1. Enhancing data protection

Articles 40, 93

Data protection, a core value of community networks

In Europe, CNs are a growing movement of organizations that operate local communication infrastructures, sometimes federated at the regional or national levels. These networks, most of which also provide access to the global Internet, are operated as a commons. That is, rather than being driven by for-profit motives, their key focus is on providing connectivity while striving for democratic governance, social inclusion, education, and human rights with respect to communication technologies.

As such, one of their core values is to protect the privacy of their users and not to process their personal data for business purpose or any other purpose not necessary for the provision of their services.

Obstacles faced by community networks

Governments of numerous Member States intend to abolish users' freedom to encrypt their communications. Furthermore, they have lately adopted several laws strengthening the powers of intelligence services to intercept communications and to monitor networks for purposes such as protecting national economical health or the detection of minor crimes or simple misconducts.

In the same spirit, and in breach of the Charter of Fundamental Rights (as clearly interpreted last winter by the Court of Justice of the European Union in its Tele2 case), many Member States are refusing to revoke or review their national laws which require telecommunication operators to retain traffic data of all their subscribers.

All of these issues directly and drastically impact CNs' activities, by preventing them from implementing policies that fulfill one of their core social values.

Amendments

IMCO

Amendments **377 and 378 should be adopted** as they would make end-to-end encryption mandatory for interpersonal communication service providers (such as mail and chat).

Amendment **530 should be adopted** as it would explicitly force Member States to comply with the Tele2 case of the European Court of Justice.

ITRE

Amendments **565, 566, 567 and 568 should be adopted** as they would make end-to-end encryption mandatory for providers of interpersonal communication services.

Amendment **1099 should be adopted** as it would provide a framework anchored in fundamental rights for the interception of communications by competent national authorities.

2. Fostering the development of wireless community networks

Articles 2, 55, 95

Freifunk, a wireless community network

Freifunk is a German community network whose members are single-handedly installing and maintaining free networks, using their own Freifunk firmware on off-the-shelf wireless (WiFi) devices and routers. Every member of the network configures his or her router to relay the traffic of other participants to the Freifunk network. In return, he or she can also transmit data, such as text, music and movies through the network or use services setup by participants. Many members also share their Internet access and allow others to use it to access the World Wide Web and other internet services.

In 2013, there were 40.000 Freifunk relays all over Germany and neighbouring countries and, given the coverage achieved in Berlin, more than 350,000 people can have access to the network. Since the provision of free Internet for all is part of Freifunk core identity, its network is essential for many communities, such as underprivileged individuals.

Finally, based on user-driven networks, services and usages, Freifunk depends on perpetual innovation through, for instance, the development of new communication protocols that any other operators or companies may freely used to provide innovative services all over the EU.

Obstacles faced by Freifunk

Several national laws seek to prevent the sharing of Internet connections amongst several users by making people liable for all the communications made through their Wi-Fi connection. In 2017, two German courts have found individuals sharing their Wi-Fi connection liable for copyright infringements committed by other users. They were found liable because, despite having been warned by rights-holders about such infringements, they did not take measures to stop those infringements and to prevent new ones.

Such liability is a major threat for Freifunk members and a clear distortion of competition since 'traditional' Internet access providers cannot be liable for infringements committed by their users, even if they are aware of them, as provided by article 12 of Directive 2000/31/EC ('Directive on electronic commerce').

Furthermore, while they do not benefit from the same liability regime as professional providers, CNs are subject to the same strict obligations. Some of these obligations are clearly unjustified and disproportionate where imposed on individuals.

Finally, two practical obstacles may prevent individuals from sharing their Internet connection. Firstly, router manufacturers may prevent users from loading into their devices customized software necessary for maintaining free and open wireless networks (such as those developed by Freifunk). Users' ability to use Free Software in order to regain control over their devices is also threatened by ambiguous language in the Directive 2014/53 on radio equipment. Secondly, Internet access contracts may directly forbid subscribers to share their connections with others, or charge them for doing so.

Amendments

Article 55 of the proposed Code intends to foster the development of wireless community networks but fails to address the obstacles underlined above.

