

EUROPEAN PARLIAMENT

2004



2009

Committee on Legal Affairs

2007/0248(COD)

3.6.2008

OPINION

of the Committee on Legal Affairs

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))

Draftswoman: Lidia Joanna Geringer de Oedenberg

PA_Legam

SHORT JUSTIFICATION

1. Scope of the Commission proposal

The present legislative reform proposal adapts the regulatory framework by strengthening certain consumers' and users' rights (in particular with a view to improving accessibility and promoting an inclusive Information Society), and ensuring that electronic communications are trustworthy, secure and reliable and provide a high level of protection for individuals' privacy and personal data.

2. Rapporteur's position

Electronic communications provide the foundations for the EU economy while the widespread availability of affordable and secure broadband communications networks is a key condition of realising its growth and job-creation potential.

The Article 95 EC is the appropriate legal basis and the proposal for the directive complies with the principles of subsidiarity and proportionality. In general, your Rapporteur agrees with the aim of the Commission proposal. Strengthening certain consumers' and users' rights, and ensuring that electronic communications are secure and trustworthy and provide a high level of protection for individuals' privacy and personal data are goals of the utmost importance. In addition, your Rapporteur considers it essential to ensure that as markets offer increasing choice, consumers are better informed about the supply conditions and tariffs and can more easily switch providers. Accordingly, your Rapporteur shares the same concerns as the Commission as for the need to amend the existing Universal Service Directive and the Directive on privacy and electronic communications with a view to :

- improving the transparency and publication of information for end-users;
- facilitating use of and access to e-communications for disabled users;
- facilitating the switching of suppliers by consumers through, among other things; strengthened provisions on number portability;
- improving obligations related to emergency services;
- ensuring basic connectivity and quality of service;
- introducing mandatory notification of security breaches resulting in users' personal data being lost or compromised;
- strengthening implementation provisions related to network and information security to be adopted in consultation with the Authority to be established;
- strengthening implementation and enforcement provisions to ensure that sufficient measures are available at Member State level to combat spam;
- modernising specific provisions of the Directives to bring them into line with technology and market developments, including the deletion of a number of obsolete or redundant provisions.

However, your Rapporteur would propose some amendments aiming at improving the above proposal, especially with a view to ensuring further consideration of some legal and social issues.

More specifically, as Article 7 of the Universal Service Directive, as amended by the Commission proposal, obliges Member States to adopt special measures for disabled users, your Rapporteur would propose an amendment to Article 9 of the same Directive aiming at

ensuring the same result as that provision and taking into due account consumers identified as having low incomes, disability or special social needs.

Secondly, it is fundamental to ensure the highest protection to subscribers' personal data. To that end, foreseeing non-compulsory actions that might be taken by the undertakings concerned would not be sufficient. An amendment to Article 20 of the Universal Service Directive is presented accordingly.

Thirdly, when guides or techniques enabling users to make independent evaluation of costs are not available on the market, your Rapporteur finds it contradictory to foresee the publication by national regulatory authorities (presumably free of charge) and, at the same time, to allow third parties to sell such guides or techniques. Article 21 of the Universal Service Directive and recital 15 of the amending act are therefore to be amended.

Finally, Article 28 of the same Directive should be amended so that decisions of the national regulatory authorities, especially when limiting undertakings' access to market positions, can always be subject to judicial review.

AMENDMENTS

The Committee on Legal Affairs 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 13

Text proposed by the Commission

(13) The right of subscribers to withdraw from their contracts without penalty refers to modifications in contractual conditions which are imposed by the providers of electronic communications networks and/or services.

Amendment

(13) The right of subscribers to withdraw from their contracts without penalty refers to modifications in contractual conditions which are imposed by the providers of electronic communications networks and/or services, ***other than changes required by law. Where a contract contains a clause enabling the provider to unilaterally vary the contract, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts¹ applies. The right of subscribers to withdraw applies to detrimental variations whether applied on a stand-alone basis or in bundled services.***

¹ OJ L 95, 21.4.1993, p. 29.

Amendment 2

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. 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.

Justification

When guides or techniques enabling users to make independent evaluation of costs are not available on the market, it is fundamental to stress the role of national regulatory authorities, rather than that of third parties aiming at profit-making.

Amendment 3

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

(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.

Amendment 4

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

Amendment

deleted

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.

Amendment 5

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 ***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.

