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Committee on Civil Liberties, Justice and Home Affairs

2007/0248(COD)

26.6.2008

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation
(COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))

Rapporteur(*): Alexander Alvaro

(*) Procedure with associated committees - Rule 47 of the Rules of Procedure

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SHORT JUSTIFICATION

The directive in context

The Commission proposal for amendments to consumer rights aspects of the 2002 Electronic Communications Legislative package is one of three legislative reform proposals to amend the current regulatory framework which entered into force in 2002. The bulk of the reforms affect the universal services and users' rights directive, with a smaller number of changes to the ePrivacy directive, and one minor change to the consumer protection co-operation regulation.

There are two additional related reform proposals which cover changes to the other three electronic communication directives (authorisation, access and framework) and the proposed creation of a European electronic communications market authority (authority). The rapporteur has therefore collaborated closely with the rapporteurs of these reform proposals, to ensure a consistent regulatory approach.

Ensuring a high level of protection of consumers' and users' rights, including the right to privacy and data protection in electronic communications, is one of the crucial elements of an inclusive information society, enabling the smooth development and wide take-up of new innovative services and applications.

The present legislative reform proposal adapts the regulatory framework by strengthening certain consumers' and users' rights (in particular with a view to improving accessibility and promoting an inclusive information society), and ensuring that electronic communications are trustworthy, secure and reliable and provide a high level of protection for individuals' privacy and personal data.

The two objectives of the current proposal are as follows:

1) Strengthening and improving consumer protection and user rights in the electronic communication sector, through – among other aspects – providing consumers with more information about prices and supply conditions, and facilitating access to and use of e-communications, including services for disabled users. In these aspects, the rapporteur has worked closely with the internal market committee, which has the status of leading committee under rule 47 of Parliament's rules of procedure. The rapporteur has therefore not amended in this regard.

2) Enhancing the protection of individuals' privacy and personal data in the electronic communication sector, in particular through a new data breach notification requirement and improved enforcement mechanisms. On these particular issues the civil liberties, justice and home affairs committee has been declared competent and responsible due to rule 47 of Parliament's rules of procedure. In agreement with the rapporteur in the leading internal market committee the rapporteur has purely focussed his work on the matters within the competences of the civil liberties, justice and home affairs committee. The rapporteur wishes to highlight the extremely positive way the internal market committee and the Civil Liberties, Justice and Home Affairs Committee have worked together.

The main approach taken by the rapporteur

The rapporteur has proposed a number of amendments to the following areas of the proposals, with the broad aim of simplifying, clarifying and strengthening the provisions.

Although the opinion of the Article 29 Working Party could not be taken into account due to time constraints the rapporteur has taken into account the opinion delivered by the European Data Protection Supervisor on these matters and has implemented the suggestions given by the competent body.

In particular:

- Included latest developments in member states data protection laws and court rulings on data protection
- Included the suggestions made in the opinion of the European Data Protection Supervisor, especially with regard to
- the inclusion of private electronic communications networks
- the enabling of legal persons to take legal action for infringement of any provision of the ePrivacy directive
- Added a clarification by what means traffic data must be considered as personal data with regards to Article 2 of Directive 95/46/EC
- Specified the Commissions proposal to security breach notifications to enhance legal certainty on this sensitive issue
- Pointed out that the European Union ENISA is the proper body to handle matters related to network security
- Clarified that spyware, trojans and other malicious software may also come from storage mediums like CD-ROMs, USB-Sticks, etc.
- Covered technologies which have emerged since directive 2002/58/EC has been put into force
- Enhanced consumer protection by making it obligatory that certain actions require prior consent by users

The rapporteur commends these proposals to the Committee and is open to further suggestions to enhance these useful reforms.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) This Directive provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the right to confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communication sector

and to ensure the free movement of such data and of electronic communication equipment and services in the Community.

Amendment 2

Proposal for a directive – amending act Recital 26 b (new)

Text proposed by the Commission

Amendment

(26b) When defining the implementing measures on the security of processing, in accordance with the regulatory procedure with scrutiny, the Commission shall involve all relevant European authorities and organisations (ENISA, EDPS and the Article 29 Working Party) as well as all relevant stakeholders, particularly in order to be informed on best available solutions, both technically and economically, appropriate for improving the implementation of this Directive.

