TSM – Net neutrality
EP draft compromise text

Article 1 – Objective and scope

1. [Based on Council text] This Regulation establishes common rules on aiming at ensuring open internet access offered by providers of electronic communications to the public, safeguarding related end-users' rights and ensuring non-discriminatory treatment of traffic in provision of internet access services.

Article 2 – Definitions

For the purposes of this Regulation, the definitions set out in Directive 2002/21/EC shall apply.

The following definitions shall also apply:

(1) [EP 1st reading position] '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;

(2) [EP 1st reading position] 'internet access service' means a publicly available electronic communications service that provides access to the internet in accordance with the principle of net neutrality, and thereby connectivity between virtually all end points of the internet, irrespective of the network technology and/or terminal equipment used;

Article 3 - Safeguarding of open internet access

1. [Based on Council text] End-users shall have the right to access and distribute information and content, use and provide applications and services and have the right to 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.

2. [Based on Council text] Providers of internet access services and end-users may agree on the commercial conditions for internet access services such as related to price, data volumes or speeds. Such agreements, and any commercial practices conducted by providers of internet access services, shall be non-discriminatory and shall not limit the exercise of the right of end-users set out in paragraph 1.
3. [Based on Council text] Subject to this paragraph and in accordance with the principle of net neutrality, providers of internet access services shall equally treat all equivalent types of traffic equally when providing internet access services.

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, whereas such a distinction can only be made on the basis of the packet header.

Providers of internet access services shall not engage in traffic management measures going beyond the reasonable measures set out in sub-paragraph 2, and in particular shall not block, slow down, alter, degrade or discriminate between/against specific content, applications or services, or specific categories or entire classes of traffic thereof, except as necessary, and only for as long as necessary, to:

a) implement a legislative provision or a court order 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' terminal equipment;

c) [Council text and Commission suggestion deleted] 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 violence. The end-user shall be given the possibility to withdraw this request at any time.

d) [EP 1st reading position] prevent or impending network congestion and mitigate the effects of temporary and or exceptional 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.

[EP 1st reading position] Traffic management measures are exceptional and shall not be maintained longer than necessary.

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.

4. [EP 1st reading position - para 4] End-users shall be provided with complete information in accordance with 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 this Article.

5. [Based on COM suggestions] 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 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.

Article 4 – Safeguards for quality of service and the availability of internet access services

[Based on Council text]

1. National regulatory authorities shall closely monitor and ensure compliance with Article 3, and shall promote the continued availability of non-discriminatory internet access services at levels of quality that reflects advances in technology and are not impaired by services referring to Article 3(5). For those purposes national regulatory authorities may impose technical characteristics and minimum quality of service requirements. National regulatory authorities shall publish reports on an annual basis regarding their monitoring and findings, and provide those reports to the Commission and BEREC.

2. Providers of electronic communication services to the public, including providers of internet access services, shall make available, at the request of the national regulatory authority, information about how their network traffic and capacity are managed, as well as justifications for any traffic management measures applied. Article 5 of the Framework Directive shall apply, mutatis mutandis, in respect of the provision of information under this Article.
3. No later than nine months after this Regulation enters into force, in order to contribute to the consistent application of this Regulation, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, lay down guidelines for the implementation of the obligations of national competent authorities under this Article, including with respect to the application of traffic management measures set out in Article 3(4) and for monitoring of compliance.

Article 4a (new)- Supervision and enforcement

[EP 1st reading position – Art. 30a]

1. National regulatory authorities shall monitor and supervise compliance with this Regulation within their territories.

2. National regulatory authorities shall make up-to-date information on the application of this Regulation publicly available in a manner that enables interested parties to have easy access to it.

3. National regulatory authorities shall have the power to require undertakings subject to obligations under this Regulation to supply all information relevant to the implementation and enforcement of this Regulation. Those undertakings shall provide such information promptly on request and in accordance with time limits and the level of detail required by the national regulatory authority.

4. National regulatory authorities may intervene on their own initiative in order to ensure compliance with this Regulation.

5. National regulatory authorities shall put in place appropriate, clear, open and efficient procedures aimed at addressing complaints alleging breaches of Article 3. To this end, all users of internet access services shall be entitled to make use of such complaint procedures in front of the relevant authority. National regulatory authorities shall respond to complaints within a reasonable time.

6. Where a national regulatory authority finds that a breach of the obligations set out in this Regulation has occurred, it must require the immediate cessation of such a breach.