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*****I**

SECOND REPORT

on the proposal for a European Parliament and Council directive concerning the processing of personal data and the protection of privacy in the electronic communications sector
((COM(2000) 385 – C5-0439/2000 – 2000/0189(COD))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Marco Cappato

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 25 August 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 95 of the EC Treaty, the proposal for a European Parliament and Council directive concerning the processing of personal data and the protection of privacy in the electronic communications sector (COM(2000) 385 - 2000/0189 (COD)).

At the sitting of 8 September 2000 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Budgets, the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy and Committee on the Environment, Public Health and Consumer Policy for their opinions (C5-0439/2000).

At the sitting of 6 October 2000 the President of Parliament announced that the Committee on Industry, External Trade, Research and Energy, which had been asked for its opinion, would be involved in drawing up the report, under the Hughes Procedure.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Marco Cappato rapporteur at its meeting of 29 August 2000.

It considered the Commission proposal and draft report at its meetings of 4 December 2000 and 19 June and 11 July 2001.

At the last meeting it adopted the draft legislative resolution by 22 votes to 12, with 5 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans and Enrico Ferri, vice-chairmen; Marco Cappato, rapporteur; Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Gerhard Schmid), Ozan Ceyhun, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Adeline Hazan, Jorge Salvador Hernández Mollar, Anna Karamanou, Sylvia-Yvonne Kaufmann (for Pernille Frahm), Margot Keßler, Timothy Kirkhope, Eva Klamt, Alain Krivine (for Fodé Sylla), Klaus-Heiner Lehne (for Mary Elizabeth Banotti), Luís Marinho (for Sérgio Sousa Pinto), Iñigo Méndez de Vigo (for Daniel J. Hannan), Hartmut Nassauer, Arie M. Oostlander (for Carlos Coelho), Elena Ornella Paciotti, Paolo Pastorelli, Hubert Pirker, Martine Roure (for Martin Schulz), Amalia Sartori (for Marcello Dell'Utri), Ingo Schmitt (for Bernd Posselt), Ilka Schröder (for Alima Boumediene-Thiery), Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Astrid Thors (for Baroness Sarah Ludford), Maurizio Turco (for Frank Vanhecke), Gianni Vattimo, Christian Ulrik von Boetticher and Jan-Kees Wiebenga.

The opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Industry, External Trade, Research and Energy and the Committee on the Environment, Public Health and Consumer Policy were attached; the Committee on Budgets decided on 14 September 2000 not to deliver an opinion.

The report was tabled on 13 July 2000 (A5-0270/2001).

At the sitting of 6 September 2001 the question was referred back to committee under Rule 68, paragraph 3.

At its meetings of 10 October and 22 October 2001 it considered the draft second report.

At the latter meeting it adopted the draft legislative resolution by 23 votes to 14.

The following were present for the vote : Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Bernd Posselt, vice-chairman; Marco Cappato, rapporteur; Alima Boumediene-Thiery, Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Ozan Ceyhun), Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Enrico Ferri pursuant to Rule 153(2)), Pernille Frahm, Evelyne Gebhardt (for Adeline Hazan), Daniel J. Hannan, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Timothy Kirkhope, Eva Klamt, Baroness Sarah Ludford, Lucio Manisco (for Fodé Sylla), Luís Marinho (for Gerhard Schmid), Juan Andrés Naranjo Escobar (for Mary Elizabeth Banotti), Arie M. Oostlander (for Marcello Dell'Utri), Elena Ornella Paciotti, Paolo Pastorelli, Martine Roure (for Joke Swiebel), Agnes Schierhuber (for Hubert Pirker pursuant to Rule 153(2)), Patsy Sörensen, Anna Terrón i Cusí, Astrid Thors (for Bertel Haarder pursuant to Rule 153(2)), Maurizio Turco (for Frank Vanhecke), Anne E.M. Van Lancker (for Martin Schulz), Gianni Vattimo and Christian Ulrik von Boetticher.

