



Brussels, 18 September 2024
(OR. en)

13294/24

LIMITE

TELECOM 268
CYBER 252
COMPET 892
MI 786

NOTE

From:	Presidency
To:	Delegations
Subject:	Draft Council Conclusions on The White paper on “How to master Europe’s digital infrastructure needs?” - First compromise text

I. INTRODUCTION

1. The HU Presidency presented the first draft of the Council Conclusions on the White Paper “How to master Europe’s digital infrastructure needs?”, during the meeting of WP TELECOM of 5 September 2024, and delegations provided their comments at the meeting and their written proposals afterwards.
2. On 10 September 2024, a deep-dive on the White Paper took place, with the Body of European Regulators for Electronic Communications (BEREC) offering its views and the Commission and the Smart Networks and Services Joint Undertaking (SNS JU) holding presentations focused on Pillar I — Capacity building, innovation and technology capabilities.
3. In the following weeks, based on the written submissions received from the delegations, the HU Presidency drafted the first compromise proposal, found in the annex of this document.
4. The HU Presidency invites the delegations to study the compromise text and prepare their inputs to the **WP TELECOM meeting of 24 September 2024**, when this compromise text will be **discussed**.

5. The changes in the document compared to the initial text are underlined: additions are marked with **bold text**, deletions with strikethrough.

II. MAIN CHANGES

6. The amendments made in the Preamble aim to improve the readability of the text and to complement it with useful references, in the correct chronological order.
7. In paragraph 7 emphasis was put on reducing administrative burden on companies, particularly SMEs, as well as on the need for policies that encourage innovation. The latter has also been given new prominence in paragraphs 10 and 23.
8. Paragraph 9 has been integrated in the new paragraph 5a, in order to put more emphasis to consumer welfare.
9. Both the Letta and Draghi reports are now referenced in paragraph 14, in the context of the promotion of investments, competitiveness, competition and consumers' welfare.
10. The new paragraph 18a was introduced to take account of the role of electronic communications services as a universal service in favour of citizens.
11. Some caution was introduced around MFF negotiations in paragraph 20, and the wording on EU programmes has been improved.
12. In paragraph 25 the wording on copper switch-off was softened, opting for a more gradual approach over time.
13. Additional considerations of the environmental sustainability of the digital sector are now featured in paragraph 26 and a possible Digital Decade target on green digitalization is mentioned in paragraph 32.
14. A new paragraph 31a has been dedicated to spectrum management and the issue of interference from third countries.
15. Paragraph 35 is now fully dedicated to market consolidation and other ways toward scalability for companies in the electronic communications sector.

16. More prominence was accorded to the security and resilience of digital infrastructures in paragraphs **36**, **37** and **38**.

17. Several editorial changes and minor modifications have been proposed throughout the text to improve its quality and readability.

Draft Council Conclusions on The White Paper “How to master Europe’s digital infrastructure needs?”

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING

- **The Directive (EC) 2002/58 of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications),**
- The Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 on laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union,
- **The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation),**
- **The Commission Notice of 19 July 2016 on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union,**
- The Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 on establishing the European Electronic Communications Code,
- **The Joint Communication of 16 December 2020: The EU’s Cybersecurity Strategy for the Digital Decade,**
- **The Commission Recommendation of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code,**

- The Declaration of 19 March 2021 on “European Data Gateways as a key element of the EU’s Digital Decade”,
- The Joint Communication of 1 December 2021 to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank - The Global Gateway,
- The Communication from the Commission on the criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (IPCEIs) of 30 December 2021,
- The European Declaration on Digital Rights and Principles for the Digital Decade of 26 January 2022,
- The Nevers Call of 9 March 2022 to Reinforce the EU's Cybersecurity Capabilities,
- The Declaration of June 2022 ‘Toulouse Call for a Green and Digital Transition in the EU’,
- The Council Recommendation of 8 December 2022 on a Union-wide coordinated approach to strengthen the resilience of critical infrastructure,
- The Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive),
- The Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC,
- The Decision of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme,
- Joint Communication to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank – The Global Gateway,
- The Declaration on “European Data Gateways as a key element of the EU’s Digital Decade”,
- The Nevers Call to Reinforce the EU's Cybersecurity Capabilities,
- The Council Recommendation of 8 December 2022 on a Union-wide coordinated approach to strengthen the resilience of critical infrastructure,
- The Joint Communication of 20 June 2023 to the European Parliament, the European Council and the Council on “European Economic Security Strategy”,
- The Joint Communication: The EU’s Cybersecurity Strategy for the Digital Decade,