Amendment

(29) A ***serious*** breach of security resulting in the loss or compromising *of* 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, ***the national regulatory authority*** should be notified without delay. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected. ***The national regulatory authority should consider and determine the seriousness of the breach and should require the provider where appropriate to notify without undue delay the subscribers directly affected by the breach.***

Amendment 6

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

Text proposed by the Commission

Amendment

(30a) When implementing the measures for transposing Directive 2002/58/EC, the

authorities and courts of the Member States must not only interpret their national law in a manner consistent with that Directive but also make sure that they do not rely on an interpretation of it which would be in conflict with other fundamental rights or general principles of Community law, such as the principle of proportionality.

Justification

To incorporate the wording of the recent ruling by the CJEC in its judgment on Promusicae v Telefónica (29 January 2008). The Court's ruling reaffirms that it is for the Member States to take care, when transposing directives, 'to rely on an interpretation of them which allows a fair balance to be struck between the various fundamental rights protected by the Community legal order'.

Amendment 7

**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 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.

deleted

Amendment 8

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take specific

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.

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 9

Proposal for a directive – amending act

Article 1 – point 7

Directive 2002/22/EC

Article 9 – paragraphs 2 and 3

Text proposed by the Commission

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.

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

2. Member States **shall**, 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.

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.

Justification

Article 7 of the Universal Service Directive, as amended by the Commission proposal, obliges Member States to adopt special measures for disabled users. The proposed amendment aims at ensuring the same result as that provision.

Amendment 10

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, 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 that will be levied due to involvement of subsidised equipment**;

Amendment 11

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 action **to** be taken by the undertaking providing connection and/or services **in order to respect the confidentiality of subscribers' personal data and the action that might be taken** in reaction to security or integrity incidents or threats and vulnerabilities, **and any compensation arrangements which apply if security or integrity incidents occur**.

Justification

*It is fundamental to ensure the highest protection to subscribers' personal data. Non-compulsory actions would not be sufficient to that aim. **

Amendment 12

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The contract shall also include relevant information on the legally permissible uses of electronic communications networks and the means of protection against risks to privacy and personal data referred to in Article 21(4a).

Amendment 13

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 7

Text proposed by the Commission

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.

7. Subscribers shall have a right to withdraw from their contracts without penalty upon notice of modifications ***to the detriment of the subscriber*** in the contractual conditions proposed by operators ***in reliance on a term in the contract allowing unilateral changes.*** 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. ***If the contract does not contain a term enabling the operator to unilaterally alter the contract the notice shall inform the subscriber of the right to refuse to accept the proposed modification and to maintain the contract unchanged.***

Amendment 14

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 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.

Justification

When guides or techniques enabling users to make independent evaluation of costs are not available on the market, it is contradictory to foresee the publication by national regulatory authorities (presumably free of charge) and, at the same time, to allow third parties to sell such guides or techniques.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 6

Text proposed by the Commission

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

Amendment

deleted

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 16

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. 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 lawful content or to run lawful applications and services of their choice is not unreasonably restricted, national regulatory authorities* may adopt minimum quality of service requirements. National regulatory *authorities may consider a limitation imposed by the operator on the ability of users to access or distribute lawful content or to run lawful applications and services of their choice to be unreasonable if it discriminates according to source, destination, content or type of application, and is not duly justified by the operator.*

Amendment 17

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 18

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

Amendment 19

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

Amendment

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

deleted

Amendment 20

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

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.

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.

Member States shall make the decision to block access to certain numbers or services subject to judicial review.

Justification

Decisions of the national regulatory authorities, especially when limiting undertakings' access to market positions, should always be subject to judicial review.

Amendment 21

Proposal for a directive – amending act

Article 2 – point 3 – point a a (new)

Directive 2002/58/EC

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph shall be inserted:

'1a. Without prejudice to the provisions of Directives 95/46/EC and 2006/24/EC, these measures shall include:

– appropriate technical and organisational measures to ensure that personal data may be accessed only by authorised personnel and to protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, or 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, interference with or hindering of its functioning or availability, including inter alia the distribution of unsolicited or fraudulent electronic communication messages;

– 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 the electronic communication service, which shall include regular monitoring for security breaches;

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

Amendment 22

Proposal for a directive – amending act

Article 2 – point 3 – point a b (new)

Directive 2002/58/EC

Article 4 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(ab) the following paragraph shall be inserted:

‘1b. National regulatory authorities shall have the power to audit the measures taken by providers of publicly available electronic communication services and of information society services and to issue recommendations about best practices and performance indicators concerning the level of security which these measures should achieve.’

