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OPINION

of the Committee on Industry, Research and Energy

for the Committee on the Internal Market and Consumer Protection

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))

Draftsman: Reino Paasilinna

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SHORT JUSTIFICATION

The draftsman welcomes the Commission proposal COM(2007)0698 on amending, in the frame of the review of the EU framework for electronic communications networks and services, the existing directives on universal service (USD) and citizens' rights (CRD).

A true enabling information society should enable everyone to be a participant, through access to technology and knowledge, and with freedom of choice. The advent of the information society brings with it new responsibilities for those who provide information and communication, and is creating new ways for citizens, particularly for vulnerable population groups (elderly people, people with disabilities, those living alone or in social difficulties, etc.) to exercise their rights, which enable them to benefit to the full from the spread of new ICT. Therefore, the Member States, with the support from the Commission, should help ensure that technology is more accessible to citizens and meets the demands of society.

The proposal by the Commission aims at (i) strengthening and improving consumer protection and user rights in the electronic communication sector; and (ii) enhancing the protection of individuals' privacy and personal data in the electronic communications sector. The draftsman is of the opinion that by these measures consumers' and users' confidence in electronic communication services would be further strengthened; that would result in a better exploitation of these services and therefore would contribute to the development of a ubiquitous information society. In order to better achieve these goals the draftsman proposes to amend the Commission proposal along the following lines in particular.

- **Must-carry obligations:** In view of new platforms and services, and to allow Member States to ensure access by viewers and listeners to linear and non-linear services alike where appropriate, the scope of the 'must carry' obligation needs to be extended to audiovisual media services. Services aimed at specific groups (subtitling), as well as complementary services aimed at the public as a whole (radiotext, teletext, programme information) shall not be excluded from must-carry status. (**Recital 24; Art 1 – point 19** amending Art 31 – para 1, subpara 1 of the USD)
- **Delivering choice and universal services objectives; development of competition:** Member States should be enabled to identify and apply conditions to universal service providers at 'wholesale' level in circumstances where competition would deliver choice and universal service objectives at the retail level. (**Art 1 – point (5 a)** new amending Art 8 - para 1 of the USD; **Art 1 – point (7)** amending Art 9 - para 4 of the USD) Furthermore, regulators should be enabled to prevent activities which inhibit entry and delay the development of competition during an interim period whilst wholesale remedies are still becoming effective. (**Art 1 – point (10) - sub-point (a a)** (**new**) inserting Art 17 - para 1 a (new) into the USD)
- **Clear information to consumers on limitations concerning the use of services, applications, devices:** Consumers should be clearly informed about any limitation imposed by either their service provider or a third party with regard to the access/use of any service, content, or application, as well as limitations of their device (phone is not operating with a SIM card of other operators, etc.). It is of particular importance in case of special offers and package deals, when the attractive price is often subject to certain conditions and restrictions. (**Art 1 – point 12** amending Art 20 – paragraph 2 -

point (b) of the USD; **Art 1 – point (12)** amending Art 20 – para 5 of the USD)

