

# EUROPEAN PARLIAMENT

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## **\*\*\*I** **REPORT**

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation  
(COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Malcolm Harbour

Draftsman (\*):  
Alexander Alvaro, Committee on Civil Liberties, Justice and Home Affairs

(\*): Associated committee – Rule 47 of the Rules of Procedure

### ***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 proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation (COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0698),
  - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0420/2007),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, Research and Energy, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0318/2008),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

### **Amendment 1**

**Proposal for a directive – amending act  
Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) The universal service is a protective network for people whose financial resources, geographical location or special social needs do not permit them to access the basic services available to the majority of citizens. The basic universal***

*service obligation laid down in Directive 2002/22/EC is to provide users who so request with a connection to the public telephone network from a fixed location and at an affordable price. As a result, it addresses neither mobile services nor broadband access to the Internet. This basic obligation is now confronted by technological and market developments in which mobile communications may be the primary form of access in many areas and networks are increasingly adopting the technology associated with mobile and broadband communications. These developments raise a need to assess whether the technical, social and economic conditions justifying the inclusion of mobile communications and broadband access in the universal service obligation are fulfilled, as well as related financing aspects. To this end, the Commission will present, no later than autumn 2008, a review of the scope of the universal service obligation and proposals for reform of Directive 2002/22/EC to meet the appropriate public interest objectives. That review will take account of economic competitiveness and include an analysis of social, commercial and technological conditions and of the risk of social exclusion. It will also address the technical and economic viability, estimated cost, cost allocation and funding models for any redefined universal service obligation. As questions relating to the scope of the universal service obligation will therefore be fully dealt with in that separate procedure, this Directive only deals with other aspects of Directive 2002/22/EC.*

## Amendment 2

### Proposal for a directive – amending act Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(4a) Without prejudice to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity<sup>1</sup>, and in particular the disability requirements laid down in Article 3(3)(f) thereof, certain aspects of terminal equipment, including equipment intended for disabled users, should be brought within the scope of Directive 2002/22/EC in order to facilitate access to networks and the use of services. Such equipment currently includes receive-only radio and television terminal equipment as well as special terminal devices for hearing-impaired users.***

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<sup>1</sup> OJ L 91, 7.4.1999, p. 10. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

#### *Justification*

*This addition of a new recital is to explain the practical implications of including aspects of terminal equipment in this Directive and provide examples of the type of equipment concerned.*

## Amendment 3

### Proposal for a directive – amending act Recital 4 b (new)

*Text proposed by the Commission*

*Amendment*

***(4b) Member States should introduce measures to promote the creation of a market for widely available products and services incorporating facilities for***

*disabled 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.*

#### *Justification*

*All users can benefit from the incorporation in currently available products of facilities improving accessibility compatible with all services provided. Mainstreamed electronic accessibility based on European standards coupled with an across-the-board approach to discrimination based on disability initiated by the Commission (eAccessibility) must facilitate the development of innovative solutions. Member States have a role to play by implementing these measures and stimulating the market, for example by means of public tendering procedures.*

#### **Amendment 4**

##### **Proposal for a directive – amending act Recital 5**

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

(5) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. **a** service available to the public for originating and receiving, directly or indirectly via carrier selection or pre-selection or resale, national and/or international calls through a number or numbers in a national or international telephone numbering plan. A service which does not fulfil all these conditions is not a publicly available telephone service.

###### *Amendment*

(5) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. **an electronic communications** service available to the public for originating and receiving, directly or indirectly via carrier selection or pre-selection or resale, national and/or international calls **and means of communication specifically intended for disabled users using text relay or total conversation services** through a number or numbers in a national or international telephone numbering plan, **whether such a service is based on circuit switching or packet switching technology. It is the nature of such a service that it is**



***bidirectional, enabling both parties to communicate.*** A service which does not fulfil all these conditions, ***such as for example a "click-through" application on a customer service website,*** is not a publicly available telephone service.

*Justification*

*The notion of a publicly accessible telephone service is more clearly defined and expressly includes services specifically tailored to the needs of disabled users.*

**Amendment 5**

**Proposal for a directive – amending act  
Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11a) The provisions on contracts should apply not only to consumers but also to other end-users, primarily micro enterprises and small and medium-sized enterprises (SMEs), who may prefer a contract adapted to consumer needs. To avoid unnecessary administrative burdens on providers and complexity related to the definition of SMEs, the provisions on contracts should not apply automatically to those other end-users but only where they so request. Member States should take appropriate measures to promote awareness amongst SMEs of this possibility.***

**Amendment 6**

**Proposal for a directive – amending act  
Recital 12**

*Text proposed by the Commission*

*Amendment*

(12) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to

(12) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to

emergency services is provided, and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. Customers should also be kept well informed of possible **actions** that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data, privacy or other aspects of the service provided.

emergency services **and caller location information** is provided and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. ***This information should include any limitations as to territorial coverage, on the basis of the planned technical operating parameters of the service and the available infrastructure. Where the service is not provided over a switched telephony network, the information should also include the level of reliability of the access and of caller location information compared to a service that is provided over a switched telephony network, taking into account current technology and quality standards, as well as any quality of service parameters specified under Directive 2002/22/EC. Voice calls remain the most robust and reliable form of access to emergency services. Other means of contact, such as text messaging, may be less reliable and may suffer from lack of immediacy. Member States should however, if they deem it appropriate, be free to promote the development and implementation of other means of access to emergency services which are capable of ensuring access equivalent to voice calls.*** Customers should also be kept well informed of possible **types of action** that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data, privacy or other aspects of the service provided.

## Amendment 7

### Proposal for a directive – amending act Recital 12 a (new)

*Text proposed by the Commission*

*Amendment*

***(12a) With respect to terminal equipment, the customer contract should specify any restrictions imposed by the provider on the customer's use of the equipment, such as by way of "SIM-locking" mobile devices, and any charges due on termination of the contract, whether before or on the agreed expiry date, including any cost imposed in order to retain the equipment.***

*Justification*

## Amendment 8

### Proposal for a directive – amending act Recital 12 b (new)

*Text proposed by the Commission*

*Amendment*

***(12b) Without imposing any obligation on the provider to take action over and above what is required under Community law, the customer contract should also specify the type of action, if any, the provider might take in case of security or integrity incidents, threats or vulnerabilities, as well as any arrangements implemented by the provider to provide compensation if such events occur.***

## Amendment 9

### Proposal for a directive – amending act Recital 12 c (new)

*Text proposed by the Commission*

*Amendment*

***(12c) In order to address public interest issues with respect to the use of communications services, and to encourage protection of the rights and freedoms of others, the relevant national authorities should be able to produce and have disseminated, with the aid of providers, information related to the use of communications services. This information should include warnings regarding copyright infringement, other unlawful uses and dissemination of harmful content, and advice and means of protection against risks to personal security, which may for example arise from disclosure of personal information in certain circumstances, privacy and personal data. The information could be coordinated by way of the cooperation procedure established in Article 33(2a) of Directive 2002/22/EC. Such public interest information should be produced either as a preventative measure or in response to particular problems, should be updated whenever necessary and should be presented in easily comprehensible printed and electronic formats, as determined by each Member State, and on national public authority websites. National regulatory authorities should be able to oblige providers to disseminate this information to their customers in a manner deemed appropriate by the national regulatory authorities. Significant additional costs incurred by service providers for dissemination of such information, for example if the provider is obliged to send the information by post and thereby incurs additional postage costs, should be agreed between the providers and the***

*relevant authorities and met by those authorities. The information should also be included in contracts.*

## **Amendment 10**

### **Proposal for a directive – amending act Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) Community rules on consumer protection and national rules in conformity with Community law should apply to Directive 2002/22/EC without exception.***

## **Amendment 11**

### **Proposal for a directive – amending act Recital 14**

*Text proposed by the Commission*

*Amendment*

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

***(14) End-users should decide what lawful content they want to be able to send and receive, and which services, applications, hardware and software they want to use for such purposes, without prejudice to the need to preserve the integrity and security of networks and services. A competitive market with transparent offerings as provided for in Directive 2002/22/EC should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. Such information should, at the option of the***

*provider, specify either the type of content, application or service concerned, or individual applications or services, or both. Depending on the technology used and the type of restriction and/or limitation, such restrictions and/or limitations may require user consent under Directive 2002/58/EC (Privacy Directive).*

## **Amendment 12**

### **Proposal for a directive – amending act Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

*(14a) A competitive market should also ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, usage restrictions and/or limitations and the slowing of traffic. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them under the Directives establishing the regulatory framework for electronic communications networks and services to ensure that users' access to particular types of content or applications is not unreasonably restricted. It should also be possible for national regulatory authorities to issue guidelines setting minimum quality of service requirements under Directive 2002/22/EC and to take other measures where such other remedies have, in their judgement, not been effective with regard to the interests of users and all other relevant circumstances. Such guidelines or measures could include the provision of a basic tier of unrestricted services.*

## Amendment 13

### Proposal for a directive – amending act Recital 14 b (new)

*Text proposed by the Commission*

*Amendment*

***(14b) Management of networks in order to, for example, address congestion and capacity constraints and to enable new services should not per se be considered an example of a restriction requiring intervention, and due account should be taken of the right of network and service operators to diversify their offerings in a competitive market, including through the imposition of reasonable usage restrictions, price differentiation and other legitimate competitive practices. Temporary non-compliance with any minimum quality of service requirements due to unforeseeable circumstances beyond the reasonable control of the service and/or network provider (force majeure) should not be subject to sanctions.***

## Amendment 14

### Proposal for a directive – amending act Recital 14 c (new)

*Text proposed by the Commission*

*Amendment*

***(14c) Since inconsistent remedies will significantly impair the achievement of the internal market, the Commission should assess any guidelines or other measures adopted 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.***

## Amendment 15

### Proposal for a directive – amending act Recital 15

#### *Text proposed by the Commission*

(15) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency and to ensure that third parties have the right to use without charge publicly available tariffs published by undertakings providing electronic communications services. They should also make price guides available where the market has not provided them. Operators should not be entitled to any remuneration for such use of tariffs *which had* already been published and thus belong to the public domain. In addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges. ***The Commission should be able to adopt technical implementing measures to ensure that end-users benefit from a consistent approach to tariff transparency in the Community.***

#### *Amendment*

(15) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency and to ensure that third parties have the right to use without charge publicly available tariffs published by undertakings providing electronic communications services. They should also, ***themselves or through third parties,*** make price guides available where the market has not provided them ***free of charge or at a reasonable price.*** Operators should not be entitled to any remuneration for such use of tariffs ***where they have*** already been published and thus belong to the public domain. In addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges. ***National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, prior to connecting the call. 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.*

## **Amendment 16**

### **Proposal for a directive – amending act Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

*(15a) Customers should be informed of their rights with respect to the use of their personal information in directories of subscribers, and in particular of the purpose or purposes of such directories, as well as their right, free of charge, not to be included in a public subscriber directory, as provided for in Directive 2002/58/EC. Where systems exist allowing information to be included in the directory database but not disclosed to users of directory services customers should also be informed of that possibility.*

## **Amendment 17**

### **Proposal for a directive – amending act Recital 15 b (new)**

*Text proposed by the Commission*

*Amendment*

*(15b) The 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.*

*Justification*

*The introduction of such information points will, together with the new charter, enable users to obtain information independently of operators and, if necessary, legal assistance in case of dispute.*

**Amendment 18**

**Proposal for a directive – amending act  
Recital 16**

*Text proposed by the Commission*

*Amendment*

***(16) A competitive market should ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the blocking of access and the slowing of traffic over the networks. In particular, the Commission should be able to adopt implementing measures with a view to identifying the quality standards to be used by the national regulatory authorities.***

***deleted***

*Justification*

*Merged into recitals 14-14a.*

**Amendment 19**

**Proposal for a directive – amending act  
Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

***(18a) Directory enquiry services should be, and frequently are, provided in competition, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services<sup>1</sup>. Wholesale measures ensuring the inclusion of end-user data (both fixed and mobile) in***

*databases, the cost-oriented supply of that data to service providers and the provision of network access in cost-oriented, reasonable and transparent conditions should be in place in order to ensure that end users benefit fully from competition with the ultimate aim of enabling the removal of retail regulation from these services.*

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<sup>1</sup> OJ L 249, 17.9.2002, p. 21.

### *Justification*

*Directory Enquiry services are a critical service for disabled and elderly users, and for users in general. Currently, there are two key factors which are impeding consumers receiving the full benefit of competition in directory enquiry services:*

- (i) limitations on the inclusion of end-user data in databases (particularly, mobile telephone information) which affects the comprehensiveness of services.*
- (ii) unfair wholesale access conditions.*

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

## **Amendment 20**

### **Proposal for a directive – amending act Recital 19**

#### *Text proposed by the Commission*

(19) End-users should be able to call and access the emergency services provided using any telephone service capable of originating voice calls through a number or numbers in the national or international 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 other 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

#### *Amendment*

(19) End-users should be able to call and access the emergency services provided using any telephone service capable of originating voice calls through a number or numbers in the national or international 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 other 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 that “112” can be used as a single emergency number when travelling in any Member States, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material. The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, operators should provide caller location information to emergency services in a “push” mode. In order to respond to technological developments, including those leading to increasingly precise accuracy of location information, the Commission should be able to adopt technical implementing measures in order to ensure the effective implementation of “112” in the Community for the benefit of citizens of the European Union.

European Union. To this end, citizens should be made fully aware that “112” can be used as a single emergency number when travelling in any Member States, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material. ***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 further awareness of "112" and periodically to evaluate knowledge of "112" by the public.*** The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, operators should provide caller location information to emergency services in a “push” mode. In order to respond to technological developments, including those leading to increasingly precise accuracy of location information, the Commission should be able to adopt technical implementing measures in order to ensure the effective implementation of “112” in the Community for the benefit of citizens of the European Union.

## Amendment 21

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

*Text proposed by the Commission*

(21) ***The countries to which the International Telecommunications Union assigned the international code “3883” have delegated administrative responsibility for the European Telephony Numbering Space (ETNS) to the electronic communications committee (ECC) of the European Conference of Postal and Telecommunications Administrations***

*Amendment*

(21) ***Development of*** the international code “3883” (the European Telephony Numbering Space (ETNS)) is currently ***hindered by lack of demand***, overly bureaucratic procedural requirements and ***insufficient awareness***. In order to foster the development of ETNS, ***the Commission should delegate responsibility for its management, number***

*(CEPT). Technological and market developments show that ETNS represents an opportunity for pan-European services to develop, but that it is currently prevented from realising its potential by overly bureaucratic procedural requirements and a lack of coordination between national administrations. In order to foster the development of ETNS, its administration (which includes assignment, monitoring and development) should be transferred to the European Electronic Communications Market Authority established by Regulation (EC) No.../... of the European Parliament and of the Council of [...], hereinafter referred to as “the Authority”. The Authority should ensure coordination with those countries that share “3883” but are not Member States on behalf of the Member States to which “3883” has been assigned.*

*assignment and promotion either to [xxx] 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.*

*(References to the European Electronic Communications Market Authority are replaced by [xxx] throughout, without further specific AMs.)*

#### *Justification*

*Replaces AM 7 of the draft report. See justification to 27(2).*

#### **Amendment 22**

#### **Proposal for a directive – amending act Recital 22**

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

(22) 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, including Information Society 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

##### *Amendment*

(22) 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, including Information Society 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 the associated service should not be prevented except in objectively justified cases, such as when this is necessary to combat fraud, and abuse e.g. in connection with certain premium-rate services, or when the number is defined as having a national scope only (e.g. national short code). Users should be fully informed in advance 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 able to adopt implementing measures.

freephone numbers (UIFN). Cross-border access to numbering resources and to the associated service should not be prevented except in objectively justified cases, such as when this is necessary to combat fraud, and abuse e.g. in connection with certain premium-rate services, or when the number is defined as having a national scope only (e.g. national short code). Users should be fully informed in advance 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 able to adopt implementing measures. ***End-users should also be able to connect to other end-users (especially via Internet Protocol (IP) numbers) in order to exchange data, regardless of the operator they choose.***

#### *Justification*

*This amendment seeks to ensure that users of any electronic communication service are able to connect to any users of another service and vice-versa, regardless of the technology being used.*

### **Amendment 23**

#### **Proposal for a directive – amending act Recital 23**

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

(23) 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 etc. This does not preclude imposing reasonable minimum contractual periods in

##### *Amendment*

(23) 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 etc. This does not preclude imposing 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. In order to be able to adapt number portability to market and technological evolution, including the possible porting of subscriber's personal directories and profile information stored within the network, the Commission should be able to take technical implementing measures in this area. Assessment of whether technology and market conditions are such as to allow for porting of numbers between networks providing services at a fixed location and mobile networks should in particular take into account prices for users and switching costs for undertakings providing services at fixed locations and mobile networks.

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, *ordinarily within no more than one day from the request of the consumer. However, experience in certain Member States has shown that there is a risk of consumers being 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, without making the process less attractive for consumers.* In order to be able to adapt number portability to market and technological evolution, including the possible porting of subscriber's personal directories and profile information stored within the network, the Commission should be able to take technical implementing measures in this area. Assessment of whether technology and market conditions are such as to allow for porting of numbers between networks providing services at a fixed location and mobile networks should in particular take into account prices for users and switching costs for undertakings providing services at fixed locations and mobile networks.

#### *Justification*

*To provide background and guidance on the changes to 30(4).*

#### **Amendment 24**

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

#### **Recital 24**

*Text proposed by the Commission*

(24) *A television broadcast is a linear*

*Amendment*

(24) Legal “must-carry” obligations may

*audiovisual media service as defined in the Audiovisual Media Services Directive of the European Parliament and of the Council of [...] 2007, which is provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule; a media service provider may provide a number of audio or audio visual programme schedules (channels).* Legal “must-carry” obligations may be applied, **but only** to specified **broadcast channels** supplied by a specified media service provider. Member States should provide a clear justification for the “must carry” obligations **in their national law** so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. **Given the rapid change in technology and market conditions such a full review would need to be carried out at least every three years and would require a public consultation of all stakeholders. One or more broadcast channels may be complemented by** services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

be applied to specified **radio and audiovisual media services and complementary services** supplied by a specified media service provider. **Audiovisual media services are defined in Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities<sup>1</sup>.** Member States should provide a clear justification for the “must carry” obligations so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. **Complementary services include, but are not limited to,** services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

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<sup>1</sup> OJ L 332, 18.12.2007, p. 27.

## Amendment 25



**Proposal for a directive – amending act  
Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

***(25a) 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.***

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

*Justification*

*See justification to 34(1).*

**Amendment 26**

**Proposal for a directive – amending act  
Recital 26 a (new)**

*Text proposed by the Commission*

*Amendment*

***(26a) 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 and security of information technology systems, 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.*

*(AM 1 of the LIBE opinion)*

**Amendment 27**

**Proposal for a directive – amending act  
Recital 26 b (new)**

*Text proposed by the Commission*

*Amendment*

***(26b) 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.***

*(AM 2 of the LIBE opinion)*

**Amendment 28**

**Proposal for a directive – amending act  
Recital 26 c (new)**

*Text proposed by the Commission*

*Amendment*

***(26c) The provisions of Directive 2002/58/EC particularise and complement 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<sup>1</sup> and provide for the legitimate interests of subscribers who are natural or legal persons.***

**10J L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003.**

*(AM 3 of the LIBE opinion)*

## **Amendment 29**

### **Proposal for a directive – amending act Recital 27**

*Text proposed by the Commission*

(27) Liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and resulted in a rich diversity of end-user services accessible via public electronic communications networks. ***There is a need to ensure that consumers and users are afforded the same level of protection of privacy and personal data, regardless of the technology used to deliver a particular service.***

*Amendment*

(27) Liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and *have* resulted in a rich diversity of end-user services accessible via public ***and private*** electronic communications networks ***and publicly accessible private networks.***

*(AM 4 of the LIBE opinion)*

## **Amendment 30**

### **Proposal for a directive – amending act Recital 28 a (new)**

*Text proposed by the Commission*

*Amendment*

***(28a) For the purpose of Directive 2002/58/EC, Internet Protocol addresses should be considered as personal data only if they can be directly linked to an individual alone or in conjunction with other data. By ...<sup>+</sup>, the Commission should propose specific legislation on the legal handling of Internet Protocol addresses as personal data within the framework of data protection following consultation of***

*the Article 29 Working Party and the European Data Protection Supervisor.*

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*+ Two years from the date of entry into force of this Directive.*

*(AM 5 of the LIBE opinion)*

### **Amendment 31**

**Proposal for a directive – amending act  
Recital 28 b (new)**

*Text proposed by the Commission*

*Amendment*

*(28b) 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 and Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks<sup>1</sup>, 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 regular monitoring and preventive, corrective and mitigating action should be carried out.*

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<sup>1</sup> *OJ L 105, 13.4.2006, p. 54.*

*(AM 6 of the LIBE opinion)*

## Amendment 32

### Proposal for a directive – amending act Recital 28 c (new)

*Text proposed by the Commission*

*Amendment*

***(28c) National regulatory authorities should monitor measures taken and disseminate best practices among providers of publicly available electronic communications services.***

*(AM 7 of the LIBE opinion)*

## Amendment 33

### Proposal for a directive – amending act Recital 29

*Text proposed by the Commission*

*Amendment*

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, ***subscribers concerned by such security incidents*** should be notified without delay ***and informed in order to be able to take the necessary precautions***. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected.

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, ***the national regulatory authority or other competent national authority*** should be notified without delay. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected. ***The competent authority should consider and determine the seriousness of the breach. If the breach is deemed to be serious the competent authority should require the provider of publicly available electronic communications service and the provider of information society services to give an appropriate notification without undue delay to the persons affected by the breach.***

*(AM 8 of the LIBE opinion)*

## Amendment 34

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

*Text proposed by the Commission*

*Amendment*

***(30a) Article 15(1) of Directive 2002/58/EC should be construed as meaning that disclosure of personal data in the context of Article 8 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights<sup>1</sup> is without prejudice to Directive 2002/58/EC or Directive 95/46/EC where it takes place following a justified, i.e. sufficiently well-founded, and proportionate request in accordance with procedures laid down by the Member States to guarantee that these safeguards are respected.***

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<sup>1</sup> OJ L 157, 30.4.2004, p. 45.

*(AM 9 of the LIBE opinion)*

*Justification*

*Article 8, Directive 2004/48 on the enforcement of intellectual property rights relates to disclosure of information, which may involve data protected under this Directive (2002/58) and/or Directive 95/46/EC. It is clear from Article 15(1) of this Directive and Article 13(1)(g) of Directive 95/46/EC that such disclosure may take place, as it is necessary to protect the rights and freedoms of third parties. In view of recent case-law it seems relevant to clarify at EU-level the relationship between the specific disclosure provision in Article 8 of Directive 2004/48 and the provisions of this Directive, and thereby increase legal certainty for all parties.*

## Amendment 35

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

*Text proposed by the Commission*

*Amendment*

***(30b) When implementing measures transposing Directive 2002/58/EC, the authorities and courts of the Member***

***States should not only interpret their national law in a manner consistent with that Directive, but should also ensure that they do not rely on an interpretation of that Directive which would be in conflict with other fundamental rights or general principles of Community law, such as the principle of proportionality.***

*(AM 10 of the LIBE opinion)*

*Justification*

*This amendment takes account of the Court of Justice judgment of 29 January 2008 in the Promusicae v Telefónica case, which reaffirms that Member States must interpret the directive in a manner that does not conflict with other fundamental rights or general principles of law. This constitutes a guarantee for the protection of the rights and freedoms of others.*

### **Amendment 36**

#### **Proposal for a directive – amending act Recital 33**

*Text proposed by the Commission*

*Amendment*

***(33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment. In particular, it should contribute to harmonisation of appropriate technical and organisational security measures.***

***deleted***

*Justification*

*The proposed authority will likely not have responsibility for these issues.*

### **Amendment 37**

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

*Text proposed by the Commission*

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

*Amendment*

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

*(AM 12 of the LIBE opinion)*

*Justification*

*The terminal equipment is the weakest link in a network and, hence, should be well protected. End-users should understand the risks they face while surfing the internet, when they download and use software or data storage media.*

**Amendment 38**

**Proposal for a directive – amending act  
Recital 35**

*Text proposed by the Commission*

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action

*Amendment*

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action



against spammers and thus defend the interests of their customers, as well as their own legitimate business interests.

against spammers *for such infringements* and thus defend the interests of their customers, as well as their own legitimate business interests.