The second report was tabled on 24 October 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council directive concerning the processing of personal data and the protection of privacy in the electronic communications sector ((COM(2000) 385 – C5-0439/2000 – 2000/0189) – C5-049/2000 – 2000/0189(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1
Citation 4a (new)

having regard to Articles 7 and 8 of the European Union Charter of Fundamental Rights, proclaimed in Nice on 7 December 2000, which seek to guarantee respect for private life and communications, including personal data,

Justification

The above reference is necessary owing to the fact that data protection is explicitly provided for in the Charter of Fundamental Rights. This amendment has been adopted in plenary on 6 September 2001.

Amendment 2
Recital 5a (new)

(5a) Information that is part of a broadcasting service provided over a public communications network is intended for a potentially unlimited audience and does not constitute a communication in the sense of this Directive. However in cases where the individual subscriber or user receiving such information can be identified, for example with video-on-demand services, the information conveyed is covered within the meaning of a communication

¹ OJ C 365, 19.12.2000, p. 223.

for the purposes of this Directive.

Justification

The above amendments clarifies the position of on-demand transmissions. This amendment has been adopted in plenary on 6 September 2001.

Amendment 3
Recital 8

(8) The Member States, providers and users concerned, together with the competent Community bodies, should cooperate in introducing and developing the relevant technologies where this is necessary to apply the guarantees provided for by this Directive **and taking particular account of the objectives of minimising the processing of personal data and of using anonymous or pseudonymous data where possible.**

(8) The Member States, providers and users concerned, together with the competent Community bodies, should **ensure that the processing of personal data is limited to a minimum and uses anonymous or pseudonymous data wherever possible, and must** cooperate in introducing and developing the relevant technologies where this is necessary to apply the guarantees provided for by this Directive.

Justification

This wording insists on the priority that protection of personal information must enjoy, compared to the rather weak formulation in the Commission's proposal This amendment has been adopted in plenary on 6 September 2001.

Amendment 4
Recital 10

(10) Like Directive 95/46/EC, this Directive does not **address** issues of protection of fundamental rights and freedoms related to activities which are not governed by Community law. **It is for Member States to take such measures as**

(10) Like Directive 95/46/EC, this Directive **addresses** issues of protection of fundamental rights and freedoms, related to activities which are governed by Community law. **In taking measures for the protection of public security, defence,**

are necessary for the protection of public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) *and* the enforcement of criminal law. ***This Directive does not affect the ability of Member States to carry out lawful interception of electronic communications if necessary for any of these purposes.***

State security (including the economic well-being of the State when the activities relate to State security matters), the enforcement of criminal law, ***and in carrying out lawful interception of electronic communications if necessary for any of these purposes, Member States have to act on the basis of a specific law which is comprehensible to the general public, and the measures have to be entirely exceptional, authorised by the judicial or competent authorities for individual cases and for a limited duration, appropriate, proportionate and necessary within a democratic society. Under the European Convention on Human Rights and pursuant to rulings issued by the Court of Human Rights, any form of wide-scale general or exploratory electronic surveillance is prohibited.***

Justification

This wording highlights the need to show respect for fundamental rights in the field of data protection, in accordance with European case-law. This amendment has been adopted in plenary on 6 September 2001.

Amendment 5 Recital 13

(13) Service providers should take appropriate measures to safeguard the security of their services, if necessary in conjunction with the provider of the network, and inform subscribers of any special risks of a breach of the security of the network. Such risks may especially occur for electronic communications services over an open network such as the Internet. It is particularly important for subscribers and users of such services to be fully informed by their service provider of the existing security risks which are outside the scope of possible remedies by

(13) Service providers should take appropriate measures to safeguard the security of their services, if necessary in conjunction with the provider of the network, and inform subscribers of any special risks of a breach of the security of the network. Such risks may especially occur for electronic communications services over an open network such as the Internet or ***mobile telephony***. It is particularly important for subscribers and users of such services to be fully informed by their service provider of the existing security risks which are outside the scope

the service provider. Service providers who offer publicly available electronic communications services over the Internet should inform users and subscribers of measures they can take to protect the security of their communications for instance by using specific types of software or encryption technologies. Security is appraised in the light of Article 17 of Directive 95/46/EC.

of possible remedies by the service provider. ***Service providers shall be obliged to notify subscribers about the type of traffic data being processed and their right to refuse such processing.*** Service providers who offer publicly available electronic communications services over the Internet should inform users and subscribers of measures they can take to protect the security of their communications for instance by using specific types of software or encryption technologies. Security is appraised in the light of Article 17 of Directive 95/46/EC. ***The requirement to inform subscribers of particular security risks does not discharge a service provider from the obligation to take, at his own costs, appropriate and immediate measures to remedy any new, unforeseen security risks and restore the normal security level of the service. The provision of information about security risks to the subscriber should be free of charge except for any nominal costs which the subscriber may incur while receiving or collecting the information, for instance by downloading an electronic mail message.***

Justification

It is deemed indispensable to include a reference to the medium of mobile telephony and to users' rights in the proposal for a directive. This amendment has been adopted in plenary on 6 September 2001.

