European Parliament: Approves the New Telecoms Package in the Second Reading

IRIS 2009-6:1/6

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On 6 May 2009, the European Parliament voted on the informal political agreement reached with the Commission and the Council in the discussions following last autumn's first reading of the Telecoms Package. The package involves a revision of the EU's electronic communications regulatory framework, appertaining to five existing Directives and as encapsulated in three separate legislative proposals and corresponding Parliament reports (see IRIS 2008-10: 4). The EP approved the new package in its entirety, save for one modification: it reinstated amendment 138 of the Trautmann report, a controversial article which states that the fundamental rights and freedoms of end users may not be restricted without prior ruling by a competent judicial authority, unless public security is threatened. The amendment had been introduced by Parliament in the first reading, but was later rejected by Council (see IRIS 2009-1: 5).

The move is considered significant, as amendment 138 is widely held to constitute a political signal against the so-called "three strikes and you're out" approach being implemented in national legislation. It is particularly seen as incompatible with France's *Création et Internet* legislative bill, which was recently voted through by the French National Assembly.

On the other hand, the likewise heavily debated amendment 166 of the Harbour report remains outside the endorsed package, with the re-written text, as negotiated with Council, taking its place. Amendment 166 in its initial form required that any measures restricting users' access rights take heed of the principles of proportionality, effectiveness and dissuasiveness. The new text explicitly explains that it "neither mandates not prohibits" conditions imposed by providers limiting users' access to and/or use of services or applications. Instead, these are safeguarded by means of an obligation to inform customers of existing restrictions. A "universal service" obligation in relation to functional internet access is also imposed. In any case, MEP Malcolm Harbour has indicated his view that lines have been blurred in the discussions surrounding Telecoms reform: "This directive package has never been about copyright enforcement. The Parliament cannot impose on a country conditions about how it organises its judicial system. That is a basic element of subsidiarity".

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Other issues affected by the proposed reforms would include clearer contracts for the provision of electronic communication services, mobile phone number portability, functional separation to overcome competition problems, a hotline for missing children, better recognition of the rights of people with disabilities, better privacy protection and action against illegal activity on the internet, network security against personal data breaches and spam, better management of radio spectrum and investment in next-generation networks and infrastructure. Finally, if the reforms pass, what has now been termed the Body of European Regulators for Electronic Communications (BEREC) will be instituted as an independent expert advisory body, helping to ensure fair competition and more consistency of regulation in telecoms markets.

The new texts must now be accepted by Council by a qualified majority if agreement on the package is to be found. Discussions on the question are likely to take place at the Telecoms Council on 12 June 2009. If rejected, the whole package of reforms will have to enter the conciliation process in Parliament's next legislative term, following the upcoming European elections.

No Agreement on Reform of Telecom Legislation, EP press release, 6 May 2009

http://www.europarl.europa.eu/news/expert/infopress_page/058-55086-124-05-19-909-20090505IPR55085-04-05-2009-2009-true/default_en.htm

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