

The European Electronic Communications Code – End-User Rights

ANETA ŁAZARSKA

Professor of Civil Law and Civil Procedure at Lazarski University, Warsaw, and Judge at the District Court of Warsaw.

E-mail: aneta.lazarska@lazarski.pl

MACIEJ ROGALSKI

Professor of Criminal Law and Procedure at Lazarski University, Warsaw, and Rector of Lazarski University.

E-mail: maciej.rogalski@lazarski.edu.pl

ABSTRACT

The article analyses end-user rights as set out in the EU Directive establishing the European Electronic Communications Code. The sources of those rights are to be found not just in the Directive, but also in other acts of law, and in the system of values whose basic goal is to protect the fundamental rights of every EU citizen. Where those values collide with technological progress, the protection of fundamental rights should prevail.

KEYWORDS

electronic communications services, digital transformation, civil rights, protection of fundamental rights

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1. Introduction

We are at a historic digital watershed in which the right to electronic communication services has become fundamentally important to the exercise of basic rights and freedoms. As rightly pointed out by Maciej Szpunar, the first Advocate General of the CJEU, today the Court of Justice of the European Union faces many challenges, including safeguarding the rule of law and various aspects of fundamental rights – particularly in the context of the scope of the Charter of Fundamental Rights of the European Union, its connection with the constitutions of individual Member States, and the European Convention on Human Rights. For Szpunar, there is no doubt that the legal problems resulting from the emergence and growth of new technologies constitute one of those challenges¹, one that not only the Court of Justice – but the whole world, societies and individuals – are grappling with.

The primary aim of this research was to conduct a dogmatic analysis (that is, one based on the legal norms) of electronic communications services, which are part of the digital transformation and the EU's digital sovereignty in the area covered by the European Electronic Communications Code. That analysis is set in the context of the shared values and principles that shape EU identity.

Directive (EU) 2018/1972 of the European Parliament and of the Council (EU) of 11 December 2018 establishing the European Electronic Communications Code (“EECC”)² is the basic act of law regulating the provision of electronic communications services within the European Union. It is undoubtedly of strategic importance, for it constitutes part of the EU's digital transformation, and it is on its basis that individual Member States adopt national regulations governing the provision of such services. Previously, five different directives on electronic communications services were in force in the EU; the EECC recast these into a single, new act of law, drawing on experience gained from the functioning of the market and the technological changes it had gone through. In this article, we analyse the right of users to access electronic communications services as guaranteed not only by the EECC, but by the EU's system of values.

We put forward the thesis that end users' entitlements do not derive only from the EECC, but also from the system of values set out in other acts of law, such as the Charter of Fundamental Rights, whose purpose is to protect the fundamental rights of every EU citizen, including as regards electronic communications services. For even the preamble to the EECC (Recital 6) declares that its provisions must be consistent with Art. 52 sec. 1 of the Charter. Any restrictions on the exercise of rights and freedoms recognised in the Charter must be foreseen by the law and must respect the essence of those rights and freedoms. Subject to the principle of

¹ SZPUNAR 2025, 4-9; SZPUNAR 2020, 149-168.

² OJEU L 2018 No. 321 p. 36.

proportionality, restrictions can only be introduced when they are necessary and actually serve a general interest recognised by the EU or a need to protect the rights and freedoms of others.

We analyse the rights end users enjoy under the EECC in the context of the principle of non-discrimination, in accordance with which providers of networks or electronic communications services must not apply any requirements to end users other than the general conditions on access to and use of those networks or services that result from the EECC – such as a user’s citizenship, place of residence or registered office. We also conduct a dogmatic analysis of the EECC with regard to freedom of speech, media pluralism, impartiality, and cultural and linguistic diversity.

Further, we consider whether the right to electronic communications services established by the EECC indeed ensures that end users have universal, equal access to and choice of services. This especially concerns end users with disabilities. Our analysis takes account of the regulations guaranteeing that users have transparency, are able to compare offers, and that information important to concluding a contract for electronic communications services be published in an understandable manner. Finally, we examine the requirements imposed on suppliers when setting prices for end users.

We also set out to answer the question of whether the rights of electronic communications services users are consistent with the system of values that results from other EU acts of law intended to protect the fundamental rights of every EU citizen and facilitate the digital transformation and digital sovereignty.

2. *The digital transformation in the EU and fundamental rights*

The European Union’s digital transformation rests on the shared values and principles that shape its identity. Those values are a kind of unique code that binds and strengthens EU society. In accordance with Art. 2 of the Treaty on the European Union of 7 February 1992 (the “TEU”)³, the Union is based on the values its Member States share. Art. 49 states that respect for those values constitutes a precondition for EU access⁴. The Union is composed of states that freely and voluntarily acceded to the community of values referred to in Art. 2 TEU; they adhere to those values and commit to upholding them. In this context, mutual trust is key, for the EU in fact constitutes a community of values, and it is a fundamental assumption that Member States share those values⁵.

Consequently, as confirmed by CJEU case law, Art. 2 TEU is not simply an indication of direction or an expression of political will. It sets out the values that constitute the very identity of the Union as a common legal order – values embodied in principles that translate into legally binding obligations on Member States. Thus, a Member State must respect the values enshrined in Art. 2 TEU to be able to enjoy all the rights that follow from enacting the treaties. This cannot be reduced to an obligation a candidate state must follow during EU accession, but may later do away with⁶.

In turn, Art. 19 TEU enshrines the value of the rule of law affirmed in Art. 2 TEU⁷, under which the principles of democracy and equal treatment are values on which the Union is based⁸. And the CJEU has ruled that, while it does result from Art. 4 sec. 2 TEU that the Union respects Member States’ national identity, which is inextricably tied up with their basic

³ OJEU of 7 June 2016, C 203/13.