Amendment 3

Proposal for a directive – amending act Recital 26 c (new)

Text proposed by the Commission

Amendment

(26c) The provisions of this Directive particularise and complement Directive 95/46/EC and provide for the legitimate interests of subscribers who are natural or legal persons.

Amendment 4

Proposal for a directive – amending act Recital 27

Text proposed by the Commission

Amendment

(27) Liberalisation of electronic

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communications networks and services markets and rapid technological development have combined to boost competition and economic growth and resulted in a rich diversity of end-user services accessible via public electronic communications networks. ***There is a need to ensure that consumers and users are afforded the same level of protection of privacy and personal data, regardless of the technology used to deliver a particular service.***

Amendment 5

Proposal for a directive – amending act Recital 28 a (new)

Text proposed by the Commission

communications networks and services markets and rapid technological development have combined to boost competition and economic growth and resulted in a rich diversity of end-user services accessible via public ***and private*** electronic communications networks ***and publicly accessible private networks.***

Amendment

(28a) For the purpose of this Directive, Internet Protocol addresses shall be considered as personal data only if they can be directly linked to an individual alone or in conjunction with other data.

Within the next two years the Commission should propose specific legislation on the legal handling of Internet Protocol addresses as personal data within the framework of data protection following consultation of the Article 29 Working Party and the European Data Protection Supervisor.

Amendment 6

Proposal for a directive – amending act Recital 28 b (new)

Text proposed by the Commission

Amendment

(28b) The provider of a publicly available electronic communications service should take appropriate technical and organisational measures to ensure the

security of its services. Without prejudice to the provisions of Directive 95/46/EC and 2006/24/EC such measures should ensure that personal data can be accessed only by authorised personnel for strictly legally authorised purposes and that the personal data stored or transmitted as well as the network and services are protected. Moreover a security policy with respect to the processing of personal data should be established in order to identify vulnerabilities in the system; regular monitoring and preventive, corrective and mitigating action should be carried out.

Amendment 7

Proposal for a directive – amending act Recital 28 c (new)

Text proposed by the Commission

Amendment

(28c) National regulatory authorities should monitor the measures taken and disseminate best practices and performances among publicly available electronic communications services.

Amendment 8

Proposal for a directive – amending act Recital 29

Text proposed by the Commission

Amendment

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, ***subscribers concerned by such security incidents*** should be notified without delay ***and informed in order to be able to take the necessary precautions***. The notification should include information about measures taken by the provider to

(29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, ***the national regulatory authority or competent authority*** should be notified without delay. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users

address the breach, as well as recommendations for the users affected.

affected. ***The competent authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious the competent authority shall require the provider of publicly available electronic communications service and the provider of information society services to give an appropriate notification without undue delay to the persons affected by the breach.***

Amendment 9

Proposal for a directive – amending act Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) Article 15(1) of this Directive is to be construed as meaning that disclosure of personal data in the context of Article 8 of Directive 2004/48 shall be without prejudice to this Directive or Directive 1995/46 where it takes place following a justified, i.e. sufficiently well-founded, and proportionate request in accordance with procedures laid down by the Member States, which guarantee that these safeguards are respected.

Justification

Article 8, Directive 2004/48 on the enforcement of intellectual property rights relates to disclosure of information, which may involve data protected under this Directive (2002/58) and/or Directive 1995/46. It is clear from Article 15(1) of this Directive and Article 13(1)(g) of Directive 1995/46 that such disclosure may take place, as it is necessary to protect the rights and freedoms of third parties. In view of recent case-law it seems relevant to clarify at EU-level the relationship between the specific disclosure provision in Article 8 of Directive 2004/48 and the provisions of this Directive, and thereby increase legal certainty for all parties.

Amendment 10

**Proposal for a directive – amending act
Recital 30 b (new)**

Text proposed by the Commission

Amendment

(30b) When implementing measures transposing Directive 2002/58/EC, the authorities and courts of the Member States shall not only interpret their national law in a manner consistent with that Directive but also make sure that they do not rely on an interpretation of that Directive which would be in conflict with other fundamental rights or general principles of Community law, such as the principle of proportionality.

Justification

This amendment takes account of the Court of Justice judgment of 29 January 2008 in the Promusicae v Telefónica case, which reaffirms that Member States must interpret the directive in a manner that does not conflict with other fundamental rights or general principles of law. This constitutes a guarantee for the protection of the rights and freedoms of others.

Amendment 11

**Proposal for a directive – amending act
Recital 33**

Text proposed by the Commission

Amendment

(33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment. ***In particular, it should contribute to harmonisation of appropriate technical and organisational security measures.***

(33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment.

