

# DIGITALEUROPE Position Paper on the Electronic Communications Code

Brussels, 1 March 2017

---

## EXECUTIVE SUMMARY

DIGITALEUROPE welcomes the Commission's proposals to review and update the European Union's telecommunications regulatory framework. The proposed **Electronic Communications Code** (ECC), flanked by the 5G Action Plan and Gigabit Society Communication, aim to build a more competitive and investment-friendly telecoms landscape in Europe.

DIGITALEUROPE as the representative of the technology vendors in all layers of the internet value chain, believe that the core goals of the new telecoms framework should be fostering investments and infrastructure-based competition, notably through a coordinated EU vision on spectrum management and through a proportionate, innovation-friendly approach to electronic communication services regulation.

DIGITALEUROPE finds that effective infrastructure-based competition remains the most important driver of innovation and investment into Very High Capacity Networks (VHCNs). We support the proposals of the Commission to make access regulation more targeted and proportionate and, if implementation of access remedies is warranted, to focus first on the physical infrastructure, passive and then active network elements.

We also support the proposal to further encourage co-investments into VHCNs but believe it should be considered to allow more flexibility for the market to design the investments according the specifics of individual projects. Finally, DIGITALEUROPE supports the concept of broadband mapping and Digital Exclusion Areas where additional efforts will be needed to ensure every EU citizens will have access to VHCNs.

As far as the spectrum proposals are concerned, DIGITALEUROPE fully supports the Commission's draft and agrees that coordination is needed to free up the bands for deployment of 5G devices and services. The markets for Internet of Things, Machine-to-Machine technologies, Connected Cars, etc., all depends on certainty for investment and timely availability of spectrum bands.

The important elements of a secure and predictable spectrum landscape consist of, as proposed in the ECC, longer license durations combined a flexible secondary market in trading and leasing of licenses.

The most crucial element though is the timely and EU-wide availability of spectrum, to foster those economies of scale which are essential for the development and deployment of wireless devices in the Digital Single Market.

To this end, a more balanced approach to general authorisations versus individual rights should be considered (as licensed spectrum availability is the guarantee for networks with required quality of service).

Finally, in respect of services regulation, DIGITALEUROPE appreciates the layered approach taken by the Commission. We stress nonetheless that the definitions need to be more carefully crafted to be better aligned with technology to ensure a truly targeted approach and to ensure a practicable implementation that works to the benefit of consumers and businesses. This notably concerns the definition of number-based and the exception for ‘merely minor and ancillary’ features where the current wording could capture a significantly wider group of services than intended.

More targeted definitions and provisions, supported by established competition law, would also better support innovation for both big and small players in this dynamic and borderless digital market. Overall, a harmonised EU approach, true to the principles of the Digital Single Market and aligned with existing horizontal legislation such as the NIS Directive, would be the most proportionate way of delivering on a flourishing telecoms market.

## NETWORK ACCESS

### Key points

DIGITALEUROPE welcomes the Electronic Communications Code's ambition to deliver on an improved and more investment-friendly framework for the telecommunications sector and particularly appreciates the balance sought between the objective of achieving very high capacity data connectivity and the one of sustainable competition. DIGITALEUROPE believes effective competition remains the most important driver of innovation.

DIGITALEUROPE also believes that in pursuit of these objectives, an increased coordination among the National Regulatory Authorities (NRA) in the practical implementation of the rules and remedies will be essential for building a more competitive EU telecoms industry.

### Market analysis

DIGITALEUROPE strongly agrees with the Commission's proposed changes to the market analysis procedure (**art. 65**). These changes are aligned with our position paper on the Telecoms Framework Review.<sup>1</sup> While maintaining the competition law based principles, which the current framework is based on, the changes envisaged by the Commission have the potential to make access regulation significantly more targeted and proportionate.