⁴ Ruling of the Court of Justice of the European Union (“CJEU”) of 16 February 2022, *Hungary v. the Parliament and the Council*, C-156/21, EU:C:2022:97, pt. 124 and the case law cited therein.

⁵ Ruling of the CJEU of 15 July 2021, *Commission v. Poland*, C-791/19, EU:C:2021:596, pt. 50 and the case law cited therein.

⁶ Ruling of the CJEU of 16 February 2022, *Hungary v. the Parliament and the Council*, C-156/21, EU:C:2022:97, pt. 232, 126 and the case law cited therein.

⁷ Ruling of the CJEU of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, ECLI:EU:C:2018:117, pt. 32.

⁸ Ruling of the CJEU of 3 June 2021, *Hungary v. the Parliament and the Council*, C-650/18, EU:C:2021:426, pt. 94.

political and constitutional structures, and that they therefore enjoy a certain scope of discretion in implementing the principle of the rule of law, it in no way follows that the obligation to achieve a certain result may differ from one Member State to another. For they have all committed themselves to upholding the rule of law – a concept common to all of their constitutional traditions – in a manner that is lasting⁹.

The European Parliament, the Council and the Commission made a solemn joint Declaration on digital rights and principles in the digital decade (the “Declaration”)¹⁰. It emphasises that the European Union is a union of values, as set out in Art. 2 TEU, based on respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including minority rights. Further, under the Charter of Fundamental Rights of the European Union (the “Charter”)¹¹, the Union is founded upon indivisible, universal values: human dignity, freedom, equality and solidarity. The Charter also confirms particular rights derived from shared international commitments Member States have made¹².

It is emphasised in the Declaration that the digital transformation will affect every aspect of life, and offers significant opportunities for improving the quality of life, economic growth, and sustainable development. On several occasions, the European Parliament has called for ethical principles to inform the EU’s approach to the digital transformation, and to ensure full compliance with fundamental rights such as: 1) data protection, 2) privacy, and 3) non-discrimination and sexual equality, as well as with principles such as: 4) consumer protection, 5) technological and network neutrality, 6) credibility, and 7) inclusivity. The overriding principle is respect for human rights.

There have also been calls to strengthen the protection of the rights of users in the digital environment, as well as workers’ rights and the right to be offline. In the Lisbon Declaration – Purposeful Digital Democracy¹³, drawing on previous initiatives such as the Tallinn Declaration on e-Government¹⁴ and the Berlin Declaration on the Digital Society and Value-Based Digital Government¹⁵, Member States appealed for a model of digital transformation that would strengthen the human dimension of the digital ecosystem, a model based on the digital single market.

Certainly, what is most striking here is the emphasis on making the digital transformation benefit people: what is most important is people. Technology should serve and benefit all people living in the EU. It should not encroach upon their fundamental rights, but should enable them to securely achieve their aspirations. Hence the effort to strengthen the democratic framework for the digital transformation. The transformation should foster a fair, integrated and inclusive society and economy within the EU. Further, it is connected with digital sovereignty, that is, the ability of states and users themselves to exercise their rights and to shape the digital domain in accordance with their social and developmental needs¹⁶.

More and more, the EU emphasises the dimension of strengthening its “digital sovereignty” as a basis for protecting European values in the digital era. In her State of the Union address to the European Parliament in 2020, President of the European Commission Ursula von der Leyen

⁹ Ruling of the CJEU of 16 February 2022, *Hungary v. the Parliament and the Council*, C-156/21, EU:C:2022:97, pt. 233, 234.

¹⁰ European declaration on digital rights and principles in the digital decade, Brussels 26 January 2022, COM(2022) 28 final, <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52022DC0028>.

¹¹ https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

¹² European declaration on digital rights and principles in the digital decade, (2023/C 23/01) [https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:32023C0123\(01\)](https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:32023C0123(01)).

¹³ <https://futurium.ec.europa.eu/pl/digital-compass/digital-principles/library-video/lisbon-declaration-digital-democracy-purpose>.

¹⁴ eGovernment Declaration in Tallin of 6 October 2017, file:///C:/Users/macie/Downloads/tallinn_egov_declaration-final_with_signatures_47559.pdf.

¹⁵ https://ec.europa.eu/isaz/sites/default/files/cdr_20201207_eu2020_berlin_declaration_on_digital_society_and_value-based_digital_government.pdf.

¹⁶ HUW et al. 2023, 51-75; HACKER, VAN DIJK 2000, 54; KRASNER 2001, 20-29; WILMAN et al. 2024, 122-129.

stated that the EU had an opportunity to introduce changes in a planned way, not merely in response to a disaster or at the dictate of other players in the world, and that what was at stake was Europe's digital sovereignty, on the micro and macro scales¹⁷. The address was both a signal of intentions and a reflection of a new political programme in the EU. Digital sovereignty is seen as a foundation for strengthening the EU's role in an interconnected world, promoting its fundamental interests, and protecting the values on which it stands: human dignity, freedom, democracy, equality, the rule of law and respect for human rights (Art. 2 TEU)¹⁸.

The development of digital technologies and cyberspace is undermining the traditional concepts of national borders and international law. When it first emerged, it was believed that the internet was resistant to sovereignty, would contribute to freedom of speech, and that states would be kept out of managing it. Recent history has shown, however, that state involvement was inevitable¹⁹. "Technological sovereignty" is an umbrella term applied to a range of solutions, technical and non-technical, from undersea cables to data protection²⁰.

«Some EU political institutions have recently attempted to define digital sovereignty and related terms. European Commission President Ursula von der Leyen has spoken of "tech sovereignty" as Europe's ability to "make its own choices, based on its values, respect its own rules". A similar understanding of "digital sovereignty" is implicit in a statement by Charles Michel, President of the European Council, who sees it as a means of achieving strategic autonomy, which "is about being able to make choices [...] this means reducing our dependencies to better defend our interests and values"»²¹.

