



Romanian Parliament  
Senate

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Bucharest, December 13, 2016

**OPINION**

**Regarding the *Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast)***

***COM (2016) 590 final***

The **Romanian Senate** examined the *Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) – COM (2016) 590 final* according to the provisions of the Treaty of Lisbon (Protocol no. 2).

Taking into account the report of November 4, 2016 of our permanent Committee on European Affairs, **the Plenum of the Senate**, during its session of November 7, 2016, decided as follows:

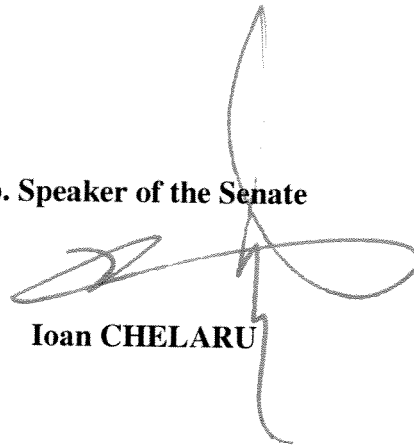
- 1. This Regulation does not violate principles of subsidiarity and proportionality.**
- 2. Within European Electronic Communications Code, the following are noted:**
  - a) Member States shall coordinate efforts to harmonize the conditions for granting spectrum licenses and the European Commission's intervention is required. Romania sees its limited powers in determining the conditions attached radio spectrum licenses that meet national needs, such as coverage obligations of the national territory, and also about the possibility to obtain an appropriate price for granting the licenses that discourage further price increase economic efficiency of the providers of electronic communications services at mobile and maximize benefits to end users.
  - b) Unlike the current rules, the European Electronic Communications Code establishes a maximum level of harmonization of the users protection. Thus, they will not be adopted measures to protect the rights users.
- 3. The following are considered necessary and mandatory:**
  - a) At the principle level, the European Electronic Communications Code gives priority to connectivity objective, detrimental to the objective of encouraging competition. Connectivity would be achieved by limiting the opportunities for wholesale-only networks with significant market power. We are of the opinion that such an approach will not increase coverage by electronic communications networks speed. The rationale for the wholesale-only networks with significant market power do not invest, in some Member States, it is the regulatory

obligations imposed on them – usually, ones to grant access to its network competitors – but many factors related to national circumstances (tax arrangements, opportunities to access funding lines, administrative conditions for realization and development of civilian infrastructure etc).

- b) A first concrete subject is the imposed obligation on Romania to conduct every three years an exercise in determination of covered areas with electronic communications network, able to provide broadband services and inventory intentions suppliers development in this regard. The problem is not necessarily a significant effort to be made for this exercise, but rather the consequences it could have on suppliers declaration or intentions development. Basically, they could be punished for not expanded their networks, according to the declared intentions, although there may be objective reasons, economy, giving up a development project. Suppliers also could be sanctioned if they extended networks, without declaring in advance such an intention, which raises particular concern, as it could be triggered by a supplier, just because it would contribute to the objectives of Digital Agenda carriage 2020 – such an approach is likely to encourage investments in electronic communications networks for greater capacity.
- c) A suitable measure to address a market like the one in Romania, characterized by a significant level of competition among suppliers is the symmetric regulation is the ability to require all providers certain obligations to open up access to its network for competitors. Unfortunately, European Electronic Communications Code subject the symmetrical regulatory options to very restrictive conditions.
- d) Another topic is the concrete analysis of electronic communications markets and the specific obligations that may be imposed on providers with significant market power. European Electronic Communications Code requires consideration of several circumstances that can lead to deregulation in certain areas or certain categories of networks. These circumstances related to the availability of commercial agreements or the co-investment access, competitive pressure exercised on the wholesale market for other services and applications, including services not related to electronic communications. We are of the view that these circumstances should be considered only under certain conditions, the markets that no competition concerns serious in underserved areas or only for a limited period of time and not be ultimate reason to de-regulate certain markets. Moreover, there is a risk that imposing specific obligations to become an exercise extremely complicated, possibly with several areas or situations where they do not apply, which will lead to simplification and predictability of European Code Communications Electronics intentional regulatory issues.
- e) The possibility of establishing a single tariff at European level for fixed and mobile call services is a solution in favor of encouraging competition. However, maximum levels of this tariff imposed by the European Electronic Communications Code are not ambitious enough to achieve the objective pursued. These levels should be established in 2020, in anticipation of efficiencies to be achieved by it this time, in order to benefit the most efficient providers.

- f) Another concern is the financing of universal service in electronic communications exclusively from public funds, by eliminating the possibility of recourse to the contributions of suppliers. Member States should be free to establish methods of financing the universal service which best suits national circumstances. Thus, the occurrence of specific budgetary limitations could jeopardize the funding of universal service in electronic communications, just to ensure the accessibility of all citizens to basic electronic communications services as a means to determine the return to economic growth.

**p. Speaker of the Senate**

A handwritten signature in black ink, consisting of several loops and a long vertical stroke extending downwards.

**Ioan CHELARU**