

16.12.16**Decision
of the Bundesrat****Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities****COM(2016) 589 final; Council document 12259/16**

At its 952nd session on 16 December 2016, the Bundesrat adopted the following opinion pursuant to Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG):

Context of, reasons for and objectives of the proposal

1. In principle, the Bundesrat welcomes the proposal for a Regulation as regards the promotion of Internet connectivity in local communities with a view to providing free, high-capacity wireless Internet connectivity in the future. It also considers that such access will offer substantial benefits to citizens and increase digital literacy and interest in broadband.
2. Furthermore, the Bundesrat supports the idea that every EU citizen should have the right to a functional and affordable internet connection. The Bundesrat also sees the installation of free Wi-Fi access points in local communities as an effective means of promoting a digital society. This is reflected by the fact that many countries are already taking their own initiatives in that direction.

Results of ex-post evaluations, stakeholder consultations and impact assessments

3. The Communication cites the results of the public consultation carried out by the Commission to review the regulatory framework for electronic communications: they showed that many public authorities and private respondents supported the deployment of Wi-Fi networks in public premises in principle, while seeking an appropriate regulatory environment for issues like access-provider liability. The Bundesrat is also of the opinion that open networks are a precondition for the development of a digital society and that creating legal certainty for operators is of fundamental importance for a comprehensive roll-out of open Wi-Fi access points. To that extent, it reaffirms its view, as expressed in BR Document 440/15 (Decision) and elsewhere, that measures such as a ‘splash page’ and encryption and user-registration requirements hamper or prevent the comprehensive roll-out and use of WLAN access points. This runs counter to the Commission’s laudable aim of using open Wi-Fi access points to encourage as many citizens as possible to take advantage of the opportunities afforded by the digital society. The Bundesrat is of the opinion that an encryption and registration requirement — described by the CJEU as suitable security measures in its Judgment of 15 September 2016 in case C-484/14 — will discourage precisely those citizens who have so far been less receptive to digital opportunities from using open Wi-Fi access points. In order to provide the necessary legal certainty, it therefore suggests making it clear that providers of public Wi-Fi access points are not required to implement measures such as a ‘splash page’ or encryption and registration.
4. The Commission’s objective of achieving a rapid and comprehensive roll-out of open Wi-Fi access points would be significantly accelerated if operators of open Wi-Fi access points were given full access-provider exemption. This would encourage many public bodies, commercial providers and private individuals to offer such network access. Such arrangements should, among other things, prevent access providers from being exposed to liability risks and also, for example, from having to bear the costs of injunctions.
5. However, the Bundesrat has serious doubts as to whether the planned budget for the measure and the targeting of funding exclusively towards initial investments without taking account of operating and follow-on costs will provide sufficient incentive. It therefore asks that the budget and the narrow focus of the funding be

critically re-examined at a later stage.

6. The Bundesrat asks for it to be ensured that the measure will not hinder market-driven investment, supply and services in the field of telecommunications. It therefore calls for rules to be laid down to prevent undue distortion and restriction of competition.

Regarding Article 2(6) – wireless connectivity in local communities

7. The Bundesrat recommends that the conditions and definitions set out in Article 2(6) be reviewed and clarified.
8. It recommends that a precise definition be given of when offers duplicate ‘already existing private or public offers of similar characteristics in the same area’ within the meaning of the Regulation. The Bundesrat considers it important to clarify the extent to which this relates to coverage of an area, an entire local community or the available bandwidths, so that local communities which already provide Wi-Fi access points or in which other private or commercial providers already do so will not be disadvantaged, as financial support for WLAN would be particularly effective in these communities, most of which are densely populated. The term ‘area’ should therefore be understood as referring only to the coverage area of already existing public WLAN routers. This would therefore exclude only projects ‘duplicating’ already existing public offers of similar characteristics, including quality, in the same area in which a corresponding WLAN router is already transmitting.
9. The Bundesrat suggests setting the minimum speed of supported access points high enough for local communities that already offer lower-speed access points to be able to continue to receive support for broadband access. This would be in the interests of promoting the comprehensive roll-out of broadband access points.
10. It suggests reviewing the conditions laid down in Article 2(6): if support is given only to Wi-Fi access points that use ‘state-of-the-art technology’ and support ‘access to innovative digital services’, this could exclude some regions and local communities, thus widening a digital divide. The Bundesrat therefore suggests setting flexible criteria for the funding of access points.

Further comments and direct transmission to the Commission

11. The Bundesrat reserves the right to consider the proposal for a Regulation again and to submit further comments in the light of discussions at European level.
12. The Bundesrat is sending this opinion directly to the Commission.