AK EUROPA

September 2013

AK Position Paper

Proposal for a regulation on measures for the European internal market in electronic communications

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About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, communityand military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudolf Kaske
President

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Director

The AK position in detail

The further development of consumer protection in the area of the European telecommunications market is an issue of particular interest to the Federal Chamber of Labour (AK). It therefore welcomes the efforts of the EU Commission to promote the European internal market in electronic communications. It also, however, emphatically advocates that, when this is done, the needs of consumers must be given due regard. With this in mind, the AK is taking the liberty of taking a position on the current draft, in particular on the chapter „Harmonised rights of end-users", as follows:

1. Full harmonisation

The draft EU regulation aims to enable full harmonisation of the telecommunications market. Accordingly, those responsible for protecting consumers' interests have occasion to be concerned as to whether and to what extent existing, tried and tested consumer protection norms can still be maintained alongside the regulatory items in the draft. Thus, by way of example, telecommunications service providers in Austria must comply with a range of requirements, which the telecommunications regulator has imposed in order to protect consumers from any lack of transparency, misuse of telephone numbers, hidden costs etc.. There are many areas that the draft regulation does not specifically address: e.g. fundamental rules for premium rate services for the protection of telephone users from the misuse of premium rate numbers, the duty to provide information on the part of the providers when numbers are being transferred - in order to make clear the consequences for the consumer, formal provisions for the notification of changes to contracts and much more.

In part, the draft also contains guidelines for providers that are less stringent than comparable Austrian protection standards: by way of example, article 27 regulates the control of the amount of usage via an „Opt In" (according to this customers can apply for cost control aids from their provider). Here the Austrian cost limitation ordinance envisages that the providers have to automatically provide cost control systems for their customers' data use („Opt Out"). The key benefit of this regulation is that consumers who are in particular need of protection - for example, those who are careless and uninformed - are also effectively protected from unanticipated high costs.

AK concern: also in future, specific risks for consumers could arise on national markets. The legislator and the regulatory authorities need the room to manoeuvre necessary to be able to react if the occasion arises in the event of the current **lack of market transparency, hidden costs and misuse risks**. Detailed stipulations on the duties of the service provider should therefore continue to be left to the **member states**.

The consumer would moreover have no understanding at all for being subject to different standards of protection depending on which country a telecommunications provider locates its headquarters. The consumer should therefore be able to rely on the protection standards applicable in his/her place of residence. At present this only applies to provisions under contract law corresponding to the ROM I-EU Regulation.

AK concern: even with **telecommunications-specific administration norms** that serve to protect the consumer, the **consumer statute** should apply.

Article 21 Abolishing of restrictions and discrimination

In principle, the finding that consumers have the choice of also using providers who are based in another member state is welcome. Conversely, the draft postulates further that, in concluding contracts, providers may not discriminate between interested parties with regard to their nationality and/or their place of residence.

Insofar as these internal market principles apply to telecommunications services in the narrowest sense, there is no objection. However, should the intention also be to include content providers such as premium rate services in this regulation, there would be reason to be concerned. Consumer advice centres and the statistics of the telecommunications arbitration service prove: the premium rate sector is extremely prone to misuse. With this in mind, there is an important protective function in the fact that premium rate telephone numbers can only be assigned at national level in Austria. If there was an international-level allocation of telephone numbers, the possibilities of implementing an effective check on misuse and the withdrawing of a telephone number would be considerably limited.

AK concern: it should be made clear that the principles listed in article 21 do not refer to content providers such as, for example, **premium rate services**.

The requirements of paragraph 3 regarding tariffs abroad are welcomed in principle. Similar to the proposals for the reduction of roaming charges, AK is however of the view that the average consumer will only benefit from these measures if at the same time care is taken to ensure that the providers cannot raise domestic prices to make up for the resultant losses in turnover incurred. Otherwise, the proposals would have negative effects for the overwhelming majority of the consumers, who mainly make domestic calls and use data services.

