## TSM: Net neutrality provisions 4-column working document

At the 3<sup>rd</sup> trilogue on 2 June, the co-legislators invited the Commission to make compromise proposals and undertook to work on them. The 4th column is accordingly based on the Commission non-paper of 4 June on the net neutrality provisions.

EP text of 8 May	Council text of 29 May	Commission non-paper of 4 June	EP text of 18 June
Recitals	Recitals	Recitals	Recitals
	Marking for recitals: bold-	Marking for recitals: bold-	Marking for recitals: bold-
	italic/strikethrough shows differences	italic/strikethrough shows differences	italic/strikethrough shows differences
	with Council text of 17 April	with Council text of 29 May 2015	with COM non-paper of 4 June
	(1) This Regulation aims at	(1) This Regulation aims at	(1) This Regulation aims at
	harmonising rules on safeguarding	harmonising rules on access to open	harmonising rules on access to open
	access to open internet by ensuring	internet by ensuring end-users' right to	internet by ensuring end-users' right to
	end-users' right to access and	access and distribute information and	access and distribute information and
	distribute information and lawful	lawful content, run applications and	lawful content, run applications and
	content, run applications and use	use services of their choice, as well as	use services of their choice, as well as
	services of their choice, as well as by	by establishing common rules on the	by establishing common rules on the
	establishing common rules on traffic	equal treatment of internet traffic and	equal <i>and non-discriminatory</i>
	management which not only protect	traffic management which not only	treatment of internet traffic and traffic
	end-users but simultaneously guarantee	protect end-users but simultaneously	management which not only protect
	the continued functioning of the	guarantee the continued functioning of	end-users but simultaneously guarantee
	Internet ecosystem as an engine of	the Internet ecosystem as an engine of	the continued functioning of the
	innovation. Reforms in the field of	innovation. Reforms in the field of	Internet ecosystem as an engine of
	roaming should give end-users the	roaming should give end-users the	innovation. Reforms in the field of

confidence to stay connected when	confidence to stay connected when	roaming should give end-users the
they travel in the Union, and should	they travel in the Union, and should	confidence to stay connected when
become over time a driver of	become over time a driver of	they travel in the Union, and should
convergent pricing and other	convergent pricing and other	become over time a driver of
conditions in the Union.	conditions in the Union.	convergent pricing and other
		conditions in the Union.
(2) The measures provided in this	(2) The measures provided in this	(2) The measures provided in this
Regulation respect the principle of	Regulation respect the principle of	Regulation <i>shall</i> respect the principle
technological neutrality, that is to say	technological neutrality, that is to say	of technological neutrality, that is to
they neither impose nor discriminate in	they neither impose nor discriminate in	say they neither impose nor
favour of the use of a particular type of	favour of the use of a particular type of	discriminate in favour of the use of a
technology.	technology.	particular type of technology.
(3) The internet has developed over	(3) The internet has developed over	(3) The internet has developed over
the past decades as an open platform	the past decades as an open platform	the past decades as an open platform
for innovation with low access barriers	for innovation with low access barriers	for innovation with low access barriers
for end-users, content and application	for end-users, content and application	for end-users, content and application
providers and internet service	providers and internet service	providers and internet service
providers. The existing regulatory	providers. The existing regulatory	providers. The existing regulatory
framework aims at promoting the	framework aims at promoting the	framework aims at promoting the
ability of end-users to access and	ability of end-users to access and	ability of end-users to access and
distribute information or run	distribute information or run	distribute information or run
applications and services of their	applications and services of their	applications and services of their
choice. However,-a significant number	choice. However, a significant number	choice. However, a significant number
of end-users are affected by traffic	of end-users are affected by traffic	of end-users are affected by traffic
management practices which block or	management practices which block or	management practices which block or
slow down specific applications. These	slow down specific applications. These	slow down specific applications. These
tendencies require common rules at the	tendencies require common rules at the	tendencies require common rules at the

Union level to maintain ensure the Union level to ensure the open internet Union level to ensure the open internet open internet and to avoid and to avoid fragmentation of the and to avoid fragmentation of the fragmentation of the single market single market resulting from individual single market resulting from individual resulting from individual Member Member States' measures. Member States' measures. States' measures. (10 4) In the open internet end-users In the open internet end-users In the open internet end-users should have the right to access and should have the right to access and should have the right to access and distribute information and content, and distribute information and content, and distribute information and content. and to use and provide applications to use and provide applications and to use and provide applications and and services without discrimination, services without discrimination, via services without discrimination, via their internet access service. The their internet access service. The via their internet access service. The exercise of this right is subject to exercise of this right is subject to exercise of this right is subject to Union law and national law, compliant Union law and national law, compliant Union law and national law, with Union law, regarding the with Union law, regarding the compliant with Union law, regarding the lawfulness of content, services or lawfulness of content, services or lawfulness of content, services or applications. However, this applications. However, this Regulation applications. However, this Regulation Regulation does not seek to regulate does not seek to regulate the does not seek to regulate the the lawfulness of the information, lawfulness of the information, content, lawfulness of the information, content, content, application or services, nor the application or services, nor the application or services, nor the procedures, requirements and procedures, requirements and procedures, requirements and safeguards related thereto. These safeguards related thereto. These safeguards related thereto. These matters remain thus subject to Union matters remain thus subject to Union matters remain thus subject to Union legislation or national legislation in legislation or national legislation in legislation or national legislation in compliance with Union law, including compliance with Union law, including compliance with Union law, including measures giving effect to such Union measures giving effect to such Union measures giving effect to such Union or national legislation (for example, or national legislation (for example, or national legislation (for example, court orders, administrative decisions court orders, administrative decisions court orders, administrative decisions

or other measures implementing,	or other measures implementing,	or other measures implementing,
applying or ensuring compliance with	applying or ensuring compliance with	applying or ensuring compliance with
such legislation). If those measures	such legislation). If those measures	such legislation). If those measures
prohibit end-users to access unlawful	prohibit end-users to access unlawful	prohibit end-users to access unlawful
content (such as, for example, child	content (such as, for example, child	content (such as, for example, child
pornography), end-users should abide	pornography), end-users should abide	pornography), end users should abide
by those obligations by virtue of and in	by those obligations by virtue of and in	by those obligations by virtue of and in
accordance with that Union or national	accordance with that Union or national	accordance with that Union or national
law.	law.	<del>law.</del>
(4-5) End-users should be free to	(5) End-users should be free to	(5) End-users should be free to
choose between various types of	choose between various types of	choose between various types of
terminal equipment (defined in	terminal equipment (defined in	terminal equipment (defined in
Directive 2008/63/EC on competition	Directive 2008/63/EC on competition	Directive 2008/63/EC on competition
in the markets in telecommunications	in the markets in telecommunications	in the markets in telecommunications
terminal equipment) to access the	terminal equipment) to access the	terminal equipment) to access the
internet. Providers of internet access	internet. Providers of internet access	internet. Providers of internet access
service should not impose restrictions	services should not impose restrictions	services should not impose restrictions
on the use of terminal equipment	on the use of terminal equipment	on the use of terminal equipment
connecting to the network, in addition	connecting to the network, in addition	connecting to the network, in addition
to those imposed by terminal	to those imposed by terminal	to those imposed by terminal
equipment's manufacturers or	equipment's manufacturers or	equipment's manufacturers or
distributors in compliance with Union	distributors in compliance with Union	distributors in compliance with Union
law.	law.	law.
(5 6) Internet access service is any a	(6) Internet access service is a	(6) Internet access service is a
publicly available electronic	publicly available electronic	publicly available electronic
<b>communications</b> service that provides	communications service that provides	communications service that provides
 connectivity access to the internet,	access to the internet, and in principle	access to the internet, and in principle

irrespective of the network technology and terminal equipment used by enduser. 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 virtually all end points of the internet. **Providers of internet** access services should therefore not restrict connectivity to any endpoints of the internet which are accessible to them.

to all its end-points, irrespective of the network technology and terminal equipment used by *the* 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 virtually all end points of the internet. Providers of internet access services should therefore not restrict connectivity to any accessible endpoints of the internet. which are accessible to them.

