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Committee on Civil Liberties, Justice and Home Affairs

2013/0309(COD)

10.12.2013

DRAFT OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Industry, Research and Energy

on the proposal for a regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012 (COM(2013)0627 – C7-0267/2013 – 2013/0309(COD))

Rapporteur: Salvador Sedó i Alabart

PA_Legam

SHORT JUSTIFICATION

This proposal facilitates the provision of cross-border communication services by enabling providers to offer services across the Union based on a single EU authorisation and thus with minimum administrative hurdles.

The rapporteur welcomes the Commission proposal that seeks to facilitate the harmonisation of end-users' rights (relating to open internet) as well as its efforts to harmonise publication by providers of information on electronic communications services they offer and the inclusion of such information in contracts, as well as the modalities of switching an operator and charges applicable to roaming services.

In view of the rapporteur, adhering to the rights to confidentiality of communications, privacy and personal data is a key part of building consumer trust and confidence in the EU electronic communications, and thus its success. End-users need to be certain that these rights are respected whenever they make use of electronic communications services and networks, and that any interference with these rights is proportionate and necessary to achieve a clearly specified legitimate purpose.

The present Opinion therefore focuses on those aspects of the proposal which are likely to have an impact on the rights to privacy and the protection of personal data, as well as on the confidentiality of communications.

The rapporteur welcomes the inclusion of the principle of 'net neutrality into the regulation', and therefore underlines that any measures allowed under the proposal that interfere with end-users' data protection and privacy rights should be subject to transparency, strict proportionality and necessity limitations.

The amendments proposed aim at guaranteeing confidentiality of communications, privacy and personal data protection in order to build consumers' trust.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Citation 2 a (new)

Text proposed by the Commission

Amendment

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data^{11a},

^{11a}*OJ L 281, 23.11.1995, p. 31.*

Or. en

Amendment 2

Proposal for a regulation

Citation 3a (new)

Text proposed by the Commission

Amendment

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data^{11b},

^{11b}*OJ L 8, 12.1.2001, p. 1.*

Amendment 3

Proposal for a regulation Citation 4a (new)

Text proposed by the Commission

Amendment

***Having regard to the Directive
2002/58/EC of the European Parliament
and of the Council of 12 July 2002
concerning the processing of personal
data and the protection of privacy in the
electronic communications sector^{11c},***

^{11c}*OJ L 201, 31.7.2002 p. 37.*

Or. en

Amendment 4

Proposal for a regulation Recital 46

Text proposed by the Commission

Amendment

(46) The freedom of end-users to access and distribute information and lawful content, run applications and use services of their choice is subject to the respect of Union and compatible national law. This Regulation defines the limits for any restrictions to this freedom by providers of electronic communications to the public but is without prejudice to other Union legislation, including copyright rules and Directive 2000/31/EC.

(46) The freedom of end-users to access and distribute information and lawful content, run applications and use services of their choice is subject to the respect of Union and compatible national law. This Regulation defines the limits for any restrictions to this freedom by providers of electronic communications to the public but is without prejudice to other Union legislation, including copyright rules and Directive 2000/31/EC ***on electronic commerce and Article 13 of Directive 95/46/EC and Article 15 of 2002/58/EC, which define the limits to traffic management measures from the data protection and privacy perspective.***

Amendment 5**Proposal for a regulation
Recital 58 a (new)***Text proposed by the Commission**Amendment*

(58a) The processing of personal data referred to in Regulation of the European Parliament and of the Council laying down measures concerning the European Single Market for electronic communications and to achieve a Connected Continent should comply with Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data^{24a}, which governs the processing of personal data carried out in the Member States pursuant to this Regulation and under the supervision of the Member States' competent authorities, in particular the independent public authorities designated by the Member States, and with Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector^{24b}.

^{24a} ***Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).***

^{24b} ***Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of***

*personal data and the protection of
privacy in the electronic communications
sector (OJ L 201, 31.7.2002 p. 37).*

Or. en

Amendment 6

Proposal for a regulation Article 4 – paragraph 5

Text proposed by the Commission

5. The national regulatory authority of the home Member State shall forward the information received in accordance with paragraph 2 and any change to that information in accordance with paragraph 3 to the national regulatory authorities of the concerned host Member States and to the BEREC Office within one week following reception of such information or any change. The BEREC Office shall maintain a publicly accessible registry of notifications made in accordance with this Regulation.

Amendment

5. The national regulatory authority of the home Member State shall forward the information received in accordance with paragraph 2 and any change to that information in accordance with paragraph 3 to the national regulatory authorities of the concerned host Member States and to the BEREC Office within one week following reception of such information or any change. The BEREC Office shall maintain a publicly accessible registry of notifications made in accordance with this Regulation. ***Regardless of the format (electronic or printed) of the registry selected by BEREC Office, the latter should apply adequate security measures in its maintenance of the registry, in accordance with Article 22 of Regulation (EC) No 45/2001.***

Or. en

Amendment 7

Proposal for a regulation Article 4 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(5a) Moreover, BEREC should grant communications providers information in

accordance with Article 12 of Regulation (EC) No 45/2001, which can be disseminated via the regulatory authority of a provider's home Member State.

Or. en

Amendment 8

Proposal for a regulation Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to adapt Annex I in light of market and technological developments, so as to continue to meet the substantive requirements listed in paragraph 1.

deleted

Or. en

Amendment 9

Proposal for a regulation Article 19 – paragraph 4 – point e

Text proposed by the Commission

Amendment

(e) ensuring that the rules on protection of privacy, personal data, security and integrity of networks and transparency in accordance with Union law are respected.

