

P6_TA-PROV(2008)0452

Electronic communications networks and services, protection of privacy and consumer protection *I**

European Parliament legislative resolution of 24 September 2008 on the proposal for 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 consumer protection cooperation (COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0698),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0420/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, Research and Energy, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0318/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a directive – amending act
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The universal service is a protective network for people whose financial resources, geographical location or

special social needs do not permit them to access the basic services available to the majority of citizens. The basic universal service obligation laid down in Directive 2002/22/EC is to provide users who so request with a connection to the public telephone network from a fixed location and at an affordable price. As a result, it addresses neither mobile services nor broadband access to the Internet. This basic obligation is now confronted by technological and market developments in which mobile communications may be the primary form of access in many areas and networks are increasingly adopting the technology associated with mobile and broadband communications. These developments raise a need to assess whether the technical, social and economic conditions justifying the inclusion of mobile communications and broadband access in the universal service obligation are fulfilled, as well as related financing aspects. To this end, the Commission will present, no later than autumn 2008, a review of the scope of the universal service obligation and proposals for reform of Directive 2002/22/EC to meet the appropriate public interest objectives. That review will take account of economic competitiveness and include an analysis of social, commercial and technological conditions and of the risk of social exclusion. It will also address the technical and economic viability, estimated cost, cost allocation and funding models for any redefined universal service obligation. As questions relating to the scope of the universal service obligation will therefore be fully dealt with in that separate procedure, this Directive only deals with other aspects of Directive 2002/22/EC.

Amendment 2

Proposal for a directive – amending act Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Without prejudice to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity¹, and in particular the disability requirements laid down in Article 3(3)(f) thereof, certain aspects of terminal equipment, including equipment intended for disabled users, should be brought within the scope of Directive 2002/22/EC in order to facilitate access to networks and the use of services. Such equipment currently includes receive-only radio and television terminal equipment as well as special terminal devices for hearing-impaired users.

¹ OJ L 91, 7.4.1999, p. 10.

Amendment 3

Proposal for a directive – amending act Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) Member States should introduce measures to promote the creation of a market for widely available products and services incorporating facilities for disabled users. This can be achieved inter alia by referring to European standards, by introducing electronic accessibility (eAccessibility) requirements for public procurement procedures and the provision of services relating to calls for tender, and by implementing legislation

upholding the rights of the disabled.

Amendment 4

Proposal for a directive – amending act Recital 5

Text proposed by the Commission

(5) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. **a** service available to the public for originating and receiving, directly or indirectly via carrier selection or pre-selection or resale, national and/or international calls through a number or numbers in a national or international telephone numbering plan. A service which does not fulfil all these conditions is not a publicly available telephone service.

Amendment

(5) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. **an *electronic communications*** service available to the public for originating and receiving, directly or indirectly via carrier selection or pre-selection or resale, national and/or international calls ***and means of communication specifically intended for disabled users using text relay or total conversation services*** through a number or numbers in a national or international telephone numbering plan, ***whether such a service is based on circuit switching or packet switching technology. It is the nature of such a service that it is bidirectional, enabling both parties to communicate.*** A service which does not fulfil all these conditions, ***such as for example a "click-through" application on a customer service website,*** is not a publicly available telephone service.

Amendment 5

Proposal for a directive – amending act Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) The provisions on contracts should apply not only to consumers but also to other end-users, primarily micro enterprises and small and medium-sized enterprises (SMEs), which may prefer a contract adapted to consumer needs. To avoid unnecessary administrative burdens on providers and complexity related to the definition of SMEs, the provisions on contracts should not apply automatically to those other end-users, but only where they so request. Member States should take appropriate measures to promote awareness amongst SMEs of this possibility.

Amendment 6

Proposal for a directive – amending act Recital 12

Text proposed by the Commission

Amendment

(12) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to emergency services is provided, and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. Customers should also be kept well informed of possible ***actions*** that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data,

(12) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to emergency services ***and caller location information*** is provided and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. ***This information should include any limitations as to territorial coverage, on the basis of the planned technical operating parameters of the service and the available infrastructure. Where the service is not provided over a switched***

privacy or other aspects of the service provided.

telephony network, the information should also include the level of reliability of the access and of caller location information compared to a service that is provided over a switched telephony network, taking into account current technology and quality standards, as well as any quality of service parameters specified under Directive 2002/22/EC. Voice calls remain the most robust and reliable form of access to emergency services. Other means of contact, such as text messaging, may be less reliable and may suffer from lack of immediacy. Member States should however, if they deem it appropriate, be free to promote the development and implementation of other means of access to emergency services which are capable of ensuring access equivalent to voice calls. Customers should also be kept well informed of possible *types of action* that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data, privacy or other aspects of the service provided.

Amendment 7

Proposal for a directive – amending act Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) With respect to terminal equipment, the customer contract should specify any restrictions imposed by the provider on the customer's use of such equipment, such as by way of "SIM-locking" mobile devices, and any charges due on termination of the contract, whether before or on the agreed expiry date, including any cost imposed in order to

retain the equipment.

Amendment 8

Proposal for a directive – amending act Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) Without imposing any obligation on the provider to take action over and above what is required under Community law, the customer contract should also specify the type of action, if any, the provider might take in case of security or integrity incidents, threats or vulnerabilities, as well as any arrangements implemented by the provider to provide compensation if such events occur.

Amendment 191

Proposal for a directive – amending act Recital 12 c (new)

Text proposed by the Commission

Amendment

(12c) In order to address public interest issues with respect to the use of communications services, and to encourage protection of the rights and freedoms of others, the relevant national authorities should be able to produce and have disseminated, with the aid of providers, public interest information related to the use of communications services. This information should include public interest warnings regarding copyright infringement, other unlawful uses and dissemination of harmful content, and advice and means of protection against risks to personal security, which may for example arise from disclosure of personal information in certain circumstances, privacy and

personal data. The information could be coordinated by way of the cooperation procedure established in Article 33(2a) of Directive 2002/22/EC. Such public interest information should be updated whenever necessary and it should be presented in easily comprehensible printed and electronic formats, as determined by each Member State, and on national public authority websites. National regulatory authorities should be able to oblige providers to disseminate this standardised information to all their customers in a manner deemed appropriate by the national regulatory authorities. Significant additional costs incurred by service providers for dissemination of such information should be agreed between the providers and the relevant authorities and met by those authorities. The information should also be included in contracts.

Amendment 10

Proposal for a directive – amending act Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Community rules on consumer protection and national rules in conformity with Community law should apply to Directive 2002/22/EC without exception.

Amendment 11

Proposal for a directive – amending act Recital 14

Text proposed by the Commission

Amendment

(14) A competitive market should ensure that end-users are able to access and

(14) End-users should decide what lawful content they want to be able to send and

distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. ***Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them in Directive 2002/19/EC to ensure that users' access to particular types of content or applications is not unreasonably restricted.***

receive, and which services, applications, hardware and software they want to use for such purposes, without prejudice to the need to preserve the integrity and security of networks and services. A competitive market with transparent offerings as provided for in Directive 2002/22/EC should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. Such information should, at the option of the provider, specify the type of content, application or service concerned, individual applications or services, or both. Depending on the technology used and the type of restriction and/or limitation, such restrictions and/or limitations may require user consent under Directive 2002/58/EC (Privacy Directive).

Amendment 12

Proposal for a directive – amending act Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) A competitive market should also ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, usage restrictions and/or limitations and the slowing of traffic. Where there is a lack of

effective competition, national regulatory authorities should use the remedies available to them under the Directives establishing the regulatory framework for electronic communications networks and services to ensure that users' access to particular types of content or applications is not unreasonably restricted. It should also be possible for national regulatory authorities to issue guidelines setting minimum quality of service requirements under Directive 2002/22/EC and to take other measures where such other remedies have, in their judgement, not been effective with regard to the interests of users and all other relevant circumstances. Such guidelines or measures could include the provision of a basic tier of unrestricted services.

Amendment 194
Proposal for a directive – amending act
Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) In the absence of relevant rules of Community law, content, applications and services are deemed lawful or harmful in accordance with national substantive and procedural law. It is a task for the relevant authorities of the Member States, not for providers of electronic communications networks or services, to decide, in accordance with due process, whether content, applications or services are lawful or harmful or not. Directive 2002/22/EC is without prejudice to Directive 2000/31/EC (Directive on electronic commerce), which inter alia contains a "mere conduit" rule for intermediary service providers. Directive 2002/22/EC does not require providers to monitor information transmitted over their networks or to take punitive action or legal prosecution against their

customers due to such information, nor does it make providers liable for the information. Responsibility for any such punitive action or legal prosecution remains with the relevant law enforcement authorities.

Amendment 190
Proposal for a directive – amending act
Recital 14 c (new)

Text proposed by the Commission

Amendment

(14c) Directive 2002/22/EC is without prejudice to reasonable and non-discriminatory network management by providers.

Amendment 14

Proposal for a directive – amending act
Recital 14 d (new)

Text proposed by the Commission

Amendment

(14d) Since inconsistent remedies will significantly impair the achievement of the internal market, the Commission should assess any guidelines or other measures adopted by national regulatory authorities for possible regulatory intervention across the Community and, if necessary, adopt technical implementing measures in order to achieve consistent application throughout the Community.

Amendment 15

Proposal for a directive – amending act Recital 15

Text proposed by the Commission

(15) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency and to ensure that third parties have the right to use without charge publicly available tariffs published by undertakings providing electronic communications services. They should also make price guides available where the market has not provided them. Operators should not be entitled to any remuneration for such use of tariffs *which had* already been published and thus belong to the public domain. In addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges. ***The Commission should be able to adopt technical implementing measures to ensure that end-users benefit from a consistent approach to tariff transparency in the Community.***

Amendment

(15) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency and to ensure that third parties have the right to use without charge publicly available tariffs published by undertakings providing electronic communications services. They should also, ***themselves or through third parties,*** make price guides available where the market has not provided them ***free of charge or at a reasonable price.*** Operators should not be entitled to any remuneration for such use of tariffs ***where they have*** already been published and thus belong to the public domain. In addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges. ***National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, prior to connecting the call. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing***

conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services.