*(AM 13 of the LIBE opinion)*

#### **Amendment 39**

##### **Proposal for a directive – amending act Recital 35 a (new)**

*Text proposed by the Commission*

*Amendment*

***(35a) Where location data other than traffic data can be processed, such data should be processed only when they are made anonymous or with the prior consent of the users or subscribers concerned, who should be given clear and comprehensive information on the possibility of withdrawing their consent at any time.***

*(AM 14 of the LIBE opinion)*

#### **Amendment 40**

##### **Proposal for a directive – amending act Recital 38 a (new)**

*Text proposed by the Commission*

*Amendment*

***(38a) The Commission should, provided that the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community<sup>1</sup> enters into force, present to the Council and to the European Parliament a new legislative proposal on privacy and data security in electronic communications, with a new legal basis.***

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<sup>1</sup> OJ C 306, 17.12.2007, p. 1.

*(AM 15 of the LIBE opinion)*

## Amendment 41

### Proposal for a directive – amending act Recital 39

#### *Text proposed by the Commission*

(39) In particular power should be conferred on the Commission to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of “112” services, effective access to numbers and services, improvement of accessibility by disabled end-users as well as amendments to adapt the Annexes to technical progress or changes in market demand. This power should also be conferred to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation. Since those measures are of a general scope and are designed to supplement *Directive* by adding new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***When, on imperative grounds of urgency, the normal time-limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to use the urgency procedure provided for in Article 5a(6) of the Decision.***

#### *Amendment*

(39) In particular power should be conferred on the Commission to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of “112” services, effective access to numbers and services, improvement of accessibility by disabled end-users as well as amendments to adapt the Annexes to technical progress or changes in market demand. This power should also be conferred to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation. Since those measures are of general scope and are designed to supplement *Directive 2002/22/EC* by adding new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***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.***

*(This change would be applicable throughout in references to comitology, without further specific AMs)*

#### *Justification*

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

## Amendment 42

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

*Text proposed by the Commission*

*Amendment*

***(39a) The purpose of Directive 2002/22/EC (the Universal Service Directive) is to ensure a high level of protection of the rights of consumers and individual users in the provision of telecommunications services. Such protection is not required in the case of global telecommunications services. These are corporate data and voice services provided as a package to large undertakings, located in different countries within and outside the EU, on the basis of individual contracts negotiated by parties of equal strength.***

*Justification*

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

## Amendment 43

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 2002/21/EC

Article 1 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community

1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community

of good quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. This Directive also includes provisions concerning consumer premises terminal equipment.

of good quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end users are not satisfactorily met by the market. This Directive also includes provisions concerning consumer premises terminal equipment, ***with particular attention being given to terminal equipment for users with special needs, including the disabled and the elderly.***

#### **Amendment 44**

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

##### **Article 1 – point 1**

Directive 2002/22/EC

Article 1 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. The provisions of this Directive shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EC and 97/7/EC, and to national rules in conformity with Community law.***

*Justification*

*Consistency with other amendments.*

#### **Amendment 45**

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

##### **Article 1 – point 2 – point b**

Directive 2002/22/EC

Article 2 – point (c)

*Text proposed by the Commission*

*Amendment*

(c) “publicly available telephone service” means a service available to the public for originating ***and*** receiving, directly or indirectly ***via carrier selection or pre-selection or resale***, national and/or

(c) “publicly available telephone service” means a service available to the public for originating ***and/or*** receiving, directly or indirectly, national and/or international calls ***and other means of communication***

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

***specifically intended for disabled users using text relay or total conversation services*** through a number or numbers in a national or international telephone numbering plan;

*Justification*

*The directive should not exclude users unable to make voice 'calls'. The definition should therefore include specific services intended for certain disabled user categories. Reselling, rebranding etc. are all covered by the reference to indirect provision. To present excluding telephone services provided via payphones which only allow calls to be received.*

**Amendment 46**

**Proposal for a directive – amending act**

**Article 1 – point 2 – point b a (new)**

Directive 2002/22/EC

Article 2 – point (d)

*Text proposed by the Commission*

*Amendment*

***(ba) point (d) shall be replaced by the following:***

***‘(d) “geographic number” means a number from the national telephone numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);’***

*Justification*

*To clarify the definition, as there may be other national numbering plans apart from those for telephony, as in fact is recognised in the definition of publicly available telephone services in point (c) or Article 25(2).*

**Amendment 47**

**Proposal for a directive – amending act**

**Article 1 – point 2 – point b b (new)**

Directive 2002/22/EC

Article 2 – point (e)

*Text proposed by the Commission*

*Amendment*

***(bb) point (e) shall be deleted.***

*Justification*

*Consistency with the proposal to include the concept of ‘network termination point’ in the definition of ‘public communications network’ in the framework directive.*

## **Amendment 48**

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

#### **Article 1 – point 3**

Directive 2002/22/EC

Article 4 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. Member States shall ensure that all reasonable requests for provision of a 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”, are met by at least one undertaking.

3. Member States shall ensure that all reasonable requests for 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.

## **Amendment 49**

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

#### **Article 1 – point 4 a (new)**

Directive 2002/22/EC

Article 6 – title

*Text proposed by the Commission*

*Amendment*

***(4a) in Article 6, the title shall be replaced by the following:***

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

## Amendment 50

### Proposal for a directive – amending act

#### Article 1 – point 4 b (new)

Directive 2002/22/EC

Article 6 – paragraph 1

*Text proposed by the Commission*

*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, [...] accessibility [...] to disabled users and the quality of services."**

## Amendment 51

### Proposal for a directive – amending act

#### Article 1 – point 5

Directive 2002/22/EC

Article 7 – title

*Text proposed by the Commission*

*Amendment*

***Special measures*** for disabled users

***Measures*** for disabled users

*Justification*

*The reference to "special" is deleted to avoid the impression that these measures are of extraordinary character as opposed to an integral part of the purpose of this Directive.*

## Amendment 52

### Proposal for a directive – amending act

#### Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 1

*Text proposed by the Commission*

1. Member States shall take specific measures for disabled end-users in order to ensure access to and affordability of **publicly available telephone service**, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.

*Amendment*

1. Member States shall take specific measures for disabled end-users in order to ensure access to and affordability of **electronic communications services**, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.

*Justification*

*The change would broaden the scope with respect to disabled end-users in order to not unnecessarily limit them to basic telephony services. "Electronic communications service" is defined in the Framework Directive to in principle cover any service consisting of the conveyance of signals, and includes publicly available telephone service.*

**Amendment 53**

**Proposal for a directive – amending act**

**Article 1 – point 5**

Directive 2002/22/EC

Article 7 – paragraph 2

*Text proposed by the Commission*

2. Member States **shall** take specific measures, in the light of national conditions, to ensure that disabled end-users can **also** take advantage of the choice of undertakings and service providers available to the majority of end-users.

*Amendment*

2. Member States **may** take specific measures, **shown through an assessment by the national regulatory authorities to be needed** in the light of national conditions **and specific disability requirements**, to ensure that disabled end-users can take advantage of the choice of undertakings and service providers available to the majority of end-users, **and to promote the availability of appropriate terminal equipment. They shall ensure that in any event the needs of specific groups of disabled users are met by at least one undertaking.**

*Justification*

*The AM adds a specific reference to promoting availability of terminal equipment. Also,*



*measures under this paragraph should not be obligatory, as that may require NRAs to designate several universal service providers solely to enable choice. The new Article 31a enables NRAs to take more effective action in favour of disabled users in that respect.*

## **Amendment 54**

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

#### **Article 1 – point 5**

Directive 2002/22/EC

Article 7 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. 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).***

*Justification*

*Given the current fragmentation of the markets, the solutions and standards used differ from one country to another, which constitutes a barrier to accessibility and interoperability. In order to address this problem, Member States should encourage the adoption of European standards, where they exist.*

## **Amendment 55**

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

#### **Article 1 – point 5**

Directive 2002/22/EC

Article 7 – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

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

*Justification*

*In order for services to be provided to disabled users, appropriate terminal equipment needs*

to be made available.

## Amendment 56

### Proposal for a directive – amending act

#### Article 1 – point 7

Directive 2002/22/EC

Article 9 – paragraphs 3

*Text proposed by the Commission*

*Amendment*

3. Member States **may**, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.

3. Member States **shall**, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.

#### *Justification*

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

## Amendment 57

### Proposal for a directive – amending act

#### Article 1 – point 7 a (new)

Directive 2002/22/EC

Article 10 – paragraph 2

*Text proposed by the Commission*

*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.'**

## **Amendment 58**

**Proposal for a directive – amending act**

**Article 1 – point 7 b (new)**

Directive 2002/22/EC

Article 11 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***(7b) Article 11(1) shall be replaced by the following:***

**'1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III. The published information shall *on request* be supplied to the national regulatory authority.'**

*Justification*

*To avoid excessive bureaucracy for the operators concerned.*

## **Amendment 59**

**Proposal for a directive – amending act**

**Article 1 – point 10 – point a a (new)**

Directive 2002/22/EC

Article 17 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) in Article 17, the following paragraph shall be inserted:***

***"2a. Without prejudice to obligations that may be imposed on operators identified as having significant market power on a***

*given retail market pursuant to paragraph 1, national regulatory authorities may apply the obligations referred to in paragraph 2 for a transitional period to operators identified as having significant market power on a given wholesale market in circumstances where wholesale obligations have been imposed but are not yet effective in ensuring competition in the retail market."*

*Justification*

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

**Amendment 60**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***1. This Article shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EC and 97/7/EC, and national rules in conformity with Community law.***

***deleted***

*Justification*

*Amended and moved to Article 1.*

**Amendment 61**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – introductory wording

*Text proposed by the Commission*

2. Member States shall ensure that, where subscribing to services providing connection to a public communications network and/or **publicly available telephone** services, consumers have a right to a contract with an undertaking or undertakings providing such services and/or connection. The contract shall specify at least:

*Amendment*

2. Member States shall ensure that, where subscribing to services providing connection to a public communications network and/or **electronic communications** services, consumers **and other end-users so requesting** have a right to a contract with an undertaking or undertakings providing such services and/or connection. The contract shall specify **in a clear, comprehensive and easily accessible form** at least:

*Justification*

*This, together with the other amendments to Article 20, serves to simplify the Article. The reference here to electronic communications services (which includes publicly available telephone services) enables deletion of paragraph 3. Undertakings primarily SMEs, should also be able to benefit from Article 20 if they so desire. The inclusion of the reference to clear and comprehensive information avoids repetition of that requirement in later paragraphs.*

**Amendment 62**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point (b)

*Text proposed by the Commission*

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

*Amendment*

(b) services provided, **including in particular:**

**- where access to emergency services and caller location information is to be provided under Article 26, the level of reliability of such access, where relevant, and whether access is provided in the whole of the national territory,**

**- information on any restrictions imposed by the provider regarding a subscriber's ability to access, use or distribute lawful content or run lawful applications and services,**

- the service quality levels, *with reference to any parameters specified under Article 22(2) as appropriate,*
- *types of maintenance and customer support services* offered, as well as *how to contact customer support,*
- the time for the initial connection, *and*
- *any restrictions on the use of terminal equipment imposed by the provider;*

*Justification*

*This gathers in one place the information proposed by the Commission to be included at the time of contract in the proposed new paragraphs 4 and 5, address information on directories and limitations of the use of terminal equipment, such as SIM-locked handsets, and enable deletion of point (b) on maintenance as a separate point.*

**Amendment 63**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point (c)

*Text proposed by the Commission*

*Amendment*

*(c) the types of maintenance service offered;*

*(c) the subscriber's decision as to whether to include his or her personal data in a directory and the data concerned;*

*Justification*

**Amendment 64**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point (d)

*Text proposed by the Commission*

*Amendment*

*(d) particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance*

*(d) particulars of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, **payment***

charges may be obtained;

***methods offered and any differences in costs due to payment method;***

*Justification*

*To include basic information on available payment methods, in particular whether any particular methods involves a difference in costs to the subscriber, such as for example any reduction offered if the subscriber agrees to direct debit or electronic invoicing.*

**Amendment 65**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point (e)

*Text proposed by the Commission*

(e) the duration of the contract, the conditions for renewal and termination of services and of the contract, including ***direct costs for*** portability of numbers and other identifiers;

*Amendment*

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

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

*Justification*

*This makes costs related to any subsidised handset or other terminal equipment on termination of the contract (whether termination is premature or not) clear to the subscriber. It is without prejudice to national law that might prohibit such subsidies altogether.*

**Amendment 66**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point (h)

*Text proposed by the Commission*

(h) the action that might be taken by the

*Amendment*

(h) the ***type of*** action that might be taken

undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities.

by the undertaking providing connection and/or services 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.***

*Justification*

*The limitation to the type of action should lead to information that is both shorter and more meaningful than what might otherwise be a long list of theoretically possible actions. Following the example set in point (f) regarding breach of agreed service levels, providers should also inform of any compensation arrangements they apply. Disclosure might stimulate competition in that respect.*

**Amendment 67**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

***Member States may extend these obligations to cover other end-users.***

*Amendment*

***The contract shall also include any information provided by the relevant public authorities on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data referred to in Article 21(4a) and relevant to the service provided.***

*Justification*

*This new subparagraph would enable NRAs to require providers to include any current information on legal uses of communications in the contract, including where the relevant NRA has issued information with respect to copyright infringement.*



## Amendment 68

### Proposal for a directive – amending act

#### Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. The information listed in paragraph 2 shall also be included in contracts between consumers and electronic communications services providers other than those providing connection to a public communications network and/or publicly available telephone services. Member States may extend this obligation to cover other end-users.** **deleted**

*Justification*

*See the justification to Article 20(2) above. The possibility to extend the obligation to other end-users is retained in the existing second subparagraph of Article 20(2).*

## Amendment 69

### Proposal for a directive – amending act

#### Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services that allow voice communication, subscribers are clearly informed whether or not access to emergency services is provided. Providers of electronic communications services shall ensure that customers are clearly informed of the lack of access to emergency services in advance of the conclusion of a contract and regularly thereafter.** **deleted**

## *Justification*

*See the justification to Article 20(2) point (b) above and the proposed changes to Article 21(4) relating to information separately from the contract.*

### **Amendment 70**

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

##### **Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 5

*Text proposed by the Commission*

*Amendment*

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

*Justification* See the justification to Article 20(2) point (b) above and the proposed changes to Article 21(4) relating to information separately from the contract.

### **Amendment 71**

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

##### **Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 6

*Text proposed by the Commission*

*Amendment*

**6. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of the contract and regularly thereafter of their obligations to respect copyright and** **deleted**

***related rights. Without prejudice to Directive 2000/31/EC on electronic commerce, this includes the obligation to inform subscribers of the most common acts of infringements and their legal consequences.***

*Justification* See the justification to Article 20(2) subparagraph 1 a (new) above and to Article 21(4a) (new) relating to information separately from the contract. A possibility to inform on legal uses of communications should not be limited to copyright. To avoid problems regarding liability the information should be produced by the NRAs, on such topics they deem necessary. Providers could be requested to disseminate it to their customers.

## **Amendment 72**

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

#### **Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***1. Member States shall ensure that transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of the services identified in Articles 4, 5, 6 and 7 is available to end-users and consumers, in accordance with the provisions of Annex II.***

***deleted***

*Justification*

*Merged into Article 21(2), below.*

## **Amendment 73**

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

#### **Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Member States shall ensure that

2. Member States shall ensure that

undertakings providing public electronic communications **networks** and/or services publish comparable, adequate and up-to-date information on applicable prices and tariffs in respect of access and use of their services provided to consumers. Such information shall be published in **an** easily accessible form.

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 on standard terms and conditions**, in respect of access and use of their services provided 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 published.**

#### *Justification*

*This merger and amendment of Article 21 paragraphs (1) and (2) serves to broaden, simplify and clarify the provisions. Also, the standard terms as a whole would be excluded from the comparability requirement as comparisons between those terms in general, over and above the specific information required under Annex II in any event, would add little to the consumer interest.*

#### **Amendment 74**

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

##### **Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 3

#### *Text proposed by the Commission*

3. National regulatory authorities shall encourage the provision of information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available, when **these** are not available on the market. Third parties shall have a right to use without charge the **tariffs** published by undertakings providing

#### *Amendment*

3. 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, 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 parties**, when **they** are not available on the market **free of charge or at a reasonable price**. Third

electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar techniques.

parties shall have a right to use without 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.

## Amendment 75

### Proposal for a directive – amending act

#### Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 4

#### *Text proposed by the Commission*

4. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services to provide applicable tariff information to **customers at the time and point of purchase to ensure that customers are fully informed of pricing conditions.**

#### *Amendment*

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

**(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services national regulatory authorities may require such information to be provided 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 restrictions imposed by the undertaking on their ability to access, use or distribute lawful content or run lawful applications and services of their choice;**

**(d) inform subscribers of their right to include their personal data in a directory, and of the types of data concerned; and**

*(e) regularly inform disabled subscribers of details of current products and services aimed at them.*

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

#### *Justification*

*This provision gathers the recurring information requirements proposed for Article 20 into Article 21, where they fit the structure of the Directive better, and provides some clarifications, in particular with respect to point (a) regarding individual calls to premium services.*

### **Amendment 76**

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

##### **Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

*4a. Member States shall ensure that national regulatory authorities oblige the undertakings referred to in paragraph 4 to distribute public interest information to existing and new subscribers where appropriate. Such information shall be produced by the relevant public authorities in a standardised format and shall inter alia cover the following topics:*

*(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related right, and their consequences; and*

*(b) means of protection against risks to personal security, privacy and personal data in using electronic communications*

*services.*

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

*Justification*

*This new paragraph give NRAs a general right to require undertakings to disseminate information provided by the NRAs on legal uses of communications and on means of protection against risks to privacy and personal data both to existing and, in connection with entering into a contract, new subscribers, compare 20(2a) (new) above. Significant extra costs for the undertakings should be reimbursed by the authorities, as this concerns information relating to law enforcement and in the general interest.*

**Amendment 77**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 5

*Text proposed by the Commission*

*Amendment*

***5. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services and/or networks to provide information required in accordance with Article 20(5) to customers in a clear, comprehensive and easily accessible form.***

***deleted***

*Justification*

*See justification to Article 20(2) above.*

**Amendment 78**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 6

*Text proposed by the Commission*

*Amendment*

**6. In order to ensure that end-users can benefit from a consistent approach to tariff transparency, as well as to the provision of information in accordance with Article 20(5) in the Community, the Commission may, having consulted the European Electronic Communications Market Authority (hereinafter referred to as "the Authority"), take the appropriate technical implementing measures in this area, such as specify the methodology or procedures. Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).**

**deleted**

*Justification*

*The need for harmonised tariff transparency across the Community does not seem such as to require technical implementing measures. Tariff transparency should be dealt with on a national basis by the NRAs.*

## **Amendment 79**

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

#### **Article 1 – point 13 – point a**

Directive 2002/22/EC

Article 22 – paragraph 1

*Text proposed by the Commission*

*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-

1. Member States shall ensure that national regulatory authorities are, after taking account of the views of interested parties, able to require undertakings that provide publicly available electronic communications networks and/or services to publish comparable, adequate and up-to-



date information for end-users on the quality of their services, **including** equivalent access for disabled end-users. The information shall, on request, also be supplied to the national regulatory authority in advance of its publication.

date information for end-users on the quality of their services, **and on measures taken to ensure** equivalent access for disabled end-users. The information shall, on request, also be supplied to the national regulatory authority in advance of its publication.

#### *Justification*

*The text as proposed by the Commission connected the somewhat disparate aspects of information on quality of services with equivalent access for disabled end-users. The proposed change intends to clarify.*

### **Amendment 80**

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

#### **Article 1 – point 13 – point a a (new)**

Directive 2002/22/EC

Article 22 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***(aa) paragraph 2 shall be replaced by the following:***

**"2. National regulatory authorities may specify, inter alia, the quality of service parameters to be measured, and the content, form and manner of 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 given in Annex III could be used."**

## Justification

*This change of existing text left untouched by the Commission introduces the concept of quality certification mechanisms and makes limited other improvements to the existing text.*

### Amendment 81

#### Proposal for a directive – amending act

#### Article 1 – point 13 – point b

Directive 2002/22/EC

Article 22 – paragraph 3

#### *Text proposed by the Commission*

3. In order to prevent degradation of service and slowing of traffic over networks, ***the Commission may, having consulted the Authority, adopt technical implementing measures concerning minimum quality of service requirements to be set by the national regulatory authority on undertakings providing public communications networks.***

***These*** measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

#### *Amendment*

3. ***A national regulatory authority may issue guidelines setting minimum quality of service requirements, and, if appropriate, take other measures,*** in order to prevent degradation of service and slowing of traffic over networks, ***and to ensure that the ability of users to access or distribute lawful content or to run lawful applications and services of their choice is not unreasonably restricted. Those guidelines or measures shall take due account of any standards issued under Article 17 of Directive 2002/21/EC (Framework Directive).***

***The Commission may, having examined such guidelines or measures and consulted [xxx], adopt technical implementing measures in that regard if it considers that the guidelines or measures 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).

## Amendment 82

### Proposal for a directive – amending act

#### Article 1 – point 14

Directive 2002/22/EC

Article 23

#### *Text proposed by the Commission*

Member States shall take all necessary **steps** to ensure the availability of publicly available telephone services **provided over public communications networks** in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all **reasonable steps** to ensure uninterrupted access to emergency services.

#### *Amendment*

Member States shall take all necessary **measures** to ensure the **fullest possible** availability of publicly available telephone services in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all **necessary measures** to ensure uninterrupted access to emergency services **from any place within the territory of the EU**.

#### *Justification*

*Clarification to address the fact that any delivery of service might be excluded in case of truly catastrophic events or force majeure, i.e. impossibility to perform.*

## Amendment 83

### Proposal for a directive – amending act

#### Article 1 – point 15 – point a

Directive 2002/22/EC

Article 25 – title

#### *Text proposed by the Commission*

**Telephone directory** enquiry services

#### *Amendment*

**Directory** enquiry services

#### *Justification*

*Directory Enquiry services are a critical service for disabled and elderly users, and for users in general. The imposition of wholesale obligations on operators controlling access are justified in order to ensure users the full benefit of competition in directory enquiry services and would permit the removal of heavy retail universal service regulation. In addition, Amendment 39 of the Harbour Report is critical to address problems observed in practice in accessing cross-border directory services.*

## Amendment 84

### Proposal for a directive – amending act

#### Article 1 – point 15 – point a a (new)

Directive 2002/22/EC

Article 25 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

***‘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 terms of paragraph 2.’***

*Justification*

See justification to 25(1)

## Amendment 85

### Proposal for a directive – amending act

#### Article 1 – point 15 – point b

Directive 2002/22/EC

Article 25 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. Member States shall ensure that all end-users ***provided with a publicly available telephone*** service can access directory enquiry services ***in accordance with Article 5(1)(b)***.

