

# EUROPEAN PARLIAMENT

2004



2009

---

*Committee on the Internal Market and Consumer Protection*

**2007/0248(COD)**

16.3.2009

## **AMENDMENTS 104 - 152**

**Draft recommendation for second reading**  
**Malcolm Harbour**  
(PE421.119v02-00)

on the Council common position for adopting 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 cooperation between national authorities responsible for the enforcement of consumer protection laws

Council common position – amending act  
(16497/1/2008 – C6-0068/2009 and C6-0420/2007 – 2007/0248(COD))



**Amendment 104**  
**Evelyne Gebhardt**

**Council common position – amending act**  
**Recital 3 a (new)**

*Council common position*

*Amendment*

***(3a) The universal service is a protective network for people whose financial resources, geographical location or special social needs do not permit them to access the basic services available to the majority of citizens. The basic universal service obligation laid down in Directive 2002/22/EC is to provide users who so request with a connection to the public telephone network from a fixed location and at an affordable price. As a result, it addresses neither mobile services nor broadband access to the Internet. This basic obligation is now confronted by technological and market developments in which mobile communications may be the primary form of access in many areas and networks are increasingly adopting the technology associated with mobile and broadband communications. These developments raise a need to assess whether the technical, social and economic conditions justifying the inclusion of mobile communications and broadband access in the universal service obligation are fulfilled, as well as related financing aspects. To this end, the Commission will present, no later than autumn 2009, a review of the scope of the universal service obligation and proposals for reform of Directive 2002/22/EC to meet the appropriate public interest objectives. That review will take account of economic competitiveness and include an analysis of social, commercial and technological conditions and of the risk of social exclusion. It will also address the technical and economic viability, estimated cost, cost allocation and funding models for any redefined universal service obligation. As questions***

*relating to the scope of the universal service obligation will therefore be fully dealt with in that separate procedure, this Directive only deals with other aspects of Directive 2002/22/EC.*

Or. de

*Justification*

*This amendment reflects Parliament's position at first reading.*

**Amendment 105**  
**Syed Kamall**

**Council common position – amending act**  
**Recital 22**

*Council common position*

(22) Given the increasing importance of electronic communications for consumers and businesses, users should be fully informed of ***the traffic management policies*** of the service and/or network provider with which they conclude the contract. ***Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them under Directive 2002/19/EC (Access Directive) to ensure that users' access to particular types of content or application is not unreasonably restricted.***

*Amendment*

(22) Given the increasing importance of electronic communications for consumers and businesses, users should be fully informed of ***any relevant limitations imposed on the use of electronic communications services*** by the service and/or network provider with which they conclude the contract.

Or. en

*Justification*

*This proposal, combining EP and Council wording, focuses on the aspect of transparency, ensuring transparency is targeted at the relevant restrictions which are the important parameter for the end-user rather than abstract and broad 'network management policies'. It also no longer mentions the access Directive whereas the current Recital 14 of Council text and 14a of EP text risks creating confusion over the fact that intervention under Directive 2002/19/EC only address network access for electronic communications operators. SMP-remedies do not directly address access to and for content and applications by end-users.*

**Amendment 106**  
**Eva-Britt Svensson**

**Council common position – amending act**  
**Recital 22**

*Council common position*

(22) Given the increasing importance of electronic communications for consumers and businesses, users should be fully informed of the traffic management policies of the service and/or network provider with which they conclude the contract. *Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them under Directive 2002/19/EC (Access Directive) to ensure that users' access to particular types of content or application is not unreasonably restricted.*

*Amendment*

***(22) End-users should decide what content they require to be able to send and receive, and which services, applications, hardware and software they require to use for such purposes, without prejudice to the need to preserve the integrity and security of networks and services. A competitive market with transparent offerings as provided for in Directive 2002/22/EC should ensure that end-users are able to access and distribute any content and to use any 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 the traffic management policies of the service and/or network provider with which they conclude the contract. ***Disclosure should be such that consumers are able to make an informed decision, and enable them to choose to adjust their behaviour or to switch networks. The information on traffic management policies should include the criteria and rules implemented by the operator for managing traffic, including the thresholds that will trigger changes in the users' experience of the services. It shall, where necessary, disclose specific actions included in the traffic management policy. Depending on the technology used, this may require user consent under Directive 2002/58/EC.***

Or. en

## *Justification*

*Telecommunications framework law concerns the regulation of network operators and providers of electronic communications services, and not the regulation of user behaviour. This directive concerns the rights of users and citizens in respect of the purchase of services from such operators. The language concerning 'limitations' placed the focus on the user behaviour. This amendment puts the onus back onto the operator behaviour, and tasks the regulators with ensuring the accountability of the operators, as well as allowing operators the necessary flexibility to address congestion.*

### **Amendment 107**

**Bernadette Vergnaud, Cristian Silviu Buşoi, Heide Rühle**

#### **Council common position – amending act**

##### **Recital 22**

###### *Council common position*

(22) Given the increasing importance of electronic communications for consumers and businesses, users should be fully informed of the traffic management policies of the service and/or network provider with which they conclude the contract. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them under Directive 2002/19/EC (Access Directive) to ensure that users' access to particular types of content or application is not unreasonably restricted.

###### *Amendment*

***(22) End-users should decide what content they want to be able to send and receive, and which services, applications, hardware and software they want to use for such purposes, without prejudice to the need to preserve the integrity and security of networks and services. A competitive market with transparent offerings as provided for in Directive 2002/22/EC should ensure that end-users are able to access and distribute any content and to use any 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 be fully informed of the traffic management policies of, ***and subsequent possible limitations of access to applications or services imposed by,*** the service and/or network provider with which they conclude the contract. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them under Directive 2002/19/EC (Access Directive) to ensure that users' access to particular types of content or application is not unreasonably

restricted.

