

2016-01-25

Non-paper of Belgium, Denmark, Estonia, Finland, Iceland, Norway, Sweden and the United Kingdom on the review of the regulatory framework for electronic communications

This non-paper sets out the joint positions of Belgium, Denmark, Estonia, Finland, Iceland, Norway, Sweden and the United Kingdom on the review of the regulatory framework for electronic communications.

Main points:

- Ubiquitous connectivity and access to resilient, high-speed, high-quality networks are becoming the foundation for all sectors of the modern economy, making an updated regulatory framework for electronic communications vital.
- Consumer protection rules should be as simple as possible while ensuring an adequate level of consumer protection with transparency and easy switching as the foundation.
- A revised framework should focus on enabling the competition needed to drive new investment and deliver the most consumer welfare.
- It should also continue to enable spectrum harmonisation when introducing new frequency bands in order to promote introduction of new digital services, but maintain national competence in allocation procedures and license conditions.
- Universal Service objectives and methods need to be brought up-to-date.
- The review should aim at simplifying the “SMP” assessments and make it easier to impose symmetrical obligations where appropriate.

Background and rationale

We welcome the Commission’s review of the regulatory framework for electronic communications. Much has changed since the last framework review in 2009. Access to electronic communications services has become even more essential for both consumers and businesses and providers of electronic communications services are facing growing competition from service providers using the Internet to deliver communications services. While electronic communications services and services provided over the Internet may look the same to end-users, they are to some degree regulated differently. This should be taken into account in the review. We recommend that any proposals for adding or removing regulation await the BEREC analysis on the topic. Also, ubiquitous connectivity and access to resilient, high-speed, high quality networks are fast becoming the foundation for all sectors of the modern economy, not only the “digital economy”. This means that making sure Europe has a fit-for-purpose electronic communications regulatory framework is vital for the European economy going forward. While much has changed, due note should be taken of what lessons can be

learned from Member States where the current framework has proven successful in generating a high level of investment from the private sector in digital infrastructure.

Empower consumers

A strong focus on ensuring transparency for consumers and making it easy to switch providers of electronic communications services is at the heart of the EU telecoms consumer protection rules. This allows end-users to make rational choices and, thus, strengthens competition to the benefit of the market in general. The rules should be as simple as possible while at the same time ensuring the adequate level of consumer protection, including higher minimum EU levels where appropriate. The review should build on this and look to see where harmonization would be beneficial. This will make it easier for operators to provide services across borders and thereby strengthen the digital single market. The extent to which the legislation on consumer rights can be substituted with general consumer protection legislation and supervision, where this does not undermine enforcement powers or compromise national and public security, should also be a focal point.

Let competition drive investment

The framework for electronic communications should aim to establish an internal market for all kinds of services that make use of electronic communications networks, rather than aiming for pan-European telecom operators as an end in itself. The main driver for investment in new broadband infrastructure is really end-user demand for digital products and services, in combination with competition. The “bottom-up” network development where fibre networks have been built by non-traditional actors has also been important for accelerating the roll-out of new high-speed networks. Sustainable infrastructure-based competition needs to be safeguarded in both fixed and mobile networks. In general, competition is not in conflict with private sector market investment and should rather be seen as a way to promote exactly this. The new framework should thus continue to promote competition in order to drive new investment, overcome market failures and deliver the most consumer welfare.

Radio spectrum harmonisation might improve and must enable Member States to reach national policy goals

Effective spectrum policy is the basis for quality and availability of wireless electronic communication services. The regulatory framework should enable optimum spectrum use in order to unleash its full value to society. A common approach in the coordination of general principles and objectives for radio spectrum policy in the internal market will continue to be necessary in the future. Spectrum harmonisation at global and European levels enable the introduction of new usage in new frequency bands. The regulatory framework should continue to support harmonisation of different frequency bands for electronic communications services in order to respond to increasing demand, including for the deployment of 5G technology and connected devices in Europe where appropriate. At the same time, due to varying geographic, demographic and technical conditions, there continues to be differences in the development of electronic communications between Member States. In accordance with the principle of proportionality, common regulatory measures should be carefully designed to target those areas where actual problems exist. As demand for quick introduction of new services is not uniform throughout Europe, the regulatory framework should enable flexibility in the national decision-making in order to avoid delays in technological development.

