



Council of the
European Union

Brussels, 14 November 2014

**Interinstitutional File:
2013/0309 (COD)**

**15541/14
ADD 1**

LIMITE

**TELECOM 207
COMPET 625
MI 886
CONSOM 241
CODEC 2252**

ADDENDUM TO THE NOTE

from: Presidency

to: Delegations

No. prev. doc.: 13383/14 TELECOM 164 COMPET 525 MI 677 CONSOM 173 CODEC 1852

No. Cion prop.: 13555/13 TELECOM 232 COMPET 646 MI 753 CONSOM 161 CODEC 2000

Subject: 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
- General approach

Delegations will find attached the legislative texts on Roaming, Spectrum and Open Internet/Net Neutrality.

PRESIDENCY PROPOSED REVISED TEXT ON ROAMING**Explanatory statement**

The discussion held during Council Working Group meetings and in the context of the joint technical meeting with BEREC held on 11 November 2014 showed that while the choice concerning the introduction of "roam like at home" is essentially a political choice that the co-legislators need to take and many delegations seem to accept, also in view of its broader effects on the digital economy in the whole Union, safeguards are needed that can limit possible distortions on national markets that could follow the introduction of such a principle, as feared by several delegations. In particular, until wholesale market conditions change either through normal market development or through a regulatory review of maximum charges, the fair use principle should be applied flexibly in order to ensure the sustainability of roaming services provided at domestic rates. The revised Presidency text takes stock of discussions and of concerns expressed by the Member States on the following points:

- The Presidency acknowledges the need to include a specific date for RLAH, as also supported by some delegations, although it does not consider necessary to define a precise date ahead of negotiation with the European Parliament. Being fully aware of the concerns expressed by a number of Member States on the rapid introduction of RLAH at the current level of wholesale prices the text accompanies the RLAH with a flexible fair use policy which aims at mitigating the risks arising from relatively low domestic prices vis-à-vis current wholesale charges. As an additional safeguard, the revised text, in line with the current roaming Regulation, confirms the possibility for consumers to opt out from the default regime, with strengthened transparency requirements as to the opted regime; in this case it is up to the operators to decide what alternative products to propose, in terms of tariffs, quantities and geographic scope, although the NRA remains empowered to act in case of abuses..

- With regard to fair use limits, in line with comments received by some Member States , the legislative text sets out general, qualitative criteria, to be further developed in BEREC guidelines and to be applied by operators and NRAs in the light of national circumstances. These criteria include national specificities with regard to domestic price levels, volumes and sustainability in view of wholesale prices, and that may be further specified by National Regulatory Authorities with minimum fair use criteria and, eventually, specific allowances. This approach allows the fair use allowance to be revised in the light of changes in market conditions, in particular changes in wholesale market functioning, without having to reopen this part of the legislation.
- A Commission implementing act with detailed rules on fair use criteria is envisaged in the event of significant divergences experienced throughout the Union. A number of delegations have suggested Commission implementing acts in order to enhance legal certainty .
- For consumption beyond the fair use limits, the existing safeguards in the form of eurotariff will continue to apply .
- The opt-out provision for consumers expressly mentions the possibility of a per diem charge for significantly greater roaming consumption than under the fair-use clause: a current practice in some countries which should not be excluded. Article 6a(2) is adapted in this regard.
- In light of the complex issues raised regarding revision of wholesale regulated tariffs, the Presidency has maintained the current review date (1 July 2016); in this context the features of the whole roaming market will be further analysed. In reply to calls for additional safeguards against permanent roaming, relevant text has been introduced in Article 19(2) on wholesale review with a view to take also into account the visited market distortion risk in certain scenarios.

Article 37 – Amendments to Regulation (EU) No 531/2012

(1) In Article 1(1), the following third subparagraph is inserted:

'This Regulation shall apply to roaming services provided in the Union to end users whose domestic provider is a provider of electronic communications to the public in a Member State'.

3(a) In article 4, paragraph 1, the first subparagraph is replaced by the following:

'1. Subject to the subparagraph below, domestic providers shall enable their customers to access regulated voice, SMS and data roaming services, provided as a bundle by any alternative roaming provider.

The obligation in the subparagraph above shall not apply to roaming providers that provide regulated retail roaming services in accordance with Article 6a below.'

(4a) The following articles are inserted:

'Article 6a

Abolition of retail roaming charges

1. With effect from [xx.xx.xxxx], and subject to Article 6b, roaming providers shall not levy any surcharge in comparison to the charges for mobile communications services at domestic level on roaming customers in any Member States for any regulated roaming call made or received, for any regulated roaming SMS/MMS message sent and for any regulated data roaming services used, nor any general charge to enable the terminal equipment or service to be used abroad.
2. The first paragraph shall apply by default to any tariff plan roaming providers make available at domestic level. The maximum charges set in Articles 8, 10 and 13 shall apply by default to regulated roaming services in excess of any fair use limit applied in accordance with Article 6b.

