



7.6.2017

PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

Subject: Proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities
(COM(2016)0589 – C8-0378/2016 – 2016/0287(COD))

The interinstitutional negotiations on the aforementioned proposal for a regulation have led to a compromise. In accordance with Rule 69f(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted to the Committee on Industry, Research and Energy for decision by way of a single vote.

2016/0287 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C., p...

² OJ C., p..

- (1) The Commission's Communication of 14 September 2016 entitled "**Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society**", setting out a European vision of Internet connectivity for citizens and business in the Digital Single Market³ describes a number of possible measures capable of enhancing connectivity in the European Union.
- (1a) **In its Communication of 26 August 2010 entitled “A Digital Agenda for Europe”, the Commission recalls that the Europe 2020 Strategy underlined the importance of broadband deployment to promote social inclusion and competitiveness in the EU, reaffirming the goal of ensuring that, by 2020, (i) all Europeans have access to much higher Internet speeds of above 30 Mbps and (ii) 50% or more of European households subscribe to Internet connections above 100 Mbps.**
- (2) Amongst measures to support the vision of European connectivity **across Europe, the Commission promotes in that Communication** the deployment of local wireless access points through simplified planning procedures and reduced regulatory obstacles. Such access points including those ancillary to the provision of other public services or non-commercial in character, can make an important contribution to the improvement of current **wireless communications networks** and to the deployment of future generations of ~~wireless communications~~ **such networks** by facilitating more granular coverage in line with evolving needs. **Those access points should be able to form part of a network with a single authentication system that is valid across the whole Union, and other free local wireless connectivity networks should be able to join the system. The system should be in line with Regulation (EU) 2016/679 of the European Parliament and of the Council⁴ and Regulation (EU) 2015/2120 of the European Parliament and of the Council⁵**

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Connectivity for a Competitive Digital Single Market - Towards a European Gigabit society (COM(2016)587).

⁴ **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) (Text with EEA relevance) (OJ L, 4.5.2016, p. 1).**

⁵ **Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 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 (Text with EEA relevance) (OJ L 310, 26.11.2015, p. 1).**

- (2a) **In the context of this Regulation, local wireless connectivity that is free of charge and without discriminatory conditions means that it is provided without corresponding remuneration, whether by direct payment or by other types of consideration, such as commercial advertising or the provision of personal data for commercial purposes and without prejudice to restrictions required under Union law, or under national law in compliance with Union law, as well as the need to ensure a smooth functioning of the network and in particular the need to ensure a fair allocation of capacity between users at peak-times.**
- (2b) **A competitive market and a future-proof legislative framework, which incentivises competition, investments, and wide-spread availability and take-up of very high capacity connectivity, Trans-European networks and new business models are important drivers for investments in high and very high capacity networks that can deliver connectivity to citizens throughout the Union.**
- (3) ~~Following the that Communication setting out a European vision of Internet connectivity for the Digital Single Market~~ and in order to promote digital inclusion, the Union should support the provision of **high-quality free local wireless connectivity that is free of charge and without discriminatory conditions** in the centres of local public life, including outdoor spaces accessible to the general public, ~~through targeted support~~. Such support is so far not covered by Regulations (EU) No 1316/2013 **of the European Parliament and of the Council**⁷ and **Regulation (EU) No 283/2014 of the European Parliament and of the Council**⁸.
- (4) ~~Such support of this kind should encourage entities with a public mission such as public authorities and providers of public services~~ **public sector bodies, as defined by Article 3(1) of Directive (EU) 2016/2102 of the European Parliament and of the Council**, to offer free local wireless connectivity as an ancillary service to their public mission so as to ensure that **people in the** local communities can experience the benefits of ~~very~~ high-speed broadband **and have an opportunity to improve their digital skills** in the centres of public life. Such ~~entities~~ **bodies** could include municipalities, **grouping of municipalities**, ~~and~~ other local public authorities **and institutions**, libraries and hospitals.

⁷ Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010, OJ L 348, 20.12.2013, p. 129, as last amended by Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015, OJ L 169, 1.7.2015, p. 1.

⁸ Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC, OJ L 86, 21.3.2014, p. 14.