Amendment 12

**Proposal for a directive – amending act
Recital 34**

Text proposed by the Commission

(34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user’s terminal equipment for the benefit of a third party (so-called “spyware”) poses a serious threat to users’ privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs, USB keys.

Amendment

(34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user’s terminal equipment for the benefit of a third party (so-called “spyware”) poses a serious threat to users’ privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs, USB keys. ***Member States shall encourage end-users to take the necessary steps to protect their terminal equipment against viruses and spy ware.***

Justification

The terminal equipment is the weakest link in a network and, hence, should be well protected. End-users should understand the risks they face while surfing the internet, when they download and use software or data storage media.

Amendment 13

**Proposal for a directive – amending act
Recital 35**

Text proposed by the Commission

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers and thus defend the interests of their customers, as well as their

Amendment

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers ***for such infringements*** and thus defend the interests of their

own legitimate business interests.

customers, as well as their own legitimate business interests.

Amendment 14

Proposal for a directive – amending act Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) Where location data other than traffic data can be processed, such data may be processed only when they are made anonymous or with the prior consent of the users or subscribers concerned, who shall be given clear and comprehensive information on the possibility of withdrawing their consent to the processing of traffic data at any time.

Amendment 15

Proposal for a directive – amending act Recital 38 a (new)

Text proposed by the Commission

Amendment

(38a) The Commission should, provided that the Treaty of Lisbon enters into force present to the Council and to Parliament a new legislative proposal on privacy and data security in electronic communications, with a new legal basis.

Amendment 16

Proposal for a directive – amending act Article 2 - point -1 (new) Directive 2002/58/EC Article 1 - paragraph 1

Text proposed by the Commission

Amendment

***(-1) Article 1(1) shall be replaced by the following:
1. This Directive provides for the***

harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the right to confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communications equipment and services in the Community.

Amendment 17

Proposal for a directive – amending act

Article 2 - point -1 a (new)

Directive 2002/58/EC

Article 1 - paragraph 2

Text proposed by the Commission

Amendment

(-1a) Article 1(2) shall be replaced by the following:

2. The provisions of this Directive particularise and complement Directive 95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for protection of the legitimate interests of subscribers who are *natural or legal persons*.

Justification

The Directive mentions the specific interests of legal persons without taking consumers into account. Given that the main aim of this Directive is to protect the data and economic interests of natural persons a reference to those should be added.

Amendment 18

Proposal for a directive – amending act

Article 2 - point 2

Directive 2002/58/EC

Article 3

Text proposed by the Commission

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Community, including public communications networks supporting data collection and identification devices.

Amendment

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public **and private** communications networks **and publicly accessible private networks** in the Community, including public **and private** communications networks **and publicly accessible private networks** supporting data collection and identification devices.

Justification

Since there is a tendency of services increasingly becoming a mixture of public and private ones it is necessary to broaden the scope of the Directive. This amendment follows the recommendations of the Article 29 Working Party adopted on 26 September 2006 and the opinion of the European Data Protection Supervisor on this amending Directive.

Amendment 19

Proposal for a directive – amending act

Article 2 - point 3 - point a a (new)

Directive 2002/58/EC

Article 4 - paragraphs 1 a and 1 b (new)

Text proposed by the Commission

Amendment

(aa) The following paragraphs shall be inserted:

"1a. Without prejudice to the provisions of Directive 95/46/EC and 2006/24/EC these measures shall include:

- Appropriate technical and organisational measures to ensure that personal data can be accessed only by authorised personnel for strictly legally authorised purposes and to protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure

- appropriate technical and organisational measures to protect the network and services against accidental, unlawful or unauthorised usage or interference with or hindering of their functioning or availability.

- a security policy with respect to the processing of personal data

- a process for identifying and assessing reasonably foreseeable vulnerabilities in the systems maintained by the provider of electronic communications services, which shall include regular monitoring for security breaches

- a process for taking preventive, corrective and mitigating action against any vulnerabilities discovered in the process described under the fourth indent and a process for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach.

1b. National regulatory authorities shall have the power to audit the measures taken by providers of publicly available electronic communication services and of information society services and issue recommendations about best practices and performance indicators concerning the level of security which these measures should achieve."

Justification

National regulators should monitor the taken measures and spread best practices and performances among publicly available electronic communication services.