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(67) In order to exercise their right set 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

(7) In order to exercise their rights set 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 of the internet access service. Such agreements, as well as commercial

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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. National regulatory authorities should be empowered to intervene against cCommercial practices which by reason of 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, national regulatory authorities should be required, as part of their monitoring and enforcement function, and to intervene when commercial. such practices would therefore result in undermining the essence of this right.

practices conducted by providers of internet access service, should not limit the *effective* exercise of the right set out in Article 3(1) and thusor circumvent provisions of this Regulation on safeguarding internet access. National regulatory authorities should be empowered to intervene against agreements or commercial practices which by reason of their scale, lead to situations where endusers' choice is significantly reduced in practice. To this end, the assessement of agreements and commercial practices should take into account whether they are discriminatory in nature, as well as the respective market positions of the involved providers of internet access services and of content, services and applications. Since the right to open internet is based on end-users's choice to access their preferred content and information, national regulatory authorities should be required, as part of their monitoring and enforcement function, to and intervene when

practices conducted by providers of internet access service, should be nondiscriminatory and should not limit the effective exercise of the rights set out in Article 3(1) or circumvent provisions of this Regulation on safeguarding internet access. National regulatory authorities should be empowered to intervene against agreements or commercial practices which by reason of their scale, lead to situations where end-users' choice is significantly reduced in practice. To this end, the assessement of agreements and commercial practices should take into account whether they are discriminatory in nature, as well as the respective market positions of the involved providers of internet access services and of content, services and applications. Since the *right to access* the open internet is based on endusers' right to send and receive-choice to access their content and information without discrimination, national regulatory authorities should be required, as part of their monitoring

	agreements or commercial practices	and enforcement function, to intervene
	would result in undermining the	when agreements or commercial
	essence of this right.	practices would result in undermining
		the essence of this right.
	(7a) In an open internet all traffic	(7a) In an open internet all traffic
	should be treated equally, without	should be treated equally, without
	discrimination, restriction or	discrimination, restriction or
	interference, independently of its	interference, independently of its
	sender, recipient, content, device,	sender, recipient, content, device,
	service or application. The principle	service or application. The principle of
	of equal treatment is a general	equal treatment is a general principle
	principle of Union law. According to	of Union law. According to settled
	settled case-law, that principle	case-law, that principle requires that
	requires that comparable situations	comparable situations must not be
	must not be treated differently and	treated differently and that different
	that different situations must not be	situations must not be treated in the
	treated in the same way unless such	same way unless such treatment is
	treatment is objectively justified.	objectively justified.
(8) End-users should have rights to	(8) End-users should have rights to	(8) <i>The objective of</i> reasonable
access their preferred content and	access their preferred content and	traffic management is to contribute to
information, to use and provide	information, to use and provide	an efficient use of network resources
preferred services and applications, a	s preferred services and applications, as	and to an optimisation of overall
well as terminal equipment.	well as terminal equipment.	transmission quality responding to the
Reasonable traffic management	Reasonable traffic management	objectively different quality of service
contributes to an efficient use of	contributes to an efficient use of	requirements of specific categories of
network resources and thus also	network resources and to an	traffic technical requirements of the
protects to an optimisation of the	optimisation of overall transmission	content, services and applications

freedom of internet access service providers to conduct a business. Innovation by overall transmission quality responding to the technical requirements of the content, services and applications providers should be fostered. In order to be considered transmitted. Moreover, reasonable, traffic 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 nondiscriminatory does not preclude providers of internet access services to implement, in order to optimise the overall transmission quality, traffic management measures which take into account objectively which differentiate between different categories of traffic, service or applications. Any such differentiation should be permitted only on the basis of objective technical quality of service requirements of certain traffic

quality responding to the technical requirements of the content, services and applications transmitted. Moreover, reasonable traffic management measures applied by providers of internet access services should be transparent, proportionate, non-discriminatory and should not be based on unjustified commercial considerations constitute anticompetitive behaviour such as preferring or disadvantaging competing content, services or applications. 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 categories of traffic-services or applications. Any such differentiation in order to optimise overall quality and user experience should be permitted only on the basis of objective technical quality of service

transmited. Reasonable traffic management measures applied by providers of internet access services should be transparent, proportionate, non-discriminatory and should not constitute anti-competitive behaviour be based on unjustified commercial considerations such as preferring or disadvantaging competing content, services or applications. 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 categories of traffic. Any such differentiation should, in order to optimise overall quality and user experience, be permitted only on the basis of objective technical quality of service requirements (for example, in terms of latency, jitter, packet loss, and bandwidth) of the different categories of traffic, which cannot be considered to be but not on the basis of

(for example, in terms of latency, of high jitter, packet loss, and bandwidth). Blocking, of the different categories 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.

requirements (for example, in terms of latency, jitter, packet loss, and bandwidth) of the different categories of traffic, *which cannot be considered to be* 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.

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 in line with the principle of non-discrimination. The traffic management measures should not be maintained longer than necessary.

Any traffic management practice which goes beyond such reasonable measures, including reasonable differentiation, by blocking, slowing down, altering, degrading or discriminating against between 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.

8(a) Any More intrusive traffic management practices which goes beyond such reasonable measures, including reasonable differentiation, namely by blocking, slowing down, restricting, interfering with, altering, degrading or discriminating between specific content, applications or services, or specific categories of content, applications or services, should be prohibited, subject to justified and defined exceptions laid down in this Regulation. These exceptions are subject to strict

(8a) Any Any traffic management practices which go beyond such reasonable measures by blocking, slowing down, restricting, interfering with, altering, degrading or discriminating between specific content, applications or services, or specific categories of content, applications or services, should be prohibited, subject to justified and defined exceptions laid down in this Regulation. These exceptions are subject to strict interpretation and proportionality requirements.

Rules against altering content, services interpretation and proportionality Individual Content, services and or applications refer to a modification requirements. Individual applications should be protected, as of the content of the communication. Contentcontent, services and well as categories thereof because of the negative impact of unjusitified but do not ban non-discriminatory data applications should be protected, as compression techniques which reduce well as categories thereof because of blocking or other restrictive measures the size of a data file without any the negative impact of unjustified on end-user choice and innovation modification of the content. Such blocking or other restrictive measures would be even greater if applied to compression enables a more efficient entire categories. Rules against on end-user choice and innovation would be even greater if applied to altering content, services or use of scarce resources and serves the end-users' interest in reducing data entire categories. Rules against applications refer to a modification of volumes, increasing speed and altering content, services or the content of the communication, but enhancing the experience of using the applications refer to a modification of do not ban non-discriminatory data content, services or applications in the content of the communication, but compression techniques which reduce the size of a data file without any question. do not ban non-discriminatory data modification of the content. Such compression techniques which reduce the size of a data file without any compression enables a more efficient modification of the content. Such use of scarce resources and serves the compression enables a more efficient end-users' interest in reducing data use of scarce resources and serves the volumes, increasing speed and end-users' interest in reducing data enhancing the experience of using the volumes, increasing speed and content, services or applications in enhancing the experience of using the question. content, services or applications in question. (8b) Technical information on (8b) Technical information on specific quality of service requirements specific quality of service requirements of traffic is usually of traffic is usually contained in the

(9) Providers of internet access service may be subject to legal obligations requiring, for example, blocking of specific content, applications or services. Those legal obligations should be laid down in Union or national legislation (for example, Union or national legislation related to the lawfulness of information, content, applications or services, or legislation related to public safety), in compliance with Union law, or they should be established in

contained in the data packet header.
Reasonable traffic management does
therefore not require techniques
which enable to monitor the content
or payload of data packets, such as
deep packet inspection. By contrast,
legal obligations or the preservation
of network security may exceptionally
require monitoring of the content of
data packets, subject to concrete
suspicious facts and strict
proportionality. These exceptions do
not justify systematic monitoring of
the content of data packets.

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data packet header. Reasonable traffic management does therefore not require techniques which enable to monitor the content or payload of data packets, such as deep packet inspection. By contrast, legal obligations or the preservation of network security may in exceptional circumstances exceptionally require monitoring of the content of data packets, subject to concrete suspicious facts and strict proportionality. These exceptions do not justify systematic monitoring of the content of data packets.

(9) Providers of internet access service may be subject to Union or national legislation (for example, Union or national legislation related to the lawfulness of content, applications or services, or legislation related to public safety), in compliance with Union law, including criminal law, requiring, for example, blocking of specific content, applications or services or to measures implementing or applying such legislation, in compliance with Union law, such as national measures of

measures implementing or applying such legislation, such as national measures of general application, courts orders, decisions of public authorities vested with relevant powers, or other measures ensuring compliance with such legislation (for example, obligations to comply with court orders or orders by public authorities requiring to block unlawful content). The requirement to comply with Union law relates, among others, to the compliance with the requirements of the Charter of Fundamental rights of the European Union in relation to limitations of fundamental rights and freedoms. Reasonable traffic management should also allow actions to protect the integrity of the network, for instance in preventing cyberattacks through the spread of malicious software or end-users' identity theft through spyware. In the operation of their networks, providers of internet access services should be allowed to implement reasonable traffic management measures to avoid

example, blocking of specific content, applications or services or they should be established in to measures implementing or applying such legislation, in compliance with Union law, such as national measures of general application, court orders, decisions of public authorities vested with relevant powers, or other measures ensuring compliance with such legislation (for example, obligations to comply with court orders or orders by public authorities requiring to block unlawful content). The requirement to comply with Union law relates, among others, to the compliance with the requirements of the Charter of Fundamental rights of the European Union in relation to limitations of fundamental rights and freedoms. Reasonable Restrictive traffic management measures, including blocking, should also allow actions should also be considered to be justified when employed to protect the integrity and security of the network, for instance in preventing cybergeneral application, court orders, decisions of public authorities vested with relevant powers, or other measures ensuring compliance with legislation (for example, such obligations to comply with court orders or orders by public authorities requiring to block unlawful content). The requirement to comply with Union law relates, among others, to the compliance with the requirements of the Charter of Fundamental rights of the European Union in relation to limitations of fundamental rights and freedoms. As stated in Directive anv limitations of 2009/140/EC fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms including effective judicial protection and due