IMCO

Amendment **68 should be rejected** as it would hinder the development of community networks by making the community liable for the actions carried-out by end-users.

Amendments **408 and 409 should be adopted** as they would explicitly extend the protective liability regime of Internet access providers to individuals sharing their Wi-Fi connection.

Amendment **411 should be adopted** as it would allow members of Community Networks to install Free Software (software that can be freely used, studied, modified and shared as such) onto their wireless devices, which is a prerequisite and standard practice in wireless networks.

Amendment **566 should be rejected** as it would have the opposite effect.

ITRE

Amendments **298, 316 and 333 should be adopted** as they would exclude individuals sharing their Wi-Fi connection from the scope of obligations imposed on professional providers, thereby fostering the development of wireless community networks.

Amendments **702, 703 and 706 should be adopted** as they would explicitly extend the protective liability regime of Internet access providers to individuals sharing their Wi-Fi connection.

Amendments **708 and 710 should be rejected** as they would remove the provisions giving end-users the rights to access wireless networks of their choice and to share their own access with other uses.

Amendments **712 and 713 should be adopted** as they would not allow Internet access provider to charge users in case they want to share their Wi-Fi connection.

3. Promoting a shared and unlicenced spectrum

Articles 4, 18, 45, 46, 49

Tetaneutral, a not-for-profit Internet service provider

Tetaneutral is a not-for-profit French Internet service provider that provides connectivity for everyone, including digital exclusion areas. While fibre optic networks are costly, wireless networks are a flexible and affordable way to provide broadband wireless network to all citizens.

Through WiFi unlicensed spectrum, Tetaneutral is able to deliver symmetrical very high capacity network (up to 30 megabytes) in all areas, including where fiber is not deployed. It is a key enabler that supports the digital uptake in rural areas and spreads digital literacy. It involves users in the deployment of the network and thus empowers citizens in both urban and rural zones. To that extent, bringing connectivity to everyone crucially depends on wireless unlicenced spectrum.

Obstacles faced by Tetaneutral

The lack of shared (through flexible authorisation schemes) and unlicenced spectrum is an obstacle for deploying community networks. Deployment of 4G and 5G should not be an excuse to reduce or even slow the release of shared and unlicenced spectrum (supported by the European Commission), which embodies the core principle of general authorisation mechanism enshrined since 2002 in the current telecoms package. To prevent the often exagerrated risk of congestion, technical harmonisation within the EU should ensure the coexistence of both spectrum licensed through individual rights and of free spectrum.

Besides, the duration of rights to use radio spectrum shall be limited and subject to regular review in order to assess the efficiency of the use of spectrum in light of technological and market evolution, and ensure that spectrum policy continues to serve the public interest. Authorisations should be withdrawn if necessary and National Regulatory Authorities (NRAs) have appropriate powers to carry out such assessments.

Amendments

ITRE

Amendment **393 should be rejected** as it aims at reducing the obligations of the Member States to develop the shared and unlicenced spectrum.

Amendment **420 should be rejected** as it aims at limiting the possibilities for Member States to add amendments to spectrum usage plan.

Amendment **603 should be adopted** as a solution for increasing the access to shared and unlicenced spectrum.

Amendments **636 and 645 should be rejected** as they would increase the number of cases where authorisations to use radio spectrum are needed, which is not an efficient way to foster innovation but would on the contrary add constraints.

Amendments **670 and 674 should be adopted** as they would enable regular reviews of the authorisations to use radio spectrum.

4. Creating the appropriate conditions for small Internet service providers

Articles 59, 70, 71, 72

French Data Network, a not-for-profit Internet service provider

French Data Network (FDN) is the oldest French Internet service provider (ISP) still operatingI It exists since 1992.

FDN provides hundreds of subscribers with services that major French ISPs do not offer: it systematically provides static IP addresses (a critical condition for self-hosting), refrains from monitoring the behaviour of its users for any commercial purpose and guarantees the neutrality of its network far beyond what is imposed by the Open Internet Regulation.

