

Opinion of the European Economic and Social Committee on the ‘Proposal for a Decision of the European Parliament and of the Council establishing the first radio spectrum policy programme’

COM(2010) 471 final — 2010/0252 (COD)

and on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European broadband: investing in digitally driven growth’

COM(2010) 472 final

(2011/C 107/11)

Rapporteur: **Mr MCDONOGH**

On 7 October 2010 the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 114 and Article 304 the Treaty on the Functioning of the European Union, on the

Proposal for a Decision of the European Parliament and of the Council establishing the first radio spectrum policy programme

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On 20 September 2010 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – European Broadband: investing in digitally driven growth

COM(2010) 472 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 February 2011.

At its 469th plenary session, held on 16 and 17 February 2011 (meeting of 16 February 2011), the European Economic and Social Committee adopted the following opinion by 108 votes with 2 abstentions.

1. Conclusions

1.1 The Committee compliments the Commission on all three documents in this ‘Broadband Package’. They are timely, well considered and comprehensive in scope.

1.2 The Committee strongly supports the objectives of the Digital Agenda to deliver sustainable economic and social benefits from a digital single market based on fast and ultra-fast Internet, and it fully endorses the ambitious broadband target included in that flagship initiative⁽¹⁾. However, the

⁽¹⁾ COM(2010)245 final/2: By 2020, all Europeans should have access to internet of above 30 Megabits per second (Mbps) and 50 % or more of European households should have subscriptions above 100Mbps. The Digital Agenda also restated the objective endorsed by the European Council to bring basic broadband to all Europeans by 2013.

Committee believes that even more ambitious connectivity targets might need to be set in a few years time to keep Europe globally competitive⁽²⁾.

1.3 The Committee has noted with alarm that unemployment is continuing to rise across the European Union, particularly among the youth (under 25s)⁽³⁾. The Committee believes that the successful implementation of the ‘Broadband Package’ is critical to tackling unemployment by the provision of smart, sustainable and inclusive growth in Europe as envisaged by the Europe 2020 strategy.

⁽²⁾ South Korea has devised a national plan for 1,000Mbps connections to be commonplace by 2012. The government is encouraging enterprise to spend the 34 trillion Won (EUR 23bn), required to complete the scheme. By way of a comparison, that figure is roughly the same as the nation's annual education budget. (http://news.bbc.co.uk/2/hi/programmes/click_online/9093991.stm).

⁽³⁾ Eurostat news release euro indicator - 5/2011, 7 January 2011: In November 2010, the youth unemployment rate (under-25s) was 20.7 % in the **euro area** and 21.0 % in the **EU27**. In November 2009 it was 20.1 % and 20.5 % respectively.

1.4 The Committee notes with satisfaction that the regulatory principles contained in the 'Broadband Package' are consistent with the revised legislative framework for electronic Communications ⁽⁴⁾.

1.5 The Committee considers the principle of Net Neutrality ⁽⁵⁾ to be critically important to the future of Internet services in Europe. We noted the report from the Commission about the public consultation on the Open Internet and Net Neutrality ⁽⁶⁾, and we welcome the support for the principle by Vice-President Kroes ⁽⁷⁾. However, the Committee is concerned that service providers with significant market power have strong commercial incentives to act contrary to the principle of Net Neutrality and against the interests of citizens. The Committee believes that the provisions of the Telecoms Framework ⁽⁸⁾ might require further amendments to strengthen the powers of the National Regulatory Authorities (NRAs) to ensure that the Internet is kept open across Europe and that the principle of Net Neutrality is fully respected by service providers.

1.6 The Committee directs the Commission's attention to numerous previous EESC opinions which emphasised its support for the Information Society, the EU2020 strategy and the Digital Agenda, and the opinions which commented on the need for high-quality, high-speed, Internet connectivity to be available to citizens throughout the EU, and for the implementation of a balanced regulatory environment for communications services that would provide high-quality services at affordable prices ⁽⁹⁾.

1.7 Broadband Strategy

1.7.1 The Committee believes that effective implementation of the EU broadband strategy is critical to the future economic

and social wellbeing of all citizens; however, because financial circumstances will be difficult for many years to come, the Committee is concerned that achieving the broadband objectives will be a significant challenge for Europe. The Committee calls on the Council, the Commission, the Member States and the Local and Regional Authorities to do everything in their power to support the implementation of the broadband objectives in the Digital Agenda.

1.7.2 The Committee believes that universal access to high-speed broadband is key in promoting social and territorial cohesion ⁽¹⁰⁾. We welcome the plans to expand the use of the Structural and Rural Development funds to supplement the rollout of commercially viable broadband infrastructure. However, it is also critical that the benefits of this investment flow to the citizens through the provision of high-quality services and a significant reduction in costs for all end-users. The Committee also calls on Member States and Local & Regional Authorities to provide free WiFi hotspots in public areas in support of the Digital Agenda.