congestion of the network.	attacks through the spread of malicious	process. Accordingly, these limitations
5	software or end-users' identity theft	may only be taken with due respect
	through spyware. In the operation of	for the principle of the presumption of
	their networks, providers of internet	innocence and the right to privacy. A
	access services should be allowed to	prior, fair and impartial procedure
	implement reasonable traffic	shall be guaranteed, including the
	management measures to avoid	right to be heard of the person or
	congestion of the network.	persons concerned, subject to the
	congestion of the network.	need for appropriate conditions and
		procedural arrangements in duly
		substantiated cases of urgency in
		conformity with the European
		Convention for the Protection of
		Human Rights and Fundamental
		Freedoms The right to effective and
		timely judicial review shall be
		guaranteed.' Restrictive traffic
		management measures, including
		blocking, should also be considered to
		be justified when employed to protect
		the integrity and security of the
		network, for instance in preventing
		eyber-attacks through the spread of
		malicious software or end-users'
		identity theft through spyware.
Exceptionally, more restrictive traffic	(9a) The derogations, subject to	(9a) The derogations, subject to strict
management measures affecting	strict interpretation, should also	interpretation, should also include

certain categories of content, applications or services may be necessary for the purpose of preventing network congestion, i.e. situations where congestion is pending. about to materialise, and in the mitigation of Moreover, minimising the effects of actual network congestion, should be considered reasonable provided that network such congestion occurs only temporarily or in exceptional circumstances. The principle of proportionality requires that traffic management measures based on this exception treat equivalent categories of traffic equally. Temporary congestion refers to specific, nonrecurring situations during short periods of time. Exceptional circumstances are infrequent This includes situations, especially in mobile access networks, where despite operators' efforts to ensure the most efficient use of the resources available and thus prevent congestion, demand occasionally exceeds the available capacity of the network, for example in *include m* ore restrictive traffic management measures affecting certain categories of content, applications or services which may be necessary for the purpose of preventing impending network congestion, i.e. situations where congestion is about to materialise, and in the mitigation of the effects of network congestion, provided that such congestion occurs only temporarily or in exceptional circumstances. The principle of proportionality requires that traffic management measures based on this exception treat equivalent categories of traffic equally and are only applied as long as necessary. Temporary congestion should be understood as referring refers to specific, situations of short duration, where a sudden increase in the number of users in addition to the regular users, or a sudden increase in demand for a particular content or service, may overflow the transmission capacity of some elements of the network and make the rest of the network less

more restrictive traffic management measures affecting certain categories of content, applications or services which may be necessary for the purpose of preventing impending network congestion, i.e. situations where congestion is about to materialise, and in the mitigation of the effects of network congestion, provided that such congestion occurs only temporarily or in exceptional circumstances. The principle of proportionality requires that traffic management measures based on this exception treat equivalent categories of traffic equally and are only applied as long as necessary. Temporary congestion should be understood as referring to specific situations of short duration, where a sudden increase in the number of users in addition to the regular users, or a sudden increase in demand for a particular content or service, may overflow the transmission capacity of some elements of the network and make the rest of the network less reactive. Temporary

large sport events, public demonstrations concerts or festivals and other situations where a much larger number than usual of users is trying to make use of the network at the same time.

reactive. Temporary congestion may occur especially in mobile networks, which are subject to more variable conditions, such as physical obstructions, lower indoor coverage, or a variable number of active users with changing location. It may be predictable that such temporary congestion will occur from time to time at certain points in the network such that it cannot be regarded as exceptional -, without it recurring often or for such extensive periods that a capacity expansion would be economically justified. Exceptional congestion should be understood as referring to unpredictable and unavoidable situations of congestion, both in mobile and fixed networks. These situations may be caused e.g. by a technical failure such as a service outage due to broken cables or other infrastructure elements, unexpected changes in routing of traffic or large increases in network traffic due to emergency or other situations beyond the control of the

congestion may occur especially in mobile networks, which are subject to more variable conditions, such as physical obstructions, lower indoor coverage, or a variable number of active users with changing location. It may be predictable that such temporary congestion will occur from time to time at certain points in the network – such that it cannot be regarded as exceptional -, without it recurring often or for such extensive periods that a capacity expansion would be economically justified. Exceptional congestion should be understood as referring to unpredictable and unavoidable situations of congestion, both in mobile and fixed networks. These situations may be caused e.g. by a technical failure such as a service outage due to broken cables or other infrastructure elements, unexpected changes in routing of traffic or large increases in network traffic due to emergency or other situations beyond the control of the internet access service provider. Such congestion

internet access service provider. Such congestion problems are likely to be infrequent but may be severe, and are not necessarily of short duration.nonrecurring situations during short periods of time. Exceptional circumstances are infrequent situations, especially in mobile access networks, where despite operators' efforts to ensure the most efficient use of the resources available and thus prevent congestion, demand occasionally exceeds the available capacity of the network, for example in large sport events, concerts or festivals and other situations where a much larger number than usual of users is trying to make use of the network at the same time. The need to apply intrusive traffic management measures to prevent or mitigate the effects of temporary or exceptional network congestion should not give operators the possibility to circumvent the general prohibition of blocking, slowing down, altering, degrading or discriminating between specific

problems are likely to be infrequent but may be severe, and are not necessarily of short duration. The need to apply intrusive traffic management measures to prevent or mitigate the effects of temporary or exceptional network congestion should not give operators the possibility to circumvent the general prohibition of blocking, slowing down, altering, degrading or discriminating between specific content, applications or services, or specific categories of traffic. Recurrent and more long-lasting network congestion which is neither exceptional nor temporary should not benefit from such a derogation and should rather be tackled through expansion of network capacity.

content, applications or services, or specific categories of traffic. Recurrent and more long-lasting network congestion which is neither exceptional nor temporary should not benefit from such a derogation and should rather be tackled through expansion of network capacity. (9a 10) For the purposes of this (10) For the purposes of this (10) For the purposes of this Regulation, prior explicit consent Regulation, prior explicit consent Regulation, prior explicit consent should mean any freely given specific, should mean any freely given specific, should mean any freely given specific, distinct and informed indication of distinct and informed indication of distinct and informed indication of end-user's wishes by which the endend-user's wishes by which the endend-user's wishes by which the enduser signifies his unambiguous user signifies his unambiguous user signifies his unambiguous agreement to allow the provider of agreement to allow the provider of agreement to allow the provider of internet access services to prevent the internet access services to prevent the internet access services to prevent the transmission of unsolicited transmission of unsolicited transmission of unsolicited communication or to implement communication or to implement communication or to implement parental control measures. In addition, parental control measures. For the parental control measures. For the it is also important to recall that purposes of giving effect to the purposes of giving effect to the according to Article 20 of the provision requiring a prior explicit provision requiring a prior explicit Universal Service Directive<sup>1</sup>, contracts consent of the end-user for the consent of the end-user for the for services providing connection to a implementation of parental control implementation of parental control public communications network and/or measures by the provider of the measures by the provider of the publicly available electronic internet access services, this internet access services, this communications services should Regulation should be applied in Regulation should be applied in

inform consumers and other end-users so requesting about, inter alia, any conditions which limit access to and/or use of services and applications. Finally, and f F or the purposes of giving effect to the provision requiring a prior explicit consent of the end-user for the implementation of parental control measures by the provider of the internet access services, this Regulation should be applied in accordance with national rules. Therefore, this Regulation does not affect national rules which define, for example, parental rights and obligations. In this respect, and by way of an example, the aim of parental control measures could be to prevent the access of minors to content. applications and services, such as those involving pornography or gratuitous violence, which might seriously impair minors' physical, mental or moral development. Parental control measures should be applied in a manner that ensures that the end-user decides which categories of content

accordance with national rules. Therefore, this Regulation does not affect national rules which define, for example, parental rights and obligations. In this respect, and by way of an example, the aim of parental control measures could be to prevent the access of minors to content. applications and services, such as those involving pornography or gratuitous violence, which might seriously impair minors' physical, mental or moral development. Parental control measures should be applied in a manner that ensures that the end-user decides which categories of content should be filtered, blocked or controlled. They should also include a clear alert to the end-user that such measures have been used to filter, block or control content or categories of content when the end-user attempts to access such content. The measures should also include a clear and transparent mechanism by which the end-user who has consented to the use of these measures may withdraw this

accordance with national rules. Therefore, this Regulation does not affect national rules which define, for example, parental rights and obligations. In this respect, and by way of an example, the aim of parental control measures could be to prevent the access of minors to content, applications and services, such as those involving pornography or gratuitous violence, which might seriously impair minors' physical, mental or moral development. Parental control measures should be applied in a manner that ensures that the end-user decides which categories of content should be filtered, blocked or controlled. They should also include a clear alert to the end-user that such measures have been used to filter. block or control content or categories of content when the end-user attempts to access such content. The measures should also include a clear and transparent mechanism by which the end-user who has consented to the use of these measures may withdraw this