(e) ensuring that the rules on protection of privacy, personal data, security and integrity of networks and transparency in accordance with Union *relevant* law are respected *in a way to entail respect for the confidentiality, integrity and security of the data processed within the course of transmitting communications over the network.*

Or. en

Amendment 10

Proposal for a regulation Article 19 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to adapt Annex II in light of market and technological developments, so as to continue to meet the substantive requirements listed in paragraph 4.

deleted

Or. en

Amendment 11

Proposal for a regulation Article 23 – paragraph 3

Text proposed by the Commission

Amendment

3. This Article is without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted.

deleted

Or. en

Amendment 12

Proposal for a regulation Article 23 – paragraph – 5 point a

Text proposed by the Commission

Amendment

5. Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by blocking, slowing down, degrading or

5. Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by blocking, slowing down, degrading or

discriminating against specific content, applications or services, or specific classes thereof, except in cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent, non-discriminatory, proportionate and necessary to:

(a) implement a legislative provision or a court order, or ***prevent or impede serious crimes***;

discriminating against specific content, applications or services, or specific classes thereof, except in cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent, non-discriminatory, proportionate and necessary to:

(a) implement a legislative provision or a court order, ***or for the prevention, investigation, detection and prosecution of criminal offences as laid down in article 15 of Directive 2002/58/EC***;

Or. en

Justification

Preventing or impeding serious crimes is a very broad purpose, which could trigger wide-scope traffic management measures used for preventive and potentially systematic analysis of communications content. Any limitation to the fundamental right to personal data protection might respect the conditions laid down in Article 15 of the Directive 2002/58/EC and Article 13 of Directive 95/46.

Amendment 13

Proposal for a regulation

Article 23 – paragraph 5 – point aa (new)

Text proposed by the Commission

Amendment

(aa) provide clear and specific information on communication inspection techniques that are allowed;

Or. en

Justification

Article 23(5) of the proposal provides for 'reasonable traffic management measures', under which ISPs could discriminate against, degrade, slow down or block traffic, but does not provide information on communication inspection techniques that underlie such measures. In order to provide certainty for end-users on the data protection and privacy impact of traffic management measures, Article 23(5) should thus provide clear information on communications inspection techniques.

Amendment 14

Proposal for a regulation

Article 23 – paragraph 5 – point c

Text proposed by the Commission

(c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures;

Amendment

(c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures. ***Such consent should be informed, specific and unambiguous, as well as freely given;***

Or. en

Amendment 15

Proposal for a regulation

Article 23 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph.

Amendment

Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph. ***In no case, sensitive data as defined in Article 8 paragraph 1 of Directive 95/46/EC shall be processed.***

Or. en

Amendment 16

Proposal for a regulation

Article 24 – paragraph 1

Text proposed by the Commission

1. National regulatory authorities shall closely monitor and ensure the effective ability of end-users to benefit from the

Amendment

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freedoms provided for in Article 23 (1) and (2), compliance with Article 23 (5), and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology and that are not impaired by specialised services. They shall, in cooperation with other competent national authorities, also monitor the effects of specialised services on cultural diversity and innovation. National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings..

freedoms provided for in Article 23 (1) and (2), compliance with Article 23 (5), and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology and that are not impaired by specialised services. They shall, in cooperation with other competent national authorities **and data protection authorities**, also monitor the effects of specialised services on cultural diversity and innovation. National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings. ***This monitoring shall comply with the principle of confidentiality of communications and shall not imply processing of personal data.***

Or. en

Justification

In view of the effect of such measures on confidentiality of communications, privacy and protection of personal data, Art. 24(1) should refer to the cooperation between national regulatory authorities and national data protection authorities.

Amendment 17

Proposal for a regulation Article 25 – paragraph 1

Text proposed by the Commission

1. Providers of electronic communications to the public shall, save for offers which are individually negotiated, publish transparent, comparable, adequate and up-to-date information on:

Amendment

1. Providers of electronic communications to the public shall, save for offers which are individually negotiated, publish transparent, comparable, adequate and up-to-date information ***in a clear, comprehensive and easily accessible manner*** on:

Or. en

Amendment 18

Proposal for a regulation

Article 25 – paragraph 1 – point iv a (new)

Text proposed by the Commission

Amendment

(v) clear and adequate information on traffic management measures applied for the purposes listed in Article 23(5) of the proposal.

Or. en

Amendment 19

Proposal for a regulation

Article 26 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) where an obligation exists in accordance with Article 25 of Directive 2002/22/EC, the end-users' options as to whether or not to include their personal data in a directory, and the data concerned;

(g) where an obligation exists in accordance with Article 25 of Directive 2002/22/EC, the end-users' options as to whether or not to include their personal data in a directory, and the data concerned; ***the processing of personal data included in such a directory shall comply with provisions of Article 12 of the Directive 2002/58/EC.***

Or. en

Justification

Article 12 of Directive 2002/58/EC foresees that end-users should be informed about the purposes of the directory in question, as well as any further possibilities of the use of their personal data based on search functions available in that directory.

Amendment 20

Proposal for a regulation

Article 26 – paragraph 2 – point fa (new)

Text proposed by the Commission

Amendment

(fa) Information on actions referred to in Article 26 (1)(j), and their potential effect on end-users' privacy and data protection rights.

Or. en

Amendment 21

Proposal for a regulation Article 27 – paragraph 4

Text proposed by the Commission

Amendment

4. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge for receiving itemised bills.

4. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge for receiving itemised bills, ***provided that right to privacy of calling users and called subscribers are duly respected.***

Or. en