

**Parliament of Romania**

**Chamber of Deputies**

No 1/4196/VZ

2 December 2013

**OPINION**

**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, 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**

Having regard to the Treaty of Lisbon, and in particular Articles 5 and 12 TEU and Protocols 1 and 2 annexed to the Treaty,

Having regard to the Constitution of Romania, republished, in particular Article 148 thereof,

Having regard to Decision No 11/2011 of the Chamber of Deputies,

Taking into consideration the report issued by the Committee for Information Technology and Communications at its meeting of 22 October 2011 [sic],

Taking into consideration the draft opinion issued by the Committee for Industry and Services at its meeting of 16 October 2013,

Taking into consideration the final draft opinion adopted by the Committee for European Affairs at its meeting of 20 November 2013,

Having regard to the approval of the Standing Bureau of the Chamber of Deputies, issued on 27 November 2013,

The Chamber of Deputies, acting in accordance with Article 40 of Decision No 11 of the Chamber of Deputies of 27 April 2011, hereby adopts this opinion:

**The Chamber of Deputies**

- welcomes the Commission's intention to ensure a unified and efficient legislative framework for undertakings providing electronic communications networks and services that will enable undertakings and European citizens to enjoy the advantages of the single European market;

- agrees with the favourable opinion expressed by the Chamber of Deputies' Committee for Industry and Services;

- agrees with the opinion of the Chamber of Deputies' Committee for Information Technology and Communications supporting the objectives of the Proposal for a Regulation, but has reservations about the necessity and effectiveness of certain of its provisions;

- considers that some of its reservations may be clarified in the ongoing negotiations, as they are chiefly of an administrative/technical nature.

The Chamber of Deputies would reiterate the reservations presented below with regard to the strategic elements of the Proposal:

1. The entitlement of certain European electronic communications providers to derogations from payment of the monitoring charge should be linked also to local markets at Member State level. In Romania, applying the derogation procedure would lead to almost all national providers having to pay the charges, whereas some European providers could be exempt. This would clearly constitute discriminatory treatment. In addition (and where applicable), the turnover generated by providing electronic communications networks on the territory of the host state should be taken into account when establishing the amount of the contributions;

2. The proposal adopts and/or reformulates some of the provisions of the Authorisation Directive, the Framework Directive or even of the RSP. Consequently those provisions should be re-analysed or eliminated in order to avoid cases of conflicting rules;

3. The fact of being a radio spectrum holder in a Member State is partly the result of historic assignments of radio spectrum. As a result, it is possible that an analysis carried out in a Member State may not be objective unless consideration is given to the reasons why a particular operator has come to hold other rights of use in another Member State. It would therefore be advisable that this flaw be overcome by improving and supplementing the proposed regulation;

4. As long as it is possible for market forces to lead to a particular portfolio of rights of use, with operators having at their disposal economic means of securing their rights, the Regulation will hinder the administration and management of radio frequencies.

These economic means include participation in selection procedures, transfer of rights of use, mergers and acquisitions and other methods. The Regulation should therefore also take account of these alternative means of forming a portfolio of rights of use;

5. The text of Article 13(1) of the Proposal for a Regulation provides for simultaneous consultation of the European Commission and the Member State regulatory authorities over the assignment of rights of use of radio frequencies. Such consultation would be constructive only through the benefits offered by the sharing of experiences, and could also slow down authorisation procedures and procedures for the assignment of rights of use of radio frequencies. Such consultation should no longer be made compulsory;

6. Article 16 of the Proposal for a Regulation, which empowers the European Commission to adopt implementing acts, would not only make Member States reach a common denominator over issues of cross-border coordination, particularly when coordination is already carried out with regard to rules adopted at ITU level. Empowering the European Commission to adopt implementing acts substantially changes national powers relating to administration of the radio spectrum. When the

Proposal for an EU Regulation enters into force, the role of the national radio spectrum administration authorities will be confined to applying the lines of action established by the European Commission. It should however be noted that the radio spectrum is a limited resource and the public property of the Romanian State: the Treaty on the Functioning of the European Union expressly states the rules governing the system of property ownership in Member States are not prejudiced, and this includes the manner in which Member States see fit to exercise their powers over public property in terms of the possession, use (i.e. administration) and disposal thereof. These provisions do not therefore fully comply with the principle of proportionality, and it is necessary to restrict or ring-fence the empowerment of the European Commission to what is strictly necessary for harmonisation;