should be filtered, blocked or consent at any time. consent at any time. controlled. They should also include a clear alert to the end-user that such measures have been used to filter, block or control content or categories of content when the end-user attempts to access such content. The measures should also include a clear and transparent mechanism by which the end-user who has consented to the use of these measures may withdraw this consent at any time. (11) There is demand on the part of (11) There is demand on the part of (7-11)There is demand on the part of content, applications and content, applications and services content, applications and services services providers, as well as on the providers to be able to provide, as well providers to be able to provide, as well as on the part of end-users, for the part of end-users, for the provision of as on the part of end-users, for the electronic communication services provision of, electronic communication <del>provision of,</del>, electronic other than internet access services, services other than internet access communications services other than based on specific quality of service services, based onwhich require internet access services, for which specific quality of service levels. levels. Agreements in this respect require-specific quality of service levels are indispensable. Such specific could also play an important role in the Agreements in this respect could provision of services with a public alsoSuch specific quality levels are, quality levels are, for instance, interest as well as in the development for instance, required by some required by some services responding to a public interest (e.g. e-health) or by services play an important role in the of new services such as machine-toprovision of services withresponding machine communications. At the same some new machine-to-machine to a public interest (e.g. e-health) or as time, such agreements should allow communications services. Providers of providers of electronic well as in the development by some of electronic communications to the

communications to the public to better balance traffic and prevent network congestion. End-users including providers of content, applications and services, should therefore remain free to conclude agreements with providers of electronic communications to the public and providers of content applications and services, which require specific levels of quality of service. Such services should not be offered as a replacement for internet access services, and their provision should not impair in a material manner the availability and quality of internet access services for other end-users. National regulatory authorities should ensure that providers of electronic communications to the public comply with this requirement, as set out in Article 4. In this respect, national regulatory authorities should assess whether the negative impact on the availability and quality of internet access services is material by analysing, inter alia, quality parameters such as timing and reliability

new services such as machine-tomachine communications services. At the same time, such agreements should allow providers of electronic communications to the public to better balance traffic and prevent network congestion. Providers of electronic communications to the public, including providers of internet access services, and providers of content, applications and services End-users should therefore remain be free to conclude agreements with providers of electronic communications to the public and providers of content applications and offer services which are not internet access services and which are optimised to meet the specific quality requirements forof specific content, applications or services, or a combination thereof which require specific levels of quality of service.

public, including providers of internet access services, and providers of content, applications and services should therefore be free to offer services which are not internet access services and which are optimised to meet the specific *indispensable* quality requirements of specific content, applications or services, or a combination thereof.

parameters (latency, jitter, packet loss),		
levels and effects of congestion in the		
network, actual versus advertised		
speeds, performance of internet access		
services compared with services other		
than internet access services, and		
quality as perceived by end-users.		
	(11a) In order to avoid a negative	(11a) In order to avoid a negative
	impact of the provision of such	impact of the provision of such
	services on the availability or quality	services on the availability or quality
	of internet access services for end-	of internet access services for end-
	users other than those having	users other than those having
	subscribed to the specific service,	subscribed to the specific service,
	sufficient capacity needs to be	sufficient capacity needs to be ensured.
	ensured. Providers of electronic	Providers of electronic
	communications to the public,	communications to the public,
	including providers of internet access	including providers of internet access
	services, should, therefore, offer such	services, should, therefore, offer such
	other services, or conclude	other services, or conclude
	corresponding agreements with	corresponding agreements with
	providers of content, services or	providers of content, services or
	applications facilitating such services,	applications facilitating such services,
	only if the network capacity is	only if the network capacity is
	sufficient to provide them in addition	sufficient to provide them in addition
	to any internet access services	to any internet access services
	provided. The open internet	provided. The open internet provisions
	provisions of Article 3 should not be	of Article 3 should not be

circumvented by other services usable or offered as a replacement for internet access services. However, the mere fact that corporate services such as virtual private networks may also give access to the internet should not be considered as a replacement of the internet access service provided that such access to the internet is compliant with Article 3(1) to (4) of this Regulation and thus cannot be considered a circumvention of those rules. Such services should not be offered as a replacement for internet access services, and tTheir provision of these services should not impair in a material manner the availability and general quality of internet access services for other end-users other than those having subscribed to the specific service. National regulatory authorities should ensure that providers of electronic communications to the public comply with this requirement, as set out in Article 4. In this respect, national regulatory authorities should assess whether the negative impact on

circumvented by other services usable or offered as a replacement for internet access services. However, the mere fact that corporate services such as virtual private networks may also give access to the internet should not be considered as a replacement of the internet access service provided that such access to the internet is compliant with Article 3(1) to (4) of this Regulation and thus cannot be considered a circumvention of those rules.

The provision of these services should not impair the availability and general quality of internet access services—for end users other than those having subscribed to the specific service.

National regulatory authorities should ensure that providers of electronic communications to the public comply with this requirement, as set out in Article 4. In this respect, national regulatory authorities should assess the impact on the availability and general quality of internet access services by

the availability and general quality of analysing, inter alia, quality parameters internet access services is material by (latency, jitter, packet loss, etc.), levels analysing, inter alia, quality parameters and effects of congestion in the network, actual versus advertised such as timing and reliability speeds, performance of internet access parameters ((latency, jitter, packet loss, etc.), levels and effects of congestion services compared with services other in the network, actual versus than internet access services, and advertised speeds, performance of quality as perceived by end-users. internet access services compared with services other than internet access services, and quality as perceived by end-users. (11 12) National regulatory authorities (12) National regulatory authorities (12) National regulatory authorities play an essential role in ensuring that play an essential role in ensuring that play an essential role in ensuring that end-users are effectively able to end-users are effectively able to end-users are effectively able to exercise the right to avail of open exercise the right to avail of open exercise the right to avail of open internet access. To this end, national internet access. To this end, national internet access. To this end, national regulatory authorities should have regulatory authorities should have regulatory authorities should have monitoring and reporting obligations, monitoring and reporting obligations, monitoring and reporting obligations, and should ensure compliance of and should ensure compliance of and should ensure compliance of providers of electronic providers of electronic providers of electronic communications to the public with the communications to the public, communications to the public, obligation to ensure sufficient network including providers of internet access including providers of internet access capacity for the provision of nonservices, with their obligations services, with their obligations discriminatory internet access services pursuant to Article 3, including the pursuant to Article 3, including the of high quality which should not be obligation to ensure sufficient network obligation to ensure sufficient network impaired by provision of services with capacity for the provision of noncapacity for the provision of non-

a specific level of quality. Providers of internet access services should ensure maximum transparency in the provision of internet access services according to the additional transparency measures laid down in Article 4. Therefore, national regulatory authorities should enforce compliance with Article 3 and the respective parts of Article 4. They should also have powers to impose minimum quality of service requirements on all or individual providers of electronic communications to the public if this is necessary to prevent degradation of the quality of service of internet access services for other end-users. In doing so, national regulatory authorities should take utmost account of relevant guidance from BEREC.

discriminatory internet access services of high quality which should not be impaired by *the* provision of services with a specific level of quality. Providers of internet access services should ensure maximum transparency in the provision of internet access services according to the additional transparency measures laid down in Article 4. Therefore, national regulatory authorities should enforce compliance with Article 3 and the respective parts of Article 4. They National regulatory authorities should also have powers to impose technical characteristics, minimum quality of service requirements and other appropriate measures on all or individual providers of electronic communications to the public if this is necessary to ensure compliance with Article 3 or to prevent degradation of the quality of service of internet access services for other end-users. In doing so, national regulatory authorities should take utmost account of relevant guidance from BEREC.

discriminatory internet access services of high quality which should not be impaired by the provision of services with a specific level of quality. National regulatory authorities should also have powers to impose technical characteristics, minimum quality of service requirements and other appropriate measures on all or individual providers of electronic communications to the public if this is necessary to ensure compliance with Article 3 or to prevent degradation of the quality of service of internet access services for other end-users. In doing so, national regulatory authorities should take utmost account of relevant guidance from BEREC.