Amendment 6 Recital 14

(14) Measures should be taken to prevent unauthorised access to communications in order to protect the confidentiality of communications, including both the contents and any data related to such

(14) Measures should be taken to prevent unauthorised access to communications in order to protect the confidentiality of communications, including both the contents and any data related to such

communications, by means of public communications networks and publicly available electronic communications services. ***National legislation in some Member States only prohibits intentional unauthorised access to communications.***

communications, by means of public communications networks and publicly available electronic communications services. ***These measures should include the facilitation of proven cryptography and anonymisation or pseudonymisation tools.***

Justification

Effective protection cannot rely on legal measures only, whatever their scope. The general availability of adequate tools must be ensured. This amendment has been adopted in plenary on 6 September 2001.

Amendment 7 Recital 15

(15) The data relating to subscribers processed within electronic communications networks to establish connections and to transmit information contain information on the private life of natural persons who have a right to respect for their correspondence. The legitimate interests of legal persons should also be protected. Such data may only be stored to the extent that is necessary for the provision of the service for the purpose of billing and for interconnection payments, and for a limited time. Any further processing of such data which the provider of the publicly available electronic communications services may want to perform for the marketing of ***its own*** electronic communications services or for the provision of value added services, may only be allowed if the subscriber has agreed to this on the basis of accurate and full information given by the provider of the publicly available electronic communications services about the types of further processing it intends to perform and about the subscriber's right not to give or to withdraw his consent to such processing.

(15) The data relating to subscribers processed within electronic communications networks to establish connections and to transmit information contain information on the private life of natural persons who have a right to respect for their correspondence. The legitimate interests of legal persons should also be protected. Such data may only be stored to the extent that is necessary for the provision of the service for the purpose of billing and for interconnection payments, and for a limited time. Any further processing of such data which the provider of the publicly available electronic communications services may want to perform for the marketing of electronic communications services or for the provision of value added services, may only be allowed if the subscriber has agreed to this on the basis of accurate and full information given by the provider of the publicly available electronic communications services about the types of further processing it intends to perform and about the subscriber's right not to give or to withdraw his consent to such processing.

Traffic data used for marketing of *own* communications services or for the provision of value added services should also be erased or made anonymous after the provision of the service. Service providers should always keep subscribers informed of the types of data they are processing and the purposes and duration for which this is done.

Traffic data used for marketing of communications services or for the provision of value added services should also be erased or made anonymous after the provision of the service. Service providers should always keep subscribers informed of the types of data they are processing and the purposes and duration for which this is done.

Value added services may for instance consist of advice on least expensive tariff packages, route guidance, traffic information, weather forecasts and tourist information.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001.

Amendment 8 Recital 15a (new)

(15a) For the purposes of this Directive consent of a user or subscriber, regardless of whether the latter is a natural or a legal person, should have the same meaning as the data subject's consent as defined and otherwise determined within Directive 95/46/EC.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001.

Amendment 9 Recital 15b (new)

(15b) The prohibition of storage of

communications and the related traffic data by others than the users or without their consent is not intended to prohibit any automatic, intermediate and transient storage of this information in so far as this takes place for the sole purpose of carrying out the transmission in the electronic communications network and provided that the information is not stored for any period longer than is necessary for the transmission and for traffic management purposes, and that during the period of storage the confidentiality remains guaranteed. Where this is necessary for making more efficient the onward transmission of any publicly accessible information to other recipients of the service upon their request, this Directive should not prevent that such information may be further stored, provided that this information would in any case be accessible to the public without restriction and that any data referring to the individual subscribers or users requesting such information are erased.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001.