As a first step to make the market analysis more concise the Commission proposes to use geographic segmentation to understand the market not just from a national perspective but also from a regional/local perspective. This is a reflection of the different market realities between the rural/low-density versus urban/high-density areas and the extent to which there is existing or prospective infrastructure-based competition. The denser the area, the lower the cost of network deployment per user, the higher the likelihood of infrastructure-based competition without the help of regulation.

The Code further encourages NRAs to take a more forward-looking perspective when assessing competition on the market and to understand market dynamics and prospects for competition in a 'greenfield' scenario. This is important to encourage self-sustaining infrastructure competition in the absence of regulation.

Finally, the Commission makes it clear that the purpose of regulation is to ensure retail level competition so that end-users have a real opportunity to switch among competing offers. By extension, this also implies that regulation should be proportionate with an existing or expected competition problem identified at the retail level (**recital 155**):

"For national regulatory authorities the starting point for the identification of wholesale markets susceptible to *ex ante* regulation is the **analysis of corresponding retail markets**. The analysis of effective competition at the retail

---

<sup>1</sup> DIGITALEUROPE Position Paper on the Telecoms Framework Review - [http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=2214&language=en-US&PortalId=0&TabId=353](http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=2214&language=en-US&PortalId=0&TabId=353)

and at the wholesale level is conducted from a forward-looking perspective over a given time horizon, and is guided by competition law, including the relevant case-law of the Court of Justice, as appropriate. **If it is concluded that a retail market would be effectively competitive in the absence of *ex ante* wholesale regulation** on the corresponding relevant market(s), this should lead the national regulatory authority to conclude that **regulation is no longer needed at the relevant wholesale level.**" (highlight added)

And similarly, if it is concluded that a retail market cannot remain or become effectively competitive without *ex ante* wholesale regulation on the corresponding relevant market(s), this should lead the national regulatory authority to conclude that regulation at the relevant wholesale level is necessary.

Thus, the key objective is to avoid situations where the market analysis focuses primarily on the wholesale market without taking the overall situation in the retail market - actual and prospective - into account, including competitive pressures from competing infrastructure (e.g. cable, LTE). The regulatory outcome thereof could unduly discourage broadband investment, both by incumbents and new entrants.

## Remedies

In addition to the changes to the market analysis procedure, the Commission also proposed a number of changes to the remedies. Firstly, DIGITALEUROPE agrees that commercial agreements should be taken into account before deciding on the need for and the kind of remedies. Secondly, while we appreciate the need for NRAs to have access to a flexible toolkit of remedies to apply on a case-by-case basis, we fully support a more hierarchical approach as hinted in the draft ECC. DIGITALEUROPE would however prefer to see even stronger prioritisation of remedies.

Since 80% of network deployment costs are due to civil engineering<sup>2</sup>, the key to fostering investments in infrastructure will be that NRAs first consider remedies at this level (**art. 70**) before considering to impose access to specific network facilities (**art. 71**). Amongst the different access-based solutions NRAs should also, in the same logic, prioritize remedies at the level of passive network elements (e.g. dark fibre/copper/cable terminating segments) over imposing remedies at the active layer.

On that note, DIGITALEUROPE would also like to draw the attention to the importance of planning for civil engineering. The launch, penetration and general success of digitally enabled applications and services (e.g. for Smart Cities) will, to an extent, depend on the degree of coordination amongst several infrastructures (e.g. electricity, transport, environment, health, electronic communications). It is therefore important to ensure continued synergies between the Code and the Broadband Cost Reduction Directive. As such DIGITALEUROPE

---

<sup>2</sup> As noted in the impact assessment for the Directive on Measures to Reduce the Cost of Deploying High-Speed Electronic Communication Networks - <https://ec.europa.eu/digital-single-market/en/cost-reduction-measures>

welcomes the enforcement actions the Commission is taking to ensure transposition and implementation by the Member States.<sup>3</sup>

All of the above changes to the market analysis and remedies can contribute to telecoms investment and network deployment. Legal uncertainty and disproportionately heavy remedies can discourage investments and innovation. The preference at all times should be given to remedies which are more likely to foster self-sustaining competition and consequently become ‘obsolete’ over time.

