



## **Access to information and communication networks is a fundamental right**

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**AEDH wishes to point out that access to information and communication, and therefore the Internet, is a fundamental right guaranteed by the Charter of Fundamental Rights. Consequently, any move to restrict access to the Internet should be exceptional and must only be decided upon by judicial authorities within a framework that recognises the right of defense. AEDH is therefore deeply concerned about the withdrawal of “amendment 138” from the Telecoms Package.**

The amendment, which states that “no restriction may be imposed on the fundamental rights and freedoms of end-users, without a prior ruling by the judicial authorities, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, save when public security is threatened in which case the ruling may be subsequent,” was adopted by the European Parliament in September 2008 and rejected by the Council during the French EU presidency. It was nonetheless maintained by the European Parliament and adopted during the second reading of the Telecoms Package in May 2009.

To oppose the amendment, the Council referred to Article 95 of the treaty establishing the European Community, which deals with the objectives of the internal market, and claimed that the organisation of the judicial systems of Member States did not fall under the scope of application of the EC Treaty. The European Parliament finally yielded to this argument.

While AEDH does not prejudice the legitimacy of this legal argument in view of the Lisbon Treaty’s application on the 1st of December 2009, it strongly opposes any measures that would deprive people of access to means of communication and information, specifically the Internet, except for serious, proportional and exceptional reasons, and only when the decision to cut off such access has been made by judicial authorities and all avenues of legal recourse have been exhausted.

AEDH believes that access to means of communication is not only a fundamental right in terms of the freedom of expression and information (Article 11 of the Charter of Fundamental Rights), but also in terms of the right of access to services of general economic interest that “the Union recognises and respects” (Article 36 of the Charter).

Communication services and networks that allow the circulation of information, exchanges, and access to knowledge are services of general economic interest. Any resident of the Union must have access to such services with no restrictions. By virtue of Article 14 of the Treaty of Lisbon, services of general economic interest are services to which “all in the Union attribute value”. The protocol of the treaty states, in Article 1, 3rd paragraph, that these services should have “a high level of quality, safety and affordability, equal treatment and the promotion of universal access and user rights.” Cutting off access to communication networks would be a serious violation of the fundamental rights of the persons concerned as well as their families and close contacts, and is not an acceptable means of fighting other offenses, particularly those involving the use of content.

AEDH strongly believes that the content circulating via communications networks and the Internet in particular, should obey common legal rules, adhere to the rules of international law, and fall within the framework of fundamental rights. But sanctions for content-related infringements must not lead to the loss of access to communication networks.

AEDH deplores the removal of “amendment 138” from the Telecoms Package, and calls upon the Parliament, the Council, and the European Commission to reevaluate the issue, starting from new legal foundations, to guarantee a fundamental right to every person living in the Union: the right of access to communication services, specifically the Internet.

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