



2016/0288(COD)

12.6.2017

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council
establishing the European Electronic Communications Code (Recast)
(COM(2016)0590 – C8-0379/2016 – 2016/0288(COD))

Rapporteur: Morten Helveg Petersen

SHORT JUSTIFICATION

The successful implementation of an updated regulatory framework for electronic communication in the EU should also imply the guarantee of freedom of expression and information, media pluralism, cultural diversity, consumer protection, privacy and the protection of personal data. The rapporteur therefore recommends to further amend the Commission proposal in order to meet this objective, also taking into account the links and interaction with the new proposals for a regulation on Privacy and Electronic Communications.

The rapporteur notably believes that while ensuring a level playing field among all service providers, the aim of the Directive should also be to guarantee common minimum standards when it comes to the security of networks and services, as well as the privacy of end-users. It is therefore essential to include all type of interpersonal communications services, even when an interpersonal and interactive communication facility is an ancillary feature to another service, also taking into future developments and synergies of services.

As per the Parliament position adopted with its resolution of 14th March 2017 on *fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement*, the rapporteur also insists that in order to ensure a safeguard the security and integrity of networks and services, the use of end-to-end encryption should be promoted and, where necessary, mandatory in accordance with the principles of data protection by design and privacy by design. In particular, Member States should not impose any obligation to encryption providers, communications service providers and all other organisations (at all levels of the supply chain) that would result in the weakening of the security of their networks and services, such as the allowing or facilitation of "backdoors". While such new provision relates to the security of networks and services, it is essential to guarantee the right to the protection of personal data and the privacy of electronic communications.

Another key element in order to strengthen the security of network and services and the fundamental rights safeguards is the new tasks conferred to BEREC for the development of guidelines in this specific field in order to ensure a consistent and compliant implementation. Furthermore, the independence of BEREC also relies on the guarantee that national regulatory authorities are legally distinct and functionally independent from the industry and government in that they neither seek nor take instructions from anybody, they operate in a transparent and accountable manner as set out in a law and they have sufficient powers.

The rapporteur introduces specific wording regarding possible limitations imposed by Member States on grounds of public policy, public security or public health to ensure that, in line with the Charter and the related CJEU Case law, any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) In the Digital Single Market strategy, the Commission outlined that the review of the telecoms framework will focus on measures that aim at incentivising investment in high-speed broadband networks, bring a more consistent single market approach to spectrum policy and management, deliver conditions for a true single market by tackling regulatory fragmentation, ensure a level playing field for all market players and consistent application of the rules, as well as provide a more effective regulatory institutional framework.

Amendment

(3) In the Digital Single Market strategy, the Commission outlined that the review of the telecoms framework will focus on measures that aim at incentivising investment in high-speed broadband networks, bring a more consistent single market approach to spectrum policy and management, deliver conditions for a true single market by tackling regulatory fragmentation, ensure ***an effective protection of consumers***, a level playing field for all market players and consistent application of the rules, as well as provide a more effective regulatory institutional framework. ***In its Digital Single Market strategy, the Commission also announced a review of Directive 2002/58/EC in order to ensure a high level of privacy protection for users of electronic communications services and a level playing field for all market players.***

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative proposals, in particular the proposal for a regulation on ePrivacy (COM(2017)10)

Amendment 2

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) ***this*** Directive should create a legal

Amendment

(5) ***This*** Directive should create a legal

framework to ensure the freedom to provide electronic communications networks and services, subject only to the conditions laid down in this Directive and to any restrictions in conformity with Article 52 (1) of the Treaty, in particular measures regarding public policy, public security and public health.

framework to ensure the freedom to provide electronic communications networks and services, subject only to the conditions laid down in this Directive and to any restrictions in conformity with Article 52 (1) of the Treaty, in particular measures regarding public policy, public security and public health, **and with Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter')**.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary because it is inextricably linked to other admissible amendments, in particular Amendment 20 on Article 12.

Amendment 3

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) The provisions of this Directive are without prejudice to the possibility for each Member State to take the necessary measures justified on grounds set out in Articles 87 and 45 of the Treaty on the Functioning of the European Union, to ensure the protection of its essential security interests, to safeguard public policy, **public morality** and public security, and to permit the investigation, detection and prosecution of criminal offences.

