

| ROADMAP | | | |
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| TITLE OF THE INITIATIVE | Evaluation and Reform of the Regulatory Framework for electronic communications networks and services (REFIT) | | |
| LEAD DG – RESPONSIBLE UNIT | DG CNECT – B2 | DATE OF ROADMAP | 06 / 2015 |
| <p>This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</p> | | | |

A. Context and problem definition

- (1) What is the political context of the initiative?
- (2) How does it relate to past and possible future initiatives, and to other EU policies?
- (3) What ex-post analysis of existing policy has been carried out? What results are relevant for this initiative?

1) The July 2014 [Political Guidelines](#) of the new Commission "A new start for Europe: an agenda for jobs, growth, fairness and democratic change" set out under section 2 "A connected Digital Single Market", the overall objective of which is to make a better use of the opportunities offered by digital technologies. For that purpose, the guidelines identify the need to break down national silos in telecoms regulation and the management of radio waves as part of a more ambitious reform of the telecom rules. The mission letters of Vice-President Ansip and Commissioner Oettinger build on these guidelines by referring to the need to create a connected digital single market and to set long-term strategic goals to offer legal certainty to the sector and create the right regulatory environment to foster investment and innovative businesses.

The [Commission's Communication of 6 May 2015 on a Digital Single Market for Europe](#) (DSM) is built on three pillars: (i) Better access for consumers and businesses to online goods and services across Europe; (ii) Creating the right conditions for digital networks and services to flourish; and (iii) Maximising the growth potential of our European Digital Economy. The roadmap for completing the DSM includes 16 actions in the timeframe of 2015-2016 and a review of the telecoms regulatory framework is one of the key actions under the second pillar. In its [Work Programme for 2015](#), the Commission also indicated that, in addition to conducting a REFIT evaluation of the current telecoms regulatory framework, it will complement the telecoms regulatory environment with new legislative and non-legislative initiatives to bring the Digital Single Market to the level of ambition needed to respond to the existing challenges. In this regard the framework review should be built on an overall connectivity vision, taking into account the current and future connectivity needs of citizens, businesses and the public sector, which will result from the use of applications enabled by the DSM. The challenge is to deliver consistent regulatory conditions for a true single market:

- to allow efficient and innovative network operators and service providers to benefit from relevant economies of scale;
- to enable all citizens and businesses to be connected and effectively protected;
- to ensure a level playing field for all market players and consistent application of the rules;
- to incentivise investment in high-speed broadband networks for all (including a review of broadband obligations in the context of the Universal Service Directive);
- to achieve an effective regulatory institutional framework.

2) The Reform of the regulatory framework for electronic communications is closely related to other aspects of the DSM, as well as the Commission's political guidelines and Work Programme, in so far as all digital services and applications depend on the ubiquitous availability of fast and secure connectivity infrastructures for all citizens throughout Europe. The Reform will build upon the outcome of the Commission's Connected Continent legislative proposal of September 2013, on which political agreement between the Council and European Parliament was reached on 30 June 2015.

Moreover, the EP [Resolution](#) on the Connected Continent Proposal (Recital 79a) provides that "The regulatory framework for electronic communications should be reviewed as called for in the European Parliament resolution on the Implementation report on the regulatory framework for electronic communications. The review should be based on ex-post assessments of the impact of the framework since 2009, a full consultation and a thorough ex-ante assessment of expected impacts of the proposals emanating from the review. The proposals should be presented in sufficient time to enable the legislator to analyse and debate them properly."

3) As indicated in the CWP 2015, a REFIT evaluation of the performance of the current Regulatory Framework

(2009 Telecoms Package) with a focus on regulatory fitness will be carried out in line with the new Commission working methods, REFIT and Smart Regulation principles. The ex-post evaluation will be based at least on the five mandatory evaluation criteria listed in the new [Better Regulation Package](#). The purpose is to evaluate how the current rules have contributed to the achievement of their main objectives: promoting competition, the internal market and end-user interests. This evaluation will form a basis for eventual legislative and/or non-legislative initiatives addressing the identified gaps and the ambition set out in the DSM.

The evaluation of the current regulatory framework is warranted not only because of the legal obligation to periodically review the functioning of the regulatory framework, but also because since the last review of 2009, electronic communications networks and services have undergone a number of structural changes (outlined in more detail in the following section).