Amendment 20

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3

Text proposed by the Commission

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify ***the subscriber concerned and*** the national regulatory authority of such a breach. The notification to the ***subscriber*** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

Amendment

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community ***which is likely to cause harm to users***, the provider of publicly available electronic communications services, ***as well as any company operating on the Internet and providing services to consumers, which is the data controller and the provider of information society services*** shall, without undue delay, notify the national regulatory authority ***or the competent authority according to the individual law of the Member State*** of such a breach. The notification to the ***competent authority*** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the ***competent authority*** shall, in addition, describe the consequences of and the measures taken by the provider to address the breach. ***The provider of publicly available electronic communications services, as well as any company operating on the internet and providing services to the consumers which is the data controller and the provider of information society services, shall notify their users beforehand if they deem it necessary to avoid imminent and direct danger to consumer's rights and interests.***

Amendment 21

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3 a (new)

3a. The competent authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious the competent authority shall require the provider of publicly available electronic communications service and the provider of information society services to give an appropriate notification without undue delay the persons affected by the breach. The notification shall contain the elements described in paragraph 3.

The notification of a serious breach may be postponed in cases where the notification may hinder the progress of a criminal investigation related to the serious breach.

In their annual reports providers shall notify affected users of all breaches of security that have led to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community.

National regulatory authorities shall also monitor whether companies have complied with their notification obligations under this Article and impose appropriate sanctions, including publication, as appropriate, in the event of a breach.

Amendment 22

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. The seriousness of a breach requiring notification to subscribers shall be determined according to the circumstances of the breach, such as the risk to the personal data affected by the breach, the type of data affected by the breach, the number of subscribers involved, and the immediate or potential impact of the breach on the provision of services.

Justification

For clarity reasons the conditions under which a breach of security shall be considered as a serious breach and therefore justify a notification to the subscriber shall be laid down in this directive.

Amendment 23

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 3 c (new)

Text proposed by the Commission

Amendment

3c. The breach shall not be determined to be serious and the provider of publicly available electronic communications services and the provider of information society services shall be exempt from the requirement to provide notification to the persons concerned, if they can demonstrate that there is no reasonable risk to the personal data affected by the breach due to the use of appropriate technological protection measures.

The technological protection measures in the event of accidental or unlawful loss, alteration, unauthorized disclosure of or access to personal data which are transmitted or stored would either render the data unintelligible to any third party, or in the event of accidental or unlawful

loss the technological protection measures would render the personal data available to the provider of publicly available electronic communication services and the provider of information society services.

Amendment 24

Proposal for a directive – amending act

Article 2 - point 3 - point b

Directive 2002/58/EC

Article 4 - paragraph 4 –, subparagraph 1

Text proposed by the Commission

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission **may**, following consultation with **the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”)**, and the European Data Protection Supervisor, **adopt** technical implementing measures concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.

Amendment

4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3 **a-c**, the Commission **shall**, following consultation with the European Data Protection Supervisor, **the relevant stakeholders and ENISA, recommend** technical implementing measures concerning *inter alia* the **measures described in paragraph 1a and the** circumstances, format and procedures applicable to information and notification requirements referred to in **paragraph 3a and 3b**.

The Commission shall involve all relevant stakeholders, particularly in order to be informed on best available solutions, both technically and economically, appropriate for improving the implementation of this Directive.

Justification

The Authority shall have the task to recommend but not to adopt measures in this regard.

Amendment 25

Proposal for a directive – amending act

Article 2 - point 4

Directive 2002/58/EC

Article 5 - paragraph 3

Text proposed by the Commission

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user **is only allowed on condition that** the subscriber or user concerned is provided with clear and comprehensive information in accordance with Directive 95/46/EC, *inter alia* about the purposes of the processing and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out **or facilitating** the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

Amendment 26

Proposal for a directive – amending act

Article 2 - point 4 a (new)

Directive 2002/58/EC

Article 6 - paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user, **either directly or indirectly by means of any kind of storage medium, is prohibited unless the subscriber or user concerned has given his/her prior consent, taking into account that respective browser settings constitute prior consent, and** is provided with clear and comprehensive information in accordance with Directive 95/46/EC, *inter alia* about the purposes of the processing and is offered the right to refuse such processing and is offered the right to refuse such processing by data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communication network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

Amendment

(4a) Article 6(3) shall be replaced by the following:

“3. For the purpose of marketing electronic communications services or for the provision of value added services, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services or marketing, if the subscriber or user to

whom the data relate has given his/her prior consent. Users or subscribers shall be given the possibility of withdrawing their consent for the processing of traffic data at any time.”