Amendment 16

Proposal for a directive – amending act Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Customers should be informed of their rights with respect to the use of their personal information in directories of subscribers, and in particular of the purpose or purposes of such directories, as well as their right, free of charge, not to be included in a public subscriber directory, as provided for in Directive 2002/58/EC. Where systems exist allowing information to be included in the directory database but not disclosed to users of directory services customers should also be informed of that possibility.

Amendment 17

Proposal for a directive – amending act Recital 15 b (new)

Text proposed by the Commission

Amendment

(15b) The Member States should introduce single information points for all user queries. These information points, which could be administered by the national regulatory authorities together with consumer associations, should also be able to provide legal assistance in case of disputes with operators. Access to these information points should be free of charge and users should be informed of their existence by regular information campaigns.

Amendment 18

Proposal for a directive – amending act Recital 16

Text proposed by the Commission

(16) A competitive market should ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the blocking of access and the slowing of traffic over the networks. In particular, the Commission should be able to adopt implementing measures with a view to identifying the quality standards to be used by the national regulatory authorities.

Amendment

deleted

Amendment 19

Proposal for a directive – amending act Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) Directory enquiry services should be, and frequently are, provided in competition, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services¹. Wholesale measures ensuring the inclusion of end-user data (both fixed and mobile) in databases, the cost-oriented supply of that data to service providers and the provision of network access in cost-oriented, reasonable and transparent conditions should be in place in order to ensure that end users benefit fully from competition

with the ultimate aim of enabling the removal of retail regulation from these services.

¹ OJ L 249, 17.9.2002, p. 21.

Amendment 20

Proposal for a directive – amending act Recital 19

Text proposed by the Commission

(19) End-users should be able to call and access the emergency services provided using any telephone service capable of originating voice calls through a number or numbers in the national or international telephone numbering plans. Emergency authorities should be able to handle and answer calls to the number “112” at least as expeditiously and effectively as calls to other national emergency numbers. It is important to increase awareness of “112” in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware that “112” can be used as a single emergency number when travelling in any Member States, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material. The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, operators should provide caller location information to emergency services in a “push” mode. In order to respond to technological developments, including those leading to increasingly precise accuracy of location information, the Commission should be

Amendment

(19) End-users should be able to call and access the emergency services provided using any telephone service capable of originating voice calls through a number or numbers in the national or international telephone numbering plans. Emergency authorities should be able to handle and answer calls to the number “112” at least as expeditiously and effectively as calls to other national emergency numbers. It is important to increase awareness of “112” in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware that “112” can be used as a single emergency number when travelling in any Member States, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material. ***This is primarily the responsibility of the Member States, but the Commission should continue both to support and to supplement initiatives undertaken by the Member States to further awareness of "112" and periodically to assess knowledge of "112" by the public.*** The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European

able to adopt technical implementing measures in order to ensure the effective implementation of “112” in the Community for the benefit of citizens of the European Union.

Union. In particular, operators should provide caller location information to emergency services in a “push” mode. In order to respond to technological developments, including those leading to increasingly precise accuracy of location information, the Commission should be able to adopt technical implementing measures in order to ensure the effective implementation of “112” in the Community for the benefit of citizens of the European Union.

Amendment 21

Proposal for a directive – amending act Recital 21

Text proposed by the Commission

(21) The countries to which the International Telecommunications Union assigned the international code “3883” have delegated administrative responsibility for the European Telephony Numbering Space (ETNS) to the electronic communications committee (ECC) of the European Conference of Postal and Telecommunications Administrations (CEPT). Technological and market developments show that ETNS represents an opportunity for pan-European services to develop, but that it is currently prevented from realising its potential by overly bureaucratic procedural requirements and a lack of coordination between national administrations. In order to foster the development of ETNS, its administration (which includes assignment, monitoring and development) should be transferred to the European Electronic Communications Market Authority established by Regulation (EC) No.../... of the European Parliament and of the Council of [...], hereinafter referred to as “the Authority”. The

Amendment

(21) Development of the international code “3883” (the European Telephony Numbering Space (ETNS)) is currently hindered by lack of demand, overly bureaucratic procedural requirements and insufficient awareness. In order to foster the development of ETNS, the Commission should delegate responsibility for its management, number assignment and promotion either to [xxx] or, following the example of the implementation of the “.eu” top level domain, to a separate organisation, designated by the Commission on the basis of an open, transparent and non-discriminatory selection procedure, and with operating rules which form part of Community law.

Authority should ensure coordination with those countries that share “3883” but are not Member States on behalf of the Member States to which “3883” has been assigned.

Amendment 189
Proposal for a directive – amending act
Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) Pursuant to its Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value,¹ the Commission has reserved numbers in the '116' numbering range for certain services of social value. The numbers identified in that Decision cannot be used for purposes other than those set out therein, but there is no obligation for Member States to ensure that services associated with the reserved numbers are actually provided. The appropriate provisions of Decision 2007/116/EC should be reflected in Directive 2002/22/EC in order to integrate them more firmly into the regulatory framework for electronic communications networks and services and to ensure accessibility by disabled end-users as well. Considering the particular aspects related to reporting missing children and the currently limited availability of that service, Member States should not only reserve a number, but also ensure that a service for reporting missing children is actually available in their territories under the number 116000.

¹ OJ L 49, 17.2.2007, p. 30.

Amendment 22

Proposal for a directive – amending act Recital 22

Text proposed by the Commission

(22) A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States, and to access services, including Information Society services, using non-geographic numbers within the Community, including among others freephone and premium rate numbers. End-users should also be able to access numbers from the European Telephone Numbering Space (ETNS) and universal international freephone numbers (UIFN). Cross-border access to numbering resources and to the associated service should not be prevented except in objectively justified cases, such as when this is necessary to combat fraud, and abuse e.g. in connection with certain premium-rate services, or when the number is defined as having a national scope only (e.g. national short code). Users should be fully informed in advance in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes. In order to ensure that end-users have effective access to numbers and services in the Community, the Commission should be able to adopt implementing measures.

Amendment

(22) A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States, and to access services, including Information Society services, using non-geographic numbers within the Community, including among others freephone and premium rate numbers. End-users should also be able to access numbers from the European Telephone Numbering Space (ETNS) and universal international freephone numbers (UIFN). Cross-border access to numbering resources and to the associated service should not be prevented except in objectively justified cases, such as when this is necessary to combat fraud, and abuse e.g. in connection with certain premium-rate services, or when the number is defined as having a national scope only (e.g. national short code). Users should be fully informed in advance in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes. In order to ensure that end-users have effective access to numbers and services in the Community, the Commission should be able to adopt implementing measures. ***End-users should also be able to connect to other end-users (especially via Internet Protocol (IP) numbers) in order to exchange data, regardless of the operator they choose.***

Amendment 23

Proposal for a directive – amending act Recital 23

Text proposed by the Commission

(23) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interest. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges etc. This does not preclude imposing reasonable minimum contractual periods in consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications, and should be implemented with the minimum of delay. In order to be able to adapt number portability to market and technological evolution, including the possible porting of subscriber's personal directories and profile information stored within the network, the Commission should be able to take technical implementing measures in this area. Assessment of whether technology and market conditions are such as to allow for porting of numbers between networks providing services at a fixed location and mobile networks should in particular take into account prices for users and switching costs for undertakings providing services at fixed locations and mobile networks.

Amendment

(23) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interest. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges etc. This does not preclude imposing reasonable minimum contractual periods in consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications, and should be implemented with the minimum of delay, ***ordinarily within no more than one day of the request of the consumer. However, experience in certain Member States has shown that there is a risk of consumers being switched without consent. While that is a matter that should primarily be addressed by law-enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process as are necessary to minimise such risks, without making the process less attractive for consumers.*** In order to be able to adapt number portability to market and technological evolution, including the possible porting of subscriber's personal directories and profile information stored within the network, the Commission should be able to take technical implementing measures in this area. Assessment of whether technology and market conditions are such as to allow for porting of numbers between networks providing services at a fixed location and mobile networks should in

particular take into account prices for users and switching costs for undertakings providing services at fixed locations and mobile networks.

Amendment 24

Proposal for a directive – amending act Recital 24

Text proposed by the Commission

(24) *A television broadcast is a linear audiovisual media service as defined in the Audiovisual Media Services Directive of the European Parliament and of the Council of [...] 2007, which is provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule; a media service provider may provide a number of audio or audio visual programme schedules (channels). Legal “must-carry” obligations may be applied, but only to specified broadcast channels supplied by a specified media service provider. Member States should provide a clear justification for the “must carry” obligations in their national law so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. Given the rapid change in technology and market conditions such a full review would need to be carried out at least every three years and would require a public consultation of all stakeholders. One or more broadcast channels may be*

Amendment

(24) Legal “must-carry” obligations may be applied to specified **radio and audiovisual media services and complementary services** supplied by a specified media service provider. **Audiovisual media services are defined in Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities¹.** Member States should provide a clear justification for the “must carry” obligations so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. **Complementary services include, but are not limited to,** services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

complemented by services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

¹ OJ L 332, 18.12.2007, p. 27.

Amendment 192
Proposal for a directive – amending act
Recital 25

Text proposed by the Commission

(25) In order to overcome existing shortcomings in terms of consumer consultation and appropriately address the interests of citizens, Member States should put in place *an* appropriate consultation mechanism. Such *a mechanism* could take the form of a body which would, independently from the national regulatory authority as well as from service providers, carry out research on consumer-related issues, such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholders' consultation. Where there is a need to address the facilitation of the access to and use of electronic communications services and terminal equipment for disabled users, and without prejudice to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity and in particular the disability requirements pursuant to its Article 3(3)(f), the Commission should be able to adopt implementing measures.

