **partial general approach** on a proposal to promote **free internet connections in local communities with EU-funded 'WiFi4EU'**. This Council position is partial as budget issues can only be finalised after agreement has been reached on the mid-term review of the multiannual financial framework (MFF). The presidency hopes that the Council will be able to adopt a full general approach by the end of the year.

Surfing on WiFi4EU while sitting in a park

The proposal aims to help **provide free local wireless connectivity in town halls, public parks and other centres of public life**. The EU will provide simple funding tools such as vouchers to support installation of local wireless access points. The free network will be easily recognisable to citizens under the WiFi4EU brand, which they will experience also when travelling in Europe.

The Commission proposes investing €120 million in the scheme, which would result in connecting 6 000 to 8 000 communities. The final budget, however, will depend on the MFF deal between the Council and the EP. The money for the scheme would come from the Connecting Europe Facility. The procedures would be streamlined, given the small scale of each project.

The budget would be allocated in a geographically balanced manner across the EU and, in principle, on a first-come, first-served basis.

To ensure that local communities with limited resources can participate, support under this measure would be available for up to 100% of the eligible costs.

If a project would duplicate similar existing private or public internet connections, it is not eligible for this scheme.

A free local connection should promote e-government and participation in democratic life for demographic groups that otherwise face difficulty in getting connected such as refugees and low-income groups.

The draft regulation is part of the Commission's connectivity package. President Juncker announced it in his State of the Union speech on 14 September 2016 and the Commission adopted the proposal on the same day. The Council working party prepared the draft partial general approach in just two months.

Presidency compromise proposal

The presidency compromise text aims to **improve the clarity and legal certainty** of the proposal. For example, it suggests defining eligible entities by using the notion of a public sector body from the directive on the accessibility of public websites and mobile apps. It also specifies that beneficiaries must be able to support the operating costs once the connection has been installed.

When it comes to the **minimum speed** of the connection, the Commission proposes that the funding would go to very high-speed broadband services (above 100 Mbps). While the presidency compromise supports the goal of reaching the objectives of a European gigabit society, it proposes broadening the scope so that entities which have only high-speed connectivity (above 30Mbps) could also receive funding. This would make the scheme more inclusive and help **reduce the digital divide**.

How will it become law?

In order to be adopted, the text has to be approved by both the Council and the European Parliament. The Parliament has not yet adopted its position.

WiFi4EU - draft partial general approach

WiFi4EU - Digital Single Market webpages

Cross-border parcel delivery services

The Council will **look at the progress made** on new rules to **improve cross-border parcel delivery services**. The draft regulation aims to make regulatory oversight of the parcel sector more effective and encourage competition. It sets out to increase the transparency of tariffs in order to reduce tariff differences which cannot be justified. This should also bring down prices paid by citizens and small business, especially in remote areas. The proposal does not include any price regulation for the sector.

Better and cheaper delivery services to boost cross-border e-commerce

Almost 4 billion parcels are ordered online and delivered every year in the EU. The potential for e-commerce, however, is much greater: while 44% of consumers buy online in their own country, only 15% order online from another member state. High delivery prices are one of the main reasons why consumers do not buy cross-border, outweighing convenience factors such as choosing where deliveries arrive. Large retailers enjoy discounts while smaller ones pay the full price. Rural delivery is particularly costly. What is more, some high prices cannot be explained by cost factors such as wages or geographical distance.

The Commission estimates that EU consumers could save over €11 billion each year if they chose from the full range of goods and services available when shopping online. Cheaper and more transparent pricing could also encourage more retailers to sell online.

According to the Commission, regulators in several countries do not have the powers to collect data to monitor market developments, identify market failures and assess prices. As a consequence, such data are not available. In addition, product characteristics - what constitutes a parcel - are different in different countries.

To address these issues, the Commission proposes that national regulators collect various sets of data on the service providers. Some of the data, in particular on tariffs, would be published by the Commission so as to improve transparency in the market. New provisions on access to networks should encourage new entrants in the market and help universal service providers reduce their costs, thus improving their competitiveness. Also in this regard, national regulators would collect data to monitor the evolution of competition in the parcel markets.

The new rules proposed by the Commission build on and complement the rules on cross-border parcel delivery services contained in the postal services directive. They are part of the measures to bolster e-commerce under the digital single market.

Work in the Council

According to the progress report drafted by the presidency, member states generally welcome the objectives of the proposal but have expressed a number of concerns in particular with regard to the potential regulatory and financial burden it may cause.

Despite the presidency's efforts to clarify the scope of the measures, including a new definition of 'parcel' and other adjustments to the text, more work is needed to solve the several outstanding issues.

How will it 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.