(13) The open internet provisions should be complemented by effective end-user provisions which address issues particularly linked to internet access services and enable end-users to make informed choices. These provisions should apply in addition to the applicable provisions of Directive 2002/22/EC as amended and Member States may maintain or adopt more far-reaching measures. Providers of internet access services should inform end-users in a clear manner about any traffic management practices deployed and about the possible impact of other services to which they subscribe on the quality and availability of their respective internet access services. In view of the increasing use of data volume allowances it is essential that endusers be able to be fully aware of any such allowances and to continuously monitor their data consumption. Discrepancies between advertised quality parameters, in particular speeds, and the actally available

(12a) The open internet provisions should be complemented by effective end-user provisions which address issues particularly linked to internet access services and enable end-users to make informed choices. These provisions should apply in addition to the applicable provisions of Directive 2002/22/EC as amended and Member States may maintain or adopt more farreaching measures. Providers of internet access services should inform end-users in a clear manner about any traffic management practices deployed and about the possible impact of other services to which they subscribe on the quality and availability of their respective internet access services. In view of the increasing use of data volume allowances it is essential that end-users be able to be fully aware of any such allowances and to continuously monitor their data consumption. Discrepancies between advertised quality parameters, in particular speeds, and the actally available quality of internet access

quality of internet access services, have been evidenced by studies of national regulatory authorities. In order to empower end-users in such scenarios, providers of internet access services should provide precise contractual information on the relevant speeds and on available remedies in accordance with national law in case of non-compliance of performance. National regulatory authorities should enforce compliance with Article 4.

services, have been evidenced by studies of national regulatory authorities. In order to empower endusers in such scenarios, providers of internet access services should therefore inform end-users, prior to the conclusion of the contract, of the speed and other quality of service parameters which they can realistically deliver. provide precise contractual information on the relevant speeds. The normally available speed is understood to be the speed that a consumer could expect to receive most of the time when accessing the service, regardless of the time of day. Normally available speed should be derived from estimated speed ranges, speed averages, peak-hour speed and minimal speed. The methodology should be established in BEREC guidelines and regularly reviewed and updated to reflect technology and infrastructure evolution. and on available remedies in accordance with national law in case of non-compliance of performance. National regulatory

			authorities should enforce compliance with Article 4.
Marking for Articles: bold-	Marking for Articles: bold-	Marking for Arts: bold-	Marking for Arts: bold-
italic/strikethrough shows differences	italic/strikethrough shows differences	italic/strikethrough shows differences	italic/strikethrough shows differences
with Council text of 4 March 2015	with EP suggestions of 8 May 2015	with Council text of 29 May 2015	with COM non-paper of 4 June
Article 1 – Objective and scope	Article 1 – Objective and scope	Article 1 – Objective and scope	Article 1 – Objective and scope
This Regulation establishes common	1. This Regulation establishes common	1. This Regulation establishes common	1. This Regulation establishes common
rules on aiming at ensuring open	rules on to ensure open internet access	rules to ensure open internet access,	rules to ensure <i>an</i> open internet access
internet access offered by providers of	offered by providers of electronic	safeguarding related end-user's rights	which is open, safeguarding related
electronic communications to the	communications to the public,	and equal treatment of traffic in the	end-user's rights and ensuring equal
public, access safeguarding related	safeguarding <i>related</i> end-user's rights	provision of internet access services.	and non-discriminatory treatment of
end-users' rights and ensuring non-	and ensuring non-discriminatory equal		traffic.
discriminatory treatment of traffic. in	treatment of traffic in <i>the</i> provision of		
provision of internet access services.	internet access services.		
Article 2 - Definitions	Article 2 - Definitions	Article 2 - Definitions	Article 2 - Definitions
(12a) "net neutrality" means the	Deleted	Deleted	Deleted
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;			
	(1) "provider of electronic	(1) "provider of electronic	(1) "provider of electronic
	communications to the public" means	communications to the public" means	communications to the public" means

	an undertaking providing public	an undertaking providing public	an undertaking providing public
	electronic communications networks or	electronic communications networks or	electronic communications networks or
	publicly available electronic	publicly available electronic	publicly available electronic
	communications services.	communications services.	communications services.
(14) 'internet access service' means a	(2) "internet access service" means a	(2) "internet access service" means a	(2) "internet access service" means a
publicly available electronic	publicly available electronic	publicly available electronic	publicly available electronic
communications service that provides	communications service that provides	communications service that provides	communications service that provides
connectivity to the internet <i>in</i>	access to the internet in accordance	access to the internet, and thereby	access to the internet, and thereby
accordance with the principle of net	with the principle of net neutrality, and	connectivity between virtually all end	connectivity between virtually all end
<i>neutrality</i> , and thereby connectivity	thereby connectivity between virtually	points of the internet, irrespective of	points of the internet, irrespective of
between virtually all end points of the	all end points of the internet,	the network technology or terminal	the network technology or terminal
internet, irrespective of the network	irrespective of the network technology	equipment used;	equipment used;
technology or terminal equipment	or terminal equipment used;		
used; [Am. 96]			
[Deletion of 'specialised service'			
accepted depending on overall			
agreement.]			
Article 3 - Safeguarding of open	Article 3 - Safeguarding of open	Article 3 - Safeguarding of open	Article 3 - Safeguarding of open
internet access	internet access	internet access	internet access
1. End-users shall have the right to	1. End-users shall have the right to	1. End-users shall have the right to	1. End-users shall have the right to
access and distribute information and	access and distribute information and	access and distribute information and	access and distribute information and
content, use and provide applications	content, use and provide applications	content, use and provide applications	content, use and provide applications
and services and to use terminal	and services and use terminal	and services and use terminal	and services and use terminal
equipment of their choice irrespective	equipment of their choice, irrespective	equipment of their choice, irrespective	equipment of their choice, irrespective
of the end-user's or provider's location	of the end-user's or provider's location	of the end-user's or provider's location	of the end-user's or provider's location
or the location, origin or destination of	or the location, origin or destination of	or the location, origin or destination of	or the location, origin or destination of

the service, information or content, via	the service, information or content, via	the service, information or content, via	the service, information or content, via
their internet access service-in	their internet access service.	their internet access service.	their internet access service.
accordance with this Article.			
	This paragraph is without prejudice to	This paragraph is without prejudice to	This paragraph is without prejudice to
	Union law or national law, in	Union law or national law, in	Union law or national law, in
	compliance with Union law, related to	compliance with Union law, related to	compliance with Union law, related to
	the lawfulness of the information,	the lawfulness of the information,	the lawfulness of the content,
	content, application or services.	content, application or services.	application or services.
2. Providers of internet access services	2. Providers of internet access services	2. Agreements between Pproviders of	<b>4.</b> Agreements between providers of
and end-users may agree on the	and end-users may agree on	internet access services and end-users	internet access services and end-users
commercial conditions for internet	commercial and technical conditions	may agree on commercial and	on commercial and technical
access services such as related to	and characteristics of for internet	technical conditions and characteristics	conditions and characteristics of
price, data volumes or speeds. Such	access services <del>related to</del> <u>such as</u>	of internet access services such as	internet access services such as price,
agreements, and any commercial	price, data <i>volumes or</i> speed. Such	price, data volumes or speed, . Such	data volumes or speed, and any
practices conducted by providers of	agreements, and any commercial	agreements, and any commercial	commercial practices conducted by
internet access services, shall [be non-	practices conducted by providers of	practices conducted by providers of	providers of internet access services,
discriminatory and shall] not limit the	internet access services, shall [be non-	internet access services, shall not limit	shall be non-discriminatory and shall
exercise of the right of end-users set	discriminatory and shall not limit the	the <i>effective</i> exercise of the right of	not limit the effective exercise of the
out in paragraph 1.	exercise of the right of end-users set	end-users set out in paragraph 1.	right of end-users set out in paragraph
	out in paragraph 1.		1.
3. Subject to this paragraph <i>and in</i>	3. Subject to this paragraph and in	3. Subject to this paragraph, providers	3-2. Subject to this paragraph,
accordance with the principle of net	accordance with the principle of net	of internet access services shall treat	Providers of internet access services
<i>neutrality</i> , providers of internet access	neutrality, providers of internet access	all traffic equally when providing	shall treat all traffic equally when
services shall <i>equally</i> treat <i>all</i>	services shall treat all traffic equally	internet access services, without	providing internet access services,
equivalent types of traffic equally	when providing internet access	discrimination, restriction or	without discrimination, restriction or
when providing internet access	services.	interference, and irrespective of the	interference, and irrespective of the
services.		sender and receiver, the content	sender and receiver, the content

		accessed or distributed, the	accessed or distributed, the
		applications or services used or	applications or services used or
		provided, or the terminal equipment	provided, or the terminal equipment
		used.	used.
Providers of internet access services	Providers of internet access services	Providers of internet access services	Providers of internet access services
may implement reasonable traffic	may implement reasonable traffic	may implement reasonable traffic	may implement reasonable traffic
management measures. In order to be	management measures. In order to be	management measures. In order to be	management measures. In order to be
deemed reasonable and compliant with	deemed reasonable and compliant with	deemed reasonable, such measures	deemed reasonable, such measures
the principle of equal treatment, such	the principle of equal treatment, such	shall be transparent, non-	shall be transparent, non-
measures shall be transparent, non-	measures shall be transparent, non-	discriminatory, proportionate, and	discriminatory, proportionate, and shall
discriminatory, proportionate and shall	discriminatory, proportionate and, shall	shall <i>not be based on commercial</i>	not be based on commercial
not constitute anti-competitive	not constitute anti-competitive	considerations constitute anti-	considerations but on objectively
behaviour, account being taken of	behaviour. When implementing these	competitive behaviour and shall be	different technical quality of service
objectively different technical quality	measures, providers and shall be	basedbut on objectively different	requirements of specific categories of
of service requirements of specific	based on objectively different	technical quality of service	traffic. Such measures shall not
categories of traffic, whereas such a	technical quality of service	requirements of specific categories of	monitor the specific content of data
distinction can only be made on the	requirements of specific categories of	traffic. Such measures shall not	packets and shall not be maintained
basis of the packet header. Such	traffic <del>, whereas such a distinction can</del>	monitor the specific content of data	longer than necessary.
measures shall not be maintained	only be made on the basis of the packet	packets and shall not be maintained	
longer than necessary.	header. Such measures shall not be	longer than necessary.	
	maintained longer than necessary.		
Providers of internet access services	Providers of internet access services	Providers of internet access services	Providers of internet access services
shall not engage in traffic management	shall not engage in traffic management	shall not engage in traffic management	shall not engage in traffic management
measures going beyond the reasonable	measures going beyond the reasonable	measures going beyond the reasonable	measures going beyond the reasonable
measures set out in sub-paragraph 2,	measures set out in subparagraph 2,	measures set out in subparagraph 2,	measures set out in subparagraph 2,
and in particular shall not block, slow	and <del>in particular</del> shall not block, slow	and <i>in particular</i> shall not block, slow	and in particular shall not block, slow
down, alter, degrade or discriminate	down, alter, degrade or discriminate	down, alter, restrict, interfere with,	down, alter, restrict, interfere with,