- **Transparency of tariff information:** Consumers should be clearly informed about the applicable prices/tariffs. It is of particular importance in case of special offers, package deals, flat rate offers, etc., when it is often difficult for the consumer to separate the price of each service. (**Art 1 – point 12** amending Art 21 – para 4 of the USD)
- **Equivalent access to disabled consumers:** New provisions by the Commission in favour of disabled users are welcome. However, the obligation to provide information on equivalent access to disabled end-users needs to be further strengthened. (**Art 1 – point 13 - sub-point (a)** amending Art 22 – para 1 of the USD)
- **Net neutrality:** The principle of net neutrality refers to the broadband network free of restrictions on the kinds of equipment that may be attached, on the modes of communication allowed, that does not restrict content, sites, or platforms and where communication is not unreasonably degraded by other communication streams. The principle of net neutrality has to be further emphasized in the proposal. (**Art 1 – point 13 - point (b)** amending Art 22 – para 3 of the USD)
- **Access to emergency services:** Member States should ensure that access to emergency services is provided in the full coverage of their territory, including remote and peripheral areas. (**Art 1 – point 14** amending Art 23 of the USD)
- **Number portability:** Number portability within the shortest possible delay is indeed desirable; however, a one working day time limit is difficult to be met. The relevant amendment therefore suggests a delay of maximum three working days for switching operators. (**Art 1 – point 18** amending Art 30 – para 4 of the USD)
- **Breach of security, loss of personal data:** Informing all subscribers about every single breach could create unnecessary confusion for consumers. National Regulatory Authorities should decide whether the security risk and its potential consequences are so serious that there is a need for preventive actions and informing the subscribers or general public. A cooperation mechanism and a reporting obligation is also proposed. (**Art 2 – point 3 - sub-point (b)** amending Art 4 – para 3 of the CRD)
- **Unsolicited communication:** The scope of unsolicited communication measures should be broadened and unsolicited text messages (SMS) should be also included. (**Art 2 – point 4 a (new)** amending Art 13 – para 1 of the CRD)
- **‘Technical amendments’:** (i) **Comitology procedure:** Even in case of urgency European Parliament must have the possibility to study the draft implementing measure; cooperation of the institutions is, however, necessary in order adopt the implementing measure as speedily as possible. Therefore the reference to urgency procedure is proposed to be deleted, while an amendment to the recital strengthens the obligation of the institutions to cooperate. (**Recital 39; Art 1 - point 12** amending Art 21 - para 6 of the USD; **Art 1 - point 13 - sub-point (b)** inserting Art 22 - para 3 into the USD; **Art 1 - point 16** amending Art 26 - para 7 of the USD; **Art 1 - point 16** amending Art 28 - para 2 of the USD; **Art 1 - point 20** inserting Art 33 - para 4 into the USD; **Art 2 - point 3 - sub-point (b)** inserting Art 4 - para 4 into the CRD; **Art 2**

- **point 7** inserting Art 15a - para 4 into the CRD) (ii) **EECMA**: The decision on the establishment of the European Electronic Communications Market Authority is subject to another legislative procedure; for the reasons of coherence the draftsman suggests deleting all references to EECMA in the present proposal. (Same paragraphs as above concerning the urgency procedure).

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act

Recital 6 a (new)

Text proposed by the Commission

Amendment

6a. The development of an efficient, ubiquitous information society calls for the universal provision of broadband and wireless technology, which requires further support at Member State and Community level. Therefore the Commission should, in its forthcoming redefinition of universal service, propose that broadband internet be included within the scope of universal services.

Justification

The development of an efficient, ubiquitous information society calls for the universal provision of broadband and wireless technology.

Amendment 2

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

(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, privacy or other aspects of the service provided.

given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. ***Equally, customers should be properly informed of their right to be included in directory databases and granted an effective opportunity to exercise that right both initially and during the contractual relationship. Hence, customers should be expressly asked at the moment of requesting a service whether and how they wish relevant information to be included in directory databases. Since mechanisms are available for including information in directory databases without that information being disclosed to users of directory services, hence facilitating more comprehensive directory services without compromising privacy, customers should also be offered this option by access operators.*** 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, privacy or other aspects of the service provided.

Justification

Directory Enquiry services are a critical service for disabled and elderly users and for users in general (as recognised by the Universal Service Directive). It is necessary to put in place mechanisms which guarantee the exercise of the right of end-users to be included in directory databases in these ways and thereby ensure the comprehensiveness of directory services in accordance with Recital 11 of the Universal Service Directive.

Amendment 3

Proposal for a directive – amending act Recital 14

Text proposed by the Commission

(14) A competitive market should ensure

Amendment

(14) A competitive market 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. 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.

