



Council of the European Union

PRESS
EN

BACKGROUND¹
Brussels, 29 November 2017

**Transport, Telecommunications and Energy Council
(Telecommunications issues)
Brussels, 4 December 2017**

Chair: Urve Palo, Estonia's Minister for Entrepreneurship and Information Technology

The **meeting** will **start** at 10.00.

The Council is due to agree on a general approach on an updated mandate for the **Body of European Regulators for Electronic Communication (BEREC)**.

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

They will hold a policy debate on a draft regulation on the **free flow of non-personal data**. The debate will steer future work on this priority proposal.

The presidency will brief ministers on the state of play of negotiations on a **European electronic communications code**. It will also provide information on the Council conclusions on **cybersecurity**, adopted on 20 November, and on a draft Council action plan for their implementation.

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

Over a working lunch ministers will discuss priorities for funding of the digital infrastructure, and obstacles to investment.

Press conference: +/- 16.00

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[Video streaming of press conferences and public events](#)

[Video coverage in broadcast quality \(MPEG4\) and photo gallery](#)

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

Body of European Regulators for Electronic Communication (BEREC)

The Council is due to agree its position, called a '**general approach**', on **updating the rules for the Body of European Regulators for Electronic Communication (BEREC)** ([draft Council general approach](#)).

BEREC and its Riga-based BEREC Office, both set up in 2010 and fully functional since 2011, contribute to the consistent implementation of EU telecoms rules and provide valuable technical expertise to the national regulatory authorities (NRAs). A key role of BEREC is to promote the availability and take-up of very high capacity data connectivity, and safeguard and encourage competition in the provision of electronic communications networks and services.

BEREC consists of a Board of Regulators, which is made up of representatives of national NRAs, and of expert working groups. The BEREC Office is an EU agency which provides assistance to and support for BEREC.

The regulation on roaming and net neutrality, adopted in 2015, gave additional tasks to BEREC in relation to open internet access and EU-wide roaming.

In addition, BEREC's tasks are being discussed in a wide-ranging proposal for new EU telecoms rules, a 'European Electronic Communications Code', which is currently being negotiated with the European Parliament. These two proposals are closely interlinked, and the presidency's aim is to obtain a Council position on the BEREC proposal so as to allow the BEREC proposal to be discussed in parallel with the Code in the talks with the Parliament. Negotiations on the Code between the two institutions started on 25 October.

Both the BEREC proposal [BEREC proposal](#) and the draft European Electronic Communications Code were presented by the Commission in September 2016 under the 'connectivity package', designed, among other things, to prepare Europe for the era of 5G by promoting investment, competition, consumer protection and the development of new services.

Overall, in the **draft Council position** on the BEREC proposal, BEREC's responsibilities and tasks have been aligned with the Council's mandate for the Code. In particular, while the Commission proposed entrusting BEREC with the ability to adopt binding decisions, the draft Council text does not include such a possibility.

The Commission also suggested merging the BEREC Office and BEREC into one single EU agency, but the presidency text proposes keeping the current two-tier structure, which, according to member states, is working well.

How will the text become law?

The general approach is the Council position for negotiations with the European Parliament. Both the Council and the Parliament have to agree on the text before it can enter into force. The Parliament adopted its position in October.

[BEREC website](#)

[Electronic Communications Code](#)

[Digital single market for Europe](#)

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 [Commission proposal](#) on e-privacy 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. The proposal also includes stronger rules on spam and marketing calls.

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 give users more control over their devices. No consent would be needed for non-privacy-intrusive cookies that improve internet experience, such as shopping cart history reminders.

Work in the Council

Considerable efforts have been made in the Council working party to advance negotiations on the proposal as set out in the presidency progress report, but a number of issues still require further discussion before the Council can form its position.

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 adopted its negotiating mandate in October.

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Free flow of data

The Council will hold a **policy debate** on a draft regulation on the **free flow of non-personal data**. The aim of the proposal is to set out a clear legal framework under which non-personal data could move freely across borders in the EU. To achieve this, it would remove national rules that currently restrict companies in choosing a location for storing or processing their data, unless such restrictions are justified on grounds of public security. At the same time, it would ensure that competent authorities have access to data stored or processed in another member state so that they can carry out their regulatory tasks just as they do when the data is stored in their own territory.

Data is at the heart of innovative digital technologies such as cloud computing, big data analytics and artificial intelligence. Data -driven innovation is a key enabler of growth and jobs and has the potential to significantly boost European competitiveness in the global market. Removing data localisation restrictions would drive down the costs of data, enable economies of scale and stimulate the development of new services. According to the Commission, eliminating such restrictions is considered the most important factor for the data economy to reach its full potential, and to grow up to €739 billion in 2020, doubling its value to 4% of GDP.

The Commission presented its [proposal](#) in September, and the Council working party has already started to go through the text in detail. In October 2017, the European Council called for this dossier to be concluded by June 2018.

The Council's policy debate will be structured around a number of questions prepared by the presidency in a [background document](#). The questions are as follows:

- Keeping in mind the current data revolution and the need to boost trust in data storage and processing across the single market, how could it best be assured that your public administration benefits as much as possible from the proposal (through a more competitive and open market for data storage and processing services)?
- How would you propose to build on existing cooperation mechanisms at European and national level to facilitate prompt and efficient data exchange for regulatory control?
- Would you agree that the proposal is proportionate and appropriate regarding definitions and exemptions (public security) to achieve the desired level of impact? Do you foresee specific situations in which data localisation restrictions are necessary and proportionate, but not possible under the proposal at the moment?

Ministers' views will **provide guidance for future work** on the proposal in the Council working party, with a view to reaching the deadline set by EU leaders.

A wide range of issues related to the free flow of data in the European single market were also discussed by EU telecommunications and competitiveness ministers at an informal Council meeting in July in Tallinn ([press release](#)).

How will the text become law?

If it is to be adopted, the text must be approved by both the Council and the European Parliament. The Parliament has not yet adopted its position.

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Other business

- **5G spectrum roadmap**
Information from the presidency
 - **Directive on the European Electronic Communications Code**
Information from the presidency
 - **Council conclusions on building strong cybersecurity for the EU and draft Council action plan for their implementation**
Information from the presidency
 - **Work programme of the incoming presidency**
Information from the Bulgarian delegation
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