AK concern: tariff reductions are welcome from a consumer point of view, there is however the risk that providers will compensate for the resulting drop in income by adjusting other tariffs and that this will result in higher prices particularly for consumers who make few phone calls abroad. Such a measure is therefore only meaningful in connection with other instruments that prevent compensatory price rises in other tariffs.

Article 22 Settling of cross-border disputes

In principle, the arbitration body of the telecommunications regulator often proves to be exceedingly useful in the event of a complaint. It is however striking that some Austrian providers are increasingly tending not to accept the non-binding arbitration recommendations of the regulator - which are generally very balanced and well grounded. In cross-border cases it may be assumed that the risk of poor collaboration on the part of the operators or acceptance of the arbitration results will further increase.

AK concern: such a disadvantageous development for consumers should be monitored. The regulatory authorities at the service provider's place of establishment should at least assist those in the consumer's country of residence.

Article 23 Open internet access and traffic management

In Austria, some mobile telephone service providers have already spoken out publicly on behalf of getting rid of the „neutral" transport of data packets with equal rights in favour of new business models. From AK's point of view, urgent measures are therefore required to protect consumer interests – specifically with regard to

- transparency
- respecting basic rights (freedom of information, data protection, protection of the private sphere)
- variety on offer and freedom to choose
- quality of the services
- combating unfair competition and the promotion of innovative services.

Consumers want to be able to be able to rely on access to the internet remaining available without restrictions, in other words that the entire contents of the web remain available without preference being given to individual customers or them being disadvantaged or individual services being presented and conveyed by the internet provider. Controlling interventions in the datastream should only be permissible for urgent technical reasons - for the purposes of data security and web integrity.

Consumers are to be made aware of such intervention possibilities when they sign their contract. A differentiation in „full" internet access and „second and third class" access at lower rates but which are subject to a variety of restrictions (such as lowered speeds or the blocking of certain websites or services) is too much for consumers, making it extremely difficult to compare what is on offer. It is therefore firmly rejected by the AK. A declared aim of the EU should be to promote the expansion of the infrastructure so that all consumers have sufficient bandwidth available in the long-term to allow unrestricted, open internet access.

We regard the position paper of the Austrian regulatory authority, downloadable at https://www.rtr.at/en/tk/RTRPosition2013, to be a successful step with regard to **„web neutrality"**, not only from the point of view of consumer transparency but also in terms of clearly understandable rules and prohibitions in the form of a legal policy preventing undesired, subjective interference in web neutrality by the operators.

In this context, the **AK welcomes the prohibition in paragraph 5**, which in principle prohibits „within contractually agreed data volumes or data speeds for internet access services … blockings, slowdowns, discrimination measures against certain content" inter alia. Also the exceptions to this prohibition listed in a) to d) (e.g. traffic management to counterbalance the overloading of the web) appear reasonable and justified from an objective point of view. From AK's point of view there does however exist **cause for concern** that the benefits **of this prohibition** will be to a great extent **devalued** for the consumer through the simultaneous acceptance of agreements on the „delivery of special services with a higher service quality" in paragraph 2.

Access to the internet at different prices dependent on the maximum speed promised by the operator is not a new concept and is also mostly without straightforward and without problems. However, a departure from the idea of a „neutral" internet would be if content providers could buy themselves preferential treatment for their websites and services. Internet providers could conclude exclusive contracts for better quality transmission for certain content providers.

From AK's point of view the opportunity has been missed to sufficiently guarantee the principle of the neutrality of the web. Thus the growing market concentration of large web providers will be favoured further. Commercial groups such as Google, Apple and the like can charge high prices for the superhighways they offer in the form of exclusive quality. Small providers could be left behind in this regard. And yet these are particularly important for ensuring variety and innovations in the internet.

The draft regulation only requires that the „general quality of internet access" should not be negatively affected by such exclusive contracts. Service quality regarding internet access could however vary greatly for each service or website accessed.

It would be even more difficult for the consumer to maintain a good market overview and to make the relevant purchasing decisions. With cheap broadband access, this could mean that e-mail and surfing the web are as normal but watching videos at high resolutions would only be possible for an additional charge. At any rate, retaining a market overview would be made enormously difficult for the consumer. Comparison sites can also only provide modest orientation guidelines in this regard.

