

Common Paper of the Visegrad Group on the Commission Proposal for the European Electronic Communications Code

In September 2016, the European Commission published its proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (hereinafter: Code). By horizontal recasting of the four Directives¹ currently regulating the electronic communications market, the Code seeks to address the challenges of the modern electronic communications market and meet the needs of its stakeholders.

V4 countries welcome this proposal and share the view that the Commission has chosen the right instrument and method to review the rules regulating the electronic communications market. Since the revision of the current framework in 2009, we have observed rapid and dynamic market developments, tremendously changing the usage patterns in the field of electronic communications. We agree that these changes need to be reflected in the Code.

All V4 countries confirm that their main interest is to create clear, unambiguous and future-proof rules which will deliver legal certainty to all providers and users of electronic communication networks and services.

In order to contribute to the legislative process, we have agreed on the following statement.

Spectrum

V4 countries support the initiative for more effective spectrum management at European Union level. Notwithstanding this, we believe that the current system which provides for the right balance among the European Commission, Member States and the national regulatory authorities

¹ 1. Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive);
2. Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive);
3. Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)
4. Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)

(hereinafter: NRAs) should be maintained. At this stage we believe that no far-reaching changes are needed and we favour the existing level of harmonization.

We share the opinion that the experience with past auctions, including the 800 MHz band, as well as the prioritisation for the introduction of 5G do not justify extensive modifications.

In our opinion, proper spectrum management at EU level in principle should not be based on binding delegated acts. Thus, V4 countries oppose any limitation of the competences of national institutions in spectrum management and underline that effective spectrum management must take into account specific national conditions. Current proposals would limit the Member States' effective control over spectrum and in consequence would hamper adjusting their policies to specific country factors.

V4 countries strongly support the objective of strengthening cooperation among Member States, especially within the existing institutional set-up. We note that the peer review platform is accessible by all RSPG members and provides a forum for an exchange of experience and views on spectrum awards and national assignments. This cooperation should be promoted and developed if it proves useful.

We believe that if the peer review mechanism as envisaged in the Code is to be sustained, it should be modified. We share the opinion that this process should be based on a voluntary basis, facilitate information sharing and cooperation. At the same time, we have to keep in mind that any additional bureaucratic obligations may prolong authorisation procedures. We strongly believe that unnecessary administrative burden should be avoided.

We express our concern with the new power granted to the European Commission to take on its own initiative binding measures in case of dispute resolution procedures between Member States in the context of cross-border coordination. These issues should be resolved between the parties concerned on the initiative of the Member States and on a case-by-case basis. If these mechanisms fail, only the affected Member States could request assistance of the European Commission.

V4 countries point out that the current proposal should indispensably take into account the specific conditions of Member States bordering with non-EU countries and their certain needs related to cross-border coordination.

V4 countries oppose setting minimum license duration at 25 years. We express the view that in this aspect, the Code should preserve a level of flexibility reflecting the characteristics of specific services. Furthermore, the Code should include a safeguard mechanism that allows for changes in allocation of a given spectrum band, for justified reasons.

Provisions on access and market analysis

We support the objective of the proposed provisions on access which provide incentives for deployment and take-up of very high capacity networks. We believe that promoting infrastructure competition and improving the access regime for this purpose could be a positive development. However, we note that several complex elements and competences of NRAs should be further analysed and clarified, such as network mapping, access measures together with facilitation of co-investments and commercial agreements as well as light-touch regulatory approach towards newly built networks. These measures should not harm competition dynamics, which has been the major driver of investment. Further clarification is required for symmetric regulation and new

approach to ex-ante regulation which limits the NRA regulatory intervention on wholesale markets to situations of lack of competition on retail markets.

Furthermore, we appreciate the introduction of an EU-level process for determining a methodology for setting voice termination rates. However, in our opinion, the new methodology should not lead to any increase in the rates on national markets.

We agree that a common EU regulatory framework has been instrumental in delivering competition on the regulated relevant markets. In this regard, we note that several areas have been identified where the administrative burden could be reduced without compromising – and in some cases even improving – the effectiveness of the provisions.

