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AMENDMENTS: 23

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European Electronic Communications Code (Recast)

Proposal for a directive COM(2016)0590 - C8-0379/2016 – 2016/0288(COD)

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Amendments per language:

EN: 23

Amendment 1
Gunnar Hökmark, Bendt Bendtsen

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) Interpersonal communications services are services that enable interpersonal and interactive exchange of information, covering services like traditional voice calls between two individuals but also all types of emails, messaging services, or group chats. Interpersonal communications services only cover communications between a finite, that is to say not potentially unlimited, number of natural persons which is determined by the sender of the communication. Communications involving legal persons should be within the scope of the definition where natural persons act on behalf of those legal persons or are involved at least on one side of the communication. Interactive communication entails that the service allows the recipient of the information to respond. Services which do not meet those requirements, such as linear broadcasting, video on demand, websites, social networks, blogs, or exchange of information between machines, should not be considered as interpersonal communications services. Under exceptional circumstances, a service should not be considered as an interpersonal communications service if the interpersonal and interactive communication facility is a *purely ancillary* feature to another service and for objective technical reasons cannot be used without that principal service, and its integration is not a means to circumvent the applicability of the rules governing electronic communications services. An

Amendment

(17) Interpersonal communications services are services that enable interpersonal and interactive exchange of information, covering services like traditional voice calls between two individuals but also all types of emails, messaging services, or group chats. Interpersonal communications services only cover communications between a finite, that is to say not potentially unlimited, number of natural persons which is determined by the sender of the communication. Communications involving legal persons should be within the scope of the definition where natural persons act on behalf of those legal persons or are involved at least on one side of the communication. Interactive communication entails that the service allows the recipient of the information to respond. Services which do not meet those requirements, such as linear broadcasting, video on demand, websites, social networks, blogs, or exchange of information between machines, should not be considered as interpersonal communications services. Under exceptional circumstances, a service should not be considered as an interpersonal communications service if the interpersonal and interactive communication facility is a feature to another service and for objective technical reasons cannot be used without that principal service, and its integration is not a means to circumvent the applicability of the rules governing electronic communications services. An example for

example for such an exception could be, in principle, a communication channel in online games, depending on the features of the communication facility of the service.

such an exception could be, in principle, a communication channel in online games, depending on the features of the communication facility of the service.

Or. en

Justification

This deletion serves to clarify what type of services should fall within the scope of this Directive, so as to limit the risk of inconsistency in its application.

Amendment 2

Gunnar Hökmark, Henna Virkkunen, Bendt Bendtsen

Proposal for a directive

Recital 184

Text proposed by the Commission

(184) Due to current uncertainty regarding the rate of materialisation of demand for very high capacity broadband services as well as general economies of scale and density, co-investment agreements offer significant benefits in terms of pooling of costs and risks, enabling smaller-scale operators to invest on economically rational terms and thus promoting sustainable, long-term competition, including in areas where infrastructure-based competition might not be efficient. Where an operator with significant market power makes an open call for co-investment on fair, reasonable and non-discriminatory terms in new network elements which significantly contribute to the deployment of very high capacity networks, the national regulatory authority should typically refrain from imposing obligations pursuant to this Directive on the new network elements, subject to further review in subsequent market analyses. Provided due account is taken of the prospective pro-competitive effects of the co-investment at wholesale

Amendment

(184) Due to current uncertainty regarding the rate of materialisation of demand for very high capacity broadband services as well as general economies of scale and density, co-investment agreements offer significant benefits in terms of pooling of costs and risks, enabling smaller-scale operators to invest on economically rational terms and thus promoting sustainable, long-term competition, including in areas where infrastructure-based competition might not be efficient. Where an operator with significant market power makes an open call for co-investment on fair, reasonable and non-discriminatory terms in new network elements which significantly contribute to the deployment of very high capacity networks, ***and such an offer is taken up by a co-investor and agreed upon, or when commercial access agreements based on the same preconditions have equivalent results***, the national regulatory authority should typically refrain from imposing obligations pursuant to this Directive on the new

and retail level, national regulatory authorities can still consider it appropriate, in light of the existing market structure and dynamics developed under regulated wholesale access conditions, and in the absence of a commercial offer to that effect, to safeguard the rights of access seekers who do not participate in a given co-investment through the maintenance of existing access products or – where legacy network elements are dismantled in due course – through imposition of access products with comparable functionality to those previously available on the legacy infrastructure.

