

Analysis

The text adopted (original amendment 138) is definitively weaker than the one that has been agreed with the CZ Presidency in trialogues:

- The adopted 138 amendment is badly placed and lost in the middle of article 8 dealing with the NRA's responsibilities, merely obliging them to promote the fundamental rights of end-users. NRAs, given their remit and powers, will have clear difficulties to promote fundamental rights let alone enforcing them. In opposition, the inclusion of the agreed text in trialogue in the Article 1 (*scope and aim*) of the Framework Directive was ensuring that the respect of the fundamental rights of electronic communications end-users becomes a general obligation of the whole regulatory framework, that is, of the Framework Directive and the Specific Directives notably the Universal Service Directive. Moreover, by its inclusion in Article 1, the agreed text obliges the Community and the Member States.
- The adopted 138 amendment only concerns a principle regarding restrictions “*applying the principle that no restriction may be imposed*” when the agreed text in trialogue was creating a right for end-users “*measures taken regarding end-users' access to or use of services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons*”.
- The adopted 138 amendment is much more restrictive as the agreed text in trialogue makes explicit reference to fundamental rights to be respected including “*privacy, freedom of expression and access to information*” thereby providing a more robust legal protection to citizens.
- The adopted 138 amendment is referring to the Charter of Fundamental Rights that is not signed by all the Member States. Instead, the agreed text in trialogue was incorporating into the electronic communications Community law the rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, signed by all Member States and guarantees that the rights of end-users will be subject to due process notably to “*a judgement by an independent and impartial tribunal*” as laid down in Article 6 of the Convention.

Amendment 138/46

Article 8

Policy objectives and regulatory principles

4. The national regulatory authorities shall promote the interests of the citizens of the European Union by inter alia:

(a) ensuring all citizens have access to a universal service specified in Directive 2002/22/EC (Universal Service Directive);

(b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;

(c) contributing to ensuring a high level of protection of personal data and privacy;

(d) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;

(e) addressing the needs of specific social groups, in particular disabled users, elderly users and users with special social needs;

(f) ensuring that the integrity and security of public communications networks are maintained;

(g) ...;

(h) applying the principle that no restriction may be imposed on the fundamental rights and freedoms of end-users, without a prior ruling by the judicial authorities, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, save when public security is threatened where the ruling may be subsequent.

COMPROMISE

Article 1

Scope and aim

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.

2.

3. This Directive as well as the Specific Directives are without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy.

3a. Measures taken regarding end-users' access to or use of services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, including in relation to privacy, freedom of expression and access to information and the right to a judgment by an independent and impartial tribunal established by law and acting in respect of due process in accordance with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

With the corresponding recital:

Recital

(3a) Recognising that the Internet is essential for education and for the practical exercise of freedom of expression and access to information, any restriction imposed on the exercise of these fundamental rights should be in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms. Concerning these issues, the Commission should start a wide public consultation.