Amendment

(6) The provisions of this Directive are without prejudice to the possibility for each Member State to take the necessary measures justified on grounds set out in Articles 87 and 45 of the Treaty on the Functioning of the European Union, to ensure the protection of its essential security interests, to safeguard public policy and public security, and to permit the investigation, detection and prosecution of criminal offences, **taking into account that such measures are to be provided for by law, respect the essence of the rights and freedom recognised by the Charter and be subject to the principle of proportionality, in accordance with Article 52(1) of the Charter.**

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary because it is inextricably linked to other admissible amendments, in particular Amendment 20 on Article 12.

Amendment 4

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) The convergence of the telecommunications, media and information technology sectors means that all electronic communications networks and services should be covered to the extent possible by a single European Electronic Communications Code established by a single Directive, with the exception of matters better dealt with through directly applicable rules established through regulations. It is necessary to separate the regulation of electronic communications networks and services from the regulation of content. This Code does not therefore cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content, financial services and certain information society services, and is therefore without prejudice to measures taken at Union or national level in respect of such services, in compliance with Union law, in order to promote cultural and linguistic diversity and to ensure the defence of media pluralism. The content of television programmes is covered by Directive 2010/13/EU of the European Parliament and of the Council²¹. The regulation of audiovisual policy and content aims at achieving general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors. The separation between the regulation of electronic communications and the regulation of content does not prejudice the taking into account of the links existing between them, in particular

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in order to guarantee media pluralism, cultural diversity *and consumer* protection.

in order to guarantee *freedom of expression and information*, media pluralism, cultural diversity, *consumer protection, privacy and the protection of personal data*.

²¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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) (OJ L 95, 15.4.2010, p. 1).

²¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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) (OJ L 95, 15.4.2010, p. 1).

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.

Amendment 5

Proposal for a directive Recital 15

Text proposed by the Commission

(15) The services used for communications purposes, and the technical means of their delivery, have evolved considerably. End-users increasingly substitute traditional voice telephony, text messages (SMS) and electronic mail conveyance services by functionally equivalent online services such as Voice over IP, messaging services and web-based e-mail services. In order to ensure that end-users are effectively and equally protected when using functionally equivalent services, a future-oriented definition of electronic communications services should not be purely based on technical parameters but rather build on a functional approach. The scope of

Amendment

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necessary regulation should be appropriate to achieve its public interest objectives. While "conveyance of signals" remains an important parameter for determining the services falling into the scope of this Directive, the definition should cover also other services that enable communication. From *an end-user's perspective* it is not relevant whether a provider conveys signals itself or whether the communication is delivered via an internet access service. The amended definition of electronic communications services should therefore contain three types of services which may partly overlap, that is to say internet access services according to the definition in Article 2(2) of Regulation (EU) 2015/2120, interpersonal communications services as defined in this Directive, and services consisting wholly or mainly in the conveyance of signals. The definition of electronic communications service should eliminate ambiguities observed in the implementation of the previous definition and allow a calibrated provision-by-provision application of the specific rights and obligations contained in the framework to the different types of services. The processing of personal data by electronic communications services, whether as remuneration or otherwise, must be in compliance with Directive 95/46/EC which will be replaced by Regulation (EU) 2016/679 (General Data Protection Regulation) on 25 May 2018²³.

²³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); OJ L 119, 4.5.2016, p. 1

scope of necessary regulation should be appropriate to achieve its public interest objectives. While "conveyance of signals" remains an important parameter for determining the services falling into the scope of this Directive, the definition should cover also other services that enable communication. From *the perspective of end-users and the protection of their rights* it is not relevant whether a provider conveys signals itself or whether the communication is delivered via an internet access service. The amended definition of electronic communications services should therefore contain three types of services which may partly overlap, that is to say internet access services according to the definition in Article 2(2) of Regulation (EU) 2015/2120, interpersonal communications services as defined in this Directive, and services consisting wholly or mainly in the conveyance of signals. The definition of electronic communications service should eliminate ambiguities observed in the implementation of the previous definition and allow a calibrated provision-by-provision application of the specific rights and obligations contained in the framework to the different types of services. The processing of personal data by electronic communications services, whether as remuneration or otherwise, must be in compliance with Directive 95/46/EC which will be replaced by Regulation (EU) 2016/679 (General Data Protection Regulation) on 25 May 2018²³.

²³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); OJ L 119, 4.5.2016, p. 1

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary because it is inextricably linked to other admissible amendments, in particular Amendment 13 on Article 2.

