



EDRI Open Letter to the European Parliament on Amendment 138 in the Telecoms Package

19 October 2009

To the Members of the European Parliament,

European Digital Rights is an association of 29 privacy and civil rights organisations based in 18 European countries and active across the European Union. As an association whose focus is on protecting the civil rights of online citizens, we have serious concerns about the possible abandonment of the core meaning of the so-called “Amendment 138” in the Telecoms Package. We believe that this would not just create lasting damage for the rights of European citizens, but it would also durably damage the credibility and institutional power of the European Parliament.

Citizens' Rights

The purpose of Amendment 138 is to protect the fundamental rights of citizens to freedom of expression and communication, to privacy and to due process of law. It also protects the development of democratic culture on the Internet. The fact that the Council is aware of current and planned activities in Member States that will undermine or do already undermine these principles should further convince Parliamentarians of the need to defend the principles in Amendment 138. Even if, and it is far from evident that this is the case, the Council can argue convincingly that there are certain exceptional circumstances where communications must be limited for the purposes and urgency required by the European Convention on Human Rights, such limitations should remain the exception in a democratic society, while the rights defended in Amendment 138 must constitute the rule. This must be reflected in the Telecoms Package.

Furthermore, failure to protect EU citizens will not only undermine their rights, but will be used in less democratic countries to victimise individuals, justified with the excuse that this is “EU policy”.

Parliament Powers

The Parliament now has the chance to protect citizens' rights and fully perform its institutional function within the European legislative process.

A capitulation faced with the unacceptably inflexible, legally dubious and democratically deficient approach of the Council would inflict lasting damage on the Parliament.

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What trust can voters have in an institution that will overwhelmingly support citizens' rights before an election only to abandon them immediately afterwards? What credibility will the Parliament have in future inter-institutional negotiations when it is prepared to abandon a position it supported twice with such an overwhelming majority? What authority will be left once the Parliament loses this crucial battle with the Council? Could there be a worse moment to fail so completely on an issue of such importance, at the historic moment when the institution is being entrusted with a greatly increased scope of codecision powers under the Lisbon Treaty?

For the sake of the rule of law, for the sake of European citizens and for the sake of the only democratically elected European Institution, we urge you to take whatever actions you can to defend the principles in Amendment 138. In particular, we urge you to support the principle that, unless exceptional circumstances render this impossible, citizens are entitled to a prior judgment before any measure is taken to limit their fundamental right to freedom of communication.

Yours faithfully,

A handwritten signature in blue ink, appearing to read "Andreas K. A.", written in a cursive style.

Andreas Krisch
President