## Broadband mapping

DIGITALEUROPE appreciates the more extensive and EU-wide plan for broadband mapping initiatives by the NRAs in order to also identify Digital Exclusion Areas (DEA) (**art. 20-22**), and consequently organize a call for interest. A link with EU structural and public funds should be provided in order to stimulate the deployment of VHCN in these zones where the business case for investment would otherwise be absent.

While respecting that companies and network operators should not have to share any confidential or business-sensitive information, we do see the benefits of a granular mapping of network deployments as a best practice that is already applied by some NRAs to positive effect. This encourages a more evidence-based approach for the NRAs and ties the implementation of the regulatory framework closer to the (often complex) market dynamics.

## Investment in Very High Capacity Networks

DIGITALEUROPE welcomes the changes to the access regime that create incentives for operators to invest in VHCNs while providing NRAs with adequate tools to ensure effective competition.

The co-investment regime proposed by the Code has the potential to provide incentives to Significant Market Power (SMP) operators and new entrants to co-invest in VHCNs (**art. 74, Annex IV**). However, DIGITALEUROPE thinks that the criteria for assessing whether co-investment offers should benefit from the ‘light touch’ regulatory treatment under the ECC is overly restrictive. The criteria should be amended to avoid a one size fits all that will make the co-investment model itself a less attractive and effective option.

Namely, the co-investment model and its criteria should give more flexibility to adapt to different business models and reconsider for instance the obligation to be open to offers over the lifetime of the project. The focus should be to reduce barriers to co-investment, reduce risk and uncertainty during the investment period and reduce unnecessary regulations and requirements. The private market should still be permitted the freedom to create the right investment structures under general conditions of fairness and non-discrimination.

Co-investment as described in the Code should furthermore not be seen as the ‘silver bullet’ that unlocks investments in VHCNs. A congruent application of the ECC’s new market analysis procedures (with a

---

<sup>3</sup> [http://europa.eu/rapid/press-release MEMO-16-3125\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-3125_en.htm)

comprehensive look at geographic segmentation, commercial access agreements, obligations for access to civil infrastructure and in-house wiring, competing infrastructures, emerging and prospective competitive markets) and a judicious imposition of remedies across Member States should also allow for (e.g.) individual SMP investments into VHCN to be eligible for the same or a similar regulatory approach as for co-investment projects (regulatory relaxation under extra conditions to safeguard infrastructure competition in the long run).

These taken together with the NRA's scrutiny should bring more infrastructure-based competition, ensure consumer choice and provide better connectivity to the European Union.

## SPECTRUM MANAGEMENT

### Key points

DIGITALEUROPE welcomes the Electronic Communications Code's provisions on spectrum policy. They support a more coordinated, harmonised and consistent approach to spectrum management and assignment in Europe.

A cooperative approach among Member States and spectrum regulatory bodies is key to build the appropriate framework for investment and to build a Digital Single Market for wireless devices and services, in particular for 5G deployment including Internet of Things (IoT) applications and Machine-To-Machine (M2M) technology.

We therefore urge the legislative partners to consider the Code's spectrum management provisions as a baseline of what is needed to make Europe a leader, not only for 5G but for digital innovation in general.

### License conditions

DIGITALEUROPE agrees with the principle to assign licenses with long (or even indefinite) durations on a technology and service neutral basis. The proposal in the ECC (**art. 49**) to have as minimum license durations of 25 years is a positive step in this direction and in line with the general trends on the market.

Even longer license durations could be considered to improve transparency and certainty for stakeholders in the mobile sector. This fosters a predictable spectrum landscape in Europe, which is needed for the planning and design of mobile devices and equipment. We recognise that there needs to be some mechanism to ensure spectrum is used efficiently and not hoarded, though this can be addressed through existing regulatory and competitive processes.