Roaming providers shall remind any of their roaming customers of the conditions applicable to a roaming tariff or package.

Individual end-users served by a roaming provider may make a deliberate choice of a specific roaming tariff or package by virtue of which they benefit from a different tariff for regulated roaming service than they would have been accorded in the absence of such a choice. Such specific offers may include a package of regulated roaming services significantly exceeding any fair use allowance established in accordance with Article 6b in return for a reasonable per diem charge.. The roaming provider shall remind those end users of the nature of the roaming advantages which would thereby be lost. National regulatory authorities shall monitor in particular whether roaming providers availing of this Article engage in business practices which would amount to circumvention of the default regime.

Article 6b

Fair usage

1. By way of derogation from Article 6a, and to prevent anomalous or abusive usage of retail roaming services, roaming providers may apply a "fair use clause" to the consumption of regulated retail roaming services provided at the applicable domestic price level, by reference to fair use criteria. These criteria shall be applied in such a way that consumers are in a position to replicate, to the extent possible, the typical consumption pattern associated with their respective domestic retail package while periodically travelling within the Union, taking into account, inter alia, domestic price levels and the need to avoid market distortions in domestic mobile markets.
2. By [6 months following entry into force of this Regulation] BEREC shall, after consulting stakeholders and in close cooperation with the Commission, lay down guidelines for the application of fair use criteria in retail contracts provided by roaming providers. BEREC may have regard to factors such as the evolution of pricing and consumption patterns in the Member States, any observable effect of roaming at domestic service rates on the evolution of such rates, and to the evolution of actual wholesale roaming rates for unbalanced traffic between roaming providers. In addition, BEREC's guidelines may also have regard to relevant objective variations between Member States or between roaming providers in respect of factors such as domestic price levels, typical volumes included in retail packages, the sustainability of roaming services for certain categories of roaming providers in light of the wholesale rates effectively paid for unbalanced roaming traffic, or the average period during which customers travel within the Union.

BEREC may provide guidance on both the minimum number of units of consumption of regulated roaming services and the minimum period of travel to be included in roaming providers' fair use allowances.

BEREC shall revise the guidelines laid down in accordance with this paragraph every [two] years, and shall in any event revise such guidelines within 6 months of entry into force of any amendments to the provisions of this Regulation relative to maximum wholesale roaming charges.

3. In accordance with Article 20 of Directive 2002/22/EC, roaming providers shall publish and include in their contracts detailed quantified information on how any fair use criteria are applied, by reference to the main pricing or volume of the retail package in question.
4. The competent national regulatory authority shall monitor and supervise the application of fair use criteria as defined in accordance with paragraphs 1, 3 and 5 and shall ensure that unreasonable terms are not applied.

Where the competent national authority observes that there is widespread application by roaming operators established in their Member State of unreasonable terms regarding fair use, having regard to the BEREC guidelines and to any Commission implementing act, it may determine binding minimum fair use allowances. The competent national authority shall review any such minimum fair use allowances at least every [two] years.

Such binding minimum fair use allowances shall be understood as the minimum amount of voice, SMS and data roaming services that roaming providers shall offer to their customers without levying any surcharge in comparison to the charges for mobile communications services at domestic level. Roaming providers shall be free to exceed this minimum allowance and to offer their customers a larger amount of voice, SMS and data roaming services without any surcharge.

5. Where the implementation of fair use criteria throughout the Union reveals significant divergences in practice from the BEREC guidelines referred to in paragraph 2, which are not justified by objective differences in the circumstances of different Member States or categories of roaming providers, the Commission may adopt implementing acts laying down detailed rules on the application of fair use criteria by roaming providers.

(5) In Article 8, paragraph 2 is amended as follows

(a) the first subparagraph is replaced by the following

'2. With effect from 1 July 2014, the retail charge (excluding VAT) for a euro-voice tariff which a roaming provider may levy on its roaming customer for the provision of a regulated roaming call may vary for any roaming call but shall not exceed EUR 0,19 for any call made and EUR 0,05 for any calls received. The maximum charges applicable as of 1 July 2014 shall expire [xx.xx.xxxx] save for regulated roaming calls in excess of any fair use limit applied in accordance with Article 6b.'

(b) the third subparagraph is replaced by the following:

'Every roaming provider shall charge its roaming customers for the provision of any regulated roaming call to which a euro-voice tariff applies on a per-second basis.'

