

# Review of the European Regulatory Framework

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# Review of the Regulatory Framework

## Commission's proposals

- Review Package was adopted by the European Commission on 14 September 2016
- The Package included the following proposals:
  - Proposal for a Directive of the European Parliament and of the Council establishing the **European Electronic Communications Code**
  - Proposal for a Regulation of the European Parliament and of the Council establishing the **Body of European Regulators for Electronic Communications**
  - Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of **Internet connectivity in local communities**
  - **Connectivity for a Competitive Digital Single Market** - Towards a European Gigabit Society
  - **5G for Europe: An Action Plan**

# Review of the Regulatory Framework

## Timeline For the European Electronic Communications Code

Council	EP
<p><b>SK PRES</b> Ministerial debate at the TTE Council (2/12/2016)</p>	<p><b>Committee responsible: ITRE</b> (Industry, Research, Energy) Rapporteur: Pilar del Castillo Vera</p>
<p><b>MT PRES</b></p> <ol style="list-style-type: none"> <li>1. Article-by-Article examination started in 2017</li> <li>2. Member States discussed all articles once</li> <li>3. Presidency proposed text for Access, Services</li> <li>4. Progress Report at the TTE Council (9/06/2017)</li> </ol>	<p><b>Committees for opinion:</b></p> <p><b>IMCO</b> (Internal Market and Consumer Protection) Rapporteur: Dita Charanzová</p> <p><b>CULT</b> (Culture and Education) Rapporteur: Cruzio Maltese</p> <p><b>LIBE</b> (Civil Liberties, Justice and Home Affairs) Rapporteur: Morten Helveg Petersen</p>
<p><b>EE PRES</b> Negotiations continue, the exact timeline is unknown.</p>	<p><b>IMCO timeline</b></p> <ol style="list-style-type: none"> <li>1. Deadline for amendments: 10/05/2017</li> <li>2. Consideration of amendments: 8/06/2017</li> <li>3. Vote in committee: 21-22/06/2017</li> </ol>
	<p><b>ITRE timeline</b></p> <ol style="list-style-type: none"> <li>1. Committee draft report: 17/03/2017</li> <li>2. Deadline for amendments: 4/04/2017</li> <li>3. Vote in committee: 11/07/2017</li> </ol>

# Review of the Regulatory Framework

## Timeline For the BEREC Regulation

Council	EP
<p><b>SK PRES</b> Ministerial debate at the TTE Council (2/12/2016)</p>	<p><b>Committee responsible: ITRE</b> (Industry, Research, Energy) Rapporteur: Evžen Tošenoský</p>
<p><b>MT PRES</b> Article-by-Article examination has not started yet.</p>	<p><b>Committees for opinion:</b> <b>IMCO</b> (Internal Market and Consumer Protection) Rapporteur: Ivan Štefanec <b>CULT</b> (Culture and Education) Rapporteur: Silvia Costa <b>LIBE</b> (Civil Liberties, Justice and Home Affairs) Rapporteur: Morten Helveg Petersen</p> <p><b>ITRE timeline</b></p> <ol style="list-style-type: none"><li>1. Committee draft report: 02/03/2017</li><li>2. Deadline for amendments: 30/03/2017</li><li>3. Vote in committee: 11/07/2017</li></ol>

# European Electronic Communications Code

## EP position on access related stipulations

- **Market analysis**
  - Market review periods: reduced frequency of market reviews for rapidly changing markets (every 3 years up from every 5)
  - Automatic lapse of remedies
  - Double-lock veto kept
  - Operators may request a new market review at any time where they consider that market developments are reasonably likely to affect competitive dynamics
  - Removal of powers proposed for BEREC and the Commission regarding the analysis of transnational markets and the harmonisation of transnational wholesale access products
- **No stipulation regarding non-competitive oligopolies**
- **Termination rates**
  - Agrees with the Commission's approach but does not refer to a specific amount for the caps
  - It requires that the maximum termination rates set by the Commission cannot be higher than any in force in the EU
- **New chapter on VHC networks**
  - Regulatory relief for VHCCN elements

# European Electronic Communications Code

## EP position on spectrum related stipulations

- 30-year minimum license duration rather than 25-year minimum duration for spectrum licenses as proposed by the Commission
- Common deadlines for potential 5G bands (3.4-3.8 GHz and 24.25-27.5 GHz, 31.8-33.4 GHz and 40.5-43.5 GHz)
- Amendment of spectrum licenses
  - Only valid with the prior agreement of the right holder
- Peer review
  - Deadline for BEREC to issue its opinion to three months
- RSPG stipulated at Directive level

# European Electronic Communications Code

## EP position on services related stipulations

- Scope
  - Maximum harmonisation of sector-specific consumer protection rules at EU level for ECS, except for number-independent ICS
  - Exclude number-independent ICS from the end user section of the draft Code
  - Exclude requirements on machine-to-machine from the end-user related section
- International calls
  - Fixed and mobile international calls within the EU should be charged at domestic rates
- Universal service
  - Supports the Commission's proposal to restrict the USO scope to affordable broadband access and voice services
  - Restricts the funding of USO to contributions from a state's general budget, abolishing any possibility to set up an industry fund

# European Electronic Communications Code

## Preliminary position of the political groups

**S&D** (*Shadow M-P. Kumpula-Natri*) opposes **deregulation**, pleading for the NRAs secured guarantee of efficient **instrument to prevent oligopolies**. For S&D information regarding **investment plans** should be treated as confidential. **Spectrum**, S&D suggests a mid-term Review in the 25 years so as to adapt to **new entrants and technologies** and to prevent **licences monopolisation**.

