

4-column document – Net neutrality provisions (including recitals)

[Text for technical discussions . It does not express any position of the Commission or its services]

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012

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Article 2 – Definitions	<i>[no changes]</i>	<i>[no change]</i>	
	<i>(12a) "net neutrality" means the principle according to which all internet traffic is treated equally, without discrimination, restriction or interference, independently of its sender, recipient, type, content, device, service or application; [Ams 234 and 241]</i>		
(14) "internet access service" means a publicly available electronic communications service that provides connectivity to the internet,	(14) ‘internet access service’ means a publicly available electronic communications service that provides connectivity to the internet	(1) “internet access service” means a publicly available electronic communications service that provides access to the internet, and	(14) ‘internet access service’ means a publicly available electronic communications service that provides connectivity to the internet.

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and thereby connectivity between virtually all end points connected to the internet, irrespective of the network technology used;	in accordance with the principle of net neutrality , and thereby connectivity between virtually all end points <i>of</i> the internet, irrespective of the network technology <i>or terminal equipment</i> used; [Am. 96]	thereby connectivity <i>to substantially</i> all end points <i>of the</i> internet, irrespective of the network technology <i>and terminal equipment</i> used;	
(15) "specialised service" means an electronic communications service or any other service that provides the capability to access specific content, applications or services, or a combination thereof, and whose technical characteristics are controlled from end-to-end or provides the capability to send or receive data to or from a determined number of parties or endpoints; and that is not marketed or widely used as a substitute for internet access service;	(15) 'specialised service' means an electronic communications service <i>optimised for specific content, applications or services, or a combination thereof, provided over logically distinct capacity, relying on strict admission control, offering functionality requiring enhanced quality from end to end</i> and that is not marketed or <i>usable</i> as a substitute for internet access service; [Ams 235 and 242]	<i>deleted</i>	deleted
Article 23 - Freedom to provide and avail of open internet access, and reasonable traffic management	Article 23 - Freedom to provide and avail of open internet access, and traffic management [Am. 148]	Article 3 - Safeguarding of open internet access	
1. End-users shall be free to access	1. End-Users shall <i>have the right</i> to	1. End-users shall <i>have the right</i> to	1. End-users shall have the right to access

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<p>and distribute information and content, run applications and use services of their choice via their internet access service. End-users shall be free to enter into agreements on data volumes and speeds with providers of internet access services and, in accordance with any such agreements relative to data volumes, to avail of any offers by providers of internet content, applications and services.</p>	<p>access and distribute information and content, run <i>and provide</i> applications and services <i>and use terminals</i> of their choice, <i>irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content, via their internet access service.</i></p>	<p>access and distribute information and content <i>use and provide</i> applications and services <i>and use terminal equipment</i> of their choice <i>irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content, via their internet access service in accordance with this Article.</i></p>	<p>and distribute information and content, [run/use] and provide applications and services and use terminal equipment of their choice irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content, via their internet access service in accordance with this Article.</p> <p>This paragraph is without prejudice to Union law or national law, in compliance with Union law, related to the lawfulness of the information, content, application or services.</p>
<p>(45) The internet has developed over the past decades as an open platform for innovation with low access barriers for end -users, content and application providers and internet service providers. The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management</p>	<p>(45) The internet has developed over the past decades as an open platform for innovation with low access barriers for users, content and application providers and internet service providers. The <i>principle of 'net neutrality' in the open internet means that traffic should be treated equally, without discrimination, restriction or interference, independent of the sender, receiver, type, content, device, service or application. As stated by the European Parliament resolution of</i></p>	<p>(3) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. However,—a significant number of end-users are affected by traffic management practices which block or slow down specific</p>	<p>Recital for open internet reason for action:</p> <p>The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. The internet's open character has been a key driver of competitiveness, economic growth, social development and innovation - which has led to spectacular levels of development in online applications, content and services - and thus of growth in the offer of, and demand for, content and services, and has</p>