We acknowledge that extending the current maximum three-year market review period to five years will allow operators for longer-term planning, and will provide NRAs with greater flexibility as regards the timing of market reviews. We also see the need to reflect these objectives by updating and amending the corresponding rules for the imposition and revision of regulatory obligations, for example when market conditions change. However, in our opinion information on infrastructure investment plans may not always be a fully reliable source of data for market analysis which should be based on factual data.

We oppose the draft proposal of extending the competences of the Commission by introducing the so-called “double-lock veto” system. NRAs should keep their national competences regarding market analysis in order to identify the most suitable and effective remedies, as they have expert knowledge on the national markets.

Institutions and governance

In our opinion the current role of regulators should be kept as the balance of powers (among the NRAs, the Commission and the BEREC) works well. We welcome the approach of strengthening the independence of NRAs and unifying their minimum competences. NRAs should remain functionally independent and autonomous in respect of the implementation of their budgetary allocation. We think that it is highly important to establish the same minimum set of competences for the NRAs in order to prevent fragmentation of their functions and to ensure a coherent regulatory approach throughout the Union.

With regard to the institutional set-up of the proposed BEREC Agency, we consider it highly important to emphasize that the current BEREC is a well-functioning body, where the balance of powers ingrained in its organisational structure contributes well to its effective, independent and professional operation. The basic virtue of the current system should be kept – BEREC should be rooted in its constituent NRAs and this would allow keeping the afore-mentioned balance of powers. We strongly believe that the BEREC system should undergo only slight modifications in terms of its effectiveness. New tasks would not necessarily require fundamental changes to its current set-up.

In our view, BEREC’s future structure should build upon its success, the specificities of the electronic communications markets and the coherent regulatory action carried out by its constituent NRAs.

Universal service

All V4 countries welcome the proposals relating to the universal service regime. We are convinced that the current universal service provisions need to be updated, as the needs of the European citizens have rapidly changed over the recent years. We agree with the Commission that functional

access to internet has become a must for Europe and the framework should guarantee its accessibility to all, especially to disabled persons and persons with special social needs.

We believe that the proposed wording is a step in the right direction leading to future-proof rules and we appreciate that these stipulations provide sufficient flexibility to Member States and thus reflect the current needs of citizens in the Member States. We agree that such an approach complies with the subsidiarity and proportionality principles.

We incline to keep this flexibility also in the matter of the financing of universal service. We believe that the rules relating to universal service should be in line with the state aid measures.

Services and numbering

We generally support the Commission's effort to take into account changing reality of the electronic communications services market. Therefore, we welcome that the proposal recognises the existence of new market players. We believe that the division between number-based and number-independent services may bring some uncertainty with regard to the exact scope of regulation. As the regulatory coherence in this respect should be our goal, more clarity should be given to the scope of the definitions during the legislative process. We are also supportive of the measures intended to strengthen end-user protection.

We agree that legal certainty should be an overall goal, the relation between the Code and other relevant legislative acts should be clear and that duplication of obligations should be avoided. Furthermore, end-users should be provided with a concise document with the most important pieces of information and at the same time be able to find all other detailed information at a convenient location.

We agree that consumers should expect the same level of protection regardless of the country where they conclude a contract or use the service. At the same time, we must make sure that harmonization does not lead to deterioration of the current national level of end-user protection.

We support adapting the EU rules on numbering to address competition issues on the market (e.g. development of machine-to-machine communication). We appreciate a flexible approach regarding the management of numbering resources and that numbers can be assigned also to other undertakings than those providing electronic communication services.

We also agree with the Commission that granting numbering resources should be the task of NRAs. This is already the case in all V4 countries.

In relation to the proposed obligation to determine specific ranges for extraterritorial use for machine-to-machine communication, all V4 countries wish to maintain a flexible system which will allow efficient allocation of numbering resources. This would allow all countries to meet future demand.

We are convinced that after a thorough debate a new, clear and up-to-date regulatory framework can be achieved. Therefore, we continue our existing cooperation and represent our common goals in the legislative process in order to deliver a well-functioning electronic communication market in the European Union, for the benefit of the European citizens and the economy.

Signed in Warsaw on 6 February 2017:



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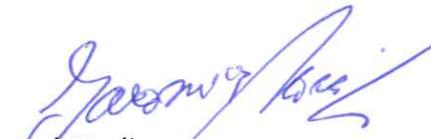
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