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. 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, *services* or applications is not unreasonably restricted *and, for instance, that unreasonable wholesale access terms are addressed.*

Justification

Currently unregulated access operators charge exorbitant prices for connecting directory enquiry calls and also impede the ability of the directory enquiry providers to set their own retail prices (see, for instance, page 41 of the Commission's new Markets Recommendation). These problems need to be addressed in order to permit the end users the full benefits of competition in directory enquiry services and allow the complete removal of retail regulation (USO).

Amendment 4

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

Amendment

(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. *The national regulatory authorities* should be able to *set appropriate* quality standards, *and the [xxx] and the Commission should*

be used by the national regulatory authorities.

be consulted in order to ensure consistency between approaches taken by the national regulatory authorities.

Amendment 5

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 conditions of 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 put in place in order to ensure that end users benefit fully from competition, with the ultimate aim of removing retail regulation from these services.

¹ OJ L 249, 17.9.2002, p. 21.

Justification

The imposition of wholesale obligations on operators controlling access are justified in order to ensure users the full benefit of competition in directory enquiry services and would permit the removal of heavy retail universal service regulation.

Amendment 6

**Proposal for a directive – amending act
Recital 20 a (new)**

Text proposed by the Commission

Amendment

(20a) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market¹ provides that transmission in a communications network of information provided by a recipient of a service does not render the service provider liable for the information transmitted. The providers of electronic communication services, therefore, are responsible for notifications to the subscriber and national regulatory authorities only for breaches of security in connection with the provision of the service, which is likely to consist of subscriber information as well as traffic data and personal content, where they choose to offer content service.

¹ OJ L 178, 17.7.2000, p. 1.

Amendment 7

**Proposal for a directive – amending act
Recital 21**

Text proposed by the Commission

Amendment

(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

deleted

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 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.

Justification

Given the low demand for this numbering range, no provisions are needed concerning the management of ETNS at European level.

Amendment 8

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*

Amendment

*(24) Legal “must-carry” obligations may be applied to specified **radio services, audiovisual media services as defined in Directive 89/552/EC of 3 October 1989 of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)**¹, and complementary services* supplied by a specified media service provider. 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

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

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. **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.

¹ OJ L 298, 17.10.1989, p. 23. Directive as last amended by Directive 2007/65/EC (OJ L 332, 18.12.2007, p. 27).

Justification

In view of new platforms and services, and to allow Member States to ensure access by viewers and listeners to linear and non-linear services alike where appropriate, the potential scope of this provision needs to be extended to audiovisual media services, in line with the new Audiovisual Media Services Directive.

Amendment 9

Proposal for a directive – amending act Recital 29

Text proposed by the Commission

(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

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 **serious** 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.

and informed in order to be able to take the necessary precautions, **if the national regulatory authorities consider this necessary after notification by the service provider. Where personal data is rendered unusable, the national regulatory authorities should be able to decide not to request notification by the service provider. A notification under these circumstances** should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected, **as appropriate for each individual case.**

Amendment 10

Proposal for a directive – amending act Recital 31 a (new)

Text proposed by the Commission

Amendment

(31a) The quality of service provision should not impair the ability of undertakings providing public communications networks to offer differentiated services and different tiers of quality. This is the best way to offer consumers choice and stimulates increased consumer benefits and demand.

Justification

The proposed new recital clarifies that network providers should be able to offer different quality of service levels, as supported in the Staff Working Document and Impact Assessment, and clarifies the nature of blocking and service degradation.

Amendment 11

Proposal for a directive – amending act Recital 39

Text proposed by the Commission

Amendment

(39) In particular power should be

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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.

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.

Taking into account that the application of the regulatory procedure with scrutiny within the usual deadlines 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.

(This amendment, in terms of deleting the urgency procedure applies throughout the text. Adopting it will necessitate corresponding changes throughout)

Justification

Even in case of urgency European Parliament must have the possibility to study the draft implementing measure; cooperation of the institutions is, however, necessary in order adopt the implementing measure as speedily as possible.