Both backward looking evaluation (to be accompanied by a REFIT Staff Working Document) and future oriented Impact Assessment outlining policy responses to identified challenges will follow the calendar announced in the DSM Communication. These two processes will be very closely coordinated in terms of their timing and content with the envisaged adoption of eventual concrete initiatives in 2016 as set out in the DSM Communication.

The evaluation will focus on the original instruments for the regulatory framework, including the BERC Regulation but with the exception of the Directive on privacy and electronic communications. The evaluation and review of this Directive is linked to the ongoing legislative process of the general data protection regulation (see COM(2012)11 final). The evaluation also excludes the Roaming Regulation, which is addressed in the political agreement on the Connected Continent proposal, as well as the Broadband Cost Reduction Directive, which is currently in the process of being transposed by Member States. The Radio Spectrum Policy Programme (RSPP) is subject to separate reporting obligations.

Analysis of the functioning of the existing 2009 Telecoms Package will be facilitated by the following:

- i. The Commission has closely followed the progress made towards reaching the broadband targets of the Digital Agenda for Europe as well as the development of the single market for electronic communications and the transposition and application of European rules, as regularly reported in the Digital Agenda Scoreboard and Progress Reports on EU electronic communications regulation and markets. The annual Digital Agenda Scoreboard and Progress Reports provide comprehensive data and analysis of market, regulatory and consumer developments in the sector and have already signalled a lack of harmonisation and consistency in the implementation of regulatory approaches across Member States.
- ii. Results from the EU consultation mechanism on market regulatory measures provided for in the regulatory framework (the so-called "Article 7 procedure") have also highlighted inconsistent practices by NRAs over a longer period when regulating relevant electronic communications markets.
- iii. In the context of the RSPP, the Commission is continuously monitoring the assignment of harmonised spectrum in the Union. This monitoring has detected a considerable lack of coherence across Member States with regard to the authorisation and the opening and use of spectrum bands on a technology-neutral basis for the provision of wireless broadband connectivity.
- v. Recent evaluation of the functioning of the Body of the European Regulators for Electronic Communications (BEREC) concluded that there is room for improvement in certain areas such as internal organisation, task definition, independence, accountability and prioritisation.

Background

The regulatory framework for electronic communications networks and services (Telecoms Package) consists of:

- Directive [2002/21/EC](#) on a common regulatory framework for electronic communications networks and services (Framework Directive);
- Directive [2002/20/EC](#) on the authorisation of electronic communications networks and services ([Authorisation Directive](#));
- Directive [2002/19/EC](#) on access to, and interconnection of, electronic communications networks and associated facilities ([Access Directive](#));
- Directive [2002/22/EC](#) on universal service and users' rights relating to electronic communications networks and services ([Universal Service Directive](#));
- Directive [2002/58/EC](#) concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

The original regulatory framework was supplemented with other instruments, such as Regulation [1211/2009](#) (BEREC Regulation), Regulation [717/2007](#) (Roaming Regulation), Directive [2014/61](#) (Broadband cost reduction) and several Commission decisions, such as Decision [676/2002/EC](#) of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision), Decision [2002/622/EC](#) of 26 July 2002 establishing a Radio Spectrum Policy Group (RSPG) and Decision [243/2012/EU](#) of 14 March 2012

establishing a multiannual radio spectrum policy programme (RSPP)

The framework is further complemented by *soft law* instruments that include Commission Recommendations relevant to the telecoms sector and which are indispensable for the application of the Regulatory Framework: Recommendation 2014/710 (relevant product and service markets for ex ante regulation), Recommendation 2010/572 (regulated access to Next Generation Access Networks), Recommendation 2013/466 (non-discrimination and costing methodologies) and Recommendation 2009/396 (termination rates).

The Telecoms Package contains various evaluation, reporting and review obligations, such as:

- Article 25 of the Framework Directive
- Article 16 of the Authorisation Directive;
- Article 17 of the Access Directive;
- Article 15 and Article 36 of the Universal Service Directive;
- Article 18 of the Directive on privacy and electronic communications.

What are the main problems which this initiative will address?

Since the last review in 2009, electronic communications networks and services have been undergoing significant structural changes characterised by a slow transition from copper to fibre, more complex competition with the convergence of fixed and mobile networks and the rise of retail bundles, emergence of new online players (so called OTTs) along the value chains, which challenge the role of traditional providers of electronic communications networks and services in providing vertically integrated communications/audiovisual services in addition to broadband/internet access, and not least changing end-user expectations and requirements.