Or. en

**Amendment 108**  
**Malcolm Harbour**

**Council common position – amending act**  
**Recital 22 a (new)**

*Council common position*

*Amendment*

***(22a) Traffic management policies should be defined for the purposes of disclosure under this Directive. The practices embodied in them are fully subject to competition scrutiny.***

Or. en

**Amendment 109**  
**Eva-Britt Svensson**

**Council common position – amending act**  
**Recital 22 a (new)**

*Council common position*

*Amendment*

***(22a) Traffic management policies are the rules and guidelines which a network operator has put in place to handle the flow of traffic on the network (i.e. bandwidth management), but they may additionally utilise capabilities installed by the operator to prioritise, block and filter traffic according to pre-set criteria. These policies must be able to be justified by a valid technical reasons such as temporary short-term remedies put in place so as to smooth traffic in cases of acute network congestion or in response to malicious activity threatening network security or end-user security. Traffic management policies should be neutral in respect of content and applications and***

***must not result in the user not being able to access content, services and applications. Operators should in all cases respect fundamental rights and freedoms of users.***

Or. en

*Justification*

*Traffic management systems are being deployed by telecommunications network operators and Internet service providers. They represent the first phase of the next-generation network, and bring in a range of new functionality, including filtering of content and applications, and the delivery of content on a preferential or discriminatory basis, which has implications for the way services may be delivered and for users. Next generation networks were originally outside the scope of the telecoms review, however, the references to traffic management policies in this directive and in the Framework directive, and the requirement to improve the transparency for users, especially users of the Internet, introduce them into the framework. In this context, 'traffic management policies' requires a formal definition (RoP 62 b) and c) apply).*

**Amendment 110**  
**Jacques Toubon**

**Council common position – amending act**  
**Recital 22 a (new)**

*Council common position*

*Amendment*

***(22a) Directive 2002/22/EC does not require providers to monitor information transmitted over their networks or to bring legal proceedings against their customers on grounds of such information, nor does it make providers liable for that information. Responsibility for launching criminal prosecution rests with the relevant authorities.***

Or. fr

*Justification*

*It is vital to allow the possibility of introducing preventive measures other than criminal law measures, such as those in the United Kingdom.*

**Amendment 111**  
**Eva-Britt Svensson**

**Council common position – amending act**  
**Recital 22 b (new)**

*Council common position*

*Amendment*

***(22b) Internet users are entitled to an Internet connection to send and receive content of their own choice, use services and applications of their own choice, and connect hardware and use software of their own choice that does not harm the network. Internet users are entitled to a connection free from discrimination based on type of application, service or content, or based on sender or receiver address.***

Or. en

*Justification*

*Self explanatory. RoP 62 b) and c) apply.*

**Amendment 112**  
**Malcolm Harbour**

**Council common position – amending act**  
**Recital 24**

*Council common position*

*Amendment*

(24) The availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets where several providers offer services. End-users and consumers of electronic communications services should be able to easily compare the prices of various services offered on the market based on information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should be able to require from undertakings providing

(24) The availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets where several providers offer services. End-users and consumers of electronic communications services should be able to easily compare the prices of various services offered on the market based on information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should be able to require from undertakings providing

electronic communications networks and/or services greater transparency as regards information (including tariffs, consumption patterns and other relevant statistics) and to ensure that third parties have the right to use, without charge, publicly available information published by such undertakings. National regulatory authorities should also be able to make price guides available, in particular where the market has not provided them free of charge or at a reasonable price. Undertakings should not be entitled to any remuneration for the use of information where it has already been published and thus belongs in the public domain. In addition, end-users and consumers should be adequately informed of the price and the type of service offered before they purchase a service, in particular if a freephone number is subject to additional charges. National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, immediately prior to connecting the call, unless otherwise provided for by national law. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services. Without prejudice to Directive 2000/31/EC (Directive on electronic commerce), undertakings should also, if required by Member States, provide subscribers with public interest information produced by the relevant public authorities regarding, inter alia, the most common infringements and their legal consequences.

electronic communications networks and/or services greater transparency as regards information (including tariffs, consumption patterns and other relevant statistics) and to ensure that third parties have the right to use, without charge, publicly available information published by such undertakings. National regulatory authorities should also be able to make price guides available, in particular where the market has not provided them free of charge or at a reasonable price. Undertakings should not be entitled to any remuneration for the use of information where it has already been published and thus belongs in the public domain. In addition, end-users and consumers should be adequately informed of the price and the type of service offered before they purchase a service, in particular if a freephone number is subject to additional charges. National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, immediately prior to connecting the call, unless otherwise provided for by national law. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services. Without prejudice to Directive 2000/31/EC (Directive on electronic commerce), undertakings should also, if required by Member States, provide subscribers with public interest information produced by the relevant public authorities regarding, inter alia, the most common infringements and their legal consequences. ***Dissemination of such information should however not create an excessive burden on undertakings and should therefore be subject to agreement on reimbursement of significant additional costs by the public***

*authorities in the event that those authorities require recourse to means of communications other than those used by the undertakings in their ordinary course of business for their communications with subscribers.*

Or. en

**Amendment 113**  
**Eva-Britt Svensson**

**Council common position – amending act**  
**Recital 24**

*Council common position*

(24) The availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets where several providers offer services. End-users and consumers of electronic communications services should be able to easily compare the prices of various services offered on the market based on information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should be able to require from undertakings providing electronic communications networks and/or services greater transparency as regards information (including tariffs, consumption patterns and other relevant statistics) and to ensure that third parties have the right to use, without charge, **publicly available information published by such undertakings**. National regulatory authorities should also be able to make price guides available, in particular where the market has not provided them free of charge or at a reasonable price. Undertakings should not be entitled to any remuneration for the use of information where it has already been published and thus belongs in the public domain. In