network elements, subject to further review in subsequent market analyses. Provided due account is taken of the prospective pro-competitive effects of the co-investment at wholesale and retail level, national regulatory authorities can still consider it appropriate, in light of the existing market structure and dynamics developed under regulated wholesale access conditions, and in the absence of a commercial offer to that effect, to safeguard the rights of access seekers who do not participate in a given co-investment through the maintenance of existing access products or – where legacy network elements are dismantled in due course – through imposition of access products with comparable functionality to those previously available on the legacy infrastructure.

Or. en

Amendment 3

Gunnar Hökmark, Michal Boni, Krišjānis Kariņš, Bendt Bendtsen

Proposal for a directive

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) 'very high capacity network' means an electronic communications network which either consists wholly of optical fibre elements at least up to the distribution point at the serving location or which is capable of delivering under usual peak-time conditions *similar* network performance in terms of available down- and uplink bandwidth, resilience, error-related parameters, and latency and its variation. Network performance *can be considered similar* regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination

Amendment

(2) 'very high capacity network' means an electronic communications network which either consists wholly of optical fibre elements at least up to the distribution point at the serving location or *any network* which is capable of delivering under usual peak-time conditions *at least equally consistent and reliable* network performance in terms of available down- and uplink bandwidth, resilience, error-related parameters, and latency and its variation. Network performance *shall be assessed on the basis of technical parameters*, regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects

point.

with the network termination point.

Or. en

Justification

The aim of the EECC is to incentivise the roll-out of infrastructure capable of delivering the speeds necessary to accelerate the transition to a 5G society. Thus, the definition must, while taking into account future technological developments, thereby maintaining the technology neutrality principle, strictly be limited to include only state of the art infrastructure.

Amendment 4

Gunnar Hökmark, Michal Boni, Bendt Bendtsen

Proposal for a directive

Article 19 – paragraph 2

Text proposed by the Commission

2. ***In line with the need*** to ensure the effective ***and efficient*** use of radio spectrum or the implementation of harmonised conditions adopted under Decision No 676/2002/EC, Member States may allow withdrawal of rights, including those with a **25** year minimum duration, based on procedures laid down ***in advance***, in compliance with the principles of proportionality and non-discrimination.

Amendment

2. ***If necessary in order*** to ensure effective use of radio spectrum ***and competition***, or the implementation of harmonised conditions adopted under Decision No 676/2002/EC, Member States may allow withdrawal of rights, including those with a **30** year minimum duration, ***after consultations with the right holder and based on fully transparent conditions and*** procedures laid down ***prior to the granting of such rights***, in compliance with the principles of proportionality and non-discrimination. ***Member States shall ensure that licence holders, following any withdrawal, are adequately and proportionally compensated with regards to investments made.***

Or. en

Justification

Predictability and certainty are both crucial to unlock investments and secure long-term effective use of spectrum; therefore, any withdrawal of rights shall be used only as a last resort and, in order not to hamper investments, be followed by financial compensation for investments already made.