Amendment 6

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) In order to fall within the scope of the definition of electronic communications service, a service needs to be provided normally in exchange for remuneration. In the digital economy, market participants increasingly consider information about users as having a monetary value. Electronic communications services are often supplied against counter-performance other than money, **for instance by giving access to personal data or other data**. The concept of remuneration should therefore encompass situations where the provider of a service requests and the end-user **actively** provides personal data, **such as name or email address**, or other data directly or indirectly to the provider. It should also encompass situations where the **provider collects** information without **the end-user** actively supplying it, such as personal data, including the IP address, or other automatically generated information, such as information collected and transmitted by a cookie). In line with the jurisprudence of the Court of Justice of the European Union on Article 57 TFEU²⁴, remuneration exists within the meaning of the Treaty also if the service provider is paid by a third party and not by the service recipient. The concept of remuneration should therefore also encompass situations where the end-user is exposed to advertisements as a condition for gaining access to the service, or situations where the service provider

Amendment

(16) In order to fall within the scope of the definition of electronic communications service, a service needs to be provided normally in exchange for remuneration. In the digital economy, market participants increasingly consider information about users as having a monetary value. Electronic communications services are often supplied **to the end-user** against counter-performance other than money, **in particular against the provision of personal data or other data**. The concept of remuneration should therefore encompass situations where the provider of a service requests and the end-user **knowingly** provides personal data **as defined in Article 4(1) of Regulation (EU) 2016/679** or other data directly or indirectly to the provider. It should also encompass situations where the **end-user allows access to** information without actively supplying it, such as personal data, including the IP address, or other automatically generated information, such as information collected and transmitted by a cookie). In line with the jurisprudence of the Court of Justice of the European Union on Article 57 TFEU²⁴, remuneration exists within the meaning of the Treaty also if the service provider is paid by a third party and not by the service recipient. The concept of remuneration should therefore also encompass situations where the end-user is exposed to advertisements as a condition

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for gaining access to the service, or situations where the service provider monetises personal data it has collected.

²⁴ Case C-352/85 *Bond van Adverteerders and Others vs The Netherlands State*, EU:C:1988:196.

²⁴ *Judgment of the Court of Justice of 26 April 1988, Bond van Adverteerders and Others v The Netherlands State, C-352/85, ECLI: EU:C:1988:196.*

Amendment 7

Proposal for a directive Recital 17

Text proposed by the Commission

(17) Interpersonal communications services are services that enable interpersonal and interactive exchange of information, covering services like traditional voice calls between two individuals but also all types of emails, messaging services, or group chats. Interpersonal communications services only cover communications between a finite, that is to say not potentially unlimited, number of natural persons which is determined by the sender of the communication. Communications involving legal persons should be within the scope of the definition where natural persons act on behalf of those legal persons or are involved at least on one side of the communication. Interactive communication entails that the service allows the recipient of the information to respond. Services which do not meet those requirements, such as linear broadcasting, video on demand, websites, social networks, blogs, or exchange of information between machines, should not be considered as interpersonal communications services. ***Under exceptional circumstances, a service should not be considered as an interpersonal communications service if the interpersonal and interactive***

Amendment

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communication facility is a purely ancillary feature to another service and for objective technical reasons cannot be used without that principal service, and its integration is not a means to circumvent the applicability of the rules governing electronic communications services. An example for such an exception could be, in principle, a communication channel in online games, depending on the features of the communication facility of the service.

Justification

While ensuring a level playing field among all service providers, the aim of the Directive should also be to guarantee common minimum standards when it comes to the security of networks and services, as well as the privacy of end-users. It is therefore essential to include all type of interpersonal communications services, even when an interpersonal and interactive communication facility is an ancillary feature to another service, also taking into future developments and synergies of services.

Amendment 8

Proposal for a directive

Recital 36

Text proposed by the Commission

(36) There is a need to further reinforce the independence of the national regulatory authorities to ensure the imperviousness of its head and members to external pressure, by providing minimum appointment qualifications, and a minimum duration for their mandate. Furthermore, the limitation of the possibility to renew more than once their mandate and the requirement for an appropriate rotation scheme for the board and the top management would address the risk of regulatory capture, ensure continuity, and enhance independence.

Amendment

(36) There is a need to further reinforce the independence of the national regulatory authorities to ensure the imperviousness of its head and members to external pressure, by providing minimum appointment qualifications, and a minimum duration for their mandate. Furthermore, the limitation of the possibility to renew more than once their mandate and the requirement for an appropriate rotation scheme for the board and the top management would address the risk of regulatory capture, ensure continuity, and enhance independence. ***To that end, Member States should ensure that national regulatory authorities are legally distinct and functionally independent from industry and government, neither seeking nor taking instructions from any body, operating in a***

transparent and accountable manner in accordance with Union and national law and having sufficient powers.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative proposals, in particular the proposal for a regulation on BEREC (COM(2016)0591).

