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Chair of European Scrutiny Committee
Room 270
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21 August 2017

Dear Chair

Update on: 12252/16 - proposals for a revised European Electronic Communications Code (EECC) (recast) and 12257/16 - proposal to establish a new Body of European Regulators for Electronic Communications (BEREC) Regulation

In October 2016 my Department submitted the explanatory memoranda (EMs) referenced above and committed to keeping your Committee updated as negotiations progressed. Since then I have provided updates to your Committee in February and April. I include in this letter updates on the 9 June Telecoms Council and 17-18 July Informal Telecoms Council, as well as on our general progress in EECC negotiations.

The Presidency intends to progress discussions on the EECC at pace during the second half of the year, aiming for either a general approach at the December Telecoms Council or potentially securing a COREPER mandate to begin trilogue negotiations in the months beforehand, dependent on the pace of technical discussions on the file. The Presidency also intends to reach a general approach on BEREC regulation in December. It is of course possible that this provisional schedule will slip.

Telecoms Council, Luxembourg, 9 June, and Informal Telecoms Council, Tallinn, 17-18 July

Given the proximity to the General Election, the UK was represented at the 9 June Telecoms Council by Katrina Williams, the Deputy Permanent Representative to the EU, for the policy debate on the EECC. The debate addressed whether there is room to strengthen predictability and coordination between Member States to increase regulatory certainty for investors in telecoms networks and services, such as 5G.



Member States were supportive of the Commission's view that the EECC needs to deliver further coordination. However, there was strong criticism of the Commission's proposal to achieve further coordination by setting detailed EU-level rules for frequency authorisation and management, and by creating an EU-level agency (the proposed change to BEREC) for telecoms regulation.

Member States generally agreed that it would be preferable to seek to achieve efficient spectrum management harmonisation by enhancing existing structures for Member States to cooperate. While some Member States based their objections on subsidiarity grounds, the general consensus was that more rules and more bureaucracy will not deliver the flexibility needed for innovative services - in particular 5G - to grow. There was some coalescence around a proposal to enhance the Radio Spectrum Policy Group (RSPG) so it has a more strategic role.

The UK delegation to Informal Telecoms Council was headed by Liam Maxwell, the National Technology Adviser, with Joe Butler, DCMS' Telecoms Director representing the Department on EECC. As the agenda focused primarily on issues relating to 5G there was very little discussion that was relevant to the EECC other than reiteration of the points made on 9 June.

Policy proposal updates:

Spectrum: Further Council Working Groups (CWGs) addressing Spectrum took place prior to the summer. The position of the UK, along with many other Member States, remains one of concern that the Commission's proposals unnecessarily extend Commission powers of intervention in spectrum management procedures, both in terms of efficient management of the resource, and in terms encroachment on Member State flexibility to respond to the unique characteristics of their individual national markets and circumstances. We remain concerned that the Commission's proposals are too broad in scope and inappropriately apply interventions designed for mobile broadband services to all other electronic communications services. We are continuing to work with other Member States to develop collaborative solutions to this area of the EECC.

Services: There have been a limited number of CWGs addressing services since my last letter. We continue to support the Presidency's revised position that end-user rights should be subject to minimum harmonisation, but Member States remain divided on the issue. We have therefore determined amendments to the current text that we would require in order to be satisfied that the UK would be able to maintain existing end-user rights and flexibility for the future if full harmonisation were to be adopted. Turning to Over-The-Top services (OTTs), our position remains the same - we continue to argue for a proportionate approach to regulation only to be introduced only in the case of consumer harm or proven market failure and where appropriate to the characteristics of the service.

Regarding the Universal Service Obligation (USO), we continue to support the draft of the services text, which in March reintroduced full funding flexibility for the USO. There have been no substantive debates since then.

Access and Investment: We continue to support the Commission's vision of affordable, reliable and ubiquitous first class electronic communications networks across the EU in order to meet consumers' growing demands on connectivity and to boost competitiveness, its key objective to better encourage private sector investment required in infrastructure needed to meet this vision, and its commitment to retain the core principle of competition as a driver of this investment as well as consumer choice.

However, there are still points of detail in this area that need to be resolved. DCMS officials are working with like-minded Member States to argue against proposals by the Commission that will not support competitive markets and may re-create localised monopolies for national incumbent operators.

BEREC: Proposals for the draft Regulation establishing BEREC as an EU agency have not yet been addressed in CWGs - discussions on the matter are scheduled in September. As was evident at both Telecoms Councils, Member States are generally opposed to making BEREC into an EU agency.

I am copying this letter to the Chair of the ESC committee, the clerk of the ESC committee, the clerk of your committee, Les Saunders at DexEU and Charlotte Brennan at DCMS.

Yours ever

A handwritten signature in blue ink, appearing to read 'Matt Hancock', followed by a horizontal flourish.

THE RT HON MATT HANCOCK MP