The EECR regulates a range of issues related to the functioning of the electronic communications services market, including end user rights (Art. 98-116). Under Art. 100 EECR, national provisions on end users' access to or use of services and applications via electronic communications networks must comply with the Charter and the general principles of EU law. If any such measure could limit the exercise of rights or freedoms recognised in the Charter, it can only be applied if it: is provided for by law; respects those rights and freedoms; is proportional; is necessary; achieves a purpose in the general interest recognised by EU law; or meets a need to protect the rights and freedoms of others under Art. 52 sec. 1 of the Charter and the general principles of EU law – including the right to a fair trial; effective avenues of appeal; the presumption of innocence; and the right to privacy. Proceedings must be fair and impartial, and those concerned must have the right to be heard – although appropriate conditions and procedural safeguards may be set, in compliance with the Charter, in duly established urgent cases. Art. 169 sec. 1 of the Treaty on the Functioning of the European Union²² (the "TFEU") relates to these provisions. It states that, in order to protect consumer interests and ensure a high level of consumer protection, the EU protects consumers' health, safety and economic interests, as well as their right to protect their own interests by becoming informed, educated and organised.

3. *Freedom to provide electronic communications services*

The provision of electronic communications networks and services constitutes regulated activity for which the EECR establishes a basic framework, and to which Art. 52 sec. 1 TFEU

¹⁷ https://ec.europa.eu/commission/presscorner/detail/en/ac_20_260.

¹⁸ HUW et al. 2021.

¹⁹ BAEZNER, ROBIN 2018, 5.

²⁰ MAURER et al. 2015, 53-68.

²¹ HUW et al. 2021.

²² OJEU No. 326, p. 47

also applies. Under that article, the provisions of the TFEU on entrepreneurs' rights and related measures do not prejudice the application of laws, regulations or administrative provisions that foresee special treatment of foreigners where this is justified by considerations of public order, public safety or public health. The EEC Directive does not limit any individual Member State from taking measures to protect its basic interests regarding public safety, order and security, or to detect and investigate crime. It does, however, set out that all restrictions on the rights and freedoms enshrined in the Charter, and particularly in Art. 7, 8 and 11, must be provided for by law, must respect the essence of those rights and freedoms, and must be proportional, in accordance with Art. 52 sec. 1 of the Charter (point 6 of the preamble to the EEC Directive).

Electronic communications networks and services are not only regulated activities – that is, activities not based solely on the free play of entities on the market. Member States' detailed regulations in this area must also observe the rights and freedoms enshrined in fundamental EU documents such as the Charter. This particularly concerns access to data on citizens by competent authorities, such as prosecutor's offices and the police, which always constitutes an encroachment into an individual's private life²³. Such considerations directly influenced how freedom of communication was formulated in the Charter²⁴. Interference of this type is justified only if it serves to protect public safety or detect crime²⁵, and meets the criteria of necessity and proportionality²⁶. National provisions of law must be clear and precise (Art. 8 sec. 2 of the Charter)²⁷ to prevent authorised entities from taking arbitrary decisions²⁸, and to ensure that users know in what situations those entities may employ particular measures²⁹.

This issue is of fundamental importance in the changing world of the digital era, where access to means of communication translates into power and control over the rights and freedoms of individuals. In modern societies, given the scale at which means of electronic communication – digital mobile networks and the internet – are used both professionally and privately, the effects of interference have escalated.

New means and technologies of communication have also made it easier for governments, enterprises and natural persons to monitor, capture and collect data. As the Special Rapporteur on freedom of opinion and expression has observed, technological progress has allowed the state to conduct surveillance that is virtually unlimited in scale or duration. Shrinking technological and data storage costs have eliminated previous financial or practical barriers, such that states can now conduct simultaneous, invasive, targeted, mass surveillance as never before. In other words, the technological platforms on which the world's political, economic and social life increasingly relies are not only susceptible to mass surveillance, but can even facilitate it³⁰.

²³ See European Court of Human Rights ("ECtHR"), Judgment of 6 September, 1978, *Klass and Others v. Germany*, Appl. no. 5029/71, www.echr.coe.int, sec. 41; ECtHR, Judgment of 16 February, 2000, *Amann v. Switzerland*, Appl. no. 27798/95, www.echr.coe.int, sec. 56; ECtHR, Judgment of 25 June, 2013, *Valentino Acatrinei v. Romania*, Appl. no. 18540/04, www.echr.coe.int, sec. 57-58.

²⁴ See ECtHR, Judgment of 6 September, 1978, *Klass and Others v. Germany*, Appl. no. 5029/71, www.echr.coe.int, sec. 41; ECtHR, Judgment of 29 June, 2006, *Weber and Saravia v. Germany*, Appl. no. 54934/00, www.echr.coe.int, sec. 77-79; ECtHR, Judgment of 1 July, 2008, *Liberty and Others v. Great Britain*, Appl. no. 58243/00, www.echr.coe.int, sec. 56.

²⁵ See ROBILLIARD, MCEWAN 1986, 30.

²⁶ CJEU, Judgment of 21 December, 2016, *Tele2 Sverige AB v. Post- och telestyrelsen*, Joined Cases C-203/15 and C-698/15, EU:C:2016:970, sec. 107-108, 112-114, 124-125, 134. See also VAINIO, MIETTINEN 2015, 299.

²⁷ See ECtHR, Judgment of 2 September, 2010, *Uzun v. Germany*, Appl. no. 35623/05, sec. 66.