- **The Communication from the Commission establishing Union-level projected trajectories for the digital targets of 29 September 2023,**
- **The Commission Recommendation of 3 October 2023 on critical technology areas for the EU’s economic security for further risk assessment with Member States,**
- The Council conclusions on the Revised EU Maritime Security Strategy (EUMSS) and its Action Plan of 24 October 2023,
- ~~- The Communication on the criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (IPCEIs),~~
- ~~- The Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union,~~
- ~~- The Communication from the Commission establishing Union-level projected trajectories for the digital targets,~~
- The Commission White Paper on “How to master Europe’s digital infrastructure needs?” of 21 February 2024,
- The Commission recommendation of 26 February 2024 on Secure and Resilient Submarine Cable Infrastructures,
- **The Commission Recommendation of 11 April 2024 on a Coordinated Implementation Roadmap for the transition to Post-Quantum Cryptography,**
- ~~- The Council Conclusions of 21 May 2024 on the Future of EU Digital Policy,~~
- The Regulation (EU) 2024/1309 of the European Parliament and of the Council of 29 April 2024 on measures to reduce the cost of deploying gigabit electronic communications networks, amending Regulation (EU) 2015/2120 and repealing Directive 2014/61/EU (Gigabit Infrastructure Act),
- **The Council Conclusions of 21 May 2024 on the Future of EU Digital Policy,**
- **The Council conclusions of 24 May 2024 on a competitive European industry driving our green, digital and resilient future,**

1. RECOGNISES the positive effects of the digital convergence offering a wide variety of new services to end-users, companies and public institutions alike and ACKNOWLEDGES that there are important ~~the~~ new dynamics ~~of~~ affecting digital infrastructures ~~and RECOGNISES the positive effects of the digital convergence offering a wide variety of new services to users, companies and public institutions alike.~~
2. RECOGNISES the extensive changes that have been shaping the landscape of the electronic communications sector and that are of critical relevance for the Union's economic security ~~and~~, global competitiveness and national security. These transformations have been driven by notable technological advancements, such as cloud and edge computing, the virtualization of network functions, and the demand for data processing services; ACKNOWLEDGES ~~the~~ that significant investments ~~needs~~ are needed for such transformations to deliver the Digital Decade targets in the area of digital infrastructures, taking into account the differences among Member States.
3. WELCOMES the Commission's goals to foster innovation, security and resilience of digital infrastructures and ~~SUPPORTS its efforts~~ STRIVES to unleash further benefits of the Single Market's potential within the digital sector; WELCOMES the Commission's efforts to contribute to the development of a digital ecosystem ~~where companies have~~ that provides greater opportunities for companies to establish and roll out digital infrastructures and provide related services.
4. HIGHLIGHTS that high-quality, cutting edge, secure, resilient and sustainable digital infrastructures are crucial for the competitiveness of the EU's economy, and a forward-looking regulatory approach ~~in~~ that facilitates the planning and rollout of such infrastructures, including next generation mobile technologies, is essential to enhance the Union's capabilities to address the challenges set by global competition.
5. ACKNOWLEDGES that the digital transition has a cross-sectoral nature, and it has an impact not only on the electronic communications sector, but on other sectors, such as transport, energy, agriculture and healthcare, and is crucial for society as a whole.

5a. EMPHASISES that the interest of consumers throughout the EU should be at the forefront of any initiatives impacting end-users' rights, obligations and benefits alongside objectives to enable the digitalisation of the EU's businesses.

6. WELCOMES the Commission's consideration in the White Paper to review the relevant financial instruments to achieve ~~a geographically balanced network~~ **digital infrastructures that meet customer demands in all different geographies** and make it possible to blend the funds for investment needs, **where appropriate**.
7. UNDERLINES the importance to further analyse the challenges arising from emerging technological changes, **some of which are** outlined in the White Paper and therefore CALLS UPON the Commission to continue to explore the latest developments, consider future-proof solutions, and base ~~its proposals~~ **any possible initiatives** on evidence while keeping in mind the need for reducing the ~~regulatory~~ **administrative** burden on companies, **in particular SMEs**, and maintaining **a sustainable level of competition to guarantee** consumers' welfare. **This requires a policy environment favourable to innovation without pre-empting certain market outcomes.**
8. REINFORCES the need for consistency with the goals and objectives of existing regulatory measures and EMPHASIZES the importance of ~~their~~ **regulatory predictability by means of** effective implementation in order to further enhance the EU's competitiveness **and reach the Digital Decade targets.**
9. ~~EMPHASISES that alongside objectives to enable the digitalisation of the EU's industrial sectors, the interest of consumers throughout the EU should be at the forefront of any proposals detailing expected effects on end-users' rights, obligations and benefits.~~
10. STRESSES that the regulation of the electronic communications sector should proportionately address both supply and demand, including the affordability, **freedom of choice, security, and quality** of the services to consumers **and businesses through competition.** **CALLS UPON the Commission to further investigate the demand-side of cutting-edge digital networks and to support innovative business models for the benefit of EU consumers and businesses.**

