Open internet access

2013/0309(COD) - 03/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 534 votes to 25, with 58 abstentions, a legislative resolution 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.

Parliament adopted its position at first reading following the ordinary legislative procedure which amends the proposal as follows:

Objectives: according to Parliament, the Regulation should establish rules necessary to:

- facilitate the practical exercise of the right of providers of electronic communications services and networks to **operate their networks and to provide services irrespective of where the provider is established or its customers are situated in the Union** 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, without being hampered by cross-border restrictions or unjustified additional costs and penalties;

- 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: Parliament recommended that the date of 15 December 2015 be set for the final phasing out of retail roaming surcharges for **voice, SMS and data**.

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.

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.

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 on roaming on public mobile communications networks within the Union.

Unlike the Commission, Parliament 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: Members stipulated that the principle of ‘net neutrality’ in the open internet means that traffic should be treated equally, without discrimination, restriction or interference, independent of the

sender, receiver, type, content, device, service or application. As stated by the European Parliament resolution of 17 November 2011 on the open internet and net neutrality in Europe, the internet's open character has been a key driver of competitiveness, economic growth, social development and innovation.

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.

Freedom to provide and avail of open internet access: 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.

According to the amended text, **providers of internet access services should be free to offer specialised services to users**. Such services shall only be offered if the network capacity is sufficient to provide them in addition to internet access services and they are not to the detriment of the availability or quality of internet access services. Providers of internet access to end-users shall not discriminate between functionally equivalent services and applications.

Traffic management: end-users should be provided with **complete information** on any traffic management measures applied that might affect access to and distribution of information, content, applications and services.

Providers of internet access services and end-users **may agree to set limits on data volumes or speeds for internet access services**. Traffic management measures should be transparent, non-discriminatory, proportionate and necessary, in particular to prevent or mitigate the effects of temporary and exceptional network congestion provided that equivalent types of traffic are treated equally.

Traffic management measures should not be maintained longer than necessary and should only entail such processing of personal data that is necessary in particular with respect to confidentiality of communications. In this context, providers of internet access services should put in place appropriate, clear, open and efficient procedures aimed at addressing complaints alleging breaches.

BEREC (Body of European Regulators for Electronic Communications): no later than six months of adoption of this regulation, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, lay **down general guidelines defining uniform conditions** for the implementation of the obligations of national competent authorities, as regards quality of service, in particular 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: Parliament considered that trading and leasing of spectrum harmonised for wireless broadband communications increased flexibility and lead to more efficient allocation of spectrum resources. That is why it proposed measures to **facilitate the transfer and leasing of rights with the aim of using certain radio frequencies**.

Thus, the amended text provides that Member States may not refuse to allow a transfer or lease to an existing holder of such rights of use. Member States 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. They 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.

Transparent contracts for end-users: providers should allow end-users access to **comparable information** on the coverage of the mobile networks, including different technologies in their Member State, prior to the conclusion of the contract. Contracts should also specify **the types of after-sales services, maintenance services and customer support services** provided.

In order to avoid bill shocks, for all post-paid services, users should be able to set a **predefined maximum financial limit** for the charges related to their usage of calls and internet access services. This facility should include an **appropriate notification** when the limit is being approached.

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.