

Electronic communications: common regulatory framework for networks and services, access, interconnection and authorisation. 'Telecoms Package'

2007/0247(COD) - 13/11/2009

The co-chairs of the Conciliation Committee formally approved the joint text for a directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services. The proposed directive is part of a legislative package known as the telecom package. Parliament and Council reached agreement on two other legislative proposals in the package in May 2009 (see [COD/2007/0248](#) and [COD/2007/0249](#)).

The background to this conciliation dossier is as follows: at the plenary sitting of 6 May 2009, Parliament voted on the three proposals under the telecom package for which agreement had been reached with the Council at the second reading stage. However, one amendment which was not part of that overall agreement was also adopted.

This amendment required national regulatory authorities to promote the interests of the citizens of the European Union by *inter alia* "applying the principle that no restriction may be imposed on the fundamental rights and freedoms of end-users, without a prior ruling by the judicial authorities, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, save when public security is threatened in which case the ruling may be subsequent."

The Council did not accept this amendment, on the grounds that the legal basis of the proposed instrument meant that the Member States could not be forced into a particular judicial structure, including with regard to criminal matters. The "prior ruling by the judicial authorities" would create problems for Member States which do not have such a requirement before acting against an individual (for example, in cases involving dissemination of child pornography material through the Internet). An agreement was finally reached on a compromise text to be included in Article 1 of the Framework Directive. It would therefore become an obligation for the whole regulatory framework. The text stipulated that restrictions on a user's internet access may "only be imposed if they are appropriate, proportionate and necessary within a democratic society". Such measures may be taken only "with due respect for the principle of presumption of innocence and the right to privacy" and as a result of "a prior, fair and impartial procedure" guaranteeing "the right to be heard (...) and the right to an effective and timely judicial review."

By reaching an agreement with Council on the compromise text, Parliament achieved its objective of including in the legislation provisions which had not been proposed by the Commission and which were also not included in the Council's common position, and laying down the maximum possible guarantees for internet users on the legal basis.

The European Parliament delegation to the Conciliation Committee, chaired by Alejo VIDAL-QUADRAS (EPP, ES), tabled a report recommending that Parliament approve the joint text at third reading.