Amendment 5
Gunnar Hökmark, Krišjānis Kariņš, Bendt Bendtsen

Proposal for a directive
Article 20 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that undertakings providing electronic communications networks and services associated facilities, or associated services provide all the information, including financial information, necessary for national regulatory authorities, other competent authorities and BEREC to ensure conformity with the provisions of, or decisions made in accordance with, this Directive. In particular, national regulatory authorities shall have the power to require those undertakings to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors. They may also require information on electronic communications networks and associated facilities which is disaggregated at local level and sufficiently detailed for the national regulatory authority to be able to conduct the geographical survey and to designate digital exclusion areas in accordance with Article 22. ***In accordance with Article 29, national regulatory authorities may sanction undertakings deliberately providing misleading, erroneous or incomplete information.***

Amendment

Member States shall ensure that undertakings providing electronic communications networks and services associated facilities, or associated services provide all the information, including financial information, necessary for national regulatory authorities, other competent authorities and BEREC to ensure conformity with the provisions of, or decisions made in accordance with, this Directive. In particular, national regulatory authorities shall have the power to require those undertakings to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors. They may also require information on electronic communications networks and associated facilities which is disaggregated at local level and sufficiently detailed for the national regulatory authority to be able to conduct the geographical survey and to designate digital exclusion areas in accordance with Article 22. ***Such information shall facilitate the forecasting of future investments in network deployment and development.***

Or. en

Amendment 6
Gunnar Hökmark, Krišjānis Kariņš, Bendt Bendtsen

Proposal for a directive
Article 22 – paragraph 1 – subparagraph 2 – point b – paragraph 2

Text proposed by the Commission

This forecast shall reflect the economic prospects of the electronic communications networks sector and investment intentions of operators at the time when the data is gathered, in order to allow the identification of available connectivity in different areas. This forecast shall include information on planned deployments **by any undertaking or public authority**, in particular to include very high capacity networks and significant upgrades or extensions of legacy broadband networks to at least the performance of next-generation access networks. For this purpose, national regulatory authorities shall **request undertakings to provide relevant** information regarding planned deployments of such networks.

Amendment

This forecast shall reflect the economic prospects of the electronic communications networks sector and investment intentions of operators at the time when the data is gathered, in order to allow the identification of available connectivity in different areas. This forecast shall include information on planned deployments, in particular to include very high capacity networks and significant upgrades or extensions of legacy broadband networks to at least the performance of next-generation access networks. For this purpose, national regulatory authorities shall **gather relevant and reasonably available** information regarding planned deployments of such networks.

Or. en

Amendment 7

Gunnar Hökmark, Henna Virkkunen, Michał Boni, Krišjānis Kariņš, Bendt Bendtsen

Proposal for a directive

Article 22 – paragraph 2

Text proposed by the Commission

2. National regulatory authorities may designate a "digital exclusion area" corresponding to an area with clear territorial boundaries where, on the basis of the information gathered pursuant to paragraph 1, it is **determined** that for the duration of the relevant forecast period, no undertaking or public authority has deployed or is planning to deploy a very high capacity network or has significantly upgraded or extended its network to a **performance of at least 100 Mbps download speeds**, or is planning to do so. National regulatory authorities shall publish the designated digital exclusion

Amendment

2. National regulatory authorities may designate a "digital exclusion area" corresponding to an area with clear territorial boundaries where, on the basis of the information gathered pursuant to paragraph 1, it is **foreseen** that for the duration of the relevant forecast period, no undertaking or public authority has deployed or is planning to deploy a very high capacity network or has significantly upgraded or extended its network to a **very high capacity network**, or is planning to do so. National regulatory authorities shall publish the designated digital exclusion

areas.

areas.

Or. en

Amendment 8

Gunnar Hökmark, Henna Virkkunen, Michał Boni, Krišjānis Kariņš, Bendt Bendtsen

Proposal for a directive Article 22 – paragraph 3

Text proposed by the Commission

3. Within a designated digital exclusion area, national regulatory authorities may issue a call open to any undertaking to declare their intention to deploy very high capacity networks over the duration of the relevant forecast period. The national regulatory authority shall specify the information to be included in such submissions, in order to ensure at least a similar level of detail as that taken into consideration in the forecast envisaged in paragraph 1(b). It shall also inform any undertaking expressing its interest whether the designated digital exclusion area is covered or likely to be covered by an NGA network offering download speeds below **100 Mbps** on the basis of the information gathered pursuant to paragraph 1(b).