In order to incentivize continuous operator investments into spectrum and infrastructure, DIGITALEUROPE supports that Member States should take a decision on the license renewal at least three years ahead of the end-date, or up to five years beforehand by request of the license holder (**art. 50**). This decision should take into account the need to avoid service disruptions and to foster efficient investments and innovation.

The mobile sector may be aided by the development of a more flexible secondary market in licenses, such as proposed by the provisions on spectrum trading and leasing (**art. 51**). However, in countries where secondary market exists, few spectrum transactions took place over the years; we therefore urge some caution in relying exclusively on this option to ensure more efficient use is made of the scarce resource. Nonetheless, fewer administrative burdens and procedures would greatly improve self-regulatory market practices' effectiveness.

Leasing, trading and swapping of licenses may foster and facilitate more consolidation of spectrum in wider contiguous blocks. This is exactly what certain 5G services and high data bandwidth demands require. However, leasing, trading and swapping of licences alone cannot be relied upon to achieve the highest efficiency. To that end, further regulatory measures and/or intervention may be required.

In addition, the aforementioned longer license durations, combined with increased transparency and predictability on license renewals, might also benefit the development of such a secondary market and foster greater spectrum utilisation.

DIGITALEUROPE welcomes the provisions on small cells (**art. 56**). For 5G in particular, denser networks with more wireless access points will be required with the appropriate licensed, license-exempt, or shared access regime.

In this context, easy access to additional sites for the deployment of 5G would facilitate the roll-out and avoid a technology divide. DIGITALEUROPE therefore advocates regional and local administrations to work together to streamline these access procedures and tackle bottlenecks to building denser small cell networks. This would be in line with the WiFi4EU Regulation to promote connectivity and easier deployment of wireless equipment in public places and government buildings.

## Cooperation in spectrum management

DIGITALEUROPE views that fragmentation between Member States in the application of spectrum regulation has led to delays in spectrum availability. If the EU wants to be at the forefront of 5G innovation and deployment, it is critical to unlock these economies of scale in a timely manner, which has not been the case for some frequency bands in parts of Europe.<sup>4</sup>

Device manufacturers need to take into account market sizes, support of bands and combination of bands in devices. An insufficient number of licences in place for a new band may therefore defer production to later dates and in return further delay the uptake of the service. These delays in product availability or uptake increase differences between Member States, between users, between areas and also between Europe and other regions.

Measures to encourage more coordination and to drive forward national auction procedures are therefore essential to ensure that new bands are awarded on time and consistent with market development. This is a *conditio sine qua non* in terms of product development, not only the telecoms sector itself, but also for its applications and services for any type of wireless and mobile interaction.

In the light of 5G developments and deployment, common economies of scale are essential to ensure that devices for Connected Cars and automated driving, mHealth, Industry 4.0 and Smart Cities are operational in a European Digital Single Market.

Consequently, DIGITALEUROPE fully supports the proposed changes in the ECC on spectrum governance and common auction principles, including the non-binding peer review (**art 35**). This strikes an appropriate balance

---

<sup>4</sup> In EU, delays in the allocation of certain frequencies had as impact the inclusion of the European bands in mobile devices only few years later (e.g. the 800 MHz, aimed to assure fast and economic national coverage). As such, this impeded the take-up of LTE in Europe, leaving the leadership in 4G to the USA, Japan, Korea and Australia.



between the responsibilities of the various regulatory partners, while encouraging more cooperation to the benefit of Member States and the many industries relying on wireless communication infrastructure.

## Authorization framework

New 5G mobile technologies and services will need to be supported by flexibility on spectrum licensing and authorization schemes. On that front, DIGITALEUROPE encourages the mobile stakeholders to find the appropriate balance between individual licenses (with or without shared access agreements) and general authorizations or also license-exempt usages.

