

Subject: Q&As on the Telecoms Package
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Dear colleague,

In advance of final discussions in Group this evening and to deal with constituency enquiries that you may be receiving, I attach a Q&A document on Universal Services, E-Privacy and BEREC elements of the Telecoms Package.

I hope that you will find this document helpful.

With best wishes,
Malcolm.

Telecoms package

Users' Rights FAQs

1) What improvements will be made in my contract terms?

Consumers will have much clearer contracts to ensure they are aware of exactly what they are signing up to. Price plans and information will be clearer. Consumers will be told about any limitations on access to particular services, such as Skype, on their handset before agreeing to take out a contract and any changes after their contract is in force.

Consumers will be informed of any costs of subsidised handsets should they terminate their contracts early.

2) As a small business customer, how do I benefit?

Small businesses may request their provider to offer them a consumer style contract, meeting the upgraded information requirements.

3) How long will communications contracts be?

Contracts will be a maximum of 24 months to avoid consumers being locked into long contracts, and operators will be obliged to make a 12 month offer. This will encourage operators to innovate, offer competitive services, and keep their prices down to retain their customer base.

4) What about pricing information?

Tariff information must be clearly presented to you and you must be informed of any changes. Operators must make data available for comparative price tables, which can be provided by the telecoms regulators or other information providers on request. Consumer organisations consider that long tie-ins stop consumers from accessing better offers, as they become available in a very volatile and fast moving business. Also, operators should inform customers at their request on any available lower-cost tariffs.

5) How can I protect myself from 'Bill Shock'?

Operators will be required to offer facilities to inform you if your monthly billing reaches a pre-set level of your choice. You can also be able to ask for a review of your bills and an offer of better tariffs, if available.

6) How long will it take if I want to keep my phone number when switching networks?

The proposals will mean that number portability will take place in one working day. This process can currently take up to 30 days or more in some EU countries. Research shows that it is technically possible to carry out number porting in one day. There will be an exception for cases of slamming or miss-selling (when a customer is switched without their consent).

7) What other new information will I receive?

Internet Service Providers will need to make the level of service and speed of service (in case of the need to prioritise certain forms of traffic which would cause a slowing of traffic) clear to consumers in their contracts.

8) What are the benefits for disabled users?

Disabled users will benefit from equivalent access to communications and special terminal equipment as non-disabled people. National telecom regulators will have extended powers to require operators to provide special services for disabled users.

9) Can I be sure of accessing Emergency Services anywhere in the EU, especially through my mobile?

There are tougher requirements on operators to ensure access to 112 services alongside existing emergency numbers. Location information must also be provided - which would be a life saver if you experience problems in a remote location.

10) Are there other new services?

Member States are obliged to make every effort to make sure that citizens have access to a missing children hotline.

A separate entity shall be charged with promoting the European Telephony Numbering Space (the "3883" code), and other trans-European services, such as a common number for reporting thefts of mobile phones.

National regulatory authorities will be able to set minimum quality of service requirements on operators to prevent degradation of service and the hindering or slowing down of network traffic.

11) Will my internet service give me guidance on internet security and other potential problems?

Member States will be able to ask internet service providers to give all their customers information on risks relating to e.g. computer viruses, phishing attacks and other internet scams, as well as on means of protecting against such risks. That information could also include information on unlawful use of communications.

12) Why does the European Parliament want to introduce rules "legally entitling" broadband providers to limit the number of websites consumers are able to view?

It doesn't, and this proposal does not do that. It introduces no new rules allowing providers to restrict services - providers are free to do that already, under European and National law. But, the proposal makes it clear that any restrictions must respect your rights under the Convention on Human Rights and Fundamental Freedoms.

13) What are the "new consumer packages" that internet providers will be able to offer under these rules, which will threaten the future of the internet?

There is no mention of this issue in the proposal, and there is not provision that could be interpreted in this light.

14) Why has there been so much controversy among freedom of the internet groups on this issue?

There has been a clear misunderstanding about the role of European and National law. Member States can take action to restrict access to internet sites under their own national law - for example, in cases of child pornography. European law sets out consumers' rights and freedoms to access services, and the information they should receive. In particular, the proposal introduces a consumers "right to know" on service restrictions and quality of service. If an operator restricts access to a service, you have a right to know about it and you can then change to another provider.

