

# EUROPEAN PARLIAMENT

2004



2009

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*Committee on the Internal Market and Consumer Protection*

**2007/0248(COD)**

4.3.2009

**\*\*\*II**

## **DRAFT RECOMMENDATION FOR SECOND READING**

on the Council common position for adopting a directive of the European Parliament and of the Council on 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 for the enforcement of consumer protection laws  
(16497/1/2008 – C6-0068/2009 – 2007/0248(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Malcolm Harbour

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the Council common position for adopting a directive of the European Parliament and of the Council on 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 (16497/1/2008 – C6-0068/2009 – 2007/0248(COD))**

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (16497/1/2008 – C6-0068/2009),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2007)0698),
  - having regard to the amended Commission proposal (COM(2008)0723),
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 62 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on the Internal Market and Consumer Protection (A6-0000/2009),
1. Approves the common position as amended;
  2. Instructs its President to forward its position to the Council and Commission.

### **Amendment 1**

**Council common position**  
**Recital 3 a (new)**

*Council common position*

*Amendment*

***(3a) A fundamental requirement of universal service is to provide users on request with a connection to the public communications network at a fixed location and at an affordable price. The requirement is limited to a single network connection, the provision of which may be***

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<sup>1</sup> Texts adopted, 24.9.2008, P6\_TA(2008)0452.

*restricted by Member States to the end-user's primary location/residence. There should be no constraints on the technical means by which the connection is provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations. Connections to the public communications network at a fixed location should be capable of supporting speech and data communications at rates sufficient for access to online services such as those provided via the public internet. The speed of internet access experienced by a given user may depend on a number of factors including the provider(s) of internet connectivity as well as the given application for which a connection is being used. The data rate that can be supported by a connection to the public communications network depends on the capabilities of the subscriber's terminal equipment as well as the connection. For this reason it is not appropriate to mandate a specific data or bit rate at Community level. Currently almost half of Europeans with access to the internet have access speeds above 2 Mbit/s. Broadband is available to 80% of the population in rural areas and use of modems to access the internet has decreased to 10% or less of EU households. Flexibility is required to allow Member States to take measures where necessary to ensure that connections are capable of supporting satisfactory data rates, while allowing Member States, where relevant, to, for example, exploit the capabilities of wireless technologies (including cellular wireless networks) to deliver universal service to a higher proportion of the population. This may be of particular importance in some Member States where household penetration of traditional connections remains relatively low. In specific cases where the connection to the*

*public communications network at a fixed location is clearly insufficient to support satisfactory internet access, Member States should be able to require the connection to be brought up to a sufficient level for such access. Where such specific measures produce a net cost burden for those consumers concerned, the net effect may be included in any net cost calculation of universal service obligations.*

Or. en

*Justification*

*Amends recital 8 of Directive 2002/22/EC*

**Amendment 2**

**Council common position**

**Recital 6**

*Council common position*

(6) Member States should introduce measures to promote the creation of a market for widely available products and services incorporating facilities for disabled end-users. ***One way among others of achieving this is with reference*** to European standards, introducing electronic accessibility (eAccessibility) requirements for public procurement procedures and ***tendering services, in accordance with*** legislation upholding the rights of the disabled end-users.

*Amendment*

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

Or. en

### Amendment 3

#### Council common position Recital 6 a (new)

*Council common position*

*Amendment*

***(6a) Where an undertaking designated, for the purposes of Article 4 of Directive 2002/22/EC (Universal Service Directive), to provide universal service chooses to dispose of a substantial part, viewed in light of its universal service obligation, or all, of its local access network assets in the national territory to a separate legal entity under different ultimate ownership, the national regulatory authority should assess the effects of the transaction in order to ensure the continuity of universal service obligations in all or parts of the national territory. To this end, the national regulatory authority which imposed the universal service obligations should be informed by the undertaking in advance of the disposal. The assessment of the national regulatory authority should not prejudice the completion of the transaction.***

Or. en

### Amendment 4

#### Council common position Recital 6 b (new)

*Council common position*

*Amendment*

***(6b) The provisions of this Directive should apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EEC, 97/7/EC and 2005/29/EC, and national rules in conformity with Community law.***



## Amendment 5

### Council common position

#### 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 applications 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 ***any limitations imposed on the use of electronic communications services by the service and/or network provider. Such information should, at the option of the provider, specify the type of content, application or service concerned, individual applications or services, or both. Depending on the technology used and the type of limitation, such limitations may require user consent under Directive 2002/58/EC.***

## Amendment 6

### Council common position 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 punitive action or criminal prosecution remains with the relevant law enforcement authorities.***

Or. en

## Amendment 7

### Council common position 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 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

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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 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.

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 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 8

### Council common position Recital 24 a (new)

*Council common position*

*Amendment*

***(24a) Member States should introduce single information points for all user queries. These information points, which could be administered by the national regulatory authorities together with consumer associations, should also be able to provide legal assistance in case of disputes with operators. Access to these information points should be free of charge and users should be informed of their existence by regular information campaigns.***

Or. en

## Amendment 9

### Council common position Recital 26

*Council common position*

*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.

(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. ***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

## **Amendment 10**

### **Council common position Recital 27**

#### *Council common position*

(27) In future IP networks, where provision of a service may be separated from provision of the network, Member States should determine the most appropriate steps to be taken to ensure the availability of publicly available telephone services provided using public communications networks and uninterrupted access to emergency services in the event of catastrophic network breakdown or in cases of force majeure, *taking into account the priorities of different types of subscribers and technical limitations.*

#### *Amendment*

(27) In future IP networks where provision of a service may be separated from provision of the network, Member States should determine the most appropriate steps to be taken to ensure the availability of publicly available telephone services provided using public communications networks and uninterrupted access to emergency services in the event of catastrophic network breakdown or in cases of force majeure.

Or. en

## **Amendment 11**

### **Council common position Recital 31**

#### *Council common position*

(31) End-users should be able to call and access the emergency services using any telephone service capable of originating voice calls through a number or numbers in national telephone numbering plans. Emergency authorities should be able to handle and answer calls to the number "112" at least as expeditiously and effectively as calls to national emergency numbers. It is important to increase

#### *Amendment*

(31) End-users should be able to call and access the emergency services using any telephone service capable of originating voice calls through a number or numbers in national telephone numbering plans. Emergency authorities should be able to handle and answer calls to the number "112" at least as expeditiously and effectively as calls to national emergency numbers. It is important to increase

awareness of "112" in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware, when travelling in any Member State, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material, that "112" can be used as a single emergency number throughout the Community. This is primarily the responsibility of the Member States, but the Commission should continue both to support and to supplement initiatives of the Member States to heighten awareness of "112" and periodically to evaluate the public's awareness of it. The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, undertakings should make caller location information available to emergency services as soon as the call reaches that service independently of the technology used.

awareness of "112" in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware, when travelling in any Member State, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material, that "112" can be used as a single emergency number throughout the Community. This is primarily the responsibility of the Member States, but the Commission should continue both to support and to supplement initiatives of the Member States to heighten awareness of "112" and periodically to evaluate the public's awareness of it. The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, undertakings should make caller location information available to emergency services as soon as the call reaches that service independently of the technology used. ***In order to respond to technological developments, including those leading to increasingly precise accuracy of location information, the Commission should be empowered to adopt technical implementing measures in order to ensure the effective implementation of "112" in the Community for the benefit of citizens of the Union.***