Above all, the majority of consumers do not want to have to deal with even more complicated product descriptions. Consumer surveys show that the majority of consumers who take part prefer simple, compact products with a consumer-friendly minimum quality, which ought to be specified and verified by an official body.

The regulatory authority is responsible for the task of checking the provision that „the general quality may not be repeatedly or continually negatively affected" on the market. The expectation of such an intensive monitoring will likewise be just as difficult to meet as the task in article 24 paragraph 1 to monitor the „effects of special services on cultural variety and innovation". If service providers with low levels of capital are intimidated from realising their web applications because of expensive access terms and conditions levied for high quality hosting services, this circumstance will also not be readily „observable" by the regulatory authority.

AK concern: the AK rejects a differentiation between „full" internet access and „second and third class" access at cheaper rates. Manifold limitations (how fast or slow calling up certain websites or services is) overtax consumers and make it enormously difficult to compare offers. Controlling interventions in the datastream should only be permissible for urgent technical reasons - such as for purposes of data security and web integrity. It must be ensured that **all internet content is conveyed at the speed paid for by consumers** and that individual websites are not accessible only for additional charges.

Article 24 Provisions for service quality

As already noted with regard to article 23, there are considerable doubts that regulatory authorities can realistically perform such far-reaching monitoring duties effectively. In particular it will not always be possible to easily prove the adverse effect of special services and negative consequences for cultural variety. With regard to the monitoring duties of the authorities, the EU Commission apparently also has concerns as to whether or not special agreements about exclusive data transmission result in considerable negative effects for consumers as well.

AK concern: the AK urgently seeks a critical re-examination of the plan to allow **exclusive agreements for preferential data transmission**. In particular major US content providers could benefit from this plan (as well as the European internet providers). In contrast, the disadvantages for small – but innovative – content providers and consumers could be considerable.

In view of the above, AK supports permitting **special agreements – if at all - only with regard to enumerated and listed areas** (an objectively justified requirement for extraordinary fast, reliable connection services exists e.g. for applications in the field of medicine and research).

The empowerment of the regulatory authorities to define minimum requirements for service quality makes good sense. From a consumer's point of view this measure seems long overdue. At present customers find it difficult in practice to successful enforce their guaranteed rights. Since service providers at best advertise their efforts to achieve a good connection as a prospect in the contracts or advertise with maximum data service levels, it can be difficult to ascertain what the the performance level is that has to be met on an individual basis.

It is, however, even more incomprehensible that, according to paragraph 2, the regulatory authority must summarise „the reasons for taking action", if it wants to make use of the empowerment. From the consumer's point of view, there is however need for action: consumers want to be able to rely on contemporary quality and, in the event of poor performance, to be able to refer to recognised criteria with the help of which they will also be able to assert claims relating to guarantees - for improvement, price reductions or contract termination.

AK concern: minimum requirements for service quality are so important that they - without further justification **should** be defined by the regulatory authority.

Article 25 Transparency and publication of information

Consumers currently have difficulty keeping up to date with all the latest developments. New technologies, forms of service, ever more imaginary tariffs and packages on offer, new equipment and new equipment features are continually coming onto the market. Many people have long lost the overview of the terms and conditions of use, installation requirements, and the possible costs and security risks associated with use. Products are not only very varied but are also put together in an obscure fashion and are difficult to compare with each other.

At present service providers often ultimately practise more disinformation through having a range of detailed information which is difficult to understand: business terms and conditions are as a rule 20 to 30 pages in length. Every product component in a combined product has its own individual business terms and conditions, performance specifications and lists of charges. The contract forms typically consist of two pages and seldom contain all the important contractual information in a comprehensible language. In the contract form reference is often only made to the many-paged business terms and conditions, tariff and service descriptions, which can be viewed on the internet. Specific prices (basic charges, variable costs for language, SMS or internet services) are barely mentioned in the contract itself. Even an undertaking to give a clearer explanation of the individual items on the bill would be an improvement for consumers. Currently, purchases of „digital goods" (value ad-

ded services) in particular are not defined in a comprehensible way in mobile phone bills.

