

Electronic communications: universal service, users' rights relating to networks and services, processing of personal data, protection of privacy, consumer protection cooperation. 'Telecoms Package'

2007/0248(COD) - 06/05/2009 - Text adopted by Parliament, 2nd reading

The European Parliament approved with amendments, under the second reading of the codecision procedure, the Council's common position with a view to the adoption of a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

The amendments adopted in plenary are the result of a compromise negotiated with the Council.

Note that this proposal is part of the “telecom package” which includes the [revision of the electronic communications regulatory framework](#) and the establishment of a new [European body of telecom regulators](#) (BEREC). Given that MEPs could not reach a compromise with the Council on the framework directive and that all three proposals are interlinked, it is likely that the whole package will go to conciliation in the next legislature.

With regard to the common position on the revision of the electronic communications framework and specific directives, the main amendments are as follows:

Subject-matter and scope: the compromise clarifies that the directive neither mandates nor prohibits conditions, imposed by providers of publicly available electronic communications and services, limiting users' access to and/or use of services and applications, where allowed under national law and in conformity with Community law, but does provide for information regarding such conditions.

National measures regarding end-users' access to or use of services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, including in relation to privacy and due process, as defined in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Public pay telephones and other public voice telephony access points: in order to ensure technological neutrality and continued access by the public to voice telephony, national regulatory authorities should be able to impose obligations on undertakings in order to ensure that public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other access points, accessibility to disabled users and the quality of services.

Disabled end-users: the Parliament and Council agree that equivalence in disabled end-users' access to services should be guaranteed to the level available to other end-users. To this end, access should be functionally equivalent such that disabled end-users benefit from the same usability of services as other end-users, but by different means.

Contracts: the Parliament considers it necessary to increase the level of detail of information to be provided in contracts. Therefore, the contract shall specify in a clear, comprehensive and easily accessible form a number of elements, including:

- whether or not access to emergency services and caller location information is being provided, and /or any limitations on the provision of emergency services;
- information on any other conditions limiting access to and/or use of services and applications;
- information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link and on how those procedures could impact on service quality;
- the duration of the contract and the conditions for renewal and termination of services and of the contract, including any minimum usage or duration required to benefit from promotional terms.

Quality of service: in order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

The compromise adds that national regulatory authorities shall provide the Commission, in good time before setting any such requirements, with a summary of the grounds for action, the envisaged requirements and the proposed course of action. The Commission may, having examined such information, make comments or recommendations thereupon, in particular to ensure that the requirements do not adversely affect the functioning of the internal market. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations when deciding on the requirements.

Emergency services and the single European emergency call number: the text provides that Member States, in consultation with national regulatory authorities, emergency services and providers, shall ensure that undertakings providing end-users with an electronic communications service for originating national calls to a number or numbers in a national telephone numbering plan provide access to emergency services.

In order to ensure the **effective access to “112” services** in the Member States, the Commission, having consulted BEREC, may adopt technical implementing measures. However, these technical implementing measures shall be adopted without prejudice to, and shall have no impact on, the organisation of emergency services, which remains of the exclusive competence of Member States.

European telephone access codes: a legal entity, established within the Community and designated by the Commission, shall have sole responsibility for the management, including number assignment, and promotion of the European Telephony Numbering Space (ETNS). The Commission shall adopt the necessary implementing rules.

Harmonised numbers for harmonised services of social value: Member States shall ensure that disabled end-users are able to access services provided under the **“116” numbering range** to the greatest extent possible. They shall also make every effort to ensure that citizens have access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number 116000.

In order to ensure the effective implementation of the “116” numbering range, in particular the **missing children hotline number 116000**, in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted BEREC, may adopt technical implementing measures, in accordance with the regulatory procedure with scrutiny. However, these technical implementing measures shall be adopted without prejudice to, and shall have no impact on, the organisation of these services, which remains of the exclusive competence of Member States.

International code “3883”: a new recital stresses that development of the international code “3883” (the European Telephony Numbering Space (ETNS)) is currently hindered by insufficient awareness and overly bureaucratic procedural requirements. In order to foster the development of ETNS, the countries to which the International Telecommunications Union has assigned the international code “3883” should delegate responsibility for its management, number assignment and promotion to an existing separate organisation, designated by the Commission on the basis of an open, transparent and non-discriminatory selection procedure.

That organisation should also be tasked with developing proposals for public service applications using ETNS for common European services, such as a **common number for reporting thefts of mobile terminals**.

Facilitating change of provider: porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, the compromise provides that subscribers who have concluded an agreement to port a number to a new undertaking shall have that number activated **within one working day**. Loss of service during the process of porting shall not exceed one working day.

Competent national authorities shall also take into account, where necessary, measures ensuring that subscribers are protected throughout the switching process and **are not switched against their will**. Appropriate **sanctions** on undertakings shall be provided for, including an obligation to compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf.

Lastly, Member States shall ensure that: (i) contracts concluded between consumers and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months; (ii) undertakings offer users the possibility to subscribe to a contract with a **maximum duration of 12 months**.

Out-of-court settlement of disputes: Member States shall ensure that transparent, non-discriminatory, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes between consumers and undertakings providing electronic communications networks and/or services. Such procedures shall enable disputes to be settled impartially and shall not deprive the consumer of the legal protection afforded by national law.

Security of processing and protection of personal data: the text stipulates that the provisions of this directive particularise and complement Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Moreover, they provide for protection of the legitimate interests of subscribers who are legal persons.

Without prejudice to Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the measures taken in this area shall at least:

- ensure that personal data can be accessed only by authorised personnel for legally authorised purposes;
- protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage, processing, access or disclosure;

- ensure the implementation of a security policy with respect to the processing of personal data.

When the personal data breach is likely to adversely affect the personal data and privacy of a subscriber or an individual, the provider shall also **notify the subscriber or individual of the breach without undue delay**. If the provider has not already notified the subscriber or individual of the personal data breach, the competent national authority, having considered the likely adverse effects of the breach, may require it to do so.

Notification of a personal data breach to a subscriber or individual concerned shall not be required if the provider has demonstrated to the satisfaction of the competent authority that it has implemented appropriate technological protection measures, and those measures were applied to the data concerned by the security breach.

Providers shall maintain **an inventory** of personal data breaches, comprising the facts surrounding such breaches, their effects and the remedial action taken.

Safeguards provided for subscribers against intrusion of their privacy by unsolicited communications for direct marketing purposes by means of electronic mail are also applicable to SMS, MMS and other kinds of similar applications.