²⁸ ECtHR, Judgment of 29 June, 2006, *Weber and Saravia v. Germany*, Appl. no. 54934/00, www.echr.coe.int, sec. 93-94.

²⁹ ECtHR, Judgment of 30 July, 1998, *Valenzuela Contreras v. Spain*, Appl. no. 27671/95; ECtHR, Judgment of 12 May, 2000, *Khan v. Great Britain*, Appl. no. 35394/97.

³⁰ UN General Assembly, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 23 September 2014, A/69/397, No.18, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-37_en.doc.

Under Art. 7 of the Charter, everyone has the right to have their private life, family life, home and communications respected, a right that is closely connected with the right to personal data protection set out in Art. 8 of the Charter. Personal data must be processed reliably, for specific purposes, and with the consent of the interested party or on another justifiable basis provided by law. Everyone has the right to access data collected that concern them, and the right to correct those data. Compliance with these rules is subject to control by an independent body. Freedom of expression is regulated in Art. 11 of the Charter, which states that everyone has the right to freedom of expression. This encompasses the freedom to hold opinions, and to obtain and transmit information and ideas without interference by public authorities, regardless of state borders. The freedom and pluralism of the media must also be respected.

The right to privacy is also protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms (“EConHR”)³¹. Art. 8 of the Convention states that everyone has the right to have their private life, family life, home and correspondence respected:

«There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others».

The European Court of Human Rights (“ECtHR”) has ruled on many occasions that it «does not consider it possible or necessary to attempt an exhaustive definition of the notion of “private life”»³². More recently, however, it has indicated that this is a “broad” concept³³ – which seems especially relevant given the changes society is going through in this era of new digital technologies.

The ECtHR has found that data on telecommunications subscribers, as well as traffic and location data, whether considered separately or jointly, may concern the private life of interested persons. It has also found that the very fact of storing data on an individual’s private life constitutes interference in the meaning of Art. 8 EConHR. Further, the Court determined that storing such data without the data subject’s knowledge also constitutes interference with their right to have their correspondence respected – it noted that later use of the information stored was irrelevant, and ruled that access by competent authorities to data stored in that manner constituted additional interference in the data subjects’ exercise of their right to protection under Art. 8 EConHR³⁴.

Certainly, digital sovereignty based on EU regulations has contributed to respect for the right to privacy. The Declaration states that the democratic activities of digital society and the digital economy should be strengthened, with full respect for the principles of the rule of law, an effective justice system, and enforcement of rights. The Declaration does not affect lawful restrictions on the exercise of rights in order to reconcile them with the exercise of other rights, or restrictions in the public interest that are necessary and proportional.

The European Union guarantees fundamental rights and freedom, and defines strict conditions under which they may be limited. Under Art. 52 sec. 1 of the Charter, all such restrictions must be provided for in the law and must respect the essence of those rights and freedom, where, subject to the principle of proportionality, restrictions may be introduced only when they are necessary and actually serve a general interest recognised by the Union, or the

³¹ European Convention on Human Rights and Fundamental Freedoms adopted in Rome on 4 November 1950, amended by Protocols 3, 5 and 8 and supplemented by Protocol 2, Journal of Laws of 1993 no. 61, item 284, of 1995 no. 36 items 175, 176 and 177, of 1998 no. 147 item 962, of 2001 no. 23 item 266, of 2003 no. 42 item 364, and of 2010 no. 90 item 587.

³² Ruling of the ECtHR of 16 December 1992 in *Niemietz v Germany*, complaint no. 13710/88, series A, no. 251-B, § 29.

³³ Judgment of the ECtHR of 28.06. 2007 r. in *Ekimdzhie v Bułgarii*, application no. 62540/00; judgment of the ECtHR of 19.07.2018 in *Centrum för Rättvisa v Sweden*, application no. 35252/08.

³⁴ Judgment of the ECtHR of 28.06. 2007 in *Ekimdzhie v Bułgarii*, application no. 62540/00; judgment of the ECtHR of 19.07.2018 in *Centrum för Rättvisa v Sweden*, application no. 35252/08.

need to protect the rights and freedoms of others. In the meaning of Art. 52, for any restriction on the exercise of fundamental rights to be lawful, it must be proportional.

In CJEU case law, an EU act may be deemed proportional only when the measures it introduces are appropriate to achieve a defined goal and do not extend beyond what is necessary to achieve it. For fundamental rights are not absolute prerogatives, but must be viewed in light of their social function and weighed against other fundamental rights. Restrictions must be confined to what is absolutely necessary, and the regulations governing them must contain clear, precise rules on their scope and application³⁵. A restriction on the exercise of the fundamental rights guaranteed in Art. 7 and 8 of the Charter, such as, for example, processing personal data or accessing data stored on a mobile phone as part of preparatory criminal proceedings conducted by the police, should in principle be deemed to correspond to a general interest recognised by the EU in the meaning of Art. 52 sec. 1 of the Charter. Nevertheless, this requirement is not met if that purpose can be rationally achieved equally effectively by other means that encroach less upon the fundamental rights of the persons the data concern³⁶.

The requirement to respect the principle of proportionality also results from CJEU case law, which states that, at the EU level, the fundamental right to privacy means that any derogations from or limitations on personal data protection must themselves be limited to what is absolutely necessary³⁷. Moreover, a general interest goal must not be pursued without striking a balance between that goal and the fundamental rights the measures to be applied will affect³⁸.

Thus, the CJEU highlights that, to meet the requirement of proportionality, regulations must clearly and precisely set out the scope and manner in which a given measure may be applied, as well as minimum guarantees that data subjects will be able to effectively protect their data from abuse. Those regulations must be legally binding in domestic law, and in particular must set out under what circumstances and conditions data may be processed, thereby guaranteeing that all interference will be limited to what is strictly necessary. The need for such a guarantee is all the more vital when personal data may be processed automatically, and when there is a significant risk of unauthorised access – especially to sensitive data³⁹.