between against specific content,	against between specific content,	degrade or discriminate between	degrade or discriminate between
applications or services, or specific	applications or services, or specific	specific content, applications or	specific content, applications or
categories or entire classes of traffic	categories or entire classes of traffic,	services, or specific categories	services, or specific categories thereof,
<i>thereof</i> , except as necessary, and only	except as necessary, and only for as	thereof, except as necessary, and only	except as necessary, and only for as
for as long as necessary, to:	long as necessary, to:	for as long as necessary, to:	long as necessary, to:
a) comply with legal obligations, to	a) comply with legal obligations to	a) comply with <del>legal obligations to</del>	a) comply with Union legislation or
which the internet access service	which the internet access service	which the internet access service	national legislation, in compliance with
provider is subject, that are <i>laid down</i>	provider is subject, that are laid down	provider is subject, that are laid down	Union law, to which the internet access
in Union legislation or national	in Union legislation or national	in Union legislation or national	service provider is subject, or with
legislation, in compliance with Union	legislation, in compliance with Union	legislation, in compliance with Union	measures giving effect to such Union
law, or in measures giving effect to	law, or in measures giving effect to	law, to which the internet access	or national legislation, in compliance
such Union or national legislation,	such Union or national legislation,	service provider is subject, or in with	with Union law, including with orders
including orders by courts or public	including orders by courts or public	measures giving effect to such Union	by courts or public authorities vested
authorities vested with relevant	authorities vested with relevant	or national legislation, in compliance	with relevant powers;
powers;	powers;	with Union law, including with orders	
		by courts or public authorities vested	
		with relevant powers;	
b) preserve the integrity and security of	b) preserve the integrity and security of	b) preserve the integrity and security of	b) preserve the integrity and security of
the network, services provided via this	the network, services provided via this	the network, services provided via this	the network, services provided via this
network, and the end-users' terminal	network, and the end-users' terminal	network, and the end-users' terminal	network, and the end-users' terminal
equipment;	equipment;	equipment;	equipment;
c) prevent <i>or <del>impending network</del></i>	c) prevent <del>or impending network</del>	c) prevent impending network	c) prevent impending network
<i>congestion and</i> mitigate the effects of	congestion and mitigate the effects of	congestion and mitigate the effects of	congestion and mitigate the effects of
temporary <i>and or</i> exceptional network	exceptional and or temporary network	exceptional or temporary network	exceptional or temporary network
congestion, provided that equivalent	congestion, provided that equivalent	congestion, provided that equivalent	congestion, provided that equivalent
types of traffic are treated equally.	types categories of traffic are treated	categories of traffic are treated equally;	categories of traffic are treated equally;
	equally;		

	d) prevent transmission of unsolicited communication within the meaning of Article 13 of Directive 2002/58/EC or implement parental control measures, subject to a prior explicit consent of the end-user. The end-user shall be given the possibility to withdraw this consent at any time.	d) prevent transmission of unsolicited communication within the meaning of Article 13 of Directive 2002/58/EC <sup>2</sup> or implement parental control measures 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, subject to a prior explicit consent of the end-user. The end-user shall be given the possibility to withdraw this consent at any time.	d³) prevent transmission of specific types or categories of harmful content or unsolicited communication within the meaning of Article 13 of Directive 2002/58/EC1 or implement parental control measures 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, subject to a prior explicit request or consent of the enduser.  The end-user shall be given the possibility to withdraw this request or consent at any time, using a mechanism that is no more onerous than the mechanism used to opt-in.
Traffic management measures shall not be maintained longer than necessary.	Deleted	Deleted	Deleted
Traffic management measures may only entail processing of personal data	4. Any traffic management measures may only entail processing of personal	4. Any traffic management measures may only entail processing of personal	3. Any traffic management measures may only entail processing of personal

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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).

<sup>3</sup> CULT rapporteur for opinion has reservations on the wording in point (d) and recital 10.

that is necessary and proportionate to	data that is necessary and proportionate	data that is necessary and proportionate	data that is necessary and proportionate
achieve the objectives of paragraph 3	to achieve the objectives of paragraph	to achieve the objectives of paragraph	to achieve the objectives of paragraph
(a – d). Such processing shall be	3 4 (a d). Such processing shall be	3. Such processing shall be carried out	3. Such processing shall be carried out
carried out in accordance with	carried out in accordance with	in accordance with Directive 95/46.	in accordance with Directive 95/46.
Directive 95/46. Traffic management	Directive 95/46. Traffic management	Traffic management measures shall	Traffic management measures shall
measures shall also comply with	measures shall also comply with	also comply with Directive 2002/58.	also comply with Directive 2002/58.
Directive 2002/58.	Directive 2002/58.	also comply with Directive 2002/30.	anso comply with Directive 2002/30.
4. End-users shall be provided with	5. Providers of electronic	5. Providers of electronic	5. Providers of electronic
complete information in accordance	communications to the public,	communications to the public,	communications to the public,
with Article 20(2), Article 21(3) and	including providers of internet access	including providers of internet access	including providers of internet access
Article 21a of Directive 2002/22/EC,	services, and providers of content,	services, and providers of content,	services, and providers of content,
including information on any traffic	applications and services shall be free	applications and services shall be free	applications and services shall be free
management measures applied that	to offer services which are distinct	to offer services other than internet	to offer services other than internet
might affect access to and distribution	from other than internet access	access services which are optimised for	access services which are optimised for
of information, content, applications	services <del>and</del> which are optimised for	specific content, applications or	specific content, applications or
and services as specified in this	specific content, applications or	services, or a combination thereof, in	services, or a combination thereof,
Article.	services, or a combination thereof, in	order to meet their requirements for a	where the optimisation is
Threet.	order to meet their requirements for a	specific level of quality.	indispensable in order to meet
	specific level of quality.	specific level of quality.	requirements of the
	specific level of quality.		content, applications or services for a
			specific level of quality.
5. Providers of electronic	Providers of electronic	Providers of electronic	Providers of electronic
communications to the public,	communications to the public,	communications to the public,	communications to the public,
including providers of internet access	including providers of internet access	including providers of internet access	including providers of internet access
services, and providers of content,	services, <u>may</u> offer such services only	services, may offer <i>or facilitate</i> such	services, may offer or facilitate such
applications and services shall be free	if the network capacity is sufficient to	services only if the network capacity is	services only if the network capacity is
to offer individual services which are	provide them in addition to internet	sufficient to provide them <i>in addition</i>	sufficient to provide them in addition
to offer marvidual services which are	provide them in addition to internet	sufficient to provide them in unumbi	same to provide them in addition

distinct from internet access services	access services, they are	to any internet access services	to any internet access services
and which are optimised for specific		provided.	provided.
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	Such services shall not be offered as a	Such services shall not be <i>usable or</i>	Such services shall not be usable or
the network capacity made available	replacement for internet access	offered as a replacement for internet	offered as a replacement for internet
by providers of electronic	services, and are shall not be to the	access services, and shall not be to the	access services, and shall not be to the
communications services to the public,	material detriment of the availability or	detriment of the availability or general	detriment of the availability or general
including providers of internet access	general quality of internet access	quality of internet access services for	quality of internet access services for
services, is sufficient to provide them	services for other end-users.	other end-users.	other end-users.
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.			