11. HIGHLIGHTS that the principles of subsidiarity, proportionality and technological neutrality should be reflected in all initiatives in the domain of electronic communications. RECOGNISES the importance of a clear and structured governance model ~~considering~~ **building upon** the existing governance structures, relevant national experiences and the dynamic evolution of the digital ecosystem.
12. ~~ACKNOWLEDGES~~ that significant investments are needed to meet the targets set under the Digital Decade Policy Programme 2030. CALLS FOR ~~CONSIDERING~~ other critical obstacles hindering infrastructure development, such as administrative burdens, lack of ~~consumer~~ demand, ~~scarcity of construction capacities or~~ risk of low uptake of ~~parallel~~ networks, **especially** in rural areas.
13. CALLS for a clearer definition **and consistent use** of the concepts of cloudification and virtualisation by advocating for a thorough exploration and analysis of the various layers that constitute the related infrastructure. This call underscores the importance of defining these fundamental concepts to enhance understanding in relation to their infrastructure layers.
14. NOTES that the evaluation of the current status of the electronic communications market, as outlined in the Letta report, is in line with the principles set forth in the White Paper ~~and~~ **but** RECALLS that any future legislative proposal requires a solid impact assessment. Therefore, INVITES the Commission to conduct a ~~careful~~ analysis of ~~the~~ **any** proposals, **in particular those** in the Letta **and Draghi** reports, with regard to the electronic communications market **in light of promoting investments, and the EU overarching principles of competitiveness, competition and consumers' welfare.**
15. NOTES the considerations on the promotion of a level playing field, ~~where~~ **and** **CONSIDERS that** players of a converged ecosystem ~~should~~ **could** fall under the same rules applicable. However, STRESSES ~~that~~ the ~~current concepts~~ **importance** of net neutrality ~~should be carefully assessed~~, and **that** contractual freedom should be upheld as one of the primary principles, while keeping regulatory intervention at ~~the~~ minimum level.
16. TAKES INTO ACCOUNT national security aspects of critical infrastructures of electronic communications systems. NOTES that questions related to the privacy **and confidentiality** of electronic communications should be ~~updated~~ **reassessed** to reflect technological advancements.

17. HIGHLIGHTS that the current European electronic communications landscape is the result of historical and ~~cultural~~ **geographical** circumstances, which should be factored in when undertaking actions to effectively increase competitiveness.

18. UNDERLINES the need ~~for~~ **to** further digitalising the industry in order to incentivise the take-up of advanced technologies. STRESSES that the availability of high quality, affordable, reliable, sustainable, **accessible**, open and secure connectivity is of paramount importance to all citizens in the EU and that EU businesses and citizens shall equally benefit from digitalisation.

18a. STRESSES that electronic communications services as a universal service should secure that all citizens in the EU have access to such quality, reliable and affordable connectivity that is necessary for social and economic participation in society.

Capacity building, innovation and technology capabilities

19. RECALLS the need for Europe to build on its solid research and innovation base in the upstream part of the digital value chain. Given the trend towards ever more critical applications, ~~such as blockchain in finance, telemedicine, and autonomous driving,~~ infrastructure security and resilience by design should be required ~~and assessed based on available data and KPIs.~~

20. SHARES THE VIEW that the transformation of the EU's connectivity industry requires significant investment capacities. Therefore, **and without pre-empting the negotiations of the next Multiannual Financial Framework (MFF)**, EU funding instruments and programmes should ~~be reinforced and adapted to~~ **take into consideration the** technological progress and the widespread use of AI applications. RECOGNISES that the **R&I activities of the** Smart Network and Services Joint Undertaking **and more broadly** under Horizon Europe, **as well as** InvestEU, the Digital Europe Programme (**DEP**), and the Connecting Europe Facility (**CEF**) should be maintained **and potentially reinforced,** ~~updated and strengthened under the next MFF.~~

21. RECALLS that the IPCEI, especially the Next Generation Cloud Infrastructure and Services (IPCEI CIS), has the potential to unlock ~~significant~~ additional private investments, and RECOGNISES that Cable Projects of European Interest (CPEI) ~~will~~ **could** induce similar effects.
22. EMPHASISES that when establishing large-scale pilots ~~for end-to-end integrated infrastructures~~, the participation of smaller European players in consortia should be incentivised. UNDERLINES the need for cross-sectoral programmes to boost the adoption of new technologies by recognising the opportunities that connectivity technologies offer to other sectors. **RECOGNISES the relevance of SMEs in the development of the EU ecosystem and the importance of creating an environment where they can develop.** ~~Therefore~~, CONSIDERS the acceleration of the take-up of ~~these~~ new technologies ~~as an overall goal~~ **as significant** to achieve the 2030 Digital Decade targets.