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<p>practices published in May 2012 and a study, commissioned by the Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of end-users are affected by traffic management practices which block or slow down specific applications. These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</p>	<p><i>17 November 2011 on the open internet and net neutrality in Europe 1 , the internet's open character has been a key driver of competitiveness, economic growth, social development and innovation – which has led to spectacular levels of development in online applications, content and services – and thus of growth in the offer of, and demand for, content and services, and has made it a vitally important accelerator in the free circulation of knowledge, ideas and information, including in countries where access to independent media is limited. The</i> existing regulatory framework aims at promoting the ability of users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012 and a study, commissioned by the</p>	<p>applications. These tendencies require common rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</p>	<p>made it a vitally important accelerator in the free circulation of knowledge, ideas and information, including in countries where access to independent media is limited. The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. However,-a significant number of end-users are affected by traffic management practices which block or slow down specific applications. These tendencies require common rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</p>

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	<p>Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of users are affected by traffic management practices which block or slow down specific applications. These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</p>		
		<p><i>(4) End-users should be free to choose between various types of terminal equipment (defined in Directive 2008/63/EC on competition in the markets in telecommunications terminal equipment) to access the internet. Providers of internet access service should not impose restrictions on the use of terminal equipment connecting to the network, in addition to those imposed by</i></p>	<p>Recital for terminal equipment: <i>(in Article 23(1) and (2): End-users should be free to choose between various types of terminal equipment (defined in Directive 2008/63/EC on competition in the markets in telecommunications terminal equipment) to access the internet. Providers of internet access service should not impose restrictions on the use of terminal equipment connecting to the network, [in addition to those imposed by terminal equipment's manufacturers or distributors</i></p>

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		<p><i>terminal equipment's manufacturers or distributors in compliance with Union law.</i></p>	<p>in compliance with Union law].</p>
		<p><i>(5) Internet access service is any service that provides connectivity to the internet, irrespective of the network technology and terminal equipment used by end-user. However, for reasons outside the control of internet access service providers, some end points of the internet may not always be accessible, for instance due to measures taken by public authorities. Therefore, a provider is deemed to comply with its obligation related to the offering an internet access service within the meaning of this Regulation when that service provides connectivity to substantially all end points of the internet.</i></p>	<p>Recital (related to connectivity to end-points of the Internet): Internet access service is any service that provides connectivity to the internet, and in principle to all its end-points, irrespective of the network technology and terminal equipment used by the end-user. Subject to legal obligations under Union or national law, providers of internet access services should therefore not restrict connectivity to any end-points of the internet. However, for reasons outside the control of internet access service providers, some end points of the internet may not always be accessible, for instance due to measures taken by public authorities. Therefore, a provider is deemed to comply with its obligation related to the offering an internet access service within the meaning of this Regulation when that service provides connectivity to essentially all end points of the internet.</p>
		<p>(6) In order to exercise their right set out in Article 3(1), end-users should be free to agree with providers of</p>	<p>Recital (related to contractual freedom, subject to control of circumvention / abuses): In order to exercise their right set</p>

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		<p>internet access services on tariffs with specific data volumes and speeds or on other technical or commercial characteristics of the internet access service. Such agreements, as well as commercial practices conducted by providers of internet access service, should not limit the exercise of the right set out in Article 3(1) and thus circumvent provisions of this Regulation on safeguarding internet access. Commercial practices should not, given their scale, lead to situations where end-users' choice is significantly reduced in practice. Since the right to open internet is based on end-user's choice to access preferred content and information, such practices would therefore result in undermining the essence of this right.</p>	<p>out in Article 3(1), end-users should be free to agree with providers of internet access services on tariffs with specific data volumes and speeds or on other technical or commercial characteristics of the internet access service. Such agreements, as well as commercial practices conducted by providers of internet access service, should not limit the exercise of the right set out in Article 3(1) and thus circumvent provisions of this Regulation on safeguarding internet access. Commercial practices should not, given their scale, lead to situations where end-users' choice is significantly reduced in practice. Since the right to open internet is based on end-user's choice to access preferred content and information, such practices would therefore result in undermining the essence of this right.</p>
[para 2 moved down, for easier comparison with Pres para 3]	[para 2 moved down, for easier comparison with Pres para 3] EP para 5: <i>Providers of internet access services and end-users may agree to set limits on data volumes</i>	2. <i>Providers of internet access services and end-users may agree on commercial and technical conditions and characteristics of internet access services, such as</i>	2. Providers of internet access services shall provide connectivity between essentially all end points of the internet, irrespective of the network technology or terminal equipment used.

