

EUROPEAN PARLIAMENT

2004



2009

Committee on Economic and Monetary Affairs

2007/0248(COD)

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))

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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 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 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.

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 specific national conditions, without distorting competition. This Directive also sets out obligations with regard to the provision of certain mandatory 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

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.

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

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 ***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-

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).***

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

Amendment

Member States shall take all necessary steps to ensure ***that service providers fulfil their obligation of universal service, in***

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.

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*

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

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

Amendment

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

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).

37(3).

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

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 in which the service has been provided*** of such a breach. The notification to the subscriber shall at least describe the nature

address the breach.

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-

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). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14a (3).***

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 1st pillar and 3rd 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

Title	Electronic communications networks and services, protection of privacy and consumer protection		
References	COM(2007)0698 – C6-0420/2007 – 2007/0248(COD)		
Committee responsible	IMCO		
Opinion by Date announced in plenary	ECON 10.12.2007		
Drafts(wo)man Date appointed	Sophia in 't Veld 18.2.2008		
Discussed in committee	1.4.2008	6.5.2008	19.5.2008
Date adopted	3.6.2008		
Result of final vote	+: -: 0:	32 0 13	
Members present for the final vote	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		
Substitute(s) present for the final vote	Dragoş Florin David, Mia De Vits, Harald Ettl, Ján Hudacký, Janusz Lewandowski, Gianni Pittella, Margaritis Schinas, Theodor Dumitru Stolojan		
Substitute(s) under Rule 178(2) present for the final vote	Tobias Pflüger		