(5a) In Article 10, paragraph 2 is replaced by the following:

'2. With effect from 1 July 2014, the retail charge (excluding VAT) for a euro-SMS tariff which a roaming provider may levy on its roaming customer for a regulated roaming SMS message sent by that roaming customer may vary for any regulated roaming SMS message but shall not exceed EUR 0,06. The maximum charges applicable as of 1 July 2014 shall expire [xx.xx.xxxx] save for regulated roaming SMS messages in excess of any fair use limit applied in accordance with Article 6b.'

(5b) In Article 13, paragraph 2, the first subparagraph is replaced by the following:

'2. With effect from 1 July 2014, the retail charge (excluding VAT) of a euro-data tariff which a roaming provider may levy on its roaming customer for the provision of a regulated data roaming service shall not exceed EUR 0,20 per megabyte used on 1 July 2014. The maximum charges applicable as of 1 July 2014 shall expire [xx.xx.xxxx] save for regulated data roaming services in excess of any fair use limit applied in accordance with Article 6b.'

6a) Article 14 is amended as follows

Article 14 - Transparency of retail charges for roaming calls and SMS messages

1. To alert roaming customers to the fact that they may be subject to roaming charges when making or receiving a call or when sending an SMS message, each roaming provider shall, except when the customer has notified the roaming provider that he does not require this service, provide the customer, automatically by means of a Message Service, without undue delay and free of charge, when he enters a Member State other than that of his domestic provider, with basic personalised pricing information on the roaming charges (including VAT) that apply to the making and receiving of calls and to the sending of SMS messages by that customer in the visited Member State.

That basic personalised pricing information shall include the maximum charges (in the currency of the home bill provided by the customer's domestic provider) to which the customer may be subject under his tariff scheme for:

- (a) making regulated roaming calls within the visited Member State and back to the Member State of his domestic provider, as well as for regulated roaming calls received; and
- (b) sending regulated roaming SMS messages while in the visited Member State.

It shall also include the free-of-charge number referred to in paragraph 2 for obtaining more detailed information and information on the possibility of accessing emergency services by dialling the European emergency number 112 free of charge.

On the occasion of each message, a customer shall have the opportunity to give notice to the roaming provider, free of charge and in an easy manner, that he does not require the automatic Message Service. A customer who has given notice that he does not require the automatic Message Service shall have the right at any time and free of charge to require the roaming provider to provide the service again.

Roaming providers shall provide blind or partially-sighted customers with the basic personalised pricing information referred to in the first subparagraph automatically, by voice call, free of charge, if they so request.

The first, second, fourth and fifth subparagraphs shall also apply to voice and SMS roaming services used by roaming customers travelling outside the Union and provided by a roaming provider. With effect from [xx.xx.xxxx] the first, second, fourth and fifth subparagraphs shall apply to the consumption of regulated roaming services within the EU in cases where the applicable domestic service rate is limited by reference to a fair use criterion in accordance with Article 6b.

2. In addition to paragraph 1, customers shall have the right to request and receive, free of charge, and irrespective of their location within the Union, more detailed personalised pricing information on the roaming charges that apply in the visited network to voice calls and SMS, and information on the transparency measures applicable by virtue of this Regulation, by means of a mobile voice call or by SMS. Such a request shall be to a free-of-charge number designated for this purpose by the roaming provider. Obligations provided for in paragraph 1 shall not apply to devices which do not support SMS functionality.
3. Roaming providers shall provide all users with full information on applicable roaming charges, in particular on the euro-voice tariff and the euro-SMS tariff, when subscriptions are taken out. They shall also provide their roaming customers with updates on applicable roaming charges without undue delay each time there is a change in these charges.
Roaming providers shall take the necessary steps to secure awareness by all their roaming customers of the availability of the euro-voice tariff and the euro-SMS tariff. They shall in particular communicate to all roaming customers the conditions relating to the euro-voice tariff and the conditions relating to the euro-SMS tariff, in each case in a clear and unbiased manner. They shall send a reminder at reasonable intervals thereafter to all customers who have opted for another tariff.
The information provided shall be sufficiently detailed for customers to judge whether or not it is beneficial for them to switch to a Eurotariff.
4. Roaming providers shall make available information to their customers on how to avoid inadvertent roaming in border regions. Roaming providers shall take reasonable steps to protect their customers from paying roaming charges for inadvertently accessed roaming services while situated in their home Member State.

6(a) Article 14, paragraph 3:

With effect from [xx.xx.xxxx] paragraph 3 of Article 14 shall be deleted

(7a) Article 15 is amended as follows:

Article 15 - Transparency and safeguard mechanisms for retail data roaming services

1. Roaming providers shall ensure that their roaming customers, both before and after the conclusion of a contract, are kept adequately informed of the charges which apply to their use of regulated data roaming services, in ways which facilitate customers' understanding of the financial consequences of such use and permit them to monitor and control their expenditure on regulated data roaming services in accordance with paragraphs 2 and 3.

