Non-paper of the Czech Republic, Finland, Ireland, Latvia, Luxembourg, Sweden and the United Kingdom on the scope of services regulation in the European Electronic Communications Code

This non-paper sets out the joint positions of the Czech Republic, Finland, Ireland, Latvia, Luxembourg, Sweden and the United Kingdom on the scope of services regulation in the European Electronic Communications Code.

Main points:

- The rules of the European Electronic Communications Code ("the code") should be extended to new services only when there is a clear regulatory need and in order to achieve the objectives of the code.
- No clear evidence has been shown for including number-independent interpersonal communications services in the scope of access, interconnection or emergency services rules. Such inclusion – even only as a possibility with safeguards attached – would risk creating uncertainty, harming investment incentives, raising costs, stifling innovation and increasing red tape especially for smaller service providers.
- Given the above, and with the high level of competition in number-independent interpersonal communications, the market is best placed to determine interoperability.

Background and rationale

The European Electronic Communications Code ("the code") should be based on an end user perspective, seeking to achieve the best possible connectivity, quality, affordability, choice and access to the digital single market. The scope of regulation should only be extended where there is a clear case for doing so to fulfil the objectives of the code, with the overall end user interest in focus. No clear evidence has been demonstrated that justifies including number-independent interpersonal communications services in the scope of access, interconnection or emergency services rules. Such inclusion – even only potentially, with safeguards – would risk creating uncertainty, harming investment incentives, raising costs and increasing red tape especially for smaller providers. This would be detrimental to the end user interest.

Given the lack of a clearly defined need for regulation, the market is best placed to determine when interoperability needs should be met. Regulation in this case should only be considered where there are high barriers to market entry. These services experience few barriers to market entry as they do not require special network access and consumers download and use multiple apps on a device. As for emergency services, they are generally not equipped to receive calls from number-independent interpersonal communications services, nor are such services equipped to provide this calling facility to emergency services. There is little need in this case to regulate access to emergency services since those with access to number-independent services normally also have access to number-based services on the same terminal or a terminal very close by.
Number-based voice services have a uniquely strong, global position with unrivalled network effects, because they are used by virtually everyone and are supplied by multiple operators in a standardised way. This does not apply to non-number based services. Consumer protection rules in the code ensure that customers have access to favourable contractual protections which are not as relevant to number independent services, as customers can subscribe and unsubscribe from as many of these services as they wish with relative ease. Instead, being faced with potential regulation providers of such services will be less likely to establish themselves, operate, or develop new options for consumers in the EU. This risk will increase if the scope of the definition of ‘interpersonal communications services’ is too broad. In the regulation of services, a future proof and technology neutral approach should rather be taken in the sense that any service using numbers and holding control of signal transmission should be regulated in the same way regardless of underlying technology.

Finally, for the legislation to be effective, issues of jurisdiction need to be considered. Many service providers are based outside of the EU. Application of the framework to traditional telecoms providers based outside the EU is usually clear because it is tied to the concept of an electronic communications network (such as internet access services) and/or the wholesale use of numbers from an EU jurisdiction numbering plan. This is not the case with non-number based services.

The points made in this non-paper are without prejudice to information security requirements and what may follow from the e-privacy review.