15) What about service restrictions, such as the blocking of Skype access in Germany?

Any restrictions that are deemed to be anticompetitive can be dealt with by EU telecoms law. The proposal also gives regulators new powers to deal with operators who may use degraded service quality (for example, slowing down delivery) as anticompetitive means to discourage certain service provisions.

The Telecoms Package and Your Rights on the Internet - the key questions:

1) Does this new Package threaten the freedom of the internet, by allowing big telecoms operators to block or discriminate against content, and my ability to access the services and content I want (net neutrality)?

No. The ISP provides a commercial service to customers and in principle free to structure that offering as they deem best. They will of course take customer demand into account. This means that they can currently for example block access to any site they want, or restrict access to applications, if they deem that to be commercially attractive. They can also offer different bandwidths, price packages etc. They can continue doing so also in the future. The situation is comparable to a bookseller - a bookseller does not have to offer every book available in print.

The possibility for ISPs to decide what to offer their customers is not changed by the Package. However, the Package will require ISPs to inform their customers of any such restrictions, so that you can choose whether to use another ISP.

If an ISP has a dominant position and abuses it, competition rules apply and can be used by the Commission or national authorities to address the situation.

As between you and your Government, any measures taken by a Member State to limit your access to services and content, for example by forcing ISPs to block access, have to respect your fundamental freedoms.

2) How are my rights as a citizen on the Internet safeguarded? Does this whole package affect my freedom to access and use information?

The fundamental rights of all citizens, whether as internet users or in any other capacity, are protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms. That Convention for example safeguards freedom of expression, and the right to hold and impart information. It also provides for judicial remedies. The Package affirms that these fundamental rights also apply in the field of electronic communications.

3) This proposal has been drafted by the French Government to enable it to impose HADOPI?

No. Amendments that would have facilitated HADOPI were all rejected. These issues are a matter for national law, and not addressed in the Telecoms Package. The Package does however restate and reinforce that fundamental rights apply and have to be observed by Member States also in the context of internet usage.

4) Will I be banned from the Internet if I am caught downloading illegal copyright material from the Internet, such as films and music?

No. The reports that the proposals are going to lead to this are scaremongering. The legislation does not propose this.

5) What has caused all this scaremongering?

France is considering a highly controversial law which will mean that if French citizens are caught downloading illegal content, such as copyright films and music, three times they will be disconnected from the Internet. This is called the "Three Strikes and You're Out" rule. This would mean that Internet Service Providers (ISPs) would have to monitor internet traffic. The telecoms package has been attacked by false statements that it would adopt a similar "Three Strikes and You're Out" approach.

6) So what does the Users' Rights report proposals say in relation to copyright?

National authorities would, if appropriate, be able to produce generic, standardised information, which would be sent to all customers. This public interest information could cover a range of issues, including copyright, child pornography, viruses, and risks to attacks for personal security. There will be no targeting of individual customers for any particular activity and there will be no identification, spying or surveillance of any specific individuals. There is also a provision enabling national authorities to promote appropriate cooperation between ISPs and rightholders regarding lawful content.

7) What will happen if I illegally download copyright material after this legislation comes into force? Is there any way this legislation could lead to me being banned from the Internet?

There will be no change to the current situation, which means that it is up to Member States to deal with copyright issues according to their national law.

8) I am very interested in copyright and Intellectual Property. Will there be a more detailed dossier covering these issues?

Yes, the upcoming Creative Content Online consultation will explore Intellectual Property Rights in more detail.

E-Privacy FAQs

1) What will happen if my Internet Service Provider loses some of my personal data?

If there is a breach of personal data it will be mandatory to inform consumers. This information shall also include measures the consumer can take to better protect his or her personal data. Furthermore, companies will also have to inform users which protective measures, such as encryption, they are using to ensure data protection.

2) Will all companies operating on the internet be covered by the Directive?

Only providers of electronic communications services are covered by this Directive at present. The European Parliament and the Commission aim to have the entire sector covered by 2011.

3) Why was it necessary to introduce a new Directive?

The whole legal framework covering electronic communications was in need of an overhaul in order to adapt it to the advances in technology and the ways companies and individuals use the internet.