Or. en

## **Amendment 12**

### **Council common position**

#### **Recital 32**

*Council common position*

(32) Member States should ensure that

*Amendment*

(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***, ***the*** 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.***

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 **undertakings** 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 problems related to ***the*** infrastructure are not under ***the direct control of these undertakings.*** ***If such undertakings prove to the national regulatory authority that it is technically impossible for them to provide caller location information to the authority handling emergency calls and services as soon as the call reaches that authority, the national regulatory authority should be able to impose the lower level of caller location information that is technically possible.*** Once internationally-recognised standards ***are in place*** ensuring accurate, reliable routing and connection to the emergency services, ***all*** network-independent ***undertakings*** should ***provide caller location information at the same level as traditional integrated telephone service providers.***

Or. en

## Amendment 13

### Council common position Recital 33 a (new)

*Council common position*

*Amendment*

***(33a) Development of the international code “3883” (the European Telephony Numbering Space (ETNS)) is currently***

*hindered by insufficient awareness, overly bureaucratic procedural requirements and, in consequence, lack of demand. In order to foster the development of ETNS, the countries to which the International Telecommunications Union has assigned the international code “3883” should delegate responsibility for its management, number assignment and promotion either to the Body of European Regulators in Telecom (BERT) or, following the example of the implementation of the “.eu” top-level domain, to a separate organisation, designated by the Commission on the basis of an open, transparent and non-discriminatory selection procedure, and with operating rules which form part of Community law.*

Or. en

#### **Amendment 14**

##### **Council common position Recital 33 b (new)**

*Council common position*

*Amendment*

*(33b) Considering the particular aspects related to reporting missing children and the currently limited availability of that service, Member States should not only reserve a number, but also ensure that a service for reporting missing children is actually available in their territories under the number 116000.*

Or. en



## Amendment 15

### Council common position

#### Recital 36

##### *Council common position*

(36) A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States, and to access services using non-geographic numbers within the Community including, among others, freephone and premium rate numbers. End-users should also be able to access numbers from the European Telephone Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN). Cross-border access to numbering resources and to its associated services should not be prevented except in objectively justified cases, for example to combat fraud or abuse (e.g. in connection with certain premium-rate services) when the number is defined as having a national scope only (e.g. a national short code) or when it is technically or economically unfeasible. Users should be fully informed in advance and in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes.

##### *Amendment*

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

Or. en

## Amendment 16

### Council common position

#### Recital 37

##### *Council common position*

(37) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interest. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications. ***It should be implemented with the minimum delay. In any case, the technical transfer of the number should not exceed one day.*** Competent national authorities may establish the global process of the porting of numbers, taking into account national provisions on contracts and technical feasibility, ***and, where necessary, appropriate*** measures ensuring that consumers are protected throughout the switching process. ***This protection may include the limitation of porting abuse and the setting of speedy corrective action.***

##### *Amendment*

(37) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interest. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications, ***and*** should be implemented with the minimum of delay, ***so that the number is available for use with the new undertaking within one working day of the request of the consumer.*** Competent national authorities may establish the global process of the porting of numbers, taking into account national provisions on contracts and technical feasibility. ***Experience in certain Member States has shown that there is a risk of consumers having their provider switched without consent. While that is a matter that should primarily be addressed by law-enforcement authorities, Member States should be able to impose such minimum proportionate*** measures regarding the switching process as are necessary to minimise such risks and ensuring that consumers are protected throughout the switching process, ***without making the process less attractive for consumers.***

Or. en

## Amendment 17

### Council common position

#### Recital 39

##### *Council common position*

(39) In order to overcome existing shortcomings in terms of consumer consultation and to appropriately address the interests of citizens, Member States should put in place an appropriate consultation mechanism. Such a mechanism could take the form of a body which would, independently of the national regulatory authority and service providers, carry out research into consumer-related issues such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholder consultations. Furthermore, a mechanism could be established for the purpose of enabling appropriate cooperation on issues relating to the promotion of lawful content. Any cooperation procedures agreed pursuant to such a mechanism should, however, not allow for the systematic surveillance of internet usage.

##### *Amendment*

(39) In order to overcome existing shortcomings in terms of consumer consultation and to appropriately address the interests of citizens, Member States should put in place an appropriate consultation mechanism. Such a mechanism could take the form of a body which would, independently of the national regulatory authority and service providers, carry out research into consumer-related issues such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholder consultations. Furthermore, a mechanism could be established for the purpose of enabling appropriate cooperation on issues relating to the promotion of lawful content. Any cooperation procedures agreed pursuant to such a mechanism should, however, not allow for the systematic surveillance of internet usage. ***Where there is a need to address the facilitation of the access to and use of electronic communications services and terminal equipment for disabled users, and without prejudice to Directive 1999/5/EC and in particular the disability requirements pursuant to Article 3(3)(f) thereof, the Commission should be empowered to adopt implementing measures.***

Or. en

## Amendment 18

### Council common position Recital 39 a (new)

*Council common position*

*Amendment*

***(39a) The procedure for out-of-court dispute resolution should be strengthened by ensuring that independent dispute resolution bodies are used, and that the procedure conforms at least to the minimum principles established by Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes<sup>1</sup>. Member States may either use existing dispute resolution bodies for that purpose, provided those bodies meet the applicable requirements, or establish new bodies. Furthermore, when dealing with out-of-court procedures, Member States should make every effort to ensure that those procedures are transparent and exercised impartially, in particular in view of Recommendation 98/257/EC, so that the effectiveness, fairness and legality of the procedure is safeguarded.***

<sup>1</sup> OJ L 115, 17.4.1998, p. 31.

Or. en

## Amendment 19

### Council common position Recital 39 b (new)

*Council common position*

*Amendment*

***(39b) Directive 2002/58/EC provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the***

*right to confidentiality, with respect to the processing of personal data in the electronic communications sector, and to ensure the free movement of such data and of electronic communications equipment and services in the Community. Where measures aiming to ensure that terminal equipment is constructed so as to safeguard the protection of personal data and privacy are adopted pursuant to Directive 1999/5/EC or Council Decision 87/95/EEC, such measures should respect the principle of technology neutrality.*

Or. en

## **Amendment 20**

### **Council common position Recital 39 c (new)**

*Council common position*

*Amendment*

*(39c) When defining the implementing measures on the security of processing, in accordance with the regulatory procedure with scrutiny, the Commission should consult all relevant European authorities and organisations (ENISA, the European Data Protection Supervisor and the Article 29 Working Party) as well as all other relevant stakeholders, particularly in order to be informed of the best available technical and economic methods for improving the implementation of Directive 2002/58/EC.*

Or. en

## Amendment 21

### Council common position Recital 39 d (new)

*Council common position*

*Amendment*

***(39d) Internet Protocol (IP) addresses are essential to the functioning of the internet. They identify network participating devices, such as computers or mobile smart devices according to an assigned, although not necessarily exclusive, IP number also known as IP address. Given the variety of scenarios in which IP addresses are used, and the related technologies which are rapidly evolving, questions have arisen about the use of such addresses as personal data in certain circumstances. The Commission should therefore present related proposals as appropriate, on the basis of a study on IP addresses and their various uses.***

Or. en

## Amendment 22

### Council common position Recital 43

*Council common position*

*Amendment*

(43) In line with the objectives of the regulatory framework for electronic communications networks and services and with the principles of proportionality and subsidiarity, and for the purposes of legal certainty and efficiency for European businesses and national regulatory authorities alike, this Directive focuses on ***public*** electronic communications ***networks and*** services, and does not apply to closed user groups and corporate networks.