Amendment

3. Within a designated digital exclusion area, national regulatory authorities may issue a call open to any undertaking to declare their intention to deploy very high capacity networks over the duration of the relevant forecast period. The national regulatory authority shall specify the information to be included in such submissions, in order to ensure at least a similar level of detail as that taken into consideration in the forecast envisaged in paragraph 1(b). It shall also inform any undertaking expressing its interest whether the designated digital exclusion area is covered or likely to be covered by an NGA network offering download speeds below **a very high capacity network** on the basis of the information gathered pursuant to paragraph 1(b).

Or. en

Amendment 9

Gunnar Hökmark, Michał Boni, Krišjānis Kariņš, Bendt Bendtsen

Proposal for a directive Article 22 – paragraph 4

Text proposed by the Commission

4. When national regulatory authorities take measures pursuant to paragraph 3, they shall do so according to an efficient, objective, transparent and non-discriminatory procedure, whereby no

Amendment

4. When national regulatory authorities take measures pursuant to paragraph 3, they shall do so according to an efficient, objective, transparent and non-discriminatory procedure, whereby no

undertaking is a priori excluded. ***Failure to provide information pursuant to paragraph 1(b) or to respond to the call for interest pursuant to paragraph 3 may be considered as misleading information pursuant to Articles 20 or 21.***

undertaking is a priori excluded.

Or. en

Justification

As investment plans are solely decided by the operators, it is disproportionate to argue that failure to provide accurate information on such plans is to be considered as misleading and constitute reason for sanctions by NRAs.

Amendment 10

Gunnar Hökmark, Michał Boni, Bendt Bendtsen

Proposal for a directive

Article 35 – paragraph 2

Text proposed by the Commission

2. Where a national regulatory authority intends to take a measure which falls within the scope of paragraph 1 (a) to (g), it shall make the draft measure accessible, together with the reasoning on which the measure is based, to BEREC, the Commission and national regulatory authorities in other Member States, at the same time.

Amendment

2. ***In order to facilitate coordination and efficient use of spectrum, also across the borders,*** where a national regulatory authority intends to take a measure which falls within the scope of paragraph 1 (a) to (g), it shall make the draft measure accessible, together with the reasoning on which the measure is based, to BEREC, ***the Radio Spectrum Policy Group and*** the Commission and national regulatory authorities in other Member States, at the same time.

Or. en

Amendment 11

Gunnar Hökmark, Bendt Bendtsen

Proposal for a directive

Article 35 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Within one month, or a longer period, if the national regulatory authority agrees to extend the deadline, BEREC shall issue a reasoned opinion on the draft measure, which shall analyse whether that measure would be the most appropriate in order to:

Amendment

Within one month, or a longer period **up to three months**, if the national regulatory authority agrees to extend the deadline, BEREC shall issue a reasoned opinion on the draft measure, which shall analyse whether that measure would be the most appropriate in order to:

Or. en

Amendment 12

Gunnar Hökmark, Michal Boni, Bendt Bendtsen

Proposal for a directive

Article 47 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Competent authorities shall attach conditions to individual rights and general authorisations to use radio spectrum in accordance with Article 13(1) in such a way as to ensure the most effective and efficient use of radio spectrum by the beneficiaries of the general authorisation or the holders of individual rights or by any third party to which an individual right or part thereof has been traded or leased. They shall clearly define any such conditions including the level of use required and the possibility to trade and lease in relation to this obligation in order to ensure the implementation of those conditions in line with Article 30. Conditions attached to renewals of right of use for radio spectrum may not provide undue advantages to existing holders of those rights.

Amendment

Competent authorities shall attach conditions to individual rights and general authorisations to use radio spectrum in accordance with Article 13(1) in such a way as to ensure **a sufficiently high level of network resilience and cyber security, in addition to ensuring** the most effective and efficient use of radio spectrum by the beneficiaries of the general authorisation or the holders of individual rights or by any third party to which an individual right or part thereof has been traded or leased. They shall clearly define any such conditions including the level of use required and the possibility to trade and lease in relation to this obligation in order to ensure the implementation of those conditions in line with Article 30. Conditions attached to renewals of right of use for radio spectrum may not provide undue advantages to existing holders of those rights.