EP text of 22 May plus	Council text of 29 May	Commission non-paper of 4 June	EP text of 18 June
corrections of 27 May			
Article 4 – Transparency,	Article 4 – Transparency,	Article 4 – Transparency,	Article 4 – Transparency,
supervision and enforcement of open	supervision and enforcement of open	supervision and enforcement of open	supervision and enforcement of open
internet access	internet access	internet access	internet access
Marking: bold-italic shows differences	Marking: bold-italic/strikethrough	Marking: bold-italic/strikethrough	Marking: bold-italic/strikethrough
with Presidency text of 18 May	shows differences with EP text of 22	shows differences with Council text of	shows differences with COM non-
Strikethrough/underlined shows	May	29 May 2015	paper of 4 June
corrections compared to EP text of 22			
May			
1. National regulatory authorities shall	1. National regulatory authorities shall	1. National regulatory authorities shall	1. National regulatory authorities shall
closely monitor and ensure compliance	closely monitor and ensure compliance	closely monitor and ensure compliance	closely monitor and ensure compliance
with Article 3, and shall promote the	with Article 3 and with paragraphs 3	with Article 3 and with paragraphs 3 to	with Article 3 and with paragraphs 3 to
continued availability of non-	and 5 of this Article, and shall	6 of this Article, and shall promote the	6 of this Article, and shall promote the
discriminatory internet access services	promote the continued availability of	continued availability of open internet	continued availability of <i>non-</i>
at levels of quality that reflects	non-discriminatory open internet	access at levels of quality that reflect	discriminatoryopen internet access at
advances in technology and are not	access services at levels of quality that	advances in technology. For those	levels of quality that reflect advances
impaired by services referring to	reflect advances in technology and are	purposes national regulatory	in technology. For those purposes
Article 3(5). For those purposes	not impaired by services referring to	authorities may impose technical	national regulatory authorities may
national regulatory authorities may	Article 3(5). For those purposes	characteristics and minimum quality of	impose technical characteristics
impose technical characteristics and	national regulatory authorities may	service requirements and other	minimum quality of service
minimum quality of service	impose technical characteristics and	appropriate and necessary measures	requirements and other appropriate and
requirements in accordance with	minimum quality of service	on one or more providers of electronic	necessary measures on one or more
Article 22 of the Universal Services	requirements in accordance with the	communications to the public,	providers of electronic
Directive. National regulatory	second subparagraph of Article 22(3)	including providers of internet access	communications to the public,

authorities shall publish reports on an	of the Universal Service Directive.	services. in accordance with the second	including providers of internet access
annual basis regarding their monitoring	National regulatory authorities shall	subparagraph of Article 22(3) of the	services. National regulatory
and findings, and provide those reports	publish reports on an annual basis	Universal Service Directive National	authorities shall publish reports on an
to the Commission and BEREC.	regarding their monitoring and	regulatory authorities shall publish	annual basis regarding their monitoring
	findings, and provide those reports to	reports on an annual basis regarding	and findings, and provide those reports
	the Commission and BEREC.	their monitoring and findings, and	to the Commission and BEREC.
		provide those reports to the	
		Commission and BEREC.	
2. Providers of electronic	2. Providers of electronic	2. Providers of electronic	2. Providers of electronic
communication services to the public,	communication services to the public,	communication services to the public,	communication services to the public,
including providers of internet access	including providers of internet access	including providers of internet access	including providers of internet access
services, shall make available, at the	services, shall make available, at the	services, shall make available, at the	services, shall make available, at the
request of the national regulatory	request of the national regulatory	request of the national regulatory	request of the national regulatory
authority, information relevant to their	authority, information relevant to the	authority, information relevant to the	authority, information relevant to the
obligations under Article 3 and 4, in	obligations set out in Article 3 and	obligations set out in Article 3 and	obligations set out in Article 3 and
particular information about how their	paragraphs 3 and 5 of this Article, in	paragraphs 3 to 6 of this Article, in	paragraphs 3 to 6 of this Article, in
network traffic and capacity are	particular information about how their	particular information about how their	particular information about how their
managed, as well as justifications for	network traffic and capacity are	network traffic and capacity are	network traffic and capacity are
any traffic management measures	managed, as well as justifications for	managed, as well as justifications for	managed, as well as justifications for
applied. Those providers shall provide	any traffic management measures	any traffic management measures	any traffic management measures
such information promptly on request	applied. Those providers shall provide	applied. Those providers shall provide	applied. Those providers shall provide
and in accordance with time limits and	such information promptly on request	such the requested information	the requested information in
the level of detail required by the	and in accordance with the time limits	promptly on request and in accordance	accordance with the time limits and the
national regulatory authority.	and the level of detail required by the	with the time limits and the level of	level of detail required by the national
	national regulatory authority.	detail required by the national	regulatory authority.
		regulatory authority.	
3. Providers of internet access		3. Providers of internet access	3. Providers of internet access services

services shall offer end-users the services shall offer end-users the shall offer end-users the facility to facility to monitor and control their facility to monitor their own usage of monitor their own usage of such services to the extent that these are usage of electronic communication such services to the extent that these internet access services billed on time are billed on time or volume billed on time or volume consumption. or volume consumption. That facility consumption. That facility shall That facility shall include for pre-paid include access, free of charge, to and post-paid services access, free of shall include: charge, to timely information on their (a) for pre-paid and post-paid timely information on their service services, access, free of charge, to internet access service consumption. consumption. timely information on their service consumption; (b) for post-paid services, the ability to set, free of charge, a predefined financial cap on their usage, to request notification when a predefined proportion of the cap and the cap itself has been reached, the procedure to be followed to continue usage if the cap is exceeded, and the applicable pricing plans; (c) itemised bills on a durable medium. After reaching the financial limit, end-users shall continue to be able to receive calls and SMS messages and access free-phone numbers and emergency services by dialling the European emergency call number

"112" free of charge until the end of			
the agreed billing period.			
<b>34.</b> Providers of internet access	<del>2a-3</del> . Providers of internet access	<b>4.</b> Providers of internet access services	4. Providers of internet access services
services shall ensure that a contract	services shall ensure that a contract	shall ensure that a contract which	shall ensure that a contract which
which includes an internet access	which includes an internet access	includes an internet access service	includes an internet access service
service shall specifiesy the following	service shall specify at least the	shall specifiesy at least the following	specifies at least the following
information:	following information:	information:	information:
(a) information on any procedures put	(a) information on any procedures put	(a) information on any procedures put	(a) information on any procedures put
in place by the provider to measure	in place by the provider to measure and	in place by the provider to measure	in place by the provider to measure and
and shape traffic including an	shape traffic including an indication of	and shape traffic including an	shape traffic including an explanation
indication of the underlying	the underlying communication	explanation of the underlying	of the underlying communication
communication inspection methods	inspection methods used for reasonable	communication inspection methods	inspection methods used for traffic
used for reasonable traffic	traffic management measures and	used for traffic management	management measures and information
management measures and	information on how traffic	measures and information on how	on how traffic management measures
information on how traffic	management measures applied by that	traffic management measures applied	applied by that provider could impact
management measures applied by that	provider could impact on internet	by that provider could impact on	on internet access service quality, end-
provider could impact on internet	access service quality, end-users'	internet access service quality, end-	users' privacy and the protection of
access service quality, end-users'	privacy and the protection of personal	users' privacy and the protection of	personal data;
privacy and the protection of personal	data;	personal data;	
data;			
(b) a clear and comprehensible	(b) a clear and comprehensible	(b) a clear and comprehensible	(b) a clear and comprehensible
explanation as to how any volume	explanation as to how any volume	explanation as to how any volume	explanation as to how any volume
limitation, speed and other quality of	limitation, speed and other quality of	limitation, speed and other quality of	limitation, speed and other quality of
service parameters may in practice	service parameters may in practice	service parameters may in practice	service parameters may in practice
have an impact on internet access	have an impact on internet access	have an impact on internet access	have an impact on internet access
services, in particular the use of	services, in particular the use of	services, in particular the use of	services, in particular the use of
content, applications and services.	content, applications and services-;	content, applications and services;	content, applications and services;

	(c) a clear and comprehensible	(c) a clear and comprehensible	(c) a clear and comprehensible
	explanation as to how any services	explanation as to how any <i>other</i>	explanation as to how any other
	within the meaning of Article 3(5), to	services within the meaning of Article	services within the meaning of Article
	which the end-user subscribes might	3(5), to which the end-user subscribes,	3(5), to which the end-user subscribes,
	in practice have an impact on the	might in practice have an impact on the	might in practice have an impact on the
	same end-user's internet access	same end-user's internet access	same end-user's internet access
	services.	services;-	services;
(c) the specific tariff plan or tariff		,	(ca) the specific tariff plan or tariff
plans to which the contract applies			plans to which the contract applies
and, for each such tariff plan, the			and, for each such tariff plan, the
types of services offered, including the			types of services offered, including the
volumes of communication; details of			volumes of communication;
unit data pricing plans, pricing plans			,
for bulk data and any applicable			
thresholds related to the specific tariff			
plan or tariff plans to which the			
contract applies. For data volumes			
above thresholds, unit or bulk pricing			
on an ad hoc or lasting basis and any			
data speed limitations that may be			
applied to the specific tariff plan or			
tariff plans to which the contract			
applies;			
		(d) a clear and comprehensible	(d) a clear and comprehensible
		explanation about respectively the	explanation about respectively the
		minimum, average, maximum and	minimum, <i>normally available</i> ,
		advertised download and upload	average, maximum and advertised