(43) In line with the objectives of the regulatory framework for electronic communications networks and services and with the principles of proportionality and subsidiarity, and for the purposes of legal certainty and efficiency for European businesses and national regulatory authorities alike, this Directive focuses on electronic communications services, ***i.e. services normally provided for remuneration and consisting wholly, or mainly in the transmission of signals on electronic communications networks, if***

*those services are available to the public,*  
and does *therefore* not apply to *services  
made available to limited groups of  
identifiable individuals such as in the case  
of* closed user groups and corporate  
networks.

Or. en

## Amendment 23

### Council common position

#### Recital 45

##### *Council common position*

(45) The provider of a publicly available electronic communications service should take appropriate technical and organisational measures to ensure the security of its services. Without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, such measures should ensure that personal data can be accessed only by authorised personnel for legally authorised purposes and that the personal data stored or transmitted as well as the network and services are protected. Moreover, a security policy with respect to the processing of personal data should be established in order to identify vulnerabilities in the system and monitoring and preventive, corrective and mitigating action should be regularly carried out.

<sup>1</sup> OJ L 281, 23.11.1995, p. 31.

##### *Amendment*

(45) The provider of a publicly available electronic communications service ***or an information society*** service should take appropriate technical and organisational measures to ensure the security of its services. Without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, such measures should ensure that personal data can be accessed only by authorised personnel for legally authorised purposes, and that the personal data stored or transmitted, as well as the network and services, are protected. Moreover, a security policy with respect to the processing of personal data and appropriate to the operations of the provider should be established in order to identify vulnerabilities in the system, and monitoring and preventive, corrective and mitigating action should be regularly carried out.

Or. en

## Amendment 24

### Council common position Recital 45 a (new)

*Council common position*

*Amendment*

***(45a) Competent national authorities should promote the interests of the citizens of the European Union by, inter alia, contributing to ensuring a high level of protection of personal data and privacy. To this end, they must have the necessary means to perform their duties, including comprehensive and reliable data about actual security incidents that have led to the personal data of individuals being compromised. They should monitor measures taken and disseminate best practices among providers of publicly available electronic communications services. Providers should therefore keep and maintain comprehensive records detailing all personal data breaches to enable further analysis and evaluation by the competent national authorities and should inform those authorities of all personal data breaches.***

Or. en

## Amendment 25

### Council common position Recital 47

*Council common position*

*Amendment*

***(47) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, as soon as the provider of publicly available electronic***

***(47) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm to the subscriber or individual concerned. Therefore, the provider of publicly available electronic communications services or information society services should assess the possible***



communications service *becomes aware that such a breach has occurred* it should assess the *risks associated with it, e.g. by establishing the type of data affected by the breach (including their sensitivity, context and security measures in place), the cause and extent of the breach, the number of subscribers affected, and the possible harm for subscribers as a result of the breach (e.g. identity theft, financial loss, loss of business or employment opportunities, physical harm). The subscribers concerned by security incidents that could result in a serious risk to their privacy (e.g. identity theft or fraud, physical harm, significant humiliation or damage to reputation) should be notified without delay in order to allow them to take the necessary precautions.* The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the *users affected*. Notification of a *security* breach to a subscriber should not be required if the provider has demonstrated to the competent authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the security breach. *Such technological protection measures should render the data unintelligible to any person who is not authorised to access it.*

*adverse effects of a breach, such as, inter alia, identity theft, fraud, financial loss, loss of business or employment opportunities, physical harm, significant humiliation or damage to reputation, and access to emails and other communications, as soon as the provider becomes aware of the breach. The assessment should be conducted promptly with all reasonable care, and should assume that any identified adverse effects are about to materialise. For the purpose of notification to subscribers or individuals of a personal data breach likely to have an adverse effects on them, the requirement to notify without undue delay should be taken to mean that they should be notified in such time as to enable them* to take the necessary precautions. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the *subscriber or individual concerned to prevent or minimise the likely adverse effects of the breach.* Notification of a breach to a subscriber or individual should *however* not be required if the provider has demonstrated to the competent authority that it has implemented appropriate technological protection measures, *rendering the data unintelligible to any person who is not authorised to access the data* and that those measures were applied to the data concerned by the security breach.

Or. en

## Amendment 26

### Council common position Recital 50

#### *Council common position*

(50) Provision should be made for the ***Commission to adopt recommendations on the means*** 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.

#### *Amendment*

(50) Provision should be made for the ***adoption of 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.

Or. en

## Amendment 27

### Council common position Recital 51

#### *Council common position*

(51) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected ***by encryption or other means***, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

#### *Amendment*

(51) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected ***with appropriate technical protection measures***, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

Or. en

## Amendment 28

### Council common position Recital 51 a (new)

*Council common position*

*Amendment*

***(51a) The Commission should be empowered to adopt measures on the security of processing. When adopting such measures, it should consult all relevant European authorities and organisations, such as ENISA, the European Data Protection Supervisor and the Article 29 Working Party, as well as all other relevant stakeholders, in order particularly to be informed of the best available technical and economic methods for improving the implementation of Directive 2002/58/EC. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2002/58/EC by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.***

Or. en

## Amendment 29

### Council common position Recital 52

*Council common position*

*Amendment*

(52) Software that surreptitiously monitors the actions of the user or subverts the operation of the user's terminal equipment to the benefit of a third party (***so-called "spyware"***) poses a serious threat to the privacy of users. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether

(52) Software that surreptitiously monitors the actions of the user or subverts the operation of the user's terminal equipment to the benefit of a third party ("spyware") poses a serious threat to the privacy of users, ***as can viruses***. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of

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 or USB keys. Member States should encourage end-users to take the necessary steps to protect their terminal equipment against viruses and *spyware*.

whether unwanted spy programmes *or viruses* 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 or USB keys. Member States should *inform end-users about available precautions and* encourage them to take the necessary steps to protect their terminal equipment against viruses and *spyware*.

Or. en

### Amendment 30

#### Council common position Recital 52 a (new)

*Council common position*

*Amendment*

***(52a) Safeguards provided for subscribers against the intrusion of their privacy by unsolicited communications for direct marketing purposes by means of electronic mail are also applicable to SMS, MMS and similar applications.***

Or. en

### Amendment 31

#### Council common position Recital 57

*Council common position*

*Amendment*

(57) The measures necessary for the implementation of **Directive** 2002/22/EC (**Universal Service Directive**) should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred

(57) The measures necessary for the implementation of **Directives** 2002/22/EC **and 2002/58/EC** should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the

on the Commission.

Commission.