Amendment 10
Recital 15c (new)

(15c) Confidentiality of communications should also be ensured in the course of

lawful business practice. Where necessary and legally authorised, communications can be recorded for the purpose of providing evidence of a commercial transaction. Directive 95/46/EC applies to such processing. Parties to the communications should be informed prior to the recording about the recording, its purpose and the duration of its storage. The recorded communication should be erased as soon as possible and in any case at the latest by the end of the period during which the transaction can be lawfully challenged.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001.

Amendment 11

Recital 16

(16) The introduction of itemised bills has improved the possibilities for the subscriber to check the accuracy of the fees charged by the service provider but, at the same time, it may jeopardise the privacy of the users of publicly available electronic communications services. Therefore, in order to preserve the privacy of the user, Member States should encourage the development of electronic communication service options such as alternative payment facilities which allow anonymous or strictly private access to publicly available electronic communications services, for example calling cards and facilities for payment by credit card.

(16) The introduction of itemised bills has improved the possibilities for the subscriber to check the accuracy of the fees charged by the service provider but, at the same time, it may jeopardise the privacy of the users of publicly available electronic communications services. Therefore, in order to preserve the privacy of the user, Member States should encourage the development of electronic communication service options such as alternative payment facilities which allow anonymous or strictly private access to publicly available electronic communications services, for example calling cards and facilities for payment by credit card. ***Alternatively, Member States may require the deletion of a certain number of digits from the called numbers mentioned in itemised bills.***

Justification

This recital reinserts part of Recital 18 of Directive 97/66/EC on the deletion of digits. This amendment has been adopted in plenary on 6 September 2001.

Amendment 12
Recital 17a (new)

(17a.) Whether the consent to be obtained for the processing of personal data in view of providing a particular value added service must be that of the user or of the subscriber, will depend on the data to be processed and on the type of service to be provided and on whether it is technically, procedurally and contractually possible to distinguish the individual using an electronic communications service from the legal or natural person having subscribed to it.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001.

Amendment 13
Recital 18, last sentence

The privacy options which are offered on a per-line basis do not necessarily have to be available as an automatic network service but may be obtainable through a simple request to the provider of the publicly available electronic communications service.

The privacy options which are offered on a per-line basis do not necessarily have to be available as an automatic network service but may be obtainable **free of charge** through a simple **and standardised** request to the provider of the publicly available electronic communications service.

Justification

These privacy options are an essential right and not a "value added service". The need to be able to use them on all kinds of networks or origination points (public payphones, third-party lines, etc.) means that it must be possible for them to be activated with identical codes on all networks. This amendment has been adopted in plenary on 6 September 2001.

Amendment 14
Recital 18a (new)

(18a) Where the provider of an electronic communications service or of a value added service subcontracts the processing of personal data necessary for the provision of these services to another entity, this subcontracting and subsequent data processing must be in full compliance with the requirements regarding controllers and processors of personal data as set out in Directive 95/46/EC.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001.

Amendment 15
Recital 18b (new)

(18b) Where the provision of a value added service requires that traffic or location data are forwarded from an electronic communications service provider to a provider of value added services, the subscribers or users to whom the data are related should also be fully informed of this forwarding before giving their consent for the processing of the data.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment was adopted in plenary on 6 September 2001.

Amendment 16
Recital 20

(20) Directories of subscribers to electronic communications services are widely distributed and publicly available. The right to privacy of natural persons and the legitimate interest of legal persons require that subscribers ***are able to*** determine ***whether*** their personal data are published in a directory ***and, if so, which. Providers of public directories should inform the subscribers included in such directories of the purposes of the directory and of any particular usage which may be made of electronic versions of public directories especially through search functions embedded in the software, such as reverse search functions enabling users of the directory to discover the name and address of the subscriber on the basis of a telephone number only.***

(20) Directories of subscribers to electronic communications services are widely distributed and publicly available. The right to privacy of natural persons and the legitimate interest of legal persons require that subscribers ***shall be entitled, free of charge, to be omitted at his or her request or determine the extent to which*** their personal data are published in a directory.

Justification

The current legislation (Directive 97/66) is re-proposed as a satisfactory solution, because everyone is already entitled to have his or her personal data, mobile phone number or e-mail address taken out of the directories.

