Council of the European Union: New Legislative Proposals for Telecoms Reform

IRIS 2009-1:1/5

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The legislative package on EU Telecoms Reform continues to wind its way through the article 251 co-decision procedure necessary for its official adoption as European law. Following the European Parliament's vote earlier this autumn (see IRIS 2008-10: 4), the European Commission, on 5 and 6 November 2008, brought forth its revised legislative proposals. The new texts took into consideration the amendments adopted by Parliament and aimed at paving the way for agreement on identical terms between the European Parliament and the Council of Ministers. The Council itself deliberated the drafts on 27 November 2008, a process described by EU Telecoms Commissioner Viviane Reding as a "constructive crisis". She nevertheless applauded the resulting political agreement as "an improvement compared with the initial text", but warned that room for further progress still exists.

The main source of debate emanates from amendments 138 and 166, adopted by plenary vote in Parliament. These asserted that any restriction on end-users' access rights to content, services and applications must be proportionate and rest on a court ruling, in accordance with the Charter of Fundamental Rights of the European Union. The Commission had accepted amendment 138, expressly noting its respect for the nine-tenths majority with which it was passed, and remarking in its revised proposal that the amendment ensures "a fair balance [...] between the various fundamental rights protected by the Community legal order, in particular, the right to respect for private life, the right to protection of property, the right to an effective remedy and the right to freedom of expression and information". Amendment 166, on the other hand, fared less fortunately, having been discarded in the new Commission proposals. Nevertheless, a similar fate eventually awaited amendment 138 as well, although at a later date; Concern had been consistently expressed that the Council would not accept Parliament's amendment, in view of its incompatibility with the French plans to introduce a legislative system of "graduated response" to copyright infringement (see IRIS 2008-10: 10). In the event, the controversial amendment was indeed dropped from the Council's proposals. This was despite initial objections voiced by Austria and Denmark.

It is worth mentioning that recital 14(b) to the Universal Service Directive, inserted by Parliament, remains in place. The recital indicates that, in the absence

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of relevant Community provisions (such as those that the aborted amendments would have introduced), the legislative treatment of unlawful content, applications and services is to be regulated on a local level by the Member States, in accordance with due process and the rule of law.

A second major amendment put forth by Parliament had involved the introduction of BERT (Body of the European Telecoms Regulators), a much smaller, in both size and competences, authority than the one initially envisioned by the Commission and one that will also remain separate from ENISA (The European Network and Information Security Agency), a body with which it was, according to the Commission's first proposal, to merge. Now, according to the Council's proposals, the new body will be named GERT (Group of European Regulators in Telecoms), while its powers are to be further curtailed in favour of national regulatory independence.

The modified proposals reaffirm the introduction of the remedy of functional separation, the need for telecoms operators to notify about security breaches and reinforced consumer rights, including better access for the disabled, a more reliable 112 emergency number, the ability to switch fixed or mobile operators within one working day while retaining the old number, as well as more transparency and better information for users.

The UK, Sweden and the Netherlands abstained from the political agreement in the Council. The Council is now expected to adopt its common positions on all the Commission proposals by the end of 2008. These will then serve as a basis for negotiations with the European Parliament, so as to enable a second reading agreement between the two institutions by spring 2009. Commissioner Reding has invited the French Presidency to call a meeting of all three institutions in early December, to facilitate compromise.

Relevant press pack, including all official documents of the new EU Telecom Package

http://ec.europa.eu/information_society/newsroom/cf/itemlongdetail.cfm?item_id=3701

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