Justification

Specifying that the user should consent before any processing takes place better ensures compliance with this obligation.

Amendment 27

Proposal for a directive – amending act

Article 2 - point 4 b (new)

Directive 2002/58/EC

Article 6 - paragraph 6a (new)

Text proposed by the Commission

Amendment

(4b) In Article 6 the following paragraph 6a is added:

6a. Traffic data may be processed by any natural or legal person for the purpose of implementing technical measures to ensure the security of a public electronic communication service, a public or private electronic communications network, an information society service, or related terminal and electronic communication equipment. Such processing must be restricted to that which is strictly necessary for the purposes of such security activity.

Amendment 28

Proposal for a directive – amending act

Article 2 - point 4 c (new)

Directive 2002/58/EC

Article 12 - paragraph 2

Text proposed by the Commission

Amendment

(4c) Article 12, paragraph 2, is amended as follows:

2. Member States shall ensure that all

end-users of electronic communications services and networks have their information included in directory databases and are expressly asked at the time of requesting the service, and at regular intervals thereafter, how they wish the relevant information concerning them to be included in such databases. End-users shall also be offered the option of having certain information included in the databases but not disclosed to users of directory services, and of verifying, correcting or withdrawing such data. Not being included in a public subscriber directory, verifying, correcting or withdrawing personal data from it shall be free of charge.

Justification

Directory enquiry services are of crucial importance, particularly to disabled and elderly users (as is recognised in the Universal Services Directive). The inclusion of information on end-users is, in many cases, made difficult by the fact that operators are unaccustomed to seeking consent. This is particularly true of alternative fixed-line network operators and mobile network operators. In Member States which have not legislated in this area, end-user data – particularly for mobile-network customers – are only very rarely included.

Amendment 29

Proposal for a directive – amending act

Article 2 - point -5 a (new)

Directive 2002/58/EC

Article 13 - paragraph 1

Text proposed by the Commission

Amendment

(-5a) Article 13(1) shall be replaced by the following:

1. The use of automated calling and communication systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail (including short message services (SMS) and multi media services (MMS)) for the purposes of direct marketing may be allowed *only* in respect of subscribers who have given

their prior consent.

Amendment 30

Proposal for a directive – amending act

Article 2 - point -5 b (new)

Directive 2002/58/EC

Article 13, paragraph 4

Text proposed by the Commission

Amendment

(-5b) Article 13(4) shall be replaced by the following:

“4. In any event, the practice of sending electronic mail for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or in contravention of Article 6 of Directive 2000/31/EC, or that contain links to sites that have a malicious or fraudulent intent, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited.”

Justification

In addition to the regulations in the e-Communications and Privacy Directive (2002/58/EC), the e-Commerce Directive (2000/31/EC) lays down clear rules on the information which must be provided by a sender of electronic commercial communications.

Amendment 31

Proposal for a directive – amending act

Article 2 - point 5

Directive 2002/58/EC

Article 13, paragraph 6

Text proposed by the Commission

Amendment

6. Without prejudice to any administrative remedy for which provision may be made, *inter alia* under Article 15 (a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national

6. Without prejudice to any administrative remedy for which provision may be made, *inter alia* under Article 15 (a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national

provisions adopted pursuant to this *Article*, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

provisions adopted pursuant to this *Directive*, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

Justification

The new Article 13 Paragraph 6 provides civil law remedies for any individual or legal person particularly for electronic communication service providers to fight infringements of Article 13 of the ePrivacy Directive which deals with spam. In line with the opinion of the European Data Protection Supervisor the rapporteur does not see the rationale for this new capability to be limited to the infringement of Article 13 and therefore suggests to enable legal persons to take legal actions for infringement of any provision of the ePrivacy Directive.

Amendment 32

Proposal for a directive – amending act

Article 2 - point 5 a (new)

Directive 2002/58/EC

Article 14 - paragraph 1

Text proposed by the Commission

Amendment

(5a) In Article 14, paragraph 1 shall be replaced by the following:

1. In implementing the provisions of this Directive, Member States shall ensure, subject to paragraphs 2 and 3, that no mandatory requirements for specific technical features, *including, without limitation, for the purpose of detecting, intercepting or preventing infringement of intellectual property rights by users*, are imposed on terminal or other electronic communication equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.

