



THE “TELECOM PACKAGE”
SHOULD FOCUS ON OPTIMISING
NETWORKS AND SERVICE PROVISION,
NOT ON CONTENT

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Information and Communication technologies (ICT) have significantly changed consumption habits and make up a growing part of household budgets. At the same time, ICT is also increasingly giving rise to serious concerns when it comes to the respect of citizens' fundamental rights. That is why the regulatory framework for telecommunications constitutes a priority sector for consumer organisations.

1. Many of the suggested amendments to the Telecom package bring positive results for consumers...

BEUC, the European Consumer Organisation, has noted with satisfaction the improvements accepted by the IMCO, LIBE and ITRE committees as regard to the following provisions:

- Explicit acknowledgement of the application of general consumer protection legislation in the telecom sector (Amendment 10 and 44 of the Harbour report)
- Better control of expenditure (Amendments 57, 145 and 146 of the Harbour report);
- Limits to the length of contracts (Amendments 105 and 106 of the Harbour report);
- Number portability (Amendments 23 and 103 of the Harbour report);
- Transparency and publication of information (Amendments 7, 8, 11, 15, 63, 64, 65, 66, 73, 74 and 150 of the Harbour report);
- Provision of security software to consumers (Amendment 148 of the Harbour report);
- Facilitating out of court procedures and consultation (Amendments 17, 25, 110, 111, 115 and 117 of the Harbour report);
- Special measures for disabled users (Amendments 2, 53 and 109 of the Harbour report);
- Better protection against disconnection for non-payment of bills (Amendment 144 of the Harbour report);
- Provision of services in the event of theft (Amendment 147 of the Harbour report);
- Emphasis on the need to extend the scope of the provision of universal services (Amendment 1 of the Harbour report);
- Affordability of communication services (Amendment 56 of the Harbour report);
- Increase in the powers of national regulators (Amendments 27, 43, 44 and 45 of the Trautmann report).

Improvements are also to be welcomed regarding the protection of consumers in electronic communications:

- Express mention of natural persons (consumers) as data subjects (Amendment 120 of the Harbour report);
- Facilitation of the enforcement of the right to privacy in electronic communications (amendment 133 of the Harbour report);
- Better consumer protection against unsolicited communications (spam): (Amendments 131 and 132 of the Harbour report);

We urge you **to keep these amendments** in the current text.

2. Yet, some changes proposed by the various reports are detrimental to critical consumer rights - in particular to the right to privacy...

If adopted these amendments will put consumer privacy at risk and will slow down technological innovation without solving the issue of copyright infringement. Instead, they would open the door to ever closer surveillance of Internet users. In this context the following amendments must be deleted or revised:

- Obligation to cooperate to protect and promote *"lawful content"* (Amendment 112 of the Harbour report and amendment 61 of the Trautmann report);
- Reference to intellectual property rights when granting access to networks (Amendment 100 of the Trautmann report);
- The distribution of public information in response to *"particular problems"* and in order to warn against *"copyright infringement, other unlawful uses and dissemination of harmful content"* (Amendments 9, 62, 67 and 76 of the Harbour report);
- Allowing processing of traffic data for *"security reasons"* without clearly defining what security means and allowing technical measures to filter data as long as the *"free circulation"* of equipment is not impeded (Amendment 130, 134 and 135 of the Harbour report);
- Facilitating the use of personal data such as Internet Protocol addresses for marketing purposes (Amendments 30, 128 and 129 of the Harbour report)
- Limiting the information to consumers on security breaches (Amendments 33, 123, 124, 125 and 126 of the Harbour report).

We ask you to **delete or revise** these provisions.

3. BEUC suggests introducing a "request to investigate" mechanism at EU level to ensure telecommunication markets work better

We believe that a mechanism allowing consumer organisations to complain directly to the European Commission should be created. This "request to investigate" mechanism would allow designated bodies such as regulators and consumer organisations to bring to the Commission's attention any situation or practice in the telecommunication sector that would significantly harm the interests of consumers. The Commission's services would have to investigate the complaint within a specified time limit. This mechanism is a tool that would ensure that the European telecommunications market benefits consumers.