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

*Justification*

See justification to 25(1)

## Amendment 86

### Proposal for a directive – amending act

#### Article 1 – point 15 – point b a (new)

Directive 2002/22/EC

Article 25 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***(ba) paragraph 4 shall be replaced by the following:***

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

*Justification*

*This change of existing text left untouched by the Commission is to address problems observed in practice in accessing cross-border directory services.*

## Amendment 87

### Proposal for a directive – amending act

#### Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Member States shall ensure that undertakings providing **a** service for originating national and/or international calls through a number or numbers in a national or international telephone numbering plan provide access to emergency services.

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.

## Justification

Clarification by way of using the defined term from the Framework Directive. The obligation to provide access to emergency services would remain dependent on whether the actual service offered is for origination of calls.

### Amendment 88

#### Proposal for a directive – amending act

##### Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 3

#### *Text proposed by the Commission*

3. Member States shall ensure that calls to the single European emergency call number "112" **are appropriately answered and handled** in a manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to national emergency number or numbers, where these continue in use.

#### *Amendment*

3. Member States shall ensure that **the emergency services are able to appropriately respond to and handle all** calls to the single European emergency call number "112" in a manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to national emergency number or numbers, where these continue in use.

### Amendment 89

#### Proposal for a directive – amending act

##### Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 4

#### *Text proposed by the Commission*

4. Member States shall ensure that disabled end-users **are able to** access emergency services. In order to ensure that disabled end-users are able to access emergency services while travelling in other Member States, the measures taken **may** include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework

#### *Amendment*

4. Member States shall ensure that disabled end-users **have access to** emergency services **equivalent to that enjoyed by other end-users**. In order to ensure that disabled end-users are able to access emergency services while travelling in other Member States, the measures taken **shall** include ensuring compliance with relevant standards or specifications published in accordance with the

Directive).

provisions of Article 17 of Directive  
2002/21/EC (Framework Directive).

*Justification*

*Change to bring the text into conformity with the provisions of Article 7 and to make use of applicable standards mandatory.*

**Amendment 90**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 26 – paragraph 5

*Text proposed by the Commission*

5. Member States shall ensure that caller location information is made available free of charge *to authorities* handling *emergencies* for all calls to the single European emergency call number “112”.

*Member States shall require that caller location information is automatically provided as soon as the emergency call reaches the authority dealing with the emergency.*

*Amendment*

5. Member States shall ensure that caller location information is made available free of charge, *and as soon as the emergency call reaches the authority* handling *the emergency. This shall also apply to* all calls to the single European emergency call number “112”.

*Justification*

*The obligation should refer equally to remaining national emergency numbers and "112".*

**Amendment 91**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 26 – paragraph 6

*Text proposed by the Commission*

6. Member States shall ensure that citizens are adequately informed *about* the existence and use of the single European emergency call number "112", in particular

*Amendment*

6. Member States shall ensure that *in addition to information about their national numbers, all* citizens *of the Union* are adequately informed *of* the

through initiatives specifically targeting persons travelling between Member States.  
**Member States shall submit a yearly report to the Commission and the Authority on the measures taken in that respect.**

existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States.

#### *Justification*

*A separate yearly report appears unnecessarily burdensome. Instead, measures taken with respect to "112" should be included in the broader annual reporting provided for in 33(3).*

#### **Amendment 92**

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

##### **Article 1 – point 16**

Directive 2002/22/EC

Article 26 – paragraph 7

#### *Text proposed by the Commission*

7. In order to ensure the effective implementation of “112” services in the Member States, **including access for disabled end-users when travelling in other Member States**, the Commission, having consulted **the Authority**, 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).  
**On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).**

*(This amendment, both in terms of replacing the reference to the proposed Authority and in deleting the reference to the urgency procedure, applies throughout the text. Adoption will necessitate corresponding changes throughout)*

#### *Amendment*

7. In order to ensure the effective implementation of “112” services in the Member States, the Commission, having consulted [xxx], 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).



### *Justification*

*The decision on the establishment of an authority is the subject of a separate report. For reasons of coherence, all references to the authority should therefore be deleted for present purposes. Also in cases of urgency the European Parliament should have the possibility to review the draft measure. The need for cooperation between the institutions is addressed in Recital 39.*

### **Amendment 93**

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

#### **Article 1 – point 16**

Directive 2002/22/EC

Article 27 – paragraph 2

#### *Text proposed by the Commission*

2. Those Member States to which the ITU assigned the international code "3883" shall entrust **the Authority** with sole responsibility for management of the European Telephony Numbering Space.

#### *Amendment*

2. Those Member States to which the ITU assigned the international code "3883" shall entrust **an organisation established by Community law and designated by the Commission on the basis of an open, transparent and non-discriminatory selection procedure, or [xxx]**, with sole responsibility for management, **including number assignment, and promotion** of the European Telephony Numbering Space.

### *Justification*

*While the "3883" numbering space is not used now and unlikely to be used in future due to lack of demand, the situation might possibly change in particular if the code is managed and promoted by a separate body, along the lines of the structure established for the ".eu" top level domain.*

### **Amendment 94**

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

#### **Article 1 – point 16**

Directive 2002/22/EC

Article 27 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

#### **Article 27a**

***The missing children hotline number***

***1. Member States shall ensure citizens' access to a hotline to report missing children. The hotline shall be available on the number "116000" pursuant to 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<sup>1</sup>.***

***2. Member States shall ensure that disabled end-users are able to access the missing children hotline. In order to ensure that disabled end-users are able to access the hotline while travelling in other Member States, the 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 about the existence and use of the missing children hotline number "116000", in particular through initiatives specifically targeting persons travelling between Member States.***

***4. In order to ensure the effective implementation of the missing children hotline number in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted [xxx], 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).***

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***<sup>1</sup> OJ L 49, 17.2.2007, p. 30. Decision as amended by Decision 2007/698/EC (OJ L***

*Justification*

*In February 2007 European Commission Decision 2007/116/EC was taken, obliging Member States to reserve the number 116000 as a hotline number for missing children. However, only a small number of Member States have since established such a hotline on this number. It is therefore appropriate to require Member States to ensure such a service is provided and promoted, on similar lines to the 112 number, as appropriate.*

**Amendment 95**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – introductory wording

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that national regulatory authorities take all necessary steps to ensure that:

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***, national regulatory authorities take all necessary steps to ensure that:

*Justification*

*The current qualification relating to technical and economical feasibility and the ability, for example for an operator of a freephone number, to avoid incurring expense due to calls from remote areas, should both be retained to avoid unnecessarily burdensome regulation and a measure of national discretion.*

**Amendment 96**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – point (a)

*Text proposed by the Commission*

*Amendment*

***(a) end-users are able to access and use***

***deleted***

**services, including information society services, provided within the Community; and**

*Justification*

*See the justification to 22(3). The text as proposed appears to run contrary to the principle that, in a competitive environment, operators should be able to restrict access as long as it is disclosed. The amendment to 22(3) enable NRAs to take action also in cases where there is competition but access is unreasonably restricted.*

**Amendment 97**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – point (b)

*Text proposed by the Commission*

(b) end-users are able to access all numbers provided in the Community, including those in the national numbering plans of Member States, those from the European Telephone Numbering Space and Universal International Freephone Numbers.

*Amendment*

(b) end-users are able to 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 European Telephone Numbering Space and Universal International Freephone Numbers.

*Justification*

*A subscriber to operator A shall be able to contact a subscriber to operator B without any problem whatever the technology used by the operator. Electronic communications are essential for SME daily activities. Hence, they should be able to contact and be contacted whenever needed without additional cost, need for extra subscription and other time and administrative burden.*

**Amendment 98**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – point (b a) (new)

*Text proposed by the Commission*

*Amendment*

***(ba) connection services are provided for text telephones, video telephones and products which help to enable elderly people or people with disabilities to communicate, at least as regards emergency calls.***

## **Amendment 99**

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

#### **Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse.

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse, ***and to ensure that in such cases, including where an investigation is pending, providers of electronic communications services withhold relevant interconnection or other service revenues.***

#### *Justification*

*The measure most likely to effectively block fraud and misuse is withholding of revenues.*

## **Amendment 100**

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

#### **Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 2– subparagraph 1

*Text proposed by the Commission*

*Amendment*

2. In order to ensure that end users have effective access to numbers and services in the Community, the Commission may, ***having consulted the Authority***, adopt technical implementing measures. ***These***

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-

measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).  
***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

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).

#### *Justification*

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

### **Amendment 101**

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

##### **Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall ensure that national regulatory authorities are able to require undertakings providing public communications networks to provide information regarding the management of their networks in connection with any limitations or restrictions on end-user access to or use of services, content or applications. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases in which undertakings have imposed limitations on end-user access to services, content or applications.***

### **Amendment 102**

**Proposal for a directive – amending act**

**Article 1 – point 18**

Directive 2002/22/EC

Article 30 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that all subscribers with numbers from the national numbering plan who so request can retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Annex I, part C.

*Amendment*

1. Member States shall ensure that all subscribers with numbers from the national **telephone** numbering plan who so request can retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Annex I, part C.

*Justification*

*Consistency with previous amendments.*

**Amendment 103**

**Proposal for a directive – amending act**

**Article 1 – point 18**

Directive 2002/22/EC

Article 30 – paragraph 4

*Text proposed by the Commission*

4. Porting of numbers and their subsequent activation shall be executed within the shortest possible delay, no later than one working day from the initial request by the subscriber.

*Amendment*

4. Porting of numbers and their subsequent activation shall be executed within the shortest possible delay, no later than one working day from the initial request by the subscriber. ***National regulatory authorities may extend the one day period and prescribe appropriate measures where necessary to ensure that subscribers are not switched against their will. National regulatory authorities may impose appropriate sanctions on providers, including an obligation to compensate customers, in case of delay in porting or abuse of porting by them or on their behalf.***

*Justification*

*Porting within one day is technologically feasible and in the consumer interest. It should*

*therefore be the default rule. However, there have been instances of abuse with customers being switched against their will, as described i.a. in the Commission's 13th implementation report. NRAs should therefore be able to make exceptions from the one day rule and prescribe other appropriate measures if necessary, as well as to impose appropriate sanctions.*

## **Amendment 104**

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

#### **Article 1 – point 18**

Directive 2002/22/EC

Article 30 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. The Commission may, having consulted the Authority and taking into account technology and market conditions, amend Annex I in accordance with the procedure referred to in Article 37(2).** *deleted*

**Such amendment may, in particular provide for:**

**(a) the portability of numbers between fixed and mobile networks;**

**(b) the portability of subscriber identifiers and related information, in which case the provisions of paragraphs 2, 3 and 4 shall also apply to these identifiers.**

*Justification*

*Amendments of the Annex should be dealt with by the normal legislative procedure.*

## **Amendment 105**

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

#### **Article 1 – point 18**

Directive 2002/22/EC

Article 30 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

**5a. Member States shall ensure that the duration of contracts concluded between**



***users and undertakings providing electronic communications services does not exceed 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.***

*Justification*

*Contracts lasting 24 months can be beneficial to consumers in terms of cost. However, consumers must be able to subscribe for a shorter, less binding period for all the services offered.*

**Amendment 106**

**Proposal for a directive – amending act**

**Article 1 – point 18**

Directive 2002/22/EC

Article 30 – paragraph 6

*Text proposed by the Commission*

***6. Without prejudice to any minimum contractual period, national regulatory authorities shall ensure that conditions and procedures for termination of contract do not act as a disincentive for changing suppliers or services.***

*Amendment*

***6. Member States*** shall ensure that procedures for termination of ***contracts*** do not act as a disincentive for changing suppliers or services.

*Justification*

*This obligation should rest on the Member States, as national bodies other than NRAs may be responsible. The conditions relating to contracts are addressed in Article 20, as well as by consumer protection law, which means that this provision should be limited to any procedures employed to dissuade from a change of provider.*

**Amendment 107**

**Proposal for a directive – amending act**

**Article 1 – point 19**

Directive 2002/22/EC

Article 31 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

1. Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and **television broadcast channels** and accessibility services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **television broadcasts** to the public where a significant number of end-users of such networks use them as their principal means to receive radio and **television broadcasts**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State **in its national law** and shall be proportionate and transparent.

*Amendment*

1. Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and **audiovisual media services** and **complementary services, particularly** accessibility services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **audiovisual media services** to the public where a significant number of end-users of such networks use them as their principal means to receive radio and **audiovisual media services**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State and shall be proportionate and transparent.

*Justification*

*In order to ensure that all viewers and listeners can access all available services, linear and non-linear, the potential scope of this provision must be expanded to include audiovisual media services, as defined in Directive 2007/65/EC. The reference to ‘national law’ could cause problems in certain countries for reasons to do with the legal tradition or the sharing of competences between federal levels.*

**Amendment 108**

**Proposal for a directive – amending act**

**Article 1 – point 19**

Directive 2002/22/EC

Article 31 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

Member States shall review “must carry” obligations **at least every three years**.

*Amendment*

Member States shall review “must carry” obligations **on a regular basis**.

*Justification*

*In view of the different legal instruments chosen by Member States, a rigid requirement that “must carry” rules must be reviewed “at least every three years” would not be appropriate.*

## **Amendment 109**

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

#### **Article 1 – point 19 a (new)**

Directive 2002/22/EC

Article 31 a (new)

*Text proposed by the Commission*

*Amendment*

***(19a) the following Article shall be inserted:***

***"Article 31a***

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

***Member States shall ensure that national regulatory authorities are able to impose appropriate requirements on undertakings providing publicly available electronic communications services so as 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) can take advantage of the choice of undertakings and services available to the majority of end-users."***

*Justification*

*This amendment enables NRAs to impose requirements to ensure access and choice for disabled end-users generally, and without having to designate several universal service providers, as would be required if Article 7 would be used for the same purpose.*

## **Amendment 110**

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

#### **Article 1 – point 20 – point -a (new)**

Directive 2002/22/EC

Article 33 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

***(-a) in paragraph 1, the first***

*subparagraph shall be replaced by the following:*

**"1. Member States shall ensure as far as appropriate that national regulatory authorities take account of the views of end-users, [...] consumers [..], manufacturers *and* undertakings that provide electronic communications networks and/or services on issues related to all end-user and consumer rights concerning publicly available electronic communications services, in particular where they have a significant impact on the market."**

## **Amendment 111**

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

#### **Article 1 – point 20 – point a**

Directive 2002/22/EC

Article 33 – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

In particular, Member States shall ensure that national regulatory authorities establish *a* consultation ***mechanism*** ensuring that in their decision-making process due consideration is given to ***consumer interests in electronic communications***.

#### *Amendment*

In particular, Member States shall ensure that national regulatory authorities establish consultation ***mechanisms*** ensuring that in their decision-making process due consideration is given to, ***and account taken of, issues related to end-users, including, in particular, disabled end-users***.

#### *Justification*

*Change for reasons of consistency.*

## **Amendment 112**

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

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

Directive 2002/22/EC

Article 33 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

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

***"2a. Without prejudice to national rules in conformity with Community law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, national regulatory authorities and other relevant authorities shall as far as appropriate promote cooperation between undertakings providing electronic communications networks and/or services and the sectors interested in the promotion of lawful content in electronic communication networks and services. That co-operation may also include coordination of the public interest information to be made available under Article 21(4a) and Article 20(2)."***

### **Amendment 113**

**Proposal for a directive – amending act**

**Article 1 – point 20 – point b**

Directive 2002/22/EC

Article 33 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***3. Member States shall submit a yearly report to the Commission and the Authority on the measures taken and the progress towards improving interoperability and use of, and access to, electronic communications services and terminal equipment by disabled end-users.***

***deleted***

## *Justification*

*This additional reporting requirement is unnecessarily burdensome. The information can be included in existing other reporting, for example under the Framework Directive.*

### **Amendment 114**

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

##### **Article 1 – point 20 – point b**

Directive 2002/22/EC

Article 33 – paragraph 4

#### *Text proposed by the Commission*

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may, **having consulted the Authority**, take the appropriate technical implementing measures **to address the issues raised in the report referred to in paragraph 3**, following a public consultation. **These** measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). **On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).**

#### *Amendment*

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may take the appropriate technical implementing measures, following a public consultation **and after having consulted [xxx]**. 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 115**

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

##### **Article 1 – point 21**

Directive 2002/22/EC

Article 34 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

1. Member States shall ensure that

#### *Amendment*

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, relating to the contractual conditions and/or performance of contracts concerning supply of such networks 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.

**independent bodies provide** transparent, simple and inexpensive out-of-court procedures for dealing with disputes between consumers and undertakings providing electronic communications networks and/or services, relating to the contractual conditions and/or performance of contracts concerning supply of such networks or services. **Such** procedures **shall** enable disputes to be settled fairly and promptly and **shall take account of the requirements of 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, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.

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

#### *Justification*

*This amendment seeks to reinforce the dispute resolution mechanism by ensuring that it is operated by independent bodies and that it meets the minimum requirements contained in the Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.*

#### **Amendment 116**

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

##### **Article 1 – point 21**

Directive 2002/22/EC

Article 34 – paragraph 1 – subparagraph 2

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

Member States shall ensure that bodies in charge of dealing with such disputes provide relevant information for statistical purposes to the Commission and the **Authority**.

##### *Amendment*

Member States shall ensure that 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**.

### *Justification*

*The purpose of this amendment is to make it possible for users to introduce collective redress procedures, and to emphasise the role of legal assistance through the single points of contact.*

#### **Amendment 117**

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

##### **Article 1 – point 21**

Directive 2002/22/EC

Article 34 – paragraph 1 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

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

### *Justification*

*Convergence blurred clear divisions among services, and in practice, users are getting confused to which out of several authorities they should get in touch for their complaints to be solved. Users should be enabled to solve disputes within the easiest possible way.*

#### **Amendment 118**

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

##### **Article 1 – point 24**

Directive 2002/22/EC

Article 37 – paragraph 3

*Text proposed by the Commission*

*Amendment*

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

### *Justification*

*Under the current framework law the communications committee for technical adjustments to the annexes, pursuant to Article 35 of Directive 2002/22/EC, comes into play. This should remain the case under the new framework law. The use of the urgent comitology procedure*



could result in regulation of many areas beyond the scope of the traditional legislative procedure - with no impact assessment study and no public debate. The Commission can, however, draw up guidelines to assist the exchange of best practices.

## **Amendment 119**

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

#### **Article 2 – point -1 (new)**

Directive 2002/58/EC

Article 1 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

***"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 the right to confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communications equipment and services in the Community."***

*(AM 15 of the LIBE opinion)*

## **Amendment 120**

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

#### **Article 2 – point -1 a (new)**

Directive 2002/58/EC

Article 1 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

***"2. The provisions of this Directive particularise and complement Directive***

**95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for protection of the legitimate interests of subscribers who are *natural or legal persons*."**

*(AM 17 of the LIBE opinion)*

*Justification*

*The Directive mentions the specific interests of legal persons without taking consumers into account. Given that the main aim of this Directive is to protect the data and economic interests of natural persons a reference to those should be added.*

**Amendment 121**

**Proposal for a directive – amending act**

**Article 2 – point 2**

Directive 2002/58/EC

Article 3

*Text proposed by the Commission*

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Community, including public communications networks supporting data collection and identification devices.

*Amendment*

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public **and private** communications networks **and publicly accessible private networks** in the Community, including public **and private** communications networks **and publicly accessible private networks** supporting data collection and identification devices.

*(AM 18 of the LIBE opinion)*

*Justification*

*Since there is a tendency of services increasingly becoming a mixture of public and private ones it is necessary to broaden the scope of the Directive. This amendment follows the recommendations of the Article 29 Working Party adopted on 26 September 2006 and the opinion of the European Data Protection Supervisor on this amending Directive.*

**Amendment 122**

**Proposal for a directive – amending act**  
**Article 2 – point 3 – point a a (new)**  
Directive 2002/58/EC  
Article 4 – paragraphs 1 a and 1 b (new)

*Text proposed by the Commission*

*Amendment*

***(aa) the following paragraphs shall be inserted:***

***"1a. Without prejudice to the provisions of Directive 95/46/EC and Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks<sup>1</sup>, these measures shall include:***

***– appropriate technical and organisational measures to ensure that personal data can be accessed only by authorised personnel for legally authorised purposes and to protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration and unauthorised or unlawful storage, processing, access or disclosure;***

***– appropriate technical and organisational measures to protect the network and services against accidental, unlawful or unauthorised usage or interference with or hindering of their functioning or availability;***

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

***– a process for identifying and assessing reasonably foreseeable vulnerabilities in the systems maintained by the provider of electronic communications services, which shall include regular monitoring for security breaches; and***

***– a process for taking preventive, corrective and mitigating action against***

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

*1b. 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 and performance indicators concerning the level of security which these measures should achieve.*

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<sup>1</sup> OJ L 105, 13.4.2006, p. 54."

*(AM 19 of the LIBE opinion)*

*Justification*

*National regulators should monitor the taken measures and spread best practices and performances among publicly available electronic communication services.*

**Amendment 123**

**Proposal for a directive – amending act**

**Article 2 – point 3 – point b**

Directive 2002/58/EC

Article 4 – paragraph 3

*Text proposed by the Commission*

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify ***the subscriber concerned and*** the national regulatory authority of such a breach. The

*Amendment*

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community ***which is likely to cause harm to users***, the provider of publicly available electronic communications services, ***as well as any undertaking operating on the Internet and providing services to***

notification to the **subscriber** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the **national regulatory** authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

**consumers, which is the data controller and the provider of information society services** shall, without undue delay, notify the national regulatory authority **or the competent authority according to the individual law of the Member State** of such a breach. The notification to the **competent authority** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the **competent authority** shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

**The provider of publicly available electronic communications services, as well as any undertaking operating on the Internet and providing services to consumers, which is the data controller and the provider of information society services, shall notify their users beforehand if they deem it necessary to avoid imminent and direct danger to the rights and interests of consumers.**

*(AM 20 of the LIBE opinion)*

## **Amendment 124**

**Proposal for a directive – amending act**  
**Article 2 – point 3 – point b**  
Directive 2002/58/EC  
Article 4 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. The competent authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious, the competent authority shall require the provider of publicly available electronic communications services and the provider of information society services to give an appropriate notification without undue delay to the persons affected by the breach. The**

*notification shall contain the elements described in paragraph 3.*

*The notification of a serious breach may be postponed in cases where the notification may hinder the progress of a criminal investigation related to the serious breach.*

*Providers shall annually notify affected users of all breaches of security that have led to the accidental or unlawful destruction, loss or alteration or the unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community.*

*National regulatory authorities shall also monitor whether companies have complied with their notification obligations under this Article and impose appropriate sanctions, including publication, as appropriate, in the event of a failure to do so.*

*(AM 21 of the LIBE opinion)*

## **Amendment 125**

**Proposal for a directive – amending act**

**Article 2 – point 3 – point b**

Directive 2002/58/EC

Article 4 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

***3b. The seriousness of a breach requiring notification to subscribers shall be determined according to the circumstances of the breach, such as the risk to the personal data affected by the breach, the type of data affected by the breach, the number of subscribers involved, and the immediate or potential impact of the breach on the provision of***

*services.*

*(AM 22 of the LIBE opinion)*

*Justification*

*For clarity reasons the conditions under which a breach of security shall be considered as a serious breach and therefore justify a notification to the subscriber shall be laid down in this directive.*

## **Amendment 126**

**Proposal for a directive – amending act**

**Article 2 – point 3 – point b**

Directive 2002/58/EC

Article 4 – paragraph 3 c (new)

*Text proposed by the Commission*

*Amendment*

***3c. The breach shall not be determined to be serious and the provider of publicly available electronic communications services and the provider of information society services shall be exempt from the requirement to provide notification to the persons affected, if they can demonstrate that there is no reasonable risk to the personal data affected by the breach due to the use of appropriate technological protection measures.***

***Technological protection measures in the event of accidental or unlawful destruction, loss or alteration or unauthorized disclosure of or access to personal data which are transmitted or stored shall either render the data unintelligible to any third party, or in the event of accidental or unlawful loss shall make the personal data available to the provider of publicly available electronic communication services and the provider of information society services.***

*(AM 23 of the LIBE opinion)*

## Amendment 127

### Proposal for a directive – amending act

#### Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 **and** 3, the Commission **may**, following consultation with **the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”), and** the European Data Protection Supervisor, **adopt** technical implementing measures concerning inter alia the circumstances, format and procedures applicable to information and notification requirements referred to in **this Article**.

