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*Committee on Culture and Education*

**2007/0248(COD)**

14.4.2008

## **DRAFT OPINION**

of the Committee on Culture and Education

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))

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## AMENDMENTS

The Committee on Culture and Education 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 14

##### *Text proposed by the Commission*

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

##### *Amendment*

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

Or. en

##### *Justification*

*As a matter of consistency with the first part of the recital, this addition seems necessary especially in consideration of the subject matter (competition in the market place) which can only address competition among legitimate services, content and applications.*

## Amendment 2

### Proposal for a directive – amending act Recital 28

#### *Text proposed by the Commission*

(28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that **the** fundamental rights of individuals, **in particular the right to privacy and data protection**, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.

#### *Amendment*

(28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that **all the** fundamental rights of individuals **under the Charter of Fundamental Rights of the European Union** are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.

Or. en

#### *Justification*

*It is important to mention the EU Charter of Fundamental Rights in this content.*

### Amendment 3

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### *Justification*

*This amendment incorporates the wording of the recent ECJ ruling in the “Promusicae-Telefónica” case (29 January 2008). This Court decision reaffirms that when implementing this Directive, Member States must make sure that they follow an interpretation which doesn’t conflict with fundamental rights and other general principles of Community law.*

### Amendment 4

#### Proposal for a directive – amending act Recital 31

*Text proposed by the Commission*

*Amendment*

(31) Provision should be made for implementing measures to establish a common set of requirements to achieve an adequate level of privacy protection and security of personal data transmitted or processed in connection with the use of electronic communications networks in the internal market.

(31) Provision should be made for implementing measures to establish a common set of requirements to achieve an adequate level of privacy protection and security of personal data transmitted or processed in connection with the ***lawful*** use of electronic communications networks in the internal market.

Or. en

*Justification*

*The scope of the provision should be limited to lawful uses and therefore not covering unlawful uses of electronic communications.*

**Amendment 5**

**Proposal for a directive – amending act  
Recital 34**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*The scope of the provision should be limited to lawful actions of the user and therefore not covering unlawful actions of the user.*

**Amendment 6**

**Proposal for a directive – amending act  
Article 1 – point 12  
Directive 2002/22/EC  
Article 20 – paragraph 2 – 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

*Amendment*

(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.

incidents or threats and vulnerabilities, **or to the use of the service to commit unlawful acts.**

Or. en

#### *Justification*

*The article 20.2 intends to set a high standard of information to be provided to the subscriber. In a future environment of enhanced cooperation of undertakings providing connection and/or services for the reduction or prevention of unlawful activities, it is paramount that subscribers be clearly informed of the measures that the former may take in case they engage in these types of activities. Knowing the kind of measures that can be adopted by the undertaking may make the subscriber think twice before engaging in unlawful activities.*

#### **Amendment 7**

##### **Proposal for a directive – amending act**

##### **Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 5

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

#### *Justification*

*Consumers must be informed of any limitations applied regarding the access to or distribution of all content or services, whether lawful or not.*

## Amendment 8

### Proposal for a directive – amending act

#### Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – point a

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

#### *Justification*

*The scope of the provision should be limited to lawful services.*

## Amendment 9

### 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 **unlawful and harmful activity** or misuse.

Or. en

#### *Justification*

*While end-users should have all the right to access and use lawful services provided within the Community, there is no reason why this right should be extended to the access and use of unlawful ones. Also, the ability of national regulatory authorities to block access to services should be justified not only by reasons of misuse, but any unlawful activity, including fraud. This will increase the ability of regulatory authorities to act against all types of current or future unlawful activities.*

## Amendment 10

### Proposal for a directive – amending act

#### Article 2 – point 3 a (new)

Directive 2002/58/EC

Article 5 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***(3a) Article 5(1) of Directive 2002/58/EC shall be replaced by the following:***

***"1. The Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit the listening, tapping, storing or any other kind of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned, except when legally authorised to do so in accordance with Article 15(1) and with the Charter of Fundamental Rights of the European Union. This paragraph shall not prevent technical storage which is necessary for the conveyance of a communication without prejudice to the principle of confidentiality."***

Or. en

#### *Justification*

*The Directive must also be read in light of the Charter of Fundamental Rights of the European Union. This Charter is a point of reference for Courts and authorities. The Treaty of Lisbon refers to the Charter as a real catalogue of rights which the EU and its Member States must respect.*

## Amendment 11

### 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) Article 15(1) of Directive 2002/58/EC shall be replaced by the following:***

***"The 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 in 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 or the protection of the rights and freedom of others, as referred to in Article 13(1) of Directive 95/46/EC. To this end, the Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds specified in this paragraph. All the measures referred to in this paragraph shall comply with the general principles of Community law, including those referred to in Articles 6(1) and (2) of the Treaty on European Union."***

Or. en

#### *Justification*

*The e-privacy Directive completes the 1995 Framework privacy Directive and that Article 15 should also be read in light of Article 13 of the Framework Privacy Directive. The purpose of this amendment is to increase legal certainty as confirmed by the recent ECJ case law (C-275/06).*