Or. en

## Amendment 32

### Council common position Recital 57 a (new)

*Council common position*

*Amendment*

***(57a) The Commission should, if and when a new legal basis is available, present to the European Parliament and to the Council a new legislative proposal on privacy and data security in electronic communications, based on such new legal basis.***

Or. en

## Amendment 33

### Council common position Recital 58

*Council common position*

*Amendment*

(58) In particular, the Commission should be empowered to adapt the Annexes to technical progress or changes in market demand. Since those measures are of a general scope and are designed to amend non-essential elements of Directive 2002/22/EC (Universal Service Directive) by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(58) In particular, the Commission should be empowered ***to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of “112” services, effective access to numbers and services, and improvement of accessibility by disabled end-users, as well as amendments*** to adapt the Annexes to technical progress or changes in market demand. ***It should also be empowered to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation.*** Since those measures are of general scope and are designed to amend non-essential

elements of Directive 2002/22/EC (Universal Service Directive) by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***Given that the conduct of the regulatory procedure with scrutiny within the normal time limits could, in certain exceptional situations, impede the timely adoption of implementing measures, the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of those measures.***

Or. en

#### **Amendment 34**

##### **Council common position**

##### **Recital 60**

###### *Council common position*

(60) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States ***are encouraged to*** draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between Directives 2002/22/EC (Universal Service Directive) and 2002/58/EC (Directive on privacy and electronic communications) and the transposition measures, and to make them public.

###### *Amendment*

(60) In accordance with point 34 of the Interinstitutional agreement on better law-making, Member States ***should*** draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between Directives 2002/22/EC (Universal Service Directive) and 2002/58/EC (Directive on privacy and electronic communications) and the transposition measures, and to make them public.

Or. en

## Amendment 35

### Council common position – amending act

#### Article 1 – point 1

Directive 2002/22/EC

Article 1 – paragraph 3

#### *Council common position*

3. The provisions of this Directive *concerning end-users' rights* shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EEC *and* 97/7/EC, and national rules in conformity with Community law."

#### *Amendment*

3. The provisions of this Directive shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EEC, 97/7/EC *and* **2005/29/EC**, and national rules in conformity with Community law.'

Or. en

## Amendment 36

### Council common position – amending act

#### Article 1 – point 3

Directive 2002/22/EC

Article 4 – paragraph 3

#### *Council common position*

3. Member States shall ensure that all reasonable requests for the provision of a publicly available telephone service, over the network connection referred to in paragraph 1, *that allows* for originating and receiving of national and international calls and calls are met by at least one undertaking.

#### *Amendment*

3. Member States shall ensure that all reasonable requests for the provision of a publicly available telephone service over the network connection referred to in paragraph 1, *allowing* originating and receiving of national and international calls and calls *to emergency services via the number "112" as well as via any other national emergency number*, are met by at least one undertaking.

Or. en

## Amendment 37

### Council common position – amending act

#### Article 1 – point 4 a (new)

Directive 2002/22/EC

Article 6 – title

*Council common position*

*Amendment*

***(4a) The title of Article 6 shall be replaced by the following:***

***"Public pay telephones and other telecommunication access points"***

Or. en

## Amendment 38

### Council common position – amending act

#### Article 1 – point 4 b (new)

Directive 2002/22/EC

Article 6 – paragraph 1

*Council common position*

*Amendment*

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

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

Or. en



## Amendment 39

### Council common position

#### Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 1

#### *Council common position*

1. Unless requirements have been specified under Chapter IV which achieve the equivalent effect, Member States shall take specific measures to ensure access to, and affordability of, the services identified in Articles 4(3) and Article 5 for disabled end-users, which is **comparable** to that enjoyed by other end-users. Member States may oblige national regulatory authorities to assess the general need and the specific requirements, including the extent and concrete form of such specific measures for disabled end-users.

#### *Amendment*

1. Unless requirements have been specified under Chapter IV which achieve the equivalent effect, Member States shall take specific measures to ensure access to, and affordability of, the services identified in Articles 4(3) and Article 5 for disabled end-users, which is **equivalent** to that enjoyed by other end-users. Member States may oblige national regulatory authorities to assess the general need and the specific requirements, including the extent and concrete form of such specific measures for disabled end-users.

Or. en

## Amendment 40

### Council common position

#### Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 3 (new)

#### *Council common position*

#### *Amendment*

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

Or. en

## Amendment 41

### Council common position

#### Article 1 – point 7 a (new)

Directive 2002/22/EC

Article 10 – paragraph 2

*Council common position*

*Amendment*

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

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

Or. en

## Amendment 42

### Council common position

#### Article 1 – point 13

Directive 2002/22/EC

Article 20 – paragraph 1 – point a

*Council common position*

*Amendment*

(a) the identity and address of the ***supplier***;

(a) the identity and address of the ***undertaking***;

Or. en

## Amendment 43

### Council common position

#### Article 1 – point 13

Directive 2002/22/EC

Article 20 – paragraph 1 – Point b

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*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 are being provided and/or any limitations for provision of emergency services under Article 26;*

– information on *any 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*,

– 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, and,

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

Or. en

**Amendment 44**

**Council common position**

**Article 1 – point 13**

Directive 2002/22/EC

Article 20 – paragraph 1 – point e

*Council common position*

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

– *conditions regarding minimum contract duration related to promotions*,

*Amendment*

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

– *any minimum usage required to benefit from promotional terms*

– any charges related to portability of numbers and other identifiers,  
– any charges due on termination of the contract, including any cost recovery with respect to terminal equipment;

– any charges related to portability of numbers and other identifiers,  
– any charges due on termination of the contract, including any cost recovery with respect to terminal equipment;

Or. en

## Amendment 45

### Council common position

#### Article 1 – point 13

Directive 2002/22/EC

Article 20 – paragraph 1 – point h

#### *Council common position*

(h) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.

#### *Amendment*

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

Or. en

## Amendment 46

### Council common position

#### Article 1 – point 13

Directive 2002/22/EC

Article 20 – paragraph 2

#### *Council common position*

***2. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services that allow voice communication, subscribers are clearly informed as to whether or not access to emergency services and caller location information is provided. Providers of electronic communications***

#### *Amendment*

***deleted***

*services shall ensure that customers are clearly informed in advance of the conclusion of a contract of any limitation on access to emergency services, and of any change to access to the emergency services.*

Or. en

## Amendment 47

### Council common position

#### 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, adequate and up-to-date information on applicable prices and tariffs, ***any charges due on termination of a contract*** and ***information*** 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.*** National regulatory authorities may specify additional requirements regarding the form in which such information is ***to be*** published.

Or. en

## Amendment 48

### Council common position

#### Article 1 – point 13

Directive 2002/22/EC

Article 21 – paragraph 2

#### *Council common position*

2. National regulatory authorities shall encourage the provision of comparable information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities may make such guides or techniques available, ***in particular*** where they are not available, on the market free of charge or at a reasonable price. Third parties shall have a right to use, free of charge, the information published by undertakings providing electronic communications networks and/or services for the purposes of selling or making available such guides or techniques.

#### *Amendment*

2. National regulatory authorities shall encourage the provision of comparable information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available ***themselves or through third party procurement***, where they are not available on the market free of charge or at a reasonable price. Third parties shall have a right to use free of charge the information published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar techniques.

Or. en

## Amendment 49

### Council common position

#### 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*:

#### *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

(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; 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.

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

**(c)** inform subscribers of any change to *any 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,*

**(d)** 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; and

**(e)** 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 50**

### **Council common position**

#### **Article 1 – point 13**

Directive 2002/22/EC

Article 21 – paragraph 4 – subparagraph 1 a (new)

*Council common position*

*Amendment*

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

Or. en

## **Amendment 51**

### **Council common position**

#### **Article 1 – point 13**

Directive 2002/22/EC

Article 22 – paragraph 1

*Council common position*

*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 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.