Amendment

(25) In order to overcome existing shortcomings in terms of consumer consultation and appropriately address the interests of citizens, Member States should put in place appropriate consultation *mechanisms*. Such *mechanisms* could take the form of a body which would, independently from the national regulatory authority as well as from service providers, carry out research on consumer-related issues, such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholders' consultation. ***Furthermore, a mechanism should be established for the purpose of enabling appropriate cooperation on issues relating to the promotion of lawful content. Any cooperation procedures agreed pursuant to such a mechanism should however not allow for systematic surveillance of internet usage.*** Where there is a need to address the facilitation of the access to and use of electronic communications services and terminal equipment for disabled users, and without prejudice to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity and in

particular the disability requirements pursuant to its Article 3(3)(f), the Commission should be able to adopt implementing measures.

Amendment 25

Proposal for a directive – amending act Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) The procedure for out-of-court dispute resolution should be strengthened by ensuring that independent dispute resolution bodies are used, and that the procedure conforms at least to the minimum principles established by Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes¹. Member States may either use existing dispute resolution bodies for that purpose, provided those bodies meet the applicable requirements, or establish new bodies.

¹ OJ L 115, 17.4.1998, p. 31.

Amendment 26

Proposal for a directive – amending act Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) Directive 2002/58/EC provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the right to confidentiality and security of

information technology systems, with respect to the processing of personal data in the electronic communications sector, and to ensure the free movement of such data and of electronic communications equipment and services in the Community.

Amendment 180
Proposal for a directive - amending act
Recital 26 b (new)

Text proposed by the Commission

Amendment

(26b) The processing of traffic data for network and information security purposes, ensuring the availability, authenticity, integrity and confidentiality of stored or transmitted data will enable the processing of such data for the legitimate interest of the data controller for the purpose of preventing unauthorized access and malicious code distribution, stopping the denial of service attacks, and damages to computer and electronic communication systems. The European Network and Information Security Agency (ENISA) should publish regular studies with the purpose of illustrating the types of processing allowed under Article 6 of this Directive.

Amendment 27
Proposal for a directive – amending act
Recital 26 c (new)

Text proposed by the Commission

Amendment

(26c) When defining the implementing measures on the security of processing, in accordance with the regulatory procedure with scrutiny, the Commission should consult all relevant European authorities and organisations (ENISA, the European Data Protection Supervisor and the

Article 29 Working Party) as well as all other relevant stakeholders, particularly in order to be informed of the best available technical and economic methods for improving the implementation of Directive 2002/58/EC.

Amendment 28

Proposal for a directive – amending act Recital 26 d (new)

Text proposed by the Commission

Amendment

(26d) The provisions of Directive 2002/58/EC particularise and complement Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹ and provide for the legitimate interests of subscribers who are natural or legal persons.

¹ OJ L 281, 23.11.1995, p. 31.

Amendment 29

Proposal for a directive – amending act Recital 27

Text proposed by the Commission

Amendment

(27) Liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and resulted in a rich diversity of end-user services accessible via public electronic communications networks. ***There is a need to ensure that consumers and users are afforded the same level of protection of***

(27) Liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and *have* resulted in a rich diversity of end-user services accessible via public ***and private*** electronic communications networks ***and publicly accessible private networks.***

privacy and personal data, regardless of the technology used to deliver a particular service.

Amendment 185
Proposal for a directive – amending act
Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) IP addresses are essential to the working of the internet. They identify network participating devices, such as computers or mobile smart devices by a number. Considering the different scenarios in which IP addresses are used, and the related technologies which are rapidly evolving, questions have arisen about their use as personal data in certain circumstances. The Commission should therefore conduct a study regarding IP addresses and their use and present such proposals as may be appropriate.

Amendment 182
Proposal for a directive – amending act
Recital 28

Text proposed by the Commission

Amendment

(28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to

(28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to

citizens. To achieve that, it is necessary to ensure that *the* fundamental rights of individuals, *in particular* the right to privacy and data protection, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.

citizens. To achieve that, it is necessary to ensure that *all* the fundamental rights of individuals, *including* the right to privacy and data protection, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.

Amendment 31

Proposal for a directive – amending act Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) The provider of a publicly available electronic communications service should take appropriate technical and organisational measures to ensure the security of its services. Without prejudice to Directive 95/46/EC and Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks¹, such measures should ensure that personal data can be accessed only by authorised personnel for legally authorised purposes and that the personal data stored or transmitted as well as the network and services are protected. Moreover, a security policy with respect to the processing of personal data should be established in order to identify vulnerabilities in the system and regular monitoring and preventive, corrective and

mitigating action should be carried out.

¹ *OJ L 105, 13.4.2006, p. 54.*

Amendment 32

Proposal for a directive – amending act Recital 28 b (new)

Text proposed by the Commission

Amendment

(28b) National regulatory authorities should monitor measures taken and disseminate best practices among providers of publicly available electronic communications services.

Amendment 183

Proposal for a directive – amending act Recital 29

Text proposed by the Commission

Amendment

(29) A breach of security resulting in the loss or compromising personal data of ***an individual*** subscriber may, if not addressed in an adequate and timely manner, result in substantial ***economic loss and social*** harm, ***including identity fraud***. Therefore, ***subscribers concerned by such security incidents*** should be notified without delay ***and informed in order to be able to take the necessary precautions***. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected.

(29) A breach of security resulting in the loss or compromising personal data of ***a*** subscriber ***or individual*** may, if not addressed in an adequate and timely manner, result in substantial harm ***to users***. Therefore, ***the national regulatory authority or other competent national authority*** should be notified ***by the relevant service provider of every security breach*** without delay. ***The competent authority should determine the seriousness of the breach and should require the relevant service providers to give an appropriate notification without undue delay to the persons affected by the breach, as appropriate. Furthermore, and in cases where there is an imminent and direct danger for consumers' rights and interests (such as in cases of unauthorized access to the content of e-mails, access to credit card records, etc.), the relevant***

*service providers should, in addition to the competent national authorities, immediately notify affected users directly. Finally, providers should annually notify affected users of all breaches of security under this Directive that occurred during the relevant time period. The notification to the national authorities and to users should include information about measures taken by the provider to address the breach, as well as recommendations for **the protection of** the users affected.*

Amendment 35

Proposal for a directive – amending act Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) When implementing measures transposing Directive 2002/58/EC, the authorities and courts of the Member States should not only interpret their national law in a manner consistent with that Directive, but should also ensure that they do not rely on an interpretation of that Directive which would be in conflict with other fundamental rights or general principles of Community law, such as the principle of proportionality.

Amendment 36

Proposal for a directive – amending act Recital 33

Text proposed by the Commission

Amendment

(33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of

deleted

best practices in risk management, and establishing common methodologies for risk assessment. In particular, it should contribute to harmonisation of appropriate technical and organisational security measures.

Amendment 37

Proposal for a directive – amending act Recital 34

Text proposed by the Commission

(34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user’s terminal equipment for the benefit of a third party (so-called “spyware”) poses a serious threat to users’ privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs, USB keys.

Amendment

(34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user’s terminal equipment for the benefit of a third party (so-called "spyware") poses a serious threat to users’ privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs *and* USB keys.
Member States should encourage end-users to take the necessary steps to protect their terminal equipment against viruses and spyware.

Amendment 38

Proposal for a directive – amending act Recital 35

Text proposed by the Commission

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”).

Amendment

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”).

They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers and thus defend the interests of their customers, as well as their own legitimate business interests.

They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers ***for such infringements*** and thus defend the interests of their customers, as well as their own legitimate business interests.

Amendment 39

Proposal for a directive – amending act Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) Where location data other than traffic data can be processed, such data should be processed only when they are made anonymous or with the prior consent of the users or subscribers concerned, who should be given clear and comprehensive information concerning the possibility of withdrawing their consent at any time.

Amendment 40

Proposal for a directive – amending act Recital 38 a (new)

Text proposed by the Commission

Amendment

(38a) The Commission should, provided that the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community¹ enters into force, present to the Council and to the European Parliament a new legislative proposal on privacy and data security in electronic communications, with a new legal basis.

¹ OJ C 306, 17.12.2007, p. 1.

Amendment 41

Proposal for a directive – amending act Recital 39

Text proposed by the Commission

(39) In particular *power should be conferred on* the Commission to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of “112” services, effective access to numbers and services, improvement of accessibility by disabled end-users as well as amendments to adapt the Annexes to technical progress or changes in market demand. This power should also be conferred to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation. Since those measures are of a general scope and are designed to *supplement this Directive by adding new non-essential elements*, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***When, on imperative grounds of urgency, the normal time-limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to use the urgency procedure provided for in Article 5a(6) of the Decision.***

Amendment

(39) In particular the Commission *should be empowered* to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of “112” services, effective access to numbers and services, improvement of accessibility by disabled end-users as well as amendments to adapt the Annexes to technical progress or changes in market demand. This power should also be conferred to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation. Since those measures are of general scope and are designed to *amend non-essential elements of Directive 2002/22/EC by supplementing it with new non-essential elements*, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***Given that the conduct of the regulatory procedure with scrutiny within the normal time limits could, in certain exceptional situations, impede the timely adoption of implementing measures, the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of those measures.***

Amendment 42

Proposal for a directive – amending act
Recital 39 a (new)

Text proposed by the Commission

Amendment

(39a) The purpose of Directive 2002/22/EC (Universal Service Directive) is to ensure a high level of protection of the rights of consumers and individual users in the provision of telecommunications services. Such protection is not required in the case of global telecommunications services. These are corporate data and voice services provided as a package to large undertakings, located in different countries within or outside the EU, on the basis of individual contracts negotiated by parties of equal strength.

