# Open internet access

2013/0309(COD) - 11/09/2013 - Legislative proposal

PURPOSE: to lay down measures concerning the European single market for electronic communications.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: connected technologies account for **50% of productivity gains** in recent years across all sectors. The Commission considers that they are the key for Europe to emerge stronger from the crisis, if impediments to growth arising from ongoing fragmentation are addressed.

After over a decade of Union legislative interventions to liberalise and integrate the telecommunications market, Europe is fragmented into 28 separate national communications markets, each with a limited number of players. This patchy scenario raises barriers to entry and increases the costs for operators wanting to provide cross-border services thereby impeding their expansion. EU rules on, for example, authorisations, regulatory conditions, spectrum assignment and consumer protection are implemented in diverging ways.

As a consequence, while **no operator is present in more than half of the Member States**, most in far fewer, overall more than 200 operators serve a market of 510 million of customers.

This stands in stark contrast with the US or China who have one single market of 330 and 1400 million customers respectively, served by four to five large operators, with one legislation, one licensing system, and one spectrum policy.

The untapped potential of an EU single market in electronic communications is estimated at up to **0.9% GDP, or EUR 110 billion per year**. The benefits from a single market for business communication services alone amount to almost EUR 90 billion per year.

In the wider economy, increasing ICT investment, improving e-skills in the labour force and reforming the conditions for the Internet economy could boost GDP by an additional 5% up to 2020, and create 3.8 million jobs.

The Digital Agenda for Europe (DAE), one of the flagship initiatives of Europe 2020 Strategy, has already recognised the role of ICT and network connectivity as an indispensable basis for the development of our economy and society. The 2013 Spring **European Council** stressed the importance of the digital single market for growth and called for concrete measures, in order to establish a single market in information and communications technology (ICT) as early as possible.

IMPACT ASSESSMENT: in order to tackle these sources of fragmentation, three policy options were selected for further analysis:

- **option 1** was based on the regulatory framework for electronic communications as it stands;
- **option 2** considered a single legislative instrument (a Regulation) adjusting the regulatory framework only where necessary for a single EU market for electronic communications, based on enhanced EU coordination;

- **option 3** included the substance of the second option, but replaced the current governance structure by a single EU regulator in order to achieve full regulatory coordination.

The impact assessment report concludes that the **second option** is the best available.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union.

CONTENT: the general objective of the proposal is to **move towards a single market for electronic communications** in which:

- citizens and businesses can access electronic communications services wherever they are provided in the Union, without cross-border restrictions or unjustified additional costs;
- companies providing electronic communications networks and services can operate and provide them wherever they are established or their customers are situated in the EU.

The proposal builds upon and advances the main directives of 2002 governing the provision of electronic communications, as amended in 2009, by introducing **directly applicable legislative provisions** which shall operate in conjunction with the provisions of the directives on subjects such as authorisation, spectrum assignment and access to networks.

The main elements of this proposal are as follows:

**A single EU authorisation mechanism**: operators wanting to provide services in several Member States must currently be authorised in each of them. The proposed Regulation introduces a single EU authorisation based on a single notification system in the Member State of main establishment of the European electronic communication provider (the home country) and sets out the conditions applicable to it.

**European inputs**: mobile providers in Europe today lack the necessary predictability regarding spectrum availability across the EU and must deal with diverging assignment conditions. It is thus more difficult to plan long-term, to invest across borders and eventually to gain scale. Such a patchy situation means that device manufacturers design their products for other markets with greater scale and growth prospects. To put an end to this unsustainable situation, **harmonisation of spectrum inputs must be ensured by**:

- guaranteeing mobile operators predictable assignment conditions and coordinated timeframes to access spectrum for wireless broadband across the EU;
- harmonising ways to access European fixed networks so that providers can more easily offer their services across the single market.

The proposal also ensures **harmonised, high-quality virtual access** to fixed networks would facilitate market entry and the provision of cross-border services both to end-users and businesses, and would help drive competition and investment.

**Rights of end-users**: to guarantee an appropriate level of consumer protection across the EU, rules defining the rights of end-users are harmonised, including:

- **non-discrimination between certain domestic and intra-EU (international) communications** (unless differences are objectively justified);
- mandatory pre-contractual and contractual information;
- increased transparency and facilities to avoid "bill shocks";
- the right to terminate the contract after six months without costs (excluding the residual value of any subsidised equipment or other promotions);

- the obligation on providers to provide unhindered connection to all content, applications or services being accessed by end-users – also referred to as Net Neutrality - while regulating the use of traffic management measures by operators in respect of general internet access. At the same time, the legal framework for specialised services with enhanced quality is clarified.

**Facilitating change of provider**: the proposal provides for harmonised principles applicable to switching procedures are provided, such as cost-orientation, receiving provider-led process, automatic termination of contract with the transferring provider.

This proposal, together with the Commission Recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment, forms a set of balanced measures aimed at moving towards a Single Market in Telecommunications and fostering investment.

BUDGETARY IMPLICATION: the proposal has no implication for the EU budget.

DELEGATED ACTS: this proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.