Amendment 9

**Proposal for a directive
Recital 91 a (new)**

Text proposed by the Commission

Amendment

(91a) In order to ensure a safeguard to the security and integrity of networks and services, the use of end-to-end encryption should be promoted and, where technically feasible, be mandatory in accordance with the principles of data protection by design and privacy by design. In particular, Member States should not impose any obligation to encryption providers, providers of electronic communications services and all other organisations at all levels of the supply chain that would result in the weakening of the security of their networks and services, such as allowing or facilitating "backdoors".

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the coherence of this text with the position of the European Parliament, notably the resolutions of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs, and of 14th March 2016 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement.

Amendment 10

Proposal for a directive Recital 111

Text proposed by the Commission

(111) In exceptional cases where Member States decide to limit the freedom to provide electronic communications networks and services based on grounds of public policy, public security or public health, *Member States* should *explain the reasons for such limitation*.

Amendment

(111) In exceptional cases where Member States decide to limit the freedom to provide electronic communications networks and services based on grounds of public policy, public security or public health, *such limitations* should *be duly reasoned, provided for by law, respect the essence of the rights and freedoms recognised by the Charter and be subject to the principle of proportionality, in accordance with Article 52 (1) of the Charter. Furthermore, any national law allowing public authorities to obtain access to networks or the content of electronic communications on a generalised basis should be regarded as compromising the essence of the fundamental right to respect for private life, as guaranteed by Article 7 of the Charter and taking into account the judgments of the Court of Justice in Case C-362/14^{1a} and Joined Cases C-293/12 and C-594/12^{1b} and the order of the Court of Justice in Case C-557/07^{1c}.*

^{1a} Judgment of the Court of Justice of 6 October 2015, Maximilian, Schrems v Data Protection Commissioner, C-362/14, ECLI:EU:C:2015:650

^{1b} Judgment of the Court of Justice of 8 April 2014, Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others, Joined Cases C-293/12 and C-594/12, ECLI:EU:C:2014:238.

^{1c} Order of the Court of Justice of 19 February 2009, LSG-Gesellschaft zur Wahrnehmung von Leistungsschutzrechten GmbH v Tele2

Justification

Aside from the reference to the fact that all legislation adopted must respect the freedoms and principles enshrined within the Charter of Fundamental Rights, reference is also made to the Max Schrems v Data Protection, the Tele2 and the Digital Rights Ireland cases which all provide for the legal basis behind the belief that legislation that permits public authorities to have access on a generalised basis to the content of electronic communications must be regarded as compromising the essence of the fundamental right to respect for private life.

Amendment 11

**Proposal for a directive
Recital 227**

Text proposed by the Commission

(227) Considering the particular aspects related to reporting missing children, Member States should maintain their commitment to ensure that a well-functioning service for reporting missing children is actually available in their territories under the number '116000'

Amendment

(227) Considering the particular aspects related to reporting missing children, Member States should maintain their commitment to ensure that a well-functioning ***and child-friendly*** service for reporting missing children is actually available in their territories under the number '116000', ***also a helpline for children in need of care and protection under the number '116111'***.

Justification

Focusing only on the missing children hotline we lose references to the 116111 child helplines which are important for all children who are vulnerable or at risk, e.g. any child experiencing violence, so a far bigger target group than missing children.

Amendment 12

**Proposal for a directive
Recital 227 a (new)**

Text proposed by the Commission

Amendment

(227 a) It is often the case that while citizens are travelling between Member States they need to call or use a helpline

or a hotline operated in their home Member State, which is not possible today. Citizens should have access to their home helplines and hotlines by adding the country code to deal with urgent challenges or in need to mediate help to anyone in their home Member State when the services operated in the host Member State cannot provide effective help for geographic or linguistic reasons.

Justification

Adding a new recital was for reasons of consistency with amendment to Article 90 paragraph 2a (new). While citizens are travelling between different Member States they are still in need to contact different hotlines and helplines in their home countries to solve or to mediate urgent issues. Having access to these lines by dialling a country code would help them to reach help or advice.

Amendment 13

Proposal for a directive
Recital 254

Text proposed by the Commission

(254) In line with the objectives of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of Persons with Disabilities, the regulatory framework should ensure that all users, including disabled end-users, the elderly, and users with special social needs, have easy access to affordable high quality services. Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the Union shall take account of the needs of persons with a disability in drawing up measures under Article 114 of the TFEU.