*Amendment*

(24) The availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets where several providers offer services. End-users and consumers of electronic communications services should be able to easily compare the prices of various services **and their traffic management policies** offered on the market based on information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should be able to require from undertakings providing electronic communications networks and/or services greater transparency as regards information (including tariffs, consumption patterns, and other relevant statistics) and to ensure that third parties have the right to use **publicly available information published by such undertakings**, without charge. National regulatory authorities should also be able to make price guides available, in particular where the market has not provided them free of charge or at a reasonable price. Undertakings should not be entitled to any remuneration for the use of information where it has already been

addition, end-users and consumers should be adequately informed of the price and the type of service offered before they purchase a service, in particular if a freephone number is subject to additional charges. National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, immediately prior to connecting the call, unless otherwise provided for by national law. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services. Without prejudice to Directive 2000/31/EC (Directive on electronic commerce), undertakings should also, if required by Member States, provide subscribers with public interest information produced by the relevant public authorities regarding, inter alia, the most common infringements and their legal consequences.

published and thus belongs in the public domain. In addition, end-users and consumers should be adequately informed of the price and the type of service offered before they purchase a service, in particular if a freephone number is subject to additional charges. National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, immediately prior to connecting the call, unless it is otherwise provided for by national law. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services. Without prejudice to Directive 2000/31/EC (Directive on electronic commerce), undertakings should also, if required by Member States, provide to subscribers with public interest information produced by the relevant public authorities regarding, inter alia, the most common infringements and their legal consequences. ***Significant additional costs incurred by undertakings for dissemination of such information should be agreed between the undertakings and the relevant authorities and met by those authorities.***

Or. en

**Amendment 114**  
**Eva-Britt Svensson**

**Council common position – amending act**  
**Recital 24 a (new)**

*Council common position*

*Amendment*

***(24a) Transparency measures are most effective where disclosure is made both to***

***users and to regulatory authorities, including the National Regulatory Authorities and where necessary, to the BERT/GERT. Member States should ensure therefore that National Regulatory Authorities, the Commission and BERT/GERT may require disclosure of traffic management policies and take appropriate measures in cases where operators fail to disclose their traffic management policies or where the traffic management policy does not respect the rights of users to access the content, applications and services of their choice. Disclosure to regulators should include the traffic management equipment installed by the operator, when it was first commissioned, where in the network it is deployed, how it is configured, when and under what circumstances it is used, and the criteria for restrictions or limitations on usage by end-users including the thresholds that will trigger limits on users' access. It should, where necessary, disclose specific actions included in the traffic management policy.***

Or. en

#### *Justification*

*The Electronic Communications Framework requires safeguards to be in place to ensure that users can freely access and use the content, services and applications of their choice, at the same time as allowing operators the necessary flexibility to address congestion during peak periods through network management practices that are non-discriminatory. Regulators should be able to look at whether traffic management policies are intended to support a commercial interest, in order to assess whether abusive behaviour is taking place and take appropriate action (RoP 62 b) and c) apply).*

**Amendment 115**  
**Eva-Britt Svensson**

**Council common position – amending act**  
**Recital 26**

*Council common position*

(26) A competitive market should ensure that users enjoy 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 networks.

*Amendment*

(26) A competitive market should ensure that users enjoy 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 networks.

***Prioritisation or limitation of traffic must be able to be justified by a valid technical reason, such as temporary short-term remedies put in place so as to smooth traffic in cases of acute network congestion or in response to malicious activity threatening network security or end-user security, and must not result in the user not being able to access content, services and applications. A minimum quality of service should ensure that users are able to access all content, services and applications of their choice without being hindered, limited or blocked by the traffic management policies of the network operator. Since inconsistent remedies will significantly impair the achievement of the internal market, the Commission should assess any requirements set by national regulatory authorities for possible regulatory intervention across the Community and, if necessary, adopt technical implementing measures in order to achieve consistent application throughout the Community.***

Or. en

*Justification*

*Traffic management systems bring in a range of new functionality for telecoms and Internet networks, including content filtering and preferential or discriminatory delivery of content. Regulators should be able to act using more than one regulatory tool, especially to protect the*

*interests of citizens.*

**Amendment 116**  
**Jacques Toubon**

**Council common position – amending act**  
**Recital 26**

*Council common position*

(26) A competitive market should ensure that users enjoy 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 networks**.

*Amendment*

(26) A competitive market should also ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to **address unjustified** degradation of service, **usage limitations** and slowing of traffic.

Or. en

*Justification*

*The current EU legal framework and the new rules on transparency proposed in this Directive in principle already provide for sufficient safeguards to ensure the ability of end-users to access content and applications of their choice. In particular, a competitive market for retail broadband access - where necessary ensured by wholesale ex-ante access obligations under Directive 2002/19/EC - and transparency requirements regarding restrictions of quality of service under this Directive will penalise any undue restrictions of users' ability to access the content of their choice. If NRAs are nevertheless given the power to intervene in quality of services, it should be clarified that this can be done only to address observed harmful practices that are not justified by legitimate interests of network management.*

**Amendment 117**  
**Erika Mann, Edit Herczog**

**Council common position – amending act**  
**Recital 26 a (new)**

*Council common position*

*Amendment*

**(26a) Directive 2002/22/EC is without prejudice to reasonable network management by providers, for example to address congestion and capacity**

*constraints, to ensure the security of the network and of users and to enable reliable performance of individual services. These practices should not hinder the competitive development of the information society and should respect the requirements set out in articles 20 and 21 of Directive 2002/22/EC.*

Or. en

#### *Justification*

*To provide more legal certainty, appropriate and future-proof guidance on the provisions of Directive 2002/22 regarding quality of service requirements and network management should be put in place. The Recital underlines that network management should not distort competition and that operators have to comply with the newly introduced requirements regarding transparency towards end-users on any restrictions of access to services and applications. At the same time, the framework should not restrict network management per se – any exhaustive list of what network management can achieve will be incomplete and thereby limit future innovation. A key objective of network management will be to ensure quality of service for new services (e.g. distant health applications).*