Or. en

Amendment 13
Gunnar Hökmark, Bendt Bendtsen

Proposal for a directive
Article 47 – paragraph 2

Text proposed by the Commission

2. When attaching conditions to individual rights of use for radio spectrum, competent authorities may authorise the sharing of passive or active infrastructure, or of radio spectrum, as well as commercial roaming access agreements, or the joint roll-out of infrastructures for the provision of services or networks which rely on the use of radio spectrum, in particular with a view to ensuring effective and efficient use of radio spectrum or promoting coverage. Conditions attached to the rights of use shall **not prevent** the sharing of radio spectrum. Implementation by undertakings of conditions attached pursuant to this paragraph shall remain subject to competition law.

Amendment

2. When attaching conditions to individual rights of use for radio spectrum, competent authorities may authorise the sharing of passive or active infrastructure, or of radio spectrum, as well as commercial roaming access agreements, or the joint roll-out of infrastructures for the provision of services or networks which rely on the use of radio spectrum, in particular with a view to ensuring effective and efficient use of radio spectrum or promoting coverage. Conditions attached to the rights of use shall **facilitate, by different means**, the sharing of radio spectrum. Implementation by undertakings of conditions attached pursuant to this paragraph shall remain subject to competition law.

Or. en

Amendment 14
Gunnar Hökmark, Michal Boni, Bendt Bendtsen

Proposal for a directive
Article 49 – paragraph 2

Text proposed by the Commission

2. Where Member States grant rights of use for harmonised radio spectrum for a limited period of time, those rights of use for harmonised radio spectrum shall be valid for a duration of at least **25** years, except in the case of temporary rights, temporary extension of rights pursuant to paragraph 3 and rights for secondary use in harmonised bands.

Amendment

2. Where Member States grant rights of use for harmonised radio spectrum for a limited period of time, those rights of use for harmonised radio spectrum shall be valid for a duration of at least **30** years, **provided there are conditions to facilitate trading, leasing and sharing of rights**, except in the case of temporary rights, temporary extension of rights pursuant to paragraph 3 and rights for secondary use in

harmonised bands.

Or. en

Amendment 15
Gunnar Hökmark, Bendt Bendtsen

Proposal for a directive
Article 52 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

When Member States grant, amend or renew rights of use for radio spectrum, their national regulatory authorities *may take* appropriate measures such as:

Amendment

When Member States grant, amend or renew rights of use for radio spectrum, their national regulatory authorities *should, if necessary in order to ensure effective competition pursuant to point 1 of this Article, consider* appropriate measures such as:

Or. en

Amendment 16
Gunnar Hökmark, Bendt Bendtsen

Proposal for a directive
Article 53 – paragraph 1 – introductory part

Text proposed by the Commission

In order to coordinate the use of harmonised radio spectrum in the Union and taking due account of the different national market situations, the Commission may, by way of an implementing measure:

Amendment

In order to *ensure efficient use of spectrum and* coordinate the use of harmonised radio spectrum in the Union and taking due account of the different national market situations, the Commission may, by way of an implementing measure:

Or. en

Amendment 17
Gunnar Hökmark, Bendt Bendtsen

Proposal for a directive
Article 53 – paragraph 1 – subparagraph 1 (new)

The Commission shall, in its efforts to establish common maximum dates by which the use of specific harmonised radio spectrum bands shall be authorised, as set out in this Article, take into utmost consideration the need to ensure a swift harmonisation of spectrum bands which have been identified by the RSPG in its opinion on spectrum related aspects for next-generation wireless systems (5G) as 'pioneer' bands for use by 2020, in particular spectrum in the 3.4-3.8 GHz and the 24.25-27.5 GHz, as well as additional bands which the RSPG identifies as particularly important to this end.