4) What other data is covered by this Directive?

Apart from personal data, traffic data is covered by this Directive. This means that traffic data can only be processed if it does not harm network and information security in the interest of preventing unauthorised access.

5) Will users be required to accept any access to their computers?

Users will have to be informed of any programme or application that will store data on their computers and can decide not to accept such storage. If information already stored is to be accessed, users will have the chance to give their consent. This is to prevent any access to or the processing of the information, such as viruses or spyware or any other programme or application that searches users' hard disks for personal information without their knowledge or consent.

BEREC FAQs

1) What is BEREC?

BEREC is a body formed by the representatives of the 27 national regulators in the field of electronic communications, whose chief objective is to become the main advisor, both for the European Commission and for the different national regulators in the field of regulating the electronic communications market. Amongst others the scope of BEREC's competences will cover subject matters such as: measures of NRAs concerning market definition, identification of transnational markets, cross-border disputes, effective access to the emergency call number "112", and issues relating to fraud or the misuse of numbering resources, cross-border business services and roaming.

2) BEREC is not...

BEREC is neither a regulatory agency nor is it an executive agency; its decisions shall not have an obligatory character. However the Commission will be obliged to consult BEREC, whilst BEREC can give its opinion whenever it deems necessary.

BEREC is not the guardian of cybernetic security in Europe. BEREC's function will be exclusively bound to achieving a better functioning of the telecommunications market in Europe.

BEREC will not take the lead on European spectrum policies and it will not replace the Radio Spectrum Policy Group (RSPG) or the Radio Spectrum Committee (RSC).

3) Why BEREC and not EECMA, the regulatory Super agency proposed by the Commission?

Although the Commission's initial proposal had the same objective as BEREC, to improve the functioning of the single market, it could however become a handicap for European competitiveness as it adds more paperwork and bureaucracy. The Super agency would also contravene the subsidiarity principle as it would withdraw competence from the member States and the National Regulatory Authorities (NRA). For this reason the agency would be unnecessarily remote from the markets it is meant to be regulating and its existence and operation would also contradict the long-term goal to replace ex-ante regulation by competition law, to overcome the regulatory fragmentation and uncertainty. Finally the proposed fusion with the European Network Information Security Agency (ENISA) which appeared in the Commission's proposal was very complicated to understand. In fact, the proposed fusion with ENISA, where the various governmental representatives of the Member States would have to participate in, would degrade the functioning of the latter. In addition the Commission would hardly reduce the administrative costs and would undermine the agency's main orientation with the addition of ENISA's queries that aren't related with the main objective of promoting competition on the telecommunications market.

4) Which is BEREC's structure?

BERT is composed of a ***Board of Regulators that will be assisted by the OFFICE.***

The Board of Regulators will be BEREC's deciding body and will be composed by a representative of each NRA from each Member State (the Commission shall be present as an observer but will not have the right to vote). As a general rule and if the contrary is not stipulated, its decisions shall be reached by a 2/3 majority of its members. The Board of Regulators will have to meet at least 4 times a year in ordinary sessions and will choose amongst its members, for a period of 1 year, its Chair and Vice-Chair(s).

The Office will be a body of the Community with legal personality and will consequently enjoy in every Member State the most extensive legal capacity accorded to legal persons under national law (The Office's staff will be subject to the Conditions of employment of other servants of the European Communities). The Office will have legal, administrative and financial autonomy, in order to efficiently provide BEREC with its support and will comprise of a Management Committee and an Administrative Manager. Although no particular number of staff has been assigned, the organisational structures of BEREC and of the Office *"should be lean and suitable for the tasks they are to perform"* (It is estimated that the number of employees will not exceed that of 25).

5) How will BEREC be financed?

With the objective in mind of maintaining a logic co-regulation amongst the European Institutions and the Member States, inherent in all the "Telecom Package", and transmitting this logic to the budgetary arena, BERT has been given a mixed budget. The budget shall be provided by the Community budget and by voluntary contributions from the Member States and NRA's. In order to guarantee its independence the Member States must ensure that NRAs are properly financed [in a way that their participation and work in BEREC is also ensured]. This mixed structure will add transparency through the budget authority control whilst allowing, those who are closer to the market place, the different national regulatory authorities, to be full members of the body.