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Subject: Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European telecommunications networks and repealing Decision No 1336/97/EC  
- *Progress report*

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*The present report has been drawn up under the responsibility of the Cyprus Presidency. It sets out the work done so far in the Council's preparatory bodies and gives an account on the state of play in the examination of the above mentioned proposal.*

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Coreper/Council are invited to take note of this report.

## INTRODUCTION

1. The TTE Council of 7-8 June 2012 discussed a progress report<sup>1</sup> on the Commission's proposal of October 2011 for a Regulation of the European Parliament and of the Council on guidelines for trans-European telecommunications networks and repealing Decision No. 1336/97 EC<sup>2</sup> (hereinafter: Telecoms Guidelines). These Telecoms Guidelines will cover the objectives and priorities for broadband networks and digital service infrastructures and identify projects of common interest in this regard.
2. Under the Cyprus Presidency, the Working Party on Telecommunications and Information Society (hereinafter: WP TELE) examined this proposal further at several meetings with particular attention to the following issues: Member State involvement, particularly in relation to the preparatory steps of project selection and the modification of the description of projects of common interest; role and status of the proposed Expert Group; the contents of the annex to the Telecoms Guidelines; and the relation of the means of financing proposed in the draft Regulation establishing the Connecting Europe Facility (hereinafter: CEF Regulation)<sup>3</sup> and other financial instruments, such as structural and cohesion funds.
3. In parallel to the work on the Telecoms Guidelines in the WP TELE, a Friends of the Presidency Group continued with its examination of the draft CEF Regulation, which aims to stimulate investment in transport, energy and ICT infrastructure. Under the CEF, an amount of €9.2 billion is allocated for telecommunications.
4. In the European Parliament, the Committee on Industry, Research and Energy (ITRE) adopted at its meeting on 5 November 2012 a large number of amendments on the draft Regulation on the Telecoms Guidelines. The vote included a mandate for the Rapporteur and Shadows, in consultation with the ITRE Chair, to enter into negotiations with the Council and the Commission with a view to reaching agreement on the file.

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<sup>1</sup> Doc. 10451/12.

<sup>2</sup> Doc. 16006/11.

<sup>3</sup> Doc. 16176/11.

## EXAMINATION OF THE DRAFT TELECOMS GUIDELINES IN THE COUNCIL

5. With regard to the substance of the text of the draft Regulation and as set out in the latest Presidency text on the proposal<sup>4</sup>, the WP TELE reached broad agreement on the sectoral objectives to be achieved through the projects of common interest (Article 2) and on how to measure *ex post* progress on the achievement of these objectives, although some issues remain regarding which *ex post* criteria to use. With regard to the definitions (Article 3), the text has been clarified although the exact definition of 'broadband' as compared to the targets set under the Digital Agenda for Europe remains an issue, also in relation to the priorities in the area of broadband (Article 4) and the Categories of Action (Section 2 of the Annex). Concerning the priorities in the area of broadband, text has been added to the draft Regulation to underline the need for technological neutrality, to clarify priorities, and to put an emphasis on the competitiveness and sustainability of European industry, including SMEs; however, concern remains as to whether the scope of the priorities is specific enough and more clarification is needed on how priorities will be used in project selection procedure.
  
6. Delegations raised many questions about the general implementation and governance of the Connecting Europe Facility (CEF) and about the implementation of the Telecoms Guidelines specifically, particularly as regards the proposed use by the Commission of *delegated acts* for adding, removing or modifying the description of projects of common interest (Article 5 and 8). A number of delegations continue to question the need for delegated acts, as they consider the annex to contain essential provisions of the act, which cannot be delegated. In this respect, delegations argued in favour of using implementing acts in relation to specific technical aspects of the Annex, which describes the projects of common interest. The Commission considers it very unlikely that the Annex will require modification. The role of the Expert Group (Article 7) has also been amended, but further discussion is needed, particularly with regard to the extent of its involvement in the drawing up of delegated acts.

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<sup>4</sup> Doc. 17034/12.

7. The Annex to the draft Regulation has been re-structured and simplified, purely declaratory language has been eliminated to the extent possible and clarifications have been introduced. There appears to be broad agreement on Section 1 and 3 of the Annex (horizontal issues and digital services infrastructures respectively) while further discussion would be necessary for the fine tuning of details. Significant progress has also been made on Section 2 of the Annex that deals with broadband. The role of the state aid rules has been underlined, the categories of actions have been further refined by separating the areas based on the population density criterion and the method of possible intervention (grants and/or financial instruments) in those areas has been introduced. The Commission expressed its preference to use predominantly financial instruments to finance broadband deployment. However, a significant number of delegations requested financial instruments and grants to be on an equal footing. While agreeing that financial support should not lead to market distortions and the crowding out of private investments, views are converging that both financial instruments and grants could be used for broadband deployment, possibly with a preference for financial instruments, at least for certain types of areas.

## **OUTLOOK**

8. The WP TELE will be required to provide further input to the work on the draft CEF Regulation in regard of the contents of its Annex on "pre-identified priorities and areas of intervention in the telecommunications sector", on the relationship between Part III of the Annex to the draft CEF Regulation and the Annex to the draft Telecoms Guidelines, on how the contents of these annexes could possibly be changed (through delegated acts or otherwise, and possible involvement of the Expert Group) and on the functional link and consistency with "eligibility and conditions for financial assistance" as foreseen under Article 7 of the draft CEF Regulation.

9. Although significant progress has been made on the draft Telecoms Guidelines, there are a number of areas where the Presidency feels that further work is needed in order to ensure further consistency throughout the text, e.g., with regard to broadband targets and relevant priorities set out in the articles and the broadband projects described in the Annex.
10. Progress on the above issues combined with the examination of the Parliament's amendments should allow the Council to finalise its position in a timely manner in order to enter into first-reading negotiations with the Parliament.

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