Where appropriate, roaming providers shall inform their customers, before the conclusion of a contract and on a regular basis thereafter, of the risk of automatic and uncontrolled data roaming connection and download. Furthermore, roaming providers shall notify to their customers, free of charge and in a clear and easily understandable manner, how to switch off these automatic data roaming connections in order to avoid uncontrolled consumption of data roaming services.

2. An automatic message from the roaming provider shall inform the roaming customer that they are using data roaming services and provide basic personalised tariff information on the charges (in the currency of the home bill provided by the customer's domestic provider), expressed in price per megabyte, applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except where the customer has notified the roaming provider that he does not require that information.

Such basic personalised tariff information shall be delivered to the roaming customer's mobile device, for example by an SMS message, an e-mail or a pop-up window on the mobile device, every time the roaming customer enters a Member State other than that of his domestic provider and initiates for the first time a data roaming service in that particular Member State. It shall be provided free of charge at the moment the roaming customer initiates a regulated data roaming service, by an appropriate means adapted to facilitate its receipt and easy comprehension.

A customer who has notified his roaming provider that he does not require the automatic tariff information shall have the right at any time and free of charge to require the roaming provider to provide this service again.

3. Each roaming provider shall grant to all their roaming customers and shall inform them about the opportunity to opt deliberately and free of charge for a facility which provides information on the accumulated consumption expressed in volume or in the currency in which the roaming customer is billed for regulated data roaming services and which guarantees that, without the customer's explicit consent, the accumulated expenditure for regulated data roaming services over a specified period of use, excluding MMS billed on a per-unit basis, does not exceed a specified financial limit.

To this end, the roaming provider shall make available one or more maximum financial limits for specified periods of use and shall inform the customer in advance of the corresponding volume amounts. One of those limits (the default financial limit) shall be close to, but not exceed, EUR 50 of outstanding charges per monthly billing period (excluding VAT).

Alternatively, the roaming provider may establish limits expressed in volume, provided that the customer is informed in advance of the corresponding financial amounts. One of those limits (the default volume limit) shall have a corresponding financial amount not exceeding EUR 50 of outstanding charges per monthly billing period (excluding VAT).

In addition, the roaming provider may offer to its roaming customers other limits with different, that is, higher or lower, maximum monthly financial limits.

The default limits referred to in the second and third subparagraphs shall be applicable to all customers who have not made a deliberate choice to opt for another limit.

Each roaming provider shall also ensure that an appropriate notification is sent to the roaming customer's mobile device, for example by an SMS message, an e-mail or a pop-up window on the computer, when the data roaming services have reached 80 % of the agreed financial or volume limit. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the provider to provide the service again.

When the financial or volume limit would otherwise be exceeded, a notification shall be sent to the roaming customer's mobile device. That notification shall indicate the financial value of the limit that has been reached, the procedure to be followed if the customer wishes to continue provision of those services and the cost associated (on a per megabyte basis) with each additional unit to be consumed. If the roaming customer does not respond as prompted in the notification received, the roaming provider shall immediately cease to provide and to charge the roaming customer for regulated data roaming services, unless and until the roaming customer requests the continued or renewed provision of those services.

Whenever a roaming customer requests to opt for or to remove a financial or volume limit facility, the change shall be made within one working day of receipt of the request, shall be free of charge, and shall not entail conditions or restrictions pertaining to other elements of the subscription.

4. Paragraphs 2 and 3 shall not apply to machine-to-machine devices that use mobile data communication.'
5. Roaming providers shall take reasonable steps to protect their customers from paying roaming charges for inadvertently accessed roaming services while situated in their home Member State. This shall include informing customers on how to avoid inadvertent roaming in border regions.

6. This article, with the exception of paragraph 5, and subject to the second and third subparagraph of this paragraph, shall also apply to data roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.

Where the customer opts for the facility referred to in the first subparagraph of paragraph 3, the requirements provided in paragraph 3 shall not apply if the visited network operator in the visited country outside the Union does not allow the roaming provider to monitor its customers' usage on a real- time basis.

In such a case the customer shall be notified by an SMS message when entering such a country, without undue delay and free of charge, that information on accumulated consumption and the guarantee not to exceed a specified financial limit are not available.'

7. With effect from [xx.xx.xxxx] this article shall apply to the consumption of data roaming services within the EU in cases where the applicable domestic service rate is limited by reference to a fair use criterion in accordance with Article 6b and when the consumption has reached the fair use limit.