The high penetration and affordable pricing of mobile broadband in our countries is to a great extent due to effective national spectrum policy, which has helped to create favourable conditions for competition and spectrum efficiency, sometimes in challenging conditions. Detailed spectrum decisions, including auction design, coverage obligations and duration of licenses should therefore still remain a national competence. In this respect, an enhanced role for the Radio Spectrum Policy Group (RSPG) is encouraged as a means to facilitate better coordination and consistent good practice in spectrum auctions across Member States. It should also be noted that Member States with non-EU neighbours may encounter difficulties when taking harmonised bands into use. In developing these harmonisation measures, those Member States should be given more flexibility in implementing them with respect to those neighbours.

Modernise access regulation

The current system of designating undertakings with SMP (Significant Market Power) and the subsequent imposition of access obligations dates from 2002 and needs comprehensive review. It has worked well when there has been an operator with significant market power in several submarkets. Today, and more so in the future, the picture will be far more complex. In some cases, the current SMP process could be seen as bureaucratic, cumbersome, resource-consuming for all parties and only partially transparent. There is a continued need for fixed access network regulation. Symmetric regulation of access to high capacity fixed networks needs to be considered to respond to markets where anti-competitive oligopolies and other such situations arise, in particular as there will often not be a second high capacity fixed access available to a building. Since the situation differs from Member State to Member State, the current access regulation should be modernised and made more flexible, making it suitable for adaptation to different market conditions. The foremost purpose of this exercise should not be deregulation as such, but a more efficient and targeted way to address anti-competitive bottlenecks that may exist in the broadband market.

Universal Service objectives and methods need to be brought up-to-date

In an ever increasing digital society, it becomes important to safeguard access to the relevant electronic communications services. Market conditions and technological developments make it necessary to explore whether the current universal service regime is the adequate solution to this challenge. However, it is necessary to secure access to broadband capable of supporting minimum services including voice, and needs of the household and business users in both urban and rural areas. Each member state should be left to decide needs, time schedule for availability, quality levels and preferred means of funding, based on national circumstances.

Publicly supported roll-out of broadband services, whether being broadband services under a USO-regime or as a general state aid scheme, should on principle be technologically neutral. The means of financing of such broadband roll out should be decided by each member state as long as state aid and other internal market rules are observed. Furthermore, each Member State should have the competence to roll back obligations that are no longer necessary.

The needs of special groups, e.g. disabled users, must still be safeguarded. Accessibility for all is likely to play an increasingly important role. Mandating specific obligations on providers of electronic communications services for users with special needs is one way to secure universal accessibility but there may be other, in a national context more appropriate, ways to secure this. One such way is to

have flexibility at a national level to substitute general law obligations for universal service obligations. The necessary level of aid to special groups of end users and how such aid is provided and financed should be determined by the individual Member States.

Make the most of the institutions

The current framework has allowed NRAs and BEREC to play key roles in ensuring a harmonized European approach to telecoms regulation, while also taking differing national circumstances into account. National regulatory authorities should continue to play an important part in the day-to-day regulation, as they are closest to and have the deepest knowledge of national market conditions. Institutional independence of NRAs (the BEREC members) should continue to be guaranteed by the framework. However, as it stands today various supervision obligations under the framework can nationally be the responsibility of non-BEREC members. While its members need to stay independent, BEREC would benefit from opening up its work to experts from other relevant national authorities. This would also allow BEREC to respond to an ever more complex and convergent sector.

The review should provide for an opportunity to reassess the EEA EFTA States' role in BEREC. The Commission is invited to work closely with the EEA EFTA States to agree the necessary adaptations to enable the 2009 Framework and the BEREC Regulation, as well as any further amendments to either that might be agreed over the coming years, to be properly incorporated into the EEA Agreement. Finally, the RSPG provides an important arena for cooperation and coordination and conducts relevant and valuable work on the common European approach. An enhancement of the role of the RSPG should therefore be considered in order to improve coordination in Europe.