Amendment 43

Proposal for a directive – amending act
Article 1 – point 1
Directive 2002/21/EC
Article 1 – paragraph 1

Text proposed by the Commission

Amendment

1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community of good quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. This Directive also includes provisions concerning consumer premises terminal equipment.

1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community of good quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end users are not satisfactorily met by the market. This Directive also includes provisions concerning consumer premises terminal equipment, ***with particular attention being given to terminal equipment for users with special needs, including the disabled and the***

elderly.

Amendment 44

Proposal for a directive – amending act

Article 1 – point 1

Directive 2002/22/EC

Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The provisions of this Directive shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EC and 97/7/EC, and to national rules in conformity with Community law.

Amendment 45

Proposal for a directive – amending act

Article 1 – point 2 – point b

Directive 2002/22/EC

Article 2 – point c

Text proposed by the Commission

Amendment

(c) “publicly available telephone service” means a service available to the public for originating ***and*** receiving, directly or indirectly ***via carrier selection or pre-selection or resale***, national and/or international calls through a number or numbers in a national or international telephone numbering plan;

(c) “publicly available telephone service” means a service available to the public for originating ***and/or*** receiving, directly or indirectly, national and/or international calls ***and other means of communication specifically intended for disabled users using text relay or total conversation services*** through a number or numbers in a national or international telephone numbering plan;

Amendment 46

Proposal for a directive – amending act
Article 1 – point 2 – point b a (new)
Directive 2002/22/EC
Article 2 – point d

Text proposed by the Commission

Amendment

(ba) point (d) shall be replaced by the following:

“(d) ‘geographic number’ means a number from the national *telephone numbering plan* where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);”

Amendment 47

Proposal for a directive – amending act
Article 1 – point 2 – point b b (new)
Directive 2002/22/EC
Article 2 – point e

Text proposed by the Commission

Amendment

(bb) point (e) shall be deleted.

Amendment 48

Proposal for a directive – amending act
Article 1 – point 3
Directive 2002/22/EC
Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that all reasonable requests for provision of a telephone service over the network connection referred to in paragraph 1, allowing originating and receiving of national and international calls and calls to emergency services via the number “112”,

3. Member States shall ensure that all reasonable requests for provision of a ***publicly available*** telephone service over the network connection referred to in paragraph 1, allowing originating and receiving of national and international calls and calls to emergency services via the

are met by at least one undertaking.

number "112" *as well as via any other national emergency number*, are met by at least one undertaking.

Amendment 49

Proposal for a directive – amending act

Article 1 – point 4 a (new)

Directive 2002/22/EC

Article 6 – title

Text proposed by the Commission

Amendment

(4a) in Article 6, the title shall be replaced by the following:

"Public pay telephones and other telecommunication access points"

Amendment 50

Proposal for a directive – amending act

Article 1 – point 4 b (new)

Directive 2002/22/EC

Article 6 – paragraph 1

Text proposed by the Commission

Amendment

(4b) Article 6(1) shall be replaced by the following:

"1. Member States shall ensure that national regulatory authorities can impose obligations on undertakings in order to ensure that public pay telephones or other telecommunication access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other telecommunications access points, [...] accessibility [...] to disabled users and the quality of services."

Amendment 51

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – title

Text proposed by the Commission

Special measures for disabled users

Amendment

Measures for disabled users

Amendment 52

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall take specific measures for disabled end-users in order to ensure access to and affordability of *publicly available telephone service*, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.

Amendment

1. Member States shall take specific measures for disabled end-users in order to ensure access to and affordability of *electronic communications services*, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.

Amendment 53

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 2

Text proposed by the Commission

2. Member States *shall* take specific measures, in the light of national conditions, to ensure that disabled end-users can *also* take advantage of the choice of undertakings and service providers available to the majority of end-users.

Amendment

2. Member States *may* take specific measures, *shown through an assessment by the national regulatory authorities to be needed* in the light of national conditions *and specific disability requirements*, to ensure that disabled end-users can take advantage of the choice of

undertakings and service providers available to the majority of end-users, *and to promote the availability of appropriate terminal equipment. They shall ensure that in any event the needs of specific groups of disabled users are met by at least one undertaking.*

Amendment 54

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In taking the measures referred to above, Member States shall encourage compliance with the relevant standards or specifications published in accordance with Articles 17, 18 and 19 of Directive 2002/21/EC (Framework Directive).

Amendment 55

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. In order to be able to adopt and implement specific arrangements for disabled users, Member States shall encourage the production and availability of terminal equipment offering the necessary services and functions.

Amendment 56

Proposal for a directive – amending act

Article 1 – point 7

Directive 2002/22/EC

Article 9 – paragraph 3

Text proposed by the Commission

3. Member States *may*, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.

Amendment

3. Member States *shall*, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.

Amendment 57

Proposal for a directive – amending act

Article 1 – point 7 a (new)

Directive 2002/22/EC

Article 10 – paragraph 2

Text proposed by the Commission

Amendment

(7a) Article 10(2) shall be replaced by the following:

"2. Member States shall ensure that [...] undertakings offering telecommunication services as defined in Article 2 of Directive 2002/21/EC (Framework Directive) provide the specific facilities and services set out in Annex I, Part A of this Directive, in order that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service."

Amendment 58

Proposal for a directive – amending act
Article 1 – point 7 b (new)
Directive 2002/22/EC
Article 11 – paragraph 1

Text proposed by the Commission

Amendment

(7b) Article 11(1) shall be replaced by the following:

"1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III. The published information shall [...] be supplied to the national regulatory authority *on request*."

Amendment 59

Proposal for a directive – amending act
Article 1 – point 10 – point a a (new)
Directive 2002/22/EC
Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph shall be inserted:

"2a. Without prejudice to obligations that may be imposed on operators identified as having significant market power on a given retail market pursuant to paragraph 1, national regulatory authorities may apply the obligations referred to in paragraph 2 for a transitional period to operators identified as having significant market power on a given wholesale market in circumstances where wholesale obligations have been imposed but are not yet effective in ensuring competition in

the retail market."

Amendment 60

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 1

Text proposed by the Commission

Amendment

1. This Article shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EC and 97/7/EC, and national rules in conformity with Community law.

deleted

Amendment 61

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – introductory wording

Text proposed by the Commission

Amendment

2. Member States shall ensure that, where subscribing to services providing connection to a public communications network and/or *publicly available telephone* services, consumers have a right to a contract with an undertaking or undertakings providing such services and/or connection. The contract shall specify at least:

2. Member States shall ensure that, where subscribing to services providing connection to a public communications network and/or *electronic communications* services, consumers *and other end-users so requesting* have a right to a contract with an undertaking or undertakings providing such services and/or connection. The contract shall specify *in a clear, comprehensive and easily accessible form* at least:

Amendment 62

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) services provided, the service quality levels offered, as well as the time for the initial connection;

Amendment

(b) services provided, ***including in particular:***

- where access to emergency services and caller location information is to be provided under Article 26, the level of reliability of such access, where relevant, and whether access is provided in the whole of the national territory,

- information on any restrictions imposed by the provider regarding a subscriber's ability to access, use or distribute lawful content or run lawful applications and services,

- the service quality levels, with reference to any parameters specified under Article 22(2) as appropriate,

- types of maintenance and customer support services offered, as well as how to contact customer support,

- the time for the initial connection, and

- any restrictions on the use of terminal equipment imposed by the provider;

Amendment 63

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point c

Text proposed by the Commission

(c) ***the types of maintenance service***

Amendment

(c) ***the subscriber's decision as to whether***

offered;

or not to include his or her personal data in a directory, and the data concerned;

Amendment 64

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission

(d) particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

Amendment

(d) particulars of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, ***payment methods offered and any differences in costs due to payment method;***

Amendment 65

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point e

Text proposed by the Commission

(e) the duration of the contract, the conditions for renewal and termination of services and of the contract, including ***direct costs for*** portability of numbers and other identifiers;

Amendment

(e) the duration of the contract ***and*** the conditions for renewal and termination of services and of the contract, including

- any charges related to portability of numbers and other identifiers; ***and***

- any charges due on termination of the contract, including any cost recovery with respect to terminal equipment;

Amendment 66

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point h

Text proposed by the Commission

(h) the action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities.

Amendment

(h) the ***type of*** action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities, ***as well as any compensation arrangements which apply if security or integrity incidents occur.***

Amendment 67

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States may extend these obligations to cover other end-users.

Amendment

The contract shall also include any information provided by the relevant public authorities on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data referred to in Article 21(4a) and relevant to the service provided.

Amendment 68

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 3

Text proposed by the Commission

Amendment

3. The information listed in paragraph 2 shall also be included in contracts between consumers and electronic communications services providers other than those providing connection to a public communications network and/or publicly available telephone services. Member States may extend this obligation to cover other end-users.

deleted

Amendment 69

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services that allow voice communication, subscribers are clearly informed whether or not access to emergency services is provided. Providers of electronic communications services shall ensure that customers are clearly informed of the lack of access to emergency services in advance of the conclusion of a contract and regularly thereafter.

deleted

Amendment 70

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of a contract and regularly thereafter of any limitations imposed by the provider on their ability to access or distribute lawful content or run any lawful applications and services of their choice.

deleted

Amendment 71

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 6

Text proposed by the Commission

Amendment

6. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of the contract and regularly thereafter of their obligations to respect copyright and related rights. Without prejudice to Directive 2000/31/EC on electronic commerce, this includes the obligation to inform subscribers of the most common acts of infringements and their legal consequences.

deleted

Amendment 72

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of the services identified in Articles 4, 5, 6 and 7 is available to end-users and consumers, in accordance with the provisions of Annex II.

deleted

Amendment 73

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that undertakings providing public electronic communications **networks** and/or services publish comparable, adequate and up-to-date information on applicable prices and tariffs in respect of access and use of their services provided to consumers. Such information shall be published in **an** easily accessible form.

