

Brussels, 26 November 2008

## **Telecoms Council, Brussels, 27 November 2008: SMS & Data Roaming and Telecoms Reform to be discussed by Ministers**

*The Council of EU Telecoms Ministers will meet in Brussels tomorrow, 27 November 2008. Two key telecoms dossiers are on the agenda: the new Roaming Regulation on SMS and Data Roaming – on which a "general approach" (the outline of a political agreement) is expected – and the reform of the EU's telecoms rules (last revised in 2002), where discussions continue to be difficult. The EU Telecoms Ministers will also adopt conclusions on the Future of the Internet and discuss what role the Universal Service could play in achieving "broadband for all". The Commission will be represented at the Council by Viviane Reding, EU Telecoms Commissioner.*

### **Main items on the agenda of this Telecoms Council:**

- EU Regulation on SMS & Data Roaming (Commission proposal of 23 September 2008).
- EU Telecoms Reform (Commission proposal of 11 November 2007, modified on 7 November 2008; European Parliament first reading position of 24 September 2008).
- Future of the Universal Service (Commission report of 25 September 2008).
- Future of the Internet (Commission Communication of 29 September 2008).

### **EU Regulation on SMS & Data Roaming: Towards political agreement**

**What has the Commission proposed?** On 23 September 2008, the Commission proposed to substantially cut the cost of sending text messages and using mobile data services abroad in the EU. The proposals include a retail cap of €0.11 on roaming text messages (the current EU average is €0.29 per SMS), a €1 per Megabyte wholesale cap on data roaming charges and better control over data roaming charges for consumers. The Commission also proposed to extend the duration of the current Regulation of voice roaming charges (the cost of making and receiving a mobile phone call while travelling abroad) by three more years from 2010 to 2013. In addition, the principle of "per second billing" should be introduced (no later than the thirty-first second of a call) to make sure that voice roaming charges are fair and predictable for consumers across the EU's single market ([IP/08/1386](#), [MEMO/08/578](#)).

**What is expected at this Council?** The ministers are expected to decide on a "general approach" on the Commission proposal (the outline of a political agreement), especially endorsing the retail cap of €0.11 per SMS, the extension of the Regulation of voice roaming for three further years and the principle of "per second billing" no later than the thirty-first second.

Discussion among ministers can be expected to focus on the data roaming issue, where some Member States would prefer to go further than the Commission's proposal (lower wholesale cap or even retail cap).

**Next step:** A general approach of the Council on the key pillars of the Commission proposal on SMS and data roaming could pave the way for a **first reading agreement between Parliament and Council in spring 2009**. It is now for the European Parliament to express its views on the new roaming rules. The Regulation on SMS and Data Roaming must be adopted under the co-decision procedure (Article 251 of the EC Treaty). It therefore requires agreement between Parliament and Council to become law. If such agreement can be found in spring 2009, the new rules could enter into force on 1 July 2009, as intended by the Commission.

**Background:** On 30 June 2007, the EU Roaming Regulation ([IP/07/870](#)) introduced limits to the amount operators can charge customers for voice calls when roaming in other EU countries – the Eurotariff. While the application of this first Roaming Regulation has been a success – consumer prices have been reduced by 60% compared to 2005 levels – a [report by the European Regulators Group](#) and several studies have revealed that text messages and data roaming charges are substantially higher than the same services domestically, often leading to “bill shocks” for consumers ([IP/08/1144](#), [IP/08/1048](#)). For more information on roaming, visit <http://ec.europa.eu/roaming>

### **EU Telecoms Reform: After the positions taken by the European Parliament and the Commission, a Council position now to be expected**

The EU telecoms reform, which aims at strengthening the single market for telecoms operators and consumers, has been under discussion between Parliament, Council and Commission since 13 November 2007. The European Parliament voted on the EU telecoms reform in plenary session in first reading on 24 September this year ([MEMO/08/581](#)). The Commission accepted most of the changes proposed by the Parliament and presented a modified proposal on 7 November to facilitate an early agreement between Parliament and Council ([IP/08/1661](#)). Now it is for the Council of Ministers to finalise its negotiating position on the reform package.

**What is expected at this Council?** To become law, the EU telecoms reform must be adopted under the co-decision procedure (Article 251 of the EC Treaty). This means that the Council of Telecoms Ministers has three options on 27 November:

- **Option 1:** The Council agrees, by qualified majority, with all the amendments voted by the European Parliament, on 24 September. This would mean that the new legislation is adopted as an **early first-reading-agreement** and becomes law before the end of the year.
- **Option 2:** The Council agrees, by qualified majority, with the modified proposal presented by the Commission on 7 November, which includes over 85% of the amendments of the European Parliament. This would allow the European Parliament to vote on the Council's position in early 2009 and possibly reach an **early second-reading-agreement**.
- **Option 3:** The Council accepts neither the European Parliament's amendments nor the Commission's modified proposal. In this case, the Council can agree on a common position only if there is unanimity in the Council (Article 250 of the EC Treaty). This common position of the Council would then, as its negotiating position, go into a **second reading** with the European Parliament. The Parliament could, in this case, either give in and agree with the Council position, or it could re-install, with a majority of its members, all or part of the amendments voted in first reading. The Council could then agree to these

amendments; otherwise, a **conciliation procedure ("third reading")** would be required.