#### *Amendment*

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2, 3, **3a, 3b and 3c**, the Commission **shall**, following consultation with the European Data Protection Supervisor, **relevant stakeholders and ENISA, recommend** technical implementing measures concerning inter alia the **measures described in paragraph 1a and the** circumstances, format and procedures applicable to information and notification requirements referred to in **paragraphs 3a and 3b**.

***The Commission shall involve all relevant stakeholders, particularly in order to be informed of the best available technical and economic methods for improving the implementation of this Directive.***

*(AM 24 of LIBE opinion)*

#### *Justification*

*The Authority shall have the task to recommend but not to adopt measures in this regard.*

## Amendment 128

### Proposal for a directive – amending act

#### Article 2 – point 4

Directive 2002/58/EC

Article 5 – paragraph 3

#### *Text proposed by the Commission*

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user **is only allowed on condition that** the subscriber or

#### *Amendment*

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user, **either directly or indirectly by means of any kind**



user concerned is provided with clear and comprehensive information in accordance with Directive 95/46/EC, inter alia about the purposes of the processing and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out **or facilitating** the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

**of storage medium, is prohibited unless the subscriber or user concerned has given his/her prior consent, taking into account that browser settings constitute prior consent, and** is provided with clear and comprehensive information in accordance with Directive 95/46/EC, inter alia about the purposes of the processing and is offered the right to refuse such processing and is offered the right to refuse such processing by data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communication network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

*(AM 25 of the LIBE opinion)*

## **Amendment 129**

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

#### **Article 2 – point 4 a (new)**

Directive 2002/58/EC

Article 6 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(4a) Article 6(3) shall be replaced by the following:***

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

*(AM 26 of the LIBE opinion)*

*Justification*

*Specifying that the user should consent before any processing takes place better ensures compliance with this obligation.*

**Amendment 130**

**Proposal for a directive – amending act**

**Article 2 – point 4 b (new)**

Directive 2002/58/EC

Article 6 – paragraph 6a (new)

*Text proposed by the Commission*

*Amendment*

***(4b) in Article 6, the following paragraph shall be added:***

***"6a. Traffic data may be processed by any natural or legal person for the purpose of implementing technical measures to ensure the security of a public electronic communication service, a public or private electronic communications network, an information society service or related terminal and electronic communication equipment. Such processing must be restricted to that which is strictly necessary for the purposes of such security activity."***

*(AM 28 of the LIBE opinion)*

**Amendment 131**

**Proposal for a directive – amending act**

**Article 2 – point 4 c (new)**

Directive 2002/58/EC

Article 13 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***(4c) Article 13(1) shall be replaced by the following:***

***"1. The use of automated calling and communication systems without human intervention (automatic calling***

**machines), facsimile machines (fax) or electronic mail (including short message services (SMS) and multimedia messaging services (MMS)) for the purposes of direct marketing may [...] be allowed only in respect of subscribers who have given their prior consent."**

*(AM 29 of the LIBE opinion)*

## **Amendment 132**

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

#### **Article 2 – point 4 d (new)**

Directive 2002/58/EC

Article 13 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***(4d) Article 13(4) shall be replaced by the following:***

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

*(AM 30 of the LIBE opinion)*

#### *Justification*

*In addition to the regulations in the e-Communications and Privacy Directive (2002/58/EC), the e-Commerce Directive (2000/31/EC) lays down clear rules on the information which must be provided by a sender of electronic commercial communications.*

## Amendment 133

### Proposal for a directive – amending act

#### Article 2 – point 5

Directive 2002/58/EC

Article 13 – paragraph 6

#### *Text proposed by the Commission*

6. Without prejudice to any administrative remedy for which provision may be made, inter alia under Article 15 (a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this **Article**, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

#### *Amendment*

6. Without prejudice to any administrative remedy for which provision may be made, inter alia under Article 15 (a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this **Directive**, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

*(AM 31 of the LIBE opinion)*

#### *Justification*

*The new Article 13 Paragraph 6 provides civil law remedies for any individual or legal person particularly for electronic communication service providers to fight infringements of Article 13 of the ePrivacy Directive which deals with spam. In line with the opinion of the European Data Protection Supervisor the rapporteur does not see the rationale for this new capability to be limited to the infringement of Article 13 and therefore suggests to enable legal persons to take legal actions for infringement of any provision of the ePrivacy Directive.*

## Amendment 134

### Proposal for a directive – amending act

#### Article 2 – point 5 a (new)

Directive 2002/58/EC

Article 14 – paragraph 1

#### *Text proposed by the Commission*

#### *Amendment*

***(5a) Article 14(1) shall be replaced by the following:***

**"1. In implementing the provisions of this Directive, Member States shall**

**ensure, subject to paragraphs 2 and 3, that no mandatory requirements for specific technical features, *including, without limitation, for the purpose of detecting, intercepting or preventing infringements of intellectual property rights by users,* are imposed on terminal or other electronic communication equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States."**

*(AM 32 of the LIBE opinion)*

### **Amendment 135**

**Proposal for a directive – amending act**

**Article 2 – point 5 b (new)**

Directive 2002/58/EC

Article 14 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(5b) Article 14(3) shall be replaced by the following:***

**"3. Where required, measures may be adopted to ensure that terminal equipment is constructed in a way that is compatible with the right of users to protect and control the use of their personal data, in accordance with Directive 1999/5/EC and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and communications. *Such measures shall respect the principle of technology neutrality.*"**

*(AM 33 of the LIBE opinion)*

### **Amendment 136**

**Proposal for a directive – amending act**  
**Article 2 – point 6 a (new)**  
Directive 2002/58/EC  
Article 15 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) in Article 15, the following paragraph 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."***

*(AM 34 of the LIBE opinion)*

#### **Amendment 137**

**Proposal for a directive – amending act**  
**Article 2 – point 7**  
Directive 2002/58/EC  
Article 15 a – paragraph 1

*Text proposed by the Commission*

*Amendment*

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. The Member States shall notify those provisions to the Commission by the [time limit for implementation of the amending act] at the latest and shall notify

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. The Member States shall notify those provisions to the Commission by the [time limit for

it without delay of any subsequent amendment affecting them.

implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

*(AM 35 of the LIBE opinion)*

### **Amendment 138**

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

##### **Article 2 – point 7**

Directive 2002/58/EC

Article 15a – paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

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 *the Authority* 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.

*(AM 36 of the LIBE opinion)*

### **Amendment 139**

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

##### **Article 2 – point 7 a (new)**

Directive 2002/58/EC

Article 18

#### *Text proposed by the Commission*

#### *Amendment*

*(7a) Article 18 shall be replaced by the following:*

**"Article 18**

**Review**

***By ...<sup>+</sup>, the Commission shall submit to the European Parliament and the Council, having consulted the Article 29***

*Working Party and the European Data Protection Supervisor, a report on the application of this Directive and its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, breach notifications and the use of personal data by public or private third parties for purposes not covered by this Directive, 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, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community<sup>1</sup>, in particular the new competences in matters of data protection as laid down in Article 16, and any other proposal it may deem necessary in order to improve the effectiveness of this Directive.*

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*<sup>+</sup> Two years from the date of entry into force of this Directive.*

*<sup>1</sup> OJ C 306, 17.12.2007, p. 1."*

*(AM 37 of the LIBE opinion)*

## **Amendment 140**

### **Proposal for a directive – amending act Article 4 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*(1)* Member States shall adopt and publish by [...] at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission

*Amendment*

*1.* Member States shall adopt and publish by [...] at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to ***the European***



the text of those provisions and a correlation table between those provisions and this Directive.

**Parliament and** the Commission the text of those provisions and a correlation table between those provisions and this Directive.

*Justification*

*In order for Parliament to be able to monitor the transposition of this Directive on an equal basis with the Council and the Commission and independently of them, Parliament should be given the same information at the same time as the Commission of the national transposition measures.*

**Amendment 141**

**Proposal for a directive – amending act**

**Annex I – title**

Directive 2002/22/EC

Annex I – title

*Text proposed by the Commission*

*Amendment*

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE) **AND** ARTICLE 29 (ADDITIONAL FACILITIES)

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE), ARTICLE 29 (ADDITIONAL FACILITIES) **AND ARTICLE 30 (FACILITATING CHANGE OF SUPPLIER)**

*Justification*

*To reflect the addition of Part C of Annex I*

**Amendment 142**

**Proposal for a directive – amending act**

**Annex I – Part A – point (a)**

Directive 2002/22/EC

Annex I – Part A – point (a) – subparagraph 1 – introductory wording

*Text proposed by the Commission*

*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,

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 order that they can:

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 order that they can:

#### **Amendment 143**

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

##### **Annex I – Part A – point (b)**

Directive 2002/22/EC

Annex I – Part A – point (b)

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

i.e. the facility whereby the subscriber can, on request to a designated undertaking that provides telephone services, bar outgoing calls 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.

###### *Justification*

*The protection that users of telephone communications enjoy at high cost (calls to numbers with additional charges, or international calls) should be extensible to other kinds of communications that pose similar problems, such as SMS or MMS.*

#### **Amendment 144**

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

##### **Annex I – Part A – point (e)**

Directive 2002/22/EC

Annex I – part A – point (e)

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

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. **Any service**

###### *Amendment*

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. **Except** in cases

***interruption shall normally be confined to the service concerned. Exceptionally, in cases of fraud, persistent late payment or non-payment, Member States shall ensure that national regulatory authorities are able to authorise disconnection from the network as a result of non-payment of bills for services provided over the network.*** Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. "112" calls) are permitted.

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. ***Access to emergency services through 112 may be blocked in case of repeated misuse by the user.***

#### *Justification*

*It would be disproportionate and unnecessarily bureaucratic to require NRAs to authorise disconnection in case of fraud, persistent late payment or non-payment.*

#### **Amendment 145**

**Proposal for a directive – amending act**  
**Annex I – Part A – point e a (new)**  
Directive 2002/22/EC  
Annex I – Part A – point (e) a (new)

*Text proposed by the Commission*

*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.***

#### *Justification*

*Many consumers have been confronted with exceptionally high telecom expenditures due to a lack of knowledge of tariffs or unawareness of automatic use of certain services, in many cases linked to data services and international voice or data roaming. It is thus necessary to*

*offer them the means to have greater control over all their communications' services through cost control measures. At the same time, consumers should be given proactive information on the best offer in relation to their consumption pattern at least once a year by the current provider.*

#### **Amendment 146**

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

##### **Annex I – Part A – point e b (new)**

Directive 2002/22/EC

Annex I – Part A – point e b (new)

*Text proposed by the Commission*

*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.***

#### **Amendment 147**

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

##### **Annex I – Part B – point b a (new)**

Directive 2002/22/EC

Annex I – Part B – point b a (new)

*Text proposed by the Commission*

*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.***

### *Justification*

*The access points and procedures for reporting theft vary from operator to operator. This means it takes longer to report a theft, making it easier for the thief to use the subscription, to the detriment of the user whose phone has been stolen. A single, easy-to-access number would resolve this problem.*

#### **Amendment 148**

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

##### **Annex I – Part B – point b b (new)**

Directive 2002/22/EC

Annex I – Part B – point b b (new)

*Text proposed by the Commission*

*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 and easy-to-use protection and/or filtering software to control access by children or vulnerable people to unlawful or dangerous content.***

### *Justification*

*Filtering software can easily be used to prevent vulnerable people from accessing inappropriate content. Operators should therefore make such software available to users, as happens in many countries.*

#### **Amendment 149**

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

##### **Annex II – introductory part**

Directive 2002/22/EC

Annex II – introductory part

*Text proposed by the Commission*

*Amendment*

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 21. It is for the national regulatory authority to decide which information is to be published by the

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 21. It is for the national regulatory authority to decide which information is to be published by the

undertakings providing public communications networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself, so as to ensure that consumers are able to make informed choices. ***Where information is published by the undertakings providing public communications networks and/or publicly available telephone services, the national regulatory authority may specify the manner in which the information is published, in order to ensure that consumers are fully informed.***

undertakings providing public communications networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself, so as to ensure that consumers are able to make informed choices.

*Justification*

*The deleted text is covered by Article 21(2)*

**Amendment 150**

**Proposal for a directive – amending act**

**Annex II – point 2.2**

Directive 2002/22/EC

Annex II – point 2.2

*Text proposed by the Commission*

2.2. Standard tariffs ***with an indication of what is included in*** each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), ***and including*** details of standard discounts applied ***and*** special and targeted tariff schemes.

*Amendment*

2.2. Standard tariffs, ***indicating the services provided and the content of*** each tariff element (e.g. charges for access, all types of usage charges, maintenance charges). Details of standard discounts applied, special and targeted tariff schemes ***and any additional charges, as well as costs with respect to terminal equipment, shall also be included.***

*Justification*

*Clarification, and to include costs related to terminal equipment*

**Amendment 151**

**Proposal for a directive – amending act**  
**Annex III – table – columns 2 and 3**  
Directive 2002/22/EC  
Annex III – table – columns 2 and 3

*Text proposed by the Commission*

*Amendment*

ETSI EG 201 769-1

ETSI EG 202 057

*Justification*

*La guía EG 201 769-1 fue elaborada por el ETSI en respuesta al mandato de la Comisión Europea para dar respuesta a la Directiva de Telefonía Vocal ONP/98/10/CE en relación con las obligaciones de servicio universal y, por tanto, se limita a la prestación del servicio telefónico fijo ofrecido por el mismo operador que provee el acceso directo al usuario. En su lugar, la EG 202 057 abarca, de modo adicional a todos los parámetros de la EG 201 769-1, la prestación de servicios telefónicos en un entorno de multioperador, esto es, teniendo en cuenta el aspecto de comprabilidad, así como a otros tipos de servicios, como servicios móviles y servicios de acceso a internet.*

**Amendment 152**

**Proposal for a directive – amending act**  
**Annex VI – point 1**  
Directive 2002/22/EC  
Annex VI – point 1

*Text proposed by the Commission*

*Amendment*

**1. [...] Common scrambling algorithm and free-to-air reception**

**All consumer equipment intended for the reception of *conventional* digital television signals (*i.e. broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C or DVB-S*), for sale or rent or otherwise made available in the Community, capable of descrambling digital television signals, is to possess the capability to:**

**– allow the descrambling of such signals according to a common European scrambling algorithm as administered by a recognised European standards**

**organisation, currently ETSI;**  
**– display signals that have been transmitted in *the* clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.**

*Justification*

*To clarify the Annex with a view to ensuring that the technical specifications do not act as an obstacle to new services such as IPTV or mobile TV.*



## EXPLANATORY STATEMENT

### The Directive in Context

The Commission proposal for Amendments to Consumer Rights aspects of the 2002 Electronic Communications Legislative package is one of three legislative reform proposals to amend the current regulatory framework which entered into force in 2002. The bulk of the reforms affect the Universal Services and Users' Rights Directive, with a smaller number of changes to the E-Privacy Directive, and one minor change to the Consumer Protection Co-operation Regulation.

There are two additional related reform proposals which cover changes to the other three Electronic Communication Directives (Authorisation, Access and Framework)<sup>1</sup> and the proposed creation of a European Electronic Communications Market Authority (Authority)<sup>2</sup>. Your Rapporteur has therefore collaborated closely with the Rapporteurs of these reform proposals, to ensure a consistent regulatory approach.

In its 2001 Report (for which your Rapporteur was also responsible), the Legal Affairs and Internal Market Committee amended and approved the original proposal for a Universal Services and Users' Rights Directive, adding a number of additional provisions to enhance consumer protection and access to communications services for disabled users. The Rapporteur therefore welcomes the further enhancements made in this reform proposal which reinforce the line that the Committee previously followed.

This proposal to amend the Universal Services and Users' Rights Directive does not alter the current scope or concept of universal service in the European Union, which will be subject to a separate consultation in 2008. Your Rapporteur has, therefore, not proposed any changes in these areas.

The two objectives of the current proposal, against which it should be considered, are as follows:

- 1) Strengthening and improving consumer protection and user rights in the electronic communication sector, through – among other aspects – providing consumers with more information about prices and supply conditions, and facilitating access to and use of e-communications, including services for disabled users.
- 2) Enhancing the protection of individuals' privacy and personal data in the electronic communication sector, in particular through a new data breach notification requirement and improved enforcement mechanisms. In these aspects, your

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<sup>1</sup> Proposal for a Directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services (COM(2007) 697 final)

<sup>2</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority (COM(2007) 699 final)

Rapporteur has worked closely with the Civil Liberties, Justice and Home Affairs Committee, which has the status of associated Committee under Rule 47 of Parliament's Rules of Procedure, as it is directly responsible for data protection legislative proposals. Your Rapporteur has therefore not, at this stage, proposed amendments on these issues in his draft Report.

#### The main approach taken by your Rapporteur

Your Rapporteur has proposed a number of amendments to the following areas of the proposals, with the broad aim of simplifying, clarifying and strengthening the provisions.

In particular:

- Clarified the pre contractual information requirements
- Broadened the information and transparency provisions
- Added new provisions for consumers to be given information on their legal obligations in using a service (especially respect of copyright) and the adoption of security safeguards
- Reinforced the service provisions for disabled users
- Made detailed amendments related to “112” emergency number availability and caller location
- Clarified and simplified the quality of service requirements
- More clearly defined the responsibility of National Regulators for day to day market enforcement of consumer rights, removing some of the proposed Commission responsibilities in these areas.
- Removed provisions for support of the “3883” numbering space, for which very limited consumer demand is now foreseen with the evolution of nomadic “Voice over Network” services.

Your Rapporteur commends these proposals to the Committee, and is open to receive further suggestions to enhance these useful reforms.



6.6.2008

## **OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS**

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation (COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))

Draftswoman: Sophia in 't Veld

### **SHORT JUSTIFICATION**

The so-called telecoms package is a much needed update of mostly existing legislation. In particular for the e-Privacy part of the package this presents us with a number of dilemmas.

The scope of the proposals is not sufficiently well defined. The Commission suggests on the one hand a wide scope, covering e-telecommunications in general, but other parts of the proposal seem to relate to basic, traditional telephony. That does not make much sense, as there is a wide range of telecommunications services and products, which replace or complement each other, and which are increasingly connected and integrated. In addition to telephone calls there is other voice communication such as VOIP and mobile VOIP, and increasingly the two are used simultaneously from the same device. Mobile phones also serve as payment devices or navigation systems, communicating with information networks about the area. Office systems may be web based in the future, whereas the RFID in our fridge communicates with the supermarket and our mobile phones capture broadcasts or news services.

Furthermore, data are no longer stored or accessed in a single geographical location. Providers have their headquarters all over the world, web based systems can be accessed from almost anywhere, communications are routed via different continents. It is clear that rules applying to a specific geographical area are no longer sufficient, and that they are an obstacle for businesses operating under different legal regimes. The need for global rules is becoming more and more urgent. Personal data are no longer a by product of economic activity, but at the very heart of it. Data are big business. Therefore it seems appropriate to address this issue

in the context of the Transatlantic Economic Council.

Thirdly, there is a rapidly growing trend of governments requiring access to personal data held by service providers or by other (non governmental) parties. However, the regimes for data protection that apply to any single set of data vary according to what party collects or uses the data and for what purpose. From the perspective of the user this division between first and third pillar, and between different European Commission DGs is incomprehensible, and for business this creates legal uncertainty and it may undermine the confidence of their users. Thus it is hard to explain to citizens why a telecoms provider would be subject to rules on breach notification, but if a government uses the very same data held by that provider (as is the case for example with telecoms data under the Data Retention Directive), those rules do not apply. Given the increasingly intertwined nature of all kinds of networks and services, it is equally hard to explain why other sectors than telecoms would not be subject to the same rules for breach notification, such as banks or credit card companies.

In view of this the piecemeal approach of the Commission seems too limited and therefore ineffective. The compulsory review of the Directive should be used for a complete overhaul of the data protection regime, taking account of the fact that after the entry into force of the Lisbon Treaty the difference between the first and third pillar will disappear, and the European Parliament will have full legislative powers.

The proposed obligation of breach notification is very welcome, however a patchwork of 27 different versions of the regime is undesirable, as it creates legal uncertainty for business, and it is not transparent for users. Furthermore, it would be wise to draw on the experience with such regimes in other countries, notably the US as they are in a similar situation (breach notification rules being a matter for the states rather than a federal competence). The notification procedure must be such that users are fully and timely informed in case of a breach that is potentially harmful, but without sending false alerts so often that it becomes "crying wolf".

The Commission must have the necessary powers to take the necessary technical implementing powers. In view of rapid technological developments the procedures should be simple and quick. However, certain aspects are not purely technical, and should remain subject to democratic scrutiny. It must be established which aspects can be changed by the Commission, and which need parliamentary involvement

## **AMENDMENTS**

The Committee on Economic and Monetary Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

### **Amendment 1**

**Proposal for a directive – amending act**  
**Recital 32**

*Text proposed by the Commission*

(32) In setting detailed rules concerning the format and procedures applicable to the notification of security breaches, due consideration should be given to the circumstances of the breach, including whether or not the 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*

(32) In setting detailed rules concerning the format and procedures applicable to the notification of security breaches, due consideration should be given to the circumstances of the breach, including whether or not the personal data had been protected by encryption or other means, effectively limiting the likelihood of identity fraud or other forms of misuse. **The** rules and procedures should **not hamper the investigation by** law enforcement authorities of the circumstances of a breach.

*Justification*

*The terminal equipment is the weakest link in a network and, hence, should be well protected. End-users should understand the risks they face while surfing the internet, when they download and use software or data storage media. End-users should be aware of the risks that are present and act accordingly to protect their terminal equipment. Member States should stimulate the awareness raising in this area.*

**Amendment 2**

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

*Text proposed by the Commission*

(34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user's terminal equipment for the benefit of a third party (so-called "spyware") poses a serious threat to users' privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered

*Amendment*

(34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user's terminal equipment for the benefit of a third party (so-called "spyware") poses a serious threat to users' privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered

and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs, USB keys.

and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs, USB keys. ***Member States should encourage end-users to take the necessary steps to protect their terminal equipment against viruses and spy ware.***

*Justification*

*Same as am 10.*

**Amendment 3**

**Proposal for a directive – amending act**

**Article 1 – point 1**

Directive 2002/22/EC

Article 1 – paragraph 2

*Text proposed by the Commission*

2. This Directive establishes the rights of end-users and the corresponding obligations on undertakings providing publicly available electronic communications networks and services. With regard to ensuring provision of universal service within an environment of open and competitive markets, this Directive defines the minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition. This Directive also sets out obligations with regard to the provision of certain mandatory services.

