EU ELECTRONIC COMMUNICATIONS CODE
September 2016 Draft – Impact on OTT Services

QUICK FACTS

• EU Commission presented draft directive called “European Communications Code” (ECC) on September 14, 2016
• ECC shall replace the current EU telecoms framework which was last revised in 2009
• Goals:
  • Further harmonization of EU telecoms law
  • Consistent EU-wide approach on spectrum policy
  • Reflect increased use of OTT communications services
  • Incentivize investments in high-speed broadband networks
  • Improve set-up of regulators
• ECC will have no direct effect but must be implemented into Member State law
• Limited room for Member State deviation or additional regulations except where public security is concerned

SERVICE CATEGORIES

Electronic Communications Services (ECS)
Services normally provided for remuneration

NEW SERVICE CATEGORY
Interpersonal Communications Services (ICS)
Direct interpersonal & interactive exchange of information via an Electronic Communications Network
AND
Finite number of persons as determined by initiator
AND
Not just ancillary feature of another service

Internet Access Services
As defined in Regulation EU/2015/2120 (Net Neutrality Regulation)

Number-based ICS
Connected with PSTN via E.164 numbers assigned by service provider or by enabling communication with E.164 numbers
(=PSTN breakout)

Number-independent ICS
All other ICS

Services mainly consisting in the conveyance of signals
e.g., transmission services for M2M communications, or broadcasting services
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NEW OTT RULES

• All OTT communications services will likely qualify as ICS (regardless of PSTN connectivity)
• Only Number-based ICS will be regulated on the same level as traditional telecoms services
  • Rules for Number-independent ICS:
    • Only subject to further obligations where required by public policy interests
    • No general authorization, but notification may still be required
    • No mandatory participation in dispute resolution
    • No obligation to provide access to emergency services
  • Most sector-specific consumer protection rules will not apply
    • No additional info requirements for contracts or transparency requirements demanding publication of general or quality-of-service-related information
    • Restrictions on maximum contract duration and termination do not apply
    • No obligations to facilitate change of provider
  • Interoperability/standardization obligations may only be imposed by NRA if the general access to emergency services or the general end-to-end connectivity between end-users becomes endangered due to lack of interoperability between ICS

OTHER KEY CHANGES

• Broadly harmonized consumer protection rules, with only limited room for Member State deviations
• Access regulation enhanced by rules on access to passive infrastructure and on deployment of high capacity networks
• Stronger harmonization of spectrum management rules
• Numbering provisions amended to reflect need for M2M numbering resources
• BEREC as single point of contact for all service provider notifications

FURTHER LEGISLATIVE PROCESS


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