Amendment 33

Proposal for a directive – amending act

Article 2 - point 5 b (new)

Directive 2002/58/EC

Article 14 - paragraph 3

Text proposed by the Commission

Amendment

(5a) In Article 14, paragraph 3 shall be replaced by the following:

3. Where required, measures may be adopted to ensure that terminal equipment is constructed in a way that is compatible with the right of users to protect and control the use of their personal data, in accordance with Directive 1999/5/EC and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and communications. Such measures shall respect the principle of technology neutrality

Amendment 34

Proposal for a directive – amending act

Article 2 - point 6 a (new)

Directive 2002/58/EC

Article 15 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

(6a) In Article 15, the following paragraph 1a shall be added:

1a. Providers of publicly available communications services and providers of Information society services shall notify the Independent data protection authorities, without undue delay, of all requests for access to users' personal data received pursuant to Article 15 par. 1, including the legal justification given and the legal procedure followed for each request; the Independent data protection authority concerned shall notify the appropriate judicial authorities of those cases in which it deems that the

established provisions, of national law, have not been followed.

Amendment 35

Proposal for a directive – amending act

Article 2 - point 7

Directive 2002/58/EC

Article 15 a- paragraph 1

Text proposed by the Commission

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [time limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Amendment

1. Member States shall lay down the rules on penalties - ***including penal sanctions, where appropriate*** - applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [time limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Amendment 36

Proposal for a directive – amending act

Article 2 - point 7

Directive 2002/58/EC

Article 15a - paragraph 4 – subparagraph 1

Text proposed by the Commission

4. In order to ensure effective cross-border co-operation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt technical implementing measures, following consultation with ***the Authority*** and the relevant regulatory authorities.

Amendment

4. In order to ensure effective cross-border co-operation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt technical implementing measures, following consultation with ***ENISA, the Article 29 Working Party*** and the relevant regulatory authorities.

Amendment 37

Proposal for a directive – amending act

Article 2 - point 7 a (new)

Directive 2002/58/EC

Article 18

Text proposed by the Commission

Amendment

(7a) Article 18 shall be replaced by the following:

18. The Commission shall submit to the European Parliament and the Council, not later than *two* years after the *entry into force of this Directive, after consulting the Article 29 Working Party and the European Data Protection Supervisor*, a report on the application of this Directive and its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, *breach notifications, and the use of personal data by third parties - public or private - for purposes not covered by this Directive*, taking into account the international environment. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay. Where appropriate, the Commission shall submit proposals to amend this Directive, taking account of the results of that report, any changes in the sector *and the Treaty of Lisbon, in particular the new competences in matters of data protection as laid down in Article 16*, and any other proposal it may deem necessary in order to improve the effectiveness of this Directive.

PROCEDURE

Title	Electronic communications networks and services, protection of privacy and consumer protection			
References	COM(2007)0698 – C6-0420/2007 – 2007/0248(COD)			
Committee responsible	IMCO			
Opinion by Date announced in plenary	LIBE 10.12.2007			
Associated committee(s) - date announced in plenary	13.3.2008			
Drafts(wo)man Date appointed	Alexander Alvaro 31.1.2008			
Discussed in committee	27.3.2008	5.5.2008	9.6.2008	25.6.2008
Date adopted	25.6.2008			
Result of final vote	+: 45	-: 2	0: 2	
Members present for the final vote	Alexander Alvaro, Mario Borghezio, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Giusto Catania, Jean-Marie Cavada, Elly de Groen-Kouwenhoven, Panayiotis Demetriou, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Claudio Fava, Armando França, Urszula Gacek, Kinga Gál, Patrick Gaubert, Roland Gewalt, Lilli Gruber, Jeanine Hennis-Plasschaert, Livia Járóka, Ewa Klant, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Roselyne Lefrançois, Baroness Sarah Ludford, Claude Moraes, Javier Moreno Sánchez, Rareş-Lucian Niculescu, Martine Roure, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka			
Substitute(s) present for the final vote	Simon Busuttil, Maria da Assunção Esteves, Anne Ferreira, Ignasi Guardans Cambó, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Metin Kazak, Jean Lambert, Marianne Mikko, Bill Newton Dunn, Nicolae Vlad Popa			
Substitute(s) under Rule 178(2) present for the final vote	Iles Braghetto, Syed Kamall			