Or. en

Amendment 18

Gunnar Hökmark, Henna Virkkunen, Krišjānis Kariņš, Bendt Bendtsen

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) in justified cases, *obligations on providers of number-independent interpersonal communications services to make their services interoperable, namely* where access to emergency services or end-to-end *connectivity* between end-users is *endangered* due to a lack of interoperability between interpersonal communications services.

(c) in justified cases *where the reach, coverage and user uptake corresponds to that of number-based services and* where *strictly necessary in order to ensure* access to emergency services or end-to-end *communication* between end-users is due to a lack of interoperability between interpersonal communications services, *obligations on providers of number-independent interpersonal communications services to make their services interoperable.*

Or. en

Amendment 19

Gunnar Hökmark, Henna Virkkunen, Bendt Bendtsen

Proposal for a directive
Article 59 – paragraph 2 – subparagraph 1

Text proposed by the Commission

National regulatory authorities shall impose obligations ***upon reasonable request to grant*** access to wiring and cables inside buildings or up to ***the first*** concentration or distribution point ***where that point is located outside the building***, on the owners of such wiring and cable or on undertakings that have the right to use such wiring and cables, where this is justified on the grounds that replication of such network elements would be economically inefficient or physically impracticable. The access conditions imposed may include specific rules on access, transparency and non-discrimination and for apportioning the costs of access, which, where appropriate, are adjusted to take into account risk factors.

Amendment

National regulatory authorities shall impose obligations ***to meet reasonable requests for*** access to wiring and cables inside buildings or up to ***a*** concentration or distribution point ***as close to end-users as possible***, on the owners of such wiring and cable or on undertakings that have the right to use such wiring and cables, where this is justified on the grounds that replication of such network elements would be economically inefficient or physically impracticable. The access conditions imposed may include specific rules on access, transparency and non-discrimination and for apportioning the costs of access, which, where appropriate, are adjusted to take into account risk factors. ***Under special circumstances, when access regulation is imposed beyond the first concentration or distribution point, national regulatory authorities may impose active or virtual access to such wiring and cables.***

Or. en

Amendment 20
Gunnar Hökmark, Henna Virkkunen, Krišjānis Kariņš, Bendt Bendtsen

Proposal for a directive
Article 59 – paragraph 2 – subparagraph 2

Text proposed by the Commission

National regulatory authorities may extend to those owners or undertakings the imposition of such access obligations, on fair and reasonable terms and conditions, beyond the first concentration or distribution point to a concentration point as close as possible to end-users, to

Amendment

deleted

the extent strictly necessary to address insurmountable economic or physical barriers to replication in areas with lower population density.

Or. en

Justification

In correspondence to the amendment on Article 59 - paragraph 2 - subparagraph 1.

Amendment 21

Gunnar Hökmark, Henna Virkkunen, Bendt Bendtsen

Proposal for a directive

Article 59 – paragraph 2 – subparagraph 3 – introductory part

Text proposed by the Commission

National regulatory authorities shall not impose obligations *in accordance with the second subparagraph* where:

Amendment

National regulatory authorities shall not impose obligations *beyond the first concentration or distribution point* where:

Or. en

Amendment 22

Gunnar Hökmark, Michał Boni, Bendt Bendtsen

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the deployment of the new network elements is *open to* co-investment *offers* according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-

Amendment

(a) the deployment of the new network elements is *done through* co-investment according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-

invested infrastructure;

invested infrastructure;

Or. en

Amendment 23

Gunnar Hökmark, Henna Virkkunen, Bendt Bendtsen

Proposal for a directive

Article 74 – paragraph 1 – point 1 (new)

Text proposed by the Commission

Amendment

(1) In order to promote effective competition and the deployment of new network elements, and by means pro-competitive regulatory conditions, Member States shall, in consultation with BEREC, establish fair and reasonable rules for shared networks and commercial access agreements between operators and virtual service providers. Such rules and regulatory conditions shall serve to increase the level of network traffic, so as to facilitate return on investment, thereby promoting effective competition and development towards trans-European networks.

Or. en