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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union

- Statement of the Council's reasons
- Adopted by the Council on 1 October 2015

I. INTRODUCTION

1. The Commission adopted its 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* (TSM proposal) on 11 September 2013 with article 114 TFEU as a legal basis. The main elements of the TSM proposal included provisions on a single EU authorisation for electronic communications providers, on European inputs (including coordination of use of radio spectrum and European virtual access products), harmonised rights of end-users, network neutrality, powers of national regulatory authorities, roaming and BEREC.
2. The European Economic and Social Committee voted its Opinion on 21 January 2014 and the Committee of the Regions voted its Opinion on 30-31 January 2014.
3. The European Parliament voted its legislative resolution in first reading on 3 April 2014¹, adopting 233 Amendments. Most elements of the TSM proposal were retained. The European Parliament amended the roaming provisions with the objective of abolishing roaming surcharges subject to a 'fair use clause' by December 2015. Network neutrality provisions were amended notably to include a definition of network neutrality and to limit the possibility for operators to provide specialised services by requiring that network capacity is sufficient to provide them in addition to internet access services. Harmonised European wholesale broadband access products were not retained, and the form of the consumer protection elements was modified.

¹ European Parliament legislative resolution of 3 April 2014 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, 2002/22/EC, and Regulation (EC) No 1211/2009 and (EU) No 531/2012 (COM(2013)0627 - C7-0267/2013 - 2013/0309(COD))

The Council and the European Parliament entered into negotiations with a view to reaching an early second reading agreement. Intensive examination of the TSM proposal has resulted in an understanding to focus discussions only on two core issues: roaming and net neutrality, including the consumer rights related to each of these issues. Provisions on a single EU authorisation, European inputs (including the coordination of radio spectrum and European virtual access products), as well as BEREC were not retained.

4. The negotiations were successfully concluded on 30 June 2015 with European Parliament and Council reaching a provisional agreement on a compromise text.
5. On 8 July 2015 the Committee of Permanent Representatives confirmed the compromise text of the TSM proposal, as it had been agreed by the two institutions.
6. On 16 July 2015 the Chair of the European Parliament's ITRE Committee addressed a letter to the Presidency stating that, should the Council transmit formally to the European Parliament its position as agreed, subject to legal-linguistic verification, he will, together with the Rapporteur, recommend to the Plenary that the Council's position be accepted without amendments at Parliament's second reading.

II. OBJECTIVE

7. It derives from the outcome of the negotiations that the Regulation aims at establishing common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and safeguarding end-users' rights.
8. In the field of roaming the Regulation sets up a new retail pricing mechanism for Union-wide regulated roaming services in order to abolish retail roaming surcharges without distorting domestic and visited markets.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. General

9. Following the vote in plenary, the European Parliament and the Council conducted negotiations with the aim of concluding a second-reading agreement on the basis of a Council first-reading position that the Parliament could approve as such. The text of the Council's first-reading position fully reflects the compromise reached between the co-legislators.

B. Key issues

10. The main elements of the compromise reached with the European Parliament are outlined below:

a. Roaming

11. Under the compromise, retail roaming surcharges in the European Union will be abolished as of 15 June 2017. However, the compromise defines two situations when the application of surcharges is still authorised, subject to specific criteria.
12. First of all, roaming providers will be able to apply a 'fair use policy' to prevent abusive or anomalous usage of regulated retail roaming services. Once the fair use policy has been exceeded, a surcharge may be applied. The surcharge cannot be higher than the maximum wholesale charges. The detailed rules on the application of the fair use policy will be defined by the Commission in an implementing act by 15 December 2016.

13. Secondly, with a view to ensuring the sustainability of the domestic charging model, in specific and exceptional circumstances, where roaming providers will not be able to recover overall costs of providing regulated roaming services from overall revenues of providing such services, they, subject to the authorisation by the national regulatory authority, may apply a surcharge, but only to the extent necessary to recover those costs.
14. The abolition of the roaming surcharges of 15 June 2017 is subjected to the adoption by that date of a legislative proposal amending the maximum wholesale charges currently regulated under Regulation 531/2012 or providing for another solution to address issues identified at wholesale level. The Commission, before submitting such a legislative proposal, is required to conduct a review of the wholesale roaming market with a view to assessing measures necessary to enable abolition of retail roaming surcharges.
15. In order to ensure a smooth transition to the abolition of roaming surcharges, the compromise provides for a transitional period, which will start as of 30 April 2016. From this date roaming surcharges will be significantly reduced. The maximum surcharge will then be limited to the current maximum wholesale charges laid down in Regulation 531/2012. For calls received, the maximum surcharge will be the weighted average of maximum mobile termination rates across the EU, to be set out by the Commission by means of an implementing act by the end of 2015.

b. Network Neutrality

16. Under the new EU-wide rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services, providers will be required to treat all traffic equally when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used . They may use reasonable traffic management measures , but such measures must be transparent, non-discriminatory , proportionate and not be based on commercial considerations. Traffic management measures must not monitor specific content and must not be maintained longer than necessary. Measures going beyond such reasonable traffic management (for example, blocking or throttling) will be prohibited, except for a limited number of cases defined in the Regulation.
17. Agreements on services requiring a specific level of quality will be allowed, provided that those services are not usable or offered as a replacement for internet access service and they are not to the detriment of the availability or general quality of internet access services for end users.

c. End-users' rights

18. The provisions on safeguarding of open internet access and roaming are complemented by end-users' provisions which, in particular, enable end-users to make informed choices. For example, in relation to network neutrality, providers of internet access services should inform end-users in a clear manner about how traffic management practices and any services other than internet access services may impact on the quality of the internet access service. Providers should also inform end- users of the speed normally available and the remedies in case of non compliance.

19. In the area of roaming, in order to strengthen the rights of roaming customers, the Regulation lays down transparency requirements on the specific tariff and volume conditions that will apply once roaming surcharges are abolished. In particular, customers will need to be notified about the applicable fair use policy or when consumption volumes are reached.

IV. CONCLUSION

The Council's position fully reflects the compromise reached in the negotiations between the European Parliament and the Council, with the agreement of the Commission. The compromise is confirmed by the letter that the Chair of the ITRE Committee addressed to the Chairman of the Permanent Representatives Committee on 16 July 2015.