2. Member States shall ensure that undertakings providing **connection to a** public electronic communications **network** and/or **electronic communications** services publish **transparent**, comparable, adequate and up-to-date information on applicable prices and tariffs, **any charges due on termination of a contract and information on standard terms and conditions**, in respect of access and use of their services provided to **end-users and** consumers **in accordance with Annex II**. Such information shall be published in **a clear, comprehensive and** easily accessible form. **National regulatory authorities may specify additional requirements regarding the form in which such information is to be published.**

Amendment 165

Proposal for a directive – amending act

Article 1 - point 12

Directive 2002/22/EC

Article 21 - paragraph 3

Text proposed by the Commission

3. National regulatory authorities shall encourage the provision of information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available, ***when these are not available on the market***. Third parties shall have a right to use *without* charge the ***tariffs*** published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar techniques.

Amendment

3. National regulatory authorities shall encourage the provision of ***comparable*** information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available ***themselves or through third parties, free of charge or at a reasonable price***. Third parties shall have a right to use *free of* charge the ***information*** published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar techniques.

Amendment 75

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services to provide applicable tariff information to ***customers at the time and point of purchase to ensure that customers are fully informed of pricing conditions***.

Amendment

4. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing ***connection to a public electronic communications network and/or*** electronic communications services to ***inter alia***:

(a) provide applicable tariff information to

subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services national regulatory authorities may require such information to be provided prior to connecting the call;

(b) regularly remind subscribers of any lack of reliable access to emergency services or caller location information in the service they have subscribed to;

(c) inform subscribers of any change to any restrictions imposed by the undertaking on their ability to access, use or distribute lawful content or run lawful applications and services of their choice;

(d) inform subscribers of their right to include their personal data in a directory, and of the types of data concerned; and

(e) regularly inform disabled subscribers of details of current products and services aimed at them.

If deemed appropriate, national regulatory authorities may promote self- or co-regulatory measures prior to imposing any obligation.

Amendment 76

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall ensure that national regulatory authorities oblige the undertakings referred to in paragraph 4 to distribute public interest information to existing and new subscribers where appropriate. Such information shall be produced by the relevant public

authorities in a standardised format and shall inter alia cover the following topics:

(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related right, and their consequences; and

(b) means of protection against risks to personal security, privacy and personal data in using electronic communications services.

Significant additional costs incurred by an undertaking in complying with these obligations shall be reimbursed by the relevant public authorities.

Amendment 77

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services and/or networks to provide information required in accordance with Article 20(5) to customers in a clear, comprehensive and easily accessible form.

Amendment

deleted

Amendment 78

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 6

Text proposed by the Commission

Amendment

6. In order to ensure that end-users can benefit from a consistent approach to tariff transparency, as well as to the provision of information in accordance with Article 20(5) in the Community, the Commission may, having consulted the European Electronic Communications Market Authority (hereinafter referred to as "the Authority"), take the appropriate technical implementing measures in this area, such as specify the methodology or procedures. Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).

deleted

Amendment 79

Proposal for a directive – amending act

Article 1 – point 13 – point a

Directive 2002/22/EC

Article 22 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that national regulatory authorities are, after taking account of the views of interested parties, *able* to require undertakings that provide

1. Member States shall ensure that national regulatory authorities are *able*, after taking account of the views of interested parties, to require undertakings that provide

publicly available electronic communications networks and/or services to publish comparable, adequate and up-to-date information for end-users on the quality of their services, *including* equivalent access for disabled end-users. The information shall, on request, also be supplied to the national regulatory authority in advance of its publication.

publicly available electronic communications networks and/or services to publish comparable, adequate and up-to-date information for end-users on the quality of their services *and on measures taken to ensure* equivalent access for disabled end-users. The information shall, on request, also be supplied to the national regulatory authority in advance of its publication.

Amendment 80

Proposal for a directive – amending act
Article 1 – point 13 – point a (new)
Directive 2002/22/EC
Article 22 – paragraph 2

Text proposed by the Commission

Amendment

(aa) paragraph 2 shall be replaced by the following:

"2. National regulatory authorities may specify, inter alia, the quality of service parameters to be measured, and the content, form and manner of information to be published, *including possible quality certification mechanisms*, in order to ensure that end-users, *including disabled end-users*, have access to comprehensive, comparable, *reliable* and user-friendly information. Where appropriate, the parameters, definitions and measurement methods given in Annex III could be used."

Amendment 193

Proposal for a directive – amending act
Article 1 – point 13 – point b
Directive 2002/22/EC
Article 22 – paragraph 3

Text proposed by the Commission

3. In order to prevent degradation of service and slowing of traffic over networks, ***the Commission may, having consulted the Authority, adopt technical implementing measures concerning minimum quality of service requirements to be set by the national regulatory authority on undertakings providing public communications networks. These*** measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

Amendment

3. ***A national regulatory authority may issue guidelines setting minimum quality of service requirements, and, if appropriate, take other measures,*** in order to prevent degradation of service and slowing of traffic over networks, ***and to ensure that the ability of users to access or distribute content or to run applications and services of their choice is not unreasonably restricted. Those guidelines or measures shall take due account of any standards issued under Article 17 of Directive 2002/21/EC (Framework Directive).***

The Commission may, having examined such guidelines or measures and consulted [xxx], adopt technical implementing measures in that regard if it considers that the guidelines or measures may create a barrier to the internal market. Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

Amendment 82

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/22/EC

Article 23

Text proposed by the Commission

Member States shall take all necessary ***steps*** to ensure the availability of publicly available telephone services ***provided over***

Amendment

Member States shall take all necessary ***measures*** to ensure the ***fullest possible*** availability of publicly available telephone

public communications networks in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all **reasonable steps** to ensure uninterrupted access to emergency services.

services in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all **necessary measures** to ensure uninterrupted access to emergency services **from any place within the territory of the EU**.

Amendment 83

Proposal for a directive – amending act

Article 1 – point 15 – point a

Directive 2002/22/EC

Article 25 – title

Text proposed by the Commission

Telephone directory enquiry services

Amendment

Directory enquiry services

Amendment 84

Proposal for a directive – amending act

Article 1 – point 15 – point a a (new)

Directive 2002/22/EC

Article 25 – paragraph 1

Text proposed by the Commission

Amendment

(aa) paragraph 1 shall be replaced by the following:

"1. Member States shall ensure that all end-users of electronic communications networks and services have the right to have their information made available to providers of directory enquiry services and directories in accordance with the provisions of paragraph 2."

Amendment 85

Proposal for a directive – amending act

Article 1 – point 15 – point b

Directive 2002/22/EC

Article 25 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that all end-users ***provided with a publicly available telephone*** service can access directory enquiry services ***in accordance with Article 5(1)(b)***.

Amendment

3. Member States shall ensure that all end-users ***of an electronic communications*** service can access directory enquiry services ***and that operators controlling access to such services provide it on terms which are fair, cost-oriented, objective, non-discriminatory and transparent.***

Amendment 86

Proposal for a directive – amending act

Article 1 – point 15 – point b a (new)

Directive 2002/22/EC

Article 25 – paragraph 4

Text proposed by the Commission

Amendment

(ba) paragraph 4 shall be replaced by the following:

"4. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS, and shall take measures to ensure such access pursuant to Article 28."

Amendment 87

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that undertakings providing **a** service for originating national and/or international calls through a number or numbers in a national or international telephone numbering plan provide access to emergency services.

Amendment

2. Member States, **in cooperation with national regulatory authorities, emergency services and providers**, shall ensure that undertakings providing **an electronic communications** service for originating national and/or international calls through a number or numbers in a national or international telephone numbering plan provide **reliable** access to emergency services.

Amendment 88

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that calls to the single European emergency call number "112" **are appropriately answered and handled** in a manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to national emergency number or numbers, where these continue in use.

Amendment

3. Member States shall ensure that **the emergency services are able to appropriately respond to and handle all** calls to the single European emergency call number "112" in a manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to national emergency number or numbers, where these continue in use.

Amendment 89

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that disabled

Amendment

4. Member States shall ensure that disabled

end-users **are able to** access emergency services. *In order* to ensure that disabled end-users are able to access emergency services while travelling in other Member States, *the measures taken may* include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

end-users **have** access **to** emergency services **equivalent to that enjoyed by other end-users**. *The measures taken* to ensure that disabled end-users are able to access emergency services while travelling in other Member States **shall** include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

Amendment 90

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that caller location information is made available free of charge **to authorities** handling **emergencies for** all calls to the single European emergency call number “112”.

Member States shall require that caller location information is automatically provided as soon as the emergency call reaches the authority dealing with the emergency.

Amendment

5. Member States shall ensure that caller location information is made available free of charge **and as soon as the emergency call reaches the authority** handling **the emergency. This shall also apply to** all calls to the single European emergency call number “112”.

Amendment 91

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that citizens are adequately informed *about* the existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States. ***Member States shall submit a yearly report to the Commission and the Authority on the measures taken in that respect.***

Amendment

6. Member States shall ensure that, ***in addition to information about their national numbers, all citizens of the Union*** are adequately informed of the existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States.

Amendment 92

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 7

Text proposed by the Commission

7. In order to ensure the effective implementation of “112” services in the Member States, ***including access for disabled end-users when travelling in other Member States***, the Commission, having consulted ***the Authority***, may adopt technical implementing measures.

Those measures designed to amend non-essential elements of this Directive, by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

Amendment

7. In order to ensure the effective implementation of “112” services in the Member States, the Commission, having consulted [xxx], may adopt technical implementing measures.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

Amendment 93

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 27 – paragraph 2

Text proposed by the Commission

2. Those Member States to which the ITU assigned the international code "3883" shall entrust *the Authority* with sole responsibility for management of the European Telephony Numbering Space.