(8a) Article 19 is deleted and replaced by the following:

Article 19 - Review

1. The Commission shall review the functioning of this Regulation and shall report to the European Parliament and the Council in accordance with paragraphs 2 to 6.
2. The Commission shall, by 30 June 2016, after a public consultation, report to the European Parliament and the Council on whether to change the duration or revise the level of maximum wholesale charges provided for in Articles 7, 9 and 12 or to provide for other arrangements to address wholesale market problems, which may include fair use or other provisions to protect against anomalous or abusive use of regulated wholesale roaming provision for purposes other than provision of roaming services to periodic travellers.

3. The Commission shall, by 30 June 2016, after a public consultation, also report to the European Parliament and the Council on, inter alia:
- (a) the availability and quality of services including those which are an alternative to voice, SMS and data roaming services, in particular in the light of technological developments;
 - (b) the degree of competition in both the retail and wholesale markets, in particular the competitive situation of smaller, independent or newly started operators, including the competition effects of commercial agreements and the degree of interconnection between operators;
 - (c) the extent to which the implementation of the structural measures provided for in Articles 3 and 4 has produced results in developing competition in the internal market for roaming services.

The Commission shall examine, in particular, whether the abolition of retail roaming surcharges in accordance with Article 6a allows for the modification or removal of the structural measures.

4. If the report referred to in paragraph 2 shows that there is no level playing field between roaming providers and consequently that there is a need to change the duration or lower the level of maximum wholesale charges or to provide for other arrangements to address wholesale market problems, the Commission shall, after consulting BEREC, make appropriate legislative proposals to the European Parliament and the Council to address this situation by 30 June 2016.

If the report referred to in paragraph 3 shows that the structural measures provided for by this Regulation have not been sufficient to promote competition in the internal market for roaming services for the benefit of all European consumers, or that they are no longer necessary, the Commission shall make appropriate proposals to the European Parliament and the Council to address this situation.

5. In addition, the Commission shall submit a report to the European Parliament and the Council every two years after the report referred to in paragraph 3. Each report shall include a summary of the monitoring of the provision of roaming services in the Union and an assessment of the progress towards achieving the objectives of this Regulation.

6. In order to assess the competitive developments in the Union-wide roaming markets, BEREC shall regularly collect data from national regulatory authorities on the development of retail and wholesale charges for voice, SMS and data roaming services. Those data shall be notified to the Commission at least twice a year. The Commission shall make them public.

BEREC shall also annually collect information from national regulatory authorities on transparency and comparability of different tariffs offered by operators to their customers. The Commission shall make those data and findings public.'

PRESIDENCY PROPOSED REVISED TEXT ON SPECTRUM

Article 2 – Definitions

For the purposes of this Regulation, the definitions set out in Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/77/EC shall apply.

The following definitions shall also apply:

(8) ‘harmonised radio spectrum for wireless broadband communications’ means radio spectrum for which the conditions of availability, efficiency and primary use are harmonised at Union level, in accordance with provisions laid down in Directive 2002/21/EC and Decision 676/2002/EC of the European Parliament and the Council, and which serves for electronic communications services other than broadcasting;

(9) ‘small-area wireless access point’ means a low power wireless network access equipment of small size operating within a small range, using licensed spectrum or licence-exempt spectrum or a combination thereof, which may or may not be part of a public terrestrial mobile communications network, and be equipped with one or more low visual impact antennas, which allows wireless access by the public to electronic communications networks regardless of the underlying network topology;

(10) ‘radio local area network’ (RLAN) means a low power wireless access system, operating within a small range, with a low risk of interference to other such systems deployed in close proximity by other users, using on a licence-exempt basis spectrum for which the conditions of availability and efficient use for this purpose are harmonised at Union level;

Chapter III

European inputs

Section 1 - Coordination of use of radio spectrum within the single market

Article 8 – Scope of application and general provisions

1. This section shall apply to harmonised radio spectrum for wireless broadband communications in accordance with Directive 2002/21/EC, Decision 676/2002/EC and Decision 243/2012.
2. This section shall be without prejudice to the right of the Member States to establish and benefit from the fees imposed to ensure the optimal use of radio spectrum resources in accordance with Article 13 of Directive 2002/20/EC and to organise and use their radio spectrum for public order, public security and defence, or safeguarding general interest objectives such as cultural diversity and media pluralism.
3. In the exercise of its powers on spectrum issues, the Commission shall take utmost account of any relevant opinion issued by the Radio Spectrum Policy Group (RSPG) established by Commission Decision 2002/622/EC.²⁸

Article 8a - Harmonisation of certain aspects relating to duration of individual rights to use radio frequencies

1. From the date of entry into force of this Regulation, all new rights of use of spectrum in bands referred to in Article 8(1) shall be granted with a minimum duration of 15 years, and in any case for a duration appropriate to incentivise investment and competition. Member States may grant rights of use of indefinite duration.
2. Member States may provide for proportionate and non-discriminatory withdrawal of rights, including those with a 15-year minimum duration or of indefinite duration, where this is necessary in order to ensure the efficient and effective use of spectrum for reasons relating to, but not limited to, spectrum management purposes, national security, breach of licence, anti-competitive behaviour, harmonised change of use of a band and non-payment of fees.