*Amendment*

2. This Directive establishes the rights of end-users and the corresponding obligations on undertakings providing publicly available electronic communications networks and services. With regard to ensuring provision of universal service within an environment of open and competitive markets, this Directive defines the minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of ***the state of technology and*** specific national conditions, without distorting competition. This Directive also sets out obligations with regard to the provision of certain mandatory services.

*Justification*

*The Directive must ensure that universal service is guaranteed and that service providers fulfil their obligations with regard to this aim.*

**Amendment 4**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2002/22/EC

Article 4 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking.

*Amendment*

1. Member States shall ensure that all reasonable requests for connection at a fixed location to a public communications network **or connection to a cellular network** are met by at least one undertaking.

**Amendment 5**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2002/22/EC

Article 4 – paragraph 2

*Text proposed by the Commission*

2. The connection provided **shall** be capable of supporting voice, facsimile and data communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

*Amendment*

2. The connection provided **must** be capable of supporting voice, facsimile and data communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

*Justification*

*Same as am. 3.*

**Amendment 6**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2002/22/EC

Article 4 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Member States shall ensure that all reasonable requests for the provision of a**



*telephone service over the network connection referred to in paragraph 1, allowing voice and data communication at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility, are met by at least one undertaking.*

## **Amendment 7**

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

#### **Article 1 – point 3**

Directive 2002/22/EC

Article 4 – paragraph 3

#### *Text proposed by the Commission*

3. Member States shall ensure that all reasonable requests for provision of a **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" are met by at least one undertaking.

#### *Amendment*

3. Member States shall ensure that all reasonable requests for provision of a **telecommunication and data communication** service over the network connection referred to in paragraph 1, allowing originating and receiving of national and international **communications, data** and **communications** to emergency services via the number "112" are met by at least one undertaking.

#### *Justification*

*The scope of the proposals, described in article 1 as "electronic communications networks and services to end-users" should be reflected in all articles. Technological progress in recent years has blurred the lines between traditional telephone services and other telecommunications, such as the rapidly expanding VOIP and mobile VOIP, the use of mobile telephones for payment services or navigation, broadcasting content via internet or mobile phones, web based office networks, communicating networks using f. ex RFID. The rapid rise of new services should be reflected in the Directive, so as to create legal certainty for businesses, and to avoid loopholes in consumer protection.*

## Amendment 8

### Proposal for a directive – amending act

#### Article 1 – point 4 a (new)

Directive 2002/22/EC

Article 6 – title

*Text proposed by the Commission*

*Amendment*

***(4a) In Article 6, the title shall be replaced by the following:***

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

## Amendment 9

### Proposal for a directive – amending act

#### Article 1 – point 4 b (new)

Directive 2002/22/EC

Article 6 – paragraph 1

*Text proposed by the Commission*

*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."***

## Amendment 10

### Proposal for a directive – amending act

#### Article 1 – point 7

Directive 2002/22/EC

Article 9 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. Member States may, besides any provisions for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.**

**deleted**

*Justification*

*The original text covers all cases, including people with disabilities.*

## **Amendment 11**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

**6a. Member States shall ensure freedom of choice for consumers and shall provide an adequate level of protection against products that unduly restrict that freedom, such as contracts of unreasonably long duration, product tying, and fees or penalties for changing provider.**

*Justification*

*Although providers should be able to offer a wide range of products, Member States must ensure that consumers are free to choose.*

## **Amendment 12**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that transparent, comparable, adequate and up-to date information on applicable prices and tariffs, and on standard terms and conditions, ***in respect of access to and use of the services identified in Articles 4, 5, 6, and 7*** is available to end-users and consumers, in accordance with the provisions of Annex II.

*Amendment*

1. Member States shall ensure that transparent, comparable, adequate and up-to date information on applicable prices and tariffs, and on standard terms and conditions, is available to end-users and consumers, in accordance with the provisions of Annex II. ***Such information shall be published in an easily accessible form.***

*Justification*

*Transparency is essential for all telecommunication services and should be published in an accessible form.*

**Amendment 13**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 6

*Text proposed by the Commission*

6. In order to ensure that end-users can benefit from a consistent approach to tariff transparency, as well as to the provision of information in accordance with Article 20(5) in the Community, the Commission may, having consulted the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”), take the appropriate technical implementing measures in this area, such as specify the methodology or procedures. Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

*Amendment*

6. In order to ensure that end-users can benefit from a consistent approach to tariff transparency, as well as to the provision of information in accordance with Article 20(5) in the Community, the Commission may, having consulted the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”), take the appropriate technical implementing measures in this area, such as specify the methodology or procedures. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

## Amendment 14

### Proposal for a directive – amending act

#### Article 1 – point 13 – point b

Directive 2002/22/EC

Article 22 – paragraph 3

#### *Text proposed by the Commission*

3. In order to prevent degradation of service and slowing of traffic over networks, the Commission may, having consulted the Authority, adopt technical implementing measures concerning minimum quality of service requirements to be set by the national regulatory authority on undertakings providing public communications networks. *These* measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

#### *Amendment*

3. In order to prevent degradation of service and slowing of traffic over networks, the Commission may, having consulted the Authority, adopt technical implementing measures concerning minimum quality of service requirements to be set by the national regulatory authority on undertakings providing public communications networks. *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 15

### Proposal for a directive – amending act

#### Article 1 – point 14

Directive 2002/22/EC

Article 23

#### *Text proposed by the Commission*

Member States shall take all necessary steps to ensure the availability of publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all reasonable steps to ensure uninterrupted access to emergency services.

#### *Amendment*

Member States shall take all necessary steps to ensure ***that service providers fulfil their obligation of universal service, in particular through*** the availability of publicly available telephone services provided over public communications networks, in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all reasonable steps

to ensure uninterrupted access to emergency services.

*Justification*

*Same as am.3.*

**Amendment 16**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 26 – paragraph 7 – subparagraph 2

*Text proposed by the Commission*

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). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

*Amendment*

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 17**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

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

*Amendment*

In order to ensure that end users have effective access to numbers and services in the Community, the Commission may, having consulted the Authority, 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).

*procedure referred to in Article 37(3).*

## **Amendment 18**

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

#### **Article 1 – point 18**

Directive 2002/22/EC

Article 30 – paragraph 6

*Text proposed by the Commission*

6. ***Without prejudice to any minimum contractual period***, national regulatory authorities shall ensure that conditions and procedures for termination of contract do not act as a disincentive for changing suppliers of services.

*Amendment*

6. National regulatory authorities shall ensure that ***the minimum duration of contracts and*** conditions and procedures for termination of contract do not act as a disincentive for changing suppliers of services.

## **Amendment 19**

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

#### **Article 1 – point 18**

Directive 2002/22/EC

Article 30 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. Member States shall ensure that the minimum duration of contracts concluded between subscribers and undertakings providing electronic communications services do not exceed 12 months.***

## **Amendment 20**

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

#### **Article 1 – point 20 – point b**

Directive 2002/22/EC

Article 33 – paragraph 3

*Text proposed by the Commission*

3. Member States shall submit a yearly report to the Commission ***and the Authority*** on the measures taken and the

*Amendment*

3. Member States shall submit a yearly report to the Commission on the measures taken and the progress towards improving

progress towards improving interoperability and use of, and access to, electronic communications services and terminal equipment by disabled end-users.

interoperability and use of, and access to, electronic communications services and terminal equipment **by users in general and by disabled end-users in particular. Due consideration shall be taken of the policy objectives and regulatory principles set out in Article 8 of Directive 2002/21/EC.**

#### *Justification*

*It should be ensured that users, including disabled users, elderly users and users with special social needs derive maximum benefit in terms of choice, price and quality.*

### **Amendment 21**

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

#### **Article 1 – point 20 – point b**

Directive 2002/22/EC

Article 33 – paragraph 4

#### *Text proposed by the Commission*

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may, having consulted the Authority, take the appropriate technical implementing measures to address the issues raised in the report referred to in paragraph 3, following a public consultation. *These* measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

#### *Amendment*

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3) (f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may, having consulted the Authority, take the appropriate technical implementing measures to address the issues raised in the report referred to in paragraph 3, following a public consultation. *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 22**

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

#### **Article 1 – point 24**

Directive 2002/22/EC

Article 37 – paragraph 3

*Text proposed by the Commission*

*Amendment*

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

***deleted***

## **Amendment 23**

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

#### **Article 2 – point -1 (new)**

Directive 2002/58/EC

Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(-1) The following recital shall be inserted:***

***"(1a) The conclusions of the Data Protection Working Party set up under Article 29 of Directive 95/46/EC, in its opinion of 4 April 2008 on data protection issues related to search engines, should be taken into consideration."***

## **Amendment 24**

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

#### **Article 2 – point -1 a (new)**

Directive 2002/58/EC

Recital 1 b (new)

*Text proposed by the Commission*

*Amendment*

***(-1a) The following recital shall be inserted:***

***"(1b) The conclusions of the European***

*Data Protection Supervisor's opinion of 10 April 2008 on the Proposal for a Directive of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector should be taken into consideration when adopting/implementing this Directive."*

## **Amendment 25**

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

#### **Article 2 – point -1 b (new)**

Directive 2002/58/EC

Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

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

***"(6a) Rapid technological developments lead to a radical change of the role of information and communication products and services. The divisions between the telecommunication, Internet and audio-visual technology sectors are becoming increasingly blurred. Products and services in those sectors are more and more frequently merged or linked or share the same sources and correlating data across services and providers. The strict dividing into different sectors, products or services is, to a large extent artificial and obsolete. Data protection legislation based on such divisions is incomplete and ambiguous. This Directive is therefore based on principles that apply to all products and services in order to ensure an even level of data protection across the board."***

*Justification*

*Each day new services appear on the scene, such as the rapidly expanding VOIP and mobile VOIP, the use of mobile telephones for payment services or navigation, broadcasting via*

*internet or mobile phones, web based office networks, communicating networks using f. ex RFID, search engines and the use of personal data from telecommunications for behavioural targeting. Users are freely switching, combining and personalising products, services and providers. Data protection rules that apply strictly to the traditional forms of telecommunication such as (mobile) telephony, text messaging (sms), and e-mail will be redundant even before the Directive is adopted. The rapid rise of new services should be reflected in the Directive, so as to ensure full data protection for the consumer, and to avoid loopholes.*

## **Amendment 26**

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

#### **Article 2 – point -1 c (new)**

Directive 2002/58/EC

Recital 6 b (new)

*Text proposed by the Commission*

*Amendment*

***(-1c) The following recital shall be inserted:***

***"(6b) Personal data are no longer a by-product of those new information and communications products and services, but have become a core business in a self-standing market. New products and services are based on value-added operations, such as user profiling, behavioural targeting and, connecting personal data from different services. In view of the high market value of personal data, access thereto, and, by extension, data protection rules are important factors for competition."***

## **Amendment 27**

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

#### **Article 2 – point -1 d (new)**

Directive 2002/58/EC

Recital 11 a (new)

*Text proposed by the Commission*

*Amendment*

***(-1d) The following recital shall be inserted:***

***"(11a) The use of personal data in the electronic communications sector is not limited to geographical areas. Many of the providers are located outside the European Economic Area. As personal data from EU citizens which is generated and processed within the European Union can be accessed in third countries, the European Union should elaborate global standards in the appropriate international platforms and the use of personal data and data protection standards should be included in the agenda of the Transatlantic Economic Council."***

*Justification*

*As data can be accessed from almost any location in the world, there is an urgent need for global standards. Given the rapidly growing economic importance of personal data and value added operations, the TEC should address this matter*

**Amendment 28**

**Proposal for a directive – amending act**

**Article 2 – point -1 e (new)**

Directive 2002/58/EC

Recital 11 c (new)

*Text proposed by the Commission*

*Amendment*

***(-1e) The following recital shall be inserted:***

***"(11b) In the interest of users and industry, breach notification should be harmonised across the European Union in order to avoid a patchwork of different regimes applying to the same networks. The Commission should draw upon the experience with breach notification regimes outside the European Union, notably in the United States. The application of breach notification rules should also be extended to include other sectors, such as the banking sector, and the use by government bodies of data collected by companies or organisations."***

## Amendment 29

### Proposal for a directive – amending act

#### Article 2 – point -1 f (new)

Directive 2002/58/EC

Article 1 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(-1f) In Article 1, the following paragraph shall be added:***

***"3a. The provisions of this Directive shall apply to the processing of personal data, even where the headquarters of electronic service providers are located outside the European Union. Third-country providers shall inform their users about the conditions with which they must comply, in accordance with this Directive."***

## Amendment 30

### Proposal for a directive – amending act

#### Article 2 – point 3 – subpoint b

Directive 2002/58/EC

Article 4 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. In case of a breach of security leading to the accidental ***or unlawful destruction, loss, alteration***, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in ***connection with*** the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify the subscriber concerned and the national regulatory authority of such a breach. The notification to the subscriber shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification

3. In case of a ***serious*** breach of security leading to the accidental, unauthorised disclosure of or access to personal data ***that have not been rendered unintelligible by technological means***, transmitted, stored or otherwise processed in ***the course of*** the provision of publicly available ***electronic*** communications services in the Community, ***which is likely to cause significant harm to subscribers***, the provider of ***the public or private*** electronic communications services ***whose subscribers may be affected by the breach***, shall without undue delay, notify the subscriber concerned and the national regulatory authority ***of the Member State***

to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

*in which the service has been provided* of such a breach. The notification to the subscriber shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

### *Justification*

*Network security is an issue of critical concern for telecom operators and society at large. Network operators consider that security and privacy matters are of the highest importance if we are to ensure robust levels of digital confidence. However, the notifications for security breaches resulting in users' personal data being lost or compromised should be limited to instances of serious breaches of security. Too broad an approach could over-amplify the issues network operators are constantly striving to resolve and serve to reinforce the risk of additional breaches since the widespread provision of information about security and integrity weaknesses would facilitate further fraudulent activity.*

## **Amendment 31**

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

#### **Article 2 – point 3 – subpoint b**

Directive 2002/58/EC

Article 4 – paragraph 4 – first subparagraph

#### *Text proposed by the Commission*

4. In order to ensure **consistency in** implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission **may**, following consultation with the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”), and the European Data Protection Supervisor, adopt technical implementing measures concerning inter alia the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.

#### *Amendment*

4. In order to ensure **harmonised and proportional** implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission **shall**, following consultation with the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”), **the relevant stakeholders** and the European Data Protection Supervisor, adopt technical implementing measures concerning inter alia the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.

*Justification*

*Same as am.32.*

**Amendment 32**

**Proposal for a directive – amending act**

**Article 2 – point 3 – point b**

Directive 2002/58/EC

Article 4 – paragraph 4 – second subparagraph

*Text proposed by the Commission*

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

*Amendment*

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).

*Justification*

*For the sake of both consumers and industry, breach notification rules should be harmonised across Europe*

**Amendment 33**

**Proposal for a directive – amending act**

**Article 2 – point 6**

Directive 2002/58/EC

Article 14a – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

***deleted***

## Amendment 34

### Proposal for a directive – amending act

#### Article 2 – point 7

Directive 2002/58/EC

Article 15a – paragraph 4 – subparagraph 2

#### *Text proposed by the Commission*

*The 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 use the urgency procedure referred to in Article 14a (3).***

#### *Amendment*

*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).*

## Amendment 35

### Proposal for a directive – amending act

#### Article 2 – point 7 a (new)

Directive 2002/58/EC

Article 18

#### *Text proposed by the Commission*

#### *Amendment*

*(7a) Article 18 shall be replaced by the following:*

**"The Commission shall submit to the European Parliament and the Council, not later than *two* years after the *entry into force of this Directive*, a report on the application of this Directive and its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, *breach notifications, and the use of personal data by third parties - public or private - for purposes not covered by this Directive*, 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 that report, any changes in the sector, and the Treaty of Lisbon, in particular the new competences in matters of data protection as laid down in Article 16 of the Treaty on the Functioning of the European Union, and any other proposal it may deem necessary in order to improve the effectiveness of this Directive."**

*Justification*

*Already at this stage it is clear that the proposals of the European Commission are too limited in scope. What is really needed is a complete overhaul of the data protection regime, that takes account of technological progress and the global nature of electronic data bases and telecommunications networks. This calls for global data protection standards. Data can be accessed from almost any location, at any given moment. The distinction between 1<sup>st</sup> pillar and 3<sup>rd</sup> pillar data has become irrelevant, as government bodies increasingly make use of data bases set up by non government organizations or companies. The anomaly of two or more different data protection regimes applying to a single set of data has to be resolved.*

**Amendment 36**

**Proposal for a directive – amending act**

**Annex II** Directive 2002/22/EC

Annex II – point 2.2

*Text proposed by the Commission*

2.2 Standard Tariffs with an indication of what is included in each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), and including details of standard discounts applied and special and targeted tariff schemes.

*Amendment*

2.2 Standard Tariffs with an indication of ***the full price of the service contracted***, what is included in each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), and including details of standard discounts applied and special and targeted tariff schemes.

*Justification*

*For ensuring that the consumers can control their expenditure and are not misled in a purchase situation, the full price of the service contracted has to be clearly indicated.*

## PROCEDURE

<b>Title</b>	Electronic communications networks and services, protection of privacy and consumer protection		
<b>References</b>	COM(2007)0698 – C6-0420/2007 – 2007/0248(COD)		
<b>Committee responsible</b>	IMCO		
<b>Opinion by</b> Date announced in plenary	ECON 10.12.2007		
<b>Drafts(wo)man</b> Date appointed	Sophia in 't Veld 18.2.2008		
<b>Discussed in committee</b>	1.4.2008	6.5.2008	19.5.2008
<b>Date adopted</b>	3.6.2008		
<b>Result of final vote</b>	+: 32	–: 0	0: 13
<b>Members present for the final vote</b>	Mariela Velichkova Baeva, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, David Casa, Manuel António dos Santos, Jonathan Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Donata Gottardi, Dariusz Maciej Grabowski, Benoît Hamon, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Piia-Noora Kauppi, Wolf Klinz, Christoph Konrad, Guntars Krasts, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Florencio Luque Aguilar, John Purvis, Alexander Radwan, Bernhard Rapkay, Dariusz Rosati, Eoin Ryan, Antolín Sánchez Presedo, Olle Schmidt, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Ieke van den Burg, Cornelis Visser		
<b>Substitute(s) present for the final vote</b>	Dragoş Florin David, Mia De Vits, Harald Ettl, Ján Hudacký, Janusz Lewandowski, Gianni Pittella, Margaritis Schinas, Theodor Dumitru Stolojan		
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Tobias Pflüger		

9.6.2008

## **OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY**

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation (COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))

Draftsman: Reino Paasilinna

### **SHORT JUSTIFICATION**

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

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

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

- **Must-carry obligations:** In view of new platforms and services, and to allow Member States to ensure access by viewers and listeners to linear and non-linear services alike where appropriate, the scope of the ‘must carry’ obligation needs to be extended to audiovisual media services. Services aimed at specific groups (subtitling), as well as complementary services aimed at the public as a whole (radiotext, teletext, programme information) shall not be excluded from must-carry status. (**Recital 24; Art 1 – point 19** amending Art 31 – para 1, subpara 1 of the USD)
- **Delivering choice and universal services objectives; development of competition:** Member States should be enabled to identify and apply conditions to universal service providers at ‘wholesale’ level in circumstances where competition would deliver choice and universal service objectives at the retail level. (**Art 1 – point (5 a ) new** amending Art 8 - para 1 of the USD; **Art 1 – point (7)** amending Art 9 - para 4 of the USD) Furthermore, regulators should be enabled to prevent activities which inhibit entry and delay the development of competition during an interim period whilst wholesale remedies are still becoming effective. (**Art 1 – point (10) - sub-point (a a) (new)** inserting Art 17 - para 1 a (new) into the USD)
- **Clear information to consumers on limitations concerning the use of services, applications, devices:** Consumers should be clearly informed about any limitation imposed by either their service provider or a third party with regard to the access/use of any service, content, or application, as well as limitations of their device (phone is not operating with a SIM card of other operators, etc.). It is of particular importance in case of special offers and package deals, when the attractive price is often subject to certain conditions and restrictions. (**Art 1 – point 12** amending Art 20 – paragraph 2 - point (b) of the USD; **Art 1 – point (12)** amending Art 20 – para 5 of the USD)
- **Transparency of tariff information:** Consumers should be clearly informed about the applicable prices/tariffs. It is of particular importance in case of special offers, package deals, flat rate offers, etc., when it is often difficult for the consumer to separate the price of each service. (**Art 1 – point 12** amending Art 21 – para 4 of the USD)
- **Equivalent access to disabled consumers:** New provisions by the Commission in favour of disabled users are welcome. However, the obligation to provide information on equivalent access to disabled end-users needs to be further strengthened. (**Art 1 – point 13 - sub-point (a)** amending Art 22 – para 1 of the USD)
- **Net neutrality:** The principle of net neutrality refers to the broadband network free of restrictions on the kinds of equipment that may be attached, on the modes of communication allowed, that does not restrict content, sites, or platforms and where communication is not unreasonably degraded by other communication streams. The principle of net neutrality has to be further emphasized in the proposal. (**Art 1 – point 13 - point (b)** amending Art 22 – para 3 of the USD)
- **Access to emergency services:** Member States should ensure that access to emergency services is provided in the full coverage of their territory, including remote and peripheral areas. (**Art 1 – point 14** amending Art 23 of the USD)

- **Number portability:** Number portability within the shortest possible delay is indeed desirable; however, a one working day time limit is difficult to be met. The relevant amendment therefore suggests a delay of maximum three working days for switching operators. (**Art 1 – point 18** amending Art 30 – para 4 of the USD)
- **Breach of security, loss of personal data:** Informing all subscribers about every single breach could create unnecessary confusion for consumers. National Regulatory Authorities should decide whether the security risk and its potential consequences are so serious that there is a need for preventive actions and informing the subscribers or general public. A cooperation mechanism and a reporting obligation is also proposed. (**Art 2 – point 3 - sub-point (b)** amending Art 4 – para 3 of the CRD)
- **Unsolicited communication:** The scope of unsolicited communication measures should be broadened and unsolicited text messages (SMS) should be also included. (**Art 2 – point 4 a (new)** amending Art 13 – para 1 of the CRD)
- **‘Technical amendments’:** (i) **Comitology procedure:** Even in case of urgency European Parliament must have the possibility to study the draft implementing measure; cooperation of the institutions is, however, necessary in order adopt the implementing measure as speedily as possible. Therefore the reference to urgency procedure is proposed to be deleted, while an amendment to the recital strengthens the obligation of the institutions to cooperate. (**Recital 39; Art 1 - point 12** amending Art 21 - para 6 of the USD; **Art 1 - point 13 - sub-point (b)** inserting Art 22 - para 3 into the USD; **Art 1 - point 16** amending Art 26 - para 7 of the USD; **Art 1 - point 16** amending Art 28 - para 2 of the USD; **Art 1 - point 20** inserting Art 33 - para 4 into the USD; **Art 2 - point 3 - sub-point (b)** inserting Art 4 - para 4 into the CRD; **Art 2 - point 7** inserting Art 15a - para 4 into the CRD) (ii) **EECMA:** The decision on the establishment of the European Electronic Communications Market Authority is subject to another legislative procedure; for the reasons of coherence the draftsman suggests deleting all references to EECMA in the present proposal. (Same paragraphs as above concerning the urgency procedure).