Amendment

2. Those Member States to which the ITU assigned the international code "3883" shall entrust *an organisation established by Community law and designated by the Commission on the basis of an open, transparent and non-discriminatory selection procedure, or [xxx]*, with sole responsibility for management, *including number assignment, and promotion* of the European Telephony Numbering Space.

Amendment 188

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 27 a (new)

Text proposed by the Commission

Amendment

Article 27a

Harmonised numbers for harmonised services of social value, including the missing children hotline number

1. Member States shall promote the specific numbers in the numbering range beginning with '116' identified by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value.¹ They shall encourage the provision within their territory of the services for which such numbers are reserved.

2. Member States shall ensure that disabled end-users are able to access services provided under the '116'

numbering range. In order to ensure that disabled end-users are able to access such services while travelling in other Member States, measures taken shall include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

3. Member States shall ensure that citizens are adequately informed about the existence and use of services provided under the '116' numbering range, in particular through initiatives specifically targeting persons travelling between Member States.

4. Member States shall, in addition to measures of general applicability to all numbers in the '116' numbering range taken pursuant to paragraphs 1, 2 and 3, ensure citizens' access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number 116000.

5. 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 [xxx], may adopt technical implementing measures.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

¹ OJ L 49, 17.2.2007, p. 30.

Amendment 95

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – introductory wording

Text proposed by the Commission

1. Member States shall ensure that national regulatory authorities take all necessary steps to ensure that:

Amendment

1. Member States shall ensure that, *where technically and economically feasible, and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas*, national regulatory authorities take all necessary steps to ensure that:

Amendment 96

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) end-users are able to access and use services, including information society services, provided within the Community; and

Amendment

deleted

Amendment 97

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) end-users are able to access all numbers provided in the Community, including those in the national numbering plans of Member States, those from the European Telephone Numbering Space and Universal International Freephone Numbers.

Amendment

(b) end-users are able to access all numbers provided in the Community ***regardless of the technology and devices used by the operator***, including those in the national numbering plans of Member States, those from the European Telephone Numbering Space and Universal International Freephone Numbers; ***and***

Amendment 98

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) connection services are provided for text telephones, video telephones and products which help to enable elderly people or people with disabilities to communicate, at least as regards emergency calls.

Amendment 99

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse.

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse, ***and to ensure that in such cases, including where an investigation is pending, providers of electronic communications services withhold relevant interconnection***

or other service revenues.

Amendment 100

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 2– subparagraph 1

Text proposed by the Commission

2. In order to ensure that end users have effective access to numbers and services in the Community, the Commission may, ***having consulted the Authority***, adopt technical implementing measures. ***These*** measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

Amendment

2. In order to ensure that end users have effective access to numbers and services in the Community, the Commission may adopt technical implementing measures. ***Those*** measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

Amendment 101

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that national regulatory authorities are able to require undertakings providing public communications networks to provide information regarding the management of their networks in connection with any limitations or restrictions on end-user access to or use of services, content or applications. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases in which undertakings have

imposed limitations on end-user access to services, content or applications.

Amendment 102

Proposal for a directive – amending act

Article 1 – point 18

Directive 2002/22/EC

Article 30 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that all subscribers with numbers from the national numbering plan who so request can retain their *number(s)* independently of the undertaking providing the service in accordance with the provisions of Annex I, part C.

Amendment

1. Member States shall ensure that all subscribers with numbers from the national **telephone** numbering plan who so request can retain their *number or numbers* independently of the undertaking providing the service in accordance with the provisions of Annex I, part C.

Amendment 103

Proposal for a directive – amending act

Article 1 – point 18

Directive 2002/22/EC

Article 30 – paragraph 4

Text proposed by the Commission

4. Porting of numbers and their subsequent activation shall be executed within the shortest possible delay, no later than one working day from the initial request by the subscriber.

Amendment

4. Porting of numbers and their subsequent activation shall be executed within the shortest possible delay, no later than one working day from the initial request by the subscriber. ***National regulatory authorities may extend the one day period and prescribe appropriate measures where necessary to ensure that subscribers are not switched against their will. National regulatory authorities may impose appropriate sanctions on providers, including an obligation to compensate customers, in case of delay in porting or abuse of porting by them or on their behalf.***

Amendment 104

Proposal for a directive – amending act

Article 1 – point 18

Directive 2002/22/EC

Article 30 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission may, having consulted the Authority and taking into account technology and market conditions, amend Annex I in accordance with the procedure referred to in Article 37(2).

deleted

Such amendment may, in particular provide for:

(a) the portability of numbers between fixed and mobile networks;

(b) the portability of subscriber identifiers and related information, in which case the provisions of paragraphs 2, 3 and 4 shall also apply to these identifiers.

Amendment 105

Proposal for a directive – amending act

Article 1 – point 18

Directive 2002/22/EC

Article 30 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall ensure that the duration of contracts concluded between users and undertakings providing electronic communications services does not exceed 24 months. They shall also ensure that undertakings offer users the possibility to subscribe to a contract with a maximum duration of 12 months for all types of service and terminal equipment.

Amendment 106

Proposal for a directive – amending act

Article 1 – point 18

Directive 2002/22/EC

Article 30 – paragraph 6

Text proposed by the Commission

6. *Without prejudice to any minimum contractual period, national regulatory authorities* shall ensure that *conditions and* procedures for termination of *contract* do not act as a disincentive *for* changing suppliers of services.

Amendment

6. *Member States* shall ensure that procedures for termination of *contracts* do not act as a disincentive *against* changing suppliers of services.

Amendment 107

Proposal for a directive – amending act

Article 1 – point 19

Directive 2002/22/EC

Article 31 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and *television broadcast channels* and accessibility services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or *television broadcasts* to the public where a significant number of end-users of such networks use them as their principal means *to receive* radio and *television broadcasts*. Such obligations shall only be imposed where they are necessary to meet general interest objectives *as* clearly and specifically defined by each Member State *in its national law* and shall be proportionate and transparent.

Amendment

1. Member States may impose reasonable “must carry” obligations for the transmission of specified radio and *audiovisual media services* and *complementary services, particularly* accessibility services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or *audiovisual media services* to the public where a significant number of end-users of such networks use them as their principal means *of receiving* radio and *audiovisual media services*. Such obligations shall only be imposed where they are necessary to meet general interest objectives clearly and specifically defined by each Member State and shall be proportionate and transparent.

Amendment 108

Proposal for a directive – amending act

Article 1 – point 19

Directive 2002/22/EC

Article 31 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Member States shall review “must carry” obligations *at least every three years*.

Amendment

Member States shall review “must carry” obligations *on a regular basis*.

Amendment 109

Proposal for a directive – amending act

Article 1 – point 19 a (new)

Directive 2002/22/EC

Article 31 a (new)

Text proposed by the Commission

Amendment

(19a) the following Article shall be inserted:

"Article 31a

Ensuring equivalent access and choice for disabled users

Member States shall ensure that national regulatory authorities are able to impose appropriate requirements on undertakings providing publicly available electronic communications services so as to ensure that disabled end-users:

(a) have access to electronic communication services equivalent to that enjoyed by the majority of end-users; and

(b) can take advantage of the choice of undertakings and services available to the majority of end-users."

Amendment 166

Proposal for a directive – amending act

Article 1 - point 19 b (new)

Directive 2002/22/EC

Article 32 a (new)

Text proposed by the Commission

Amendment

19b) The following Article 32a shall be added:

"Article 32a

Access to content, services and applications

Member States shall ensure that any restrictions to users' rights to access content, services and applications, if they are necessary, shall be implemented by appropriate measures, in accordance with the principles of proportionality, effectiveness and dissuasiveness. These measures shall not have the effect of hindering the development of the information society, in compliance with Directive 2000/31/EC, and shall not conflict with citizens' fundamental rights, including the right to privacy and the right to due process."

Amendment 110

Proposal for a directive – amending act

Article 1 – point 20 – point -a (new)

Directive 2002/22/EC

Article 33 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(-a) in paragraph 1, the first subparagraph shall be replaced by the following:

"1. Member States shall ensure as far as appropriate that national regulatory

authorities take account of the views of end-users, [...] consumers [..], manufacturers and undertakings that provide electronic communications networks and/or services on issues related to all end-user and consumer rights concerning publicly available electronic communications services, in particular where they have a significant impact on the market."

Amendment 111

Proposal for a directive – amending act

Article 1 – point 20 – point a

Directive 2002/22/EC

Article 33 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In particular, Member States shall ensure that national regulatory authorities establish *a* consultation ***mechanism*** ensuring that *in their decision-making process* due consideration is given to ***consumer interests in electronic communications***.

Amendment

In particular, Member States shall ensure that national regulatory authorities establish consultation ***mechanisms*** ensuring that due consideration is given to, ***and account taken of, issues relating to end-users, including, in particular, disabled end-users, in their decision-making process.***

Amendment 112

Proposal for a directive – amending act

Article 1 – point 20 – point a a (new)

Directive 2002/22/EC

Article 33 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph shall be inserted:

"2a. Without prejudice to national rules in conformity with Community law promoting cultural and media policy

objectives, such as cultural and linguistic diversity and media pluralism, national regulatory authorities and other relevant authorities shall as far as appropriate promote cooperation between undertakings providing electronic communications networks and/or services and the sectors interested in the promotion of lawful content in electronic communication networks and services. That co-operation may also include coordination of the public interest information to be made available under Article 21(4a) and Article 20(2)."