It is just necessary to specify that any request coming from the user for total or partial omission should be free of charge. For that reason the provision allowing operators to require a payment is deleted.

Amendment 17 Recital 20a (new)

(20a) The obligation to inform subscribers of the purpose(s) of public directories in which their personal data are to be included should be imposed on the party collecting the data for such inclusion. Where the data may be transmitted to one or more third parties, the subscriber should be informed of this possibility and of the recipient or the categories of possible recipients. Any transmission should be subject to the condition that the data may not be used for other purposes than those for which they were collected. If the party collecting the data from the subscriber or any third party to whom the data have been transmitted wishes to use the data for an additional purpose, the renewed consent of the subscriber must be obtained either by the initial party collecting the data or by the third party to whom the data have been transmitted

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001.

Amendment 18
Article 1, paragraph 3

3. This Directive shall not apply to activities which fall outside the scope of the EC Treaty, *such as those covered by Titles V and VI of the Treaty on European Union, and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law.*

3. This Directive shall not apply to activities which fall outside the scope of the EC Treaty.

Justification

Giving examples of activities which fall outside the scope of the EC Treaty is redundant, and inflexible with a view to any future changes to the Treaty. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 22).

Amendment 19
Article 2(b)

(b) 'traffic data' means any data processed *in the course of or* for the purpose of the *transmission* of a communication *over* an electronic communications network;

(b) 'traffic data' means any *personal* data processed for the purpose of the *conveyance* of a communication *on* an electronic communications network *or for the billing thereof*;

Justification

Compromise between the Council orientation and the Cappato report former amendment on the article. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 23).

Amendment 20
Article 2, paragraph 2 b

(b) 'traffic data' means any data processed in the course of or *for the purpose of* the transmission of a communication over an

(b) 'traffic data' means any data processed in the course of or *necessary to ensure* the transmission of a communication over an

electronic communications network;

electronic communications network;

Justification

This amendment makes it possible that service providers retain only what is generally necessary to ensure communication over an electronic network, which does not include transient storage of traffic data during transmission nor all the (additional) information that could be asked by various interested parties. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 56).

Amendment 21

Article 2(d)

(d) 'communication' means any **information exchanged or transmitted** between a finite number of parties by means of a publicly available electronic communications service;

(d) 'communication' means any **exchange or conveyance of information** between a finite number of parties by means of a publicly available electronic communications service.

This does not include any information conveyed as part of a broadcasting service to the public over an electronic communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information.

Justification

Compromise between the Council orientation and Cappato report amendment on the article. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 24).

Amendment 22
Article 2(f) and (g) (new)

(f) "value added service" means any service which requires the processing of traffic data or location data other than traffic data beyond what is necessary for the transmission of a communication or the billing thereof.

(g) "electronic mail" means any text, voice, sound or image message sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 25).

Amendment 23
Article 4, paragraph 2

2. In case of a particular risk of a breach of the security of the network, the provider of a publicly available electronic communications service must inform the subscribers concerning such risk and any possible remedies, including the costs involved.

2. In case of a particular risk of a breach of the security of the network, the provider of a publicly available electronic communications service must inform the subscribers concerning such risk and, ***where the risk is outside the scope of the measures to be taken by the service provider***, of any possible remedies, including ***an indication*** of the ***likely*** costs involved.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 26).

Amendment 24
Article 5, paragraph 1

1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data, by persons other than users, without the consent of the users concerned, except when legally authorised to do so, in accordance with Article 15(1).

1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data, by persons other than users, without the consent of the users concerned, except when legally authorised to do so, in accordance with Article 15(1). ***This paragraph shall not prevent technical storage which is necessary for the conveyance of a communication without prejudice to the principle of confidentiality.***

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 27).

Amendment 25
Article 5, paragraph 2

2. Paragraph 1 shall not affect any legally authorised recording of communications and the related traffic data in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication.

2. Paragraph 1 shall not affect any legally authorised recording of communications and the related traffic data in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication. ***Employment relationship and industrial relations are not to be regarded as business communication within the sense of this paragraph.***

Justification

Business communication should only encompass the operational activity of an organisation.

Amendment 26

Article 5, paragraph 2a (new)

2a. Member States shall prohibit the use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or user without the prior, explicit consent of the subscriber or user concerned. 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.