## AMENDMENTS

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

### Amendment 1

#### Proposal for a directive – amending act Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. The development of an efficient, ubiquitous information society calls for***

*the universal provision of broadband and wireless technology, which requires further support at Member State and Community level. Therefore the Commission should, in its forthcoming redefinition of universal service, propose that broadband internet be included within the scope of universal services.*

*Justification*

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

**Amendment 2**

**Proposal for a directive – amending act  
Recital 12**

*Text proposed by the Commission*

(12) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to emergency services is provided, and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. Customers should also be kept well informed of possible actions that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data, privacy or other aspects of the service provided.

*Amendment*

(12) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to emergency services is provided, and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. ***Equally, customers should be properly informed of their right to be included in directory databases and granted an effective opportunity to exercise that right both initially and during the contractual relationship. Hence, customers should be expressly asked at the moment of requesting a service whether and how they wish relevant information to be included in directory databases. Since mechanisms are available for including information in directory databases without that information being disclosed to users of directory services, hence facilitating more comprehensive directory services without compromising privacy, customers should also be offered this***

**option by access operators.** Customers should also be kept well informed of possible actions that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data, privacy or other aspects of the service provided.

### *Justification*

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

### **Amendment 3**

#### **Proposal for a directive – amending act Recital 14**

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

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

##### *Amendment*

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

## *Justification*

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

### **Amendment 4**

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

##### **Recital 16**

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

(16) A competitive market should ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the blocking of access and the slowing of traffic over the networks. ***In particular, the Commission*** should be able to ***adopt implementing measures with a view to identifying the quality standards to be used*** by the national regulatory authorities.

###### *Amendment*

(16) A competitive market should ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the blocking of access and the slowing of traffic over the networks. ***The national regulatory authorities*** should be able to ***set appropriate*** quality standards, ***and the [xxx] and the Commission should be consulted in order to ensure consistency between approaches taken*** by the national regulatory authorities.

### **Amendment 5**

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

##### **Recital 18 a (new)**

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

###### *Amendment*

***(18a) Directory enquiry services should be, and frequently are, provided in conditions of competition, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic***



*communications networks and services<sup>1</sup>. Wholesale measures ensuring the inclusion of end-user data (both fixed and mobile) in databases, the cost-oriented supply of that data to service providers and the provision of network access in cost-oriented, reasonable and transparent conditions should be put in place in order to ensure that end users benefit fully from competition, with the ultimate aim of removing retail regulation from these services.*

<sup>1</sup> OJ L 249, 17.9.2002, p. 21.

#### *Justification*

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

#### **Amendment 6**

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

*Text proposed by the Commission*

*Amendment*

***(20a) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market<sup>1</sup> provides that transmission in a communications network of information provided by a recipient of a service does not render the service provider liable for the information transmitted. The providers of electronic communication services, therefore, are responsible for notifications to the subscriber and national regulatory authorities only for breaches of security in connection with the provision of the service, which is likely to consist of subscriber information as well as traffic data and personal content, where they choose to offer content service.***

## Amendment 7

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

*Text proposed by the Commission*

*Amendment*

*(21) The countries to which the International Telecommunications Union assigned the international code “3883” have delegated administrative responsibility for the European Telephony Numbering Space (ETNS) to the electronic communications committee (ECC) of the European Conference of Postal and Telecommunications Administrations (CEPT). Technological and market developments show that ETNS represents an opportunity for pan-European services to develop, but that it is currently prevented from realising its potential by overly bureaucratic procedural requirements and a lack of coordination between national administrations. In order to foster the development of ETNS, its administration (which includes assignment, monitoring and development) should be transferred to the European Electronic Communications Market Authority established by Regulation (EC) No.../... of the European Parliament and of the Council of [...], hereinafter referred to as “the Authority”. The Authority should ensure coordination with those countries that share “3883” but are not Member States on behalf of the Member States to which “3883” has been assigned.*

*deleted*

*Justification*

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

## Amendment 8

### Proposal for a directive – amending act Recital 24

*Text proposed by the Commission*

(24) *A television broadcast is a linear audiovisual media service as defined in the Audiovisual Media Services Directive of the European Parliament and of the Council of [...] 2007, which is provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule; a media service provider may provide a number of audio or audio visual programme schedules (channels).* Legal “must-carry” obligations may be applied, **but only** to specified **broadcast channels** supplied by a specified media service provider. Member States should provide a clear justification for the “must carry” obligations in their national law so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. Given the rapid change in technology and market conditions such a full review would need to be carried out at least every three years and would require a public consultation of all stakeholders. **One or more broadcast channels may be complemented by** services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

*Amendment*

(24) Legal “must-carry” obligations may be applied to specified **radio services, audiovisual media services as defined in Directive 89/552/EC of 3 October 1989 of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)<sup>1</sup>, and complementary services** supplied by a specified media service provider. Member States should provide a clear justification for the “must carry” obligations so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. Given the rapid change in technology and market conditions such a full review would need to be carried out at least every three years and would require a public consultation of all stakeholders. **Complementary services include, but are not limited to,** services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

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

### *Justification*

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

## **Amendment 9**

### **Proposal for a directive – amending act Recital 29**

#### *Text proposed by the Commission*

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, subscribers concerned by *such* security incidents should be notified without delay and informed in order to be able to take the necessary precautions. *The* notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected.

#### *Amendment*

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, subscribers concerned by *serious* security incidents should be notified without delay and informed in order to be able to take the necessary precautions, *if the national regulatory authorities consider this necessary after notification by the service provider. Where personal data is rendered unusable, the national regulatory authorities should be able to decide not to request notification by the service provider. A notification under these circumstances* should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected, *as appropriate for each individual case.*

## **Amendment 10**

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

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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

**Amendment 11**

**Proposal for a directive – amending act  
Recital 39**

*Text proposed by the Commission*

*Amendment*

(39) In particular power should be conferred on the Commission to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of “112” services, effective access to numbers and services, improvement of accessibility by disabled end-users as well as amendments to adapt the Annexes to technical progress or changes in market demand. This power should also be conferred to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation. Since those measures are of a general scope and are designed to supplement this Directive by adding new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in

(39) In particular power should be conferred on the Commission to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of “112” services, effective access to numbers and services, improvement of accessibility by disabled end-users as well as amendments to adapt the Annexes to technical progress or changes in market demand. This power should also be conferred to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation. Since those measures are of a general scope and are designed to supplement this Directive by adding new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in

Article 5a of Decision 1999/468/EC.  
***When, on imperative grounds of urgency, the normal time-limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to use the urgency procedure provided for in Article 5a(6) of the Decision.***

Article 5a of Decision 1999/468/EC.  
***Taking into account that the application of the regulatory procedure with scrutiny within the usual deadlines could, in certain exceptional situations, impede the timely adoption of implementing measures, the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of those measures.***

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

#### *Justification*

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

## **Amendment 12**

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

*Text proposed by the Commission*

*Amendment*

***(39a) The purpose of the Universal Service Directive is to ensure a high level of protection of consumers' and individual users' rights in the provision of telecommunications services. Such protection is not required in the case of global telecommunications services. These are corporate data and voice services provided as a package to large undertakings, located in different countries within and outside EU, on the basis of individual contracts negotiated by parties of equal strength.***

#### *Justification*

*Global telecommunications services (GTS) consist of business data and voice services provided to multinational companies with locations across multiple countries, and often*

*different continents. First, against the backdrop of the Universal Service Directive's goal, these services are not provided to mass market consumers or small businesses, but rather to large enterprises.*

### **Amendment 13**

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

##### **Article 1 – point 1**

Directive 2002/22/EC

Article 1 – paragraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

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

### **Amendment 14**

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

##### **Article 1 – point 5 a (new)**

Directive 2002/22/EC

Article 8 – paragraph 1

#### *Text proposed by the Commission*

#### *Amendment*

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

**"1. Member States may designate one or more undertakings to guarantee the provision of universal service as identified in Articles 4, 5, 6 and 7 and, where applicable, Article 9(2) so that the**

**whole of the national territory can be covered. Member States may designate different undertakings or sets of undertakings to provide different elements of universal service at wholesale and/or retail level and/or to cover different parts of the national territory."**

*Justification*

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

**Amendment 15**

**Proposal for a directive – amending act**

**Article 1 – point 7**

Directive 2002/22/EC

Article 9 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 16**



**Proposal for a directive – amending act**

**Article 1 – point 7**

Directive 2002/22/EC

Article 9 – paragraph 3

*Text proposed by the Commission*

3. Member States may, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.

*Amendment*

3. Member States may, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs. ***In such cases, Member States may compensate designated undertakings for demonstrable additional costs in full compliance with EU competition rules.***

**Amendment 17**

**Proposal for a directive – amending act**

**Article 1 – point 7 - introductory part**

Directive 2002/22/EC

Article 9 – paragraphs 1 to 3

*Text proposed by the Commission*

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

*Amendment*

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

*Justification*

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

**Amendment 18**

**Proposal for a directive – amending act**

**Article 1 – point 7**

Directive 2002/22/EC

Article 9 – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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

#### **Amendment 19**

**Proposal for a directive – amending act**

**Article 1 – point 10 – point a a (new)**

Directive 2002/22/EC

Article 17 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) The following paragraph shall be added:***

***"2a. Without prejudice to obligations that may be imposed on operators identified as having significant market power on a given retail market pursuant to paragraph 1, national regulatory authorities may apply the obligations referred to in paragraph 2 for a transitional period on operators identified as having significant market power on a given wholesale market in circumstances where wholesale obligations have been imposed but are not yet effective in ensuring competition in the retail market."***

*Justification*

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

*becoming effective.*

## **Amendment 20**

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

#### **Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 2 – point b

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Justification*

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

## **Amendment 21**

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

#### **Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 4

#### *Text proposed by the Commission*

4. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services that allow voice communication, subscribers are clearly informed whether or not access to emergency services is provided. Providers of electronic communications services shall ensure that customers are clearly informed of the lack of access to emergency services in advance of the

#### *Amendment*

4. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services that allow voice communication, subscribers are clearly informed whether or not access to emergency services is provided. Providers of electronic communications services shall ensure that customers are clearly informed of the lack of access to emergency services in advance of the

conclusion of a contract and **regularly** thereafter.

conclusion of a contract and thereafter.

### *Justification*

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

## **Amendment 22**

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

#### **Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 5

#### *Text proposed by the Commission*

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

#### *Amendment*

5. Member States shall ensure, **and enforce without delay where necessary**, that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of a contract and regularly thereafter of any limitations imposed by the provider, **in particular technical and price- or tariff-related limitations**, on their ability to:

(a) access, **use** or distribute **any** content;

(b) **access** or run any *application or service* of their choice; **and/or**

(c) **manage or use any content, service or application in their terminal equipment.**

***Such information shall be provided in a clear, comprehensive and easily accessible form.***

## **Amendment 23**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 6

*Text proposed by the Commission*

6. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of the contract and **regularly** thereafter of their obligations to respect copyright and related rights.

***Without prejudice to Directive 2000/31/EC on electronic commerce, this includes the obligation to inform subscribers of the most common acts of infringements and their legal consequences.***

*Amendment*

6. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of the contract and thereafter of their obligations to respect copyright and related rights.

*Justification*

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

**Amendment 24**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 7

*Text proposed by the Commission*

7. Subscribers shall have a right to withdraw from their contracts without penalty upon notice of modifications in the contractual conditions proposed by operators. Subscribers shall be given adequate notice, not shorter than one month, ahead of any such modifications

*Amendment*

7. Subscribers shall have a right to withdraw from their contracts without penalty upon notice of modifications in the contractual conditions proposed by operators. Subscribers shall be given adequate notice, not shorter than one month, ahead of any such modifications

and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, if they do not accept the new conditions.

and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, if they do not accept the new conditions. ***This right may only be exercised when the modifications are disadvantageous to the subscriber.***

#### *Justification*

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

### **Amendment 25**

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

##### **Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

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

### **Amendment 26**

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

##### **Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph -1 (new)

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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

## **Amendment 27**

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

#### **Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 6

*Text proposed by the Commission*

*Amendment*

6. In order to ensure that end-users can benefit from a consistent approach to tariff transparency, as well as to the provision of information in accordance with Article 20(5) in the Community, the Commission may, ***having consulted the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”), take the appropriate technical implementing measures in this area, such as specify the methodology or procedures. Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

6. In order to ensure that end-users can benefit from a consistent approach to tariff transparency, as well as to the provision of information in accordance with Article 20(5) in the Community, the Commission may ***introduce guidelines, such as guidelines specifying*** the methodology or procedures.

### *Justification*

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

### **Amendment 28**

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

#### **Article 1 – point 13 – point a**

Directive 2002/22/EC

Article 22 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall ensure that national regulatory authorities **are**, after taking account of the views of interested parties, **able to** require undertakings that provide publicly available electronic communications networks and/or services to publish comparable, adequate and up-to-date information for end-users on the quality of their services, **including equivalent access for** disabled end-users. The information shall, on request, also be supplied to the national regulatory authority in advance of its publication.

#### *Amendment*

1. Member States shall ensure that national regulatory authorities, after taking account of the views of interested parties, require undertakings that provide publicly available electronic communications networks and/or services to publish comparable, adequate and up-to-date information for end-users on the quality of their services, **with particular emphasis on information provided to** disabled end-users **concerning equivalent access**. The information shall, on request, also be supplied to the national regulatory authority in advance of its publication.

### *Justification*

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

### **Amendment 29**

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

#### **Article 1 – point 13 – point b**

Directive 2002/22/EC

Article 22 – paragraph 3



*Text proposed by the Commission*

3. In order to prevent degradation of service and slowing of traffic over networks, **the Commission** may, having consulted the **Authority**, adopt **technical implementing measures concerning minimum quality of service requirements to be set by the national regulatory authority** on undertakings providing public communications networks. **These measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).**

*Amendment*

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

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

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

## **Amendment 30**

**Proposal for a directive – amending act**

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

Directive 2002/22/EC

Article 22 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**(ba) The following paragraph shall be inserted:**

**"3a. In order to ensure that users' ability to access or distribute lawful content or to run any lawful application or service of**

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

*Justification*

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

**Amendment 31**

**Proposal for a directive – amending act**

**Article 1 – point 14**

Directive 2002/22/EC

Article 23

*Text proposed by the Commission*

Member States shall take all necessary **steps** to ensure the availability of publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of *force majeure*. Member States shall ensure that undertakings providing publicly available telephone services take all **reasonable steps** to ensure uninterrupted access to emergency services.

*Amendment*

Member States shall take all necessary **measures** to ensure the availability of publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of *force majeure*. Member States shall ensure that undertakings providing publicly available telephone services take all **necessary measures** to ensure uninterrupted access to emergency services **throughout the territory they cover**.

*Justification*

*Member States shall ensure that access to emergency services is provided in the full coverage of their territory, including remote and peripheral areas.*

**Amendment 32**

**Proposal for a directive – amending act**  
**Article 1 – point 15 – point a a (new)**  
Directive 2002/22/EC  
Article 25 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

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

### **Amendment 33**

**Proposal for a directive – amending act**  
**Article 1 – point 15 – point b**  
Directive 2002/22/EC  
Article 25 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. Member States shall ensure that all end-users ***provided with a publicly available telephone*** service can access directory enquiry services in accordance with Article 5(1)(b).

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

### *Justification*

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

*travel to other Member states and be able to access its usual directory enquiry services provider, in order to obtain information in his or her national language, is essential to promoting the single market.*

#### **Amendment 34**

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

##### **Article 1 – point 15 – point b a (new)**

Directive 2002/22/EC

Article 25 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***(ba) Article 25(4) shall be replaced by the following:***

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

#### *Justification*

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

#### **Amendment 35**

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

##### **Article 1 – point 16**

Directive 2002/22/EC

Article 26 - paragraph 4

*Text proposed by the Commission*

*Amendment*

(4) Member States shall ensure that disabled end-users are able to access emergency services. In order to ensure that disabled end-users are able to access

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

emergency services while travelling in other Member States, the measures taken may include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

end-users are able to access emergency services while travelling in other Member States, the measures taken may include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

#### *Justification*

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

### **Amendment 36**

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

##### **Article 1 – point 16**

Directive 2002/22/EC

Article 27 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. Those Member States to which the ITU assigned the international code “3883” shall entrust the Authority with sole responsibility for management of the European Telephony Numbering Space.**      **deleted**

#### *Justification*

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

### **Amendment 37**

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

##### **Article 1 – point 18**

Directive 2002/22/EC

Article 30 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. Porting of numbers and their subsequent

4. Porting of numbers and their subsequent

activation shall be executed within the shortest possible delay, no later than **one** working **day** from the initial request by the subscriber.

activation shall be executed within the shortest possible delay, no later than **two** working **days** from the initial request by the subscriber.

## Amendment 38

### Proposal for a directive – amending act

#### Article 1 – point 19

Directive 2002/22/EC

Article 31 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and **television broadcast channels** and **accessibility** services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **television broadcasts** to the public where a significant number of end-users of such networks use them as their principal means to receive radio **and television broadcasts**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State **in its national law** and shall be proportionate and transparent.

#### *Amendment*

Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and **audiovisual media services** and **complementary** services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **audiovisual media services** to the public where a significant number of end-users of such networks use them as their principal means to receive radio **or audiovisual media services**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State and shall be proportionate and transparent.

#### *Justification*

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

## Amendment 39

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

### **Article 1 – point 20**

Directive 2002/22/EC

Article 33 – paragraph 4

#### *Text proposed by the Commission*

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may, **having consulted the Authority**, take the appropriate technical implementing measures to address the issues raised in the report referred to in paragraph 3, following a public consultation. **These measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).**

#### *Amendment*

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may **introduce guidelines and** take the appropriate technical implementing measures to address the issues raised in the report referred to in paragraph 3, following a public consultation.

#### *Justification*

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

## **Amendment 40**

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

### **Article 1 – point 24**

Directive 2002/22/EC

Article 37 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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

#### **Amendment 41**

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

##### **Article 1 – point 24**

Directive 2002/22/EC

Article 37 – paragraph 3

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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



## Amendment 42

### Proposal for a directive – amending act

#### Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3

#### *Text proposed by the Commission*

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify **the subscriber concerned and** the national regulatory authority of such a breach. The notification **to the subscriber** shall **at least** describe the nature of the breach and **recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the** consequences of and the measures taken by the provider to address the breach.

#### *Amendment*

3. In case of **serious** breach of security **by the provider of publicly available electronic communications services** leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available **electronic** communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify the national regulatory authority of such a breach. The notification shall describe the nature of the breach and **its** consequences, and the measures taken by the provider to address the breach, **and shall recommend measures to mitigate its possible negative effects. The national regulatory authority shall decide whether the provider of publicly available electronic communications services shall notify the subscriber concerned of the breach. Where personal data has been rendered unusable by technical or procedural means to the extent that the risk of loss is low or substantially removed, a breach of security should not be considered as having caused harm to the end-user. Therefore the national regulatory authority may decide not to request notification from the provider to the subscriber concerned. The technical and procedural means of rendering data unusable shall be approved by the national regulatory authority. The Commission may, having consulted the [xxx], take the appropriate coordination**

*measures to ensure a consistent approach at Community level.*

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

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

#### **Amendment 43**

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

##### **Article 2 – point 3**

Directive 2002/58/EC

Article 4 – paragraph 4

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

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission may, *following consultation with the **European Electronic Communications Market Authority (hereinafter referred to as “the Authority”)***, and the European Data Protection Supervisor, adopt technical implementing measures concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.

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

##### *Amendment*

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission may, *having consulted the [xxx] and the European Data Protection Supervisor*, adopt technical implementing measures concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a (2).

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

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

#### *Justification*

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

#### **Amendment 44**

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

##### **Article 2 – point 4**

Directive 2002/58/EC

Article 5 – paragraph 3

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

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

##### *Amendment*

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

*separately from his/her agreement to the general provisions.*

*Justification*

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

**Amendment 45**

**Proposal for a directive – amending act**

**Article 2 – point 4 a (new)**

Directive 2002/58/EC

Article 6 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(4a) Article 6(3) shall be replaced by the following:***

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

*Justification*

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

**Amendment 46**

**Proposal for a directive – amending act**

**Article 2 – point 4 b (new)**

Directive 2002/58/EC

Article 9 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

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

*Justification*

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

**Amendment 47**

**Proposal for a directive – amending act**

**Article 2 – point 4 c (new)**

Directive 2002/58/EC

Article 12 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

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

**Amendment 48**

**Proposal for a directive – amending act**

**Article 2 – point 4 d (new)**

Directive 2002/58/EC

Article 13 – paragraph 1

*Text proposed by the Commission*

*Amendment*

*(4c) Article 13(1) shall be replaced by the following:*

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

*Justification*

*The scope of unsolicited communication has to be updated in the light of technological development, since there are now devices, which are able to communicate with each other without using a public communications network.*

**Amendment 49**

**Proposal for a directive – amending act**

**Article 2 – point 4 e (new)**

Directive 2002/58/EC

Article 13 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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

## PROCEDURE

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



9.6.2008

## OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation (COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))

Draftsman: Manolis Mavrommatis

### AMENDMENTS

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

#### Amendment 1

##### Proposal for a directive – amending act Recital 14

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

(14) A competitive market should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should

###### *Amendment*

(14) A competitive market should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should

in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them in Directive 2002/19/EC to ensure that users' access to particular types of content or applications is not unreasonably restricted.

in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them in Directive 2002/19/EC to ensure that users' access to particular types of **lawful** content or applications is not unreasonably restricted.

#### *Justification*

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

#### **Amendment 2**

##### **Proposal for a directive – amending act Recital 24**

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

(24) ***A television broadcast is a linear audiovisual media service as defined in the Audiovisual Media Services Directive of the European Parliament and of the Council of [...] 2007, which is provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule; a media service provider may provide a number of audio or audio visual programme schedules (channels).*** Legal “must-carry” obligations may be applied, ***but only*** to specified ***broadcast channels*** supplied by a specified media service provider. Member States should provide a clear justification for the “must carry” obligations ***in their national law*** so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient

###### *Amendment*

(24) Legal “must-carry” obligations may be applied to specified ***radio and audiovisual media services and complementary services*** supplied by a specified media service provider. ***Audiovisual media services are defined in Article 1(a) of Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Audiovisual Media Services Directive)***<sup>1</sup>. Member States should provide a clear justification for the “must carry” obligations so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for

investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. ***Given the rapid change in technology and market conditions such a full review would need to be carried out at least every three years and would require a public consultation of all stakeholders.*** One or more ***broadcast channels*** may be complemented by services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. One or more ***audiovisual media services*** may be complemented by services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

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<sup>1</sup> OJ L 332, 18.12.2007, p. 27.

#### *Justification*

*To make Article 31 future-proof, in view of new platforms and services, and to allow Member States to ensure access by viewers and listeners to linear and non-linear services alike where appropriate, the potential scope of this provision needs to be extended to audiovisual media services, in line with the new Audiovisual Media Services Directive. This must also be reflected in Recital 24.*

### **Amendment 3**

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

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

(28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus

##### *Amendment*

(28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus

make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that **the** fundamental rights of individuals, **in particular the right to privacy and data protection**, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.

make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that **all** fundamental rights of individuals **under the Charter of Fundamental Rights of the European Union** are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.