7. The proposals in the Proposal for a Regulation contradict the approach promoted through the provisions of the regulatory framework adopted at EU level, without providing a clear and grounded explanation of the causal link between the proposed measures and the stated aims of the Proposal for an EU Regulation. The text of the Access Directive states that the Member State regulatory authorities may establish, depending on the severity of the competition problems identified and depending on national circumstances, specific obligations as appropriate on providers with significant power on a particular wholesale market. However, by applying the provisions laid down in the Proposal for a Regulation, the obligation to ensure European Virtual Network Access for future networks will become a de facto standard specific obligation irrespective of national circumstances, i.e. including in cases where they might not be necessary in certain Member States, such as Romania. The fact that the regulatory authorities will have to submit arguments justifying why this is not necessary, rather than having to justify why it should be adopted, creates conditions for this obligation to become a standard obligation. The Access Directive rightly enshrines the principle that the imposition of any specific obligation requires justification that the obligation in question is appropriate and proportionate. Only in this way will we ensure a high level of legal certainty for active market providers and give them a reason to continue their investments. Article 18 of the Proposal for a Regulation derogates from this essential principle. This state of affairs must be resolved;

8. One of the aims of the Proposal for a Regulation is to have a detailed definition of the technical characteristics of a wholesale market access product, even though there is a high probability that such characteristics will be established incorrectly or quickly become obsolete as a result of technical advances on the market. This would happen without the direct involvement of the regulatory authorities in the Member States or their indirect involvement through BEREC. Consultation of this kind would make it possible to reach a practical and efficient solution on the basis of the experience that such bodies have in the regulation of the electronic communications sector. Therefore, those provisions that would lead to excessively detailed definitions of this kind should be reconsidered;

9. Until now the best means of achieving the objective of effective competition has been to encourage infrastructure-based competition. However, with this Proposal for a Regulation the European Commission is reducing support for the idea of infrastructure-based competition. The case of Romania provides a typical example of the benefits of infrastructure-based competition: the charges for end users in Romania for the provision of broadband electronic communications services are below the European average, and the proportion of fibre optic networks is above the European average. As a result, the quality of the services on offer is above the European average. The

reduction in the Commission's support for infrastructure-based competition is worrying because it creates premises for a reduction in competition on a number of markets in the electronic communications sector. This will inevitably result in an increase in charges for end users, a decrease in the quality of the services provided and a lack of innovative services, without any guarantee of an increase in investment.

10. The Proposal for a Regulation constitutes a market intervention on an electronic communications market (the internet traffic transfer services market) which, until 2010 at least, was regarded by the Commission itself as a market where ex ante regulation was unnecessary, i.e. it was a market that did not present elements conducive to anti-competitive behaviour. At that time, the Commission believed that end users were benefiting from competitive internet access services, with no need for additional regulation, and that the prices for such services were falling. Moreover, the Commission was of the view that regulating the internet traffic transfer services market could have an adverse effect on alternative operators and discourage investment in electronic communications networks. BEREC, on the other hand, is of the view that there is no need for regulatory intervention on the internet traffic transfer services market, at least at present. The European Commission should therefore explain its position and potentially reconsider the provisions of the Proposal for a Regulation that that would no longer be valid following this additional analysis.

11. At present, under the Framework Directive, national authorities coordinate their efforts and have the right to request the opinion of BEREC in cases of cross-border disputes. The procedure put forward under the Proposal for a Regulation would affect the competence with regard to dispute resolution of the host state national authorities, which are required to take the most comprehensive account of the opinion of the regulatory authority in the state of origin when so requested by the 'European provider'. The European Commission has not provided well-founded arguments supporting the need to introduce new arrangements for disputes involving such providers, other than by referring to one of the parties as 'European provider'. Moreover, the introduction of the concept of 'European provider' intrinsically implies discriminatory treatment of national providers, which could distort competition on the national market without any objective reason. Therefore additional explanations are required with regard to this aspect.

12. The Proposal for a Regulation should make it a requirement for providers of publicly available electronic communications services to offer unrestricted internet access to the public, in order to prevent the appearance on the market of offers of restricted internet access, which would go against the spirit of the Proposal. Unrestricted internet access is a key element of the freedom of expression and the development of innovative applications.

This Opinion is addressed to the Presidents of the European Parliament, the Council and the European Commission and to the Romanian Government.

PRESIDENT

Valeriu Ștefan Zgonea