Justification

Terminal equipment of users of electronic communications networks and any information stored on such equipment are part of the private sphere of the users requiring protection under the European Convention for the Protection of Human Rights and Fundamental Freedoms. So-called cookies, spyware, web bugs, hidden identifiers and other similar devices that enter the users' terminal equipment without their explicit knowledge or explicit consent in order to gain access to information, to store hidden information or to trace the activities of the user may seriously intrude the privacy of these users. The use of such devices should therefore be prohibited unless the explicit, well-informed and freely given consent of the user concerned has been obtained. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 29).

Amendment 27

Article 6, paragraph 1

1. Traffic data relating to subscribers and users processed for the purpose of the

1. Traffic data relating to subscribers and users processed for the purpose of the

transmission of a communication and stored by the provider of a public communications network or service must be erased or made anonymous upon completion of the transmission, **without prejudice to the provisions** of paragraphs 2, 3 and 4.

transmission of a communication and stored by the provider of a public communications network or service must be erased or made **irreversibly** anonymous upon completion of the transmission, **with due regard for the requirements** of paragraphs 2, 3 and 4, **and so as to allow for proper implementation of paragraph 6.**

Justification

The need for further exploitation of data is not per se a legitimate reason for lifting the requirement of individual protection when alternative means exist such as pseudonymisation, statistical format, etc.

Amendment 28 Article 6, paragraph 3

3. For the purpose of marketing **its own** electronic communications services or for the provision of value added services **to the subscriber**, 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, if the subscriber has given his consent.

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 consent.

Justification

Council orientation (that already includes Cappato report amendment on the paragraph), except the last Council sentence on the possibility to withdraw consent; this right is already guaranteed by Article 14 of Directive 95/46/CE on the data subject's right to object. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 31).

Amendment 29
Article 6, paragraph 4

4. The service provider must inform the subscriber of the types of traffic data which are processed for the purposes mentioned in paragraphs 2 and 3 and of the duration of such processing.

4. The service provider must inform the subscriber **or user** of the types of traffic data which are processed and of the duration of such processing for the purposes mentioned in paragraph 2 and, **prior to obtaining consent**, for the purposes in paragraph 3.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 32).

Amendment 30
Article 6, paragraph 5

5. Processing of traffic data, in accordance with paragraphs 1 to 4, must be restricted to persons acting under the authority of providers of the public communications networks and services handling billing or traffic management, customer enquiries, fraud detection, marketing **the provider's own** electronic communications services or providing a value added service, and must be restricted to what is necessary for the purposes of such activities.

5. Processing of traffic data, in accordance with paragraphs 1 to 4, must be restricted to persons acting under the authority of providers of the public communications networks and services handling billing or traffic management, customer enquiries, fraud detection, marketing electronic communications services or providing a value added service, and must be restricted to what is necessary for the purposes of such activities.

Justification

Privacy should be protected irrespective of who owns the services marketed. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 33).

Amendment 31
Article 6, paragraph 6

6. Paragraphs 1, 2, 3 and 5 shall apply without prejudice to the possibility for competent **authorities** to be informed of traffic data in conformity with applicable legislation with a view to settling disputes, in particular interconnection or billing disputes.

6. Paragraphs 1, 2, 3 and 5 shall apply without prejudice to the possibility for competent **bodies** to be informed of traffic data in conformity with applicable legislation with a view to settling disputes, in particular interconnection or billing disputes

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 34).

Amendment 32
Article 9, Title and paragraph 1

Location data

1. Where **electronic communications networks are capable of processing** location data other than traffic data, relating to users or subscribers of their services, these data may only be processed when they are made anonymous, or with the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service.

Location data **other than traffic data**

1. Where location data other than traffic data, relating to users or subscribers of electronic communications networks or services **can be processed**, these data may only be processed when they are made anonymous, or with the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data other than traffic data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service. **Users or subscribers shall be given the possibility to withdraw their consent for the processing of location data other than traffic data at any time.**

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 35).

Amendment 33 Article 12, paragraph 1

1. Member States shall ensure that subscribers are informed, free of charge, about the purpose(s) of a printed or electronic directory of subscribers available to the public or obtainable through directory enquiry services, in which their personal data can be included and of any further usage possibilities based on search functions embedded in electronic versions of the directory.