1.7.3 The Committee draws the attention of the Commission to the multiplier effect on the economy and quality of life from reductions in the costs of providing broadband infrastructure across Europe. We call on the Commission, the Member States and the Local and Regional Authorities to make every effort to reduce these costs.

1.7.4 While welcoming the measures to stimulate and support the investment in broadband infrastructure, the Committee would like to see all investment made in a way that strengthens competition. The Committee would be concerned if supports were implemented in a manner that was disproportionately advantageous to service providers with significant market power (SMP).

1.7.5 However, the Committee is disappointed by the slow absorption of broadband support funds to-date by Member States ⁽¹¹⁾. The planned guidance to Member States on how to speed-up the programmes and draw-down the available funds is welcome.

1.8 Radio Spectrum Policy (RSP)

1.8.1 The Committee is pleased that the RSP Programme (RSPP) will legislate to ensure that sufficient and appropriate spectrum for both the coverage and the capacity needs of wireless broadband technologies will be designated and made available to achieve the target set for 2020. And that Broadband development will be further enhanced by pro-competitive measures such as the introduction of spectrum trading and measures to prevent potential distortions when existing licences are modified.

⁽⁴⁾ Directive 2009/140/EC and Directive 2009/136/EC.

⁽⁵⁾ Net Neutrality is a principle that advocates no restrictions by Internet service providers and governments on content, sites, platforms, the kinds of equipment that may be attached, and the modes of communication allowed. If a given user pays for a certain level of Internet access, and another user pays for the same level of access, then the two users should be able to connect to each other at the subscribed level of access. Concerns have been raised about the ability of broadband providers to use their local infrastructure to block Internet applications and content (e.g., websites, services, protocols), particularly those of competitors, or to change their business models to reduce the quality and scope of access that different users enjoy. Such changes in business models could result in unfair price discrimination and service quality discrimination. The possibility of regulations designed to mandate the neutrality of the Internet has been subject to fierce debate.

⁽⁶⁾ http://ec.europa.eu/information_society/policy/ecom/doc/library/public_consult/net_neutrality/report.pdf

⁽⁷⁾ SPEECH/10/643 at the European Commission and European Parliament Summit on 'The Open Internet and Net Neutrality in Europe'.

⁽⁸⁾ Directive 2009/140/EC and Directive 2009/136/EC.

⁽⁹⁾ See OJ C 120, 20.5.2005, p. 22; OJ C 28, 3.2.2006, p. 88; OJ C 318, 23.12.2006, p. 222; OJ C 97, 28.4.2007, p. 27; OJ C 324, 30.12.2006, p. 42; OJ C 151, 17.6.2008 p. 25; OJ C 44, 16.2.2008, p. 50; OJ C 224, 30.8.2008, p. 50; OJ C 77 31.3.2009, p. 60; OJ C 175, 28.7.2009, p. 87; OJ C 175, 28.7.2009, p. 8; OJ C 182, 4.8.2009, p. 56; OJ C 218, 11.9.2009, p. 41; OJ C 317, 23.12.2009, p. 103; OJ C 255, 22.9.2010, p. 116; OJ C 44, 11.2.2011, p. 178; OJ C 54, 19.02.2011, p. 58.

⁽¹⁰⁾ OJ C 175, 28.7.2009, p. 8.

⁽¹¹⁾ Only 18 % of the planned expenditure for 2007-2013 has been committed by September 2009.

1.8.2 The Committee is also pleased to see that the RSPP explicitly targets the 800 MHz digital dividend band to be made available to provide broadband coverage, especially in rural areas, by 2013. The Committee calls on Member States to make this spectrum available without delay.

1.8.3 The Committee also notes the plans to use satellite broadband at affordable prices to reach remote areas that can not be served by terrestrial means.

1.8.4 The Committee joins with the Commission in calling on Member States to help achieve the broadband coverage target rapidly by immediately adopting policies to:

- Make available sufficiently large bands of spectrum ⁽¹²⁾;
- Award rights of use to spectrum quickly;
- Increase flexibility and competition;
- Allow secondary trading of spectrum to adapt to market developments.

1.9 Next Generation Access (NGA) Networks

1.9.1 NGA networks are hugely expensive to provide, with substantial risk for investors. We note that the proposals take cognizance of these risks and make allowance for the inclusion of a risk premium in regulated access costs.

1.9.2 The Committee likes the creative approach taken by the Commission in providing strong support for co-investment arrangements, which can reduce the level of risk taken by each individual company.