Cross-border parcel delivery services - progress report

Parcel delivery in the EU

Review of EU telecoms rules

The Council will hold a **public policy debate** on the **revision of the EU telecoms regulatory framework**. The review sets out to improve fixed and mobile connectivity for everyone in Europe. It aims to further investment, competition and innovation, and at the same time protect consumers.

The discussion addresses issues related to two legislative proposals and two communications under the **'connectivity package'** presented by the Commission in September.

In its communication on **Connectivity for a Competitive Digital Single Market**, the Commission sets out its vision for a **European gigabit society**. In this vision, availability and take-up of very high capacity networks enable the widespread use of products and services - such as connected cars, the internet of things or precision farming - in the digital single market.

By 2025, places driving socio-economic developments, such as businesses, transport hubs and public administrations, should have ultra high-speed gigabit connectivity. All urban areas and major roads and railways ought to have uninterrupted 5G coverage. And all European households should have access to an internet connection offering a speed of at least 100 Mbps. The communication also sets an intermediate 5G objective for 2020: 5G connectivity should be available as a commercial service in at least one major city in each EU country, building on commercial introduction in 2018.

To help make this vision a reality, the Commission proposes a new set of **telecoms rules**, an action plan to roll out **5G** in the EU and updated rules for the **body of European regulators, BEREC**. These initiatives are intended to create the right conditions for the necessary - primarily market-driven - investments.

The proposal for new telecoms rules, a **'European Electronic Communications Code'**, merges four existing telecoms directives (framework, authorisation, access and universal service). It aims to provide incentives for a variety of different players, both incumbents and challengers, to roll out very high-capacity fixed and mobile networks, primarily funded by the market. Take-up of such networks would be facilitated by continued competition, end-user choice and solid consumer protection.

The presidency has prepared a discussion paper setting out questions for the debate. Ministers' views are sought on the following issues:

- Are the connectivity objectives proportionate to a competitive economy and inclusive society?
- What aspects of coordination between member states are the most important to achieve common deployment of 5G networks, including timely availability of a harmonised spectrum?
- Which measures of the proposed Electronic Communications Code (and the rest of the connectivity package) are key for achieving the European gigabit society goals by 2025?

The aim of the discussion is to **provide guidance for future work** on the proposals in the Council working party, especially regarding the Electronic Communications Code.

In June 2016, the European Council called for very high-capacity fixed and wireless broadband connectivity across Europe as a precondition for future competitiveness. The leaders stated that the review should aim to incentivise major network investments while promoting effective competition and consumer rights.

The Slovak presidency considers this exchange of views a highlight of its mandate to ensure that we combine efforts on the crucial next steps in this field.

Connectivity for a European gigabit society

Digital single market for Europe

EU telecoms rules

Free flow of data

Ministers will address issues of free flow of data over lunch. The discussion will provide guidance to the Commission for future work in this area.

Data economy is the future vector of growth for businesses. Companies of all sizes and in all sectors are increasingly dependent on data flows across borders. Unjustified data localisation in member states hinders the economy and contributes to the lack of incentives for the development, e.g. of the high performance cloud computing centres on a European scale. Therefore, in order for the digital single market to flourish, the free movement of data and effective cloud computing are essential.

The free flow of data in research sectors across the EU, in particular access and re-use of research data that is generated by public budgets, is already having a positive effect on collaboration and achievement of results. However, these regulations are far from a comprehensive approach and the free flow of data does not exist in all sectors.

Today, member states are permitted to impose restrictions on where data must be stored that limit the cross-border flow of data originating from that given member state. For example, there are many national restrictions on the location of data relating to financial and health sectors, as well as company records, accounting and tax data, telecommunications, and government data. The justification for such restrictions varies, with countries citing security, safety and even legal reasons such as pre-internet laws that require companies to have their data at hand at all times.

There seems to be scant evidence that localisation rules provide real benefits. As a general EU principle, it should not matter where data are stored, but rather how they are stored. Establishing widely accepted and standardised procedures that enhance confidence and ensure confidentiality, availability and integrity of data, might be important in enabling this. Equally important might be ensuring that exceptions to the free flow of data only occur where absolutely necessary and justified by a narrow range of public interests (e.g. public safety). These exceptions would need to be clearly articulated and harmonized to remove regulatory fragmentation of the data localization rules.

Beyond data localisation, the emerging issues regarding data ownership, access and liability pose further challenges.

Free flow of data - presidency discussion paper

Any other business

Fair use policy in the context of roaming services

- *Information from the Commission, requested by the Polish delegation*

Digital Single Market initiatives

- *Information from the Commission*

Developments on internet governance

- *Information from the Commission*

Work programme of the incoming Presidency

- *Information from the Maltese delegation*