

Brussels, 7 November 2008

Telecoms Reform: Commission presents new legislative texts to pave the way for compromise between Parliament and Council

Today, the European Commission is publishing new legislative texts on the EU Telecoms Reform package to take account of the European Parliament vote of 24 September 2008 and the ongoing discussions in the Council. In November 2007, the Commission made proposals for the reform of the EU Telecoms rules, designed to create a Single EU Telecoms Market with improved rights for consumers and businesses, more competition and investment to boost the take-up of cross-border services and wireless high-speed broadband for all ([IP/07/1677](#)). The new texts presented by the Commission today will be discussed in the Council of Telecoms Ministers on 27 November. At the heart of the compromise texts is a new, small and independent office for Europe's telecoms regulators that should help the Commission to bring about more consistency to regulatory measures on Europe's telecoms markets. The new regulatory framework is expected to become law in all 27 EU Member States by 2010.

"The European Parliament and Council agree with the Commission on the need to strengthen the EU single telecoms market. We now need to move beyond this consensus on the objectives and reach agreement also on the concrete legislative texts. With the text proposals published by the Commission today, we intend to facilitate the work of the European lawmakers. We have focussed on what is important and have left out what is not essential at this moment in time", said Viviane Reding, EU Telecoms Commissioner. "I hope this will help the French Presidency to make substantial progress on the EU Telecoms Reform in view of the next Council meeting on 27 November."

The Commission's modified proposal on the EU Telecoms Reform covers the following main points:

- The European Telecoms Authority proposed by the Commission will be substantially smaller in size and competences than initially envisaged. Following the wishes expressed by Parliament and Council, it will be a lean and efficient office that will focus on telecoms regulation and have no competences with regard to spectrum or network security. In contrast to the initial Commission proposal, the European Network and Information Security Agency ([ENISA](#)) will not be merged with the new office, but continue to exist separately¹, as it had been requested by Parliament and Council. Taking into account the recent position adopted by the European Regulators Group (ERG)², independent national regulators will form the heart of the new office, which will be called "**Body of the European Telecoms Regulators**", to underline this change of approach. The heads of the national telecoms regulators will be given a strong role in the management of the new office and in the appointment of its Managing Director, and the personal and financial independence of the "Body of the European Telecoms Regulators" will be fully ensured. The Commission also accepts the Parliament's proposal that 50% of the staff of the new office can be seconded by national regulators. Including such seconded staff, the new office should employ no more than 20 experts, according to the Commission's proposal: 10 experts recruited by the new office itself, and 10 seconded from national regulators.
- The Commission reaffirms its proposals of 13 November 2007 to entrench the **personal and financial independence of national telecoms regulators** in the reformed EU Telecoms rules, a proposal that has been endorsed already by the European Parliament.
- **More consistent remedies on the EU Telecoms Market:** The existing rules under which national regulators consult the Commission and their peers in other Member States on draft regulatory measures are strengthened to ensure a direct and efficient involvement of the new "Body of the European Telecoms Regulators". In particular national regulators may be required to amend or withdraw a draft measure which both the Commission and the new office consider to create a barrier to the single market or to be otherwise incompatible with Community law.
- The modified proposal reaffirms the power of national regulators to impose, where required to overcome persistent competition bottlenecks, the remedy of **functional separation**. This remedy would require a dominant operator to separate its network infrastructure from its service branch (without changing the ownership structure) to improve competition in the market. This remedy can only be imposed by a national regulator with the approval of the Commission which, as "guardian of the Treaty", needs to ensure that it is used in a way consistent with the principles of the EU's telecoms rules.

¹ As the mandate of ENISA will expire in March 2012, the Commission launched today a public consultation on Europe's future approach to cyber-attacks and network security. On this public consultation, which is open until 9 January 2009, see <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=InfoNIS>

² See the European Regulators Group's Dublin Statement of 10 October on the progress of the European legislative framework for electronic communications, at http://www.erg.eu.int/doc/whatsnew/erg_08_52_i_erg_statement_regarding_fr_081013.pdf.