Amendment 12

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

Text proposed by the Commission

Amendment

(39a) The purpose of the Universal Service Directive is to ensure a high level of protection of consumers' and individual users' rights 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 and outside EU, on the basis of individual contracts negotiated by parties of equal strength.

Justification

Global telecommunications services (GTS) consist of business data and voice services provided to multinational companies with locations across multiple countries, and often different continents. First, against the backdrop of the Universal Service Directive's goal, these services are not provided to mass market consumers or small businesses, but rather to large enterprises.

Amendment 13

Proposal for a directive – amending act

Article 1 – point 1

Directive 2002/22/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

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.

premises terminal equipment, *with special attention being given to terminal equipment for users with special needs, including the disabled and the elderly.*

Amendment 14

Proposal for a directive – amending act

Article 1 – point 5 a (new)

Directive 2002/22/EC

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

(5a) Article 8(1) shall be replaced by the following:

"1. Member States may designate one or more undertakings to guarantee the provision of universal service as identified in Articles 4, 5, 6 and 7 and, where applicable, Article 9(2) so that the whole of the national territory can be covered. Member States may designate different undertakings or sets of undertakings to provide different elements of universal service at wholesale and/or retail level and/or to cover different parts of the national territory."

Justification

This amendment enables Member States to identify and apply conditions to universal service providers at 'wholesale' level in circumstances where competition would deliver choice and universal service objectives at the retail level.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 7

Directive 2002/22/EC

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States may, in the light of national conditions, require that designated

2. Member States may, in the light of national conditions, require that designated

undertakings provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing or using the network access referred to in Article 4(1), or the services identified in Articles 4(3), 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings.

undertakings provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing or using the network access referred to in Article 4(1), or the services identified in Articles 4(3), 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings. ***Demonstrable additional net costs may be refunded to designated undertakings in full compliance with EU competition rules.***

Amendment 16

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 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. ***In such cases, Member States may compensate designated undertakings for demonstrable additional costs in full compliance with EU competition rules.***

Amendment 17

Proposal for a directive – amending act

Article 1 – point 7 - introductory part

Directive 2002/22/EC

Article 9 – paragraphs 1 to 3

Text proposed by the Commission

Amendment

(7) In Article 9, **paragraphs 1, 2 and 3** are replaced by the following:

(7) In Article 9, **paragraphs 1 to 4** shall be replaced by the following:

Justification

Technical amendment linked to Amendment 6 modifying Article 9, paragraph 4 of the Directive 2002/22/EC.

Amendment 18

Proposal for a directive – amending act

Article 1 – point 7

Directive 2002/22/EC

Article 9 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States may require undertakings with obligations under Articles 4, 5, 6 and 7 to apply common tariffs, including geographical averaging of wholesale or retail services, throughout the territory, in the light of national conditions or to comply with price caps.

Justification

This amendment enables Member States to identify and apply conditions to universal service providers at ‘wholesale’ level in circumstances where competition would deliver choice and universal service objectives at the retail level.

Amendment 19

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 added:

"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 on 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."

Justification

This amendment enables regulators to prevent activities which inhibit entry and delay the development of competition during an interim period whilst wholesale remedies are still becoming effective.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) the services provided, **any limitations on access to and/or use of certain services and content referred to in paragraph 5,** the service quality levels offered, the time for the initial connection, **as well as any limitations on the use of terminal equipment;**

Justification

Consumers shall be clearly informed about any limitation concerning the use of certain services, as well as limitations of their device (phone is not operating with a SIM card of other operators, etc.). It is of particular importance in case of special offers and package deals, when the attractive price is often subject to certain conditions and restrictions.

Amendment 21

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 4

Text proposed by the Commission

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.

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 thereafter.

Justification

The requirement for ‘regular’ information raises the question ‘how often is regularly?’ and thus entails legal uncertainty. Information should be provided only when the occasion demands, to avoid an excess of information which would also be unwelcome to the end user.

Amendment 22

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 5

Text proposed by the Commission

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.