AK concern: the transparency requirements in article 25 are welcomed in principle. In addition it would be important to oblige the service provider to:

- present the **total costs over the minimum duration of the contract (of 24 months)** in order to improve the ability to make a comparison between different offers.

  As well as the basic charges, various one-off activation costs are also incurred depending on to service provider, annual SIM card packages, internet service packages etc.

- As the service providers tend to come up with new annual charges, which are not included in the basic charges, comparability of the offers is very difficult. An undertaking to detail the entire fixed costs calculated over the duration of the contract could provide effective remedy.

- The compulsory information in article 20 of the universal services guideline (or article 26 of the current draft) should be **automatically issued or communicated** concisely to the customer upon concluding of the contract, **on a standard form to be specified by the regulator** (currently under Austrian law it is sufficient to communicate this information to the consumer only if he/she asks for it).

- Insofar as mobile telephone providers emerge as **paid service providers** for their own and other's offers **(purchase of digital goods)** they should describe exactly in the bill which specific item from which service provider is billed with which mobile payment method. Otherwise the consumer cannot check the correctness of the bill effectively.

- Consumer organisations that offer tariff calculators (e.g. http://www.arbeiterkammer.at/konsumentenschutz/telefon.htm), are also compelled to indicate all conditions, restrictions, time-limited sales promotions, peculiarities of a tariff on offer in order not to misguide consumers about the details. In turn, the overview-ability of the orientation aids made available suffer because of this. Help in this regard is only possible by **moving away from the service providers standard business practice of offering extremely differentiated packages which are not comparable with each other**. With this in mind it has to be observed critically with regard to article 23 of the draft (Open internet access) that, as a result of the introduction of „special services with a higher service quality", obtaining an overview of the market will be once again made significantly more difficult for consumers.

Currently, advertising usually involves stating the maximum speeds („up to" values).

Also in the contract documents, apart from the maximum values theoretically reachable under optimal conditions, there are no further reference values, let alone quality assurances. Provider statements as in point i) (download and upload speeds actually available at peak times) would therefore no doubt be useful for consumers. The stating of an average speed would be useful in order to be able to better compare offers between the providers. Statistical

average values are, however, only of little assistance to the consumer in the event of a dispute.

AK concern: a **binding assurance of a minimum speed** by the provider would be important to enable consumers to enforce the rights guaranteed with (mobile) internet services as well.

Regarding point iii) it is noted that an explanation as to how special services with a higher quality of service can have an effect on the use of content, applications and services, contradicts the aims of articles 23 and 24.

There it was defined as a norm that special services should not negatively affect the general transfer speed „repeatedly or continually" (which the regulatory authority has to supervise). As significant negative effects in the rest of the services are consequently not permitted, AK requires an explanation as to what the provider - if it wants to meet point iii) - should actually refer to.

AK concern: the regulation of „special services" appears to us - as stated under article 23 – not only disadvantageous for the consumer but also **not without contradiction**. The proposal should **be removed without replacement** or be restricted to enumerated listed cases (such as research and medical applications).

According to the draft, the providers have to submit the information as per article 25 „upon demand".

AK concern: to protect consumers from information that does not comply with legal standards, this should definitely be automatically submitted to the regulatory authority . Insofar as it is a matter of terms and conditions, the authority should also be given a test competence under civil law . Formulations that are not „comprehensible and easily accessible", and are thus contrary to the draft regulation, should also be rejected by the regulatory authority.

Para. 4 is welcomed in principle. According to this, authorities can have information of public interest about the providers disseminated free of charge.

AK concern: from AK's point of view, consumer-related prevention concerns should be included in the listing of topics of public interest, such as protection against cost traps, information about improper offers or fraudulent cases and guidance on avoiding them.