3. The minimum -year licence duration shall not impede the ability of regulators to issue temporary licences and licences for secondary uses or sharing arrangements in a harmonised band.

Article 9 – Harmonised radio Spectrum use for wireless broadband communications: regulatory principles

1. Member States shall cooperate with each other and with the Commission in the use of harmonised radio spectrum for wireless broadband by the consistent application of the regulatory principles included in Article 2 of the Radio Spectrum Policy Programme established by Decision 243/2012/EU of the European Parliament and of the Council and in this Article.
2. The Commission shall take the necessary steps to ensure that the RSPG, in addition to the tasks assigned to it in article 2 of Commission Decision 2002/622/EC, is enabled to:
 - a) on request, develop and disseminate among Member States regulatory best practices, such as common approaches, methodologies, recommendations or guidelines, on the definition and implementation of an harmonised approach on the use of harmonised radio spectrum for wireless broadband communications, where applicable along the principles set in paragraph 4;
 - (b) on request, provide assistance, directly or through the Commission, to Member States on regulatory issues relating to spectrum management of harmonised bands for wireless broadband communications;
 - (c) on request, deliver opinions to the Commission and to the Member States on the draft decisions, recommendations and guidelines regarding harmonised spectrum for wireless broadband communications, within a time period specified by the Commission in its Request for Opinion;
 - (d) issue reports and provide advice, upon a reasoned request of the Commission or on its own initiative, and deliver opinions to the European Parliament and the Council, upon a reasoned request or on its own initiative, on any matter regarding spectrum policies within its competence;

(e) on request, assist the European Parliament, the Council, the Commission and the Member States in relations, discussions and exchanges with third parties, and assist the Commission and Member States in the dissemination of regulatory best practices to third parties, with regard to spectrum use.

3. Without prejudice to Article 8 of the Framework Directive, the RSPG and the Commission shall respectively, when acting pursuant to paragraph 3a, to Article 9a and to Article [13], take into account and, where necessary, shall reconcile, to the best extent possible, the following regulatory principles:
- a) maximisation of end user interest, including end users' interest in both efficient long-term investment and innovation in wireless networks and services and in effective competition;
 - b) ensuring the most efficient use and effective management of radio spectrum;
 - c) ensuring predictable and comparable conditions to enable long-term network investments and services on a multi-territorial basis and the achievement of scale economies;
 - d) ensuring the necessity and proportionality of the conditions imposed, including through an objective and transparent assessment of whether it is justified to impose additional conditions which could be in favour of or to the detriment of certain operators;
 - e) ensuring wide territorial coverage of high-speed wireless broadband networks and a high level of penetration and consumption of related services at the same time taking account of the public interest and the social, cultural and economic value of spectrum as a whole.

Article 9a Guidance on relevant criteria for use of radio spectrum

In Article 19, paragraph 1 of Directive 2002/21/EC is replaced by the following:

Without prejudice to Article 9 of this Directive and Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by the national regulatory authorities and Member States of the ~~regulatory~~ tasks specified in this Directive, the Specific Directives, and Regulation [n. xx/2014], may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of BEREC and, as far as concerns the use of radio spectrum, of the opinion of the RSPG, issue a recommendation or a decision on the harmonised application of the provisions in this Directive, the Specific Directives and Regulation [n. xx/2014], in order to further the achievement of the objectives set out in Article 8.

Article 12a - Joint authorisation process to grant individual rights of use of radio spectrum

1. Two or several Member States may cooperate with each other, and with the Commission, in meeting their obligations under Article 6 and 7 of the Authorisation Directive with a view to establish a joint authorisation process to grant individual rights of use of radio spectrum, in line, where applicable, with any common timetable. The joint authorisation process shall meet the following criteria:
 - (a) the individual national authorisation processes shall be initiated and implemented by the national competent authorities according to a common schedule;
 - (b) it shall provide where appropriate for common conditions and procedures for the selection and granting of individual rights among the Member States concerned;
 - (c) it shall provide where appropriate for common or comparable conditions to be attached to the individual rights of use among the Member States concerned inter alia allowing operators to be granted consistent spectrum portfolios with regard to the spectrum blocks to be assigned.
2. Where Member States intend to establish a joint authorisation process, the national competent authorities concerned shall simultaneously make their draft measures accessible to the Commission and the competent authorities. The Commission shall inform the other Member States.
3. A joint authorisation process shall be open at any time to other Member States.

