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The Chair
European Scrutiny Committee
House of Commons
London SW1A 0AAW

MC2017/05258/DC
3 October 2017

Dear Chair

Update on: 12252/16 - proposals for a revised European Electronic Communications Code (EECC) (recast); trilogue mandate sought at COREPER meeting (11 October) and 12257/16 - proposal to establish a new Body of European Regulators for Electronic Communications (BEREC) Regulation

In October 2016, I submitted the explanatory memoranda (EMs) referenced above, which were retained under scrutiny, and committed to keeping your Committee updated as negotiations progressed. Since then, I have provided updates to your Committee in February, April, and in August. Most recently, I wrote to you on 5 September to notify you of the Presidency's plans for COREPER on 11 October.

When I wrote to you on 5 September, I explained that the Presidency's aim was to agree a general approach *and* attempt to secure a mandate for EECC trilogue negotiations. I can now confirm that COREPER will be used as an opportunity to agree a mandate for trilogue negotiations, but it will not be used to agree a general approach.

I am therefore writing to update you on the progress of EECC negotiations prior to COREPER. Later in the year, negotiations will go to a Council meeting (not necessarily Telecoms Council, which is on 4 December) so that a general approach can be agreed. I will write to you prior to the Council in question to request a waiver or clearance.

The COREPER mandate will enable the Estonian Presidency to hold two to three trilogues on the EECC before the end of the year.

There has been no discussion of the BEREC Regulation in Council thus far, but the Presidency intends to issue a revised text late September and to discuss it at Council Working Groups on 10, 11 and 26 October. The Presidency hopes to be able to reach a general approach on the BEREC regulation in December at Telecoms Council. As was evident at both Telecoms Councils this summer, a majority of Member States are opposed to making BEREC into an EU agency.



It is of course possible that this provisional schedule for both files will slip.

Policy proposal updates:

Council Working Groups on the EECC resumed in September, so there have been further discussions on the EECC since I last wrote.

Spectrum: Council Working Groups (CWGs) addressing Spectrum resumed on 5 September. The Presidency acknowledged the concerns of the UK, along with many other Member States, that the Commission's proposals unnecessarily extend Commission powers of intervention in spectrum management procedures. Subsequent iterations of the Council's compromise text have removed or re-drafted these powers to reflect a position that we are broadly content with. We are continuing to work with other Member States to agree collaborative solutions to any outstanding issues within the text.

Services: Since Council Working Group discussions resumed there has been some discussion of the Services elements of the EECC. The Presidency supports full harmonisation of consumer rights as set out in the EECC. We do not support this position because full harmonisation would prevent Member States from applying higher standards of consumer protection. The Presidency text improves on the Commission's text in such a way that should enable the UK to maintain its consumer protection levels, although we are still negotiating the wording to ensure that our concerns are met in full.

On **Over-The-Top services (OTTs)**, our position remains the same as set out in my August update. We continue to argue for a proportionate approach to regulation which should only exist in the case of consumer harm, proven market failure or in cases where these services exhibit characteristics similar to those of traditional telecommunication services.

Regarding the **Universal Service Obligation (USO)**, we continue to support the draft of the text, which in March reintroduced full funding flexibility for the USO, which allows the USO to be funded, as currently, by an industry cost sharing mechanism, public funding, or a combination of two. There have been no substantive debates on USO 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 is to encourage the private sector investment in infrastructure required to meet this vision. It also contains a commitment to retain the core principle of competition as a driver of this investment as well as consumer choice.

A small number of points of detail remain 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 risk re-creating localised monopolies for national incumbent operators.

I am copying this letter to Lord Boswell, Chair of the House of Lords European Union Committee; Chris Johnson, Clerk to the Lords Committee; Lynn Gardner, Committee Clerk; Les Saunders at the Department for Exiting the European Union; Charlotte Brennan at the Department for Digital, Culture, Media and Sport; and Agim Zekaj at the Department for Digital, Culture, Media and Sport.

Yours ever

A handwritten signature in black ink, appearing to read 'Matt Hancock', followed by a decorative flourish consisting of a wavy line that ends in a small hook.

THE RT HON MATT HANCOCK MP