

Open internet access

2013/0309(COD) - 20/03/2014 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Industry, Research and Energy adopted the report by Pilar del CASTILLO VERA (EPP, ES) on the proposal for a regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC, 2002/22/EC, and Regulations (EC) No 1211/2009 and (EU) No 531/2012.

The committee recommended that the position of the European Parliament adopted in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Objectives: the Regulation should establish rules necessary to:

- facilitate the practical exercise of the right of providers of electronic communications services and networks to **provide services through a harmonised and simplified notification system based on a harmonised template**;
- facilitate the practical exercise of the right of citizens and businesses to access competitive, secure and reliable electronic communications services, with common rules to guarantee high standards of protection, privacy and security of their personal data,
- achieve a more coordinated Union framework for **harmonised radio spectrum** for wireless broadband communications services;
- address the **phasing out of unjustified surcharges for roaming communications** within the Union.

Ending roaming charges in 2015: the date of 15 December 2015 should be set for the final phasing out of retail roaming surcharges for voice, SMS and data, which began with Regulation (EC) No 717/2007. In addition, the Commission should by 30 June 2015, in advance of that final abolition of retail surcharges, report on any necessary changes to the wholesale rates or wholesale market mechanisms, taking into account also mobile termination rates (MTR) applicable to roaming throughout the Union.

However, to prevent anomalous or abusive usage of retail roaming services, roaming providers may apply a "fair use clause" to the consumption of regulated retail roaming services provided at the applicable domestic price level, by reference to fair use criteria. These criteria should be applied in such a way that consumers were in a position to confidently replicate the typical domestic consumption pattern associated with their respective domestic retail packages while periodically travelling within the Union.

The **maximum eurotariff price caps** should continue to serve as a safeguard limit for charges for consumption in excess of fair use limits until the expiry of the Regulation (EU) No 531/2012.

Unlike the Commission, the committee saw **no need regulate prices for international phone calls** made from the caller's home country, stating that fixed and mobile international calls were currently deregulated competitive markets that did not require regulation through EU intervention.

Net neutrality: the amended text stated that the principle of "net neutrality" means that **equivalent traffic should be treated equally**, without discrimination, restriction or interference, independent of the sender,

receiver, type, content, device, service or application. Members stressed that in an open internet, providers of internet access services should, **within contractually agreed limits** on data volumes and speeds for internet access services and the general characteristics of the service, not block, slow down, degrade or discriminate against specific content, applications or services or specific classes thereof **except for a limited number of traffic management measures**.

Specialised services: this was defined as an electronic communications service optimized for specific content, applications or services, or a combination thereof, provided over logically distinct capacity with a view to ensuring enhanced quality and that is not marketed or usable as a substitute for internet access service.

The committee specified that providers of internet access, of electronic communications to the public and providers of content, applications and services should be **free to offer specialised services to end-users**.

Such services should only be offered if the network capacity were sufficient to provide them in addition to internet access services and they were **not to the material detriment of the availability or quality of internet access services**. Providers of internet access to end-users should not discriminate against services from other sources that were competing with their own specialised services.

Freedom to provide and avail of open internet access, and reasonable traffic management: end-users should be free to access and distribute content, run and provide applications and services and use terminals of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content, via their internet access service.

Traffic management: it was specified that within the **limits of any contractually agreed data volumes** or speeds for internet access services, and subject to the general quality characteristics of the service, providers of internet access services **should not restrict these freedoms by blocking, slowing down, altering or degrading specific content**, applications or services, except in cases where it is necessary to apply traffic management measures. The latter should not be applied in such a way as to discriminate for commercial reasons against services competing with those offered by the provider of internet access.

BEREC: within six months of adoption of this regulation, BEREC shall lay down general **guidelines** defining uniform conditions for the implementation of the obligations of national competent authorities regarding **provisions on safeguards for quality of service**, including with respect to the application of traffic management measures and for monitoring of compliance.

Harmonisation of certain aspects relating to transfer or lease of individual rights to use radio frequencies and their duration: the committee felt that trading and leasing of spectrum harmonised for wireless broadband communications increased flexibility and lead to more efficient allocation of spectrum resources and consequently proposed measures to further facilitate and stimulate the dynamism of spectrum use.

Members introduced a new clause, stating that Member States:

- may not refuse to allow a transfer or lease to an existing holder of such rights of use;
- may refuse a transfer only where it is found that there is a clear risk that the new holder would be unable to meet the existing conditions for the right of use;
- may not refuse a lease where the transferor undertakes to remain liable for meeting the existing conditions for the right of use.

All rights of use of spectrum should be granted **with a minimum duration of 25 years**, and in any case for a duration appropriate to incentivise investment and competition and discourage the under-use or "hoarding" of spectrum. Member States may grant rights of use of indefinite duration.

Supervision and enforcement: national regulatory authorities should:

- have the necessary resources to monitor and supervise compliance with the Regulation within their territories;
- make up-to-date information on the application of the Regulation publicly available in a manner that enabled interested parties to have easy access to it;
- have the power to require undertakings subject to obligations under the Regulation to supply all information relevant to the implementation and enforcement of the Regulation;
- put in place appropriate, clear, open and efficient procedures to address complaints alleging breaches of provisions on the freedom to provide and avail of open internet access, and reasonable traffic management.

Review of regulatory framework: the Commission should perform a comprehensive evaluation and review of the entire regulatory framework for electronic communications, and submit a report with appropriate proposals by 30 June 2016.