EuroISPA's feedback on the European Commission's White Paper: "How to master Europe's digital infrastructure needs?"

May 2024

Resources:

- White Paper
- Consultation

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Summary

- EuroISPA welcomes the fact that the Commission highlights the critical importance of ISPs for the future of the EU and draws some meaningful scenarios in order to promote connectivity and simplify and harmonise regulations, which is needed to overcome the challenges ahead.
- Many proposals however require more clarification from the European Commission and need to take account of national specificities / efficient frameworks.
- EuroISPA also commends the willingness of the EC to address the sustainability and security of networks, which are essential to ensuring a resilient and sustainable Europe.

Comments by Pillars

EuroISPA welcomes the opportunity to participate in European Commission's public consultation on the White Paper: "How to master Europe's digital infrastructure needs?". EuroISPA would like to comment primarily on the proposals under Pillar II (Completing the Digital Single Market) and Pillar III, which are the main areas of interest for our members.

Pillar II: Completing the Digital Single Market

General Considerations:

- EuroISPA welcomes and **shares the Commission's efforts to improve the Digital Single Market** by addressing Europe's connectivity infrastructure challenges, in order to unlock the full potential of Europe's digital future all while upholding the principle of competition.
- EuroISPA commends the Commission recognition of the crucial role ISPs have to play in the green transition, innovation and resilience of the Union as well as on achieving the Digital Decade targets for Gigabit connectivity and 5G, for which investments should be unlocked.
- EuroISPA wants to highlight the diverse nature of regulatory areas, level of implementation and different actors that play a role in the functioning of Europe's digital infrastructure. Therefore, it is essential for institutional and corporate stakeholders to work together in designing better

solutions such as better conditions for rollout, efforts on better regulation, promotion measures for higher take-up rates of VHCN infrastructure, etc.

- EuroISPA stresses that, the distinct essence of the challenges presented in this paper, including the fact that the problems described are not equal in gravity in all Member States, makes the case for a case-by-case approach and **a response more complex than just proposing further "one size fits all" regulatory or legislative measures**.
- EuroISPA defends that **any legislative measures should be evidence based and should not lead to an increase of regulatory burdens** on any of the sectors affected.

3.2.1. Objectives

- **EuroISPA fully supports the objectives of Pillar II of promoting connectivity and competition** but always respecting the principles of technology neutrality, simplification, harmonization, and fairness in regulation.
- This implies following a **shift in regulatory mindset, moving away from detailed and cumbersome rules toward more flexible approaches.**
- **Achieving internal market integration relies on harmonizing the regulatory framework across numerous domains**. The effort to harmonize regulatory frameworks needs to go beyond infrastructure, spectrum management, fiscality, and coordinating ex ante and ex post evaluations. This includes doing an evaluation of the relevance of existing sectoral regulatory frameworks with horizontal rules. Moreover, efforts should be made to avoid gold-plating which can lead to unnecessary complexity and fragmentation.
- It is crucial to implement these measures while **safeguarding already existing efficient national frameworks**.
- Finally, the promotion of connectivity and competition should follow a technology neutral approach that encompasses all technologies available to end users, including fibre, 5G, and satellite, with the aim of closing the digital divide.

3.2.2. Scope

- **EuroISPA calls for a careful assessment of the idea of "rethinking of the scope of the EECC"**. As aforementioned, the complexity of both the existing regulatory frameworks and the differences between national markets, makes of vital importance to study in detail the question of the scope and its implications on technologies, operators, competition and investment.
- **EuroISPA is sceptical of the idea of "rethinking of the scope of the EECC" and calls for a careful assessment of why this would be necessary and to what end.** As aforementioned, the complexity of both the existing regulatory frameworks and the differences between national markets, makes it of importance to study in detail the question of the scope and its implications on technologies, operators, competition and investment. Digital services, including cloud, are not replacing these telecom services but are instead complementary and broadly used across many sectors (e.g., energy, health, finance), Applying the wrong regime to the wrong service risks restricting demand for new applications and the take-up of high capacity full-fibre and 5G products, slowing down the digital transformation that is necessary for GDP growth.
- This assessment should also take into consideration the distinct compliance layers, such as sectorial, cybersecurity-related, connectivity-related legislations or regulations coming from different bodies at several levels, the different services involved are already subject to.
- **The idea of European Core Network operators** needs clarification both in meaning and objective. Without this clarification, it is impossible to comment on the legislative anchoring of this new instrument.