	speed of internet access services in the	download and upload speed of internet
	case of fixed networks, or the	access services in the case of fixed
	estimated average, maximum and	networks, or the estimated average,
	advertised download and upload	maximum and advertised download
	speed of internet access services in the	and upload speed of internet access
	case of mobile networks, and about	services in the case of mobile
	how significant deviations from the	networks, and about how significant
	respective advertised download and	deviations from the respective
	upload speeds can impact end-users'	advertised download and upload
	rights referred to in Article 3(1);	speeds can impact end-users' rights
		referred to in Article 3(1);
	(e) a clear and comprehensible	(e) a clear and comprehensible
	explanation of how any significant	explanation of the remedies available
	discrepancy, continuous or regularly	to the consumer in accordance with
	recurring, between the actual	national law in case of how-any
	performance of the internet access	significant discrepancy, continuous or
	service regarding speed or other	regularly recurring, between the actual
	quality of service parameters and the	performance of the internet access
	performance indicated in accordance	service regarding speed or other
	with sub-paragraphs (a) to (d) may be	quality of service parameters and the
	deemed to constitute non-conformity	performance indicated in accordance
	of performance and which remedies	with sub-paragraphs (a) to (d) <del>may be</del>
	are available to the consumer in	deemed to constitute non-conformity
	accordance with national law;	of performance and which remedies
		are available to the consumer in
		accordance with national law;
(d) how end-users can monitor the	(f) how end-users can monitor the	(f) how end-users can monitor the

current level of their consumption,		current level of their consumption,	current level of their consumption, and
and whether and how any voluntary		and whether and how any voluntary	whether and how any voluntary limits
limits can be set;		limits can be set.	can be set;
(e) for fixed data links, the normally			
available and minimum download			
and upload speed at the main location			
of the end-user;			
(f) for mobile data links, the estimated			
and minimum download and upload			
speed when connected through the			
provider's wireless network in the			
end-user's Member State of			
residence;			
Providers of internet access services	Providers of internet access services	Providers of internet access services	Providers of internet access services
shall publish the information referred	shall publish the information referred	shall publish the information referred	shall publish the information referred
to in first subparagraph.	to in the first subparagraph.	to in the first subparagraph.	to in the first subparagraph.
5. The provisions of paragraph 3 and		5. The information requirements laid	5. The information requirements laid
4 shall not prevent Member States		down in paragraphs 3 and 4 are in	down in provisions of paragraph 3
from maintaining or introducing		addition to those contained in	and 4 are in addition to those
additional monitoring, information		Directive 2002/22/EC as amended and	contained in Directive 2002/22/EC as
and transparency requirements,		shall not prevent Member States from	amended and shall not prevent
including on the content, form and		maintaining or introducing additional	Member States from maintaining or
manner of the information to be		monitoring, information and	introducing additional monitoring,
published. Those requirements shall		transparency requirements, including	information and transparency
comply with this Regulation and the		on the content, form and manner of	requirements, including on the content,
relevant provisions of Directive		the information to be published.	form and manner of the information to
2002/21/EC and Directive		Those requirements shall comply with	be published. Those requirements shall

2002/22/EC, as amended.	this Regulation and the relevant	comply with this Regulation and the
	provisions of Directive 2002/21/EC	relevant provisions of Directive
	and Directive 2002/22/EC.	2002/21/EC and Directive
		2002/22/EC, as amended.
6. Any significant discrepancy,		6. Any significant discrepancy,
continuous or regularly recurring,		continuous or regularly recurring,
between the actual performance		between the actual performance
regarding speed or other quality of		regarding speed or other quality of
service parameters and the		service parameters and the
performance indicated by the provider		performance indicated by the provider
of electronic communications to the		of electronic communications to the
public in accordance with Paragraph		public in accordance with Paragraph
4 of this Article shall be deemed to		4 of this Article shall be deemed to
constitute non-conformity of		constitute non-conformity of
performance for the purposes of		performance for the purposes of
determining the remedies available to		determining the remedies available to
the consumer in accordance with		the consumer in accordance with
national law.		national law.
7. National regulatory authorities		(EP para 7 of 22 May could be deleted
shall ensure that end-users have		as a compromise)
access to independent evaluation tools		
to enable them to compare the		
performance of electronic		
communications network access and		
internet access services and the cost		
of alternative usage patterns. National		
regulatory authorities, under		

guidance from BEREC and after consulting relevant stakeholders, shall establish a voluntary certification scheme for interactive comparison websites, guides or similar tools, based on objective, transparent and proportionate requirements, including in particular independence from any provider of electronic communications to the public.			
	4. End-users shall have the right to		
	<u>submit complaints relating to rights</u>		
	and obligations under Article 3 and		
	paragraph 3 of this Article to the		
	national regulatory authorities.		
<b>48.</b> Providers of internet access	2b 4. Providers of internet access	<b>6.</b> Providers of internet access services	7. Providers of internet access services
services shall put in place transparent,	services shall put in place transparent,	shall put in place transparent, simple	shall put in place transparent, simple
simple and efficient procedures to	simple and efficient procedures to	and efficient procedures to address	and efficient procedures to address
address complaints of end-users	address complaints of end-users	complaints of end-users relating to	complaints of end-users relating to
relating to rights and obligations under	relating to rights and obligations under	rights and obligations under Article 3	rights and obligations under Article 3
Article 3. Such procedures shall be	Article 3 and paragraph 3 of this	and paragraphs 3 and 4 of this Article.	and paragraphs 3 and 4 of this Article.
without prejudice to the end-user's	Article. Such procedures shall be	Such procedures shall be without	Such procedures shall be without
right to refer the matter to the	without prejudice to the end-user's	prejudice to the end-user's right to	prejudice to the end-user's right to refer
national regulatory authority.	right to refer the matter to the national	refer the matter to out-of court	the matter to out-of court dispute
	regulatory authority.	dispute resolution procedures.	resolution procedures.
5. 9. No later than nine months after	3 5. No later than nine months after	7. No later than nine months after this	8. No later than nine months after this

this Regulation enters into force, in this Regulation enters into force, in Regulation enters into force, in order to Regulation enters into force, in order to order to contribute to the consistent order to contribute to the consistent contribute to the consistent application contribute to the consistent application application of this Regulation, BEREC application of this Regulation, BEREC of this Regulation, BEREC shall, after of this Regulation, BEREC shall, after shall, after consulting stakeholders and shall, after consulting stakeholders and consulting stakeholders and in close consulting stakeholders and in close in close cooperation with the in close cooperation with the cooperation with the Commission, lay cooperation with the Commission, lay Commission, lay down guidelines for Commission, lay down guidelines for down guidelines for the down guidelines for the the implementation of the obligations implementation of the obligations of the implementation of the obligations implementation of the obligations of of national competent authorities under of national competent regulatory national regulatory authorities under national regulatory authorities under this Article, including with respect to authorities under this Article, including this Article. BEREC shall in particular this Article. **BEREC** shall in the application of traffic management with respect to the application of particular issue guidelines for the issue guidelines for the methods of measures set out in Article 3(4) and for traffic management measures set out in methods of measuring the speed, the measuring the speed, the quality of monitoring of compliance. Article 3(4) and for monitoring of quality of service parameters to be service parameters to be measured compliance. measured such as the average versus such as the average versus advertised advertised speed, and the quality as speed, and the quality as perceived by perceived by users, and the methods users, and the methods for measuring for measuring them over time, as well them over time, as well as the content, as the content, form and manner of form and manner of the information to be published, including possible the information to be published, quality certification mechanisms, in including possible quality certification mechanisms, in order to ensure that order to ensure that end-users. including disabled end-users, have end-users, including disabled endusers, have access to comprehensive, access to comprehensive, comparable, reliable and user-friendly information. comparable, reliable and userfriendly information. (EP para 10 of 22 May merged with 9, 10. In addition, BEREC shall issue guidelines for the methods as per COM non-paper) measuring the speed, the quality of

service parameters to be measured			
such as the average versus advertised			
speed, and the quality as perceived by			
users, and the methods for measuring			
them over time, as well as the content,			
form and manner of the information			
to be published, including possible			
quality certification mechanisms, in			
order to ensure that end-users,			
including disabled end-users, have			
access to comprehensive, comparable,			
reliable and user-friendly			
information.			
	6. For the purposes of this Article,	6. For the purposes of this Article,	Deleted
	"national <u>regulatory</u> authorities"	"national regulatory authorities" shall	
	shall mean the body or bodies within	mean the body or bodies within the	
	the meaning of point (g) of Article 2	meaning of point (g) of Article 2 of	
	of Directive 2002/21/EC and any	Directive 2002/21/EC and any other	
	other body or bodies charged by a	body or bodies charged by a Member	
	Member State with the tasks assigned	State with the tasks assigned in this	
	in this Article.	Article.	
		8. This Article is without prejudice to	8. This Article is without prejudice to
		other tasks assigned to the same or	other tasks assigned to the same or
		other competent authorities by	other competent authorities by
		Member States in compliance with	Member States in compliance with EU
		EU law.	law.