

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

Ref. 1126967

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SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

EEA EFTA Comment

on the proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent - COM(2013) 627

1. GENERAL REMARKS

1. The proposal¹ for new measures on the European single market for electronic communications covers issues of great importance for Europe as a whole, as well as for each of the 30 nations comprising the EEA. The EEA EFTA States share the objectives expressed in the European Commission's draft Regulation for a Connected Continent. In particular the EEA EFTA States support the promotion of the Single Market for the benefit of European consumers and businesses.
2. Some of the issues raised in the proposal are rather complex and challenging, both for market players and national authorities. The EEA EFTA States are of the view that the procedure leading up to the presentation of the proposal has not been sufficiently transparent, and that it could benefit from more extensive consultation. The ambitious time-frame for the processing of the proposal is challenging as the issues at hand are too important to be concluded with great haste; careful consideration of the issues is therefore not compatible with the proposed timetable. It might be more appropriate to consider the proposals in the context of the forthcoming review of the regulatory framework for electronic communications to ensure that the new legislation fulfils the foreseen objectives.

2. EEA EFTA NRAS PARTICIPATION IN BEREC

3. With reference to the views of BEREC on the proposed Regulation², stating that there is a potentially un-harmonised implementation of the sector regulatory framework

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0627:FIN:EN:PDF>

across the EEA, the EEA EFTA States would like to point out that the proposal gives insufficient consideration to this fact.

4. To ensure harmonised implementation of the sector regulatory framework across the EEA there is an urgent need to amend Article 4 of Regulation (EC) No 1211/2009³ on BEREC.
5. Article 4(3) states that, “NRAs from European Economic Area (EEA) States and from those States that are candidates for accession to the European Union shall have observer status...” The justifications to amend this article are firstly; that the reference to the EEA States includes both the EU Member States and the EEA EFTA States and therefore must clearly be an oversight, and secondly, as the EEA EFTA States are already part of the Single Market and expected to implement the framework to ensure the goals of the Single Market, an observer status in BEREC is not sufficient to ensure a harmonised market throughout the EEA. The word “observer” obstructed the 2009 review of the regulatory framework from being incorporated into the EEA Agreement and hindered the EEA EFTA States from implementing the revised framework into their national legislation.
6. In order to address these concerns, the EEA EFTA States would like to urge the legislator to amend Article 4(3), (4) and (5) of Regulation (EC) No 1211/2009 on BEREC and replace the current text with the proposed new text in Annex 1.

3. SINGLE EU NOTIFICATION AND AUTHORISATION PROCEDURES

7. The new approach for single EU notification and authorisation procedures might be considered too bureaucratic and time-consuming compared to the simplified notification procedure already in place in several EU Member States. It is not clear that the proposed authorisation regime will reduce the administrative burden for European operators and NRAs.

4. VETO POWER ON REMEDIES

8. The EEA EFTA States are not in-line with the proposed veto power to the Commission on remedies. This has already been considered twice, in connection with the eCom package in 2002 and in connection with the telecom package in 2009. On both occasions it was justified that the final power on remedies should stay with the national regulatory authority in order to ensure that the remedy chosen, fixes the problem at hand. An unwarranted veto, at EU level, might have a serious impact on the market and might establish obstacles for markets with an advanced use of electronic communications.

² http://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/?doc=2922

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0001:0010:EN:PDF>

5. SPECTRUM

9. The EEA EFTA States share the view that the assignment of harmonised spectrum for wireless broadband communications within the EEA could be better coordinated and believe that the right way forward would be to build and improve upon the existing mechanisms and procedures in the current framework.
10. The EEA EFTA States question whether the detailed measures of the proposal are proportionate and to what extent such synchronisation would be necessary in order to achieve the intended gain. The EEA EFTA States would like to advise against synchronising the assignment procedures. Operators may have to cope with multiple assignment procedures simultaneously, all of which are likely to be auctions. This is likely to increase costs and create practical difficulties for operators having interest in many EEA EFTA countries.
11. With respect to the proposed procedures in Article 13, the EEA EFTA States question whether this arrangement would ensure a more expedient availability of spectrum across Europe. It is difficult to see how this rather cumbersome and bureaucratic procedure would cause any significant betterment.
12. For the EEA EFTA States sharing a border with a non-EEA country (e.g. Russia), and with respect to the proposed Article 16, it would be appropriate to clearly point out the existing frequency border coordination challenges and consequential possible limitations in applying harmonised rules for spectrum use within the EEA due to unavoidable restrictions in coordination agreements.

