

In Defence of the Citizens' Rights Amendments

From We Re-Build

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Last September the European Parliament with sometimes an overwhelming majority of up to 88% adopted two amendments to the so-called EU Telecoms Package which acknowledged the importance of access to information and of the freedom of expression for citizens in our modern Information Society.

The provisions of the EU Telecoms Package, if properly construed, can assist the European Community and its citizens to greatly benefit from the potential of modern electronic communications services. Article 32a of Directive 2002/22/EC (Amendment 166) and Article 8 paragraph 4 point (ga) of Directive 2002/21/EC (Amendment 138) which were adopted in the European Parliament's First Reading were bound to guarantee citizens' right to express themselves and access information without unnecessary and unjustified restrictions. The Citizens' Rights Amendments that we are now proposing aim to restore that position adopted by the Parliament in its First Reading.

Article 11 of the Charter of Fundamental Rights of the European Union, as well as the constitutional traditions of Member States, have granted the right to freedom of expression and to access of information, acknowledging their importance as fundamental rights of everyone in a democratic society. Those rights should be protected against any unnecessary and unjustified restriction as the Charter of the Fundamental Rights of the European Union recognises.

The need to provide sufficient guarantees to citizens' right to freedom of expression and information appears even more crucial nowadays when innovation and creativity mostly depends on users' ability and right to access information. A balanced approach between users' rights, as well as the rights and freedoms of others, and the protection of public safety and security, calls for the sufficient protection of everyone's right to receive and impart information and to hold opinions, while ensuring that restrictions to that right may only be imposed if they are necessary, narrow in scope and genuinely meet objectives of general interest recognised by the Union.

Restoring Amendments 166 and 138 and amending provisions that support the principles of those amendments are in line with the Charter of Fundamental Rights of the European Union, the constitutional traditions of Member States, as well as the policy guidelines adopted by governmental authorities across Europe such as the Guidelines for Internet Neutrality of the Norwegian Post and Telecommunications Authority (NPT) (Version 1.0, 24 February 2009), which reinforce users' right to an Internet connection that they are able to use freely and non-discriminatorily without legitimising unlawful or harmful actions.

But that's not enough. The original version voted by the Parliament has been under various attacks even after the Common Position was voted by the Council. While the Parliament, the Commission and the Council are supposed to work out a compromise solution, the text prepared has been pushed in a totally different direction, further departing from the approved text. New language jeopardizing the fundamental Freedoms of citizens and the free development of Information Society has been entered without any kind of democratic control, and consistently to serve specific interests of a limited circle of interested parties against citizens' interest. The package has been so hollowed out that it is unrecognisable. Thus, simply retabling the two key amendments technically would not be a sufficient guarantee to the fundamental Freedoms that we pursue. According to the rules of procedure of the Parliament ("to amend a part of the text of a common position which was not included in - or differs in content from - the proposal submitted in First Reading" - rule 62), this situation fully justifies the proposal of new amendments in the Second Reading. We call upon all MEPs to stand up for the same Free Internet that has permitted an unprecedented evolution of the digital market and society, and to all citizens to support those taking action.

Why 166 and 138

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Why 166 and 138?

Both Article 32a of Directive 2002/22/EC (Amendment 166) and Article 8 paragraph 4 point (ga) of Directive 2002/21/EC (Amendment 138) adopted in the European Parliament's first reading intend to ensure that fundamental rights of end-users will not be unnecessarily restricted without the appropriate justifications. Amendments 138 and 166 function in such a way that one complements the other. However, they bear substantive differences, which means that both should be retabled and be put to vote again before the European Parliament. Amendment 138 is addressed to National Regulatory Authorities and Amendment 166 is addressed to Member States.

Amendment 138 sits within the Framework directive which lays down the tasks of national regulatory authorities, and aims to establish a harmonised framework for the regulation of electronic communications services across the Community. It establishes a duty for the regulator to protect the interests of European citizens by ensuring that users are not sanctioned without a judicial ruling, and thereby it expresses opposition to measures such as graduated response.

Amendment 166 sits within a different directive - the Universal Services and Users Rights directive. This Directive acknowledges the importance of reinforcing end-users' rights within the overall EU regulatory framework for electronic communications services, in order to promote the development of an inclusive information society as described by the European Commission in its i2010 strategy. In particular, the directive establishes the rights of end-users and the corresponding obligations of providers of electronic communications services.

Amendment 166 calls on Member States to ensure that end-users' access to content, services, and applications, are not unduly restricted, not only by making certain that national regulatory authorities take all reasonable measures to do so, but in general by providing sufficient guarantees that no restrictions will be imposed on end-users' right unless it is absolutely necessary, that they are justified by the relevant principles and rules of law and are implemented by appropriate measures. In this way, Amendment 166 expresses opposition to graduated response, and arguably to network filtering of content, applications or services, and offers users protection against the implementation of such measures.

Therefore, Amendments 166 and 138 therefore complement each other. Where the European Parliament has defended the fundamental rights and freedom with Amendment 138 in Framework directive, it would be logical to preserve the same fundamental rights and freedoms in the Universal Services Directive.

The two amendments work together to create a balanced approach between the right of end-users to freedom of expression and of access to information, and their right to privacy, as well as other rights and freedoms, and public safety and security.

Whereas a positive definition of network neutrality that would highlight the importance of keeping the Internet an open and non-discriminatory platform for all types of communication and content distribution is crucial and, of course, welcome, it is not sufficient in order to ensure that the rights of users to access content, services, and applications are sufficiently protected. Ensuring the fundamental users' rights and freedoms, including their right to access to information, their right to freedom of expression, and their right to privacy, is an essential prerequisite to achieve network neutrality that should be explicitly provided by the law.

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