Provided that citizens' fundamental rights and freedoms as enshrined in EU law are respected, it cannot be argued that the need to ensure that authorised entities such as prosecutor's offices are able to intervene in the sphere of freedom of communication, when justified by a need to protect state security or combat crime, is detrimental to the technological or commercial development of electronic communications services. When fundamental rights

³⁵ Ruling of the CJEU of 30 January 2024, *Direktor na Glavna direktsia 'Natsionalna politisia' pri MVR - Sofia*, C-118/22, EU:C:2024:97, pt. 39.

³⁶ Similarly, ruling of the CJEU of 30 January 2024, *Direktor na Glavna direktsia 'Natsionalna politisia' pri MVR - Sofia*, C-118/22, EU:C:2024:97, pt. 40 and the case law cited therein; ruling of the CJEU of 26 January 2023, *Ministerstvo na vatreshnite raboti*, C-205/21, EU:C:2023:49, pt. 126 and the case law cited therein.

³⁷ Rulings of the CJEU: of 16 December 2008 r., *Satakunnan Markkinapörssi and Satamedia*, C-73/07, EU:C:2008:727, pt. 56; of 9 November 2010, *Volker und Markus Schecke i Eifert*, C-92/09 and C-93/09, EU:C:2010:662, pt. 77; of 6 October 2015, *Schrems*, C-362/14, EU:C:2015:650, pt. 92. RIVERS 2006, 198: «The test of necessity thus expresses the idea of efficiency or Pareto-optimality. A distribution is efficient or Pareto-optimal if no other distribution could make at least one person better off without making anyone else worse off. Likewise, an act is necessary if no alternative act could make the victim better off in terms of rights-enjoyment without reducing the level of realization of some other constitutional interest». PIRKER 2013, 30: «In its simple form, one could state that proportionality *stricto sensu* leads to a weighing between competing values to assess which value should prevail».

³⁸ Rulings of the CJEU: of 16 December 2008, *Satakunnan Markkinapörssi and Satamedia*, C-73/07, EU:C:2008:727, pt. 56; of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, pt. 76, 77, 86; of 8 April 2014, *Digital Rights Ireland and others.*, C-293/12 and C-594/12, EU:C:2014:238, pt. 52; as well as opinion 1/15 (*Umowa PNRUE-Kanada*) of 26 July 2017, EU:C:2017:592, pt. 140.

³⁹ Rulings of the CJEU: of 8 April 2014 r., *Digital Rights Ireland and others*, C-293/12 and C-594/12, EU:C:2014:238, pt. 54, 55; of 21 December 2016, *Tele2*, C-203/15 and C-698/15, EU:C:2016:970, pt. 117.

and freedoms such as state security and the right to privacy are at stake, technical and commercial development must give way to those overriding values.

4. Freedom of speech, media pluralism, impartiality, cultural and linguistic diversity

Technological progress has brought a convergence of the telecommunications, media and information technology sectors, whereas the EECC assumes a separation of the regulations covering electronic communications networks and services from those covering content (Recital 7 EECC preamble), which are set out in different acts of law. For example, issues of television program content are dealt with in Directive of the European Parliament and of the Council 2010/13/EU⁴⁰. Despite this division, the EECC indicates that regulations in both areas must ensure that the values of media pluralism, cultural diversity and consumer protection are protected (Recital 7 EECC preamble). In a case where the competition regulations are insufficient to ensure cultural diversity and media pluralism in the field of digital television, Member States should obligate providers to guarantee access to particular digital transmission services (Recital 159 EECC preamble). Such regulations will not hinder technological development, since the use of new technologies does not limit media pluralism or cultural diversity. Any requirements on what content is transmitted should be strictly defined in the provisions of law in accordance with a procedure established by competent bodies; for example, regarding content that promotes pedophilia or fascism.

Achieving the goals of cultural diversity and media pluralism, including in the realm of social cohesion, should be supported by the relevant national bodies governing the electronic communication services market (Recital 22 EEC preamble). Those bodies must be independent, but this does not infringe upon the autonomy of other institutions, the constitutional obligations of Member States, or the principle of impartiality, taking account of the principles of property law in force in the Member States under Art. 345 TFEU (Recital 34 EECC preamble). In practice, this means, in particular, that regulatory bodies should conduct their activities in compliance with the law, but independently of specific guidelines or orders issued by other persons or bodies that are not based on generally applicable law. Further, no organisation or personnel changes must be made solely in order to make those bodies subordinate to institutions or entities from which they are supposed to be independent. In particular, there should be no changes in managerial positions before the end of a manager's term of office as specified in the law unless there is a legal basis for the change – also defined by law.

5. Ensuring universal access to electronic communications service

The EECC provides for the concept of universal service, that is, a minimum set of services available to all end user consumers at an affordable price. The aim of universal service is to prevent some citizens from being excluded from full social and economic participation in society due to a lack of such access (Recital 212 EECC preamble). In the digital transformation in the European Union, what is most important is people. Technology should serve and benefit everyone living in the EU and enable them to freely pursue their aspirations, while respecting fundamental rights. That is why the Declaration refers to the need to strengthen the democratic framework of the digital transformation so that it benefits all people living in the EU and improves their quality of life, and to the need to introduce means of ensuring that the values and individual rights recognised in EU law are respected, both online and offline.

⁴⁰ Directive of the European Parliament and of the Council 2010/13/UE of 10 March 2010 r. on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJEU L 95 of 15 April 2010, p. 1).