Amendment

5. Member States shall ensure, **and enforce without delay where necessary**, 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, **in particular technical and price- or tariff-related limitations**, on their ability to:

- (a) access, *use* or distribute *any* content;
- (b) *access* or run any *application or service* of their choice; *and/or*
- (c) *manage or use any content, service or application in their terminal equipment.*
- Such information shall be provided in a clear, comprehensive and easily accessible form.*

Amendment 23

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 6

Text proposed by the Commission

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.

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 thereafter of their obligations to respect copyright and related rights.

Justification

The requirement for ‘regular’ information raises the question ‘how often is regularly?’ and thus entails legal uncertainty. Information should be provided only when the occasion demands, to avoid an excess of information which would also be unwelcome to the end user. The detailed obligation laid down in the last sentence would place an unacceptable burden on service providers and in extreme cases could bring them into conflict with professional legal advisers and should therefore be deleted.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 7

Text proposed by the Commission

7. Subscribers shall have a right to withdraw from their contracts without penalty upon notice of modifications in the contractual conditions proposed by operators. Subscribers shall be given adequate notice, not shorter than one month, ahead of any such modifications and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, if they do not accept the new conditions.

Amendment

7. Subscribers shall have a right to withdraw from their contracts without penalty upon notice of modifications in the contractual conditions proposed by operators. Subscribers shall be given adequate notice, not shorter than one month, ahead of any such modifications and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, if they do not accept the new conditions. ***This right may only be exercised when the modifications are disadvantageous to the subscriber.***

Justification

The right to withdraw without financial penalty should only apply if the modification is disadvantageous to the customer. Otherwise, customers could terminate their contract without notice even if the modification was advantageous.

Amendment 25

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are expressly asked at the moment of concluding the contract whether and how they wish relevant information to be included in directory databases and whether they wish to exercise the option of having certain information included in the database but not disclosed to users of directory services.

Amendment 26

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. This Article shall apply without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC and 2005/29/EC, and to national rules that are in conformity with Community law.

Justification

To clarify that general rules on consumer protection would apply besides the sector specific rules. The proposed amendment is in line with the text proposed by the Commission in Article 20, paragraph 1.

Amendment 27

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***

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 ***introduce guidelines, such as guidelines specifying the methodology or procedures.***

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).

Justification

Under the current framework law the Communications Committee for technical adjustments to the annexes, pursuant to Article 35 of Directive 2002/22/EC, comes into play. This should remain the case under the new framework law. The use of the Article 37(2) and 37(3) comitology procedures could result in regulation of many areas beyond the scope of the legislative procedure. The Commission can draw up guidelines to assist the exchange of best practices. There is no need for an authority as provided for in the Commission proposal COM(2007)699.

Amendment 28

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

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 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.

Amendment

1. Member States shall ensure that national regulatory authorities, after taking account of the views of interested parties, 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, **with particular emphasis on information provided to** disabled end-users **concerning equivalent access**. The information shall, on request, also be supplied to the national regulatory authority in advance of its publication.

Justification

This amendment strengthens the obligation to provide information on equivalent access to disabled end-users.

Amendment 29

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. Member States shall ensure the transparency of services across networks, and shall avoid anti-competitive discrimination in services. In order to prevent degradation of service and slowing of traffic over networks, ***national regulatory authorities*** may, having consulted the ***[xxx] and the Commission***, adopt minimum quality of service requirements *for* undertakings providing public communications networks.

Without prejudice to the first subparagraph, undertakings providing public communications networks shall be entitled to carry out reasonable network management.

(This amendment, in terms of replacing the Authority by [xxx] applies throughout the text. Adopting it will necessitate corresponding changes throughout)

Amendment 30

Proposal for a directive – amending act

Article 1 – point 13 – point b a (new)

Directive 2002/22/EC

Article 22 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(ba) The following paragraph shall be inserted:

"3a. In order to ensure that users' ability to access or distribute lawful content or to run any lawful application or service of their choice is not unreasonably restricted, Member States shall ensure that the national regulatory authorities ensure that any limitations imposed by undertakings providing public communications networks and/or services on the ability of subscribers to access or distribute lawful content are duly justified."