- Finally, as we talk about the future of the digital and internet infrastructure, we deem **critical for the EU to support the transition to IPv6**, or Internet Protocol version 6. A faster, more secure, and more reliable internet as well as a more competitive EU, cannot be conceived without IPv6[2].

3.2.3. Authorisation

- The idea of the Commission to harmonise authorisation potentially through the establishment of a "country of origin" principle for certain activities less connected to consumer retail markets and local access networks does not consider that interoperability issues and national specificities regarding infrastructures remain significant, particularly concerning high-speed broadband networks.
- The White Paper suggests that the trend towards cloudification and softwarisation reduces the connection between network provision and location. However, telecommunications operators build, deploy, and operate their network infrastructure within the borders of a country, according to their own characteristics. Therefore, **the materiality of networks constitutes and will continue to constitute an obstacle to the application of this principle.**
- Furthermore, **the ambiguity surrounding the concrete scope of this principle for providers of core networks and services raises numerous questions necessitating clarifications from the EC**, especially as it excludes access networks and retail services.

3.2.5. Radio spectrum

- On EuroISPA's view, **centralizing frequency management and fully harmonizing conditions is not in Europe's interest, as it can slow down the most advanced Member States**. While greater consistency in authorization processes between member states could be encouraged as so to ensure alignment on best practices, the implementation of centralized EU-level processes will not bring positive outcomes. Therefore, each Member State should retain the authority to determine conditions based on the needs of their markets and national operators.
- However, **positive harmonization could occur via aligning with best practices on the renewal of spectrum authorizations**. For example, establishing a minimum period for license durations to make investments profitable, predictable, and to ensure the provision of high-quality services to end-users in the future. Also, by prioritizing predictability in spectrum usage over abrupt resets.
- Furthermore, **decommissioning outdated technologies** (e.g., 2G) should be enabled, and **technology neutrality in spectrum should be harmonized**. Additionally, at the EU level, clear and decisive measures should ensure that other sectors (such as the automotive industry and eCall) cannot dictate supply and maintenance of specific technology generations in the future. DG Connect should take leadership responsibility in coordinating with other DGs in this area.
- Finally, the result of greater EU coordination on spectrum management **should be to support investment and competition.**

3.2.7. Access policy in a full fibre environment

- **EuroISPA challenges the concept of the proposed EU-wide access remedies (page 33) in the absence of further clarification from the EC regarding how it would significantly address the digital single market.** It is not clear whether such remedies are meant to be symmetrical or asymmetrical, what wholesale access products they would contain, whether there would be a legal obligation to offer them, etc.
- Furthermore, such remedies could only be complementary and cannot substitute the imposition of ex ante measures to undertakings with significant market power and should in any case not increase constraints with further regulation at EU level.

- Finally, the EU can and should improve in technical standardization.

3.2.8. Universal service and affordability of digital infrastructure

- EuroISPA is of the opinion that **universal services regimes are no longer appropriate instruments** and believe, in line with what is envisaged in the White Paper, that vouchers financed by Member States may be useful and viable alternative and effective tools to remedy any divide in access to very high-capacity networks for end-users that would still be confronted to difficulties due to their localization or economic situation.
- Furthermore, **EuroISPA is strongly against the introduction of new fees for NIICS** (i.e., online messaging apps) in the guise of universal service financing, which will have the effect of passing on the burden to consumers.