A basic requirement of universal service is to ensure that all consumers enjoy access to broadband internet and voice communication services, at an affordable price and in a fixed location. The EECC also permits such services being offered at an affordable price to citizens who are on the move if this is necessary to ensure those consumers can fully participate in the social and economic life of society (Recital 214 EECC preamble).

An affordable price for universal service means a price defined by an EU Member State at the national level in light of specific domestic conditions. Member States must enact appropriate measures if they find that the retail prices of broadband internet and voice communication services are prohibitive for consumers having a low income or particular social needs, including the elderly, the disabled, and those living in rural or geographically isolated areas (Recital 219 EECC preamble).

The EECC also foresees amenities for disabled persons' use of electronic communication services (Recital 9 EECC preamble). This is in accordance with the goals of the Charter (Art. 26) and the obligations provided for in the UN Convention on Persons with Disabilities⁴¹. Under Art. 26 of the Charter, the EU recognises and respects the rights of disabled persons to be independent, to integrate socially and professionally, and to participate fully in society⁴². Social and professional integration should be understood to mean the removal of barriers that could prevent disabled persons from working under the same conditions as other workers⁴³. Under Art. 2 sec. 3 of the Convention on the Rights of Disabled Persons, drawn upon in New York on 13 December 2006, "discrimination on the basis of disability" means «any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation»⁴⁴. In light of these regulations, provisions on amenities that enable disabled persons to use electronic communication services are particularly important, especially those that ensure they have easy access to those services.

Not only disabled persons, but also the elderly and those with specific social needs, should have guaranteed, easy, sustainable access to electronic communication services. Technically, this may mean a need to provide special terminal devices for disabled persons, such as those with a hearing deficiency or speech impediment (Recital 288 EECC preamble). Services must be not only technically accessible, but also affordable, regardless of whatever additional costs a provider must incur (Recital 297 EECC preamble).

This corresponds fully with the Declaration. In the digital decade, technology should be used to connect people, not divide them. The digital transformation should facilitate a just, integrated EU society having a fair, inclusive economy. Hence the accepted obligations to: ensure that the design, manufacture, implementation and operation of technological solutions takes place with respect for fundamental rights and enables them to be exercised; promotes solidarity and social interconnectedness; and ensures that in the digital transformation no one is left behind. The transformation should benefit all, ensure gender equality, and specifically embrace the elderly, people living in rural areas, the disabled, the marginalised, those vulnerable

⁴¹ Convention on the Rights of Persons with Disabilities and Optional Protocol, <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

⁴² European Declaration on Digital Rights and Principles for the Digital Decade 2023/C 23/01 [https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:32023C0123\(01\)](https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:32023C0123(01)).

⁴³ Similarly, see ruling of the CJEU of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, pt. 54.

⁴⁴ Convention on the Rights of Persons with Disabilities and Optional Protocol, <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

to threats or deprived of civil rights, and persons acting on their behalf⁴⁵. It should also propagate cultural and linguistic diversity.

Electronic communication services should be available to everyone, and should also be of appropriate quality. National regulatory bodies, in cooperation with other competent authorities, should monitor the quality of services and systematically gather information in this regard. They should also control at least certain infrastructure elements to guarantee appropriate quality, particularly for end users with disabilities (Recital 271 EECC preamble), in order to reduce digital exclusion (Recital 63 EECC preamble).

Electronic communication services for end users should not only be universal, of good quality and affordable; they should also be secure. To this end, providers should inform users about any security threats, and about measures they can take to enhance connection security; for example, by using particular types of software or digital encryption (Recital 97 EECC preamble), and they should not charge for this – providers bear the costs of managing all security threats (Recital 96 EECC preamble).

Guaranteeing universal access to secure, high-quality, affordable electronic communication services that takes account of the disabled and the elderly can only help the market to develop, including in terms of the most technologically advanced services. This is in full agreement with the goal of the EU Declaration that no one be left behind in the digital transformation.

6. *Clear, transparent regulations on the provision of services*

A whole series of EU regulations are designed to protect end users. At the same time, they dissuade the legislator from creating overly complex provisions, especially those that are redundant or do not create solutions to existing problems (Recital 260 EECC preamble). Regulations should be adequate to the actual situation on the market as regards the provision of services that meet users' needs, and this applies especially to contracts for telecommunications services – the principle documents on whose basis those services are provided. Before signing such a contract, the provider should give the end user essential information presented in clear, comprehensible language, on a permanent carrier or in document form. To facilitate the user's understanding of the contents of the contract, the service provider should also present a summary of the main contract terms (Recital 261 EECC preamble) – for in practice, telecommunications services contracts are very lengthy, up to a dozen pages or more, contain very complex specialised technological vocabulary, and often refer to other provisions and regulations. This makes them difficult to understand – even for people involved in electronic communication services professionally.

End users have the right to easily terminate a telecommunications services contract. In particular, they have the right to withdraw from an agreement if the provider changes the contractual conditions. The only exceptions are if the change is beneficial for the user; is solely of an administrative nature (e.g., a change in the provider's address); has no adverse effect on the user's situation; or results from legislative or regulatory changes (e.g., new requirements on contractual information imposed by EU or domestic law) (Recital 275 EECC preamble).

In a contract with a customer, the section on terminal devices should specify the provider's requirements for using a device, as well as all charges related to terminating the contract before its agreed expiration date (Recital 263 EECC preamble). Apart from the EECC, consumer contracts for electronic communication network and services are also governed by binding EU consumer protection laws, and in particular by Council Directive 93/13/EEA of 5 April 1993 on unfair terms in consumer contracts⁴⁶, and Directive of the European Parliament and of the Council 2011/83/EU of

⁴⁵ European Declaration on Digital Rights and Principles for the Digital Decade 2023/C 23/01 [https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:32023C0123\(01\)](https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:32023C0123(01)).