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 ***equivalent*** access for disabled end-users. That information shall, on request, be supplied to the national regulatory authority in advance of its publication.

Or. en

## **Amendment 52**

### **Council common position**

#### **Article 1 – point 13**

Directive 2002/22/EC

Article 22 – paragraph 2



*Council common position*

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

*Amendment*

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

Or. en

**Amendment 53**

**Council common position – amending act**

**Article 1 – point 4a (new)**

Directive 2002/22/EC

Article 22 – paragraph 3 – subparagraph 1 a (new)

*Council common position*

*Amendment*

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

Or. en

## Amendment 54

### Council common position

#### Article 1 – point 14

Directive 2002/22/EC

Article 23a

#### *Council common position*

Ensuring **comparable** access and choice for disabled end-users

1. Member States shall enable relevant national authorities to specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communication services to ensure that disabled end-users:

(a) have access to electronic communications services **comparable** to that enjoyed by the majority of end-users, and

(b) benefit from the choice of undertakings and services available to the majority of end-users

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

#### *Amendment*

Ensuring **equivalent** access and choice for disabled end-users

1. Member States shall enable relevant national authorities to specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communication services to ensure that disabled end-users:

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

(b) benefit from the choice of undertakings and services available to the majority of end-users.

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

Or. en

## Amendment 55

### Council common position

#### Article 1 – point 15 – subpoint a

Directive 2002/22/EC

Article 25 – title

#### *Council common position*

"**Telephone** directory enquiry services"

#### *Amendment*

"Directory enquiry services"

## Amendment 56

### Council common position

#### Article 1 – point 15 – subpoint b

Directive 2002/22/EC

Article 25 – paragraph 1

#### *Council common position*

1. Member States shall ensure that ***subscribers to publicly available telephone services*** have the right to have ***an entry in the publicly available directory referred to in Article 5(1)(a) and to have*** their information made available to providers of directory enquiry services and/or directories in accordance with paragraph 2 of this Article.

#### *Amendment*

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

## Amendment 57

### Council common position

#### Article 1 – point 15 – subpoint (c)

Directive 2002/22/EC

Article 25 – paragraph 3

#### *Council common position*

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 objective, proportionate,***

#### *Amendment*

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

non-discriminatory and transparent.

Or. en

## Amendment 58

### Council common position

#### Article 1 – point 15 – subpoint c

Directive 2002/22/EC

Article 25 – paragraph 4

#### *Council common position*

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

#### *Amendment*

4. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS.

Or. en

## Amendment 59

### Council common position

#### Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 2

#### *Council common position*

2. Member States shall ensure that undertakings providing **end-users with** an electronic communications service for originating national calls **to** a number or numbers in a national telephone numbering plan provide access to emergency services.

#### *Amendment*

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

## Amendment 60

### Council common position

#### Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 4

#### *Council common position*

4. Member States shall ensure that **access for** disabled end-users to emergency services **is comparable** to that enjoyed by other end-users. **Measures** taken to ensure that disabled end-users are able to access emergency services whilst travelling in other Member States shall **be based to the greatest extent possible on European** standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive), **and they shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in this Article.**

#### *Amendment*

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

## Amendment 61

### Council common position

#### 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

#### *Amendment*

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.

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 *to the competent national authority*.

Or. en

## **Amendment 62**

### **Council common position**

#### **Article 1 – point 16**

Directive 2002/22/EC

Article 26 – paragraph 7 a (new)

*Council common position*

*Amendment*

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

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

Or. en

## **Amendment 63**

### **Council common position**

#### **Article 1 – point 16**

Directive 2002/22/EC

Article 27 – paragraph 1 a (new)

*Council common position*

*Amendment*

*1a. A legal entity, established within the Community and designated by the*

*Commission, shall have sole responsibility for the management, including number assignment, and promotion of the European Telephony Numbering Space. The Commission shall lay down the necessary implementing rules.*

Or. en

## **Amendment 64**

### **Council common position**

#### **Article 1 – point 16**

Directive 2002/22/EC

Article 27 – paragraph 2

#### *Council common position*

2. Member States shall ensure that all undertakings that provide publicly available telephone services ***allowing international calls*** handle all calls to and from the ***European Telephony Numbering Space (ETNS)***, ***without prejudice to the need for undertakings to recover their costs.***

#### *Amendment*

3. Member States shall ensure that all undertakings that provide publicly available telephone services handle all calls to and from the ***ETNS, at rates that do not exceed the maximum rate they apply for calls to and from other Member States.***

Or. en

## **Amendment 65**

### **Council common position**

#### **Article 1 – point 17**

Directive 2002/22/EC

Article 27a

#### *Council common position*

1. Member States shall promote the specific numbers in the numbering range beginning with "116" identified by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with "116" for

#### *Amendment*

1. Member States shall promote the specific numbers in the numbering range beginning with '116' identified by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for

harmonised numbers for harmonised services of social value\*. They shall encourage the provision within their territory of the services for which such numbers are reserved.

2. Member States shall *facilitate access by* disabled end-users to services provided under the "116" numbering range. Measures taken to *facilitate* disabled *end-users'* access *to* such services whilst travelling in other Member States *may* include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive)

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

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

harmonised numbers for harmonised services of social value. They shall encourage the provision within their territory of the services for which such numbers are reserved.

2. Member States shall *ensure that* disabled end-users *are able to access* services provided under the '116' numbering range. Measures taken to *ensure that* disabled *end-users are able to* access such services whilst travelling in other Member States, *measures taken shall* include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive)

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

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

*5. In order to ensure the effective implementation of the '116' numbering range, in particular the missing children hotline number 116000, in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted BERT, may adopt technical implementing measures.*

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



**Amendment 66****Council common position****Article 1 – point 18**

Directive 2002/22/EC

Article 28

*Council common position*

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

(a) access and use services using non-geographic numbers within the Community; and

(b) access all numbers provided in the Community, including those in the national numbering plans of Member States, those from the ETNS and Universal International Freephone Numbers (UIFN),

2. Member States shall ensure that the relevant authorities are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other

*Amendment*

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

(a) access and use services using non-geographic numbers within the Community; and

(b) access all numbers provided in the Community ***regardless of the technology and devices used by the operator***, including those in the national numbering plans of Member States, those from the ETNS and Universal International Freephone Numbers (UIFN); ***and***

***(c) access and use services through text telephones, video telephones and products which help to enable elderly people or people with disabilities to communicate, at least as regards emergency calls.***

2. Member States shall ensure that the relevant authorities are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other

service revenues.

service revenues.

Or. en

## Amendment 67

### Council common position

#### Article 1 – point 18

Directive 2002/22/EC

Article 28 – paragraph 2 a (new)

*Council common position*

*Amendment*

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

***Any such technical implementing measure may be periodically reviewed to take account of market and technological developments.***

Or. en

## Amendment 68

### Council common position

#### Article 1 – point 19 – subpoint (b)

Directive 2002/22/EC

Article 29 – paragraph 3

*Council common position*

*Amendment*

3. Without prejudice to Article 10(2), Member States may impose the obligations ***set out in points (a) and (e) of Part A of Annex I*** as a general requirement on all undertakings providing access to public communications networks and/or publicly

3. Without prejudice to Article 10(2), Member States may impose the obligations in Annex I, Part A, point (e), ***concerning disconnection*** as a general requirement on all undertakings providing access to public communications networks and/or publicly

available telephone services.

available telephone services.