3.2.9. Sustainability

- EuroISPA commends the Commission's White Paper for its proactive stance on addressing sustainability challenges for the digital ecosystem and European economy, facing green transition imperative.
- Additionally, EuroISPA is of the opinion that additional regulation, including but not limited to reporting, to achieve sustainability targets should not come at the expense of security, resilience and operational efficiency.
- **Digital infrastructures such as data centres and gigabit-capable telecommunications networks form the spine of digitalisation and are therefore a basic prerequisite for leveraging digital sustainability potential. Especially in other sectors.**
- **In order to leverage the positive enabling effects of digital infrastructures for achieving climate neutrality, it is necessary to further strengthen investment incentives in the further expansion of these infrastructures. The realisation of efficiency and sustainability potential in the operation of digital infrastructures should not be pushed at the expense of the resilience, security and performance of digital infrastructures.**
- The telecoms sector is making a major contribution to reducing the environmental impact of facilities with the replacement of legacy technology by modern equipment, which is more energy efficient. In this regard, the inclusion of connectivity networks in the EU Taxonomy for sustainable finance marks a positive step towards directing financing to green activities and recognizing the environmental contributions of telecommunications networks.
- As the industry moves towards achieving net-zero emissions, it also becomes increasingly important to engage with equipment suppliers to address emissions throughout the supply chain. For many operators, a significant portion of emissions resides upstream in the supply chain, necessitating collaboration with suppliers to adopt more environmentally friendly practices. This includes energy-efficient manufacturing, transport, and storage methods, as well as embracing circular economy principles.

3.2.10. Summary of possible scenarios

Counting with all the previous considerations, EuroISPA would like to directly respond to the scenarios put forward.

Scenario 4:

- **The European economy's strength stems from the innovation created by a large number of service providers different in size competing against each other all along the value chain.** While the potential re-assessment of current regulatory frameworks in order to ensure a level playing field in light of technological developments is welcomed, the idea of Regulatory

interventions leading to market consolidation should not be considered as an essential lever to enable the deepening of the single market and achieve the objectives of competitiveness, investment and competition within the EU. Dynamism on the national level should not be perceived as an obstacle for growth.

- **The European electronic services sector entails very detailed regulation**. However, the idea of a fully integrated electronic communications markets collides with the reality of Member States where market conditions, commercial practices, infrastructure, and networks are of quite different nature.
- EuroISPA supports the removal of regulatory fragmentation that causes divergent application of harmonisation rules. The European Commission should pay more attention to checking the correct and full implementation of harmonisation acts.

Scenario 5:

- EuroISPA is of the opinion of further clarification on wholesale access product by the Commission to complement the national approach in policy access. Additionally, further clarification is also needed regarding the origin and concrete aim of this proposal that appears to benefit third parties and therefore raises significant concerns for operators.

Scenario 6:

- **EuroISPA opposes to a more harmonized approach to authorization, potentially through the establishment of a "country of origin" principle** for certain activities less connected to consumer retail markets and local access networks. As explained before, this measure does not take into account that interoperability issues and national specificities regarding infrastructures remain significant, particularly concerning high-speed broadband networks.
- EuroISPA thinks that setting an EU-wide recommended date for achieving the copper switch-off does not adequately reflect the vast differences in infrastructure rollout within the member states. Also, take up rates of VHCN infrastructure should be fostered by promoting the multiple benefits of powerful internet access to end-users and not by artificial measures like a price increase on the legacy network.

Scenario 7:

- EuroISPA acknowledges the significant investments made in full fibre networks and data centres, which promote technology efficiency. Consequently, EuroISPA emphasizes that our sectors play a crucial role in the positive impact they generate throughout the entire value chain. Therefore, we believe the Commission should refrain from implementing measures that could discourage investments within the value chain.