Justification

National authorities should be able to monitor whether discriminatory practices by undertaking providing electronic communication services are duly justified.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/22/EC

Article 23

Text proposed by the Commission

Amendment

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

Member States shall take all necessary ***measures*** to ensure the availability of publicly available telephone services provided over 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 ***necessary measures*** to ensure uninterrupted access to emergency services ***throughout the territory they cover***.

Justification

Member States shall ensure that access to emergency services is provided in the full coverage

of their territory, including remote and peripheral areas.

Amendment 32

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) Article 25(1) shall be replaced by the following:

"1. Member States shall ensure that all end-users of electronic communications networks and services are expressly asked at the moment of requesting the service whether and how they wish relevant information to be included in directory databases. End users shall also be offered the option of having certain information included in the database but not disclosed to users of directory services."

Amendment 33

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

Amendment

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).

3. Member States shall ensure that all end-users ***of an electronic communications*** service can access directory enquiry services in accordance with Article 5(1)(b), ***and that operators controlling access to such services provide access services on terms which are fair, cost-oriented, objective, non-discriminatory and transparent.***

Justification

The imposition of wholesale obligations on operators controlling access are justified in order to ensure users the full benefit of competition in directory enquiry services and would permit the removal of heavy retail universal service regulation. The ability for a European citizen to travel to other Member states and be able to access its usual directory enquiry services provider, in order to obtain information in his or her national language, is essential to promoting the single market.

Amendment 34

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) Article 25(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."

Justification

The imposition of wholesale obligations on operators controlling access are justified in order to ensure users the full benefit of competition in directory enquiry services and would permit the removal of heavy retail universal service regulation. The ability for a European citizen to travel to other Member states and be able to access its usual directory enquiry services provider, in order to obtain information in his or her national language, is essential to promoting the single market.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 - paragraph 4

Text proposed by the Commission

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).

(4) Member States shall ensure that disabled end-users are able to access emergency services ***in accordance with Article 7***. 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).

Justification

These measures may include the provision of special terminal equipment for disabled users particularly those suffering from deafness or weak hearing, speech problems or combined deafness and blindness, together with data transmission services or other special equipment, which should be provided by the Member States.

Amendment 36

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 27 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

Justification

Given the low demand for this numbering range, no provisions are needed concerning the management of ETNS at European level.

Amendment 37

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 **two** working **days** from the initial request by the subscriber.

Amendment 38

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

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

Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and **audiovisual media services** and **complementary** 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 to receive radio **or audiovisual media services**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State and shall be proportionate and transparent.

Justification

(i) *The scope of this provision needs to be extended to Audiovisual Media Services with*

regard to new platforms and services. Services aimed at specific groups (subtitling), as well as complementary services aimed at the public as a whole (radiotext, teletext, programme information) shall not be excluded from must-carry status. (iii) The reference to national law has to be deleted as in some MSs these objectives are not regulated by legislation, as well as in some MSs of federal structure the competence for adopting “must-carry” rules does not fall under the competence of federal legislation.

Amendment 39

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/22/EC

Article 33 – paragraph 4

Text proposed by the Commission

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).**

Amendment

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 **introduce guidelines and** take the appropriate technical implementing measures to address the issues raised in the report referred to in paragraph 3, following a public consultation.

Justification

Under the current framework law the Communications Committee for technical adjustments to the annexes, pursuant to Article 35 of Directive 2002/22/EC, comes into play. This should remain the case under the new framework law. The use of the Article 37(2) and 37(3) comitology procedures could result in regulation of many areas beyond the scope of the legislative procedure. The Commission can draw up guidelines to assist the exchange of best practices. There is no need for an authority as provided for in the Commission proposal COM(2007)699.