#### *Justification*

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

#### **Amendment 4**

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

*Text proposed by the Commission*

*Amendment*

***(30a) When implementing measures adopted to transpose Directive 2002/58/EC, the authorities and courts of the Member States should not only interpret their national law in a manner consistent with this Directive, but also ensure that they do not rely on an interpretation of this Directive which would conflict with fundamental rights or with other general principles of Community law, such as the principle of proportionality.***

#### *Justification*

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

## Amendment 5

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

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Justification*

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

## Amendment 6

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

#### *Text proposed by the Commission*

1. This Article shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EC and 97/7/EC, and national rules in conformity with Community law.

#### *Amendment*

1. This Article shall apply without prejudice to Community rules on consumer protection **and other rules on transparency in the provision of media services**, in particular Directives **89/552/EEC**, 93/13/EC and 97/7/EC, and national rules in conformity with Community law.

## Amendment 7

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

*Text proposed by the Commission*

*Amendment*

(h) the action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities.

(h) the action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities, ***or in relation to the use of the service to commit unlawful acts.***

*Justification*

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

**Amendment 8**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 5

*Text proposed by the Commission*

*Amendment*

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

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

*Justification*

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

**Amendment 9**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

**6a. Member States shall ensure that subscribers are clearly notified in the event of repeated breaches of copyright and related rights so that they are able to cease their unlawful activities.**

*Justification*

*The internet should be freed from unlawful behaviour. Thus, subscribers and operators should collaborate in the fight against piracy and unlawful online activity.*

**Amendment 10**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

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

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

*Justification*

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

**Amendment 11**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

National regulatory authorities shall be able to block on a case-by-case basis

National regulatory authorities shall be able to block on a case-by-case basis

access to numbers or services where this is justified by reasons of **fraud** or misuse.

access to numbers or services where this is justified by reasons of **unlawful and harmful activity** or misuse.

#### *Justification*

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

### **Amendment 12**

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

##### **Article 1 – point 19**

Directive 2002/22/EC

Article 31 – paragraph 1

#### *Text proposed by the Commission*

1. Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and **television broadcast channels** and **accessibility** services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **television broadcasts** to the public where a significant number of end-users of such networks use them as their principal means to receive radio **and television broadcasts**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State **in its national law** and shall be proportionate and transparent.

#### *Amendment*

1. Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and **audiovisual media services** and **complementary** services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **audiovisual media services** to the public where a significant number of end-users of such networks use them as their principal means to receive radio **or audiovisual media services**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly and specifically defined by each Member State and shall be proportionate and transparent.

#### *Justification*

*To make Article 31 future-proof, in view of new platforms and services, and to allow Member States to ensure access by viewers and listeners to linear and non-linear services alike where appropriate, the potential scope of this provision needs to be extended to audiovisual media services, in line with the new Audiovisual Media Services Directive. This must also be reflected in Recital 24.*



## Amendment 13

### Proposal for a directive – amending act

#### Article 1 – point 19

Directive 2002/22/EC

Article 31 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

Member States shall review “must carry” obligations ***at least every three years***.

*Amendment*

Member States shall review “must-carry” obligations ***on a regular basis***.

#### *Justification*

*In view of the different legal instruments chosen by Member States, a rigid requirement that “must carry” rules must be reviewed “at least every three years” would not be appropriate.*

## Amendment 14

### Proposal for a directive – amending act

#### Article 2 – point 3 a (new)

Directive 2002/58/EC

Article 5 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***(3a) Article 5(1) shall be replaced by the following:***

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

**the conveyance of a communication without prejudice to the principle of confidentiality."**

*Justification*

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

**Amendment 15**

**Proposal for a directive – amending act**

**Article 2 – point 6 a (new)**

Directive 2002/58/EC

Article 15 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***(6a) Article 15(1) shall be replaced by the following:***

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

**principles of Community law, including those referred to in Articles 6(1) and (2) of the Treaty on European Union."**

*Justification*

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

## PROCEDURE

<b>Title</b>	Electronic communications networks and services, protection of privacy and consumer protection
<b>References</b>	COM(2007)0698 – C6-0420/2007 – 2007/0248(COD)
<b>Committee responsible</b>	IMCO
<b>Opinion by</b> Date announced in plenary	CULT 10.12.2007
<b>Drafts(wo)man</b> Date appointed	Manolis Mavrommatis 17.1.2008
<b>Discussed in committee</b>	6.5.2008
<b>Date adopted</b>	2.6.2008
<b>Result of final vote</b>	+: 12 -: 4 0: 1
<b>Members present for the final vote</b>	Katerina Batzeli, Ivo Belet, Věra Flasarová, Milan Gaľa, Claire Gibault, Lissy Gröner, Mikel Irujo Amezaga, Manolis Mavrommatis, Ljudmila Novak, Doris Pack, Christa Prets, Karin Resetarits, Pál Schmitt, Thomas Wise
<b>Substitute(s) present for the final vote</b>	Victor Boștinaru, Elisabeth Morin, Ewa Tomaszewska

3.6.2008

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation (COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))

Draftswoman: Lidia Joanna Geringer de Oedenberg

### **SHORT JUSTIFICATION**

#### **1. Scope of the Commission proposal**

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

#### **2. Rapporteur's position**

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

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

Commission as for the need to amend the existing Universal Service Directive and the Directive on privacy and electronic communications with a view to :

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

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

More specifically, as Article 7 of the Universal Service Directive, as amended by the Commission proposal, obliges Member States to adopt special measures for disabled users, your Rapporteur would propose an amendment to Article 9 of the same Directive aiming at ensuring the same result as that provision and taking into due account consumers identified as having low incomes, disability or special social needs.

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

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

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

## **AMENDMENTS**

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

### **Amendment 1**

**Proposal for a directive – amending act  
Recital 13**

*Text proposed by the Commission*

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

*Amendment*

(13) The right of subscribers to withdraw from their contracts without penalty refers to modifications in contractual conditions which are imposed by the providers of electronic communications networks and/or services, ***other than changes required by law. Where a contract contains a clause enabling the provider to unilaterally vary the contract, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>1</sup> applies. The right of subscribers to withdraw applies to detrimental variations whether applied on a stand-alone basis or in bundled services.***

<sup>1</sup> OJ L 95, 21.4.1993, p. 29.

**Amendment 2**

**Proposal for a directive – amending act  
Recital 15**

*Text proposed by the Commission*

(15) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency ***and to ensure that third parties have the right to use without charge publicly available tariffs published by undertakings providing electronic communications services.*** They should also make price guides available where the

*Amendment*

(15) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency. They should also make price guides available where the market has not provided them. Operators should not be entitled to any remuneration for such use of tariffs which had already been published and thus belong to the public domain. In

market has not provided them. Operators should not be entitled to any remuneration for such use of tariffs which had already been published and thus belong to the public domain. In addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges. ***The Commission should be able to adopt technical implementing measures to ensure that end-users benefit from a consistent approach to tariff transparency in the Community.***

addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges.

#### *Justification*

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

### **Amendment 3**

#### **Proposal for a directive – amending act Recital 16**

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

(16) A competitive market should ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the blocking of access and the slowing of traffic over the networks. ***In particular, the Commission should be able to adopt implementing measures with a view to identifying the quality standards to be used by the national regulatory authorities.***

##### *Amendment*

(16) A competitive market should ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the blocking of access and the slowing of traffic over the networks.

### **Amendment 4**



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

*Text proposed by the Commission*

*Amendment*

***(21) The countries to which the International Telecommunications Union assigned the international code ‘3883’ have delegated administrative responsibility for the European Telephony Numbering Space (ETNS) to the electronic communications committee (ECC) of the European Conference of Postal and Telecommunications Administrations (CEPT). Technological and market developments show that ETNS represents an opportunity for pan-European services to develop, but that it is currently prevented from realising its potential by overly bureaucratic procedural requirements and a lack of coordination between national administrations. In order to foster the development of ETNS, its administration (which includes assignment, monitoring and development) should be transferred to the European Electronic Communications Market Authority established by Regulation (EC) No.../... of the European Parliament and of the Council of [...], hereinafter referred to as ‘the Authority’. The Authority should ensure coordination with those countries that share ‘3883’ but are not Member States on behalf of the Member States to which ‘3883’ has been assigned.***

***deleted***

**Amendment 5**

**Proposal for a directive – amending act  
Recital 29**

*Text proposed by the Commission*

*Amendment*

***(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed***

***(29) A **serious** breach of security resulting in the loss or compromising of personal data of an individual subscriber may, if not***

in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, ***subscribers concerned by such security incidents*** should be notified without delay ***and informed in order to be able to take the necessary precautions***. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected.

addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, ***the national regulatory authority*** should be notified without delay. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected. ***The national regulatory authority should consider and determine the seriousness of the breach and should require the provider where appropriate to notify without undue delay the subscribers directly affected by the breach.***

## Amendment 6

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

*Text proposed by the Commission*

*Amendment*

***(30a) When implementing the measures for transposing Directive 2002/58/EC, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with that Directive but also make sure that they do not rely on an interpretation of it which would be in conflict with other fundamental rights or general principles of Community law, such as the principle of proportionality.***

*Justification*

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

## Amendment 7

**Proposal for a directive – amending act  
Recital 33**

*Text proposed by the Commission*

*Amendment*

***(33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment. In particular, it should contribute to harmonisation of appropriate technical and organisational security measures.***

***deleted***

**Amendment 8**

**Proposal for a directive – amending act  
Article 1 – point 5  
Directive 2002/22/EC  
Article 7 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall take specific measures for disabled end-users in order to ensure access to and affordability of ***publicly available telephone service***, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.

1. Member States shall take specific measures for disabled end-users in order to ensure access to and affordability of ***electronic communications services***, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.

**Amendment 9**

**Proposal for a directive – amending act  
Article 1 – point 7  
Directive 2002/22/EC  
Article 9 – paragraphs 2 and 3**

*Text proposed by the Commission*

*Amendment*

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

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

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

3. Member States *may*, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.

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

3. Member States *shall*, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.

#### *Justification*

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

### **Amendment 10**

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

##### **Article 1 – point 12**

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point e

#### *Text proposed by the Commission*

(e) the duration of the contract, the conditions for renewal and termination of services and of the contract, including ***direct costs for*** portability of numbers and other identifiers;

#### *Amendment*

(e) the duration of the contract, the conditions for renewal and termination of services and of the contract, including ***any charges related to*** portability of numbers and other identifiers ***and any charges that will be levied due to involvement of subsidised equipment;***

## Amendment 11

### Proposal for a directive – amending act

#### Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point h

#### *Text proposed by the Commission*

(h) the action ***that might*** be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities.

#### *Amendment*

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

#### *Justification*

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

## Amendment 12

### Proposal for a directive – amending act

#### Article 1 – point 12

Directive 2002/22/EC

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

#### *Text proposed by the Commission*

#### *Amendment*

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

## Amendment 13

### Proposal for a directive – amending act

#### Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 7

*Text proposed by the Commission*

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

*Amendment*

7. Subscribers shall have a right to withdraw from their contracts without penalty upon notice of modifications ***to the detriment of the subscriber*** in the contractual conditions proposed by operators ***in reliance on a term in the contract allowing unilateral changes***. Subscribers shall be given adequate notice, not shorter than one month, ahead of any such modifications and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, if they do not accept the new conditions. ***If the contract does not contain a term enabling the operator to unilaterally alter the contract the notice shall inform the subscriber of the right to refuse to accept the proposed modification and to maintain the contract unchanged.***

**Amendment 14**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 3

*Text proposed by the Commission*

3. National regulatory authorities shall encourage the provision of information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available, when these are not available on the market. ***Third parties shall have a right to use without charge the tariffs published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such***

*Amendment*

3. National regulatory authorities shall encourage the provision of information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available, when these are not available on the market.

*interactive guides or similar techniques.*

*Justification*

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

**Amendment 15**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2002/22/EC

Article 21 – paragraph 6

*Text proposed by the Commission*

*Amendment*

***6. In order to ensure that end-users can benefit from a consistent approach to tariff transparency, as well as to the provision of information in accordance with Article 20(5) in the Community, the Commission may, having consulted the European Electronic Communications Market Authority (hereinafter referred to as ‘the Authority’), take the appropriate technical implementing measures in this area, such as specify the methodology or procedures. Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

***deleted***

**Amendment 16**

**Proposal for a directive – amending act**

**Article 1 – point 13 – point b**

Directive 2002/22/EC

Article 22 – paragraph 3

*Text proposed by the Commission*

3. In order to prevent degradation of service and slowing of traffic over networks, **the Commission** may, **having consulted the Authority**, adopt **technical implementing measures concerning minimum quality of service requirements to be set by the national regulatory authority on undertakings providing public communications networks. These measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).**

*Amendment*

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

**Amendment 17**

**Proposal for a directive – amending act  
Article 1 – point 15 – point b a (new)  
Directive 2002/22/EC  
Article 25 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**(ba) Paragraph 4 shall be replaced by the following:**

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

**Amendment 18**



**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 27 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. Those Member States to which the ITU assigned the international code ‘3883’ shall entrust the Authority with sole responsibility for management of the European Telephony Numbering Space.** *deleted*

**Amendment 19**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – point a

*Text proposed by the Commission*

*Amendment*

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

**Amendment 20**

**Proposal for a directive – amending act**

**Article 1 – point 16**

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse.

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse.  
***Member States shall make the decision to block access to certain numbers or services subject to judicial review.***

## *Justification*

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

### **Amendment 21**

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

#### **Article 2 – point 3 – point a a (new)**

Directive 2002/58/EC

Article 4 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) the following paragraph shall be inserted:***

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

- appropriate technical and organisational measures to ensure that personal data may be accessed only by authorised personnel and to protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure;***
- appropriate technical and organisational measures to protect the network and services against accidental, unlawful or unauthorised usage, interference with or hindering of its functioning or availability, including inter alia the distribution of unsolicited or fraudulent electronic communication messages;***
- a security policy with respect to the processing of personal data;***
- a process for identifying and assessing reasonably foreseeable vulnerabilities in the systems maintained by the provider of the electronic communication service, which shall include regular monitoring for security breaches;***

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

## **Amendment 22**

**Proposal for a directive – amending act**  
**Article 2 – point 3 – point a b (new)**  
Directive 2002/58/EC  
Article 4 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

*(ab) the following paragraph shall be inserted:*

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

## **Amendment 23**

**Proposal for a directive – amending act**  
**Article 2 – point 3 – point b**  
Directive 2002/58/EC  
Article 4 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available

3. In case of a **serious** breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of

communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify **the subscriber concerned and** the national regulatory authority of such a breach. The notification to the **subscriber** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

publicly available communications services in the Community **which is likely to cause harm to users**, the provider of publicly available electronic communications services, **and any company providing services to consumers over the Internet which is the data controller and the provider of information society services**, shall, without undue delay, notify the national regulatory authority of such a breach. The notification to the **national regulatory authority** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

## Amendment 24

### Proposal for a directive – amending act

#### Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. The national regulatory authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious, the national regulatory authority shall require the provider of publicly available electronic communications service and the provider of information society services to appropriately notify without undue delay the subscribers directly affected by the breach. The notification shall contain the information set out in paragraph 3.**

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

## Amendment 25

### Proposal for a directive – amending act

#### Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

***3b. The seriousness of a breach requiring notification to subscribers shall be determined according to the circumstances of the breach, such as the risk to the personal data affected by the breach, the type of data affected by the breach, the number of subscribers involved, and the immediate or potential impact of the breach on the provision of services.***

## Amendment 26

### Proposal for a directive – amending act

#### Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3 c (new)

*Text proposed by the Commission*

*Amendment*

***3c. The breach shall not be determined to be serious and the provider of publicly available electronic communication services and the provider of information society services shall be exempt from the requirement to notify or provide notification to subscribers, if it can be demonstrated that there is no reasonable risk to the personal data affected by the breach due to the use of appropriate technological protection measures, including but not limited to appropriate encryption technologies, which render the data unintelligible in the event of accidental or unlawful loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed, or of other***

*appropriate technological protection measures which render the personal data available in case of accidental or unlawful loss.*

## Amendment 27

### Proposal for a directive – amending act

#### Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

4. In order to ensure consistency in implementation of the measures referred to in *paragraphs 1, 2 and 3*, the Commission *may*, following consultation with *the European Electronic Communications Market Authority (hereinafter referred to as ‘the Authority’)*, and the European Data Protection Supervisor, *adopt* technical implementing measures concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in *this Article*.

#### *Amendment*

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

## Amendment 28

### Proposal for a directive – amending act

#### Article 2 – point 4

Directive 2002/58/EC

Article 5 – paragraph 3

#### *Text proposed by the Commission*

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user is *only allowed on condition that* the subscriber or user concerned is provided with clear and comprehensive information in accordance with Directive 95/46/EC, *inter alia* about

#### *Amendment*

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user, *either directly or indirectly by means of any kind of storage medium*, is *prohibited unless* the subscriber or user concerned *has given his prior consent and* is provided with

the purposes of the processing and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out *or facilitating* the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

clear and comprehensive information in accordance with Directive 95/46/EC, *inter alia* about the purposes of the processing and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

## **Amendment 29**

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

#### **Article 2 – point 4 a (new)**

Directive 2002/58/EC

Article 13 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 30**

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

#### **Article 2 – point 4 b (new)**

Directive 2002/58/EC

Article 13 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***(4b) In Article 13, paragraph 4 shall be replaced by the following:***

**‘4. In any event, the practice of sending**

**electronic mail for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, either in contravention of Article 6 of Directive 2000/31/EC, or containing links to sites that have a malicious or fraudulent intent, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited.'**

## **Amendment 31**

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

#### **Article 2 – point 5**

Directive 2002/58/EC

Article 13 – paragraph 6

#### *Text proposed by the Commission*

6. Without prejudice to any administrative remedy for which provision may be made, *inter alia* under Article 15a(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this **Article**, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

#### *Amendment*

6. Without prejudice to any administrative remedy for which provision may be made, *inter alia* under Article 15a(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this **Directive**, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

## **Amendment 32**

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

#### **Article 2 – point 6 a (new)**

Directive 2002/58/EC

Article 15 – paragraph 1

#### *Text proposed by the Commission*

#### *Amendment*

**(6a) In Article 15, paragraph 1 shall be**



*replaced by the following:*

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

#### *Justification*

*The 2002 directive, on the protection of privacy, merely extends to electronic communications the provisions of the 1995 framework directive. Thus Article 15 of the 2002 directive should be read in the light of Article 13 of the 1995 framework directive. The purpose of this amendment is to increase legal certainty in the context of the recent CJEC judgment (C-275/06).*

#### **Amendment 33**

**Proposal for a directive – amending act**

**Annex I – Part A – heading (e)**

Directive 2002/22/EC

Annex I – Part A – heading (e)

(e) Non payment of bills

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. ***Any service interruption shall normally be confined to the service concerned. Exceptionally, in cases of fraud, persistent late payment or non-payment, Member States shall ensure that national regulatory authorities are able to authorise disconnection from the network as a result of non-payment of bills for services provided over the network.*** Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. ‘112’ calls) are permitted.

(e) Non payment of bills

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. ***Except*** in cases of fraud, persistent late payment or non-payment, ***these measures*** shall ensure, ***as far as is technically feasible, that any service interruption is confined to the service concerned.*** Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. ‘112’ calls) are permitted.

## PROCEDURE

<b>Title</b>	Electronic communications networks and services, protection of privacy and consumer protection		
<b>References</b>	COM(2007)0698 – C6-0420/2007 – 2007/0248(COD)		
<b>Committee responsible</b>	IMCO		
<b>Opinion by</b> Date announced in plenary	JURI 10.12.2007		
<b>Drafts(wo)man</b> Date appointed	Lidia Joanna Geringer de Oedenberg 19.12.2007		
<b>Discussed in committee</b>	26.2.2008	8.4.2008	28.5.2008
<b>Date adopted</b>	29.5.2008		
<b>Result of final vote</b>	+: 20	–: 0	0: 0
<b>Members present for the final vote</b>	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Piia-Noora Kauppi, Katalin Lévai, Antonio Masip Hidalgo, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka		
<b>Substitute(s) present for the final vote</b>	Sharon Bowles, Luis de Grandes Pascual, Sajjad Karim, Georgios Papastamkos, Jacques Toubon		

26.6.2008

## **OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation (COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))

Rapporteur(\*): Alexander Alvaro

(\* ) Associated committee - Rule 47 of the Rules of Procedure

### **SHORT JUSTIFICATION**

The directive in context

The Commission proposal for amendments to consumer rights aspects of the 2002 Electronic Communications Legislative package is one of three legislative reform proposals to amend the current regulatory framework which entered into force in 2002. The bulk of the reforms affect the universal services and users' rights directive, with a smaller number of changes to the ePrivacy directive, and one minor change to the consumer protection co-operation regulation.

There are two additional related reform proposals which cover changes to the other three electronic communication directives (authorisation, access and framework) and the proposed creation of a European electronic communications market authority (authority) . The rapporteur has therefore collaborated closely with the rapporteurs of these reform proposals, to ensure a consistent regulatory approach.

Ensuring a high level of protection of consumers' and users' rights, including the right to privacy and data protection in electronic communications, is one of the crucial elements of an inclusive information society, enabling the smooth development and wide take-up of new innovative services and applications.

The present legislative reform proposal adapts the regulatory framework by strengthening certain consumers' and users' rights (in particular with a view to improving accessibility and

promoting an inclusive information society), and ensuring that electronic communications are trustworthy, secure and reliable and provide a high level of protection for individuals' privacy and personal data.

The two objectives of the current proposal are as follows:

1) Strengthening and improving consumer protection and user rights in the electronic communication sector, through – among other aspects – providing consumers with more information about prices and supply conditions, and facilitating access to and use of e-communications, including services for disabled users. In these aspects, the rapporteur has worked closely with the internal market committee, which has the status of leading committee under rule 47 of Parliament's rules of procedure. The rapporteur has therefore not amended in this regard.

2) Enhancing the protection of individuals' privacy and personal data in the electronic communication sector, in particular through a new data breach notification requirement and improved enforcement mechanisms. On these particular issues the civil liberties, justice and home affairs committee has been declared competent and responsible due to rule 47 of Parliament's rules of procedure. In agreement with the rapporteur in the leading internal market committee the rapporteur has purely focussed his work on the matters within the competences of the civil liberties, justice and home affairs committee. The rapporteur wishes to highlight the extremely positive way the internal market committee and the Civil Liberties, Justice and Home Affairs Committee have worked together.

The main approach taken by the rapporteur

The rapporteur has proposed a number of amendments to the following areas of the proposals, with the broad aim of simplifying, clarifying and strengthening the provisions.

Although the opinion of the Article 29 Working Party could not be taken into account due to time constraints the rapporteur has taken into account the opinion delivered by the European Data Protection Supervisor on these matters and has implemented the suggestions given by the competent body.