- Accordingly, EuroISPA firmly believes that the Commission should support the adoption of the most efficient technologies across the entire value chain (for example, moving to the full fibre environment and a more efficient use of networks (CODECS), while advancing towards switching off 2g, 3g, and copper networks).

Pillar III: Secure and resilient digital infrastructures for Europe

3.3.1 Towards Secure Communications Using Quantum and post-quantum technologies

- **EuroISPA welcomes the European Commission's efforts to make data and communications resistant to attacks through Post-Quantum Cryptography**. Encryption technologies play a crucial role in building trust in online services as they preserve the privacy and confidentiality of

communications for European businesses and citizens. Therefore, EuroISPA has always been strongly opposed to any undermining of encryption technologies and can only encourage the Commissions' willingness to promote the deployment and implementation of Post-Quantum Cryptography and Quantum Key Distribution.

3.3.2. Towards security and resilience of submarine cable infrastructure

- EuroISPA's members are of the opinion that the **proposals related to easing national and international permitting, as well as promoting financing and maintenance and repair capacity, are commendable in view of the criticality of submarine cables for the sovereignty of the UE.**
- EuroISPA is of the opinion that subsea cables should be public and private-owned by a diversity of actors, both in size and activities. In that vein, EuroISPA believes that investments from EU industry for subsea cables should be encouraged. This calls for an increased budget for the CEF programme dedicated to submarine cables that has proven its efficiency and added value.
- EuroISPA believes that European subsea cables should be laid down on diverse routes, rather than crossing only a few, to ensure their physical security. Indeed, security of subsea cables is of paramount importance for its digital economy since the EU is relying at 95% on them.
- The idea of joint EU governance on submarine cables infrastructure is interesting as it could foster greater dialogue and sharing of best practices between the various stakeholders of connectivity and between members-States. However, it is essential that the regulatory endeavours remain primarily driven by Member States, enabling them to call on the European Union for help when needed, in a "bottom-up" logic. In this respect, it would be useful to clarify the functioning of the informal expert group composed of member states authorities as mentioned in the Recommendation on Submarine cables published on the 21st of February.
- On the other hand, EuroISPA would not support the collection and submission of critical submarine cable location or other technical information to EU administrative bodies or any entity outside national security authorities. This domain falls within the scope of national security, and the EU does not have a mandate in this regard.
- EuroISPA also supports that in the event of an issue with subsea cables security, Member States should be able to seek help from the European Union upon request.
- EuroISPA believes that the EU should mandate a minimum of security features for subsea cables that land in the EU.
- Additionally, EuroISPA is of the opinion that no additional regulations should be presented in relation to international governance of subsea cables.

Scenario 11:

- EuroISPA believes that a joint EU governance system on submarine cable infrastructures is potentially very beneficial for achieving EU digital autonomy and increasing the security and resilience of the EU's network. However, it should be ensured that this governance approach does not infringe upon the member states' authority in matters of national security. Additionally, Member States exercise jurisdiction over cables in territorial waters, but no single body has jurisdiction in international waters. Therefore, current offshore governance does not allow to secure submarine and energy/gas infrastructures.

Other Aspects

2.4. Need for security in the supply and in the operation of networks

2.4.1. Challenge of trusted suppliers

- Regarding so-called High-Risk-Vendors, any evaluation of the reliability of a component vendor must be based on technical and not political criteria. Any decision of a member state to exclude certain vendors needs prudent and careful consideration, since such an exclusion would further hamper reaching the Digital Decade's targes and therefore runs contrary to the White Paper's intentions. High-Risk-Vendors mechanism should not weaken investment predictability for the operators and other players on the EU market.

About EuroISPA

Established in 1997, EuroISPA is the world's largest association of Internet Services Providers Associations, representing over 3,300 Internet Service Providers (ISPs) across the EU and EFTA countries. EuroISPA is recognised as the voice of the EU ISP industry, reflecting the views of ISPs of all sizes from across its member base.