#### **Amendment 118**

**Zita Pleštinská, Andreas Schwab**

#### **Council common position – amending act Recital 26 a (new)**

*Council common position*

*Amendment*

*(26a) Directive 2002/22/EC is without prejudice to reasonable network management by providers for example to address congestion, capacity constraints, to ensure the security of the network and of the users and to enable reliable performance of individual services, as long as this does not hinder the competitive development of the information society. Due account should be taken of the right of network and service operators to diversify their offers to consumers in a competitive environment, while respecting the requirements set out in articles 20 and 21 of Directive 2002/22/EC.*

*Justification*

*To provide more legal certainty, appropriate and future-proof guidance on the provisions of Directive 2002/22 regarding quality of service requirements and network management should be put in place. The Recital underlines that network management should not distort competition and that operators have to comply with the newly introduced requirements regarding transparency towards end-users on any restrictions of access to services and applications. At the same time, the framework should not restrict network management per se – any exhaustive list of what network management can achieve will be incomplete and thereby limit future innovation.*

**Amendment 119****Bernadette Vergnaud****Council common position – amending act  
Recital 30***Council common position*

(30) Directory enquiry services should be, and frequently are, provided under competitive market conditions, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services. **Measures concerning the inclusion of end-user data (held by undertakings that assign telephone numbers to subscribers)** in databases should comply with the safeguards for the protection of personal data, including Article 12 of Directive 2002/58/EC (**Directive on privacy and electronic communications**). The cost-oriented supply of that data **for the purposes of publicly available directory and directory enquiry services** should be in place in order to ensure that end-users benefit fully from reasonable and transparent competitive conditions.

*Amendment*

(30) Directory enquiry services should be, and frequently are, provided in competition, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services. **Wholesale measures ensuring** the inclusion of end-user data (**both fixed and mobile**) in databases should comply with the safeguards for the protection of personal data, including Article 12 of Directive 2002/58/EC. The cost-oriented supply of that data **to service providers, with the possibility for Member States to establish a centralised mechanism for providing comprehensive aggregated information to directory providers, and the provision of network access in reasonable and transparent conditions**, should be in place in order to ensure that end users benefit fully from **competition, with the ultimate aim of enabling the removal of retail regulation from these services and the provision of offers of directory services under** reasonable and transparent

conditions.

Or. en

## Amendment 120

Bernadette Vergnaud, Cristian Silviu Buşoi, Heide Rühle

### Council common position – amending act

#### Recital 32

##### *Council common position*

(32) Member States should ensure that undertakings providing end-users with an electronic communications service designed for originating calls through a number or numbers in a national telephone numbering plan provide access to emergency services ***with such accuracy and reliability as is technically feasible for that electronic communications service***. Network-independent service providers may not have control over networks and may not be able to ensure that emergency calls made through their service are routed with the same reliability as traditional integrated telephone service providers, as they may not be able to guarantee service availability, given that problems related to infrastructure are not under ***their*** control. Once internationally-recognised standards ensuring accurate and reliable routing and connection to the emergency services are in place, network-independent service providers should also fulfil the obligations related to access to emergency services at a level comparable to that required of other undertakings.

##### *Amendment*

(32) Member States should ensure that undertakings providing end users with an electronic communications service for originating calls through a number or numbers in a national telephone numbering plan provide ***reliable and accurate*** access to emergency services, ***taking into account possible lack of access in areas not covered by mobile networks***. Network-independent undertakings may not have control over networks and may not be able to ensure that the emergency calls made through their service are routed with the same reliability as traditional integrated telephone service providers, as they may not be able to guarantee service availability, given that problems related to the infrastructure are not under ***the direct control of these undertakings***. Once internationally-recognized standards ensuring accurate, reliable routing and connection to the emergency services are in place, all network-independent service providers should also fulfil the obligations related to access to emergency services at a level comparable to that required of other undertakings.

Or. en

**Amendment 121**  
**Bernadette Vergnaud, Heide Rühle**

**Council common position – amending act**  
**Recital 38**

*Council common position*

(38) Legal ‘must-carry’ obligations may be applied to specified radio and **television broadcast channels** and complementary services supplied by a specified media service provider. Member States should provide a clear justification for the ‘must carry’ obligations **in their national law** so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, ‘must carry’ rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. ‘Must carry’ rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution and in order to ensure that they continue to be proportionate to the objectives to be achieved. Complementary services include, but are not limited to, services designed to improve accessibility for end-users with disabilities, such as videotext, subtitling, audio description and sign language.

*Amendment*

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

Or. en

## Amendment 122

Bernadette Vergnaud, Cristian Silviu Buşoi, Heide Rühle

### Council common position – amending act

#### Article 1 – point 1

Directive 2002/22/EC

Article 1 – paragraph 1

#### *Council common position*

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. The Directive also includes provisions concerning *certain aspects of terminal equipment intended to facilitate access for disabled end-users.*

#### *Amendment*

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

Or. en

## Amendment 123

Bernadette Vergnaud, Heide Rühle

### Council common position – amending act

#### Article 1 – point 2 – point (b)

Directive 2002/22/EC

Article 2 – point (c)

#### *Council common position*

(c) ‘publicly available telephone service’ means a service made available to the public for originating *and* receiving, directly or indirectly, national *or national and* international calls through a number or numbers in a national or international telephone numbering plan;

#### *Amendment*

(c) ‘publicly available telephone service’ means a service available to the public for originating *and/or* receiving, directly or indirectly, national *and/or* international calls *and other means of communication specifically intended for disabled users using text relay or total conversation*

*services* through a number or numbers in a national or international telephone numbering plan;

Or. en

**Amendment 124**  
**Malcolm Harbour**

**Council common position – amending act**

**Article 1 – point 2 – point (c)**

Directive 2002/22/EC

Article 2 – point (e)

*Council common position*

point (e) shall be *deleted*;

*Amendment*

point (e) shall be *replaced by the following*:

