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	[no changes]	[no change]	
	(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]		
(14) "internet access service" means	(14) 'internet access service' means	(1) "internet access service" means	(14) 'internet access service' means a
a publicly available electronic	a publicly available electronic	a publicly available electronic	publicly available electronic
communications service that	communications service that	communications service that	communications service that provides
provides connectivity to the internet,	provides connectivity to the internet	provides <i>access</i> to the internet, and	connectivity to the internet.

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and thereby connectivity between	in accordance with the principle of	thereby connectivity to substantially	
virtually all end points connected to	net neutrality, and thereby	all end points of the internet,	
the internet, irrespective of the	connectivity between virtually all	irrespective of the network	
network technology used;	end points of the internet,	technology and terminal equipment	
	irrespective of the network	used;	
	technology or terminal equipment		
	used; [Am. 96]		
(15) "specialised service" means an	(15) 'specialised service' means an	deleted	deleted
electronic communications service or	electronic communications service		
any other service that provides the	optimised for specific content,		
capability to access specific content,	applications or services, or a		
applications or services, or a	combination thereof, provided over		
combination thereof, and whose	logically distinct capacity, relying		
technical characteristics are	on strict admission control, offering		
controlled from end-to-end or	functionality requiring enhanced		
provides the capability to send or	quality from end to end and that is		
receive data to or from a determined	not marketed or <i>usable</i> as a		
number of parties or endpoints; and	substitute for internet access service;		
that is not marketed or widely used	[Ams 235 and 242]		
as a substitute for internet access			
service;			
Article 23 - Freedom to provide	Article 23 - Freedom to provide	Article 3 - Safeguarding of open	
and avail of open internet access,	and avail of open internet access,	internet access	
and reasonable traffic	and traffic management [Am. 148]		
management			
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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and distribute information and	access and distribute information and	access and distribute information	and distribute information and content,
content, run applications and use	content, run and provide applications	and contentuse and provide	[run/use] and provide applications and
services of their choice via their	and services and use terminals of	applications and services and use	services and use terminal equipment of their
internet access service. End-users	their choice, irrespective of the end-	terminal equipment of their choice	choice irrespective of the end-user's or
shall be free to enter into agreements	user's or provider's location or the	irrespective of the end-user's or	provider's location or the location, origin or
on data volumes and speeds with	location, origin or destination of the	provider's location or the location,	destination of the service, information or
providers of internet access services	service, information or content, via	origin or destination of the service,	content, via their internet access service in
and, in accordance with any such	their internet access service.	information or content, via their	accordance with this Article.
agreements relative to data volumes,		internet access service in	This paragraph is without prejudice to
to avail of any offers by providers of		accordance with this Article.	Union law or national law, in compliance
internet content, applications and			with Union law, related to the lawfulness of
services.			the information, content, application or
			services.
(45) The internet has developed over	(45) The internet has developed	(3) The internet has developed over	Recital for open internet reason for
the past decades as an open platform	over the past decades as an open	the past decades as an open platform	action:
for innovation with low access	platform for innovation with low	for innovation with low access	The internet has developed over the past
barriers for end -users, content and	access barriers for users, content and	barriers for end-users, content and	decades as an open platform for innovation
application providers and internet	application providers and internet	application providers and internet	with low access barriers for end-users,
service providers. The existing	service providers. The <i>principle of</i>	service providers. The existing	content and application providers and
regulatory framework aims at	'net neutrality' in the open internet	regulatory framework aims at	internet service providers. The internet's
promoting the ability of end-users to	means that traffic should be treated	promoting the ability of end-users to	open character has been a key driver of
access and distribute information or	equally, without discrimination,	access and distribute information or	competitiveness, economic growth, social
run applications and services of their	restriction or interference,	run applications and services of their	development and innovation - which has led
choice. Recently, however, the report	independent of the sender, receiver,	choice. However,—a significant	to spectacular levels of development in
of the Body of European Regulators	type, content, device, service or	number of end-users are affected by	online applications, content and services -
for Electronic Communications	application. As stated by the	traffic management practices which	and thus of growth in the offer of, and
(BEREC) on traffic management	European Parliament resolution of	block or slow down specific	demand for, content and services, and has

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

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	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.		
		(4) End-users should be free to	Recital for terminal equipment: (in
		choose between various types of	Article 23(1) and (2): End-users should be
		terminal equipment (defined in	free to choose between various types of
		Directive 2008/63/EC on	terminal equipment (defined in Directive
		competition in the markets in	2008/63/EC on competition in the markets
		telecommunications terminal	in telecommunications terminal equipment)
		equipment) to access the internet.	to access the internet. Providers of internet
		Providers of internet access service	access service should not impose
		should not impose restrictions on	restrictions on the use of terminal
		the use of terminal equipment	equipment connecting to the network, [in
		connecting to the network, in	addition to those imposed by terminal
		addition to those imposed by	equipment's manufacturers or distributors

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

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

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

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

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

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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	a) implement a a court order;	a) comply with legal obligations to	a) comply with legal obligations to which
or a court order, or prevent or		which the internet access service	the internet access service provider is
impede serious crimes;		provider is subject;	subject;
b) preserve the integrity and security	[no change]	[no change]	b) preserve the integrity and security of the
of the network, services provided via			network, services provided via this network,
this network, and the end-users'			and the end-users' terminal [equipment];
terminals;			
c) prevent the transmission of	deleted	c)[compare with (d) in EP position]	c) subject to a prior explicit request by the
unsolicited communications to end-		prevent pending network	end-users concerned, (i) prevent the
users who have given their prior		congestion and mitigate the effects	transmission of unsolicited communications
consent to such restrictive measures;		of exceptional or temporary	within the meaning of Article 13 of
		network congestion, provided that	Directive 2002/58/EC, or (ii) implement
		equivalent types of traffic are	parental control measures, [in accordance
		treated equally;	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	d) prevent or mitigate the effects of	d) [compare with (c) in COM	d) prevent impending network congestion
or exceptional network congestion	temporary <i>and</i> exceptional network	proposal] comply with an explicit	and mitigate the effects of exceptional or
provided that equivalent types of	congestion provided that equivalent	request from the end-user, in order	temporary and non-recurring network
traffic are treated equally.	types of traffic are treated equally.	to prevent transmission of	congestion, provided that equivalent types
		unsolicited communication within	of traffic are treated equally.
		the meaning of Article 13 of	
		Directive 2002/58/EC ¹ or to	
		implement parental control	
		measures.	
		The legal obligations referred to in	The legal obligations referred to in point (a)
		point (a) shall be laid down in	shall be laid down in Union legislation or
		Union legislation or national	national legislation, in compliance with
		legislation, in compliance with	Union law, or in measures giving effect to
		Union law, or in measures giving	such Union or national legislation,
		effect to such Union or national	including orders by courts or public
		legislation, including orders by	authorities vested with relevant powers.
		courts or public authorities vested	
		with relevant powers.	

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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(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.	(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.	(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-	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 endusers to access unlawful content (such as,
		users should abide by those obligations by virtue of and in	for example, child pornography), end-users should abide by those obligations by virtue of and in accordance with that Union or
		accordance with that Union or national law.	national law.
	Traffic management measures shall	[compare with chapeau before	
	not be maintained longer than	points a-d]	
	necessary.		

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

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