



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2016)

## **Opinion**

### **Title**

**DG CNECT – Reform of the electronic communications networks and services**

(version of 13 June 2016)\*

### **(A) Context**

The electronic communications sector and its regulatory framework (dating back to 2002) have significantly evolved over the last years, necessitating a review. The 2002 framework consisted of (i) sector-specific economic regulation based on the principles of EU competition law, and (ii) rules safeguarding end-user interests. It aimed at promoting competition via regulated access to incumbents' networks and market entry as a means to make markets contestable and to maximise consumer benefits. In 2009, the EU legislative framework was revised but the general competition objectives were maintained

Since then, the sector has further developed and its role in the online economy has grown. Consumers and businesses are increasingly relying on data and internet access services instead of traditional telephone services. The Commission announced a review of the telecoms regulatory framework in its Digital Single Market Strategy for which a REFIT evaluation including a fitness check was conducted to provide the evidence-base. The impact assessment report establishes that a revised framework should aim to ensure that the existing pro-competitive framework leads to ubiquitous unconstrained connectivity as the basis for a Digital Single Market. This entails the introduction of a new Very High Capacity (VHC) connectivity as prime objective that will complement the existing objectives on competition, internal market and end-user interests

### **(B) Overall opinion: NEGATIVE**

**The Board gives a negative opinion because the report contains shortcomings that need to be addressed, particularly with respect to the following issues:**

**(1) While recognising the considerable scope and complexity of this exercise, further efforts should be undertaken to simplify the technical language, streamline the text and ensure that the key messages are more clearly brought out so as to provide a more accessible information base for policy-makers.**

**(2) The links between the results of the evaluation and the impact assessment need to be strengthened, in particular in the problem definition section. The causes for the lack of investment in connectivity need to be elaborated.**

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\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

**(3) The intervention logic needs to be improved, by delineating more precisely the scope and the ambition of the initiative and by clarifying the links between the problems and the objectives on the one hand and between the objectives and the options on the other. The context of the initiative also needs to be better described, in particular its relationship with the European Gigabit Society strategy.**

**(4) In the context of the REFIT exercise, a synthetic overview should be provided of the key substantive measures in terms of simplification and administrative burden reduction in particular in relation to the preferred options. It should include more details on the possible reduction of overlaps between the general and the sector-specific consumer protection law.**

**(5) The views of stakeholders should be more systematically and objectively reflected throughout the entire report and in particular in the analysis of the preferred options.**

**(6) The assessment of macroeconomic impacts should be qualified.**

**The lead DG shall ensure that the report is revised accordingly and resubmitted to the Board, which will issue a new opinion on the revised draft.**

### **(C) Main recommendations for improvements**

**(1) Presentation:** While taking into account the broad scope and complexity of this review, further efforts should be undertaken to simplify the technical language and to streamline and shorten the text where possible (for example: moving section 1.6 before 1.1; eliminating section 1.4; shortening section 1.7; shortening the description of the need for unconstrained connectivity and integrating it into the section presenting the objectives). Finally, the glossary should be completed and complemented with definitions of the concepts that are not self-explanatory.

**(2) Integration of evaluation results:** The results of the evaluation are not sufficiently integrated and exploited in the impact assessment report. The evaluation report demonstrates that the objectives of the original telecoms framework are still valid, though single market has not been achieved yet. Therefore, even though the single market thread is present throughout the impact assessment report, it should be clarified whether the achievement of single market remains an explicit objective of the review. It should be further ensured that the evaluation results sufficiently feed the initial identification of the problems, their drivers and options, in particular as regards the identification of reasons for sub-optimal pace of investment in infrastructure and the ways to improve it.

**(3) Intervention logic:** The report should better explain how this initiative fits with other existing or planned initiatives, in particular the European Gigabit Society strategy. Consistent with other related Commission communications (e.g. Strategic Plan 2016-2020), the unconstrained connectivity should be presented as an objective and not as a problem. In view of the overarching connectivity goal, the considerable investment needs associated with the development of VHC infrastructure and the admission that infrastructure competition alone is not enough to meet such needs, the report should elaborate more extensively on the sources of private and public (including EU) funding that could be mobilised to this end. Alternatively, the objective of 'meeting the connectivity imperative' should be rephrased to reflect what is presented in the review, i.e. the adaptation of the regulatory framework to facilitate the achievement of the ubiquitous connectivity, in order to avoid creating false expectations as to the level of ambition of the initiative. With the presented options being organised along the different legislative acts constituting the electronic communications networks, a stronger link with the specific objectives needs to

be established (i.e. connectivity, competition and user choice, simplification and single market coherence). To this end, in a section preceding the presentation of the options, the report should provide a narrative explaining which measures per legislative act are set to tackle which problems and help achieve which objectives.

**(4) REFIT aspects:** The report does not clearly present the overall REFIT potential of the review in a comprehensive way. In order to strengthen the REFIT dimension of the report, it should provide a synthetic overview of the key substantive measures in terms of simplification and administrative burden reduction and the main beneficiaries, in particular in relation to the preferred options (for example as a new section at the end of chapter 4). This should include the reduction of the overlaps between the general and sector-specific consumer protection law.

**(5) Stakeholder views:** More systematic and detailed background information on stakeholders' views and in particular regarding the views of consumers and Member States should be provided throughout the report and especially in the sections on the preferred options. Given the subsidiarity reservations by some Member States made in the past (in particular as regards spectrum management), their position on the proposed changes to the telecoms regulatory framework should be clarified. Since the IA is supposed to be a self-standing document, annex 2 of the IA report should summarise the stakeholders' views, currently only reflected in a separate synopsis report.

**(6) Impact methodology:** The methodology to calculate the impacts includes a number of external assumptions on investment developments which are not summarised in the annex: either annex 5 should present assumptions and intermediate results or the reference to the results in the text should be qualified by referring to a favourable scenario under the assumption of a substantially faster network deployment.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated into the final version of the impact assessment report.*

#### **(D) Procedure and presentation**

See box C (1).

#### **(E) RSB scrutiny process**

Reference number	2015/CNECT/007
External expertise used	No
Date of RSB meeting	05 July 2016