*‘(e) “traffic management policies” means the procedures put in place by the provider of a public electronic communications service or network in order to measure and control traffic on a network link so as to avoid filling the link to capacity or overfilling the link, which might result in network congestion and poor performance.’;*

Or. en

**Amendment 125**  
**Eva-Britt Svensson**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 20 – paragraph 1 – point (b)

*Council common position*

(b) the services provided, including in particular,  
- information on the *provider’s* traffic management policies,

*Amendment*

(b) the services provided, including in particular:  
– information on the traffic management policies *operated by the undertaking such that the subscriber is able to make an*

*informed decision as to whether to purchase the service, and/or, where necessary, adjust their behaviour, deactivate the service, alter the service criteria or switch networks. Operators shall, where necessary, disclose specific actions included in the traffic management policy,*

*– whether or not access to emergency services and caller location information are being provided and/or any limitations for provision of emergency services under Article 26,*

- the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,
- the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,
- any restrictions imposed by the provider on the use of terminal equipment supplied;

- the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,
- the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,
- any restrictions imposed by the provider on the use of terminal equipment supplied;

Or. en

## **Amendment 126** **Jacques Toubon**

### **Council common position – amending act**

#### **Article 1 – point 13**

Directive 2002/22/EC

Article 20 – paragraph 1 – point (b) – indent 1

#### *Council common position*

- information on *the provider's traffic management policies*,

#### *Amendment*

- information on *any relevant limitations imposed by the undertaking, in accordance with national law, on a subscriber's ability to access, use or distribute information or run applications or services*,

Or. en

## Justification

*What is relevant for the functioning of the retail market is transparent information on the nature of the retail service in terms of restrictions of access to content and applications. The Council proposition to provide information about changes to the ‘traffic management policies’ of operators is not meeting the actual information requirement of customers and as such is both too broad and not helpful and not relevant for end-users.*

### **Amendment 127**

**Bernadette Vergnaud, Heide Rühle**

#### **Council common position – amending act**

##### **Article 1 – point 13**

Directive 2002/22/EC

Article 20 – paragraph 1 – point (b)

#### *Council common position*

(b) the services provided, including in particular,

- information on *the provider’s traffic management policies*,

- the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,

- the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,

- any restrictions imposed by the provider

#### *Amendment*

(b) the services provided, including in particular,

***- whether or not reliable and accurate access to emergency services and caller location information is being provided and/or any limitations for provision of emergency services under Article 26 and/or the possible lack of access in areas not covered by mobile networks,***

***- information on any limitations regarding access to and/or use of services and applications, including information on any traffic management policies which are essential to prevent degradation of service or slowing of traffic over networks and on how these may impact on the delivery of the service,***

- the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,

- the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,

- any restrictions imposed by the provider

on the use of terminal equipment supplied;

on the use of terminal equipment supplied;

Or. en

**Amendment 128**  
**Malcolm Harbour**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 20 – paragraph 1 – point (b)

*Council common position*

b) the services provided, including in particular,

– information on *the provider's traffic management policies*,

- the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,

- the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,

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

*Amendment*

(b) the services provided, including in particular

***- whether or not access to emergency services and caller location information is being provided and/or any limitations for provision of emergency services under Article 26,***

***- information on any other limitations regarding access to and/or use of services and applications, where allowed under national law,***

- the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,

***- information on any traffic management policies and on how these may impact on service quality,***

- the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,

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

Or. en

**Amendment 129**  
**Eva-Britt Svensson**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 21 – paragraph 1

*Council common position*

1. Member States shall ensure that ***national regulatory authorities are able to oblige*** undertakings providing electronic communications ***networks*** and/or services ***to*** publish transparent, comparable, adequate and up-to-date information, ***as set out in Annex II***, on applicable prices and tariffs and standard terms and conditions in respect of access to, and use of, services provided by them to end-users and consumers. National regulatory authorities may specify additional requirements regarding the form in which such information is published ***to ensure transparency, comparability, clarity and accessibility for the benefit of consumers.***

*Amendment*

1. Member States shall ensure that undertakings providing ***connection to a public*** electronic communications ***network*** and/or ***electronic communications*** services publish transparent, comparable and up-to-date information on ***traffic management policies***, applicable prices and tariffs ***and any charges due on termination of a contract*** and ***information on*** standard terms and conditions in respect of access to, and use of, services provided by them to end-users and consumers ***in accordance with Annex II. Such information shall be published in a clear, comprehensive and easily accessible form and should include when and under what circumstances traffic management policies are implemented, and the criteria and rules implemented by the operator for managing traffic, including the thresholds that will trigger changes in the users' experience of the services.*** National regulatory authorities may specify additional requirements regarding the form in which such information is ***to be*** published.

Or. en

*Justification*

*To clarify the concept of transparency and establish a common understanding of what it might mean in the context of the new telecommunications environment and the implementation by network operators of 'traffic management systems' as defined in Recital 22a (new).*

**Amendment 130**  
**Malcolm Harbour**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 21 – paragraph 3

*Council common position*

3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services to inter alia:

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;

(b) inform subscribers of any change to *the provider's traffic management policies*;

(c) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(d) regularly inform disabled subscribers of details of products and services designed for them.

If deemed appropriate, national regulatory

*Amendment*

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

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;

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

(b) inform subscribers of any change to ***limitations regarding access to and/or use of services and applications, where allowed under national law;***

***(ba) provide information on any traffic management policies and on how these may impact on service quality;***

(c) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(d) regularly inform disabled subscribers of details of products and services designed for them.

If deemed appropriate, national regulatory

authorities may promote self- or co-regulatory measures prior to imposing any obligation.

authorities may promote self- or co-regulatory measures prior to imposing any obligation.