- (4a) **Free local wireless connectivity could contribute to bridging the digital divide, especially in areas lagging behind in terms of digital literacy, as well as in rural areas and remote locations.**
- (5) **In the context of this Regulation, local wireless connectivity should only qualify as free, where it is provided without corresponding remuneration, whether by direct payment or other types of consideration, including, but not limited to, commercial advertising and the provision of personal data for commercial purposes.**
- (5a) **Improving access to high speed and very high speed broadband and therefore to ICT services, especially in remote areas, could increase the quality of peoples' life by facilitating access to services (e.g. e-Health and e-Government) and promote the development of local SMEs.**
- (5b) **To guarantee the success of the initiative and to give prominence to Union action in this area, the Commission should ensure that the entities that are pursuing projects benefitting from this initiative provide end users with as much information as possible on the availability of the services and make prominent the fact that the EU has granted financing. Such information could also provide end-users with easy access to information on the Union.**
- (6) Considering its specific purpose and targeted nature toward local needs, the ~~intervention~~ **promotion of free local wireless connectivity in the centres of public life** should be identified as a distinct project of common interest in the telecommunications sector within the meaning of Regulations (EU) No 1316/2013 and (EU) No 283/2014.
- (7) ~~{~~To provide this intervention with appropriate financing, the financial envelope for the implementation of the CEF in the telecommunications sector should be increased by an amount of EUR ~~50~~ **25 000 000, which may be increased to EUR 50 000 000 in order to ensure the succesful implementation of this programme.**
- (8) Given the non-commercial nature of ~~this intervention~~ **the support to be provided under this Regulation** and the small scale of individual projects foreseen, the administrative burden should be limited to a minimum **and should be proportionate to the benefits envisaged, taking into account the need for accountability and a proper balance between simplification and control.** Therefore, ~~the intervention~~ **this Regulation** should be implemented by the most appropriate forms of financial assistance, ~~notably~~ **in particular grants, for instance by way of vouchers**, available under the Financial Regulation, now or in future. The ~~intervention~~ **support to be provided under this Regulation** should not rely on financial instruments. **The principle of sound financial management should apply.**

- (8a) **Given the limited volume of financial appropriations measured against the possibly high number of applications, steps will need to be taken to ensure that administrative procedures are simplified so that decisions can be taken in a timely manner. Regulation (EU) No 1316/2013 (the CEF Regulation) should be amended to allow Member States to support categories of proposals in line with the criteria defined in section 4, so as to avoid the individual approval of applications and ensure that certification of expenditure and annual reporting to the Commission are not obligatory for grants or other forms of financial assistance awarded under this Regulation.**
- (9) Due to the limited reach of any single local wireless access point and the small value of individual projects covered, access points benefitting from financial assistance under this Regulation are not expected to challenge commercial offers. In order to further ensure that such financial assistance does not unduly distort competition, crowd out private investments or create disincentives for private operators to invest, **the intervention support provided under this Regulation** should be limited to projects that do not duplicate already existing **free** private or public offers of similar characteristics in the same area. This should not exclude additional support to deployments under this **initiative Regulation** from **either public sources of funding such as national or Union funds, including the European Regional Development Fund, or from private sources of funding, as additional support could contribute to a more significant effect, nor should it prevent the setting of limitations, in the user's terms and conditions, such as providing connectivity for a limited period of time or up to a reasonable data consumption.**
- (9a) **The available budget should be allocated in a geographically balanced manner across Member States to projects and in principle, on a 'first come, first served' basis.' The mechanism aiming at ensuring geographical balance should be included in the relevant work programmes adopted pursuant to Regulation No (EU) 1316/2013, and be further specified in calls for proposals adopted in accordance with that Regulation, if necessary, for instance by enabling enhanced participation by applicants from Member States whose take-up of grants or of other forms of financial assistance has been comparatively low.**
- (10) To ensure that connectivity in accordance with this Regulation is provided quickly, financial assistance should be implemented using to the fullest extent possible on-line tools that allow for the swift submission and handling of applications and support the implementation, monitoring and auditing of the local wireless access points installed. **The Commission and the relevant authorities in the Member States should promote the programme.**

- (10a) **This Regulation is without prejudice to national law that complies with Union law, such as national provisions preventing municipalities from providing free wireless connection directly, while allowing them to provide such a connection through private entities.**
- (11) Given Internet connectivity needs within the Union and the urgency of promoting access networks that can deliver, throughout the EU, **including in remote locations and rural areas**, an Internet experience of high quality based **at least** on very high-speed broadband services, **while preferably reaching the objectives of the European Gigabit Society**, financial assistance should seek to attain a geographically balanced distribution.
- (11a) **Furthermore, beneficiary entities should be required to provide the wireless connection for not less than three years.**
- (11b) **The actions financed pursuant to this Regulation should use state-of-the-art equipment, capable of delivering free, easy to access and appropriately secured high speed connectivity to its users .**
- (11c) **Since the objective of this Regulation, namely to support the provision of high-quality wireless connectivity in local communities across the Union, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.**
- (12) Regulations (EU) No 1316/2013 and (EU) No 283/2014 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 1316/2013

Regulation (EU) No 1316/2013 is amended as follows:

0a. Article 2(1) is replaced by the following:

'(1) "project of common interest" means a project identified in Regulation (EU) No 1315/2013 or Regulation (EU) No 347/2013 or in Regulation (EU) No 283/2014 of the European Parliament and of the Council⁹'

0b. Article 4(4) is replaced by the following:

'4. In the telecommunications sector, the CEF shall support actions that pursue the objectives specified in Regulation (EU) No 283/2014.'