Amendment

(254) In line with the objectives of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of Persons with Disabilities, the regulatory framework should ensure that all users, including disabled end-users, the elderly, and users with special social needs, have easy access to affordable high quality services ***regardless of their place of residence within the Union***. Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the Union shall take account of the needs of persons with a disability in drawing up measures under Article 114 of the TFEU.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other

related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.

Amendment 14

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The aim of this Directive is on the one hand to implement an internal market in electronic communications networks and services that will result in deployment and take-up of very high capacity networks, sustainable competition, interoperability of electronic communications services and end-user benefits.

Amendment

The aim of this Directive is on the one hand to implement an internal market in electronic communications networks and services that will result in deployment and take-up of very high capacity **secured** networks, sustainable competition, interoperability of electronic communications services, **accessibility** and end-user benefits.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.

Amendment 15

Proposal for a directive

Article 1 – paragraph 3 – indent 2

Text proposed by the Commission

- measures taken at Union or national level, in compliance with Union law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy

Amendment

- measures taken at Union or national level, in compliance with Union law, to pursue general interest objectives, in particular relating to **the protection of personal data and privacy**, content regulation and audio-visual policy

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.

Amendment 16

Proposal for a directive

Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘interpersonal communications service’ means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s); ***it does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;***

Amendment

(5) ‘interpersonal communications service’ means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s);

Justification

While ensuring a level playing field among all service providers, the aim of the Directive should also be to guarantee common minimum standards when it comes to the security of networks and services, as well as the privacy of end-users. It is therefore essential to include all type of interpersonal communications services, even when an interpersonal and interactive communication facility is an ancillary feature to another service, also taking into future developments and synergies of services.

Amendment 17

Proposal for a directive

Article 2 – paragraph 1 – point 22

Text proposed by the Commission

(22) ‘security’ of networks and services means the ability of electronic communications networks and services to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of stored or transmitted or processed data or the related services offered by, or

Amendment

(22) ‘security’ of networks and services means the ***technical and structural*** ability of electronic communications networks and services to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of stored or transmitted or processed data or the related services

accessible via, those networks or services.

offered by, or accessible via, those networks or services.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary because it is inextricably linked to other admissible amendments, in particular Amendment 22 on Article 40.

Amendment 18

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

National regulatory and other competent authorities may contribute within their competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism.

Amendment

National regulatory and other competent authorities may contribute within their competencies to ensuring the implementation of policies aimed at the ***protection of personal data and privacy, the*** promotion of cultural and linguistic diversity, as well as media pluralism.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.

Amendment 19

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the Union. To this end, they shall take into consideration, inter alia, the economic, safety, health, public interest, public security and defence, freedom of expression, cultural, scientific, social and

Amendment

1. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the Union. To this end, they shall take into consideration, inter alia, the economic, safety, health, public interest, public security and defence, ***data protection and privacy***, freedom of expression, cultural,

technical aspects of EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.

scientific, social and technical aspects of EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.

Amendment 20

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

1. The head of a national regulatory authority, or, where applicable, the members of the collegiate body fulfilling that function within a national regulatory authority or their replacements, shall be appointed for a term of office of at least four years from among persons of recognised standing and professional experience, on the basis of merit, skills, knowledge and experience and following an open selection procedure. They shall not be allowed to serve more than two terms, either consecutive or not. Member States shall ensure continuity of decision-making by providing for an appropriate rotation scheme for the members of the collegiate body or the top management, such as by appointing the first members of the collegiate body for different periods, in order for their mandates, as well as that of their successors not to elapse at the same moment.

Amendment

1. The head of a national regulatory authority, or, where applicable, the members of the collegiate body fulfilling that function within a national regulatory authority or their replacements, shall be appointed for a term of office of at least four years from among persons of recognised standing and professional experience, on the basis of merit, skills, knowledge and experience and following an open **and transparent** selection procedure. They shall not be allowed to serve more than two terms, either consecutive or not. Member States shall ensure continuity of decision-making by providing for an appropriate rotation scheme for the members of the collegiate body or the top management, such as by appointing the first members of the collegiate body for different periods, in order for their mandates, as well as that of their successors not to elapse at the same moment.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for

pressing reasons related to the internal logic of the text as well as the coherence with other related legislative proposals, in particular proposal for a regulation on BEREC.

Amendment 21

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

1. Without prejudice to the provisions of Article 10, national regulatory authorities shall act independently and objectively, and shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 31 shall have the power to suspend or overturn decisions by the national regulatory authorities.

