



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Reasoned Opinion concerning 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 final}.

The global economy is evolving towards an Internet economy, and Information and Communication Technology (ICT) should be fully recognised as a source of smart, sustainable and inclusive growth. A single market for electronic communications, where the freedom to provide electronic communications networks and services to every customer in the Union and the right of each end-user to choose the best offer available on the market is ensured and is not hindered by the fragmentation of markets along national borders, should promote competition, investment and innovation in new and enhanced networks and services. The benefits arising from a single market for electronic communications should extend to the wider digital ecosystem.

The Commission appreciates that the Bundesrat welcomes the strengthening of the telecom sector in Europe by creating a fully functioning digital single market to the benefit of European companies and consumers. Europe, once a leader in ICT, now lags behind, and we have to act quickly to reverse this trend.

The Commission takes good note also of the concerns expressed by the Bundesrat.

In general, the current regulatory framework has not been able to fully deliver its objective to establish a single market for electronic communications, with markets still fragmented along national borders and obstacles to cross-border provision and possibility to acquire electronic communications. In accordance with the subsidiarity principle, measures at EU level are needed to remove specified internal market barriers, but limited to what is necessary to achieve the objectives identified.

With regard to the specific concerns expressed by the Bundesrat, the Commission would like to stress, first of all, that the pace of the adoption process needs to be considered in the light of the need of the economic effects of the telecom single market to materialise quickly.

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Therefore, the key challenge is now to carry out an intensive examination of the proposal with the co-legislators with a view to get it approved timely, in order to address the obstacles for the fully functioning of the single market and taking into account the forthcoming European Parliament elections. The Commission stresses not only the importance of the proposal in its substance, but also the urgency for its adoption. In the current crisis, Europe can simply no longer afford to forego the enormous potential the telecom single market could bring for growth and jobs.

Nevertheless, the Commission has also engaged extensively with all relevant external stakeholders in order to assess the state of the market and to determine how to improve conditions for establishing a telecom single market. In the consultation process broad public events were combined with more targeted consultation to achieve the required breadth and depth of stakeholder inputs, supported by market studies. In particular, the Commission organised several consultative events attended by stakeholders representing all segments of the industry, consumers and civil society. In addition, the Commission held dedicated discussions with many stakeholders, including a public information session on 17 June 2013 and one on 24 June 2013 with the Body of European Regulators for Electronic Communications (BEREC) and the National Regulatory Authorities to discuss the whole range of issues being considered for the Single Market initiative.

Discussions have shown a large degree of convergence on the urgent need to overcome the remaining fragmentation of the single telecom market, acknowledging the benefits that would flow from this in terms of additional growth.

With regard to the extent of harmonisation of end-users rules, the tabled proposal harmonises them at a very high standard. This excludes in principle that Member States keep more detailed national sector-specific consumer protection rules as the aim is to ensure consistency in the single market. Nevertheless, the full harmonisation which is envisaged in respect of sector-specific end-user protection rules is in line with a broader tendency in EU consumer protection in recent years; it is pitched at a high level of protection in order to respect as much as possible the choices of Member States which have up to now chosen to go beyond the minimum or facultative provisions of the existing Directive. The Commission is of the firm belief that overall gains in both end-user protection and alignment of business conditions for operators justify such a harmonising step.

While the Commission notes the concerns related to the impact of the package on domestic prices, we would like to point out that mobile operators compete against each other in the domestic mobile markets. As concluded by the Impact Assessment of the proposal, the harmonisation of consumer protection rules can be expected to increase consumer empowerment when buying digital services from providers in the EU and thus benefit from lower prices available in other Member States. Commission studies (9th Consumer Scoreboard) also indicate that facilitating cross-border provision of services allow consumers to benefit from lower prices abroad and from offers unavailable to them locally.

The proposal's provisions on net neutrality aim at guaranteeing open access to the Internet by prohibiting blocking, throttling, degradation and discrimination within the limits of any contracted data volumes or speeds. Thus all content, services and applications will be available over the open Internet to all end-users. The proposal will help start-ups to innovate as they will not risk seeing their applications and services blocked or degraded, as it is currently the case. Agreements between content providers and Internet service providers are necessary to satisfy the demand of some end-users for high-quality services such as videoconferences or certain e-Health applications. As a safeguard, national regulators shall monitor that the quality of the internet reflects advances in technology, so that a high quality Internet is available and that specialised services do not impair the general quality of the Internet. They are also empowered to set minimum quality of service requirements on electronic communication providers.

Concerning the assignment of frequencies, the Commission would like to stress that the proposal is not seeking a transfer of spectrum responsibilities from the national to the European level. Nevertheless, delays in granting spectrum licenses have already led to an important fragmentation of the European mobile market. This situation has a negative impact on mobile equipment manufacturers operating in the EU market and has reduced the offer of new generation terminals for European consumers. It acted also as a barrier to enter the European market at an efficient scale, thus hindering the emergence of pan-European operators. A new approach on the coordination of licenses across Europe is absolutely necessary. Under this approach, the Commission will be able to adopt implementing acts with a view to ensure harmonisation of availability, timing of assignments and duration of rights of use for spectrum used for wireless broadband communications. This will be done together with the national competent authorities, to ensure that no barrier is created to the internal market, but does not limit the scope of responsibilities of Member States for authorisations of rights of use of spectrum.

In general, the Commission has granted the outmost attention to the respect of the principle of subsidiarity, as EU intervention is limited to spectrum bands that are already harmonised at EU level for wireless broadband and to European operators who carry out their activities on a pan-EU dimension and offer consumers who so wish wider choice of services provided cross-border on the basis of a high level of common protection. At the same time, the EU measures foreseen will not limit the national margin of policy assessment more than is necessary to achieve Single Market goals.

The Commission hopes that these clarifications address the concerns raised by the Bundesrat and looks forward to continuing this political dialogue in the future.

Yours faithfully,

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Vice-President*