1. Member States shall ensure that subscribers are informed, free of charge ***and before they are included in the directory***, about the purpose(s) of a printed or electronic directory of subscribers available to the public or obtainable through directory enquiry services, in which their personal data can be included and of any further usage possibilities based on search functions embedded in electronic versions of the directory.

Justification

This addition improves the choice of consumers to be inserted or not in future directories. Deciding not to be included anymore in a directory which has already been published will not have the same effect as choosing not to be inserted in the first place. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 57).

Amendment 34 Article 12, paragraph 2

2. Member States shall ensure that subscribers are given the opportunity, free of charge, to determine whether their personal data are included in public directories, and if so, which, to the extent that such data are relevant for the purpose of the directory as determined by the provider of the directory, and to verify, correct or withdraw such data.

2. Personal data contained in printed or electronic directories of subscribers available to the public or obtainable through directory enquiry services should be limited to what is necessary to identify a particular subscriber, unless the subscriber has given his unambiguous consent to the publication of additional personal data. The subscriber shall be entitled, free of charge, to be omitted from a printed or

electronic directory at his or her request, to determine which data may be listed, to verify, correct or withdraw such data, to indicate that his or her personal data may not be used for the purpose of direct marketing, to have his or her address omitted in part and not to have a reference revealing his or her sex, where this is applicable linguistically.

Justification

The current legislation (Directive 97/66) is re-proposed as a satisfactory solution, because everyone is already entitled to have his or her personal data, mobile-phone number or e-mail address taken out of the directories.

It is just necessary to specify that any request coming from the user for total or partial omission should be free of charge. For that reason the provision allowing operators to require a payment is deleted.

Amendment 35 Article 13

Unsolicited communications

1. The use of automated calling systems without human intervention (automatic calling machines), facsimile machines (fax) or *electronic mail* for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent.

2. Member States shall take appropriate measures to ensure that, free of charge, unsolicited communications for purposes of direct marketing, by means other than those referred to in paragraph 1, are not allowed either without the consent of the subscribers concerned or in respect of subscribers who do not wish to receive these communications, the choice between

Unsolicited communications

1. The use of automated calling systems without human intervention (automatic calling machines), facsimile machines (fax) or *SMS (short messages service available on mobile phones)* for the purpose of direct marketing may be only allowed in respect of subscribers who have given their prior consent.

2. Member States shall take appropriate measures to ensure that, free of charge, **and in a easy and clear manner**, unsolicited communications for purposes of direct marketing, by means other than those referred to in paragraph 1, are not allowed either without the consent of the subscribers concerned or in respect of subscribers who do not wish to receive

these options to be determined by national legislation.

these communications, the choice between these options to be determined by national legislation.

The practice of sending electronic messages for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited.

As from 30 months after the entry into force of this Directive, subscribers have the right to ask from providers of electronic communications services to use technical solutions which allow them to view the sender and subject line of electronic mails, and also to delete them, without having to download the rest of the electronic mail's content or any attachments.

3. Paragraphs 1 and 2 shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected.

3. Paragraphs 1 and 2 shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected.

Justification

Compromise amendment based on the "national choice" option.

Amendment 36 Article 14, paragraph 3

3. Where required, the Commission shall adopt measures to ensure that terminal equipment incorporates the necessary safeguards to guarantee the protection of personal data and privacy of users and

3. As concerns arise with categories of products, it may be necessary to adopt measures to ensure that terminal equipment is constructed in a way that is compatible with users' right to protect and control the

subscribers, in accordance with Directive 1999/5/EC and Council Decision 87/95/EEC

use of their personal data, in accordance with Directive 1999/5/EC and Council Decision 87/95/EEC

Justification

This amendment makes sure that the privacy of users and their personal data are better protected. Prohibiting the development of technical equipment that will infringe users' rights has a stronger preventive effect than reacting against the infringement itself.

This amendment clarifies that terminal equipment should not infringe individuals' privacy, instead of the original wording which suggests that terminal equipment should incorporate safeguards. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 49).

Amendment 37 Article 15, paragraph 1

1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1) to (4), and Article 9 of this Directive when such restriction constitutes a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as referred to in Article 13(1) of Directive 95/46/EC.

