European Parliament: Telecoms Reform Adopted

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On 24 November 2009, the European Parliament, at its plenary session in Strasbourg, formally approved the EU's Telecoms Reform Package, after two years of discussions (see IRIS 2008-10: 4, IRIS 2009-1: 5 and IRIS 2009-6: 5).

After the first reading of the legislative proposals failed to lead to adoption, intense negotiations during last spring resulted in an informal political agreement between the Commission, the Parliament and the Council on all three parts of the package: the electronic communications framework directive, the citizen's rights directive and the establishment of a new Body of European Regulators for Electronic Communications (BEREC). Subsequently, in May 2009, the EP approved the new package in its entirety, save for one contentious modification: it reinstated Amendment 138 of the Trautmann report, one of the Parliament's most controversial first-reading amendments, according to which "no restriction may be imposed on the fundamental rights and freedoms of end users, without a prior ruling by the judicial authorities (...) save when public security is threatened".

Upon rejection of the amendment by the EU Telecommunications Ministers on 6 October, the Article 251 co-decision procedure entered the conciliation stage. Formal conciliation proceedings were opened on 4 November 2009. Political agreement between negotiators from the Parliament, the Council and the Commission was reached in the Conciliation Committee in the early hours of 5 November 2009.

Under the final deal, fundamental rights regarding internet access are dealt with in Article 1(3a) of the second directive of the package on citizen's rights. According to this, national measures liable to restrict end-users' access to or use of services and applications through electronic communications networks must be "appropriate, proportionate and necessary in a democratic society" and can only be implemented with "adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process". A "prior fair and impartial procedure" is also guaranteed, as is the "right to an effective and timely judicial review".

Questions still remain open as to the correct interpretation of the expression "prior fair and impartial procedure" and the extent to which so-called three strikes

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legislation in force in France and under consideration elsewhere is affected by it. It is likely however that the issue will have to be brought before the ECJ before absolute clarity can be achieved.

The reformed Package entered into force with its publication in the Official Journal of the EU on 18 December 2009. The 27 Member States now have 18 months, till July 2011, to transpose the new rules into their national telecoms laws. BEREC was established in January 2010.

European Commission welcomes European Parliament approval of sweeping reforms to strengthen competition and consumer rights on Europe's telecoms markets, Brussels, 24 November 2009, IP/09/1812

http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1812&format=HTML&aged=0&language=EN&guiLanguage=en

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

http://ec.europa.eu/information_society/policy/ecomm/tomorrow/index_en.htm

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