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	or speeds for internet access services, [...]	<i>price, volume and speed. Such agreements, and any commercial practices conducted by providers of internet access services, shall not limit the exercise of the right of end-users set out in paragraph 1.</i>	Providers of internet access services and end-users may agree on commercial conditions for internet access services such as price, data volumes or speeds. Such agreements, and any commercial practices conducted by providers of internet access services, shall not limit the exercise of the right of end-users set out in paragraph 1 or the obligations of internet access providers set out in the first sub-paragraph.
[Paragraphs 2-4 moved down to reflect new proposed order of paragraphs]			
		<i>(8)[...] Reasonable traffic management contributes to an efficient use of network resources and thus also protects the freedom of internet access service providers to conduct a business. Innovation by content service and application providers should be fostered. In order to be considered reasonable, traffic management measures applied by providers of internet access services should be transparent, proportionate, non-</i>	Recital (related to traffic management): The underlying objective of rules relative to the open internet is that end-users should have right to access and distribute information or use applications and services of their choice, as well as terminal equipment. Reasonable traffic management contributes to an efficient use of network resources and to an optimisation of the overall transmission quality responding to the technical requirements of the content, services and applications transmitted. In order to be considered reasonable, traffic

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		<p><i>discriminatory and should not constitute anti-competitive behaviour. The requirement for traffic management measures to be non-discriminatory does not preclude providers of internet access services to implement traffic management measures which take into account objectively different quality of service requirements of certain traffic (for example, latency or high bandwidth). Blocking, slowing down, altering, degrading or discriminating against specific content, applications or services should be prohibited, subject to justified and defined exceptions laid down in this Regulation. Content, services and applications should be protected because of the negative impact of blocking or other restrictive measures on end-user choice and innovation.[...]</i></p>	<p>management measures applied by providers of internet access services should be transparent, proportionate, non-discriminatory and should not constitute anti-competitive behaviour. The requirement for traffic management measures to be non-discriminatory does not preclude providers of internet access services to implement, in order to optimise the overall transmission quality, traffic management measures which differentiate between different types of traffic, i.e. categories of content, services or applications. Any such differentiation should be permitted only on the basis of objective technical quality [of service] requirements (for example in terms of latency, jitter, packet loss, bandwidth), of the different types of traffic, but not on the basis of commercial considerations. Such differentiating traffic management measures should be proportionate in relation to the purpose of overall quality optimisation and should treat equivalent traffic equally. Any traffic management practice which goes beyond such reasonable measures, including reasonable differentiation, by blocking,</p>

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			<p>slowing down, altering, degrading or discriminating against specific content, applications or services, or categories thereof, should be prohibited, subject to justified and defined exceptions laid down in this Regulation.</p>
<p>5. Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by blocking, slowing down, degrading or discriminating against specific content, applications or services, or specific classes thereof, except in cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent, non-discriminatory, proportionate and necessary to:</p>	<p>5. <i>Providers of internet access services and end-users may agree to set limits on</i> data volumes or speeds for internet access services, providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by blocking, slowing down, <i>altering</i> degrading or discriminating against specific content, applications or services, or specific classes thereof, except in cases where it is necessary to apply traffic management measures. Traffic management measures shall be transparent, non-discriminatory, proportionate and necessary to:</p>	<p>4. <i>Subject to this paragraph, providers of internet access services shall equally treat equivalent types of traffic when providing internet access services.</i></p> <p><i>Providers of internet access services may implement traffic management measures. Such measures shall be transparent, non-discriminatory, proportionate and shall not constitute anti-competitive behaviour. When implementing these measures, providers of internet access services shall not block, slow down, alter, degrade or discriminate against specific content, applications or services except as necessary, and only for as long as necessary, to:</i></p>	<p>3. Subject to this paragraph, providers of internet access services shall treat traffic in accordance with the principle of equal treatment when providing internet access services.</p> <p>Providers of internet access services may implement reasonable traffic management measures. In order to be deemed reasonable and compliant with the principle of equal treatment, such measures shall be transparent, non-discriminatory, proportionate and shall not constitute anti-competitive behaviour, account being taken of objectively different technical quality of service requirements of specific categories of traffic.</p> <p>Providers of internet access services shall not engage in traffic management measures going beyond the reasonable measures set</p>