That said, DIGITALEUROPE believes the text of the ECC should be amended to better reflect this instead of stressing the scenario of general authorizations as the main way forward (**art. 45-47**). Moreover, since the technical details and specific business structures are not yet clear in terms of 5G and cooperation in the vertical sector between private firms and mobile operators, the Code even has an interest in being more neutral with regards to the licensing framework.

This technology and service neutrality is needed to guarantee a flexible and fit-for-purpose approach to new types of 5G structures, including various licenses with shared access or neutral host models, small cells as a service (SCaaS), virtualization and splicing of networks, and so on. Only in this manner can the security and quality of services of these 5G electronic communications be guaranteed.

DIGITALEUROPE is finally not convinced of the need to include provisions on spectrum allocation and reservation for new-comers (**art. 52**). This could in fact distort normal market competition while failing to foster additional investment.<sup>5</sup>

---

<sup>5</sup> See also a study by CERRE (September 2015) on “Evaluating Market Consolidation in Mobile Communications”, [http://cerre.eu/sites/cerre/files/150915\\_CERRE\\_Mobile\\_Consolidation\\_Report\\_Final.pdf](http://cerre.eu/sites/cerre/files/150915_CERRE_Mobile_Consolidation_Report_Final.pdf). - Experience in Latin-America countries demonstrated that reserved spectrum for new entrants does not necessarily lead to attribution of new licenses.

## SERVICES REGULATION

### Key points

DIGITALEUROPE finds Commission’s proposal for a new definition of Electronic Communication Services (ECS) in sharp contrast with the care and precision it has displayed in striking a balance between the objectives of connectivity and competition. There is no adequate justification why certain concerns stemming from digitization and convergence could not be better dealt with via established competition law and horizontal legislation (e.g. on consumer rights) rather than by expanding the scope of an extensive set of *ex ante* rules, created for a specific traditional sector, to emerging services abiding by a very different social and economic logic. DIGITALEUROPE believes that the Commission’s decision to take this approach is likely to damage innovation significantly.

Nonetheless, DIGITALEUROPE appreciates the Commission’s intention to pursue a layered approach in the regulation of Electronic Communication Services through the differentiation of Internet Access Services (IAS); Interpersonal Communication Services (ICS), number-based and number-independent; and Conveyance of Signals, including broadcast and Machine-to-Machine transmissions.

While agreeing in general terms that a targeted approach is sensible, DIGITALEUROPE has concerns that some of the definitions may not be sufficiently clear as currently drafted. It will be crucial to review in detail if and when an expansion of scope is desirable for users, while refining it in a way to ensure that any new rules remain proportionate, in line with the technological underpinnings and supportive of innovation.

An improved scope and implementation of the text will help in delivering a clear benefit to the user, while boosting certainty for enterprises, big and small. A fully harmonised, single market approach will also be needed to minimise the negative impact of new regulatory obligations, in particular on digital SMEs and start-ups.

### Definitions

DIGITALEUROPE agrees that a structured set of definitions is needed in order to properly target the various types of communications services and applications. We identify however elements in the definitions (**art. 2**) that lack clarity and could cause confusion as regards the scope of the legislation. This concerns in particular the division between number-based and number-independent Interpersonal Communication Services, the concept of ‘ancillary purpose’, and the scope of ‘conveyance of signals’ within the ECS definition.

#### Definition of number-based

DIGITALEUROPE agrees that it is essential to distinguish between different types of interpersonal communication services to ensure the targeted, proportionate and multi-layered approach intended by the Commission. As such, the distinction between number-based and number-independent is in our view well-intended, but needs to be further refined.

As the definition for number-based currently stands, it would capture both fully integrated PSTN services (two-way) and those which may be able to communicate with the PSTN but which remain nonetheless IP-based services that are not substitutes for number-based calling and messaging services.