1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1) to (4), and Article 9 of this Directive when such restriction constitutes a necessary, ***appropriate, proportionate and limited in time*** measure ***within a democratic society*** to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as referred to in Article 13(1) of Directive 95/46/EC. ***These measures must be entirely exceptional, based on a specific law which is comprehensible to the general public and be authorised by the judicial or competent authorities for individual cases. Under the European Convention on Human Rights and pursuant to rulings issued by the Court of Human Rights, any form of wide-scale general or exploratory electronic surveillance is prohibited.***

Justification

This amendment is intended to ensure that Member States cannot, in breach of the Human Rights Convention, the case-law of the Court of Human Rights and Community law, make use of exemptions to restrict the fundamental right to protection of privacy. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 50).

Amendment 38 Article 15, paragraph 3

3. The Working Party on the Protection of Individuals with regard to the Processing of Personal Data instituted by Article 29 of Directive 95/46/EC shall also carry out the tasks laid down in Article 30 of that Directive with regard to matters covered by this Directive, namely the protection of fundamental rights and freedoms and of legitimate interests in the electronic communications sector.

3. The Working Party on the Protection of Individuals with regard to the Processing of Personal Data instituted by Article 29 of Directive 95/46/EC shall also carry out the tasks laid down in Article 30 of that Directive with regard to matters covered by this Directive, namely the protection of fundamental rights and freedoms and of legitimate interests in the electronic communications sector.

The Working Party shall take the utmost account of the views of all interested parties, including industry and consumers.

The Working Party shall state to what extent the views of interested parties have been heard and taken into account and shall give interested parties the opportunity to comment within a reasonable time frame, proportionate to the importance of the issue considered

Justification

Since the Working group is currently composed only of members of the national Data Protection Authorities, the advice from the Working Party can be provided in a more transparent way by enabling discussion with interested parties like industry and consumer organisations. This will result in improvements in balancing interests involved, providing a greater sense of reality and more practical advises and opinions. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 58).

Amendment 39
Article 16

Article 12 shall not apply to *editions of* directories published before the national provisions adopted pursuant to this Directive enter into force.

Article 12 shall not apply to directories published before the national provisions adopted pursuant to this Directive enter into force.

Justification

This deletion prevents that copies of directories which have already been published and distributed, might have to be confiscated.

Moreover, electronic available directories should also enjoy a transitional arrangement, which will be achieved by this amendment. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 59).

Amendment 40
Article 16

Article 12 shall not apply to editions of directories published before the national provisions adopted pursuant to this Directive enter into force

I. Article 12 shall not apply to editions of directories ***already produced or placed on the market in printed or off-line electronic form*** before the national provisions adopted pursuant to this Directive enter into force.

Justification

With a view to giving the directive the best possible chance of being adopted at first reading, this amendment contains as much of the text informally approved by the Council working party as was deemed appropriate. This amendment has been adopted in plenary on 6 September 2001 (ex-am. 52).

Amendment 41
Article 17

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive **by 31 December 2001** at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive **within 15 months** at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Justification

31 December 2001 is an impossible deadline. The date of entry into force of this directive must be brought into line with the deadlines for the other measures in the 'Telecommunications' package.

Amendment 42
Article 18 a (new)

Review clause

The European Commission shall submit to the European Parliament and the Council, not later than three years after the date of implementation of this Directive by Member States, a report on its effects on economic operators and consumers, especially as regards the provisions concerning unsolicited communications. Where appropriate, the Commission shall submit proposals for the modification of this Directive to take account of the results of the above mentioned report and any changes in the sector and any other proposal it may deem necessary in order to enhance the effectiveness of this Directive.

Justification

Review clause linked to the compromise amendment based on the "national choice" option.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive concerning the processing of personal data and the protection of privacy in the electronic communications sector ((COM(2000) 385 – C5-0439/2000 – 2000/0189) – C5-049/2000 – 2000/0189(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 385¹),
 - having regard to Article 251(2) of the EC Treaty and Articles 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0439//2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Industry, External Trade, Research and Energy and the Committee on the Environment, Public Health and Consumer Policy (A5-0270/2001),
 - having regard to the second report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0374/2001),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 365, 19.12.2000, p. 223