Or. en

**Amendment 131**  
**Eva-Britt Svensson**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 21 – paragraph 3

*Council common position*

3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services to inter alia:

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;

(b) inform subscribers of any change *to the provider's traffic management policies*;

*Amendment*

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

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;

(b) inform subscribers of *the provider's traffic management policies, and any change thereto, so that subscribers are able to make an informed decision as to whether to purchase the service, and/or, where necessary, adjust their behaviour, deactivate the service, alter the service criteria or switch networks. Operators shall, where necessary, disclose specific actions included in the traffic management policy*;

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

(c) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(d) regularly inform disabled subscribers of details of products and services designed for them.

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

(c) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(d) regularly inform disabled subscribers of details of products and services designed for them.

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

Or. en

### *Justification*

*Telecommunications framework law concerns the regulation of network operators and providers of electronic communications services, and not the regulation of user behaviour. This directive concerns the rights of users and citizens in respect of the purchase of services from such operators. The regulators task is to ensure the accountability of the operators.*

## **Amendment 132** **Jacques Toubon**

### **Council common position – amending act**

#### **Article 1 – point 13**

Directive 2002/22/EC

Article 21 – paragraph 3

#### *Council common position*

3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services to inter alia:

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to

#### *Amendment*

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

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to

be provided immediately prior to connecting the call;

(b) inform subscribers of any change to *the provider's traffic management policies*;

(c) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(d) regularly inform disabled subscribers of details of products and services designed for them.

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

be provided immediately prior to connecting the call;

(b) inform subscribers of any change to *any relevant limitations imposed by the undertaking, in accordance with national law, on a subscriber's ability to access, use or distribute information or run applications or services*;

(c) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(d) regularly inform disabled subscribers of details of products and services designed for them.

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

Or. en

#### *Justification*

*What is relevant for the functioning of the retail market is transparent information on the nature of the retail service in terms of restrictions of access to content and applications. The Council proposition to provide information about changes to the 'traffic management policies' of operators is not meeting the actual information requirement of customers and as such is both too broad and not helpful and not relevant for end-users.*

#### **Amendment 133**

**Bernadette Vergnaud, Cristian Silviu Buşoi, Heide Rühle**

#### **Council common position – amending act**

##### **Article 1 – point 13**

Directive 2002/22/EC

Article 21 – paragraph 3

#### *Council common position*

3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic

#### *Amendment*

3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing *connection to a*

communications services to inter alia:

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;

(b) inform subscribers of any change to the provider's traffic management policies;

(c) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(d) regularly inform disabled subscribers of details of products and services designed for them.

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

***public electronic communications network and/or*** electronic communications services to inter alia:

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;

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

(b) inform subscribers of any ***relevant*** change to the provider's traffic management policies ***and subsequent possible limitations of access to applications or services;***

(c) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(d) regularly inform disabled subscribers of details of products and services designed for them.

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

Or. en

## **Amendment 134 Malcolm Harbour**

### **Council common position – amending act**

#### **Article 1 – point 13**

Directive 2002/22/EC

Article 21 – paragraph 4 – introductory wording

*Council common position*

4. Member States may require that undertakings referred to in paragraph 3 distribute public interest information **free of charge** to existing and new subscribers, where appropriate. In such a case, that information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:

*Amendment*

4. Member States may require that undertakings referred to in paragraph 3 distribute public interest information to existing and new subscribers, where appropriate, **through the same means as those ordinarily used by the undertakings for their communications with subscribers and free of charge**. In such a case, that information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:

Or. en

**Amendment 135**  
**Eva-Britt Svensson**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 22 – paragraph 1

*Council common position*

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 and measures taken to ensure comparable access for disabled end-users. That information shall, on request, be supplied to the national regulatory authority in advance of its publication.

*Amendment*

1. Member States shall ensure that national regulatory authorities are, after taking account of the views of interested parties, able to require undertakings that provide publicly available electronic communications networks and/or services to publish **equivalent**, adequate and up-to-date information for end-users on the quality of their services and measures taken to ensure comparable access for disabled end-users **and to disclose traffic management policies**. That information shall, on request, be supplied to the national regulatory authority in advance of its publication. **Member States shall ensure that national regulatory authorities are able to take appropriate measures in cases where operators fail to disclose their traffic management policies or where the traffic management policy**

*does not respect the rights of users to access the content, applications and services of their choice. National regulatory authorities shall additionally ensure that there is a facility in place by which users can monitor and identify any problems created by traffic management policies in cases where disputes may arise.*

Or. en

*Justification*

*The Electronic Communications Framework requires safeguards to be in place to ensure that users can freely access and use the content, services and applications of their choice, at the same time as allowing operators the necessary flexibility to address congestion during peak periods through network management practices that are non-discriminatory. Regulators should be able to look at whether traffic management policies are intended to support a commercial interest, in order to assess whether abusive behaviour is taking place, and take appropriate action.*

**Amendment 136**

**Erika Mann, Edit Herczog**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 22 – paragraph 3

*Council common position*

3. In order to **prevent the** degradation of service and **the** hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

*Amendment*

3. In order to **address unjustified** degradation of service and hindering or slowing of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

Or. en

*Justification*

*The current EU legal framework and the new rules on transparency proposed in this Directive in principle already provide for sufficient safeguards to ensure the ability of end-users to access content and applications of their choice. In particular, a competitive market*

*for retail broadband access - where necessary ensured by wholesale ex-ante access obligations under Directive 2002/19/EC - and transparency requirements regarding restrictions of quality of service under this Directive will penalise any undue restrictions of users' ability to access the content of their choice. If NRAs are nevertheless given the power to intervene in QoS, it should be clarified that this can be done only to address observed harmful practices that are not justified by legitimate interests of network management.*

#### **Amendment 137**

**Zita Pleštinská, Andreas Schwab**

#### **Council common position – amending act**

##### **Article 1 – point 13**

Directive 2002/22/EC

Article 22 – paragraph 3

#### *Council common position*

3. In order to **prevent the** degradation of service and **the** hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

#### *Amendment*

3. In order to **address unjustified** degradation of service and hindering or slowing of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