Amendment 23

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 ***serious*** 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 ***which is likely to cause harm to users***, the provider of publicly available electronic communications services, ***and any company providing services to consumers over the Internet which is the data controller and the provider of information society services***, shall, without undue delay, notify the national regulatory authority of such a breach. The notification to the ***national regulatory authority*** 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 24

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 national regulatory authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious, the national

regulatory authority shall require the provider of publicly available electronic communications service and the provider of information society services to appropriately notify without undue delay the subscribers directly affected by the breach. The notification shall contain the information set out in paragraph 3.

The notification of a serious breach may be postponed in cases where it may undermine the progress of a criminal investigation into that breach.

Amendment 25

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 26

Proposal for a directive – amending act

Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

3c. The breach shall not be determined to be serious and the provider of publicly available electronic communication services and the provider of information

society services shall be exempt from the requirement to notify or provide notification to subscribers, if it can be demonstrated that there is no reasonable risk to the personal data affected by the breach due to the use of appropriate technological protection measures, including but not limited to appropriate encryption technologies, which render the data unintelligible in the event of accidental or unlawful loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed, or of other appropriate technological protection measures which render the personal data available in case of accidental or unlawful loss.

Amendment 27

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

Amendment

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*.

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

Amendment 28

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, **either directly or indirectly by means of any kind of storage medium, is prohibited unless the subscriber or user concerned has given his 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 by the 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 communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

Amendment 29

Proposal for a directive – amending act

Article 2 – point 4 a (new)

Directive 2002/58/EC

Article 13 – paragraph 1

Text proposed by the Commission

Amendment

(4a) In Article 13, paragraph 1 shall be replaced by the following:

‘1. The use of automated calling systems without human intervention (automatic calling machines), facsimile machines (fax), short message services (SMS) or electronic mail for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent.’

Amendment 30

Proposal for a directive – amending act

Article 2 – point 4 b (new)

Directive 2002/58/EC

Article 13 – paragraph 4

Text proposed by the Commission

Amendment

(4b) In Article 13, paragraph 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, *either in contravention of Article 6 of Directive 2000/31/EC, or containing 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 31

Proposal for a directive – amending act

Article 2 – point 5

Directive 2002/58/EC

Article 13 – paragraph 6

Text proposed by the Commission

Amendment

6. Without prejudice to any administrative remedy for which provision may be made, *inter alia* under Article 15a(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.

6. Without prejudice to any administrative remedy for which provision may be made, *inter alia* under Article 15a(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 32

Proposal for a directive – amending act

Article 2 – point 6 a (new)

Directive 2002/58/EC

Article 15 – paragraph 1

Text proposed by the Commission

Amendment

(6a) In Article 15, paragraph 1 shall be replaced by the following:

‘1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1), (2), (3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, and protection of the rights and freedoms of others, as referred to in Article 13(1) of Directive 95/46/EC. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph. All the measures referred to in this paragraph shall be in accordance with the general principles of Community law, including those referred to in Article 6(1) and (2) of the Treaty on European Union.’

Justification

The 2002 directive, on the protection of privacy, merely extends to electronic communications the provisions of the 1995 framework directive. Thus Article 15 of the 2002 directive should be read in the light of Article 13 of the 1995 framework directive. The purpose of this amendment is to increase legal certainty in the context of the recent CJEC judgment (C-

Amendment 33

Proposal for a directive – amending act

Annex I – Part A – heading (e)

Directive 2002/22/EC

Annex I – Part A – heading (e)

Text proposed by the Commission

(e) Non payment of bills

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

(e) Non payment of bills

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.

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	JURI 10.12.2007		
Drafts(wo)man Date appointed	Lidia Joanna Geringer de Oedenberg 19.12.2007		
Discussed in committee	26.2.2008	8.4.2008	28.5.2008
Date adopted	29.5.2008		
Result of final vote	+: 20	–: 0	0: 0
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Piia-Noora Kauppi, Katalin Lévai, Antonio Masip Hidalgo, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Sharon Bowles, Luis de Grandes Pascual, Sajjad Karim, Georgios Papastamkos, Jacques Toubon		