**Greens** (*Shadow M. Reimon*) also opposes **deregulation** they are even more radical on **co-investment** « *as being conducive of enduring local oligopolies and coordinated actions preparing cartels* ». Regarding **spectrum**, Greens opposed **long-term licenses** (*even 20 years is too long based on his experience*) for **preserving competition and markets evolutions**.

**ALDE** (*Shadow K. Kallas*) pushes for **symmetrical regulation** lying on an similar way to all players and **limited** to evidenced SMP. However much stricter on the **risks of co-investment schemes** (monopoly) if loopholes remain in the proposed framework. **Spectrum** licenses of 25 years max. with revisions every 5 years to adapt to technological evolutions.

**ECR** (*E. Tošenovský*) does not suppress art 74.1 however pleads for a clear **strengthening of independent NRAs powers** among which the decision to maintain obligations or not lying on players as regards **network access**.



# European Electronic Communications Code

Council position in general (based on latest informations)

- The official position of the Council is not yet available.
- The TTE Council (9 June 2017) will adopt progress report, regarding the work achieved so far in the Council
  - No compromise text proposal will be attached to the report
  - Only reference will be made to working documents on access and end-user topics (papers already presented in Council WP)
  - Institutional and spectrum working document will not be prepared by the Presidency
- MS in general support the proposal, but the positions on the details vary.
- Crucial issues:
  - Scope of the Code
  - Spectrum related stipulations
  - Level of harmonization of end-user rights

# European Electronic Communications Code

## Council position on access related stipulations

- Regulatory relief for new network elements
  - Not imposing remedies on new network elements is optional, not an obligation, even if the conditions proposed by the Commission are met
  - At least one co-investment agreement must have been already concluded.
- Double-lock veto on remedies
  - Rejected
- Termination rates
  - No explicit level for caps
  - The caps would apply to all "active" operators, not only those with SMP
- Three-year forward-looking geographical survey of broadband networks
  - Survey should cover "up to" three years
  - NRAs can request information "to the extent that it is available and can be provided with reasonable effort."
  - Enforcement action against operators only if they have deliberately provided wrong information.

# European Electronic Communications Code

## Council position on spectrum related stipulations

- Joint position of 16 MS (AT, BG, HR, CY, CZ, FI, DE, EL, IE, IT, LV, NL, PL, PT, ES, UK) issued on 21 April
- Joint position of 7 MS (BG, DK, FI, IT, NL, PL, ES) on peer review (art. 35) on 25 April
- MSs reject the sweeping-off of powers and flexibility on auctions processes
- Significant objection to minimum license duration as well as to the new peer review procedure

# European Electronic Communications Code

## Council position on services related stipulations

- Harmonisation of consumer protection law at EU-level
  - Minimum vs. maximum harmonisation
  - Presidency proposal: maximum harmonisation of number-independent interpersonal communications services
  - For a better understanding, a table setting out which provisions apply to which services was debated by MSs
- Universal service obligation
  - Maintain MS' flexibility regarding the scope and funding of the USO
  - Flexibility for MSs on defining functional broadband, e.g. a minimum bandwidth or a list of services to be supported
- Security related stipulations
  - Alignment of the text with the NIS Directive, with the addition of importing and amending the provisions from ePrivacy

# BEREC regulation

## Summary of EP position

- ITRE
  1. Committee draft report: 02/03/2017
  2. Deadline for amendments: 30/03/2017
  3. Vote in committee: 11/07/2017
- The rapporteur (Evžen Tošenoský)
  - aims to maintain the current set-up of BEREC;
  - wants to maintain the current two-tier system with on the one hand the Board of Regulators, with no legal personality and on the other hand the Office, currently located in Riga, as a decentralised EU agency with legal personality;
  - agrees with the Commission to provide BEREC with extra staff up to 40-45 by 2019-2020, compared to a maximum of 27 at the moment;
  - wants to remove the explicit references to specific tasks, such as taking decisions on identifying trans-national market and contract summary templates.

# BEREC regulation

## Summary of EP position

**S&D** (*Shadow Nicola Danti*) opts for **reforming current BEREC** with conviction that an **Agency** will be more work-and-cost-efficient and bring more **Europeanisation** (EU-consistent implementation of rules). However **BEREC full independence** is to be secured (critics to EC's proposals) and notably via appointment of the Executive Director (EC « dubious » plan). Similar ideas than **S&D ITRE Shadow Rapporteur Constanze Krehl**.

**ECR** (*Shadow Emma McClarkin*) also lots of commonalities with EPP. The **institutional structure** is a key issue to be addressed via a **number of immediate actions** (not detailed..)

**ALDE** (*Shadow K. Kallas*) BEREC is not valuable as a **mere Forum of discussion** should be more: produce **convergence**, binding decisions to avoid inconsistency noted in the **interpretation** and in the **enforcement** (similar system than the GDPR). The governance should be **flexible** enough to promote synergies/enhanced cooperations between NRAs on certain **key topics** (e.g.open data). BEREC should be **fully independent** and that should be reinforced in the EC text. BEREC in the same line should avoid duplicated **cross-border obligations** for player and should set a system of **'One-Stop-Shop'** wherever possible.

# BEREC position

- BEREC opinions
  - December 2015 – BEREC Opinion on the review of the regulatory Framework
  - December 2016 – BEREC high-level Opinion on the European Commission's proposals for a review of the electronic communications framework
- BEREC is now following the ongoing legislative process, continuing the technical analysis and exchanging expert views with MEPs
- 12 detailed analysis papers published 11 May 2017, also with a view to identifying concrete amendment proposals on key topics

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# Review of the Regulatory Framework

**Thank you**