



European
Automobile
Manufacturers
Association



CLEPA
European Association of
Automotive Suppliers



European Automotive and Telecom Alliance

Regulatory briefing paper

22 August 2017

Topic: Electronic Communication Services

Context: implications of the Electronic Communications definition in the European electronic Communications Code (EECC) and the related obligations on connected and automated driving related services.

Short description: application of sector-specific regulation to IoT and M2M.

Status of adoption

EC proposal for a Directive establishing the European Electronic Communications Code (EECC) issued in September 2016. Draft report in ITRE published in March 2017; draft report of IMCO published in April 2017; Votes in both Committees foreseen in September; Under review in the competent Council WP; EE PCY will work towards the approval of a General Approach

Impact for connected and automated driving

The Commission proposes to distinguish between three categories of electronic communications services: internet access services (IAS, as defined in the Telecoms Single Market Regulation); interpersonal communications services (ICS) (number-based and number-independent); and services consisting wholly or mainly of conveyance of signals, *such as transmission services used for the provision of machine-to-machine services and for broadcasting.*

This definition clearly states that not the M2M-service, but the transmission service used to provide the M2M-service is to be considered as an "electronic communications service". The same goes for broadcast services. Not the broadcast service, but the broadcast transmission service is to be seen as an "electronic communications service". What is decisive for a transmission service being qualified as an electronic communications service is that it wholly or mainly consists in the conveyance of signals. But this distinction is difficult to apply to integrated services, combining connectivity and other services requiring signal processing (such as M2M-services). This approach is therefore confusing and promises to be troublesome for transmission services when these are bundled with other services

The qualification "mainly" will be subject to the interpretation of different relevant regulatory authorities. We know from experience that this can and will lead to neighbouring Member States categorizing and treating identical transmission services differently. Furthermore, there is a risk that Member States interpret the definition of electronic communications services as including M2M-services and regulate them under the Code.

This **non-harmonised application** of the definition and, subsequently, of the sector specific rules across the EU will create **legal uncertainty**. This is obviously not of a nature to foster a speedy and solid development of M2M-services in the EU. Nor does the possibility to apply the qualification “mainly” in such a way that it results in **disproportionate and sometimes even arbitrary** regulations.

Furthermore, the fact that transmission services are already subject to the **horizontal consumer protection rules**, in particular to those in the Consumer Rights Directive and the Unfair Commercial Practices Directive, even turns the sector specific rules into a **structural disproportionality**, delivering little added value for end-users. Also the various sub categories of ECS should be more clearly defined to avoid never ending debate on which obligation(s) apply to which service; and made exclusive from one another to avoid overlapping or even divergent regulatory requirements

It also has to be realised that it would be impossible for providers of M2M-services to fulfil the regulatory obligations that come with the status of an ECS provider if the services are technically realized via a third-party network, which the M2M-service provider cannot control. Dealing with legal obligations that are impossible to fulfil on one hand, and facing the legal consequences and sanctions in case of not fulfilling the obligations on the other hand, does not support and encourage the development of M2M-services.

Moreover, providers of M2M-services may want to conclude one contract with the customer including the transmission services. By way of example, vehicle manufacturers could offer to the driver a package of connectivity services (V2V, V2I, V2X) with the transmission link embedded. Such contractual arrangement should however not have as a consequence that the vehicle manufacturer would be qualified as a provider of electronic communications services.

Overall, EATA therefore **believes that additional efforts must be made to clarify the scope of application of the Code to ensure that electronic communications service providers and M2M service providers can engage in the development of intelligent transport solutions and promote EU leadership in this domain without either side being subject to inappropriate and disproportionate regulatory obligations.**

Position EATA

A successful, solid development of M2M- services across the EU will require an innovation-friendly environment boosting a future oriented, technology neutral and proportionate regulatory framework with little administrative burden and the highest possible legal certainty. To this end, **policy-makers must ensure that the combination of transmission services with other services does not prejudice business opportunities for ECS providers or providers of other services**, by creating confusion or unjustifiably imposing obligations.

The Code should therefore clarify how **M2M-services and the corresponding transmission services can effectively be distinguished and how qualification of M2M-services as ECS can be avoided**, especially when they are offered together. Furthermore, **disproportionate obligations regarding end-user rights and interoperability requirements must be avoided**. Relying on **horizontal rules** in this field is the right way to ensure development of innovative services, increased consumer choice and better user experience.