6. NET NEUTRALITY

13. The EEA EFTA States welcome the Commission's acknowledgment of a service architecture including the two service categories: internet access services and specialised services. The EEA EFTA States find it important that these service categories are clearly separated to avoid degradation of the internet access service and therefore suggest that the definition of specialised services is supplemented with a reference to their provision within closed networks.
14. The EEA EFTA States also applaud the freedom to provide and utilize open internet access and reasonable traffic management. However, more emphasis should be put on application-agnosticism. This would be particularly useful in order to assess practices of congestion management. Also, in Article 23(5)(d) of the proposal, referring to "temporary or exceptional network congestion", the word "temporary" should be deleted as it would encourage providers to apply traffic management instead of investing in network capacity.

7. INTERNATIONAL ROAMING

15. The EEA EFTA States support further reductions in international roaming prices and understand the Commission's eagerness to see prices for international roaming approach the level of national ones. However, the proposed amendments to the Roaming III Regulation undermine the investment currently being made by operators across Europe to meet the requirements following the before mentioned regulation creating unnecessary regulatory uncertainty.
16. In addition, the introduction of the concept of bilateral and multilateral roaming agreements will most likely benefit the larger MNOs with existing pan-European networks to the detriment of smaller operators and smaller countries, resulting in reduced competitive pressure against the intention behind the provisions of the Roaming III Regulation. The existing legal framework should be given the opportunity to show its merits before additional changes are proposed.
17. A report on the functioning of the Roaming III Regulation is planned for the summer of 2016. Any further measures to address roaming prices should be considered then.

8. CONSUMER PROTECTION

18. The EEA EFTA States support the Commission's intention to establish a consumer friendly internal market for electronic communications services. However, it is unfortunate that the Commission has put forward a draft regulation entailing total harmonisation of end-user rights contrary to the current regulatory framework, according to which Member States may apply a stricter regime for the protection of consumers.

Proposal for amendment

Proposal concerned:

Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012, COM(2013) 627 final

Text proposed by the Commission

Article 38, paragraph 2

In Article 4, paragraphs 4 and 5 are deleted

Proposed new text

Article 38, paragraph 2

Article 4 is amended as follows:

(a) Paragraphs 3 and 4 are replaced by the following:

‘3. NRAs from those States that are candidates for accession to the European Union shall have observer status and shall be represented at an appropriate level. BEREC may invite other experts and observers to attend its meetings.

4. BEREC shall be open to the participation of countries which have concluded agreements with the European Union by virtue of which they have adopted and apply Union legislation in the field covered by this Regulation.

Arrangements shall be made under the relevant provisions of those agreements, specifying in particular the nature, extent and manner in which these countries will participate in BEREC’s work, including provisions relating to financial contributions and staff.’

(b) Paragraph 5 is deleted.

Justification

The proposed new text of Art 4(4) of Regulation (EC) No 1211/2009 is based on the standard provision on participation contained in a number of EU acts, such as Art 24 of Regulation (EC) No 460/2004 and Art 49 of Regulation (EC) No 178/2002. The current Art 4(3) of Regulation (EC) No 1211/2009 is not in line with this practice, and has prevented the EEA EFTA States from taking part in BEREC, to the detriment of the homogeneity of the internal market. The new text reflects that the EEA EFTA States are an integral part of the internal market and that, according to the EEA Agreement, the terms of their participation are to be negotiated and set out therein. Given their full financial contribution, the EEA EFTA States normally have full participation rights in EU bodies, except for the right to vote.