Or. en

#### *Justification*

*The current EU legal framework and the new rules on transparency proposed in this Directive in principle already provide for sufficient safeguards to ensure the ability of end-users to access content and applications of their choice in a competitive market for retail broadband access services. The amendment clarifies that if NRAs are given the power to intervene in quality of service, they should only address actual harmful practices that are not justified by legitimate interests of network management to not unduly limit innovation in the network.*

#### **Amendment 138**

**Syed Kamall**

#### **Council common position – amending act**

##### **Article 1 – point 13**

Directive 2002/22/EC

Article 22 – paragraph 3

*Council common position*

3. In order to **prevent the** degradation of service and **the** hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

*Amendment*

3. In order to **address unjustified** degradation of service and hindering or slowing of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

Or. en

*Justification*

*The current EU legal framework and the new rules on transparency proposed in this Directive in principle already provide for sufficient safeguards to ensure the ability of end-users to access content and applications of their choice. In particular, a competitive market for retail broadband access - where necessary ensured by wholesale ex-ante access obligations under Directive 2002/19/EC - and transparency requirements regarding restrictions of quality of service under this Directive will penalise any undue restrictions of users' ability to access the content of their choice. If NRAs are nevertheless given the power to intervene in QoS, it should be clarified that this can be done only to address observed harmful practices that are not justified by legitimate interests of network management.*

**Amendment 139**

**Bernadette Vergnaud, Cristian Silviu Buşoi, Heide Rühle**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 22 – paragraph 3 a (new)

*Council common position*

*Amendment*

***3a. To ensure quality of services, operators may use traffic management policies, namely the procedures put in place by the provider in order to measure and control traffic on a network link so as to avoid filling the link to capacity or overfilling the link, which would result in network congestion and poor performance.***

Or. en

**Amendment 140**  
**Cristian Silviu Buşoi**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 22 – paragraph 3 b (new)

*Council common position*

*Amendment*

***3b. These policies are deemed appropriate and reasonable as long as it can be proved that they are not anti-competitive and do not hinder the competitive development of the information society.***

Or. en

*Justification*

*This addition to the article brings some clarifications on what type of procedures are to be considered as appropriate traffic management policies. It provides an important safeguard that traffic management policies are not underpinned by hidden commercial purposes of the network operators and do not constitute anti-competitive behaviour. This way, the development of the information society in a competitive environment is encouraged.*

**Amendment 141**  
**Bernadette Vergnaud, Heide Rühle**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 22 – paragraph 3 b (new)

*Council common position*

*Amendment*

***3b. Traffic management policies are deemed appropriate and reasonable as long as it can be proved that they are not anti-competitive or do not give preferential treatment to the services or applications of the network operators or their commercial partners over the services and applications of other providers.***

**Amendment 142**

**Heide Rühle**

**Council common position – amending act**

**Article 1 – point 13**

Directive 2002/22/EC

Article 22 – paragraph 3 c (new)

*Council common position*

*Amendment*

***3c. The minimum quality of services requirements may oblige operators to use traffic management policies, namely the procedures put in place by the provider in order to measure and control traffic on a network link so as to avoid filling the link to capacity or overfilling the link, which would result in network congestion and poor performance.***

Or. en

**Amendment 143**

**Bernadette Vergnaud**

**Council common position – amending act**

**Article 1 – point 15 – point c**

Directive 2002/22/EC

Article 25 – paragraph 3

*Council common position*

*Amendment*

3. Member States shall ensure that all end-users provided with a publicly available telephone service can access directory enquiry services. ***National regulatory authorities shall be able to impose obligations and conditions on undertakings that control access of end-users for the provision of directory enquiry services in accordance with the provisions of Article 5 of Directive 2002/19/EC (Access Directive). Such obligations and conditions shall be***

3. Member States shall ensure that all end-users provided with a publicly available telephone service can access directory enquiry services ***and that operators controlling access to such services provide it on terms which are fair, reasonable, objective, non-discriminatory and transparent.***

objective, *proportionate*,  
non-discriminatory and transparent.

Or. en

#### **Amendment 144**

**Bernadette Vergnaud, Cristian Silviu Buşoi, Heide Rühle**

#### **Council common position – amending act**

##### **Article 1 – point 16**

Directive 2002/22/EC

Article 26 – paragraph 5

#### *Council common position*

5. Member States shall ensure that, *to the extent technically feasible*, undertakings concerned make caller location information available free of charge to the authority handling emergency calls as soon as the call reaches that authority. This applies to all calls to the single European emergency call number ‘112’. Member States may extend this obligation to cover calls to national emergency numbers. *Where undertakings referred to in paragraph 2 wish to claim that providing caller location information is not technically feasible, they shall bear the burden of proving this.*

#### *Amendment*

5. Member States shall ensure that undertakings concerned make caller location information available free of charge to the authority handling emergency calls as soon as the call reaches that authority. This applies to all calls to the single European emergency call number ‘112’. Member States may extend this obligation to cover calls to national emergency numbers.

Or. en

#### **Amendment 145**

**Bernadette Vergnaud, Heide Rühle**

#### **Council common position – amending act**

##### **Article 1 – point 21**

Directive 2002/22/EC

Article 31 – paragraph 1 – subparagraph 1

#### *Council common position*

1. Member States may impose reasonable ‘must carry’ obligations, for the

#### *Amendment*

1. Member States may impose reasonable ‘must carry’ obligations, for the

transmission of specified radio and **television broadcast channels** and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **television broadcast channels** to the public where a significant number of end-users of such networks use them as their principal means to receive radio and **television broadcast channels**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.

transmission of specified radio and **audiovisual media services** and complementary services, particularly accessibility services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **audiovisual media services** to the public where a significant number of end-users of such networks use them as their principal means to receive radio and **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.