⁴⁶ OJEU L 95 of 21 April 1993, p. 29.

25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council⁴⁷.

The goal of these regulations is to implement the assumption of the Declaration that everyone should have the ability to freely, effectively choose what online service they wish to use, based on information that is objective, transparent, easily accessible and reliable. The EECC achieves that goal by making sure that the digital environment is secure, protected and based on fair competition; that users' fundamental rights and users' rights are protected; and that consumer protection is guaranteed on the digital single market.

The need for states to have a consumer policy in the global economy became evident in the 1960s, first in the United States – which became the first country to introduce consumer protection laws⁴⁸. The Maastricht Treaty⁴⁹ formally recognised consumer protection as one of the policies of the European Community. Art. 169 TFEU states that, by seeking to support consumer interests and ensure a high level of consumer protection, the Union will contribute to protecting consumers' health, safety and economic interests, and will promote their right to inform, educate and organise themselves to protect their interests. That protection constitutes part of the EU's strategic goal of improving the quality of life of its citizens, a strategy that takes account of consumer interests, both in EU legislation and when establishing and implementing other Union policies and activities. The need to ensure a high level of consumer protection in EU policies is also emphasised in Art. 38 of the Charter⁵⁰.

Users should be able to easily compare the prices of different services offered on the market, using information published in an easily accessible form (Recital 265 EECC preamble). In practice, however, information on suppliers' offers and services is quite extensive – a result of the dynamic growth in new services and the different formulas used to calculate charges, especially when the business model includes not only the provider and the user, but also a third party. Comparing similar services offered by different providers, then, may be very difficult. For this reason, independent comparative tools should be provided, such as websites that make it possible to obtain impartial information by comparing prices, tariffs and quality parameters all in one place (Recital 267 EECC preamble). EU regulations even protect against “shockingly high bills” (Recital 266 EECC preamble), for it does happen in practice that customers are not sufficiently informed about the price of a particular service or how that price is calculated – especially when an EU citizen purchases services from outside the EU where prices are similar to those in their home country, but discovers when travelling to another country that the price for the same service may be several, or even more than ten times, higher.

Similar problems arose in the past with roaming services in EU countries, that is, when a user from one Member State used telecommunications services while travelling in another Member State. At that time, the price outside the home country was generally higher, even though the costs of the services were similar. This is the issue of cross-border access to electronic communication services throughout the Union. Providers should not refuse or restrict end users' access, and should not discriminate on the basis of their nationality, place of residence, or place of registered office (Recital 256 EECC preamble). Different treatment must not go beyond what is foreseen in EU Regulation No. 531/2012 in a case of misuse or abuse of regulated retail roaming services⁵¹. Currently, it can be said that the problem of significantly different retail roaming prices not justified by cost does not exist in practice.

⁴⁷ OJEU L 304 of 22 November 2011, p. 64.

⁴⁸ JURCZYK, MAJEWSKA-JURCZYK 2015; STAWICKA 2018, 4.

⁴⁹ Treaty on the European Union 7 February 1992, Official Journal C 191, 29/07/1992.

⁵⁰ STAWICKA 2018, 6.

⁵¹ Regulation of the European Parliament and of the Council (EU) no. 531/2012 of 13 June 2012 on roaming on public communications network in the Union (OJEU L 172 of 30 June 2012, p. 10).

The EECC stipulates that consumers must be able to make conscious choices about providers, and in particular to change their provider. This should not be limited by legal, technical or practical barriers, especially contractual terms, procedures or charges (Recital 273 EECC preamble). Moreover, when changing provider, the user is entitled to transfer their number. This is considered a key factor enabling consumers to choose and facilitating competition on the competitive electronic communication market. Under the EECC, an end user who wishes to change provider must have the ability to retain their number, regardless of what entity provides the service. This entitlement must be guaranteed in both landline and mobile networks, but not in the case of calls between landline and mobile locations. Of course, the transfer of numbers between landline and mobile networks can also be ensured (Recital 278 EECC preamble).

Other important entitlements of consumers are to have a directory enquiry service and a subscriber directory. In this regard, it is acknowledged that effective competition has already developed, including on the basis of Art. 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services⁵². Nevertheless, the EECC emphasises that, in order to maintain effective competition, all entities that provide number-based interpersonal communication services by assigning numbers to end users from a numbering plan should still be obliged to make relevant information available in a manner that is honest, takes account of costs, and is non-discriminatory (Recital 299 EECC preamble).

End users should also be able to benefit from the interoperability guarantee on all radio and digital television equipment in new M-category passenger cars sold in the EU, where interoperability means that the equipment will function properly, including with other products and systems that exist or will exist in the future, without restrictions on access or implementation options. Member States should ensure that minimum harmonised standards are in place for such equipment, and those standards should be updated as the market and technologies develop (Recital 303 EECC preamble).

The EECC obligates Member States, in cooperation with service providers, to prepare and disseminate information that will help consumers use their services, in particular information on the most common violations of the law and their legal effects, such as copyright infringements or unlawful use or dissemination of harmful content. Such information should also include advice on how to counter threats that may arise – such as the disclosure of private information, invasion of privacy, or the unauthorised processing of personal data – and on what software and other tools are appropriate for protecting children and vulnerable persons from those threats. The purpose is to protect the public interest related to use of the internet and publicly available number-based interpersonal communication services. Finally, the information provided should promote the protection of users' civil rights and freedoms (Recital 269 EECC preamble).

V. Reding has shown that, in the digital era, personal data must be stored and collected. Data are a key economic resource. But as Reding points out, it is equally important to protect the rights of subjects whose data are transferred to third states outside the European Union. The right to be forgotten is also crucial in a world that is ever more connected, with practically no limits on searching for and storing data. If a user does not want their data to continue to be stored and there is no reason for keeping them online, the data should be deleted. In Reding's opinion, solid provisions for the benefit of both consumers and internet companies are needed, because, by increasing legal certainty, they build consumer trust – and trust is needed for the digital economy to grow. Consumers must feel confident when providing personal data online. Otherwise, they will hesitate to make online purchases or sign up for new digital services⁵³.