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			out in sub-paragraph 2, and in particular shall not block, slow down, alter, degrade or discriminate against specific content, applications or services, or specific categories thereof, except as necessary, and only for as long as necessary, to:
a) implement a legislative provision or a court order, or prevent or impede serious crimes;	a) implement a a court order;	<i>a) comply with legal obligations to which the internet access service provider is subject;</i>	a) comply with legal obligations to which the internet access service provider is subject;
b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminals;	[no change]	<i>[no change]</i>	b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminal [equipment];
c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures;	<i>deleted</i>	<i>c)[compare with (d) in EP position] prevent pending network congestion and mitigate the effects of exceptional or temporary network congestion, provided that equivalent types of traffic are treated equally;</i>	c) subject to a prior explicit request by the end-users concerned, (i) prevent the transmission of unsolicited communications within the meaning of Article 13 of Directive 2002/58/EC, or (ii) implement parental control measures, [in accordance with national rules which define parental rights and obligations], with respect to content, services or applications which might seriously impair the physical, mental or moral development of minors, in particular pornography or gratuitous

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			violence. The end-user shall be given the possibility to withdraw this request at any time.
d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.	d) prevent or mitigate the effects of temporary and exceptional network congestion provided that equivalent types of traffic are treated equally.	d) [compare with (c) in COM proposal] comply with an explicit request from the end-user, in order to prevent transmission of unsolicited communication within the meaning of Article 13 of Directive 2002/58/EC¹ or to implement parental control measures.	d) prevent impending network congestion and mitigate the effects of exceptional or temporary and non-recurring network congestion, provided that equivalent types of traffic are treated equally.
		The legal obligations referred to in point (a) shall be laid down in Union legislation or national legislation, in compliance with Union law, or in measures giving effect to such Union or national legislation, including orders by courts or public authorities vested with relevant powers.	The legal obligations referred to in point (a) shall be laid down in Union legislation or national legislation, in compliance with Union law, or in measures giving effect to such Union or national legislation, including orders by courts or public authorities vested with relevant powers.

¹ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.07.2002, p. 37).

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<p>(46) The freedom of end- users to access and distribute information and lawful content, run applications and use services of their choice is subject to the respect of Union and compatible national law. This Regulation defines the limits for any restrictions to this freedom by providers of electronic communications to the public but is without prejudice to other Union legislation, including copyright rules and Directive 2000/31/EC .</p>	<p>(46) The freedom of users to access and distribute information and content, run applications and use services of their choice is subject to the respect of Union and compatible national law. This Regulation defines the limits for any restrictions to this freedom by providers of electronic communications to the public but is without prejudice to other Union legislation.</p>	<p><i>(10) This Regulation does not seek to regulate the lawfulness of the information, content, application or services, nor the procedures, requirements and safeguards related thereto. These matters remain thus subject to Union legislation or national legislation in compliance with Union law, including measures giving effect to such Union or national legislation (for example, court orders, administrative decisions or other measures implementing, applying or ensuring compliance with such legislation). If those measures prohibit end-users to access unlawful content (such as, for example, child pornography), end-users should abide by those obligations by virtue of and in accordance with that Union or national law.</i></p>	<p>Recital (related to measures referred to in the above paragraph): This Regulation does not seek to regulate the lawfulness of the information, content, application or services, nor the procedures, requirements and safeguards related thereto. These matters remain thus subject to Union legislation or national legislation in compliance with Union law, including measures giving effect to such Union or national legislation (for example, court orders, administrative decisions or other measures implementing, applying or ensuring compliance with such legislation). Measures implementing Union or national law cannot relate to mere contractual agreements between private economic operators. If those measures prohibit end-users to access unlawful content (such as, for example, child pornography), end-users should abide by those obligations by virtue of and in accordance with that Union or national law.</p>
	<p>Traffic management <i>measures shall not be maintained longer than necessary.</i></p>	<p><i>[compare with chapeau before points a-d]</i></p>	