Or. en

**Amendment 146**  
**Heide Rühle**

**Council common position – amending act**  
**Article 1 – point 21 a (new)**  
Directive 2002/22/EC  
Article 32 a (new)

*Council common position*

*Amendment*

***(21a) the following Article shall be inserted:***

***‘Article 32a***

***Access to content, services and applications***

***Member States shall ensure that any restrictions to users’ rights to access content, services and applications, if they are necessary, shall be implemented by appropriate measures, in accordance with the principles of proportionality, effectiveness and dissuasiveness. These measures shall not have the effect of hindering the development of the information society, in compliance with***

*Directive 2000/31/EC, and shall not conflict with citizens' fundamental rights, including the right to privacy and the right to due process.'*

Or. en

*Justification*

*Takes up Parliament's 1st reading; promotes fundamental principles and rights which should also be respected when it comes to electronic communications.*

**Amendment 147**  
**Jacques Toubon**

**Council common position – amending act**  
**Article 1 – point 21 a (new)**  
Directive 2002/22/EC  
Article 32 a (new)

*Council common position*

*Amendment*

*(21a) the following Article shall be inserted:*

*'Article 32a*

*Member States shall ensure that any restrictions on the rights of users to access content, services and applications, if such restrictions are necessary, are implemented by appropriate measures, in accordance with the principles of proportionality, effectiveness and dissuasiveness. The measures shall be aimed at enhancing the development of the information society, in compliance with the EC legal order, and shall fully respect the fundamental rights protected by the Community legal order, including the right to privacy, the right to property, the right to due process and the right to an effective remedy.'*

Or. en

**Amendment 148**  
**Eva-Britt Svensson**

**Council common position – amending act**

**Article 1 – point 22 – point b**

Directive 2002/22/EC

Article 33 – paragraph 3

*Council common position*

3. Without prejudice to national rules in conformity with Community law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, national regulatory authorities and other relevant authorities may promote cooperation between undertakings providing electronic communications networks and/or services and sectors interested in the promotion of **lawful** content in electronic communication networks and services. That cooperation may also include coordination of the public interest information to be provided pursuant to Article 21(4)(a) and Article 20(1).

*Amendment*

3. Without prejudice to national rules in conformity with Community law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, national regulatory authorities and other relevant authorities may promote cooperation between undertakings providing electronic communications networks and/or services and sectors interested in the promotion of content in electronic communication networks and services. That cooperation may also include coordination of the public interest information to be provided pursuant to Article 21(4)(a) and Article 20(1).

Or. en

*Justification*

*The term ‘lawful content’ implies a judgement whether copyright is breached or not. Such judgement lies outside the scope of the telecoms regulation since it is not about copyright enforcement at all. ‘Promotion of content’ on the other hand is a generic term which allows libraries, user generated content advocates, civil society and traditional copyright holders to find common interests in the development of the information society in the cooperation envisaged in this amendment.*

**Amendment 149**  
**Malcolm Harbour**

**Council common position – amending act**

**Article 2 – point 4 – point b**

Directive 2002/58/EC

Article 4 – paragraph 4

*Council common position*

4. **Member States shall ensure that** the competent national **authority is able to set detailed rules** and, where necessary, issue instructions concerning the circumstances in which notification of personal data breaches **by providers of a publicly available electronic communications service is necessary**, the format **applicable to such notification and the manner in which the notification is to be made.**

*Amendment*

4. **Subject to any technical implementing measures adopted under paragraph 4**, the competent national **authorities may adopt guidelines** and, where necessary, issue instructions concerning the circumstances in which notification **by providers** of personal data breaches **is required and** the format **of and procedures for** such notification. **They shall also monitor whether providers have complied with their notification obligations under this paragraph and impose appropriate sanctions in the event of a failure to do so.**

**Providers shall maintain an inventory of personal data breaches, comprising the facts surrounding such breaches, their effects and the remedial action taken, sufficient for the purpose of enabling the competent national authorities to verify compliance with the provisions of paragraph 3. The inventory shall only include the information necessary for this purpose.**

Or. en

**Amendment 150**  
**Eva-Britt Svensson**

**Council common position – amending act**  
**Article 2 – point 6 – point c**  
Directive 2002/58/EC  
Article 6 – paragraph 7

*Council common position*

7. Traffic data may be **processed** to the extent strictly necessary to ensure network and information security, as defined by Article 4(c) of Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and

*Amendment*

7. Traffic data may be **collected, stored and used in specific cases** to the extent strictly necessary to ensure network and information security, as defined by Article 4(c) of Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information

Information Security Agency.

Security Agency. ***Traffic data stored pursuant to this paragraph must not be used for any other purpose and must be erased or made anonymous no later than seven days after its collection.***

Or. en

*Justification*

*The term ‘processing’ covers ‘disclosure by transmission, dissemination and otherwise making available’ of traffic data (see article 2(b) of Directive 95/46/EC) and is too broad to meet the requirements of precision of law necessary to uphold the right to privacy (ART 8 ECHR) and the principle of proportionality. This amendment is following recommendations of the European Data Protection Supervisor (EDPS).*

**Amendment 151**  
**Malcolm Harbour**

**Council common position – amending act**  
**Article 2 – point 7 a (new)**  
Directive 2002/58/EC  
Article 15 – paragraph 1 b (new)

*Council common position*

*Amendment*

***(7a) in Article 15, the following paragraph shall be inserted:***

***‘1b. Providers shall establish internal procedures for responding to requests for access to users’ personal data based on national provisions adopted pursuant to paragraph 1. They shall provide the competent national authority, on demand, with information on those procedures, the number of requests received, the legal justification invoked and the response by the provider.’***

Or. en

**Amendment 152**  
**Malcolm Harbour**

**Council common position – amending act**  
**Annex I – Part A – point e b (new)**

*Council common position*

*Amendment*

***(eb) Best advice***

***i.e. the facility whereby an undertaking at least once a year clearly communicates to subscribers who have requested the facility and consented to the undertaking retaining the data necessary to provide it, alternative lower-cost tariffs, if available, on the basis of usage patterns for the previous twelve months.***

Or. en