

# CLIENT ALERT

## Electronic Communications & IT

December 1, 2009

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*After opposition from the Member States, the new proposed text of the Internet freedom provision is worded more softly and no longer includes the requirement of a prior judicial ruling before measures may be adopted against Internet users infringing IP rights. The text, however, still requires "a prior, fair and impartial procedure" and "an effective and timely judicial review" once measures have been taken. As it stands now, the proposed text is likely to meet Member States' demands, paving the way for the definite adoption of the telecoms package.*

### Introduction

On 5 November 2009, the European Parliament and the Council of Ministers reached an agreement on the EU telecoms reform. The reform is intended to substantially strengthen competition and consumer rights on Europe's telecoms markets, facilitate high-speed internet broadband connections to all Europeans and establish a European Body of Telecoms Regulators to complete the single market for telecoms networks and services.

### The Internet Freedom Provision

In order to come to an agreement, the greatly disputed Internet freedom provision, destined to protect citizens' rights relating to Internet access, had to be redrafted after pressure from the Member States. After long negotiations on this point, the new text now explicitly states that any measures taken by Member States regarding access to or use of services and applications through telecoms networks must respect the fundamental rights and freedoms of citizens and must be appropriate, proportionate and necessary within a democratic society. The key sentence of the provision is now, however, worded more softly: from the need to obtain a "*prior ruling by the **judicial** authorities*" before taking any measures against infringers, the provision now states that "*a prior, fair and impartial procedure*" is required, the word "judicial" being removed.

Although the provision continues by according consumers "*an effective and timely judicial review*", concerns are that, should this text become law, Member States would be allowed to introduce provisions enabling *administrative* authorities to cut the Internet connections of suspected offenders without a prior *judicial* ruling. The connections could later be restored with the authorization of the "judicial review", but it would be unclear how long the review process would take.

Commissioner Viviane Reding, however, is positive: "*The new internet freedom provision represents a great victory for the rights and freedoms of European citizens. 'Three-strikes-laws', which could cut off Internet access without a prior fair and impartial procedure or without effective and timely judicial review, will certainly not become part of European law.*"

## The Other Reforms of the Telecom Package

Apart from the Internet freedom provision, the other prominent reforms of the telecoms package can be summarized as follows:

- The introduction of a right for European consumers to change, in 1 working day, fixed or mobile operators while keeping their old phone number.
- An obligation on operators to provide better consumer information, ensuring they can understand what services they subscribe to and, in particular, what they can or cannot do with the communications services.
- New guarantees for an open and more "neutral" net and powers for national telecoms authorities to set minimum quality levels for network transmission services so as to promote "net neutrality" and "net freedoms" for European citizens.
- Consumer protection against personal data breaches and spam, including new rules introducing mandatory notifications for personal data breaches by communications providers.
- Better access to emergency services.
- The establishment of a new European Telecoms Authority that will help ensure fair competition and more consistency of regulation on the telecoms markets .
- A new Commission say on the competition remedies for the telecoms markets.
- Functional separation as a means to overcome competition problems.
- Acceleration of broadband access for all Europeans.
- Encouragement of competition and investment in next generation access networks.

## Next steps

On 24 November 2009, the Council of Ministers unanimously approved the telecoms reform package. The European Parliament will vote in the first week of December, in its Strasbourg plenary session, to formally endorse the telecoms package. The telecoms reform can then enter into force with its publication in the EU's Official Journal, probably by early 2010, after which the package will be implemented into national legislation by the 27 EU Member States.

**Links:**[http://ec.europa.eu/information\\_society/policy/ecomm/library/proposals/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecomm/library/proposals/index_en.htm)

## Annex: The new Internet Freedom Provision

Article 1(3)a of the new Framework Directive:

*"Measures taken by Member States regarding end-users' access to or use of services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law.*

*Any of these measures regarding end-users' access to or use of services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law, including effective judicial protection and due process. Accordingly, these measures may only be taken with due respect for the principle of presumption of innocence and the right to privacy. A prior fair and impartial procedure shall be*

*guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms . The right to an effective and timely judicial review shall be guaranteed."*

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