Amendment 113

Proposal for a directive – amending act
Article 1 – point 20 – point b
Directive 2002/22/EC
Article 33 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall submit a yearly report to the Commission and the Authority on the measures taken and the progress towards improving interoperability and use of, and access to, electronic communications services and terminal equipment by disabled end-users.

deleted

Amendment 114

Proposal for a directive – amending act
Article 1 – point 20 – point b
Directive 2002/22/EC
Article 33 – paragraph 4

Text proposed by the Commission

Amendment

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its

Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may, **having consulted the Authority**, take the appropriate technical implementing measures **to address the issues raised in the report referred to in paragraph 3**, following a public consultation. **These** measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). **On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).**

Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may take the appropriate technical implementing measures, following a public consultation **and after having consulted [xxx]. Those** measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

Amendment 115

Proposal for a directive – amending act

Article 1 – point 21

Directive 2002/22/EC

Article 34 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall ensure that transparent, 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, relating to the contractual conditions and/or performance of contracts concerning supply of such networks or services. **Member States shall adopt measures to ensure that such** procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.

Amendment

1. Member States shall ensure that **independent bodies provide** transparent, simple and inexpensive out-of-court procedures for dealing with disputes between consumers and undertakings providing electronic communications networks and/or services relating to the contractual conditions and/or performance of contracts concerning **the** supply of such networks or services. **Such** procedures **shall** enable disputes to be settled fairly and promptly and **shall take account of the requirements of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes¹**. Member States may, where warranted, adopt a system of reimbursement and/or

compensation. Member States may extend these obligations to cover disputes involving other end-users.

¹*OJ L 115, 17.4.1998, p. 31.*

Amendment 116

Proposal for a directive – amending act

Article 1 – point 21

Directive 2002/22/EC

Article 34 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Member States shall ensure that bodies in charge of dealing with such disputes provide relevant information for statistical purposes to the Commission and the **Authority**.

Amendment

Member States shall ensure that *the* bodies in charge of dealing with such disputes, ***which can be single points of contact***, provide relevant information for statistical purposes to the Commission and the ***authorities***.

Amendment 117

Proposal for a directive – amending act

Article 1 – point 21

Directive 2002/22/EC

Article 34 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

With specific regard to the interaction of audiovisual and electronic communications, Member States shall encourage reliable out-of-court procedures.

Amendment 118

Proposal for a directive – amending act

Article 1 – point 24

Directive 2002/22/EC

Article 37 – paragraph 3

Text proposed by the Commission

3. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Amendment

deleted

Amendment 152

Proposal for a directive – amending act

Article 1 – point 25 a (new)

Directive 2002/22/EC

Annex VI – point 1

Text proposed by the Commission

Amendment

(25a) in Annex VI, point 1 shall be replaced by the following:

"1. Common scrambling algorithm and free-to-air reception

All consumer equipment intended for the reception of *conventional digital television signals (i.e. broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C or DVB-S)*, for sale or rent or otherwise made available in the Community, capable of descrambling digital television signals, is to possess the capability to:

– allow the descrambling of such signals according to a common European scrambling algorithm as administered by a recognised European standards organisation, currently ETSI;

– display signals that have been transmitted in *the* clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement."

Amendment 119

Proposal for a directive – amending act

Article 2 – point -1 (new)

Directive 2002/58/EC

Article 1 – paragraph 1

Text proposed by the Commission

Amendment

(-1) Article 1(1) shall be replaced by the following:

"1. This Directive provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the right to confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communications equipment and services in the Community."

Amendment 120

Proposal for a directive – amending act

Article 2 – point -1 a (new)

Directive 2002/58/EC

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

(-1a) Article 1(2) shall be replaced by the following:

"2. The provisions of this Directive

particularise and complement Directive 95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for protection of the legitimate interests of subscribers who are *natural or legal persons*."

Amendment 121

Proposal for a directive – amending act

Article 2 – point 2

Directive 2002/58/EC

Article 3

Text proposed by the Commission

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Community, including public communications networks supporting data collection and identification devices.

Amendment

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public **and private** communications networks **and publicly accessible private networks** in the Community, including public **and private** communications networks **and publicly accessible private networks** supporting data collection and identification devices.

Amendment 122

Proposal for a directive – amending act

Article 2 – point 3 – point a a (new)

Directive 2002/58/EC

Article 4 – paragraphs 1 a and 1 b (new)

Text proposed by the Commission

Amendment

(aa) the following paragraphs shall be inserted:

"1a. Without prejudice to the provisions of Directive 95/46/EC and Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or

processed in connection with the provision of publicly available electronic communications services or of public communications networks¹, these measures shall include:

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

– appropriate technical and organisational measures to protect the network and services against accidental, unlawful or unauthorised usage or interference with or hindering of their functioning or availability;

- a security policy with respect to the processing of personal data;

– a process for identifying and assessing reasonably foreseeable vulnerabilities in the systems maintained by the provider of electronic communications services, which shall include regular monitoring for security breaches; and

– a process for taking preventive, corrective and mitigating action against any vulnerabilities discovered in the process described under the fourth indent and a process for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach.

1b. National regulatory authorities shall be able to audit the measures taken by providers of publicly available electronic communication services and information society services and to issue recommendations about best practices and performance indicators concerning

the level of security which these measures should achieve.

¹ OJ L 105, 13.4.2006, p. 54."

Amendments 187/rev and 184

Proposal for a directive – amending act

Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3

Text proposed by the Commission

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify the **subscriber concerned and** the national regulatory authority of such a breach. The notification to the **subscriber** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the **national regulatory** authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

Amendment

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services, **as well as any undertaking operating on the internet and providing services to consumers, which is the data controller and the provider of information society services** shall, without undue delay, notify the national regulatory authority **or the competent authority according to the individual law of the Member State** of such a breach. The notification to the **competent authority** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the **competent** authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

The provider of publicly available electronic communications services, as well as any undertaking operating on the Internet and providing services to

consumers, which is the data controller and the provider of information society services, shall notify their users beforehand to avoid imminent and direct danger to the rights and interests of consumers.

Notification of a security breach to a subscriber or individual shall not be required if the provider has demonstrated to the competent authority that it has implemented appropriate technological protection measures, and those measures were applied to the data concerned by the security breach. Such technological protection measures shall render the data unintelligible to any person who is not authorized to access the data.

Amendment 124

Proposal for a directive – amending act

Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The competent authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious, the competent authority shall require the provider of publicly available electronic communications services and the provider of information society services to give an appropriate notification without undue delay to the persons affected by the breach. The notification shall contain the elements described in paragraph 3.

The notification of a serious breach may be postponed in cases where the notification may hinder the progress of a criminal investigation related to the serious breach.

Providers shall annually notify affected users of all breaches of security that have led to the accidental or unlawful destruction, loss or alteration or the unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community.

National regulatory authorities shall also monitor whether companies have complied with their notification obligations under this Article and impose appropriate sanctions, including publication, as appropriate, in the event of a failure to do so.

Amendment 125

Proposal for a directive – amending act

Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. The seriousness of a breach requiring notification to subscribers shall be determined according to the circumstances of the breach, such as the risk to the personal data affected by the breach, the type of data affected by the breach, the number of subscribers involved, and the immediate or potential impact of the breach on the provision of services.

Amendment 127

Proposal for a directive – amending act

Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. In order to ensure consistency in implementation of the measures referred to in *paragraphs 1, 2 and 3*, the Commission *may*, following consultation with *the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”)*, and the European Data Protection Supervisor, *adopt* technical implementing measures concerning inter alia the circumstances, format and procedures applicable to information and notification requirements referred to in *this Article*.

Amendment

4. In order to ensure consistency in implementation of the measures referred to in *paragraphs 1 to 3b*, the Commission *shall*, following consultation with the European Data Protection Supervisor, *relevant stakeholders and ENISA*, *recommend* technical implementing measures concerning inter alia the *measures set out in paragraph 1a and the* circumstances, format and procedures applicable to information and notification requirements referred to in *paragraphs 3a and 3b*.

The Commission shall involve all relevant stakeholders, particularly in order to be informed of the best available technical and economic methods for improving the implementation of this Directive.

Amendment 128

Proposal for a directive – amending act

Article 2 – point 4

Directive 2002/58/EC

Article 5 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user *is only allowed on condition that* the subscriber or user concerned is provided with clear and comprehensive information in accordance with Directive 95/46/EC, inter alia about

Amendment

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user, *either directly or indirectly by means of any kind of storage medium, is prohibited unless* the subscriber or user concerned *has given his/her prior consent, taking into account*

the purposes of the processing and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out *or facilitating* the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

that browser settings constitute prior consent, and is provided with clear and comprehensive information in accordance with Directive 95/46/EC, inter alia about the purposes of the processing, and is offered the right to refuse such processing and is offered the right to refuse such processing by data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communication network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

Amendment 129

Proposal for a directive – amending act

Article 2 – point 4 a (new)

Directive 2002/58/EC

Article 6 – paragraph 3

Text proposed by the Commission

Amendment

(4a) Article 6(3) shall be replaced by the following:

“3. For the purpose of marketing electronic communications services or for the provision of value added services, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services or marketing, if the subscriber or user to whom the data relate has given his/her *prior* consent. Users or subscribers shall be given the possibility to withdraw their consent for the processing of traffic data at any time.”

Amendment 181

Proposal for a directive - amending act

Article 2 - point 4 b (new)
Directive 2002/58/EC
Article 6 - paragraph 6 a (new)

Text proposed by the Commission

Amendment

(4b) in Article 6, the following paragraph shall be added:

"6a. Without prejudice to compliance with the provisions other than Article 7 of Directive 95/46/EC and Article 5 of this Directive, traffic data may be processed for the legitimate interest of the data controller for the purpose of implementing technical measures to ensure the network and information security, as defined by Article 4 (c) of Regulation (EC) 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency¹, of a public electronic communication service, a public or private electronic communications network, an information society service or related terminal and electronic communication equipment, except where such interests are overridden by the interests for the fundamental rights and freedoms of the data subject. Such processing must be restricted to that which is strictly necessary for the purposes of such security activity.

¹ OJ L 77, 13.3.2004, p. 1."

