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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a Regulation of the European Parliament and of the Council laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union

(Text with EEA relevance)

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2013) 0627 final – 2013/0309 (COD): 12.09.2013.

Date of the opinion of the European Economic and Social Committee: 21.01.2014

Date of the position of the European Parliament, first reading: 03.04.2014.

Date of adoption of the position of the Council: 01.10.2015.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The objective of the proposal is to move towards a single market for electronic communications. This should allow citizens and businesses to access electronic communications services wherever they are provided in the European Union, without cross-border restrictions or unjustified additional costs. It should also enable companies providing electronic communications networks and services to provide and operate these wherever they are established or their customers are situated in the EU.

The Commission proposal contained provisions to tackle particular bottlenecks hindering the development of the single market for electronic communications. It provided for, in particular: establishing a single EU authorisation for cross-border providers, coordinating spectrum assignments, harmonising access products needed to provide electronic communications, harmonising rules ensuring open internet, harmonising rules to protect end-users, measures to phase out roaming surcharges, and modifications to the governance of the Body of European Regulators for Electronic Communications.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The Council took a firm position to limit the scope of the proposal to net neutrality and roaming, and this was confirmed in the negotiations with the European Parliament. It should be noted that the Digital Single Market strategy announced by the Commission on 6 May 2015 makes clear that spectrum will be part of the telecom review to be presented in 2016. It is therefore acceptable to limit the scope of the draft regulation to roaming and net neutrality. This choice takes into account the clear indications from the the European Council conclusions of 26 June 2015, that emphasise the importance of all dimensions of the Commission's strategy and of pursuing an ambitious reform of the telecommunications framework, including coordinating spectrum more effectively.

Overall the Council's position endorses the core objectives of the Commission proposal, namely to abolish retail roaming surcharges and ensure open internet access while allowing innovative services. However, the Council makes some changes regarding how to achieve these goals. Its amendments involve defining a clear end-date for roaming surcharges while ensuring the sustainability of such abolition, in particular by appropriately timing the review of wholesale roaming markets and establishing an appropriate mechanism to address exceptional and specific cases where domestic charging models would be unsustainable even after the review of wholesale roaming markets. (These details are to be fleshed out by Commission implementing measures).

On the open internet, the Commission notes that the Council text ensures the policy objective of the draft regulation, namely enshrining the right of every European to access internet content of their choice without discrimination. At the same time the text clarifies that equal treatment of traffic allows for reasonable day-to-day traffic management based on justified objective technical requirements and independently of the traffic's origin or destination. Moreover, the text contains a ban on blocking, throttling and discrimination against specific content, services or applications, or categories thereof, with three narrowly circumscribed necessary exceptions, namely for compliance with EU or national laws or measures giving effect to such laws, for network security purposes, and for management of temporary or exceptional network congestion. .

In addition, the text establishes that services other than internet access services, which are optimised for specific content, applications or services, may be provided under certain conditions. These are that optimisation is necessary to meet the quality requirements of these content, applications or services; that they are not marketed or usable as a substitute to internet access services; that sufficient capacity is available; and that their provision is not detrimental to the quality of internet access services for end-users.

The competent regulatory authorities will have the responsibility and obligation to ensure, through monitoring and enforcement action, compliance with the rules of the Regulation and that the rights of end-users, including providers of content, services and applications, are not impaired.

This balanced approach effectively protects the quality of internet access services while not stifling innovation. Finally, the proposal establishes certain end-users' rights which are necessary to apply the provisions on roaming and net neutrality effectively.

The Commission supports these outcomes.

Following the informal tripartite discussions on 23 March 2015, 21 April 2015, 2 June 2015 and 29 June 2015, the Parliament and the Council reached provisional political agreement on the text.

This political agreement was confirmed by the Council on 8 July 2015, and on 1 October 2015 the Council adopted its first reading position.

4. CONCLUSION

As all amendments to the Commission proposal were discussed during the informal tripartite discussions, the Commission can accept the amendments that the Council adopted in its first reading position.