For example, many web-based video conferencing systems allow users to dial a telephone number to participate in a meeting rather than using VoIP over an internet connection. While the call originates on the PSTN it does not terminate on the same network. The PSTN signal is instead translated into an IP packet and the audio stream is routed to (e.g.) the cloud where the service is hosted. In many cases, the provider of the numbers may also be separate and different the provider of the video-conference system. Such services are therefore in their technical design and architecture very different from two-way PSTN services.

Equally importantly, end-users do not use such services *in lieu* of traditional telephone and SMS services. To ensure proportionality and safeguard against unintended consequences from the expansion of scope, the definition of number-based ICS needs to be aligned to the different technical realities of integrated PSTN services versus IP-based services which can connect to a PSTN as a supplemental feature rather than being a fully equivalent substitute.

Also, the specific obligations for number-based ICS (emergency calling, number portability, contract term requirements) are not technically feasible or relevant for such ‘hybrid’ services. The definition of number-based ICS should consequently be narrowed in scope to clearly cover only two-way PSTN services.

If, however, IP-based services with some PSTN communications capability would be included within the number based-ICS definition, then this definition should be narrowed down to include only those IP-based services where numbers are provided directly by that service provider as an integrated solution with PSTN to PSTN capabilities.

### Exemption for minor and ancillary

The Commission recognizes that there are vast amounts of applications, software and services that include some sort of communication capability. This can range from consumer help chat-windows on webstores, contact lines in e-banking or e-health portal, and in nearly every video game with online or multiplayer interaction.

The Code logically intends to keep these communication services outside of its scope, since these tools are ‘merely minor and ancillary’ (**rec. 18 and art. 2**) and are in no way equivalent, either in functionality nor in users’ perception, to ‘traditional’ communication services. It would also in practice be impossible to impose the same obligations on all these services and would cause an immense burden on every app developer or SME in the software sector.

However, DIGITALEUROPE fears that the current wording still risks imposing disproportionate and fragmented obligations on businesses and users. The usage of the terms ‘minor and ancillary’ is in practice very limited and vague, while also being dependent on case law varying from Member State to Member State.

DIGITALEUROPE advocates therefore to reverse the definition and focus towards those services which have as their 'primary' goal inter-personal communications. This would create more clarity on the scope of application and not cause undue stress on SMEs, both for compliance and in judicial burden of proof.

### **M2M communications**

Finally, DIGITALEUROPE is concerned that it is not sufficiently clear what services would be within the scope of the ECC as any service considered to be consisting 'wholly or mainly in the conveyance of signals' is also included in the definition of electronic communications service.

This results in uncertainty about the potential application of the Code's requirements to services with a transmission component. For example, it is not feasible to draw a line between the actual conveyance of the signals by an IoT device and the cloud-based M2M or IoT service that relies on communications from the device.

### **Matching obligations to technology**

With the expansion of scope as proposed in the ECC's definitions, there are more obligations imposed on communication services, including as regards security and interoperability. DIGITALEUROPE questions the approach taken here and notes that there is either a large amount of overlap with other regulations or a lack of evidence to justify these obligations.

### **Security provisions: lack of consistency with NIS**

The Code duplicates security provisions that already apply to OTT communication services as Digital Service Providers in the NIS Directive. While on paper the obligations are very similar to each other, due to the unlimited freedom to impose further requirements on the national level there is a significant risk of fragmentation of actual obligations under the Code.

DIGITALEUROPE suggests that services already under the scope of the NIS Directive should therefore remain under that Directive. The security provisions of the Code must in addition be aligned with existing horizontal rules, notably by limiting Member States' ability to impose further obligations as necessary for the purposes of national security, as with NIS, and thereby ensuring that implementing measures are harmonised at an EU level.

The level of obligations should further be matched with the specific needs of the different kinds of electronic communications services. Obligations, such as outage reporting requirements, do not seem meaningful given how internet and cloud-based services do not necessarily control the networks through which users access them.

Finally, internet-based services are by the very nature cross-border. Respecting the Digital Single Market and in order to encourage and foster development of innovative new services, compliance and enforcement governance should consequently be as streamlined as possible. It is critical to apply stronger internal market principles to the Code, notably by following the general principle of single market legislation of home/host member state.

