

INTERNET ACCESS AND TECHNOLOGICAL INNOVATION

PUBLIC LAW

New consumers' rights will promote investment in more sophisticated information technologies

On December 18th 2009, the new “**Telecoms reform package**” was finally published in the Official Journal of the European Union (Directives 2009/136/CE and 2009/140/CE and Regulation (EC) no. 1211/2009). The aforementioned directives must be implemented into national law by 25 May 2011.

This *Briefing* sheds light into **two different aspects of this reform** that goes beyond the telecoms sector:

- (i) Rules about new consumers' rights which will promote new investments in information technologies (IT) systems;
- (ii) Rules about access to the Internet and Internet neutrality.

1. THE INVESTMENT IN MORE SOPHISTICATED INFORMATION TECHNOLOGIES

The **new consumers' rights** will certainly compel the development and implementation of more sophisticated information technologies:

- An improvement of **telecoms operators' information duties**, with respect to: **(i)** traffic management techniques and their impact on quality of service; **(ii)** bandwidth caps or available connection speed; **(iii)** minimum service quality levels, as well as compensation and refunds if these levels are not met; **(iv)** subscriber's options to be listed in personal data directories; **(v)** qualifying criteria set for promotional offers of the operators; among others;
- Operators will be required to **inform** the authorities and consumers **about security breaches affecting personal data of their clients**;
- A **better access to emergency services - 112**, extending the traditional access to this kind of service (telephone) to the new technologies (Internet), and strengthening operator's obligations to pass effectively information about the caller location.

2. THE CONSUMERS' USE AND ACCESS TO THE NETWORKS

Internet access cut off as a result of illicit use

The new European rules seek to respond to the exponential growth of illicit use of the Internet, in order to respond to concerns such as illegal downloads, on the one hand, and child pornography and terrorism, on the other.

The package establishes the **possibility to limit or “cut off” access - both for Internet and for other types of networks** - insofar as such measures are appropriate, proportionate and necessary. Member States still retain the responsibility to define which are the lawful contents and copyright protection at national level.

Although Internet access is now established as being one of the European fundamental rights, citizens may see in certain cases their access and use of any network limited or even cut off. However, if such restriction is to be imposed, Member States should ensure that the right to be heard is guaranteed, through a prior, fair and impartial procedure, except in duly substantiated cases of urgency.

“Promotion of the net neutrality”

One of the most prominent aspects of the new package concerns **the promotion of the Internet neutrality**, for example, assuring the freedom to choose VoIP services (such as the classic *Skype*) and other innovative net-based services.

In this regard, it is now established that end-users should be able to decide what content they want to send and receive, and which services, applications, *hardware* and *software* they want to use for such purposes (without prejudice to the integrity and security of networks and services).

The new rules are likely to have a profound impact on the lives of organizations, companies and individuals. Organizations will have to start thinking of “preventive measures” in their internal IT systems, in order to restrict illegal activities, such as unauthorized downloads.

On the other hand, the neutrality rule may result in users benefiting from a wider variety of affordable and efficient IT and communications systems, regardless of their network service provider.

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