- With regard to **radio spectrum policy**, the strategic coordination of radio spectrum policy will be strengthened at political level through a process whereby the Commission submits a multi-annual EU radio spectrum policy programme to be jointly adopted by Parliament and Council. The promotion of cultural and media policy objectives has also been strengthened in line with the European Parliament's amendments, even though the Commission has made sure in its modified proposal that this does not unduly restrict the increased flexibility in the use of spectrum and does not call into question the promotion of wireless broadband in rural and other non-metropolitan areas in line with the Commission's "broadband for all" policy. The Commission's role in coordinating conditions and procedures relating to rights to use spectrum is now clearly focused on "pan-European services" as proposed by the European Parliament. The creation of a new advisory body for radio spectrum policy, as suggested by the Parliament, has however not been retained by the Commission, in order to avoid duplication of work with the existing Radio Spectrum Policy Group.
- **Investment in new networks:** The Parliament has confirmed and reinforced the existing EU rules applying to investment in high-speed broadband networks by rejecting all calls for "regulatory holidays" and promoting efficient investment in new fibre optic networks, and the Commission welcomes these important clarifications. In line with this, the Commission will give more detailed regulatory guidance on next generation access networks in 2009 ([IP/08/1370](#)).
- **Consumer rights:** More transparency and better information, better access for users with disabilities, consumers' right to change fixed or mobile operator within 1 working day while keeping their number, as well as a more efficient 112 European emergency number, are major consumer benefits proposed by the Commission and supported strongly by the European Parliament. The Commission therefore reaffirms these consumer rights in its modified proposal. The Commission also agrees with the European Parliament about the need to ensure effective implementation of harmonised numbers of social value that begin with "116", such as the 116000 missing children hotline number. In addition, national telecoms authorities will be able to take action in order to secure minimum quality of service for internet users in order to maintain, if necessary and appropriate, "net neutrality" in Europe. The Commission's modified proposals ensure that any national requirements are set in a consistent way that does not create barriers to the internal market.
- **Amendment 138 adopted by Parliament** in its plenary vote on 24 September provides that "no restriction may be imposed on the fundamental rights and freedoms of end-users, without a prior ruling by the judicial authorities, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, save when public security is threatened where the ruling may be subsequent." As already stated on 6 October, the Commission can accept this amendment, which was voted by a nine-tenths majority in the European Parliament plenary ([MEMO/08/681](#)). The Commission considers this amendment to be an important restatement of key legal principles of the Community legal order, especially of citizens' fundamental rights. It leaves Member States sufficient scope for reaching a fair balance between different fundamental rights, in particular the right to respect for private life, the right to protection of property, the right to an effective remedy and the right to freedom of expression and information.

- **Data security:** The Commission reaffirms the need of telecoms operators to notify regulators and the public about security breaches. The Commission reaffirms that notifications must, as a matter of principle, be sent to the individuals affected by them and that the notification procedure must remain swift, simple and effective. In order to clarify, in an objective manner, the cases where such notifications will be required, the Commission will, under the new legislative text, give more detailed guidance as to the circumstances of a breach that would trigger a notification.

Background:

The European Commission proposed to reform the EU Telecoms rules on 13 November 2007 ([IP/07/1677](#)). In June this year, the Council of Telecoms Ministers expressed for the first time its views on the Commission proposals ([MEMO/08/384](#)). The European Parliament debated the reform first at Committee level ([MEMO/08/491](#)) and then on 2 September in Plenary ([MEMO/08/551](#), [MEMO/08/552](#)). The European Parliament voted, in first reading, on the whole reform package in its plenary session on 24 September ([MEMO/08/581](#)).

The Commission is entitled to modify its proposals at any time during the legislative process. This is an important part of the Commission's right of initiative and explicitly foreseen in Article 250 of the EC Treaty.

Next steps:

- Meeting of the Council of Telecoms Ministers on 27 November.
- The vote in second reading in the European Parliament is scheduled for April 2009.
- The public consultation on the future of ENISA, open until 9 January 2009, is available at: <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=InfsoNis>