## Emergency services

The Commission proposes that all number-based interpersonal communication services have to provide access to emergency services (**art. 102**), taking into account technical feasibility. However, this could be problematic due to the broad definition of number-based ICS (see above) and due to the lack of clarity around when an undertaking can refrain from providing access to emergency services based on lack of technical feasibility.

Many IP services would face technical difficulties to support reliable emergency services access and, not least, to provide accurate location information given how these services are often based on cloud network architecture and do not feature the same level of geolocation support.

To avoid undermining the effectiveness of Europe's emergency services, the definition of number-based should be limited to truly PSTN interconnected services. Failing that, the Code should recognise this technological discrepancy in the provision itself (replicating **recitals 256 and 259**) to make clear that network-independent number-based ICS will not be required to provide a service they are not capable of fully supporting.

Instead, the focus should be on ensuring transparency around the capacity for emergency services access and continuing existing technical work to ensure this access in a future IP converged world, outside of the scope of the political work around the Code.

## Interoperability requirements

As regards interoperability (**art. 39, 59**), the Commission foresees an open provision for NRAs to impose end-to-end interoperability requirements on both number-based as well as number-independent ICS. In the former case, if the definition of number-based is narrowed down to only capture those services fully integrated with the interoperable PSTN, there should be no need for any interoperability.

In the latter case, for number-independent ICS, DIGITALEUROPE is very concerned about lack of clarity and the vagueness of the provision. Not only is there no evidence of a demonstrated problem with regards to interoperability for number-independent communication apps. From a software design and product planning perspective, it is also impossible to foresee and accommodate interoperability with an unknown amount of other services and software, all with their own systems and purposes.

For example, how would a programmer at a start-up of a photo-based chat application provide connectivity to a video-conference system? Not only would this be a disproportionate burden, it could also be technologically unrealistic and unfeasible.

The Commission's proposal has not justified why concerns on end-to-end connectivity could not be better dealt with via established competition law, rather than this proposal which would risk severe market fragmentation by different interoperability requirements per Member State. DIGITALEUROPE consequently advocates to reconsider the provision entirely.

## Alignment with Digital Single Market vision

DIGITALEUROPE very much welcomes the Commission proposal to further streamline the notification procedure under the Code by making BEREC the single point of contact (**art. 12**). There is no need for duplication of work by one NRA and that to be repeated by others when one notification to BEREC would suffice.

However, while the Commission proposal is a good step in the right direction, much more work is needed to facilitate a true Digital Single Market for communication services. For that to happen, the Code needs to follow the general principle of horizontal market legislation of home/host Member State whereby service providers would be subject to the NRA or other competent authority in the country of main establishment.

## Universal Service and End-User Provisions

DIGITALEUROPE welcomes the envisioned plan of the Commission to improve broadband access for European citizens. The Universal Service Obligation (USO), as updated in the Code (**art. 79-80, 84-85**) and corresponding Annex, would make it more streamlined and easier to provide this connectivity to citizens.

In particular, we agree with the proposal to fund USO via the general budget instead of imposing the cost of a social tariff on operators. In order to minimize the administrative burden and to ensure more rapid take-up of high-speed broadband, we recommend the Member States realize the USO by following the funding via a voucher scheme in the Commission proposal.

DIGITALEUROPE further suggests to amend the proposed end-user protection provisions (**art. 95-97**). Firstly, these regulations should, as currently the case, apply to calling services that both originate and receive telephone calls (two-way PSTN services) rather than one-way only.

That approach continues to make sense as one-way PSTN calling services are often free or low-cost services typically provided without any long-term subscription commitment. There is no risk that end-users will be locked into an expensive contract or have to pay costly hidden charges. Instead, the end-user protection provisions should apply to Voice Communications Services (VCS) – the Code’s term for two-way PSTN services – as end-users usually must enter into a long-term subscription for such services.