Amendment 40

Proposal for a directive – amending act

Article 1 – point 24

Directive 2002/22/EC

Article 37 – paragraph 2

Text proposed by the Commission

Amendment

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

Justification

Under the current framework law the communications committee for technical adjustments to the annexes, pursuant to Article 35 of Directive 2002/22/EC, comes into play. This should remain the case under the new framework law. The use of the comitology procedure with scrutiny by the European Parliament could result in regulation of many areas beyond the scope of the traditional legislative procedure - with no impact assessment study and no public debate. The Commission can, however, draw up guidelines to assist the exchange of best practices.

Amendment 41

Proposal for a directive – amending act

Article 1 – point 24

Directive 2002/22/EC

Article 37 – paragraph 3

Text proposed by the Commission

Amendment

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. *deleted*

Justification

Under the current framework law the communications committee for technical adjustments to the annexes, pursuant to Article 35 of Directive 2002/22/EC, comes into play. This should remain the case under the new framework law. The use of the urgent comitology procedure could result in regulation of many areas beyond the scope of the traditional legislative procedure - with no impact assessment study and no public debate. The Commission can, however, draw up guidelines to assist the exchange of best practices.

Amendment 42

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 ***serious*** breach of security ***by the provider of publicly available electronic communications services*** 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 ***electronic*** communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify the national regulatory authority of such a breach. The notification shall describe the nature of the breach and ***its*** consequences, and the measures taken by the provider to address the breach, ***and shall recommend measures to mitigate its possible negative effects. The national regulatory authority shall decide whether the provider of publicly available electronic communications services shall notify the subscriber concerned of the breach. Where personal data has been rendered unusable by technical or procedural means to the extent that the risk of loss is low or substantially removed, a breach of security should not be considered as having caused harm to the end-user. Therefore the national regulatory authority may decide not to request notification from the provider to the subscriber concerned. The technical and procedural means of rendering data unusable shall be approved by the national regulatory authority. The Commission may, having consulted the***

[xxx], take the appropriate coordination measures to ensure a consistent approach at Community level.

Where appropriate, the national regulatory authority concerned shall notify the national regulatory authorities in other Member States and the [xxx] of the breach. Where disclosure of the breach is in the public interest, the national regulatory authority may inform the public.

Every three months, the national regulatory authority shall submit a summary report to the Commission on the notifications received and action taken pursuant to this paragraph.

Amendment 43

Proposal for a directive – amending act

Article 2 – point 3

Directive 2002/58/EC

Article 4 – paragraph 4

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.

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 14a (2). ***On imperative grounds of urgency, the***

Amendment

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission may, *having consulted the [xxx] 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.

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 14a (2).

Commission may use the urgency procedure referred to in Article 14a (3).

(This amendment, both in terms of replacing the reference to EECMA by '[xxx]' as well as deleting the reference to the urgency procedure, applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

(i) The decision on the establishment of the European Electronic Communications Market Authority is subject to another legislative procedure; for the reasons of coherence the draftsman suggests deleting all references to EECMA in the present proposal. (ii) Even in case of urgency European Parliament must have the possibility to study the draft implementing measure; cooperation of the institutions is, however, necessary in order to adopt the implementing measure as speedily as possible.

Amendment 44

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 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.

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 is only allowed on condition that the subscriber or user concerned ***has given his/her prior consent based on*** 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 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. ***The subscriber's prior consent shall be sought separately from his/her agreement to the***

general provisions.

Justification

Use of personal information is very widespread in the electronic communication environment. Before information is accessed, prior consent of the subscriber should be sought, separately from his agreement to all other conditions.

Amendment 45

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 *clear and comprehensive information on the possibility to withdraw their consent for the processing of traffic data at any time. The procedures for withdrawing consent shall be easily comprehensible and straightforward.*'

Justification

Use of personal information is very widespread in the electronic communication environment. Before data is accessed, prior consent of the subscriber should be sought.