1. In the first subparagraph of Article 5(1), point (b) is replaced by the following:

–'(b) telecommunications sector: ~~EUR 1 091 602 000~~ **EUR 1 066 602 000;**'

2. Article 7 is amended as follows:

a) paragraph 1 is replaced by the following:

'1. Only actions contributing to projects of common interest in accordance with Regulations (EU) No 1315/2013, (EU) No 347/2013 and a ~~Regulation on guidelines for trans-European networks in the area of telecommunications infrastructure~~, Regulation (EU) No 283/2014 of the European Parliament and of the Council as well as programme support actions, shall be eligible for support through Union financial assistance, in particular in the form of grants, procurement and financial instruments.'

⁹ Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC, OJ L 86, 21.3.2014, p. 14.

b) paragraph 4 is replaced by the following:

'4. In the telecommunications sector, all actions implementing the projects of common interest and programme support actions identified in ~~a Regulation on guidelines for trans-European networks in the area of telecommunications infrastructure~~ **Regulation (EU) No 283/2014** and meeting eligibility criteria and/or conditions laid down in accordance with that Regulation shall be eligible to receive Union financial assistance under this Regulation, as follows:

(a) generic services, core service platforms and programme support actions shall be financed through grants and/or procurement;

(b) actions in the field of broadband networks shall be financed through financial instruments;

(c) actions in the field of providing free local wireless connectivity **that is free of charge and without discriminatory conditions** in local communities shall be financed through grants or forms of financial assistance other than financial instruments.'

3. In Article 9, the following paragraph is added:

'1a. Where justified by the need to avoid undue administrative burden, in particular in case of low value grants within the meaning of Article 185 of **Commission Delegated Regulation (EU) No ~~1286/2012~~ 1268/2012**, the agreement of the Member States' ~~concerned agreement~~ **referred to in paragraph 1 of this Article** may be given to a certain category of proposals under the work programmes **adopted** pursuant to Article 17 **of this Regulation**, without indicating individual applicants. **Such agreement eliminates the need for Member States to provide an agreement to each individual applicant.**'

4. In Article 10(4), the following ~~third~~ subparagraph is added:

'Actions in the field of providing free local wireless connectivity in local communities shall be funded by Union financial assistance **covering** up to 100 % of the eligible costs, without prejudice to the co-financing principle.'

75. Article 14(1) is replaced by the following:

'1. Financial instruments set up in accordance with Title VIII of Regulation (EU, Euratom) No 966/2012 may be used to facilitate access to finance by entities implementing actions contributing to projects of common interest as defined in Regulations (EU) No 1315/2013 and (EU) No 347/2013 and in Regulation (EU) No 283/2014, and to the achievement of their objectives. The financial instruments shall be based on ex-ante assessments of market imperfections or sub-optimal investment situations and investment needs. The main terms, conditions and procedures for each financial instrument are laid down in Part III of Annex I to this Regulation.'

~~(8)~~6. Article 17(5) is replaced by the following:

'5. The Commission, when adopting multiannual and sectoral annual work programmes, shall establish the selection and award criteria in line with the objectives and priorities laid down in Articles 3 and 4 of this Regulation and in Regulations (EU) No 1315/2013 and (EU) No 347/2013 or in Regulation (EU) No 283/2014. When setting the award criteria, the Commission shall take into account the general orientations laid down in Part V of Annex I to this Regulation.'

7. In Article 22, the following subparagraph is inserted after the second subparagraph:

'The certification of the expenditure referred to in the second paragraph of this Article is not mandatory for grants awarded pursuant to point (c) of Article 4(1) of Regulation (EU) No 283/2014.'

8. In Article 22, the following subparagraph is added:

'The requirement to inform the Commission annually referred to in the fourth sub-paragraph of this Article shall not apply for grants or other forms of financial assistance awarded pursuant to point (c) of Article 4(1) of Regulation (EU) No 283/2014'

Article 2

Amendments to Regulation (EU) No 283/2014

Regulation (EU) No 283/2014 is amended as follows:

1. In Article 2(2), the following point (h) is added:

(h) 'local wireless access point' means a low power equipment of small size operating within a small range, using on a non-exclusive basis radio spectrum for which the conditions of availability and efficient use for this purpose are harmonised at Union level, and which allows wireless access by users to an electronic communications network.