Article 13 –Coordination of authorisation procedures and conditions for the use of radio spectrum for wireless broadband in the internal market

1. Where a Member State intends to seek comments of the RSPG on a draft measure to subject the use of radio spectrum to a general authorisation or to grant individual rights of use of radio spectrum, or to amend rights and obligations in relation to the use of radio spectrum in accordance with Article 14 of Directive 2002/20/EC, it shall make accessible its draft measure, together with the reasoning thereof, simultaneously to the Commission and to the RSPG either in parallel to or upon completion of the public consultation referred to in Article 6 of Directive 2002/21/EC, if applicable, and in any event before final adoption.

The Member State shall provide information which shall include at least the following matters, where applicable:

- (a) the type of authorisation process;
- (b) the timing of the authorisation process;
- (c) the duration of the rights of use;
- (d) the type and amount of radio spectrum available, as a whole or maxima available to any given undertaking;
- (e) the amount and structure, including payment modalities over time, of any fees to be paid;
- (f) compensation or incentives regarding the vacation or sharing of radio spectrum by existing users;
- (g) territorial or population coverage obligations;
- (h) wholesale access, national or regional roaming requirements;
- (i) the reservation of radio spectrum for certain types of operators, or the exclusion of certain types of operators;
- (j) conditions related to the assignment, renewal, transfer or accumulation of rights of use;
- (k) the possibility to use radio spectrum on a shared basis;
- (l) passive or active infrastructure sharing;
- (m) minimum technology performance levels;
- (ma) conditions allowing the revocation or cancellation of rights of use in the case of persistent failure to use the spectrum in question;
- (n) restrictions applied in accordance with Articles 9(3) and 9(4) of Directive 2002/21/EC;
- (o) a revocation or withdrawal of one or several rights of use or an amendment of rights or conditions attached to such rights which cannot be considered as minor within the meaning of Article 14(1) of Directive 2002/20/EC.

2. Within one month-from the transmission of the draft measure by the Member State, the RSPG may indicate on its own motion its intention to provide comments within the following two-month period. During the whole procedure, the Commission, the RSPG and the Member State concerned shall cooperate closely.

3. When assessing the draft measure in accordance with this Article, the RSPG shall have regard in particular to:
 - (a) the provisions of Directives 2002/20/EC and 2002/21/EC and Decision No. 243/2012/EC;
 - (b) the regulatory principles set out in Article 9;
 - (c) any Commission recommendation adopted in accordance with Article 19 of the Framework Directive;
 - (d) any regulatory best practices developed by the RSPG in accordance with Article 9(3a);
 - (e) coherence with recent, pending or planned procedures in other Member States, and possible effects on trade between Member States.
4. Any comments issued by the RSPG shall be reasoned and made public and communicated to the Commission and to the Member State concerned.
5. The Member State may amend or withdraw its draft measure at any stage of the procedure.

Article 14 – Access to radio local area networks

1. National competent authorities shall allow the provision of access through radio local area networks to the network of a provider of electronic communications to the public as well as the use of the harmonised radio spectrum for such provision, subject only to general authorisation.
2. National competent authorities shall not prevent providers of electronic communications to the public from allowing access for the public to their networks, through radio local area networks, which may be located at an end user's premises, subject to compliance with the general authorisation conditions and the prior informed agreement of the end user.
3. Providers of electronic communications to the public shall not unilaterally restrict:
 - a) the right of end users to accede to radio local area networks of their choice provided by third parties;
 - b) the right of end users to allow reciprocally or more generally access to the networks of such providers by other end users through radio local area networks, including on the basis of third-party initiatives which associate and make publicly accessible the radio local area networks of different end users.

To that end, providers of electronic communications to the public shall make available and actively offer, clearly and transparently, products or specific offers allowing its subscribers to provide access to third parties through a radio local area network.

4. National competent authorities shall not restrict the right of end users to allow reciprocally or more generally access to their radio local area networks by other end users, including on the basis of third-party initiatives which associate and make publicly accessible the radio local area networks of different end users.
5. National competent authorities shall promote, and shall in any case not restrict the provision of public access to radio local area networks:
 - (a) by public authorities on or in the immediate vicinity of premises occupied by such public authorities, when it is ancillary to the public services provided on such premises;
 - (b) by initiatives of non-governmental organisations or public authorities to associate and make reciprocally or more generally accessible the radio local area networks of different end users, including, where applicable, the radio local area networks to which public access is provided in accordance with sub-point (a).
6. National regulatory authorities may require an undertaking, public authority or other end user to submit the notification provided for in Article 3(2) of Directive 2002/20/EC if it provides electronic communications to the public solely by virtue of the provision of public access to radio local area networks, unless such provision is not commercial in character, or is merely ancillary to another commercial activity or public service which is not dependent on the conveyance of signals on such networks.