Or. en

## Amendment 69

### Council common position

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

Directive 2002/22/EC

Article 30 – paragraph 2

#### *Council common position*

2. National regulatory authorities shall ensure that pricing between operators and/or service providers related to the provision of number portability is cost-oriented, and that direct charges to subscribers, if any, do not act as a disincentive for **subscribers against changing** service provider.

#### *Amendment*

2. National regulatory authorities shall ensure that pricing between operators and/or service providers related to the provision of number portability is cost-oriented, and that direct charges to subscribers, if any, do not act as a disincentive for **them to change** service provider.

Or. en

## Amendment 70

### Council common position

#### Article 1 – point 20

Directive 2002/22/EC

Article 30 – paragraph 4

#### *Council common position*

4. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, **time taken for the the technical transfer of the number shall not exceed** one day.

Competent national authorities may establish the global process of porting of numbers, taking into account national provisions on contracts and technical feasibility, including where necessary

#### *Amendment*

4. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, **subscribers wishing to port a number to a new undertaking shall have the number activated within one working day from their initial request.**

Competent national authorities may establish the global process of porting of numbers, taking into account national provisions on contracts and technical feasibility, including where necessary

measures ensuring that subscribers are protected throughout the switching process

measures ensuring that subscribers are protected throughout the switching process **and not switched against their will. National regulatory authorities shall be able to impose appropriate sanctions on undertakings, including an obligation to compensate subscribers in the event of delay in porting or abuse of porting by them or on their behalf.**

Or. en

## **Amendment 71**

### **Council common position**

#### **Article 1 – point 20**

Directive 2002/22/EC

Article 30 – paragraph 5

#### *Council common position*

5. Member States shall ensure that contracts concluded between users and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months.

#### *Amendment*

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

Or. en

## **Amendment 72**

### **Council common position**

#### **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 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. Those measures shall not have the effect of hindering the development of the information society, in compliance with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)\*, and shall not conflict with the fundamental rights of citizens, including the right to privacy and the right to due process."***

Or. en

**Amendment 73**

**Council common position**

**Article 1 – point 22 – subpoint b a (new)**

Directive 2002/22/EC

Article 33 – paragraph 4 a (new)

*Council common position*

*Amendment*

***(ba) the following paragraph shall be added:***

***"4a. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to Article 3(3)(f) of that Directive, and in order to improve accessibility to electronic communications services and equipment***

*by disabled end-users, the Commission may take the appropriate technical implementing measures, following a public consultation and after having consulted BERT. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2)."*

Or. en

## Amendment 74

### Council common position

#### Article 1 – point 23

Directive 2002/22/EC

Article 34 – paragraph 1

#### *Council common position*

1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes between consumers and undertakings providing electronic communications networks and/or services arising under this Directive and relating to the contractual conditions and/or performance of contracts concerning the supply of those networks and/or services. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.

#### *Amendment*

1. Member States shall ensure that transparent, ***non-discriminatory***, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes between consumers and undertakings providing electronic communications networks and/or services arising under this Directive and relating to the contractual conditions and/or performance of contracts concerning the supply of those networks and/or services. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. ***Such procedures shall enable disputes to be settled impartially and shall not deprive the consumer of the legal protection afforded by the national law.*** Member States may extend these obligations to cover disputes involving other end-users.

***Member States shall ensure that the bodies in charge of dealing with such***

*disputes, which can be single points of contact, provide relevant information for statistical purposes to the Commission and the authorities.*

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

Or. en

## **Amendment 75**

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

#### **Article 1 – point 27**

Directive 2002/58/EC

Annexes I-VI

#### *Council common position*

Annexes I, II, III and VI shall be replaced by the text appearing in Annexes I and II to this Directive;

#### *Amendment*

Annexes I, II, III and VI shall be replaced by the text appearing in Annexes I, II **and VI** to this Directive;

Or. en

## **Amendment 76**

### **Council common position**

#### **Article 2 – point 1**

Directive 2002/58/EC

Article 1 – paragraph 1

#### *Council common position*

1. This Directive provides for the harmonisation of the ***national*** provisions required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the

#### *Amendment*

1. This Directive provides for the harmonisation of the provisions ***of the Member States*** required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy ***and confidentiality***, with respect to the processing of personal data in the

free movement of such data and of electronic communication equipment and services in the Community.

electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community.

Or. en

#### **Amendment 77**

**Council common position**  
**Article 2 – point 1 a (new)**  
Directive 2002/58/EC  
Article 1 – paragraph 2

*Council common position*

*Amendment*

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

***"2. The provisions of this Directive particularise and complement Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data for the purposes mentioned in paragraph 1. Moreover, they provide for protection of the legitimate interests of subscribers who are legal persons."***

Or. en

#### **Amendment 78**

**Council common position**  
**Article 2 – point 2 – subpoint c**  
Directive 2002/58/EC  
Article 2 – point h

*Council common position*

*Amendment*

(h) "personal data breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or

(h) "personal data breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or



otherwise processed in connection with the provision of a publicly available electronic communications service in the Community.

otherwise processed in connection with the provision of *a* publicly available electronic communications service *or information society service* in the Community.

Or. en

## **Amendment 79**

### **Council common position**

**Article 2 – point 4 – subpoint a a (new)**

Directive 2002/58/EC

Article 4 – paragraph 1

*Council common position*

*Amendment*

*(aa) Article 4(1) shall be replaced by the following:*

**"1. The provider of a publicly available electronic communications service *or of an information society service* must take appropriate technical and organisational measures to safeguard security of its services, if necessary in conjunction with the provider of the public communications network with respect to network security. Having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented."**

Or. en

## **Amendment 80**

### **Council common position**

**Article 2 – point 4 – subpoint a b (new)**

Directive 2002/58/EC

Article 4 – paragraph 1a (new)

***(ab) Article 4 paragraph 1 a shall be inserted:***

***"1a. Without prejudice to the provisions of Directive 95/46/EC, these measures shall at least:***

***– ensure that personal data can be accessed only by authorised personnel for legally authorised purposes;***

***– protect personal data stored or transmitted against accidental, or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure; and;***

***– implement a security policy with respect to the processing of personal data;***

***National regulatory authorities shall be able to audit the measures taken by providers of publicly available electronic communication services and information society services and to issue recommendations about best practices concerning the level of security which these measures should achieve."***

Or. en

## Amendment 81

**Council common position**  
**Article 2 – point 4 – subpoint b**  
Directive 2002/58/EC  
Article 4 – paragraph 3

*Council common position*

3. In the case of a personal data breach, the provider of publicly available electronic communications services shall ***assess the scope of the personal data breach, evaluate its seriousness and consider***

*Amendment*

3. In the case of a personal data breach, the provider of publicly available electronic communications services ***or information society services concerned*** shall, ***without undue delay***, notify the personal data

***whether it is necessary to*** notify the personal data breach to the competent national authority ***and subscriber concerned, taking into account the relevant rules set by the competent national authority in accordance with paragraph 4.***

When the personal data breach ***represents a serious risk for the*** subscriber's privacy, the provider ***of publicly available electronic communications services*** shall notify ***the competent national authority and*** the subscriber of the breach without undue delay.

The notification to the subscriber shall at least describe the nature of the personal data breach and the contact points where more information can be obtained, and shall recommend measures to mitigate ***the*** possible ***negative*** effects of the personal data breach. The notification to the competent national authority shall, in addition, describe the consequences of, and the measures proposed or taken by the provider to address, the personal data breach.

breach to the competent national authority.