While the current framework has been instrumental in ensuring that markets operate more competitively, bringing lower prices and better quality of service to consumers and businesses, it can be questioned as to whether it has sufficiently promoted the transition towards high-capacity Next Generation Access (NGA) networks fit to meet future needs. In spite of the gradual extension of NGA networks (coverage of 68% in 2014), the coverage of very high-speed networks able to deal with a likely substantial future increase in demand for upload as well as download remains limited (Fibre-To-The-Premises (FTTP) coverage stood at 19% at the end of 2014). Moreover, the growth in high speed broadband subscriptions (especially above 30Mbps download) slightly slowed in 2014 compared with previous years, while growth in very high speed subscriptions (above 100Mbps) remained slow with a take-up rate of 9% of all fixed broadband connections. Overall, fixed high-speed broadband penetration still varies significantly across the Union, with some Member States continuing to trail behind on NGA take-up. This digital divide is even more pronounced if one considers the figures for rural areas (NGA coverage in rural areas stood at 25% at the end of 2014). An investment gap of € 90 billion has been identified in order to meet the 100 Mbps take-up target (50% of all fixed subscriptions) for 2020.

Although telecom markets have become more integrated, progress is slow and the provision of connectivity to business and consumers remains highly fragmented and divergent across the Union. This is particularly the case for radio spectrum which is a vital building block for the deployment of broadband services. A recent study for the European Parliament assessing the achievements and failures of the current framework has shown that Europe's telecoms sector remains fragmented along national lines. This lack of integration represents a significant missed opportunity. It is estimated, for example, that the indirect benefits which could be achieved from policies fostering a consistent regulatory approach for business communications alone amount to € 90 billion p.a.

Whilst the lack of consistency in the regulatory approach taken at national level is not solely attributable to the regulatory set-up in the EU, it has become apparent over the past years that it is – to a degree at least – the result of the institutional set-up and the way the various institutional players (i.e. mainly the national regulators, the Body of European Regulators, i.e. BEREC, and the European Commission) interact and can influence the regulatory outcome.

Following IP convergence and a demand shift from IP voice to data traffic, traditional electronic communications service (ECS) providers are increasingly competing with IP and software-based business models. Over-the-top (OTT) services such as VoIP, messaging and also social networks are more and more used by end-users as substitutes for traditional ECS such as voice telephony and SMS for interpersonal communications. There is some evidence of a chain of functional substitutability encompassing traditional ECS, OTT communication services and OTT platforms with a communication element. Such OTT services, however, are at this stage not subject to the same regulatory regime, as the current scope of the EU regulatory framework is centred on the definition of ECS, which requires inter alia "conveyance of signals". As a consequence, the issue of a level playing field has been raised, namely that only some, but not all, providers of competing services have to comply with various sector-specific obligations. The emergence of substitutable OTT services therefore calls for a re-evaluation of the existing provisions, aimed at achieving a situation where providers of competing or comparable services would be subject to the same obligations and would also enjoy the same rights. At the same time, the

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| communications sector has seen important technological and commercial innovations which may also require a modernisation of the applicable regulatory framework. |
| The REFIT evaluation of the 2009 Telecoms Package, as well as consultations and studies planned for 2015, will further identify issues and problems that should be addressed by the Reform of the current regulatory framework. These issues will be subject to wide public consultation. The main problems will be identified in this process and addressed in the legislative proposals in 2016. |
| Who will be affected by it? |
| The Reform of the regulatory framework will directly affect the sector providing electronic communications networks and communications services (e.g. telecoms operators, online service providers) and consequently users of those services (users' associations and end-users). It will involve national governments, national regulatory authorities, BEREC and industry associations. It may also affect other parties, such as employee representatives. |
| Is EU action justified on grounds of subsidiarity? Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? Can the EU achieve the objectives better? |
| EU action is justified by the requirement in the current EU regulatory framework periodically to review the functioning of the current rules. The aim of the review is to address market fragmentation and ensure better harmonisation of the regulatory environment in order to promote better outcomes, especially in respect of high-speed connectivity, in the interests of achieving a Digital Single Market. |