1.9.3 The Committee recognises that the successful enforcement of the access regulations for NGA networks will depend heavily on implementation by NRAs in each Member State. The Committee calls on the Commission and the Member States to provide every support to the NRAs and the Body of European Regulators for Electronic Communications (BEREC), so that they can succeed in their difficult task.

2. Recommendations

2.1 To ensure the continuation of the Open Internet and the protection of Net Neutrality, the Commission and NRAs should

⁽¹²⁾ It is essential for designated spectrum to be made available *effectively*; this must be done both by opening new spectrum (such as 2.6 GHz as well as 800 MHz) and by liberalising the use of existing spectrum (e.g. the 900/1 800 MHz band — see the revised GSM Directive and the 900/1 800 MHz Decision).

monitor closely the techniques used by operators to manage data flows over their networks, and the potential impact these may have on Internet users' experience.

2.2 In the light of experience, the Commission should consider the adequacy of the Telecoms Framework to deal with the challenges posed by the threat from service providers to the Open Internet and Net Neutrality.

2.3 National Broadband Plans should be updated soon to include project plans for the provision of fast and ultra-fast broadband.

2.4 National Broadband Plans should follow standard best practice for project plans, with details of required resources associated with objectives and milestone dates.

2.5 The EU should periodically review the National Broadband Plans to question resource gaps and other plan issues.

2.6 The National Broadband Plans should include details of all direct public authority schemes and investments in infrastructure and civil works that would facilitate the achievement of the Digital Agenda targets.

2.7 The Committee asks the Commission to pay special attention to the effect on competition in the Member States in order to control how the broadband network cost reductions are implemented.

2.8 Through whatever mechanisms are appropriate, the Commission should ensure that radio spectrum pricing is always at an appropriate level so that the provision of competitive services is economically viable.

2.9 To stimulate the digital economy, Member States and regional authorities should promote free WiFi hotspots in public areas.

2.10 When pursuing co-investment and Public Private Partnership (PPP) infrastructure projects, Member States and Regional Authorities must be careful not to hurt healthy competition in the market ⁽¹³⁾.

2.11 As radio technology and services are developed, it is important that public health concerns regarding the potentially hazardous effects of electromagnetic fields are paramount and that the public is reassured by the measures taken to monitor these effects.

⁽¹³⁾ See OJ C 48, 15.2.2011, p. 72.

2.12 The Committee believes that when authorising the roll-out of wireless networks, local authorities need to enforce environmental and health regulations efficiently, so that services, which are in full-compliance with regulations, can be provided quickly and cost effectively.

2.13 To ensure that the NGA regulations are implemented equally across the EU, and to identify any possible resource issues, the Commission should propose that the NRAs submit to a periodic audit. Perhaps this audit could be by way of peer-review, under the auspice of the BEREC.

2.14 The EU should consider providing funds to the BEREC for the following purposes:

- to create a pool of experts that could supplement NRA expertise on an ad hoc basis;
- to fund a professional development programme for NRA staff;
- to fund an audit function and best practice unit that would help ensure uniform excellence in the implementation of regulations across Europe.

3. Background

3.1 The development of high-speed communications networks today is having the same revolutionary impact as the development of electricity and transportation networks had a century ago. Although Europe is one of the most highly networked regions in the world⁽¹⁴⁾, many parts of the Union still do not have basic Internet services and even in urban areas high-speed connections are rare.

3.2 Citizens and businesses around the world are increasingly demanding much faster NGA networks. In this respect, Europe is still lagging behind some of our main international counterparts: 30 % of Europeans have still never used the Internet and Europe has only 1 % penetration of fibre-based high-speed networks whereas Japan is at 12 % and South Korea is at 15 %.

3.3 Ambitious broadband connectivity objectives for Europe have been set in the Digital Agenda⁽¹⁵⁾ - one of the flagship initiatives of the Europe 2020 strategy⁽¹⁶⁾ for a smart, sustainable and inclusive economy: By 2020, all Europeans should have access to Internet of above 30 Megabits per second (Mbps) and 50 % or more of European households should have subscriptions above 100Mbps. The Digital Agenda also restated the objective endorsed by the European

Council to bring basic broadband to all Europeans by 2013. To reach these ambitious objectives it is necessary to develop a comprehensive policy, based on a mix of technologies, and to carefully monitor progress over time⁽¹⁷⁾.

3.4 The 'Broadband Package' under consideration in this opinion comprises of documents from the Commission which are drafted to give effect to the connectivity objectives in the Digital Agenda. They comprise:

- a set of proposals to address the planning and financing requirements to meet the connectivity objectives – COM(2010) 472 'European Broadband: investing in digitally driven growth';
- a legislative proposal to establish the first radio spectrum policy programme, which is necessary to regulate and harmonise the wireless infrastructure needed to support the Europe 2020 objectives – COM(2010) 471 'Proposal for a Decision of the European Parliament and of the Council establishing the first Radio Spectrum Policy Programme';
- a recommendation on how NRAs across the EU should regulate access to the NGAs required to provide the fast and ultrafast broadband connectivity envisaged by the Digital Agenda – C(2010) 6223/3.