The European Parliament, in a letter sent to all 27 Telecoms Ministers on 5 November 2008 and signed by the Chairwomen of the Industry Committee and the Internal Market Committee and the three rapporteurs on the telecoms package, appealed to the Council to "pave the way for a swift agreement with Parliament".

**What issues are still open between Council, Parliament and Commission?**

While there is agreement between Council, Parliament and Commission on some certain aspects of the EU telecoms reform – such as the consumer right to number portability within 1 day – so far there is no agreement on five key issues:

- **Independence of national telecoms regulators:** On 24 September 2008, the European Parliament voted in favour of rules improving the institutional, personal and financial independence of national telecoms regulators, in view of their fundamental role in ensuring an efficient application of EU telecoms rules in the interest of fair competition and consumer benefits. In doing so the Parliament endorsed the Commission's proposal on this. The Council, however, favours a limitation of such independence by stating: "This shall not prevent supervision in accordance with national constitutional law." In some countries, this could allow Ministers to give instructions to national telecoms regulators, regardless of the guarantees under EU law.
- **The new Body of European Telecoms Regulators:** On 24 September 2008, the European Parliament voted in favour of a Community body financed from the EU budget, while 50% of its personnel would be experts seconded from national regulators. The Commission has expressed support for this structure in its modified proposal of 7 November. The Council, however, would prefer a private legal body, incorporated under Belgian law, to take charge of coordinating national telecoms regulators.
- **Consistency of regulatory remedies:** On 24 September 2008, the European Parliament voted in favour of a system of "checks and balances" to ensure the consistency of regulatory remedies in the single telecoms market (such as obligations, imposed by a national regulator, to grant new entrants access to the network of a dominant operator or to regulate mobile termination rates). Under this system, agreement between the new Body of European Telecoms Regulators and the Commission would be needed to stop a national regulator adopting a remedy that could be insufficient or otherwise distort competition in the single market. The Council would prefer not to allow the Commission to block a remedy, but only to give its opinion.
- **Management of Radio spectrum:** On 24 September 2008, the European Parliament voted in favour of coordination and harmonisation measures as regards the spectrum needed for "pan-European services". The Council is opposed to any new European Union mechanisms on radio spectrum.
- **Consumer Right of Internet Access (Amendment 138):** On 24 September 2008, after an intense debate with the proponents of the "graduated response" model for fighting Internet piracy, the European Parliament voted by a nine-tenths majority (573 votes to 74) in favour of an amendment to the effect that "no restriction may be imposed on the fundamental rights and freedoms of end-users, without a prior ruling by the judicial authorities, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, save when public security is threatened where the ruling may be subsequent". Even though the Commission supports this amendment, the Council appears unanimously opposed.

**Background:** The main principles of the current EU telecoms rules of 2002 have proved effective in progressively opening up markets, but have not yet remedied many regulatory inconsistencies and competition bottlenecks (such as access to next generation networks, termination rates etc.). In November 2007, the Commission proposed a package of reforms to the EU telecoms rules to guarantee greater consistency in the European telecoms market and enable EU citizens to benefit from better, cheaper and more secure communication services ([IP/07/1677](#); [IP/07/1678](#)). The European Parliament debated the reform first at Committee level ([MEMO/08/491](#)) and then, on 2 September 2008, in plenary session ([MEMO/08/551](#), [MEMO/08/552](#)). The European Parliament voted, in first reading, on the entire reform package in its plenary session on 24 September 2008 ([MEMO/08/581](#)).

### **Future of the Universal Service and "Broadband for all"**

Thanks to competitive markets, broadband networks now cover 90% of Europe and broadband use by households has tripled to 36% between 2003 and 2007. Nevertheless, a recent Commission [report](#) showed that 7% of the EU's population (30% in rural areas) still do not have access to a broadband connection ([IP/08/1397](#), [MEMO/08/583](#)). The Commission therefore launched a public debate to discuss the role of Universal Service in achieving "broadband for all". Following this debate the Commission will issue a Communication and possibly make legislative proposals to update the Universal Service Directive in 2010.

**What is expected at this Council?** Ministers will have the opportunity to hold a first exchange of views on the Commission's report.

**Background:** The EU's [Universal Service Directive](#) of 2002 established the principles of Universal Service based on the need to maintain a safety net for all citizens guaranteeing the access to basic communications services of a specific quality, at an affordable price. The Commission reviews the scope of the Universal Service every 3 years ([IP/05/594](#), [IP/06/488](#)).

### **Future of the Internet**

Social networking, the decisive shift to on-line business services, nomadic services based on GPS and mobile TV and the growth of smart tags are all trends intensifying the next wave of the Information Revolution. While Europe is well placed to exploit these new instruments, the Commission believes that the EU should prepare steps to take the lead in the next generation of the Internet. This September, the Commission therefore issued a Communication on how to put Europe into the lead of the transition to Web 3.0 ([IP/08/1422](#)). The Commission noted that the EU should stimulate investment in next generation broadband access, keep the Internet open to competition, prevent unfair restrictions in consumers' choice, safeguard consumer confidence in using the Internet and fund research in the Internet of the future.

A [public consultation](#) seeking responses to the challenges of the "Internet of Things" is also underway.

**What is expected at this Council?** The Council will adopt its conclusions on Future Networks and the Internet, thereby endorsing the Commission's Communication.