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Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph.	<i>Without prejudice to Directive 95/46/EC, traffic management measures shall only entail such processing of personal data that is necessary and proportionate to achieve the purposes set out in this paragraph, and shall also be subject to Directive 2002/58/EC, in particular with respect to confidentiality of communications.</i>	<i>5. Traffic management measures may only entail processing of personal data that is necessary and proportionate to achieve the objectives of paragraph 4 (a – d). Such processing shall be carried out in accordance with Directive 95/46. Traffic management measures shall also comply with Directive 2002/58.</i>	4. Traffic management measures may only entail processing of personal data that is necessary and proportionate to achieve the objectives of paragraph 3 (a – d). Such processing shall be carried out in accordance with Directive 95/46. Traffic management measures shall also comply with Directive 2002/58.
3. This Article is without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted.		<i>6. Paragraph 1 is without prejudice to Union law or national law, in compliance with Union law, related to the lawfulness of the information, content, application or services.</i>	.
2. End-users shall also be free to agree with either providers of electronic communications to the public or with providers of content, applications and services on the provision of specialised services with an enhanced quality of service. In order to enable the provision of	<i>2. Providers of internet access, of electronic communications to the public and providers of content, applications and services shall be free to offer specialised services to end-users. Such services shall only be offered if the network capacity is sufficient to provide them in</i>	<i>3. Providers of electronic communications to the public, including providers of internet access services, shall be free to enter into agreements with end-users, including providers of content, applications and services to deliver a service other than</i>	5. Providers of electronic communications to the public, including providers of internet access services, and providers of content, applications and services shall be free to offer individual services which are distinct from internet access services and which are optimised for specific content, applications or services, or a combination thereof, in

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specialised services to end-users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair in a recurring or continuous manner the general quality of internet access services.	<i>addition to internet access services and they are not to the detriment of the availability or quality of internet access services. Providers of internet access to end-users shall not discriminate between functionally equivalent services and applications.</i>	<i>internet access services, which requires a specific level of quality. Providers of electronic communications to the public, including providers of internet access services, shall ensure that sufficient network capacity is available so that the availability and quality of internet access services for other end-users are not impaired in a material manner.</i>	order to meet their requirements for a specific level of quality. Such services shall only be offered if the network capacity made available by providers of electronic communications services to the public, including providers of internet access services, is sufficient to provide them in addition to internet access services, they are not marketed or usable as substitute for internet access services and are not to the appreciable detriment of the availability or quality of internet access services for other end users.
	<i>Providers of internet access services shall put in place appropriate, clear, open and efficient procedures aimed at addressing complaints alleging breaches of this Article. Such procedures shall be without prejudice to the end-users right to refer the matter to the national regulatory authority. [Ams 236 and 243]</i>		8. Providers of internet access services shall put in place appropriate, clear, open and efficient procedures aimed at addressing complaints alleging breaches of this Article. Such procedures shall be without prejudice to the end-users right to refer the matter to the national regulatory authority.
	<i>[deleted]</i>	<i>deleted</i> [see para 6 in this column]	
4. The exercise of the freedoms	4. <i>End-users shall be provided with</i>	<i>deleted</i>	[To be determined in light of discussion on

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<p>provided for in paragraphs 1 and 2 shall be facilitated by the provision of complete information in accordance with Article 25(1), Article 26 (2), and Article 27 (1) and (2).</p>	<p>complete information in accordance with <i>Article 20(2), Article 21(3) and Article 21a of Directive 2002/22/EC, including information on any traffic management measures applied that might affect access to and distribution of information, content, applications and services as specified in paragraphs 1 and 2 of this Article.</i></p>		<p>end-user provisions, to include a specific provision on transparency of the types of content, applications and services that would be affected by parental control measures offered by an ISP.]</p>