In particular:

- Included latest developments in member states data protection laws and court rulings on data protection
- Included the suggestions made in the opinion of the European Data Protection Supervisor, especially with regard to
- the inclusion of private electronic communications networks
- the enabling of legal persons to take legal action for infringement of any provision of the ePrivacy directive
- Added a clarification by what means traffic data must be considered as personal data with regards to Article 2 of Directive 95/46/EC
- Specified the Commissions proposal to security breach notifications to enhance legal certainty on this sensitive issue
- Pointed out that the European Union ENISA is the proper body to handle matters related to network security
- Clarified that spyware, trojans and other malicious software may also come from storage mediums like CD-ROMs, USB-Sticks, etc.
- Covered technologies which have emerged since directive 2002/58/EC has been put into force
- Enhanced consumer protection by making it obligatory that certain actions require prior consent by users

The rapporteur commends these proposals to the Committee and is open to further suggestions to enhance these useful reforms.

## AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive – amending act Recital 26 a (new)

*Text proposed by the Commission*

*Amendment*

***(26a) 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 the right to confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community.***

### Amendment 2

#### Proposal for a directive – amending act Recital 26 b (new)

*Text proposed by the Commission*

*Amendment*

***(26b) When defining the implementing measures on the security of processing, in accordance with the regulatory procedure with scrutiny, the Commission shall involve all relevant European authorities and organisations (ENISA, EDPS and the Article 29 Working Party) as well as all relevant stakeholders, particularly in***

*order to be informed on best available solutions, both technically and economically, appropriate for improving the implementation of this Directive.*

### Amendment 3

#### Proposal for a directive – amending act Recital 26 c (new)

*Text proposed by the Commission*

*Amendment*

*(26c) The provisions of this Directive particularise and complement Directive 95/46/EC and provide for the legitimate interests of subscribers who are natural or legal persons.*

### Amendment 4

#### Proposal for a directive – amending act Recital 27

*Text proposed by the Commission*

*Amendment*

(27) Liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and resulted in a rich diversity of end-user services accessible via public electronic communications networks. ***There is a need to ensure that consumers and users are afforded the same level of protection of privacy and personal data, regardless of the technology used to deliver a particular service.***

(27) Liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and resulted in a rich diversity of end-user services accessible via public ***and private*** electronic communications networks ***and publicly accessible private networks.***

## Amendment 5

### Proposal for a directive – amending act Recital 28 a (new)

*Text proposed by the Commission*

*Amendment*

***(28a) For the purpose of this Directive, Internet Protocol addresses shall be considered as personal data only if they can be directly linked to an individual alone or in conjunction with other data.***

***Within the next two years the Commission should propose specific legislation on the legal handling of Internet Protocol addresses as personal data within the framework of data protection following consultation of the Article 29 Working Party and the European Data Protection Supervisor.***

## Amendment 6

### Proposal for a directive – amending act Recital 28 b (new)

*Text proposed by the Commission*

*Amendment*

***(28b) 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 the provisions of Directive 95/46/EC and 2006/24/EC such measures should ensure that personal data can be accessed only by authorised personnel for strictly 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; regular monitoring and preventive, corrective and***



*mitigating action should be carried out.*

## Amendment 7

### Proposal for a directive – amending act Recital 28 c (new)

*Text proposed by the Commission*

*Amendment*

***(28c) National regulatory authorities should monitor the measures taken and disseminate best practices and performances among publicly available electronic communications services.***

## Amendment 8

### Proposal for a directive – amending act Recital 29

*Text proposed by the Commission*

*Amendment*

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, ***subscribers concerned by such security incidents*** should be notified without delay ***and informed in order to be able to take the necessary precautions***. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected.

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, ***the national regulatory authority or competent authority*** should be notified without delay. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected. ***The competent authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious the competent authority shall require the provider of publicly available electronic communications service and the provider of information society services to give an appropriate notification without undue delay to the persons affected by the breach.***

## Amendment 9

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

*Text proposed by the Commission*

*Amendment*

***(30a) Article 15(1) of this Directive is to be construed as meaning that disclosure of personal data in the context of Article 8 of Directive 2004/48 shall be without prejudice to this Directive or Directive 1995/46 where it takes place following a justified, i.e. sufficiently well-founded, and proportionate request in accordance with procedures laid down by the Member States, which guarantee that these safeguards are respected.***

*Justification*

*Article 8, Directive 2004/48 on the enforcement of intellectual property rights relates to disclosure of information, which may involve data protected under this Directive (2002/58) and/or Directive 1995/46. It is clear from Article 15(1) of this Directive and Article 13(1)(g) of Directive 1995/46 that such disclosure may take place, as it is necessary to protect the rights and freedoms of third parties. In view of recent case-law it seems relevant to clarify at EU-level the relationship between the specific disclosure provision in Article 8 of Directive 2004/48 and the provisions of this Directive, and thereby increase legal certainty for all parties.*

## Amendment 10

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

*Text proposed by the Commission*

*Amendment*

***(30b) When implementing measures transposing Directive 2002/58/EC, the authorities and courts of the Member States shall not only interpret their national law in a manner consistent with that Directive but also make sure that they do not rely on an interpretation of that Directive which would be in conflict with other fundamental rights or general principles of Community law, such as the principle of proportionality.***

## *Justification*

*This amendment takes account of the Court of Justice judgment of 29 January 2008 in the Promusicae v Telefónica case, which reaffirms that Member States must interpret the directive in a manner that does not conflict with other fundamental rights or general principles of law. This constitutes a guarantee for the protection of the rights and freedoms of others.*

### **Amendment 11**

#### **Proposal for a directive – amending act Recital 33**

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

(33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment. ***In particular, it should contribute to harmonisation of appropriate technical and organisational security measures.***

##### *Amendment*

(33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment.

### **Amendment 12**

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

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

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

##### *Amendment*

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

***States shall encourage end-users to take the necessary steps to protect their terminal equipment against viruses and spy ware.***

*Justification*

*The terminal equipment is the weakest link in a network and, hence, should be well protected. End-users should understand the risks they face while surfing the internet, when they download and use software or data storage media.*

**Amendment 13**

**Proposal for a directive – amending act  
Recital 35**

*Text proposed by the Commission*

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers and thus defend the interests of their customers, as well as their own legitimate business interests.

*Amendment*

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers ***for such infringements*** and thus defend the interests of their customers, as well as their own legitimate business interests.

**Amendment 14**

**Proposal for a directive – amending act  
Recital 35 a (new)**

*Text proposed by the Commission*

*Amendment*

***(35a) Where location data other than traffic data can be processed, such data***

*may be processed only when they are made anonymous or with the prior consent of the users or subscribers concerned, who shall be given clear and comprehensive information on the possibility of withdrawing their consent to the processing of traffic data at any time.*

## **Amendment 15**

### **Proposal for a directive – amending act Recital 38 a (new)**

*Text proposed by the Commission*

*Amendment*

*(38a) The Commission should, provided that the Treaty of Lisbon enters into force present to the Council and to Parliament a new legislative proposal on privacy and data security in electronic communications, with a new legal basis.*

## **Amendment 16**

### **Proposal for a directive – amending act Article 2 - point -1 (new) Directive 2002/58/EC Article 1 - paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

**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 the right to confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communications equipment and services in the Community.**

## Amendment 17

### Proposal for a directive – amending act

#### Article 2 - point -1 a (new)

Directive 2002/58/EC

Article 1 - paragraph 2

*Text proposed by the Commission*

*Amendment*

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

**2. The provisions of this Directive particularise and complement Directive 95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for protection of the legitimate interests of subscribers who are *natural or legal persons*.**

*Justification*

*The Directive mentions the specific interests of legal persons without taking consumers into account. Given that the main aim of this Directive is to protect the data and economic interests of natural persons a reference to those should be added.*

## Amendment 18

### Proposal for a directive – amending act

#### Article 2 - point 2

Directive 2002/58/EC

Article 3

*Text proposed by the Commission*

*Amendment*

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Community, including public communications networks supporting data collection and identification devices.

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public ***and private*** communications networks ***and publicly accessible private networks*** in the Community, including public ***and private*** communications networks ***and publicly accessible private networks*** supporting data collection and identification devices.

## *Justification*

*Since there is a tendency of services increasingly becoming a mixture of public and private ones it is necessary to broaden the scope of the Directive. This amendment follows the recommendations of the Article 29 Working Party adopted on 26 September 2006 and the opinion of the European Data Protection Supervisor on this amending Directive.*

### **Amendment 19**

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

#### **Article 2 - point 3 - point a a (new)**

Directive 2002/58/EC

Article 4 - paragraphs 1 a and 1 b (new)

*Text proposed by the Commission*

*Amendment*

***(aa) The following paragraphs shall be inserted:***

***"1a. Without prejudice to the provisions of Directive 95/46/EC and 2006/24/EC these measures shall include:***

***- Appropriate technical and organisational measures to ensure that personal data can be accessed only by authorised personnel for strictly legally authorised purposes and to protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure***

***- appropriate technical and organisational measures to protect the network and services against accidental, unlawful or unauthorised usage or interference with or hindering of their functioning or availability.***

***- a security policy with respect to the processing of personal data***

***- a process for identifying and assessing reasonably foreseeable vulnerabilities in the systems maintained by the provider of electronic communications services,***

*which shall include regular monitoring for security breaches*

*- a process for taking preventive, corrective and mitigating action against any vulnerabilities discovered in the process described under the fourth indent and a process for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach.*

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

#### *Justification*

*National regulators should monitor the taken measures and spread best practices and performances among publicly available electronic communication services.*

#### **Amendment 20**

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

##### **Article 2 - point 3 - point b**

Directive 2002/58/EC

Article 4 - paragraph 3

#### *Text proposed by the Commission*

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify ***the subscriber concerned*** and the national regulatory authority of such a breach. The

#### *Amendment*

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community ***which is likely to cause harm to users***, the provider of publicly available electronic communications services, ***as well as any company operating on the Internet and providing services to***



notification to the **subscriber** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

**consumers, which is the data controller and the provider of information society services** shall, without undue delay, notify the national regulatory authority **or the competent authority according to the individual law of the Member State** of such a breach. The notification to the **competent authority** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the **competent authority** shall, in addition, describe the consequences of and the measures taken by the provider to address the breach. **The provider of publicly available electronic communications services, as well as any company operating on the internet and providing services to the consumers which is the data controller and the provider of information society services, shall notify their users beforehand if they deem it necessary to avoid imminent and direct danger to consumer's rights and interests.**

## Amendment 21

### Proposal for a directive – amending act

#### Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. The competent authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious the competent authority shall require the provider of publicly available electronic communications service and the provider of information society services to give an appropriate notification without undue delay the persons affected by the breach. The notification shall contain the elements described in paragraph 3.**

*The notification of a serious breach may be postponed in cases where the notification may hinder the progress of a criminal investigation related to the serious breach.*

*In their annual reports providers shall notify affected users of all breaches of security that have led to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community.*

*National regulatory authorities shall also monitor whether companies have complied with their notification obligations under this Article and impose appropriate sanctions, including publication, as appropriate, in the event of a breach.*

## **Amendment 22**

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

#### **Article 2 - point 3 - point b**

Directive 2002/58/EC

Article 4 - paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

***3b. The seriousness of a breach requiring notification to subscribers shall be determined according to the circumstances of the breach, such as the risk to the personal data affected by the breach, the type of data affected by the breach, the number of subscribers involved, and the immediate or potential impact of the breach on the provision of services.***

## *Justification*

*For clarity reasons the conditions under which a breach of security shall be considered as a serious breach and therefore justify a notification to the subscriber shall be laid down in this directive.*

### **Amendment 23**

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

##### **Article 2 - point 3 - point b**

Directive 2002/58/EC

Article 4 - paragraph 3 c (new)

*Text proposed by the Commission*

*Amendment*

***3c. The breach shall not be determined to be serious and the provider of publicly available electronic communications services and the provider of information society services shall be exempt from the requirement to provide notification to the persons concerned, if they can demonstrate that there is no reasonable risk to the personal data affected by the breach due to the use of appropriate technological protection measures.***

***The technological protection measures in the event of accidental or unlawful loss, alteration, unauthorized disclosure of or access to personal data which are transmitted or stored would either render the data unintelligible to any third party, or in the event of accidental or unlawful loss the technological protection measures would render the personal data available to the provider of publicly available electronic communication services and the provider of information society services.***

### **Amendment 24**

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

##### **Article 2 - point 3 - point b**

Directive 2002/58/EC

Article 4 - paragraph 4 –, subparagraph 1

*Text proposed by the Commission*

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission **may**, following consultation with **the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”)**, and the European Data Protection Supervisor, **adopt** technical implementing measures concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.

*Amendment*

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3 **a-c**, the Commission **shall**, following consultation with the European Data Protection Supervisor, **the relevant stakeholders and ENISA, recommend** technical implementing measures concerning *inter alia* the **measures described in paragraph 1a and the** circumstances, format and procedures applicable to information and notification requirements referred to in **paragraph 3a and 3b**.

**The Commission shall involve all relevant stakeholders, particularly in order to be informed on best available solutions, both technically and economically, appropriate for improving the implementation of this Directive.**

*Justification*

*The Authority shall have the task to recommend but not to adopt measures in this regard.*

**Amendment 25**

**Proposal for a directive – amending act**

**Article 2 - point 4**

Directive 2002/58/EC

Article 5 - paragraph 3

*Text proposed by the Commission*

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

*Amendment*

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user, **either directly or indirectly by means of any kind of storage medium, is prohibited unless** the subscriber or user concerned **has given his/her prior consent, taking into account that respective browser settings constitute prior consent, and** is provided with clear and comprehensive information in accordance with Directive 95/46/EC, *inter alia* about the purposes of the processing

*facilitating* the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

and is offered the right to refuse such processing and is offered the right to refuse such processing by data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communication network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

## **Amendment 26**

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

#### **Article 2 - point 4 a (new)**

Directive 2002/58/EC

Article 6 - paragraph 3

*Text proposed by the Commission*

*Amendment*

*(4a) Article 6(3) shall be replaced by the following:*

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

*Justification*

*Specifying that the user should consent before any processing takes place better ensures compliance with this obligation.*

## **Amendment 27**

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

#### **Article 2 - point 4 b (new)**

Directive 2002/58/EC

Article 6 - paragraph 6a (new)

*Text proposed by the Commission*

*Amendment*

***(4b) In Article 6 the following paragraph 6a is added:***

***6a. Traffic data may be processed by any natural or legal person for the purpose of implementing technical measures to ensure the security of a public electronic communication service, a public or private electronic communications network, an information society service, or related terminal and electronic communication equipment. Such processing must be restricted to that which is strictly necessary for the purposes of such security activity.***

## **Amendment 28**

**Proposal for a directive – amending act**

**Article 2 - point 4 c (new)**

Directive 2002/58/EC

Article 12 - paragraph 2

*Text proposed by the Commission*

*Amendment*

***(4c) Article 12, paragraph 2, is amended as follows:***

***2. Member States shall ensure that all end-users of electronic communications services and networks have their information included in directory databases and are expressly asked at the time of requesting the service, and at regular intervals thereafter, how they wish the relevant information concerning them to be included in such databases. End-users shall also be offered the option of having certain information included in the databases but not disclosed to users of directory services, and of verifying, correcting or withdrawing such data. Not being included in a public subscriber directory, verifying, correcting or withdrawing personal data from it shall***

**be free of charge.**

*Justification*

*Directory enquiry services are of crucial importance, particularly to disabled and elderly users (as is recognised in the Universal Services Directive). The inclusion of information on end-users is, in many cases, made difficult by the fact that operators are unaccustomed to seeking consent. This is particularly true of alternative fixed-line network operators and mobile network operators. In Member States which have not legislated in this area, end-user data – particularly for mobile-network customers – are only very rarely included.*

**Amendment 29**

**Proposal for a directive – amending act**

**Article 2 - point -5 a (new)**

Directive 2002/58/EC

Article 13 - paragraph 1

*Text proposed by the Commission*

*Amendment*

***(-5a) Article 13(1) shall be replaced by the following:***

***1. The use of automated calling and communication 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 who have given their prior consent.***

**Amendment 30**

**Proposal for a directive – amending act**

**Article 2 - point -5 b (new)**

Directive 2002/58/EC

Article 13, paragraph 4

*Text proposed by the Commission*

*Amendment*

***(-5b) Article 13(4) shall be replaced by the following:***

***“4. In any event, the practice of sending electronic mail for purposes of direct***

**marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or in contravention of Article 6 of Directive 2000/31/EC, or that contain links to sites that have a malicious or fraudulent intent, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited.”**

*Justification*

*In addition to the regulations in the e-Communications and Privacy Directive (2002/58/EC), the e-Commerce Directive (2000/31/EC) lays down clear rules on the information which must be provided by a sender of electronic commercial communications.*

**Amendment 31**

**Proposal for a directive – amending act**

**Article 2 - point 5**

Directive 2002/58/EC

Article 13, paragraph 6

*Text proposed by the Commission*

6. Without prejudice to any administrative remedy for which provision may be made, *inter alia* under Article 15 (a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this **Article**, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

*Amendment*

6. Without prejudice to any administrative remedy for which provision may be made, *inter alia* under Article 15 (a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this **Directive**, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

*Justification*

*The new Article 13 Paragraph 6 provides civil law remedies for any individual or legal person particularly for electronic communication service providers to fight infringements of Article 13 of the ePrivacy Directive which deals with spam. In line with the opinion of the European Data Protection Supervisor the rapporteur does not see the rationale for this new capability to be limited to the infringement of Article 13 and therefore suggests to enable legal persons to take legal actions for infringement of any provision of the ePrivacy Directive.*



## Amendment 32

### Proposal for a directive – amending act

#### Article 2 - point 5 a (new)

Directive 2002/58/EC

Article 14 - paragraph 1

*Text proposed by the Commission*

*Amendment*

*(5a) In Article 14, paragraph 1 shall be replaced by the following:*

**1. In implementing the provisions of this Directive, Member States shall ensure, subject to paragraphs 2 and 3, that no mandatory requirements for specific technical features, including, without limitation, for the purpose of detecting, intercepting or preventing infringement of intellectual property rights by users, are imposed on terminal or other electronic communication equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.**

## Amendment 33

### Proposal for a directive – amending act

#### Article 2 - point 5 b (new)

Directive 2002/58/EC

Article 14 - paragraph 3

*Text proposed by the Commission*

*Amendment*

*(5a) In Article 14, paragraph 3 shall be replaced by the following:*

**3. Where required, measures may be adopted to ensure that terminal equipment is constructed in a way that is compatible with the right of users to protect and control the use of their personal data, in accordance with Directive 1999/5/EC and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of**

**information technology and communications. *Such measures shall respect the principle of technology neutrality***

#### **Amendment 34**

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

##### **Article 2 - point 6 a (new)**

Directive 2002/58/EC

Article 15 - paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) In Article 15, the following paragraph 1a shall be added:  
1a. 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 Article 15 par. 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 established provisions, of national law, have not been followed.***

#### **Amendment 35**

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

##### **Article 2 - point 7**

Directive 2002/58/EC

Article 15 a- paragraph 1

*Text proposed by the Commission*

*Amendment*

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

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

must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [time limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [time limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

## **Amendment 36**

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

#### **Article 2 - point 7**

Directive 2002/58/EC

Article 15a - paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

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 *the Authority* 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.

## **Amendment 37**

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

#### **Article 2 - point 7 a (new)**

Directive 2002/58/EC

Article 18

#### *Text proposed by the Commission*

#### *Amendment*

*(7a) Article 18 shall be replaced by the following:*

**18. The Commission shall submit to the European Parliament and the Council, not later than *two* years after the *entry into force of this Directive*, after consulting the *Article 29 Working Party* and the *European Data Protection***

***Supervisor, a report on the application of this Directive and its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, breach notifications, and the use of personal data by third parties - public or private - for purposes not covered by this Directive, 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 the Treaty of Lisbon, in particular the new competences in matters of data protection as laid down in Article 16, and any other proposal it may deem necessary in order to improve the effectiveness of this Directive.***

## PROCEDURE

<b>Title</b>	Electronic communications networks and services, protection of privacy and consumer protection			
<b>References</b>	COM(2007)0698 – C6-0420/2007 – 2007/0248(COD)			
<b>Committee responsible</b>	IMCO			
<b>Opinion by</b> Date announced in plenary	LIBE 10.12.2007			
<b>Associated committee(s) - date announced in plenary</b>	13.3.2008			
<b>Drafts(wo)man</b> Date appointed	Alexander Alvaro 31.1.2008			
<b>Discussed in committee</b>	27.3.2008	5.5.2008	9.6.2008	25.6.2008
<b>Date adopted</b>	25.6.2008			
<b>Result of final vote</b>	+: 45	-: 2	0: 2	
<b>Members present for the final vote</b>	Alexander Alvaro, Mario Borghezio, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Giusto Catania, Jean-Marie Cavada, Elly de Groen-Kouwenhoven, Panayiotis Demetriou, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Claudio Fava, Armando França, Urszula Gacek, Kinga Gál, Patrick Gaubert, Roland Gewalt, Lilli Gruber, Jeanine Hennis-Plasschaert, Livia Járóka, Ewa Klant, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Roselyne Lefrançois, Baroness Sarah Ludford, Claude Moraes, Javier Moreno Sánchez, Rareş-Lucian Niculescu, Martine Roure, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka			
<b>Substitute(s) present for the final vote</b>	Simon Busuttil, Maria da Assunção Esteves, Anne Ferreira, Ignasi Guardans Cambó, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Metin Kazak, Jean Lambert, Marianne Mikko, Bill Newton Dunn, Nicolae Vlad Popa			
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Iles Braghetto, Syed Kamall			

## PROCEDURE

<b>Title</b>	Electronic communications networks and services, protection of privacy and consumer protection			
<b>References</b>	COM(2007)0698 – C6-0420/2007 – 2007/0248(COD)			
<b>Date submitted to Parliament</b>	13.11.2007			
<b>Committee responsible</b> Date announced in plenary	IMCO 10.12.2007			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	ECON	ITRE	CULT	JURI
	10.12.2007	10.12.2007	10.12.2007	10.12.2007
	LIBE 10.12.2007			
<b>Associated committee(s)</b> Date announced in plenary	LIBE 13.3.2008			
<b>Rapporteur(s)</b> Date appointed	Malcolm Harbour 22.1.2008			
<b>Discussed in committee</b>	28.2.2008	26.3.2008	6.5.2008	28.5.2008
	25.6.2008			
<b>Date adopted</b>	7.7.2008			
<b>Result of final vote</b>	+: -: 0:	38 2 0		
<b>Members present for the final vote</b>	Cristian Silviu Buşoi, Mogens Camre, Gabriela Creţu, Janelly Fourtou, Evelyne Gebhardt, Martí Grau i Segú, Malcolm Harbour, Christopher Heaton-Harris, Edit Herczog, Pierre Jonckheer, Kurt Lechner, Lasse Lehtinen, Toine Manders, Arlene McCarthy, Nikolay Mladenov, Bill Newton Dunn, Sirpa Pietikäinen, Zita Pleštinská, Karin Riis-Jørgensen, Heide Rühle, Leopold Józef Rutowicz, Salvador Domingo Sanz Palacio, Christel Schaldemose, Andreas Schwab, Eva-Britt Svensson, Jacques Toubon, Bernadette Vergnaud, Barbara Weiler, Marian Zlotea			
<b>Substitute(s) present for the final vote</b>	Emmanouil Angelakas, André Brie, Wolfgang Bulfon, Colm Burke, Giovanna Corda, Jan Cremers, Joel Hasse Ferreira, Filip Kaczmarek, Manuel Medina Ortega, Anja Weisgerber			
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Iratxe García Pérez, Manolis Mavrommatis, Mihaela Popa			