FDN is a non-profit entity: it provides access to the Internet against payment, but its revenues are entirely dedicated to the development of its network and services. Its governance is open to anyone.

Obstacles faced by FDN

As most landine ISPs, FDN has not enough funding to deploy its own cables. It has to rent access to the wired network of big operators in order to provide users with its enhanced services. It may rent two kinds of access: passive and active.

Passive access means that a provider actually rents physical cables, installs its own equipment on the network and manages every technical aspect of the access provided to users. It is usually expensive since ISPs have to rent space in each local infrastructure (thousands of euros per month for each) in order to install their equipment. Thus, passive access is more suited for providing Internet access to many users in the same area or to companies with very specific needs.

Active (also called “bitstream”) access means to simply use part of a network already managed by another operator. It does not require to install equipment nor to rent space. It is much cheaper and adapted for providing Internet access to fewer users in each location. It does not give as much control as passive access but still allows ISPs such as FDN to provide the services their members and subscribers are looking for.

Regarding ADSL lines, operators are obliged to grant passive and active access to ISPs requesting so. Therefore, there are now thousands of ISPs in France that provide customized and enhanced services to individuals or SMEs through the ADSL infrastructure of a few big operators.

However, this situation is limited to ADSL: operators are free not to grant access to their fibre-optic lines at all. Since FDN and most ISPs are not in a position to deploy their own lines (nor participate in the deployment of fibre lines), they simply cannot and do not offer any fibre access to end-users.

This impedes competition drastically, limits the diversity and the quality of services provided to SMEs and individuals and is destroying the pre-existent economic fabric of small ISPs used to work with companies. Now, these companies may only rely on the four big French ISPs which are unable to provide them with services specifically fitting their needs.

Amendments

Article **59** (symmetric regulation), **70** (access to civil engineering), **71** (general access including active) of the proposed Code intend to create obligations to grant access (active and passive) at relevant cost (article **72**) but fails to address efficiently the obstacles underlined above.

ITRE

The following amendments **should be adopted** as they would strengthen operators' obligations to grant access and NRAs' power to order them to do so: **737, 738, 743, 745, 748-752, 757, 905, 907, 908, 909, 912, 939, 940, 948, 953, 954, 959, 965-970, 974, 976, 977, 979, 980**.

The following amendments **should be rejected** as they would have the opposite effect: **735, 746, 747, 889, 893, 894-900, 906, 913, 918, 924-926, 932-937, 943, 971, 984**.

Amendments **917 and 923 should be adopted** as they would specifically ensure that active access is not relegated to a minor role compared to passive access.

The following amendments **should be rejected** as they would have the opposite effects: **739, 740, 741, 742, 880, 930, 931**.

5. Enhancing competition and addressing oligopolistic situations

Articles 61, 65, 71, 72, 74, 77

Federation FDN, a federation of not-for-profit ISPs

The Federation FDN gathers 26 not-for-profit Internet service providers in France and Belgium. Some rely on bitstream access provided by incumbent players. Others create their own fiber-optic or wireless networks in both urban and rural settings, in many cases bringing connectibity to "white zones".

Obstacles faced by Federation FDN

In France, more than 1000 operators are on the ADSL market, offering connection to both individuals or companies. To some extent, this allows competition between a variety of actors, and can ensure the possibility for users to choose between several offers. While ensuring competition at a retail level, such providers also stimulate competition on wholesale markets.

But the situation on the fiber-optic local loop is very worrying: only four operators are developing this kind of infrastructures in France, which cannot be considered as the same competition conditions as for the ADSL market. Furthermore, operators are often alone in a specific area, which leads to a monopolistic situation from the end-users point of view, as they cannot choose between several operators. The root cause is that there is currently no bitstream offers allowing smaller operators or Community Networks (CNs) to use the infrastructure of the dominant players to provide their services to end-users. This situation brings national markets back to the early days of European regulation where single dominance is the rule but with several players theoretically active. Deprived of the proper regulatory incentive to remedy this situation, NRAs are not taking the necessary steps to ensure competition.