2 In Article 4(1), the following point (c) is added:

'(c) support the provision of **high-quality** ~~free~~ local wireless connectivity **that is free of charge and without discriminatory conditions** in local communities.'

3. Article 5 is hereby amended as follows:

(a) paragraph 7 is replaced by the following:

'7. The total amount of the budget allocated to financial instruments for broadband networks shall not exceed the minimum necessary to establish cost-efficient interventions which shall be determined on the basis of ex-ante assessments as referred to in Article 14(1) of Regulation (EU) No 1316/2013.

That amount shall be up to 15 % of the financial envelope for the telecommunications sector referred to in point (b) of Article 5(1) of Regulation (EU) No 1316/2013.'

(b) the following paragraph is ~~added~~ **inserted after paragraph 5**:

'5a. Actions contributing to ~~the~~ projects of common interest in the field of providing free local wireless connectivity in local communities shall be supported by:

(a) grants; and/or

(b) **other** forms of financial assistance other than financial instruments.'

4. In Article 6, the following paragraph 8a is ~~added~~ **inserted after paragraph 8**:

'8a. Actions contributing to projects of common interest in the field of providing **high-quality** free local wireless connectivity **that is free of charge and without discriminatory conditions** in local communities shall meet conditions set out in Section 4 ~~in~~ **of the Annex in order to be eligible for the funding.**'

5. In Article 8(9), the following point ~~(d)~~ is added:

'(d) the number of connections to local wireless access points established under actions implementing Section 4 of the Annex.'

6. In the Annex, the following section shall be inserted:

'SECTION 4. WIRELESS CONNECTIVITY IN LOCAL COMMUNITIES

Actions ~~aiming at~~ **must aim for** the provision of free local wireless connectivity in the centres of local public life, including outdoor spaces accessible to the general public that play a major role in the public life of local communities, ~~shall~~ **to be eligible for financial assistance. For the purpose of accessibility, those actions shall provide access to services at least in the relevant languages of the Member State concerned and, to the extent possible, in other Union languages.**

Financial assistance ~~shall~~ **will** be available to ~~entities with a public mission such as local authorities and providers of public services~~ **public sector bodies, as defined by Article 3(1) of Directive (EU) 2016/2102 of the European Parliament and of the Council**, undertaking to provide, **in accordance with national laws**, free local wireless connectivity through the installation of local wireless access points.

~~Projects~~ **Actions** for the provision of wireless connectivity through freely accessible local wireless access points ~~may~~ **will be eligible to** receive funding if they:

- 1) are implemented by ~~an entity with a public mission~~ **a public sector body as referred to in the second paragraph** capable of planning and supervising the installation, **as well as ensuring for a minimum of three years the financing of operating costs**, of indoor or outdoor local wireless access points in public spaces;
- 2) build on ~~very~~ high-speed broadband connectivity enabling delivery of high quality Internet experience to users that
 - a. is free, easy to access, **secured**, and uses state-of-the-art equipment **capable of delivering high speed connectivity to its users**, and
 - b. supports access to innovative digital services, such as those offered via digital service infrastructures;
- 3) use the common visual identity to be provided by the Commission and link to the associated online tools.
- 3a) **respect the principles of technological neutrality at the level of the backhaul, the efficient use of public funding and the ability to adapt projects to the best technological offers.**
- 4) **commit to procure the necessary equipment and/or related installation services in accordance with applicable law to ensure that projects do not unduly distort competition.**

~~Projects~~ **Actions** duplicating already existing **free** private or public offers of similar characteristics, including quality, in the same area shall not be ~~covered~~ **eligible to receive funding. Such duplication may be avoided by ensuring that the range of the access points funded under this Regulation is designed so as to cover primarily public spaces and not to overlap with that of existing private or public offers of similar characteristics.**

The available budget shall be allocated in a geographically balanced manner **across Member States** to ~~projects~~ **actions** meeting the above conditions in view of the proposals received and, in principle, on a 'first come, first served' basis. **As long as actions eligible under this Section are presented, the total allocation of funds under this Section shall include all Member States.**

Actions financed under this section shall be in operation and closely monitored by the Commission for at least three years. Beyond the operational period the Commission shall continue to provide an overview of functionality of this project and possible input for future initiatives.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President

DRAFT JOINT STATEMENT BY THE EUROPEAN PARLIAMENT, THE COUNCIL
AND
THE COMMISSION

The European Parliament, the Council and the Commission agree that the WiFi4EU initiative should have meaningful impact and scalability. To this end, they note that if an increase of EUR 25 000 000 to EUR 50 000 000 of the financial envelope for the implementation of CEF in the telecommunications sector cannot be secured in full, the Commission might propose reallocations within that envelope in order to facilitate overall funding for the promotion of internet connectivity in local communities of EUR 120 000 000.