

BACKGROUND TO THE PUBLIC CONSULTATION

ON THE EVALUATION OF THE REGULATORY FRAMEWORK FOR ELECTRONIC COMMUNICATIONS AND ON ITS REVIEW

I. Context of the consultation

a) Digital Single Market

The [Commission's Communication of 6 May 2015 on a Digital Single Market for Europe](#) (DSM) is built on three pillars: (i) Better access for consumers and businesses to online goods and services across Europe; (ii) Creating the right conditions for digital networks and services to flourish; and (iii) Maximising the growth potential of our European Digital Economy.

The roadmap for completing the DSM includes 16 actions in the timeframe of 2015-2016 and a review of the telecoms regulatory framework is one of the key actions under the second pillar. In its [Work Programme for 2015](#), the Commission indicated that, in addition to conducting a REFIT evaluation of the current telecoms regulatory framework, it will complement the telecoms regulatory environment with new legislative and non-legislative initiatives to bring the Digital Single Market to the level of ambition needed to respond to the existing challenges.

In this regard the framework review is built on an overall connectivity vision, taking into account the current and future connectivity needs of citizens, businesses and the public sector, which will result from the use of applications enabled by the DSM. In this regard, this consultation is closely linked to the parallel public consultation on the [future connectivity needs of citizens and businesses](#).

b) Change drivers

Since the last review in 2009, electronic communications networks and services have been undergoing significant structural changes characterised by a slow transition from copper to fibre, more complex competition with the convergence of fixed and mobile networks, the rise of retail bundles, the emergence of new online players (so called OTTs) along the value chains, which challenge the role of traditional providers of electronic communications networks and services in providing vertically integrated communications/audiovisual services in addition to broadband/internet access, and not least changing end-user expectations and requirements, including an explosion in demand for wireless data.

The current framework has been instrumental in ensuring that markets operate more competitively, bringing lower prices and better quality of service to consumers and businesses. Yet, it is questionable whether it has sufficiently promoted the transition towards high-capacity Next Generation Access (NGA) networks fit to meet future needs. In spite of the gradual extension of NGA networks (coverage of 68% in 2014), the coverage of very high-speed networks able to deal with a likely substantial future increase in demand for

upload as well as download remains limited (Fibre-To-The-Premises (FTTP) coverage stood at 19% at the end of 2014). The growth in high-speed broadband subscriptions (especially above 30Mbps download) slightly slowed in 2014 compared to previous years, while growth in very high-speed subscriptions (above 100Mbps) remained slow with a take-up rate of 9% of all fixed broadband connections. Overall, fixed high-speed broadband penetration still varies significantly across the Union, with some Member States continuing to trail behind on NGA take-up. This digital divide is even more pronounced if one considers the figures for rural areas (NGA coverage in rural areas stood at 25% at the end of 2014). An investment gap of € 90 billion has been identified in order to meet the 100 Mbps take-up target (50% of all fixed subscriptions) for 2020.

Following IP convergence and a demand shift from voice to data traffic, over-the-top (OTT) services such as VoIP, messaging and also social networks are increasingly seen by end users as substitutes for traditional ECS, such as voice telephony and SMS for interpersonal communications. There is some evidence of a chain of a functional substitutability encompassing traditional ECS, OTT communication services and OTT platforms with a communication element. Such OTT services are not subject to the same regulatory regime at this stage, as the current scope of the EU regulatory framework is centred on the definition of ECS, which requires *inter alia* "conveyance of signals". At the same time, the communications sector has seen important technological and commercial innovations which may require a modernisation of the applicable regulatory framework.

II. Scope of the regulatory framework for electronic communications networks and services

a) Legislation in force

The regulatory framework for electronic communications networks and services (Telecoms Package) consists of:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive)
- Directive 2002/20/EC on the authorisation of electronic communications networks and services (Authorisation Directive)
- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)
- Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)
- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)

The original regulatory framework was supplemented with other instruments, such as:

- Regulation 1211/2009 (BEREC Regulation)
- Regulation 717/2007 (Roaming Regulation)
- Directive 2014/61 (Broadband cost reduction)

and several Commission decisions, such as:

- Decision 676/2002/EC of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)
- Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group (RSPG)
- Decision 243/2012/EU of 14 March 2012 establishing a multiannual radio spectrum policy programme (RSPP)

Along with above referred directives, regulations and decisions, the framework is further complemented by soft law instruments that include Commission Recommendations relevant for the telecoms sector and which are indispensable for the application of the Regulatory Framework:

- Recommendation 2014/710 (relevant product and service markets for ex ante regulation)
- Recommendation 2010/572 (regulated access to Next Generation Access Networks)
- Recommendation 2013/466 (non-discrimination and costing methodologies)
- Recommendation 2009/396 (termination rates).

b) Scope of the public consultation

This Public Consultation focuses on the original instruments for the regulatory framework, including the BEREC Regulation. It excludes the Directive on privacy and electronic communications, the evaluation and review of which is linked to the ongoing legislative process on general data protection regulation (COM(2012)11 final). The evaluation also excludes the Roaming Regulation, which is currently subject to an ongoing legislative process, as well as the Broadband Cost Reduction Directive, which is currently in the process of transposition by Member States. The Radio Spectrum Policy Programme is subject to separate reporting obligations.

The Public Consultation will cover all three main pillars of the current framework, namely (a) **the network pillar**, with the aim to ensure a consistent and predictable regulatory environment that is supportive for infrastructure investments in both fixed and wireless networks; (b) **the service pillar**, with the aim to ensure a modernised regulatory regime for electronic communication services in a world of diverse online services, and (c) **the governance pillar**, with the aim to ensure that markets are regulated in a consistent manner across the EU, including as regards access to spectrum.