When the personal data breach ***is likely to adversely affect a*** subscriber's ***or individual's personal data and*** privacy, the provider shall notify the subscriber ***or individual*** concerned of ***the*** breach without undue delay.

***If the provider has not already notified the subscriber or individual of the personal data breach, the competent national authority, having considered the likely adverse effects of the breach, may require it to do so.***

The notification to the subscriber ***or individual*** shall at least describe the nature of the personal data breach and the contact points where more information can be obtained, and it shall recommend measures to mitigate possible ***adverse*** effects of the personal data breach. The notification to the competent national authority shall, in addition, describe the consequences of and the measures proposed or taken by the provider to address the personal data breach.

Or. en

## **Amendment 82**

**Council common position**  
**Article 2 – point 4 – subpoint b**  
Directive 2002/58/EC  
Article 4 – paragraph 4

*Council common position*

***4. Member States shall ensure that the***

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*Amendment*

***4. Subject to any technical implementing***

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*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*.

*measures adopted under paragraph 4, the competent national authorities may adopt guidelines* and, where necessary, issue instructions concerning the circumstances when notification by providers of personal data breaches *is required*, the format *of* such notification *and notification procedures. 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 keep and maintain comprehensive records detailing all personal data breaches, relevant technical information related thereto and any remedial action taken. These records shall also contain a reference to all notifications issued to the subscribers or individuals concerned, as well as to the competent national authorities, including the date and content thereof. The records shall be provided to the competent national authority on request.*

Or. en

## Amendment 83

### Council common position

#### Article 2 – point 4 – subpoint b

Directive 2002/58/EC

Article 4 – paragraph 5

#### *Council common position*

5. In order to ensure consistency in implementation of the measures referred to in *paragraphs 1 to 4* the Commission *may*, following consultation with the European Network and Information Security Agency (ENISA), the Article 29 Working Party and the European Data Protection Supervisor, adopt *recommendations* concerning, inter alia, the circumstances, format and procedures applicable to *the* information

#### *Amendment*

5. In order to ensure consistency in implementation of the measures referred to in *paragraphs 1, 2, 3 and 3a*, the Commission *shall*, following consultation with the European Network and Information Security Agency (ENISA), the Article 29 Working Party and the European Data Protection Supervisor, adopt *technical implementing measures* concerning, inter alia, the circumstances,

and notification requirements referred to in this Article.

format and procedures applicable to information and notification requirements referred to in this Article. ***The Commission shall involve all relevant stakeholders in order particularly to be informed of the best available technical and economic methods for the implementation of this Article.***

***Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(2). On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 14a (3).***

Or. en

## Amendment 84

### Council common position

#### Article 2 – point 5

Directive 2002/58/EC

Article 5 – paragraph 3

#### *Council common position*

3. Member States shall ensure that the storing of information, or access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned ***is*** provided with clear and comprehensive information, in accordance with Directive 95/46/EC, inter alia about the purposes of the processing, ***and is offered the right to refuse such processing by the data controller.*** This shall not prevent any technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an

#### *Amendment*

3. Member States shall ensure that the storing of information, or ***gaining*** access to information already stored in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned ***has given his/her prior consent, which may be given by way of using the appropriate settings of a browser or another application, after having been*** provided with clear and comprehensive information in accordance with Directive 95/46/EC, inter alia about the purposes of the processing. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or as

information society service explicitly requested by the subscriber or user.

strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

Or. en

## Amendment 85

### Council common position

#### Article 2 – point 6

Directive 2002/58/EC

Article 6

#### *Council common position*

(a) paragraph 1 shall be replaced by the following:  
1. Traffic data relating to subscribers and users processed and stored by the provider of a public communications network or publicly available electronic communications service **shall** be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication. **This shall be** without prejudice to paragraphs 2, 3, 5 **and** 7 of this Article and Article 15(1).

#### *Amendment*

(a) paragraph 1 shall be replaced by the following:  
1. Traffic data relating to subscribers and users processed and stored by the provider of a public communications network or publicly available electronic communications service **must** be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication without prejudice to paragraphs 2, **2a**, 3 **and** 5 of this Article and Article 15(1).

***(aa) The following paragraph 1 a shall be inserted:***

**1a. Traffic data necessary for the purposes of subscriber billing and interconnection payments may be processed. Such processing is permissible only up to the end of the period during which the bill may lawfully be challenged or payment pursued.**

***(ab) The following paragraph 1 b shall be inserted:***

***1b. Without prejudice to compliance with provisions other than Article 7 of Directive 95/46/EC and Article 5 of this Directive, traffic data may be processed in the legitimate interest of the data controller for the purpose of implementing technical measures to***

(b) paragraph 3 shall be replaced by the following:

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

*(c) the following paragraph shall be added:*

*"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 Information Security Agency\*."*

*ensure the 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 Security Agency, of a public electronic communication service, a public electronic communications network, an information society service or related terminal and electronic communication equipment, except where such interest is overridden by those of the fundamental rights and freedoms of the data subject. Such processing shall be restricted to that which is strictly necessary for the purposes of such security activity.*

(b) paragraph 3 shall be replaced by the following:

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

*4. The service provider must inform the subscriber or user of the types of traffic data which are processed and of the duration of such processing for the purposes mentioned in paragraph 2 and 2a and, prior to obtaining consent, for the purposes mentioned in paragraph 3.*

*5. Processing of traffic data, in accordance with paragraphs 1, 2, 2a, 3 and 4, must be restricted to persons acting under the authority of providers of the public communications networks and publicly available electronic communications services handling billing or traffic management, customer enquiries, fraud detection, other network*

*and information security, marketing electronic communications services or providing a value added service, and must be restricted to what is necessary for the purposes of such activities.*

*6. Paragraphs 1, 2, 2a, 3 and 5 shall apply without prejudice to the possibility for competent bodies to be informed of traffic data in conformity with applicable legislation with a view to settling disputes, in particular interconnection or billing disputes.*

\* OJ L 77, 13.3.2004, p. 1.

\* OJ L 77, 13.3.2004, p. 1.

Or. en

## Amendment 86

### Council common position

#### Article 2 – point 7

Directive 2002/58/EC

Article 13 – paragraph 1

#### *Council common position*

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

#### *Amendment*

1. The use of automated calling *and communication* systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail for the purposes of direct marketing may be allowed only in respect of subscribers or users who have given their prior consent.

Or. en

## Amendment 87

### Council common position

#### Article 2 – point 7

Directive 2002/58/EC

Article 13 – paragraph 4



*Council common position*

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

*Amendment*

4. In any event, the practice of sending electronic mail for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or in contravention of Article 6 of Directive 2000/31/EC, or without a valid address to which the recipient may send a request that such communications cease, ***or encouraging recipients to visit websites that contravene Article 6 of Directive 2000/31/EC***, shall be prohibited.