⁵² OJEU L 249 of 17 September 2002, p. 21.

⁵³ REDING 2011; IRION 2012, 40-71.

In view of the weak position of a user in any dispute with a service provider, the EECC also provides for out-of-court resolution procedures. Certainly, in practice it is very difficult for an end user to conduct a dispute with a provider having sizable financial and organisational resources, as well as professional legal support. Alternative dispute resolution can enable users – especially consumers, microbusinesses and small businesses – to enforce their rights quickly and economically, in accordance with Commission Recommendation 2003/361-EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises⁵⁴. Before the EECC entered into force, many Member States already had procedures for settling disputes, both for consumers and other end users, to which Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)⁵⁵ does not apply (Recital 68 EECC preamble).

7. Remuneration for the provision of electronic communications services

In defining electronic communication services contained, the EECC does not only refer to technical parameters, but takes a functional approach, and extends the concept to three types of services: internet access services in the meaning of Art. 2 sec. 2 of Regulation of the European Parliament and of the Council (EU) 2015/2120 of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union⁵⁶; interpersonal communication services; and services solely or mainly involving signal transmission. The processing of personal data by electronic communication services providers should be in accordance with Regulation of the European Parliament and of the Council (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the General Data Protection Regulation)⁵⁷ (pt. 15 EECC preamble). Formulated in this way, electronic communication services in the above scope should ensure that end users enjoy the legal protection to which they are entitled under the EECC – protection that extends not just to selected services, but to the entire scope of services thus defined.

The EECC also incorporates a definition of remuneration for the provision of electronic communication services, one that is favourable for users. Accordingly, remuneration is not limited to the costs of providing a specific service increased by the provider's profit margin. It should also take account of the fact that users provide their personal data to the provider at its request. In accordance with a ruling by the Court of Justice of the EU on Art. 57 TFEU, in the meaning of the TFEU remuneration also exists when a service provider is paid not by the service recipient, but by a third party. This means that, when calculating the price of a service, the provider must consider remuneration for providing user data to third parties – that is, the price the user has to pay should be proportionally lower. Remuneration should also take account of situations where the end user is exposed to advertising as a condition of gaining access to a service (pt. 16 EECC preamble).

These provisions provide solutions that are beneficial for users – not only for calculating prices for electronic communication services, but also where there is a delay in settling them. Apart from cases of persistent delays in paying or failure to pay, they protect consumers

⁵⁴ OJEU L 124 of 20 May 2003, 36.

⁵⁵ OJEU L 165 of 18 June 2013, 63.

⁵⁶ OJEU L 310 of 26 November 2015, 1.

⁵⁷ OJEU L 119 of 4 May 2016, p. 1.

entitled to affordable price tariffs from being immediately cut off from a network for being in arrears. Especially in a dispute over high bills for premium services, the consumer should have continued access to basic voice communication services and a minimal level of internet access until the dispute is resolved (pt. 237 EECC preamble).

Some services are free of charge – the basic criterion being the protection of human life and health. Whatever the device, therefore, access to emergency services through number-based interpersonal communication is free (pt. 285 EECC preamble). As is the service of connecting to the number “116000” for reporting missing children (pt. 252 EECC preamble). All interpersonal communication services that enable access to emergency services make emergency calls possible, based on alarm system elements already accounted for in EU law, that is, the concepts of “public safety answering point” (PSAP) and “most appropriate PSAP”, defined in Regulation of the European Parliament and of the Council (EU) 2015/758 of 29 April 2015 concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 service and amending Directive 2007/46/EC⁵⁸, and of “emergency services” defined in Commission Regulation (EU) no. 305/2013 of 26 November 2012 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the harmonised provision for an interoperable EU-wide eCall⁵⁹ (pt. 20 EECC preamble).

8. Conclusions

We analysed the end users’ rights that arise from the EECC, particularly those that result from the principle of non-discrimination; the provisions that guarantee users – and users with disabilities in particular – equal access to a selection of services; the regulations requiring transparency, the ability to compare offers, the publication of important contract information in an understandable manner; and charges for such services. We showed that those rights also result from the system of values set out in other acts of law, such as the Charter of Fundamental Rights, whose purpose is to protect the fundamental rights of every EU citizen, including with regard to electronic communication services.

The protection of those values should not be seen as a hindrance to the development of electronic communication services, but as an essential element of the developing the market for such services. The system of values shaped in EU legal acts and case law establishes a hierarchy of values and, where these collide, the system gives priority to basic civic values. Thus, where those values are threatened by technological progress, they prevail. In most cases, a conflict that arises will not need to be resolved, for in fact, protecting and upholding those values will actually foster the quick, effective development of the electronic communication services market.

It is clear, then, that the rights of users of electronic communication services are consistent with the EU system of values that results from EU acts of law, whose basic purpose is to protect the fundamental rights of every EU citizen and to enact the digital transformation and digital sovereignty. In the European Union’s digital transformation, what is most important is people. Technology should serve and benefit everyone living in the EU, enable them to securely pursue their aspirations, and respect their fundamental rights. The digital transformation should foster a just, integrated society and a fair, inclusive economy in the EU. Those values ensure European digital sovereignty.

⁵⁸ Ruling of the CJEU of 26 April 1988, *Bond van Adverteerders and others v the Netherlands*, C-352/85, ECLI: EU:C:1988:196.

⁵⁹ OJEU L 91 of 3 April 2013, p. 1.

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