Amendment

1. Without prejudice to the provisions of Article 10, national regulatory authorities shall act independently and objectively, ***shall be legally distinct and functionally independent from the government, shall operate in a transparent and accountable manner in accordance with Union and national law, shall have sufficient powers*** and shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 31 shall have the power to suspend or overturn decisions by the national regulatory authorities.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy and the proposal on BEREC. It is also connected to AM 19 as it seeks to ensure the independence of the supervisory bodies.

Amendment 22

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. National regulatory authorities, other competent authorities under this

Amendment

1. National regulatory authorities, other competent authorities under this

Directive, and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.

Directive, and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive. In respect of the information exchanged, ***Union data protection rules shall apply, and*** the receiving authority shall ensure the same level of confidentiality as the originating authority.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.

Amendment 23

Proposal for a directive Article 12 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article 52 (1) of the Treaty. Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned ***and shall be*** notified to the Commission.

Amendment

1. Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article 52 (1) of the Treaty. Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned, ***provided for by law, respect the essence of the rights and freedoms recognised by the Charter and be subject to the principle of proportionality, in accordance with Article 52(1) of the Charter and*** notified to the Commission.

Justification

In line with the Charter and the related CJEU Case law, any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations

may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

Amendment 24

Proposal for a directive

Article 20 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where information contains personal data, the Commission, BEREC and the authorities concerned shall ensure the compliance of data processing with Union data protection rules.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy. The recast proposal entails data processing in several cases and there is no provision providing for compliance with Union data protection law.

Amendment 25

Proposal for a directive

Article 39 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall encourage the use of the standards and/or specifications referred to in paragraph 1, for the provision of services, technical interfaces and/or network functions, to the extent strictly necessary to ensure interoperability of services **and** to improve freedom of choice for users.

Member States shall encourage the use of the standards and/or specifications referred to in paragraph 1, for the provision of services, technical interfaces and/or network functions, to the extent strictly necessary to ensure interoperability **and interconnectivity** of services **in order** to improve freedom of choice for users **and facilitate switching**.

Justification

The Shadow Rapporteur believes that this amendment is necessary as it will strengthen the freedom of choice for users and contribute to the Digital Single Market strategy for the EU.

Amendment 26

Proposal for a directive Article 40 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to appropriately manage the risks posed to security of networks and services. Having regard to the state of the art, these measures shall ensure a level of security appropriate to the risk presented. In particular, measures shall be taken to prevent and minimise the impact of security incidents on users and on other networks and services.

Amendment

1. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to appropriately manage the risks posed to security of networks and services. Having regard to the state of the art, these measures shall ensure a level of security appropriate to the risk presented. In particular, measures shall be taken to ***ensure that electronic communications content is, where technically feasible, encrypted from end-to-end by default, in order to*** prevent and minimise the impact of security incidents on users and on other networks and services.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the coherence of this text with the position of the European Parliament, notably the resolutions of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs, and of 14th March 2016 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement.

Amendment 27

Proposal for a directive Article 40 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Member States shall not impose any obligation on providers of public communications networks or publicly available electronic communications services that would result in a weakening

of the security of their networks or services.

Where Member States impose additional security requirements on providers of public communications networks or publicly available electronic communications services in more than one Member State, they shall notify those measures to the Commission and ENISA. ENISA shall assist Member States in coordinating the measures taken to avoid duplication or diverging requirements that may create security risks and barriers to the internal market.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the coherence of this text with the position of the European Parliament, notably the resolutions of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs, and of 14th March 2016 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement.

Amendment 28

Proposal for a directive

Article 40 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify without undue delay the competent authority of a ***breach of security*** that has had a significant impact on the operation of networks or services.

Amendment

Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify without undue delay the competent authority of a ***security incident or loss of integrity*** that has had a significant impact on the operation of networks or services.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary because it is inextricably linked to other admissible amendments on Article 40. The first part is necessary because it is aligned to the amendment on subparagraph 3.