4. Taking into account the points mentioned above BEUC suggests the following specific amendments

| Issue | Suggestion | Justification |
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| <p><u>Obligation to cooperate</u> (Amendment 112 of the Harbour report and amendment 61 of the Trautmann report)</p> | <ul style="list-style-type: none"> • Delete “lawful content” and instead make reference to “legal offers”. • Ensure the telecom framework does not conflict with the E-commerce directive by explicitly referring to articles 15 and 12 of the E-commerce directive. | <p>It is unclear what cooperation means and how one can distinguish between <i>lawful</i> or <i>unlawful content</i>. What is needed is cooperation to promote alternative business models which offer consumers new “legal” online services and offers. Furthermore, the “cooperation” principle would be in contradiction with the E-commerce Directive, which expressly excludes any general obligation for ISPs to monitor content (article 15) and grants ISPs the status of “mere conduit” (article 12).</p> |
| <p><u>Reference to intellectual property rights when granting access</u> (Amendment 100 of the Trautmann report)</p> | <ul style="list-style-type: none"> • This provision should be deleted. | <p>The telecom framework should deal with networks, not with content.</p> |
| <p><u>Public information</u> (Amendments 9, 62, 67 and 76 of the Harbour report)</p> | <ul style="list-style-type: none"> • Delete “lawful” and “unlawful” in articles 20, 21 and recital 12c of the Universal Service directive. • Ensure that references related to the “graduated response” are deleted. | <p>The only way to distinguish between “lawful” and “unlawful” is to inspect all data traffic. From a technical perspective, it is impossible to inspect all traffic without significantly slowing down the Internet. As said before, these activities would contradict the E-commerce directive. At the same time, ISP’s already have the obligation to “remove or disable access to [illegal] information” (as foreseen in Article 14 E-commerce directive).</p> |
| <p><u>Allowing technical measures to filter data</u> (Amendment 130, 134 and 135 of the Harbour report)</p> | <ul style="list-style-type: none"> • These amendments should be deleted. | <p>These amendments are a wide open door for introducing surveillance of Internet users in the name of security, and go beyond the principle of proportionality. These new provisions would allow any natural or legal person to implement technical measures to filter traffic data as long as these measures are</p> |

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| | | for “security” reasons and do not hamper the internal market. In addition, users would not need to be informed about the implementation of such measures nor would proof be needed that security is endangered. |
| <p><u>Facilitation of the use of personal data for marketing purposes</u> (Amendments 30, 128 and 129 of the Harbour report)</p> | <ul style="list-style-type: none"> • These amendments should be deleted. | <p>These amendments significantly water-down the existing legislation on the protection of personal data. As a result Internet Protocol (IP) addresses could become public information, browser settings could constitute prior consent and personal data could be processed for marketing purposes.</p> |
| <p><u>Limiting the information to consumers on security breaches</u> (Amendments 33, 123, 124, 125 and 126 of the Harbour report)</p> | <ul style="list-style-type: none"> • Revise article 4, paragraph 4 so that consumers are informed together with the competent authority of any security breach. • Delete the new paragraphs 3a, 3b and 3c of Article 4. | <p>The consumer, as the data subject, is best placed to assess the nature of the harm that is caused to his/her personal sphere. We therefore ask that consumers are notified directly, together with the competent authorities, of any security breach. The exceptions to notify the security breach to the persons concerned should in any case be deleted.</p> |
| <p><u>Redress mechanisms</u></p> | <ul style="list-style-type: none"> • Introduce a new provision that will establish a “super-complaint” mechanism at EU level | <p>Consumer organisations and other designated bodies should be able to address competition problems directly to the Commission’s services.</p> |

4. In conclusion

The Telecom package should deal first and foremost with telecom networks. A thorough discussion on content related issues is indeed very much needed, but the Telecom package is not the right place to tackle these issues. All content-oriented amendments should be carefully reviewed before the plenary vote and where such amendments are intended to filter content or introduce monitoring obligations; they should be deleted or revised.

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