B. Objectives of the initiative

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| What are the main policy objectives? |
| The main policy objective is to identify the most appropriate measures to align the current regulatory framework for electronic communications to the needs of a well-functioning Digital Single Market, in particular by supporting the achievement of public policy goals related to ubiquitous and accessible high-speed connectivity. The initiative also aims at simplifying regulation and reducing administrative burden. It should support the overall connectivity vision of a Digital Single Market in which all Europeans should be connected to high-speed internet everywhere by ensuring the widest coverage of areas where citizens live, work, gather and travel in the EU with unconstrained connectivity at affordable prices. |
| An investigation into the cost of non-Europe has shown that the untapped economic potential of the single market for telecoms corresponds to an increase of 0.9% of annual GDP amounting to 110 billion euros for the sector and even more in indirect gains for the economy as a whole. Over the wider economy, at least 4% additional GDP (EU 27) could be gained in the longer term (between 2010 and 2020) by stimulating further adoption of ICT and digital services through the creation of a digital single market. |
| Do the objectives imply developing EU policy in new areas? |
| This is a policy area which is subject to constant and rapid technological and market development. The follow-up initiatives may imply a full revamp of the existing EU regulatory framework for electronic communications, in coordination with other policy developments in the field of the Digital Single Market. |

C. Options

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| (1) What are the policy options (including exemptions/adapted regimes e.g. for SMEs) being considered? (2) What legislative or 'soft law' instruments could be considered? (3) How do the options respect the proportionality principle? |
| The policy options and relevant instruments will be defined in detail at a later stage to take account of the results of the REFIT evaluation and the results of the public consultation and relevant studies. |
| The review will have to address all three pillars of the current framework, namely (a) the network pillar, with the aim to ensure a consistent and predictable regulatory environment that is supportive for infrastructure investments in both fixed and wireless networks; (b) the service pillar, with the aim to ensure a modernised regulatory regime for electronic communication services in a world of diverse online services, and (c) the governance pillar, with the aim to ensure that markets are regulated in a consistent manner across the EU, including as regards spectrum, in order to foster the creation of a true single telecoms market through the emergence of electronic communications services provided at an efficient scale throughout the EU. |
| Addressing these three areas entails various policy options and sub-options. As for the network pillar, the review will need to assess inter alia whether the current policy and regulatory objectives are still fit for purpose or whether they should be complemented with a stronger emphasis on investment as a policy objective. Furthermore, it will need to be assessed whether the current market regulation and in particular access |

regulation could be streamlined and eventually simplified. In certain areas, primarily rural, private investments might not be expected on the basis of current regulatory incentives, due to long-run cost structures and low long-term returns on investment. This calls for reassessing the appropriate degree of complementarity between sector-specific access regulation and other regulations and measures which enable efficient public intervention.

With regard to wireless access, the policy options will explore the need for greater coordination and consistency, compared to the current situation, in the way spectrum use is authorised in Europe and whether this could require a revision of the regulatory framework for electronic communications which sets fundamental principles and certain operational requirements for spectrum allocation and assignment.

As for the services pillar, the review will have to evaluate to what extent the currently applicable provisions are still fit for purpose or have become obsolete and how they need to be amended in order to respond to today's and future challenges. Secondly, because of the recent emergence of new types of players offering communications services, the scope of the regulatory regime for the future should create a level regulatory playing field for functionally substitutable and competing services. Such a level playing field is expected to incentivise investment by all actors of the value chain and enable innovation while modernising the safeguards for end-users and thereby boosting the demand for communications services.

Regarding the universal service provisions in the current framework, the review will evaluate whether the current concept of the universal service should be maintained or modified and whether the current scope of mandatory services is compliant with the market and technological developments. In particular, the role of broadband as part of universal service and its implications on the financing mechanism will have to be carefully assessed.

With regard to the governance pillar, the changing market and technological environment requires an assessment as to whether the current institutional framework and the role of bodies in which the Member States' authorities are themselves represented – such as the Body of European Regulators for Electronic Communications or the Radio Spectrum Policy Group - should be adapted or reinforced in order to enhance their capacity to contribute to a consistent and predictable regulatory environment supporting the connectivity ambition set out in the DSM strategy.

The proposed work stream will enable the elaboration of options for each of the pillars and the assessment of their impacts.

D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

The impacts of various options will be assessed in detail at a later stage. The anticipated overall impact of an adapted regulatory regime is expected to be conducive to competition and investment for the benefit of sector, economy and users. More streamlined regulation will likely decrease regulatory and administrative burdens.

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

Not relevant at this stage.