Article 26 Information obligations in contracts

The regulation is welcomed in principle. The actual benefit of comprehensive information is however measured on how information is „made available". 30-page business terms and conditions and lists of charges respectively downloadable on the internet are completely unsuitable for the average consumer as a source of information.

AK concern: with this in mind, the information must be handed/ individually sent to the consumer a) upon concluding of the contract and specifically b) in a standardised contract form prescribed by the regulator which presents the most important components of the contract concisely and clearly (the long version with all terms and conditions is to be enclosed).

Paragraph 5 envisages that the contract, as demanded by authorities, would also have to contain **information „on the use of the web and services for illegal actions"**. This guideline should in practice mainly be used for supporting **copyright owners** in collaboration with the authorities responsible for pursuing

possible v**iolations of their rights in the internet**.

The guideline goes beyond article 25 paragraph 4 of the draft. Whilst article 25 paragraph 4 aims to make it possible for customers to receive legal information when requested by the authorities from their service providers (for example, about copyrights), article 26 paragraph 5 regulates that „the information made available by the authorities" should be part of the contract. In other words: **consumers could be directly obliged to carry out certain actions or omissions**. There are **considerable concerns** against this manner of proceeding:

- Art 12-14 of the **e-commerce guideline** grant courts and administrative authorities the right to require service providers of the information technology company „to stop or prevent the infringement of the law" anyway. Recital 45 on the guideline states: ordinances can be passed for the purpose of „preventing a violation of the law..., including the removal of illegal information or the blocking of access to it." An undertaking to monitor can however only be envisaged „in specific cases" (recital 47). Art 15 of the e-commerce guideline prohibits a general undertaking on the part of access and host providers to actively monitor transmitted or stored content or to actively look for circumstances which allow one to deduce illegal conduct.

- From AK's point of view, **internet providers may in no way be used as „stooges" of rights holders or copyright collection societies.** A standard inclusion of internet providers in activities to combat copyright violations going beyond the level of individual cases is disproportionate from AK's point of view. In line with the three strikes-out model and the French (Hadopi) model, a mechanism could be established that obliges the access provider to send warnings to its customers when called upon to do so by copyright holders (and to subsequently block the connection).

- **Copyright clauses prescribed by the authorities** in the internet contracts of users only make sense if **user behaviour** is also **monitored accordingly as a result**. The AK rejects such a process for data protection reasons. A general preventive monitoring of internet traffic going beyond that of the pursuit of individual cases would only be possible in association with the renunciation of elementary principles such as the assumption of innocence, the freedom of information and data protection.

- In this context it would be much better to aim for a **strengthening of user rights** – perhaps through a **ban on the deployment of deep packet inspections**. Such a combing of internet data by means of software for copyright-protected material breaches the principle of confidentiality of communication for all internet users and illicitly interferes with the confidentiality of their communications as protected in their fundamental rights.

- Furthermore, one should once again recall the **principle of web neutrality** (no interference with the dataflow unless it is necessary for the securing of the technical web integrity). From AK's point of view, this means that non-judicial interference in user rights is not permissible: internet providers can, for example, not decide independently about

passing on of data, filter measures or customer blocking. They can neither assess the facts submitted by the rights holder conclusively nor evaluate the individual case.

- **The legal right to a fair trial cannot be waived** (adherence to the assumption of innocence, a preliminary investigation that considers both points of view, possibilities of appeal against decisions etc.)

AK concern: due to the **disparity of the measure** (see above justification) the **part of the text that deals with illegal actions in paragraph 5 should definitely be deleted**. Article 25 paragraph 4 already caters for the issue regarding better consumer education. There is no necessity to also make this „information" a component part of consumer contracts in AK's opinion.

Article 27 Inspection of the volume of use

The regulation is welcomed in principle. A cost check tool that is easy for consumers to use is of enormous help in avoiding surprisingly expensive bills. As providers are often not prepared to voluntarily offer their customers effective systems for limiting costs, there was a need for action in this area (and in part is still exists at present).