Secondly, the requirements in terms of disclosure, comparison tools or on quality of service metrics (e.g. initial connection, failure probability, and call signalling delays) are not meaningful for other types of number-based ICS, which often have no control over their network infrastructure. These non-VCS number-based ICS services should consequently be exempt from these detailed requirements, which are designed for access services such as fixed or mobile telephony or internet access.

Thirdly, the creation of independent comparison tools (**art. 96 §2**) should be left to the discretion of NRAs given local market conditions. This provision should therefore be deleted. If retained, however, such a requirement must be tailored to the services for which the tool is meant to be used, as the ECS definition covers an enormous

number of services, many free or low-cost. Instead, the scope of the provision should be limited to VCS and potentially Internet Access Services where it is actually useful.

In any case, DIGITALEUROPE also finds that a stronger distinction between B2C and B2B is needed. The distinction between B2C and B2B has historically been lacking from EU telecommunications regulation leading to a disproportionate application of what is intended as consumer rights protections often also applying to business end-users.

As such, DIGITALEUROPE welcomes that the Commission has as a first important step introduced the distinction in the Code. However, it is not consistently applied throughout the relevant articles in the ECC (**art. 95-98, 100**) and this should be rectified so that they clearly only apply to consumer offers and safeguard the contractual freedom for B2B relations. To the extent micro and small enterprises are covered as consumers, it should be made clear that they are nonetheless free to opt out of being covered by these provisions.

--

For more information please contact:  
 Jochen Mistiaen, DIGITALEUROPE's Policy Manager for Digital Technology and Innovation  
 +32 2 609 53 37 or [jochen.mistiaen@digitaleurope.org](mailto:jochen.mistiaen@digitaleurope.org)

## ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 61 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

## DIGITALEUROPE MEMBERSHIP

### Corporate Members

Airbus, Amazon Web Services, AMD, Apple, BlackBerry, Bose, Brother, CA Technologies, Canon, Cisco, Dell, Dropbox, Epson, Ericsson, Fujitsu, Google, Hewlett Packard Enterprise, Hitachi, HP Inc., Huawei, IBM, Intel, iQor, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Loewe, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, NEC, Nokia, Nvidia Ltd., Océ, Oki, Oracle, Panasonic Europe, Philips, Pioneer, Qualcomm, Ricoh Europe PLC, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Sony, Swatch Group, Technicolor, Texas Instruments, Toshiba, TP Vision, VMware, Western Digital, Xerox, Zebra Technologies.

### National Trade Associations

<b>Austria:</b> IOÖ	<b>Germany:</b> BITKOM, ZVEI	<b>Slovakia:</b> ITAS
<b>Belarus:</b> INFOPARK	<b>Greece:</b> SEPE	<b>Slovenia:</b> GZS
<b>Belgium:</b> AGORIA	<b>Hungary:</b> IVSZ	<b>Spain:</b> AMETIC
<b>Bulgaria:</b> BAIT	<b>Ireland:</b> ICT IRELAND	<b>Sweden:</b> Foreningen Teknikföretagen i Sverige,
<b>Cyprus:</b> CITEA	<b>Italy:</b> ANITEC	IT&Telekomföretagen
<b>Denmark:</b> DI Digital, IT-BRANCHEN	<b>Lithuania:</b> INFOBALT	<b>Switzerland:</b> SWICO
<b>Estonia:</b> ITL	<b>Netherlands:</b> Nederland ICT, FIAR	<b>Turkey:</b> Digital Turkey Platform, ECID
<b>Finland:</b> TIF	<b>Poland:</b> KIGEIT, PIIT, ZIPSEE	<b>Ukraine:</b> IT UKRAINE
<b>France:</b> AFNUM, Force Numérique, Tech in France	<b>Portugal:</b> AGEFE	<b>United Kingdom:</b> techUK
	<b>Romania:</b> ANIS, APDETIC	