

# CLIENT ALERT

## Electronic Communications & IT

December 15, 2008

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### EU Telecoms Ministers Take Position on the Telecoms Reform Package

#### Introduction

As discussed in our previous newsletter, the European Parliament voted on the EU telecoms reform package in first reading on 24 September this year. The ball was then in the court of the Member States, who could express their views during the EU Telecoms Council of 27 November 2008.

#### Turbulent Build-up

The least one can say about the build-up to the Telecoms Council of November 27, is that it was a turbulent one. Following the Parliament's plenary vote on September 24, by which the Commission's proposed new independent European Telecoms Market Authority was watered down, the Commission presented new legislative texts on November 7 in a final attempt to push for more European (rather than national) control. In the revised proposals, the European Telecoms Authority was to be substantially smaller in size and competences than initially envisaged, but the Commission was to keep a veto power over decisions taken by national regulators.

By doing so, the Commission seemed to be on a collision course with the Parliament and Member States. When it became clear that the EU Telecoms Ministers were heading towards a "minimalist" approach and would ignore the Commission's revised proposal, the Commission threatened to withdraw its reform package overall.

#### November 27: D-day

However, it did not come that far.

The meeting started with a small crisis as several delegations felt that the Council's text agreed so far was not ambitious enough. However, following efforts by the French EU Presidency, a deal was eventually reached. As expected though, the Council watered down the ambitious proposals of the Commission.

Regarding the new regulatory body, the Ministers rejected the Commission's proposals to harmonize oversight of communications networks across Europe under a Commission-controlled "super-regulator". The new body foreseen by the Council would be an extension of the current European Regulators Group (ERG), with advisory powers and private status. Moreover, the veto power on national measures in regulated markets, which the Commission originally assigned to itself, has been reversed to a power to issue an opinion.

On radio spectrum, the Commission was in favour of flexible use of the spare frequencies freed by the switchover from analogue to digital services. The final text agreed by the Telecoms Ministers remains generally more restrictive on the use of frequencies. According to the Ministers, too much flexibility could have technical drawbacks and might ultimately interfere with the services of broadcasters. The final text however does not preclude "*the possibility of using more than one service in the same frequency band*".

The debate on functional separation between services and network activities also proved to be a topic of disagreement between Member States. The final deal now foresees the possibility of imposing functional separation only as an "extraordinary measure" and provided that a range of conditions are met.

### **Next steps**

Telecoms commissioner Viviane Reding called the agreement an improvement on earlier suggested compromises, but said she was still disappointed with the outcome: "*I continue to believe that Europe's telecoms sector requires better rules than those now on the table here*". She encourages Parliament, Council and Commission to sit down together without delay and get down to work on a common approach.

The new Council text can be a basis now for negotiations between the Council and the European Parliament, which co-decides on the EU's Telecoms Reform Package. The second reading in the European Parliament is expected in April 2009.

### **Links:**

- [Telecoms Council: Commission sees improved Council position on the EU Telecoms Reform as good basis for negotiations with the European Parliament](#)

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## EU Telecoms Ministers Endorse Commission's Proposal to reduce Consumer Charges for Sending Text Messages and Downloading Data Abroad

*The reform of the EU's telecoms framework was not the only topic at hand during the Telecoms Council in Brussels of November 27, 2008. The Telecoms Ministers also discussed the Commission's proposal of 23 September 2008 to adopt a new Roaming Regulation in order to substantially cut the cost of sending text messages and using mobile data services abroad in the EU.*

### Introduction

As set out in our [previous newsletter](#), the European Commission recently published its proposals for a new Roaming Regulation.

The existing EU Roaming Regulation (Regulation 717/2007), which entered into force on June 30, 2007, introduces *inter alia* limits to the amount operators can charge customers for **voice calls** when roaming in other EU countries. According to Article 11 of the Roaming Regulation, the Commission had to review the Regulation in the course of 2008 and decide whether or not to extend it in time and scope, and especially whether to extend it to **roamed text messages** and **data services**.

### Telecoms Council

The Commission's proposals were discussed during the Telecoms Council of November 27, 2008.

Unlike the outcome of the discussions on the Telecoms Reform, the EU Telecoms Council voted in favour of the European Commission's proposals on a new Roaming Regulation.

Since the Regulation on SMS and Data Roaming must be adopted under the co-decision procedure (Article 251 of the EC Treaty), it is now for the European Parliament to express its views on the new roaming rules.

### New Roaming Regulation

The proposals include a retail cap of €0.11 on roaming text messages and a wholesale cap of €0.04 for such messages, a €1 per Megabyte wholesale cap on data roaming charges and better control over data roaming charges for consumers.

Moreover, the duration of the current Regulation of voice roaming charges (the cost of making and receiving a mobile phone call while traveling abroad) would be extended by three more years until 2013, limiting the amount operators can charge customers for roaming calls in other EU countries to €0.46 per minute for calls made abroad and to €0.22 per minute for calls received abroad (excluding VAT).

In addition, the principle of "per second billing" would 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.

### Links:

- [Texting without borders: ending roaming rip-offs for text messages abroad](#)
- [How much do you pay when you use your mobile phone abroad?](#)
- [SMS and Data Roaming: Commission welcomes swift endorsement by Telecoms Council](#)

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