Amendment 29

Proposal for a directive

Article 40 – paragraph 3 – subparagraph 2 – point a

Text proposed by the Commission

(a) the number of users affected by the ***breach***;

Amendment

(a) the number of users affected by the ***incident***;

Amendment 30

Proposal for a directive

Article 40 – paragraph 3 – subparagraph 2 – point b

Text proposed by the Commission

(b) the duration of the ***breach***;

Amendment

(b) the duration of the ***incident***;

Amendment 31

Proposal for a directive

Article 40 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

(c) the geographical spread of the area affected by the ***breach***;

Amendment

(c) the geographical spread of the area affected by the ***incident***;

Amendment 32

Proposal for a directive

Article 40 – paragraph 3 – subparagraph 2 – point d

Text proposed by the Commission

(d) the extent to which the functioning of the service is ***disrupted***;

Amendment

(d) the extent to which the functioning of the ***network or*** service is ***affected***;

Amendment 33

Proposal for a directive

Article 40 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Where appropriate, the competent authority concerned shall inform the competent authorities in other Member States and the European Network and Information Security Agency (ENISA). The competent authority concerned may inform the public or require the **undertakings** to do so, where it determines that disclosure of the **breach** is in the public interest.

Amendment

Where appropriate, the competent authority concerned shall inform the competent authorities in other Member States and the European Network and Information Security Agency (ENISA). The competent authority concerned may inform the public or require the **providers** to do so, where it determines that disclosure of the **incident** is in the public interest.

Justification

The first part of this amendment is necessary for pressing reasons related to the coherence of this text with the position of the EP, notably the resolutions of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in JHA, and of 14th March 2016 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement. The second part of this amendment is necessary because it is inextricably linked to other admissible amendments on Article 40.

Amendment 34

Proposal for a directive

Article 40 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. By ...[date] in order to contribute to the consistent application of measures for the security of networks and services, BEREC shall, after consulting stakeholders and in close cooperation with the Commission and other Union Agencies, issue guidelines on minimum criteria and common approaches for the security of networks and services and the promotion of the use of end-to-end encryption

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative proposals, in particular the proposal for a regulation on BEREC. The amendment strengthens security of networks and information services.

Amendment 35

Proposal for a directive Article 41 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that in order to implement Article 40, the competent authorities have the power to issue binding instructions, including those regarding the measures required to remedy **a breach** and time-limits for implementation, to undertakings providing public communications networks or publicly available electronic communications services.

Amendment

1. Member States shall ensure that in order to implement Article 40, the competent authorities have the power to issue binding instructions, including those regarding the measures required to **prevent or remedy an incident** and time-limits for implementation, to undertakings providing public communications networks or publicly available electronic communications services.

Amendment 36

Proposal for a directive Article 90 – title

Text proposed by the Commission

The missing children **hotline number**

Amendment

The missing children **and child helpline hotlines**

Amendment 37

Proposal for a directive Article 90 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that citizens have access to a service operating a **hotline to report cases of** missing children. The hotline shall be available on the number '116000'.

Amendment

1. Member States shall ensure that citizens have access to a service operating a missing children **hotline**. The hotline shall be **child-friendly**, available on the number '116000'.

Amendment 38

Proposal for a directive

Article 90 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Member States shall ensure that children have access to a child-friendly service operating a helpline. The helpline shall be available on the number '116111'.

Justification

Helplines are essential services, have an advisory function too. Children may feel safer contacting the 116111 helpline than contacting people at services who they don't know or trust. If a child (or someone else) calls the child helpline indicating a child is at risk, there are cases where this must be reported to child protection authorities/the police. Helplines support hundred-thousands of children who are troubled or are in need.

Amendment 39

Proposal for a directive

Article 90 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1 b. Member States shall ensure that citizens are informed of the existence and use of and able to access services provided under the numbers '116000' and '116111' to the greatest extent possible.

Justification

Hotlines for missing children have been set up by EC Decision 2007/116/EC, reachable across Europe through the same number, 116 000. Currently only 13 % of the EU population is aware of the 116 000 service according to a Eurobarometer survey. EU is facing the same problem with the number 116 111 which was set up by the EC Directive 2009/136/EC. (Universal Service Directive). Ensuring that citizens are informed about the existence and availability of these services help to implement the law.

Amendment 40

Proposal for a directive

Article 90 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that disabled end-users are able to access services provided under the *number* '116000' to the greatest extent possible. Measures taken to facilitate *disabled end-users'* access to such services whilst travelling in other Member States shall be based on compliance with relevant standards or specifications published in accordance with Article 39.

2. Member States shall ensure that *children and* disabled end-users are *informed of the existence and use of and* able to access services provided under the *numbers* '116000' *and* '116111' to the greatest extent possible. Measures taken to facilitate *broad end-users'* access to such services *also* whilst travelling in other Member States shall be based on compliance with relevant standards or specifications published in accordance with Article 39.

Amendment 41

Proposal for a directive Article 90 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that citizens have access to hotlines and helplines operated in their home Member State by adding the country code while they are travelling between Member States.