- (1) Will an IA be carried out for this initiative and/or possible follow-up initiatives?
- (2) When will the IA work start?
- (3) When will you set up the IA Steering Group and how often will it meet?
- (4) What DGs will be invited?

- 1) An impact assessment is planned for the initiatives following the evaluation (i.e. eventual Commission proposals).
- 2) The work on the impact assessment of the eventual Commission proposals started in April 2015 and will proceed in close coordination with the on-going evaluation of the current framework.
- 3) An Inter-Service Steering Group was set up in May 2015. The role of the ISG is to steer all major points of the ex-post evaluation and IA work.
- 4) The main DGs with which to coordinate closely include: SG, COMP, JUST, GROW, LS, other DGs.

- (1) Is any option likely to have impacts on the EU budget above € 5m?
- (2) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial Regulation? If not, provide information about the timing of the ex-ante evaluation.

- 1) No such impact expected for the evaluation.

E. Evidence base, planning of further work and consultation

- (1) What information and data are already available? Will existing IA and evaluation work be used?
- (2) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?
- (3) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?
- (4) Is any particular communication or information activity foreseen? If so, what, and by when?

1) Several actions have already been completed or are in progress and a more detailed analysis will follow at the time of the definition of the eventual Commission proposals. The Commission has closely followed the development of the single market for electronic communications and the transposition and application of European rules, as reported in the annual Progress Reports on EU electronic communications regulation and markets. As noted in section A.3, both the evaluation and the review will draw on the wealth of experience of the application of the 2009 regulatory framework including all the evaluations conducted to date (e.g. the evaluation on the functioning of BEREC).

The Commission will draw from its experience of continuous monitoring, prevention and enforcement activities related to the implementation of the current regulatory framework, including analysis of the compliance of national measures with the EU rules and the handling of individual complaints. All the above information will feed into the evaluation but will provide, at the same time, elements for the problem definition section of the Impact Assessment for the review proposals. Existing IA work will be re-used and complemented.

2) Further studies (see details in section 3 below) will be conducted in 2015-2016 by external contractors for DG CNECT, which will serve two purposes. First they will complement the information referred to above by providing further elements for the evaluation of different dimensions of the functioning of the current regulatory framework as appropriate. Secondly, they will include a forward-looking part to support the Commission in devising the eventual policy changes needed and providing an evidence base to that effect, thereby feeding into the impact assessment of the review proposals.

3) All studies have been or will be launched via open public tendering procedures for analytical work, with the following timing:

- Study on the Review of the scope of Universal Service, SMART 2014/0011: launch Q4 2014, results Q2 2015
- Study on future trends and business models in communications services and their regulatory impact (OTT study), SMART 2013/0019: launch Q1 2015, final results Q1 2016
- Investigation into access and interoperability standards for the promotion of the internal market for electronic communications: launch Q1 2015, final results Q3 2015
- Substantive issues for review in the areas of market entry, management of scarce resources and general consumer issues, including relevant institutional aspects: launch Q2 2015, final results Q1 2016
- Access regimes for network investment and business models in Europe, including relevant institutional aspects: launch Q2 2015, final results Q1 2016
- Cost-benefit analysis of options for the review of the regulatory framework for e-communications: launch Q3 2015, final results Q2 2016.

4) The proposed measures will be the subject of a specific communication strategy targeting the various categories of institutional and non-institutional stakeholders, including by means of public consultations and workshops.

The consultation strategy will cover both the ex-post evaluation and the Impact Assessment stages. Its activities will help define the problems to address and test ideas for the Reform in 2016. The consultation strategy aims to prepare the ex-post evaluation and give an additional insight into the application of the 2009 regulatory framework. The consultation strategy will also help to develop a policy response for the digital age by targeting a wide range of stakeholders. The launch of stakeholder consultations related to this initiative will be announced in the consultation planning that can be found at <http://ec.europa.eu/yourvoice/consultations>.

Which stakeholders & experts have been or will be consulted, how, and at what stage?

All categories of stakeholders, experts and the public at large will be consulted through a dedicated public consultation. The consultation will include questions feeding into the evaluation of the current regulatory framework and the input will help to define the main problems and key issues to be addressed in the Review.

Moreover, experts from BEREC, RSPG and other competent authorities will be consulted over the same period.

The evaluation will be the starting point for advising the Commission further on the Reform proposals in 2016.