Amendment 46

Proposal for a directive – amending act

Article 2 – point 4 b (new)

Directive 2002/58/EC

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

(4b) Article 9(1) shall be replaced by the following:

"1. Where location data other than traffic data, relating to users or subscribers of public communications networks or publicly available electronic communications services, can be processed, such data may only be processed when they are made anonymous *and with the prior consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data other than traffic data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service. Users or subscribers shall be given clear and comprehensive information concerning the possibility to withdraw their consent for the processing of location data other than traffic data at any time. The procedures for withdrawing consent shall be easily comprehensible and straightforward.*"

Justification

Use of personal information is very widespread in the electronic communication environment. Before data is accessed, prior consent of the subscriber should be sought.

Amendment 47

Proposal for a directive – amending act

Article 2 – point 4 c (new)

Directive 2002/58/EC

Article 12 – paragraph 2

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Text proposed by the Commission

Amendment

(4c) Article 12(2) shall be replaced by the following:

"2. Member States shall ensure that end-users are given the opportunity to determine whether *and which of* their personal data are included in the public directory, [...] and to verify, correct or withdraw such data. Not being included in a public subscriber directory, verifying, correcting or withdrawing personal data from it shall be free of charge."

Amendment 48

Proposal for a directive – amending act

Article 2 – point 4 d (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 systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent. *Automated transmission of unsolicited commercial messages to radio equipment or telecommunications terminal equipment belonging to natural persons may only be allowed with the prior consent of those persons.*"

Justification

The scope of unsolicited communication has to be updated in the light of technological development, since there are now devices, which are able to communicate with each other

without using a public communications network.

Amendment 49

Proposal for a directive – amending act

Article 2 – point 4 e (new)

Directive 2002/58/EC

Article 13 – paragraph 2

Text proposed by the Commission

Amendment

(4e) In Article 13, paragraph 2 shall be deleted.

Justification

Since unsolicited communications have become so widespread on the internet, consumers should always opt-in to them.

PROCEDURE

Title	Electronic communications networks and services, protection of privacy and consumer protection		
References	COM(2007)0698 – C6-0420/2007 – 2007/0248(COD)		
Committee responsible	IMCO		
Opinion by Date announced in plenary	ITRE 10.12.2007		
Drafts(wo)man Date appointed	Reino Paasilinna 17.1.2008		
Discussed in committee	6.3.2008	7.4.2008	6.5.2008
Date adopted	28.5.2008		
Result of final vote	+: -: 0:	51 0 0	
Members present for the final vote	Šarūnas Birutis, Jan Březina, Philippe Busquin, Jerzy Buzek, Jorgo Chatzimarkakis, Giles Chichester, Dragoş Florin David, Pilar del Castillo Vera, Lena Ek, Adam Gierek, Norbert Glante, Umberto Guidoni, András Gyürk, Fiona Hall, David Hammerstein, Erna Hennicot-Schoepges, Ján Hudacký, Romana Jordan Cizelj, Werner Langen, Anne Laperrouze, Eugenijus Maldeikis, Eluned Morgan, Angelika Niebler, Reino Paasilinna, Atanas Paparizov, Francisca Pleguezuelos Aguilar, Anni Podimata, Miloslav Ransdorf, Vladimír Remek, Herbert Reul, Teresa Riera Madurell, Paul Rübig, Andres Tarand, Patrizia Toia, Catherine Trautmann, Claude Turmes, Alejo Vidal-Quadras		
Substitute(s) present for the final vote	Gabriele Albertini, Alexander Alvaro, Ivo Belet, Manuel António dos Santos, Robert Goebbels, Satu Hassi, Edit Herczog, Aldo Patriciello, Pierre Pribetich, Bernhard Rapkay, Silvia-Adriana Ţicău, Lambert van Nistelrooij		
Substitute(s) under Rule 178(2) present for the final vote	Emmanouil Angelakas, Nicolae Vlad Popa		