

Committed to Europe



The EECC Draft Directive – Orange views in a nutshell

Orange welcomes the Commission’s vision and believes that the draft European Electronic Communications Code (EECC) constitutes a robust basis to deliver a new modernised, simplified framework supportive of investments. Some provisions however require improvements, especially on services, to remain aligned with the new objectives. The present paper delivers a summary of Orange’s analysis; detailed position papers are available at <https://oran.ge/2ht7ZDZ>.

New regulatory objectives are essential to support the new digital era

The regulatory objectives formalised in the draft EECC provide guidance for all regulatory decisions linked to the telecom sector. This is why Orange notably welcomes the new EECC objective to promote the availability and take up of “Very High Capacity” (VHC) connectivity. It will help redressing the investment gap in Europe and this will be crucial to achieve the Gigabit Society objectives for 2025.

Orange believes that putting Europe and its European electronic communications industry back in the driving seat of technology should also be a major preoccupation in all future decisions. The EECC should therefore include another objective linked to the competitiveness of the EU electronic communications industry.

A gigabit society indeed deserves a modified and future-proof network access regulation

To achieve the Gigabit Society, state-of-the art technologies in mobile and fixed networks are needed. The European Commission (EC) estimates that this transition will require an overall investment of €500 Billion over the coming decade, €155 Billion above current operators’ investment trends.

Orange believes that the draft EECC constitutes a robust basis to deliver an investment-focused set of rules for networks, safeguarding sustainable competition and the long-term interest of European citizens. Several new provisions send a positive signal to operators to invest and innovate to the benefit of consumers and businesses:

- Clear and consistent rules applicable to all types of operators owning fixed networks.
- More targeted approach to regulatory measures and increased role of long-term commercial or co-investment agreements conducive to more sustainable competition, benefitting businesses and end-users.
- Right balance between measures encouraging investment and co-investment in VHC networks and measures safeguarding competition amongst all actors.

That being said, Orange believes the EECC requires improvements, as some of the current wording may deviate from the overall objective of incentivising investment:

- The sharing obligation for mobile networks is not aligned with the commitments required of mobile operators in their mobile license obligations. Mobile network sharing should remain voluntary.
- Allowing exceptions to rules that should apply to all fixed network owners or proposing a preferential regulatory regime for “wholesale only” dominant fixed operators would distort competition and harm consumers.
- Requiring details of operators’ future investment plans and sanctioning deviation is inappropriate, as corporate investment strategy requires flexibility, and risks deterring investment altogether.

More harmonised and efficient Spectrum Management in Europe is welcome

In order to deliver its vision of the Gigabit Society and 5G, the EC strives to ensure greater consistency in the national approaches to the regulation of spectrum. To this effect, the EC proposes binding and enforceable rules for spectrum management and a peer review mechanism allowing BEREC, the EC and National Regulatory Authorities (NRAs) to review elements of Member States' planned national assignment procedures.

Orange supports the EC's overall approach:

- Clear and harmonized principles, applying to spectrum allocation and the extension of the duration of the rights of use, will contribute to a competitive and investment friendly environment for mobile operators; objective criteria should result in reasonable fees for radio spectrum and allow operators to dedicate more funds to be spent on investments;
- Regulatory certainty and stability: the EC's coordinated and harmonized timing, as well as increased transparency in the NRAs' procedures of allocation and re-allocation of spectrum bands, will be crucial to ensure predictability for investors, and will support the completion of the Digital Single Market;
- Technological delivery: the facilitation of small cell deployment will play an important role in 5G rollout.

In order to ensure full alignment with the EU's overall investment objective, Orange believes that the draft EECC could be further improved. To safeguard quality of service provided by operators through their individual authorizations, the EECC should not depart from the "no interference/no protection" principle for unlicensed spectrum grounded in ITU Regulation. The EECC should not attempt to impose the sharing of spectrum and/or infrastructure which are already established by voluntary market practice, used to help reducing costs.

A more in depth review is required to ensure clear and consistent end-user protection rules

Orange believes the EECC includes efforts in adapting the provisions on end-user protection to the digital era, notably by pushing for full harmonisation of consumer rights rules, and by highlighting the need to rely more on horizontal instruments, such as Consumer Rights, Unfair Commercial Practices or E-commerce Directives. Orange appreciates the Commission's announcements to ensure similar levels of consumer protection for substitutable services provided by telecom operators and by other suppliers of digital services. Orange supports the orientation stated by the Commission to focus end-users protection provisions on Internet Access Service (IAS) and on services using numbering resources.

Nonetheless, these orientations are not yet consistently translated in the definition of Electronic Communication Services (ECS) proposed in the EECC. Orange believes that sector-specific consumer protection should be further focussed on sector-specific resources (IAS, use of numbers). This requires notably to:

- Limit the scope of the definition of ECS to IASs and services using numbering resources. Relying on what has become an irrelevant "Conveyance of Signal" criterion is no longer justified and could, on the contrary, hamper the development of innovative services, for instance Machine-to-Machine (M2M) services. It would moreover maintain by design an unjustified regulatory asymmetry between market players.
- Rules applicable to bundles should be subject to horizontal laws. Sector-specific obligations in this respect would have unintended negative consequences on innovative services.
- Ensure the continuity and consistency of end-users protection of traditional telephony and SMS by attaching obligations (e.g. number portability) to the use of numbering.

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