In 2011, the AK reviewed more than 60 complaints from mobile internet users who submitted these to the consumer advice body within only 5 days: the affected users had been faced with „rogue extra charges" on their bills of on average 750 euros in addition to their monthly flat rates. The highest bill amounted to 3000 euros. As a reaction to the increase in such cases, the regulatory body in Austria has passed a cost restriction ordinance that protects against shock bills resulting from surfing using a mobile.

This prescribes – based on the cost control provisions of the EU roaming regulation - a cost control for consumers in the form of an automatic connection block after the consumption of 60 euros:

> We refer in this context to the cost restriction ordinance of the telecommunications regulator, downloadable at https://www.rtr.at/en/tk/KostbeV. According to this, providers must warn customers who have usage-dependent billing of data volumes when their allocation is used up or when 30 euros has been used by SMS (text message). The protection provisions apply to mobile data services (whether on mobile, smartphone or mobile internet) in Austria. If data volumes costing 60 euros have been consumed, the provider must block access to the internet until the end of the billing month (and can only unblock it again at the specific request of the consumer).
>
> Alternatively, providers can also install a bandwith restriction to 128 kbit/s on their tariffs, which applies as soon as the data volume included in the tariff has been consumed.

A very **positive aspect of the draft submitted** is a consumer can also request adherence by the service provider **to a monthly maximum amount set by the consumer himself/herselffor other service categories (such as telephone calls and SMS)**. A survey by the AK does however show that the overall number of complaints is lower for services other than data services. The unusually high bills reported in this area have average

disputed amounts of between 200 and 300 euros. If ascertainable, the causes lie in the use of premium rate services lacking transparency or expensive added costs that accrue after the package of free minutes or free SMS bought in advance have been used up. Young people in particular are affected by this. With this in mind, an improved cost control is also sensible and necessary in these areas as well.

However, the draft does however unfortunately lie below the protection standard offered by the Austrian costs limitation ordinance in one key point, this being that the draft regulation obliges service providers to block once a maximum amount has been reached if the customer himself/herself applies for such a cost control. **The automatic protection would not apply.**

AK concern: particularly for consumers in need of such protection – because they are impulsive, careless or simply just uninformed - an automatic barrier would be essential at a certain maximum amount above all when using data services (anyone not wanting this protection can make use of an opt-out clause). In this important point the current EU draft should be amended.

Article 28 Termination of the contract

Minimum contract duration: the universal services guideline of the 2009 EU Telecommunications Package states that the „starter" minimum contract duration may not exceed 24 months, and an offer of no more than a 12-month obligation is recommended.

According to the Austrian Consumer Protection Act, longer commitments than this are not permitted; there are relevant judicial rulings on this. However in practice it is apparent that **contract renewals with 36-month commitments** are on the increase. With this in mind, article 28 of the current draft is welcomed in principle. The regulation not only restricts the „starter" maximum commitment duration but also contractual periods in general.

From AK's point of view, however, a **maximum one year commitment** would be appropriate. This term also equates to the maximum terms applicable in most other sectors regulated by Austrian consumer law. There is often no objective justification for a longer contractual commitment in the telecommunications field (only when a very expensive telephone is provided by the provider on a heavily subsidised basis are two-year contracts conceivable on an individual case basis.) **Two-year commitments are only to be condoned in connection with the granting of special benefits** (such as highly subsidised telephones); this is also in line with Austrian case law.

AK concern: the minimum commitment should as a rule not exceed one year. A two-year commitment is only appropriate in the case of a telephone being subsidised to a considerable extent.

Notice period: in Austria, comparatively long notice periods of 3 months are usual. An improvement in the consumer's legal position is unfortunately not anticipated with the draft regulation. According to the draft, although consumers can terminate contracts by giving notice of one month, they can only do this „as long as nothing else has been agreed" (and also that more than 6 months has passed since the contract was concluded). Since business terms and conditions however regularly – according to the draft permissibly - contain longer notice periods, this piece of text should

be deleted without being replaced. Otherwise this regulation would hardly have any added value in practice.

AK concern: in the event of a termination of the contract, the notice period should generally be set without exception to one month.