Completing the Digital Single Market

23. STRESSES the significance of **legal certainty and** implementing the adopted legislative acts, **including but not limited to** ~~such as~~ the European Electronic Communications Code and the Gigabit Infrastructure Act. UNDERSCORES that any future regulatory measures should also aim to promote connectivity **and innovation**, foster competition, and should contribute to consumer welfare, **while ensuring a high level of cyber resilience and cybersecurity.**
24. RECOGNISES that connectivity and computing are converging, and players from different segments of the value chain would work best together on a level-playing field. However, this does not **necessarily** imply that the same regulations should apply to them, **since this depends on their activities across the value chain.** CALLS on the Commission to assess if **effective** competition is stifled and to propose possible solutions **where necessary and appropriate** ~~accordingly~~, including to reduce administrative burden.

25. NOTES that copper switch-off could be ~~a key measure to~~ **gradually realised to support the full fibre very high-capacity networks** rollout and support the achievement of the Digital Decade targets while bringing cost savings, but STRESSES that Member States' specificities, **competition and consumer welfare** should be taken into account ~~and general objectives should be followed~~.
26. **ACKNOWLEDGES that the digital sector currently consumes significant amounts of energy and produces e-waste.** NOTES that ~~the lower environmental impact of~~ fibre networks can contribute to achieving some of the EU environmental targets through securing better energy efficiency of networks **and contribute to the environmental sustainability of other sectors.** **STRESSES however that fibre rollout should not remain the only tool for decarbonising the digital sector in order to align with the EU's climate targets. CALLS for easily implementable solutions in that regard, such as using more efficient codecs along digital networks.**
27. **AGREES EMPHASISES** that **the possibility of** ex-ante control on geographically segmented access markets needs to be maintained. CALLS UPON the Commission to further elaborate, **in the context of the review of the EECC,** on the potential impact of relying solely on ex-post control for electronic communications in certain circumstances and on the benefits to customers in ~~competitive environments~~ **relevant markets** with two independent competing broadband networks.
28. NOTES the proper functioning of the Internet Protocol (IP) interconnection market in the EU and ACKNOWLEDGES the experience of national regulatory authorities in handling dispute resolution matters. At the same time, EMPHASISES the importance of a comprehensive, thorough analysis as foundation for any initiatives seeking to provide and open up a dispute resolution mechanism for all digital ecosystem players that operate connectivity infrastructure. **Any potential measures should not restrict the open internet.**

29. EMPHASISES that ~~fair~~ **effective** competition in itself ~~promotes~~ **contributes to** service quality, choice, innovation and benefits for consumers. In electronic communications, the spectrum awards influence the market structure and are interrelated with competition. Simultaneous selection procedures could in certain circumstances have the adverse effect of limiting competition and penalising smaller operators competing in national or sub-national markets. RECOGNISES that in the case of services that are potentially cross-border and transnational, such as satellite services, the possibility of developing an appropriate common selection mechanism and a coordinated obligations' scheme to strengthen EU policy interests should be examined **in light of international rules and taking into account national circumstances.**
30. NOTES that effective spectrum management ~~requires flexible and quick reactions to~~ **should address** emerging demand and to challenges arising from modern wireless network developments and social and economic issues alike. NOTES that regulatory decisions need to take into account ~~societal needs and trends in~~ technological development, **demand and environmental aspects.** RECOGNISES that ~~further improving the effectiveness of the~~ **current** peer review mechanism **has proven to be valuable and that proposals that seek to improve its efficiency and consistency should** ~~could have positive effects while keeping the administrative burden to a minimum. Considering real business models and the principle of social economic utility, a more coordinated approach by Member States, that does not create delays for spectrum awards and 5G rollout, and undue administrative burdens, could be endeavoured.~~
31. NOTES that technology-neutral EU spectrum harmonisation facilitates developments at national and Union level and favourable investment conditions. RECOGNISES that the current cooperation between the Member States and the Commission, and within the European Conference of Postal and Telecommunications Administrations (~~CEPT~~) works well. SUPPORTS the maintenance and further development of the existing transparent governance system in order to streamline EU policies. EMPHASISES, that decisions in the context of radio spectrum policy, in particular regarding licensing solutions, should be based on the expertise of relevant bodies such as the Radio Spectrum Policy Group (~~RSPG~~) and **BEREC the Body of European Regulators for Electronic Communications.**

31a. RECOGNISES that spectrum management remains a key public policy tool for Member States and that the management, licensing and organisation of radio spectrum falls within the national competence. NOTES the number of instances of cross-border interference from third countries, which necessitates increased focus and more robust mitigation efforts.