Amendment 131

Proposal for a directive – amending act
Article 2 – point 4 c (new)
Directive 2002/58/EC
Article 13 – paragraph 1

Text proposed by the Commission

Amendment

(4c) Article 13(1) shall be replaced by the following:

"1. The use of automated calling and communication systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail (including short message services (SMS) and multimedia messaging services (MMS)) for the purposes of direct marketing may [...] be allowed only in respect of subscribers who have given their prior consent."

Amendment 132

Proposal for a directive – amending act

Article 2 – point 4 d (new)

Directive 2002/58/EC

Article 13 – paragraph 4

Text proposed by the Commission

Amendment

(4d) Article 13(4) shall be replaced by the following:

"4. In any event, the practice of sending electronic mail for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or in contravention of Article 6 of Directive 2000/31/EC, or that contain links to sites that have a malicious or fraudulent intent, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited."

Amendment 133

Proposal for a directive – amending act

Article 2 – point 5

Directive 2002/58/EC

Article 13 – paragraph 6

Text proposed by the Commission

6. Without prejudice to any administrative remedy for which provision may be made, inter alia under Article 15 (a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this **Article**, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

Amendment

5a. Without prejudice to any administrative remedy for which provision may be made, inter alia under Article 15 (a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this **Directive**, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

Amendment 135

Proposal for a directive – amending act

Article 2 – point 5 b (new)

Directive 2002/58/EC

Article 14 – paragraph 3

Text proposed by the Commission

Amendment

(5b) Article 14(3) shall be replaced by the following:

"3. Where required, measures may be adopted to ensure that terminal equipment is constructed in a way that is compatible with the right of users to protect and control the use of their personal data, in accordance with Directive 1999/5/EC and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and

communications. Such measures shall respect the principle of technology neutrality."

Amendment 136

Proposal for a directive – amending act

Article 2 – point 6 a (new)

Directive 2002/58/EC

Article 15 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(6a) in Article 15, the following paragraph shall be inserted:

"1b. Providers of publicly available communications services and providers of information society services shall notify the independent data protection authorities, without undue delay, of all requests for access to users' personal data received pursuant to paragraph 1, including the legal justification given and the legal procedure followed for each request; the independent data protection authority concerned shall notify the appropriate judicial authorities of those cases in which it deems that the relevant provisions of national law have not been complied with."

Amendment 137

Proposal for a directive – amending act

Article 2 – point 7

Directive 2002/58/EC

Article 15a – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures

1. Member States shall lay down the rules on penalties, ***including penal sanctions where appropriate***, applicable to infringements of the national provisions

necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [time limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [time limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Amendment 138

Proposal for a directive – amending act

Article 2 – point 7

Directive 2002/58/EC

Article 15a – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. In order to ensure effective cross-border co-operation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt technical implementing measures, following consultation with *the Authority* and the relevant regulatory authorities.

Amendment

4. In order to ensure effective cross-border co-operation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt technical implementing measures, following consultation with *ENISA, the Article 29 Working Party* and the relevant regulatory authorities.

Amendments 139 and 186/rev

Proposal for a directive – amending act

Article 2 – point 7 a (new)

Directive 2002/58/EC

Article 18

Text proposed by the Commission

Amendment

(7a) Article 18 shall be replaced by the following:

"Article 18

Review

By ...⁺, the Commission shall submit to the European Parliament and the Council, having consulted the Article 29 Working Party and the European Data Protection Supervisor, a report on the application of this Directive and its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, breach notifications and the use of personal data by public or private third parties for purposes not covered by this Directive, taking into account the international environment. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay. Where appropriate, the Commission shall submit proposals to amend this Directive, taking account of the results of that report, any changes in the sector, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community¹, in particular the new competences in matters of data protection as laid down in Article 16, and any other proposal it may deem necessary in order to improve the effectiveness of this Directive.

No later than two years from the date of entry into force of Directive 2008/.../EC [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 consumer protection cooperation], the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report, based on an in-depth

study, with recommendations on standard uses of IP addresses and the application of the ePrivacy and Data Protection Directives as regards their collection and further processing, following the consultation of the EDPS, the Article 29 Working Party, and other stakeholders to include industry representatives.

⁺ *Two years from the date of entry into force of this Directive.*

¹ *OJ C 306, 17.12.2007, p. 1."*

Amendment 140

Proposal for a directive – amending act Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

(1) Member States shall adopt and publish by [...] at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment

1. Member States shall adopt and publish by [...] at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to ***the European Parliament and*** the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment 141

Proposal for a directive – amending act Annex I – title Directive 2002/22/EC Annex I – title

Text proposed by the Commission

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE) **AND** ARTICLE 29 (ADDITIONAL

Amendment

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE), ARTICLE 29 (ADDITIONAL

FACILITIES)

FACILITIES) *AND ARTICLE 30*
(*FACILITATING CHANGE OF*
SUPPLIER)

Amendment 142

Proposal for a directive – amending act

Annex I – Part A – point a

Directive 2002/22/EC

Annex I – Part A – point a – subparagraph 1 – introductory wording

Text proposed by the Commission

Member States are to ensure that national regulatory authorities, subject to the requirements of relevant legislation on the protection of personal data and privacy, may lay down the basic level of itemised bills which are to be provided by designated undertakings (as established in Article 8) to *consumers* free of charge in order that they can:

Amendment

Member States are to ensure that national regulatory authorities, subject to the requirements of relevant legislation on the protection of personal data and privacy, may lay down the basic level of itemised bills which are to be provided by designated undertakings (as established in Article 8) to *end-users* free of charge in order that they can:

Amendment 143

Proposal for a directive – amending act

Annex I – Part A – point b

Directive 2002/22/EC

Annex I – Part A – point b

Text proposed by the Commission

i.e. the facility whereby the subscriber can, on request to a designated undertaking that provides telephone services, bar outgoing calls of defined types or to defined types of numbers free of charge.

Amendment

i.e. the facility whereby the subscriber can, on request to a designated undertaking that provides telephone services, bar outgoing calls *or other kinds of communication* of defined types or to defined types of numbers free of charge.

Amendment 144

Proposal for a directive – amending act

Annex I – Part A – point e

Directive 2002/22/EC

Annex I – part A – point e

Text proposed by the Commission

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. ***Any service interruption shall normally be confined to the service concerned. Exceptionally***, in cases of fraud, persistent late payment or non-payment, ***Member States*** shall ensure that ***national regulatory authorities are able to authorise disconnection from the network as a result of non-payment of bills for services provided over the network***. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. "112" calls) are permitted.

Amendment

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. ***Except*** in cases of fraud, persistent late payment or non-payment, ***these measures*** shall ensure, ***as far as is technically feasible***, that ***any service interruption is confined to the service concerned***. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. "112" calls) are permitted. ***Access to emergency services through 112 may be blocked in case of repeated misuse by the user.***

Amendment 145

Proposal for a directive – amending act

Annex I – Part A – point e a (new)

Directive 2002/22/EC

Annex I – Part A – point e a (new)

Text proposed by the Commission

Amendment

(ea) Cost control

Member States shall ensure that national regulatory authorities require all undertakings providing electronic communication services to offer means for subscribers to control the costs of telecommunication services, including free of charge alerts to consumers in case of abnormal consumption patterns.

Amendment 146

Proposal for a directive – amending act

Annex I – Part A – point e b (new)

Directive 2002/22/EC

Annex I – Part A – point e b (new)

Text proposed by the Commission

Amendment

(eb) Best advice

Member States shall ensure that national regulatory authorities require all undertakings providing electronic communication services to recommend their best available tariff package to consumers once a year on the basis of the consumer's consumption pattern for the previous year.

Amendment 147

Proposal for a directive – amending act

Annex I – Part B – point b a (new)

Directive 2002/22/EC

Annex I – Part B – point b a (new)

Text proposed by the Commission

Amendment

(ba) Services in the event of theft

Member States shall ensure that a freephone number common to all mobile telephony service providers is set up for reporting the theft of a terminal and immediately suspending the services associated with the subscription. It must

also be possible for disabled users to access this service. Users must be regularly informed of the existence of this number, which must be easy to remember.

Amendments 157, 163 and 174
Proposal for a directive – amending act
Annex I – Part B – point b b (new)
Directive 2002/22/EC
Annex I - Part B - point b b (new)

Text proposed by the Commission

Amendment

(bb) Protection software

Member States shall ensure that national regulatory authorities are able to require operators to make available free of charge to their subscribers reliable, easy-to-use, and freely and fully configurable protection and/or filtering software to prevent access by children or vulnerable people to content unsuitable to them.

Traffic monitoring data that this software may collect is for the sole use of the subscriber only.

Amendment 149

Proposal for a directive – amending act
Annex II – introductory wording
Directive 2002/22/EC
Annex II – introductory wording

Text proposed by the Commission

Amendment

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 21. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public communications networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself, so as to

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 21. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public communications networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself, so as to

ensure that consumers are able to make informed choices. ***Where information is published by the undertakings providing public communications networks and/or publicly available telephone services, the national regulatory authority may specify the manner in which the information is published, in order to ensure that consumers are fully informed.***

ensure that consumers are able to make informed choices.

Amendment 150

Proposal for a directive – amending act

Annex II – point 2.2

Directive 2002/22/EC

Annex II – point 2.2

Text proposed by the Commission

2.2. Standard tariffs ***with an indication of what is included in*** each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), ***and including details*** of standard discounts applied ***and*** special and targeted tariff schemes.

Amendment

2.2. Standard tariffs, ***indicating the services provided and the content of*** each tariff element (e.g. charges for access, all types of usage charges, maintenance charges). ***Details*** of standard discounts applied, special and targeted tariff schemes ***and any additional charges, as well as costs with respect to terminal equipment, shall also be included.***

Amendment 151

Proposal for a directive – amending act

Annex III – table – columns 2 and 3

Directive 2002/22/EC

Annex III – table – columns 2 and 3

Text proposed by the Commission

ETSI EG 201 769-1

Amendment

ETSI EG 202 057