Justification

While citizens are travelling between different Member States they are still in need to contact different hotlines and helplines in their home countries to solve or to mediate urgent issues. Having access to these lines by dialling a country code would help them to reach help or advice.

Amendment 42

Proposal for a directive Article 92 – paragraph 1

Text proposed by the Commission

Amendment

Providers of electronic communications networks or services shall not apply any discriminatory requirements or conditions of access or use to end-users based on the end-user's nationality or place of residence unless such differences are objectively

Providers of electronic communications networks or services shall not apply any discriminatory requirements or conditions of access or use to end-users based on the end-user's nationality or place of residence unless such differences are objectively

justified.

justified *and in compliance with the scope and interpretation of fundamental rights as provided for in Article 52 of the Charter.*

Justification

In line with the Charter and the related CJEU Case law, any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

Amendment 43

Proposal for a directive Article 93 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. By ...[date] in order to contribute to the consistent application of fundamental rights safeguard, BEREC shall, after consulting stakeholders and in close cooperation with the Commission and the European Union Agency for Fundamental Rights (FRA), issue guidelines on common approaches to ensure that national measures regarding end-users' access to, or use of, services and applications through electronic communications networks respect the fundamental rights and freedoms, as guaranteed by the Charter and general principles of Union law.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative proposals, in particular proposal for a regulation on BEREC.

Amendment 44

Proposal for a directive Article 114 – paragraph 3 a (new)

3a. By ... [5 years after the date of application referred to in the second subparagraph of Article 115(1)] and every five years thereafter, the Commission shall review the application of the fundamental rights safeguard referred to in Article 93.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	European Electronic Communications Code (Recast)
References	COM(2016)0590 – C8-0379/2016 – 2016/0288(COD)
Committee responsible Date announced in plenary	ITRE 24.10.2016
Opinion by Date announced in plenary	LIBE 15.12.2016
Rapporteur Date appointed	Morten Helveg Petersen 14.12.2016
Discussed in committee	25.4.2017 8.6.2017
Date adopted	8.6.2017
Result of final vote	+: 26 -: 14 0: 1
Members present for the final vote	Jan Philipp Albrecht, Malin Björk, Michał Boni, Caterina Chinnici, Rachida Dati, Monika Flašíková Beňová, Kinga Gál, Ana Gomes, Nathalie Griesbeck, Sylvie Guillaume, Monika Hohlmeier, Brice Hortefeux, Filiz Hyusmenova, Sophia in 't Veld, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Marju Lauristin, Juan Fernando López Aguilar, Roberta Metsola, Claude Moraes, József Nagy, Birgit Sippel, Branislav Škripek, Csaba Sógor, Sergei Stanishev, Helga Stevens, Traian Ungureanu, Bodil Valero, Josef Weidenholzer, Kristina Winberg, Tomáš Zdechovský, Auke Zijlstra
Substitutes present for the final vote	Pál Csáky, Gérard Deprez, Teresa Jiménez-Becerril Barrio, Ska Keller, Andrejs Mamikins, Maite Pagazaurtundúa Ruiz, Christine Revault D'Allonnes Bonnefoy, Barbara Spinelli

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

26	+
ALDE Group	Gérard Deprez, Nathalie Griesbeck, Filiz Hyusmenova, Maite Pagazaurtundúa Ruiz, Sophia in 't Veld
ECR Group	Helga Stevens, Branislav Škripek
GUE/NGL Group	Malin Björk, Barbara Spinelli
S&D Group	Caterina Chinnici, Monika Flašíková Beňová, Ana Gomes, Sylvie Guillaume, Cécile Kashetu Kyenge, Dietmar Köster, Marju Lauristin, Juan Fernando López Aguilar, Andrejs Mamikins, Claude Moraes, Christine Revault D'Allonnes Bonnefoy, Birgit Sippel, Sergei Stanishev, Josef Weidenholzer
Verts/ALE Group	Jan Philipp Albrecht, Jan Keller, Bodil Valero

14	-
EFDD Group	Kristina Winberg
ENF Group	Auke Zijlstra
PPE Group	Pál Csáky, Rachida Dati, Kinga Gál, Monika Hohlmeier, Brice Hortefeux, Teresa Jiménez-Becerril Barrio, Barbara Kudrycka, Roberta Metsola, József Nagy, Csaba Sógor, Traian Ungureanu, Tomáš Zdechovský

1	0
PPE Group	Michał Boni

Key to symbols:

+ : in favour

- : against

0 : abstention