32. WELCOMES the general commitment to the greening of digital networks and CALLS UPON all digital ecosystem players to aim for minimising their environmental footprint. ACKNOWLEDGES the importance of coupling the green and digital transition **and CALLS UPON the Commission to consider introducing a target on green digitalisation in the context of the review of the Digital Decade Policy Programme.** HIGHLIGHTS the necessity of establishing common tools for the measurement of the environmental impact of electronic communications networks and services, in order to efficiently assess developments.

33. WELCOMES the objective to simplify applicable rules related to ~~authorisation~~ **the provision** of electronic communications networks and services throughout the Union in order to facilitate cross-border operation ~~and service provision~~; NOTES that the introduction of the ‘country of origin’ principle to rules related to authorisation for core networks and core network service providers needs further, detailed analysis, including the establishment of relevant definitions and an assessment of market trends, **and not limit the competences and abilities of Member States with regard to national security, especially with respect to law enforcement.**

34. UNDERLINES that the White Paper mentions the emergence of pan-European operators without considering its impact on the ~~competitiveness~~ **competition** of the markets of ~~various~~ **individual** Member States and operators that are unwilling or unable to operate on a pan-European scale. STRESSES that operators of all sizes should have business opportunities in the single market and be able to benefit from and contribute to vibrant competition. ENCOURAGES the Commission to further investigate ~~how~~ **to what extent** opportunities for cross-border operation and service provision, ~~[including the concept of pan-European operators]~~ can effectively address the investment challenges identified in the White Paper at European level, **but also** ~~or~~ how other regulatory approaches (such as ex-post control or

industrial policy measures) could stimulate investments in the EU digital/electronic communications sector and what would be the impact on consumer welfare.

35. UNDERLINES that market-driven consolidation, assessed by the relevant authorities taking into consideration its potential impact, could foster investment in electronic communications networks in the EU and thus open up further opportunities for growth and innovation. ~~should be market driven and assessed by the relevant authorities taking into consideration its potential impact~~ CONSIDERS that, in the context of the wider ecosystem, the question of optimal scale and fragmentation goes beyond the size of individual telecom operators or other players. Therefore, it is important to examine, next to consolidation, other ways to build scale such as interoperability and cross industry cooperation.

Secure and resilient digital infrastructures for Europe

36. ACKNOWLEDGES that, in light of the growing importance of digital technologies, the current legal framework entails important cybersecurity elements, such as security and resilience by design, to address cybersecurity vulnerabilities in digital products, services, and processes. AGREES that, since many ~~the majority of~~ cybersecurity-related issues are cross-border, the security and resilience of the EU's digital networks are essential elements of Europe's strategic autonomy and Member States' national security.
37. UNDERLINES that ~~quantum-safe cryptography~~ post-quantum cryptography is essential for protecting our digital information from the future threat posed by quantum computers; emphasis should be placed on a coordinated effort at the European and international level, involving government agencies, standardisation bodies, industry stakeholders, researchers and cybersecurity professionals, for ~~the elaboration~~ the development of standards ~~of~~ and their consistent use across the Union in order to guarantee security ~~in light of this emerging technology.~~ In addition, a longer-term vision and strategy is needed to create a future secure, resilient and robust infrastructure that leverages quantum technology.

38. RECOGNISES the importance of ensuring security and resilience of submarine cable infrastructures. Whilst recalling that national security falls within the competence of Member States, INVITES the Commission to consider a legislative proposal on this matter further measures to promote the security and resilience of submarine cable infrastructures; and based on the work of to capitalise on the expertise of Submarine Cable Infrastructure informal Expert Group. implementing Recommendation (EU) 2024/779., and Member States to cooperate in EMPHASIZES the need for an effective EU-fund allocation and INVITES Member States to support critical submarine cable infrastructure initiatives in their efforts to secure funding. RECOGNISES the dimension of national security of critical digital infrastructures, including international submarine cables, and ACKNOWLEDGES that national security falls within the competence of Member States.