To solve these issues, the definition of "significant market power" (SMP) should be broadened, so as to include all operators having a position equivalent to dominance, including through a commercial or co-investment agreement, and be subject to an asymmetric regulation. This would ensure competition in the face of oligopolistic situations.

Also, smaller operators or Community Networks need more flexibility and less administrative burden, such as analysed by the Federation FDN within its answer to the French consultation on the land-line market (www.ffdn.org/en/node/129). Community networks (CN) can be a solution for non competitive markets in bringing connectivity over the territory, such as observed in the scandinavian countries (https://openmedia.org/en/access-success-nordic-countries-0).

Regulatory holidays (art 74-77), limitations to symmetrical regulation (art 59.2) and amendments going further in this direction will inevitably lead to duopolistic and non-competitive situations Thanks to access regulation, this is precisley what we have so far avoided in Europe. As the political economy of networks further concentrates, if CN are not supported (notably through bitstream access) we will step back from this situation.

Amendments

IMCO

Amendment **436 should be adopted** as it deletes the provision on article 72 that would reduce the NRA regulation powers depending on the investments. The role of NRAs is not only to secure the investments of operators but to ensure a harmonious development of faster and affordable networks across territories.

Amendment **440 should be rejected** as it aims to put the burden of proof on NRAs when they aim at regulating costs and tariffs. Due to classical asymmetry of information issues, NRAs cannot face such a burden and would deprive them of the capacity to regulate tariffs even when reasonable and not cost oriented.

Amendment **441 should be rejected** as it aims to remove any transparency related to cost accounting system. Again, transparency is crucial when related to cost-regulation. Cross susbidies issues could not be properly addressed under such circumstances.

Amendment **442 should be adopted** as it gives back to NRAs the capacity to appreciate how much New Network Elements shall be subject to regulation. On the contrary, automatic and potentially temporary deregulation would greatly disturb the market and impede competition.

Amendment **444 should be rejected** as it worsens the European Commission's proposals by letting monopolistic players unregulated.

Amendment **448 should be rejected** as it aims to put at the same regulatory level any kind of agreements among market players, and would lead without any control mechanism to raise barriers to market entry for any operators that are not part of such agreements.

Amendment **449 should be adopted** as it clarifies that co-investment agreement must have been concluded in order to be taken into account by NRAs. Assessing a mere co-investment offer is not enough to allow NRA to play its role and ensure a proper competitive dynamic.

ITRE

Amendments **793, 794, 800 and 818 should be adopted** as they would also enhance the definition of SMP and remove provisions that weaken the SMP regime.

Amendment **971 should be rejected** as it aims at securing the network investments by operators whereas the role of NRAs is to ensure a harmonious development in the territories and give to all equal access to the market and services.

Amendment **973 should be rejected** as it would worsen the oligopolisation of fiber-optic networks and thus worsen the distortion of competition. This amendment gives operators more possibilities to exclude competitors either by increasing prices or discriminating the undertakings.

Amendment **1045 should be adopted** as it removes article 77 that imposes less obligations to vertically separate undertakings. As it stands, this article would leave monopolistic players unregulated.

Amendment **1130 should be adopted** as it would enable local ISPs to participate in the investments and thus enhance connectivity and competition at the local level.

About netCommons

netCommons is a Horizon2020 research project supported by the European Commission (2016-2018), which proposes a trans-disciplinary methodology to study and support the development of local network internet infrastructures as commons, for resiliency, sustainability, democracy, privacy, self-determination, and social integration.

netCommons is participated by 4 universities, one research center and one ONG (UniTn, UPC, AUEB-RC, UOW, CNRS and Nethood, respectively from Italy, Spain, Greece, UK, France and Switzerland). The consortium brings together research groups and institutions in the area of “networks” and collaborative platforms with expertise in engineering, computer science, economics, law, political science, interdisciplinary research.

netCommons aims to help existing community networks like guifi.net and ninux.net, to grow and replicate in more European cities and rural areas. To become more extrovert, more inclusive, and better understood by the wider population. To empower them to form both a means for equitable and affordable access to the Internet and community-owned infrastructures for the provision of local services.