4. Comments

4.1 Broadband Strategy

4.1.1 The ambitions of the EU2020 strategy and the Digital Agenda objectives will only be realised if Member States develop and implement effective national broadband plans. Although all Member States now have a broadband strategy, this needs to be updated soon to include plans for ultra-high speed networks, with concrete targets and identified implementation measures.

4.1.2 Planning and execution of the national broadband strategies are critical to success. It is also important that Member States build-out the NGA networks in such a manner that no region of the EU gets left behind, otherwise the digital divide will begin to open-up again with economic development retarded in disadvantaged regions which cannot participate in the emerging digital economy.

4.1.3 It would also help to assess the viability of National Broadband Plans if they identified the resources needed for execution (human and other), as well as the key milestones for projects. These project-plans then need to be monitored to track execution and be kept up-to-date.

⁽¹⁴⁾ World Economic Forum – Global Information Technology Report 2009-2010, <http://www.networkedreadiness.com/gitr/>.

⁽¹⁵⁾ A Digital Agenda for Europe - COM(2010) 245 final/2.

⁽¹⁶⁾ EUROPE 2020, A strategy for smart, sustainable and inclusive growth - COM(2010) 2020 final.

⁽¹⁷⁾ For instance, it could be expected that, to be on-track for the 100Mbps target, in 2015 around 15 % of European households should have subscriptions with such speeds.

4.1.4 The quality of networks, their cost of provision, and competitive end-user prices are important management criteria in build-out programmes. As up to 80 % of the cost of network infrastructure is due to civil engineering works, it is vital that national and local authorities work to significantly reduce costs by efficient coordination of infrastructure projects.

4.1.5 Good information facilitates good planning and management. The National Broadband Plans should include details of all direct public authority schemes and investments planned, including civil works, that would facilitate infrastructure build-out.

4.1.6 Unless NRAs manage the problem skilfully, the dominant position of service providers with SMP could hurt the development of competition and the rollout of infrastructure.

4.1.7 Cooperation and sharing by private infrastructure providers is essential for efficiency, speed of implementation, environmental sustainability and the availability of competitive prices for end-users.

4.1.8 Unfortunately, competitors find it difficult to cooperate unless they are obliged to do so. The Committee is pleased to see that the 'Broadband Package' will require private infrastructure providers to publish good information on existing and planned infrastructure, so that good planning and efficient use of resources is facilitated.

4.1.9 Communications services costs and price transparency is critical to ensure that the citizens benefit from the investment by the EU, Member States and Regional Authorities in broadband infrastructure.

4.1.10 The Committee is impressed by the extent and variety of funding supports available to help achieve the universal broadband objectives in the Digital Agenda. The committee also welcomes the plans for new financing instruments to be included under the next multi-annual Financial Framework.

4.2 Radio Spectrum Policy (RSP)

4.2.1 The RSP Programme (RSPP) is so important because of the pervasive role that wireless communications will play in the

smart, sustainable and inclusive economy envisioned by the Europe 2020 strategy. Besides human communications and Internet use, wireless is a fundamental technology to enabling future applications across the whole spectrum of society - from smart metering of energy, to Intelligent Transport Systems and the Internet of Things.

4.2.2 In particular, the Committee notes the importance of the RSSP to the implementation of smart grids across Europe, which will be essential to the achievement of sustainable growth.

4.2.3 The Committee notes that the highest growth rate in the EU broadband market is in mobile broadband, where take-up more than doubled in the last year. Wireless technologies are therefore increasingly important in meeting the need for broadband communications services.

4.2.4 Electromagnetic fields are potentially hazardous to citizens' well-being. The Committee is pleased that the RSSP recognises the need for constant monitoring of the effects of spectrum use on health.

4.3 Next Generation Access (NGA) Networks

4.3.1 The regulated access proposals for the NGA networks reflect years of learning by the Commission about how to get the balance right between encouraging network investment and protecting the competitive environment. The proposals also provide the communications industry with much-needed clarity around the regulations that will impact their investment decisions and plans for NGA networks.

4.3.2 Some NRAs might not have the expertise nor the capacity to cope with the work to be done. Perhaps NRAs could be supported in their complex task by a centrally resourced pool of experts, maybe organised and administered through BEREC.

4.3.3 The expertise and capacity of NRAs could be enhanced through BEREC if the organisation provided a professional development programme for its members and support around implementing best practices.

Brussels, 16 February 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