The intentions behind paragraph 2 are unclear. In principle it is to be welcomed that, in the event of a premature notice being given by the customer, the telecommunications service provider obtains terms of reference as to what costs it can fairly charge the customer upon withdrawal from the contract before the expiry of the agreed minimum contract duration.

With the current condition, however, it is not clearly stated that the provider may demand no more than the residual value of a subsidised mobile phone and a pro rata repayment of other benefits if premature notice is given. It cannot be considered reasonable that the consumer should also have to make payments after the expiry of the minimum contract duration for the residual value of subsidised telephones. The wording has also been formulated so unclearly that it cannot be reliably ascertained whether the customer actually has to cover the residual value of the „discounted phone" or only the pro rata part, non-amortized part of the subsidy provided.

At present, consumers have to pay the service provider the basic charges outstanding, on the basis of the terms and conditions, until the end of the agreed minimum contract duration if they prematurely terminate a contract in Austria.

BAK concern: the intention behind this regulation is welcomed in principle. However the condition must be more **clearly worded in a consumer-friendly manner**. In paragraph 4, it should be made clear that in the event of a subsequent amendment to the contract, the consumer can give notice without incurring any costs at all (that is, no compensation needs to be made for mobile phone subsidies granted).

The **removal of the SIM lock** free of charge, as defined in paragraph 2, **is welcomed**, as are the **strict rules on the tacit extension of the duration of the contract** in paragraph 3: in particular the transition to a contract without a specified duration (when the consumer does not reject an extension) represents progress.

Art 30 Switching providers and the transfer of telephone numbers

In Austria the switching process is strictly governed in the **Number Transfer Ordinance** (duties of the relinquishing provider and the receiving provider) and has been thoroughly tried and tested. If interested, the ordinance can be found at: https://www.rtr.at/en/tk/NUEV_2012.

Obligatory information from the relinquishing service provider are essential for the consumer to protect him or her from precipitous decisions and erroneous assumptions: the contract with the relinquishing provider is not terminated by an application to transfer the telephone number. This is why the consumer must first of all take a look at the costs of terminating the old contract in order to be able to make an economically informed decision about switching providers.

BAK concern: the obligations to provide information prescribed in the Number Transfer Ordinance of the Austrian regulatory authority **should therefore be**

retained irrespective of the efforts to achieve a full harmonisation (or should be included in the draft regulation).

Further important consumer concerns:

The possibility of deactivating additional services when the contract is being concluded: mobile telephone providers are resisting having to list already preset activated services (internet, mobile payments inter alia) in their contract forms beyond those about speech telephony and (de-) activating them based on the customer's choice (indicated by ticking a box). Many customers would like more self-determination with regard to the extent of the activated services (mainly the parents of children). Above all there is no clear listing of the service characteristics included in the contract about which they themselves would like to decide regarding (de-)activation. At present the service providers make decisions about the activation of services based on the default network settings and also predefined settings in the mobile phone. Above all the option to block access to the internet when the contract is being concluded is wanted by many parents as an effective means of protecting young people and to prevent debts being incurred.

Internet payment services – lack of protection against misuse (activation only when requested by customer; PIN code protection): with regard to the requirement already listed above, one should note that such payment services should only be switched on at the explicit wish of the customer. In the event that they are switched on, protection by means of a PIN code should be obligatory to secure the payment means against misuse by third parties (as in fact is also envisaged by the payment services guideline).

Bound to contract despite moving: in the event the consumer emigrates, the current telecommunications or internet contract cannot generally be terminated early (even though the provider cannot provide its services at the new location). Even the German Federal Supreme Court has confirmed that a move, for work or family reasons for instance, in principle did not represent a justified reason to terminate the contract early. The customer bears the risk that he/she cannot use a service provided under a long-term contract as a result of a change in his or her personal circumstances.

A regulation obliging the providers to continue to provide the service (in as far as this is technically possible) at the new place of residence without changing the agreed duration of the contract would be desirable. If this is not possible to implement, then there should exist the possibility of terminating the contract early against a partial payment of a limited amount.

Should you have any further questions please do not hesitate to contact

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