Article 15 –Deployment and operation of small-area wireless access points

1. National competent authorities shall allow the deployment, connection and operation of unobtrusive small-area wireless access points under the general authorisation regime and shall not unduly restrict that deployment, connection or operation through individual town planning permits or in any other way, whenever such use is in compliance with implementing measures adopted pursuant to paragraph 2.

This paragraph is without prejudice to the authorisation regime for the radio spectrum employed to operate small-area wireless access points.

2. For the purposes of the uniform implementation of the general authorisation regime for the deployment, connection and operation of small-area wireless access points pursuant to paragraph 1, the Commission may by means of an implementing act specify technical characteristics for the design, deployment and operation of small-area wireless access points, compliance with which shall ensure their unobtrusive character when in use in different local contexts. The Commission shall specify those technical characteristics by reference to the maximum size, power and electromagnetic characteristics, as well as the visual impact, of the deployed small-area wireless access points. Those technical characteristics for use of small-area wireless access points shall at a minimum comply with the requirements of Directive 2013/35/EU³⁰ and with the thresholds defined in Council Recommendation No 1999/519/EC³¹.

The technical characteristics specified in order for the deployment, connection and operation of small-area wireless access point to benefit from paragraph 1 shall be without prejudice to the essential requirements of Directive 1999/5/EC of the European Parliament and the Council relative to the placing on the market of such products.³²

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

Article 16 – Radio spectrum coordination among Member States

1. Without prejudice to their obligations under relevant international agreements including ITU Radio Regulations, the national competent authorities shall ensure that the use of radio spectrum is organised on their territory, and shall in particular take all necessary radio spectrum allocation or assignment measures, in order that no other Member State is impeded from allowing on its territory the use of a specific harmonised band in accordance with Union legislation.
2. Member States shall cooperate with each other in the cross-border coordination of the use of radio spectrum in order to ensure compliance with paragraph 1 and to ensure that no Member State is denied equitable access to radio spectrum.
3. Any concerned Member State may invite the Radio Spectrum Policy Group to use its good offices to assist it and any other Member State in complying with this Article.

PRESIDENCY PROPOSED REVISED TEXT ON OPEN INTERNET/NET NEUTRALITY

Article 23 - Safeguarding of open internet access, and traffic management

1. End-users shall have the right to access and distribute information and content, use and provide applications and services and use terminal equipment of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content, via their internet access service in accordance with this Article.
2. Except where specifically requested by an end-user, providers of internet access services shall not apply traffic management measures which block, slow down, alter, degrade or discriminate against specific content, applications or services, or specific classes thereof, except as necessary, and only for as long as necessary, to:
 - a) implement a legislative provision or an order by a court or other public authority vested with relevant enforcement powers under national law;
 - b) prevent the transmission of unsolicited communications, where required to give effect to Article 13 of Directive 2002/58/EC;
 - c) preserve the integrity and security of the network, services provided via the network, and the end-users' terminals;
 - d) prevent imminent network congestion or mitigate its effects if application-agnostic measures would not be efficient and provided that equivalent types of traffic are treated equally;
 - e) ensure high-quality transmission of voice communications, including to the emergency services, or
 - f) meet its obligations under a contract with an end-user to deliver a service requiring a specific level of quality to that end-user.

Traffic management measures shall be transparent, non-discriminatory, proportionate and shall not be anti-competitive. Traffic management measures at the request of an end-user, including where necessary to meet obligations under a contract with an end-user, or otherwise aimed at an individual end-user, shall not negatively impact other end-users.

Without prejudice to Directive 95/46, traffic management measures shall only entail such processing of personal data that is necessary and proportionate to achieve the purposes set out in this paragraph, and shall also be subject to Directive 2002/58, in particular with respect to confidentiality of communications.

3. This Article is without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted, and of the terminal equipment connected, and to lawful measures to block access to web pages containing or disseminating child pornography consistent with Article 25 of Directive 2011/93/EU.

Article 24 - Safeguards for quality of service

1. National regulatory authorities shall closely monitor and ensure compliance with Article 23 and the end-users' effective ability to benefit from their rights in accordance with that Article, and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology. For those purposes national regulatory authorities may also impose technical characteristics and minimum quality of service requirements. National regulatory authorities shall publish reports on an annual basis regarding their monitoring and findings, and provide those reports to the Commission and BEREC.
2. Providers of access services shall make available, at the request of the national regulatory authority, information about how their network traffic and capacity are managed, as well as justifications for any traffic management measures applied, in accordance with Article 23 (2)(a)-(f). Article 5 of the Framework Directive shall apply, *mutatis mutandis*, in respect of the provision of information under this Article.
3. Within six months of adoption of this regulation, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, lay down general guidelines defining uniform conditions for the implementation of the obligations of national competent authorities under this Article, including with respect to the application of traffic management measures and for monitoring of compliance.