Or. en

**Amendment 88**

**Council common position**

**Article 2 – point 7**

Directive 2002/58/EC

Article 13 – paragraph 6

*Council common position*

6. Without prejudice to any administrative remedy for which provision may be made, inter alia, under Article 15(a2), Member States shall ensure that any natural or legal person ***adversely affected by*** infringements of national provisions adopted pursuant to this ***Article and therefore having a legitimate interest in the cessation or prohibition of such infringements***, including an electronic communications service provider protecting its legitimate business interests, may bring legal proceedings in respect of such infringements . Member States may also lay down specific rules on penalties applicable to providers of electronic communications services which by their negligence contribute to infringements of national provisions adopted pursuant to this

*Amendment*

6. Without prejudice to any administrative remedy for which provision may be made, inter alia under Article 15(a2), Member States shall ensure that any natural or legal person ***having a legitimate interest in combating*** infringements of national provisions adopted pursuant to this ***Directive***, including an electronic communications service provider protecting its legitimate business interests or the interests ***of its customers***, may bring legal proceedings in respect of such infringements . Member States may also lay down specific rules on penalties applicable to providers of electronic communications services which by their negligence contribute to infringements of national provisions adopted pursuant to this Article.

Article.

Or. en

## **Amendment 89**

**Council common position**  
**Article 2 – point 7 a (new)**  
Directive 2002/58/EC  
Article 14 a (new)

*Council common position*

*Amendment*

***(7a) The following Article 14 a shall be inserted:***

***"Article 14a***

***1. The Commission shall be assisted by the Communications Committee set up by Article 22 of Directive 2002/21/EC (Framework Directive).***

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

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

Or. en

## **Amendment 90**

**Council common position**  
**Article 2 – point -8 (new)**  
Directive 2002/58/EC  
Article 15 - paragraph 1 b (new)

***(-8) The following paragraph 1 b shall be inserted:***

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

Or. en

## Amendment 91

### Council common position

#### Article 2 – point 8

Directive 2002/58/EC

Article 15 a - paragraph 1

#### *Council common position*

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive and may be applied to cover the period of any breach, even where the breach has subsequently been rectified. The Member States shall notify those provisions to the Commission by ...\*and shall notify it without delay of any

#### *Amendment*

1. Member States shall lay down the rules on penalties, ***including penal sanctions where appropriate***, applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive and may be applied to cover the period of any breach, even where the breach has subsequently been rectified. The Member States shall notify those provisions to the Commission by ...\* and shall notify it without delay of

subsequent amendment affecting them.

\* The date referred to in Article 4(1).

any subsequent amendment affecting them.

\* The date referred to in Article 4(1).

Or. en

## Amendment 92

### Council common position

#### Article 2 – point 8

Directive 2002/58/EC

Article 15a – paragraph 2

#### *Council common position*

2. Member States shall ensure that the competent national authority and, where relevant, other national bodies have the power to order the cessation of the infringements referred to in paragraph 1.

#### *Amendment*

2. ***Without prejudice to any judicial remedy which might be available***, Member States shall ensure that the national regulatory authority has the power to order the cessation of the infringements referred to in paragraph 1.

Or. en

## Amendment 93

### Council common position

#### –Article 2 – point 8

Directive 2002/58/EC

Article 15a – paragraph 3

#### *Council common position*

3. Member States shall ensure that the ***competent*** national authority ***and, where relevant, other national bodies*** have all ***necessary*** investigative powers and resources, including the ***power*** to obtain any relevant information they might need to monitor and enforce national provisions adopted pursuant to this Directive.

#### *Amendment*

3. Member States shall ensure that national ***regulatory*** authorities have all investigative powers and resources necessary, including the ***possibility*** to obtain any relevant information they might need to monitor and enforce national provisions adopted pursuant to this Directive.

Or. en

## Amendment 94

### Council common position

#### Article 2 – point 8

Directive 2002/58/EC

Article 15a – paragraph 4

#### *Council common position*

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

#### *Amendment*

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

***Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(2). On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 14 a(3).***

Or. en

## Amendment 95

### Council common position

#### Article 3 – point 8 a (new)

Directive 2002/0058/EC

Article 18

#### *Council common position*

#### *Amendment*

***(8a) Article 18 shall be replaced by the following:***

***"Not later than three years after <time limit for implementation of the amending***

*act>, the Commission shall submit to the European Parliament and the Council, having consulted the Working Party on the Protection of Personal Data instituted by Article 29 of Directive 95/46/EC and the European Data Protection Supervisor, a report on the application of Directive 2002/58/EC and its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, and breach notifications, taking into account the international environment. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay. Where appropriate, the Commission shall submit proposals to amend this Directive, taking account of the results of that report, any changes in the sector, and any other proposal it may deem necessary in order to improve the effectiveness of this Directive.*

*No later than ...<sup>+</sup>, the Commission shall, following consultation of the European Data Protection Supervisor, the Article 29 Working Party and other stakeholders, including industry representatives, submit to the European Parliament, the Council and the European Economic and Social Committee a report, based on an in-depth study, with recommendations on standard uses of IP addresses and the application of the ePrivacy and Data Protection Directives as regards the collection and further processing of IP addresses."*

Or. en

## Amendment 96

### Council common position – amending act Article 4

#### *Council common position*

1. Member States shall adopt and publish by ...\* the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those *measures*.

They shall apply those provisions from .....\*\*

When Member States adopt those *measures*, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. *The methods of making such reference shall be laid down by Member States.*

\*

...

\*\*

...

#### *Amendment*

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

They shall apply those provisions from [...].

When Member States adopt those ***provisions***, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. ***Member States shall determine how such reference is to be made.***

Or. en

## Amendment 97

### Council common position Annex I - Part A – point a

#### *Council common position*

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

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#### *Amendment*

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

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order that they can:

order that they can:

Or. en

## Amendment 98

### Council common position Annex I - Part A – point b

#### *Council common position*

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

#### *Amendment*

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

Or. en

## Amendment 99

### Council common position Annex I - Part A – point e

#### *Council common position*

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of **telephone** bills issued by **undertakings** designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures **are to** ensure, as far as is technically feasible that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a

#### *Amendment*

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of bills issued by **operators** designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures **shall** ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a



period of limited service prior to complete disconnection, during which only *calls* that do not incur a charge to the subscriber (e.g. "112" calls) are permitted.

period of limited service prior to complete disconnection, during which only *services* that do not incur a charge to the subscriber (e.g. "112" calls) are permitted. *Access to emergency services through "112" may be blocked in the event of repeated misuse by the user.*

Or. en

## **Amendment 100**

### **Council common position Annex I - Part A – point e a (new)**

*Council common position*

*Amendment*

#### ***(ea) Cost control***

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

Or. en

## **Amendment 101**

### **Council common position Annex I - Part A – point e b (new)**

*Council common position*

*Amendment*

#### ***(eb) Best advice***

***Member States shall ensure that national regulatory authorities require all undertakings providing electronic communication services to recommend their best available tariff package to consumers once a year on the basis of the***

*consumer's consumption pattern for the previous year.*

Or. en

## **Amendment 102**

**Council common position  
Annex I - Part B – point b a (new)**

*Council common position*

*Amendment*

### ***(ba) Services in the event of theft***

***Member States shall ensure that a freephone number common to all mobile telephony service providers is set up for reporting the theft of a terminal and immediately suspending the services associated with the subscription. It must also be possible for disabled users to access this service. Users must be regularly informed of the existence of this number, which must be easy to remember.***

Or. en

## **Amendment 103**

**Council common position  
Annex I - Part B – point b b (new)**

*Council common position*

*Amendment*

### ***(bb) Protection software***

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

***Any traffic monitoring data that this***

*software may collect is for the use of the  
subscriber only.*

Or. en