

EDRi amendments on the proposed Regulation [laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations EC No 1211/2009 and EU No 531/2012](#) .

The Commission proposal is in the left column, our suggestions in the right column.

Recitals

Recital 46	
<p>(46) The freedom of end-users to access and distribute information and lawful content, run applications and use services of their choice is subject to the respect of Union and compatible national law. This Regulation defines the limits for any restrictions to this freedom by providers of electronic communications to the public but is without prejudice to other Union legislation, including copyright rules and Directive 2000/31/EC.</p>	<p><i>deleted</i></p>
<ul style="list-style-type: none"> • Justification: This should be deleted - it is entirely unrelated to the topic of the Regulation. 	

Amendment R47

Recital 47	
<p>(47) In an open internet, providers of electronic communications to the public should, within contractually agreed limits on data volumes and speeds for internet access services, not block, slow down, degrade or discriminate against specific content, applications or services or specific classes thereof except for a limited number of reasonable traffic management measures. Such measures should be transparent, proportionate and non-discriminatory. Reasonable traffic management encompasses prevention or impediment of serious crimes, including voluntary actions of providers to prevent access to and distribution of child pornography.</p>	<p>(47) In an open internet, providers of electronic communications to the public should, within contractually agreed limits on data volumes and speeds for internet access services, not block, slow down, degrade or discriminate against specific content, applications or services or specific classes thereof except for a limited number of reasonable traffic management measures. Such measures should be transparent, proportionate and non-discriminatory. Legally mandated interferences in traffic flows does not constitute traffic management Reasonable traffic management encompasses prevention or impediment of serious crimes, including voluntary actions of providers to prevent access to and distribution of child pornography Minimising the effects of network congestion should be considered</p>

<p>Minimising the effects of network congestion should be considered reasonable provided that network congestion occurs only temporarily or in exceptional circumstances.</p>	<p>reasonable provided that network congestion occurs only temporarily or in exceptional circumstances.</p>
<ul style="list-style-type: none"> Justification: There is no definition of "serious crime". It is also unclear what "measures to prevent" would entail. In short, this text lacks clarity and would therefore lead to legal uncertainty. Moreover, to request such measures of ISPs would lead to private policing activities carried out by internet access providers outside the rule of law. 	

Amendment R50

<p style="text-align: center;">Recital 50</p>	
<p>(50) In addition, there is demand on the part of content, applications and services providers, for the provision of transmission services based on flexible quality parameters, including lower levels of priority for traffic which is not time-sensitive. The possibility for content, applications and service providers to negotiate such flexible quality of service levels with providers of electronic communications to the public is necessary for the provision of specialised services and is expected to play an important role in the development of new services such as machine-to-machine (M2M) communications. At the same time such arrangements should allow providers of electronic communications to the public to better balance traffic and prevent network congestion. Providers of content, applications and services and providers of electronic communications to the public should therefore be free to conclude specialised services agreements on defined levels of quality of service as long as such agreements do not substantially impair the general quality of internet access services.</p>	<p>(50) In addition, there is demand on the part of content, applications and services providers, for the provision of transmission services based on flexible quality parameters, including lower levels of priority for traffic which is not time-sensitive. The possibility for content, applications and service providers to negotiate such flexible quality of service levels with providers of electronic communications to the public is necessary for the provision of specialised services and is expected to play an important role in the development of new services such as machine-to-machine (M2M) communications. At the same time such arrangements should allow providers of electronic communications to the public to better balance traffic and prevent network congestion. Providers of content, applications and services and providers of electronic communications to the public should therefore be free to conclude specialised services agreements on defined levels of quality of service as long as such agreements do not substantially impair the general quality of internet access services.</p>
<ul style="list-style-type: none"> Justification: The words “substantially” and “general” are undefined qualifiers which have no obvious meaning and will generate new barriers and new legal uncertainty. 	

Article 2 - Definitions

Amendment A2P15

Article 2 Paragraph 15	
<p>(15) "specialised service" means an electronic communications service or any other service that provides the capability to access specific content, applications or services, or a combination thereof, and whose technical characteristics are controlled from end-to-end or provides the capability to send or receive data to or from a determined number of parties or endpoints; and that is not marketed or widely used as a substitute for internet access service;</p>	<p>(15) "specialised service" means an electronic communications service or any other service operated within closed electronic communications networks using the Internet Protocol with strict admission control that provides the capability to access specific content, applications or services, or a combination thereof, and whose technical characteristics are controlled from end-to-end or provides the capability to send or receive data to or from a determined number of parties or endpoints; and that is not marketed or widely used as a substitute for internet access service; and that is not functionally identical to services available over the public internet;</p>
<ul style="list-style-type: none">• Justification: The Commission's proposed text would allow for the possibility of a "specialised service" to be an online service. This needs to be clarified to ensure that the "service" connection is not functionally identical to an online service and that it is entirely off the public internet. Otherwise, you would have access to Facebook (or whatever) as the "specialised service". Otherwise, access providers could provide access to one or two subsidised services "for free", with restricted access to the open Internet. It is crucial to note that this is <i>*already*</i> happening in the mobile environment. Many mobile operators offer unmetered access to Twitter/Facebook, with everything being subject to a payment, based on the volume of data downloaded. This limits opportunities for freedom of communication online as well as severely restricting the possibilities for innovation. <p>We therefore recommend to replace this article with BEREC's definition of specialised services which clearly states that such services have to be separate from the public best effort internet and shall be only provided within the European electronic communications provider's network.</p> <p>In order to establish legal certainty, we suggest to remove "widely".</p>	

Article 19 - ASQ

Amendment A19

Article 19	
<p>1. Any operator shall have the right to provide a European ASQ connectivity product as specified in paragraph 4.</p> <p>2. Any operator shall meet any reasonable request to provide a European ASQ connectivity product as specified in paragraph 4 submitted in writing by an authorised provider of electronic communications services. Any refusal to provide a European ASQ product shall be based on objective criteria. The operator shall state the reasons for any refusal within one month from the written request.</p> <p>It shall be deemed to be an objective ground of refusal that the party requesting the supply of a European ASQ connectivity product is unable or unwilling to make available, whether within the Union or in third countries, a European ASQ connectivity product to the requested party on reasonable terms, if the latter so requests.</p> <p>3. Where the request is refused or agreement on specific terms and conditions, including price, has not been reached within two months from the written request, either party is entitled to refer the issue to the relevant national regulatory authority pursuant to Article 20 of Directive 2002/21/EC. In such a case, Article 3(6) of this Regulation may apply.</p> <p>4. The provision of a connectivity product shall be considered as the provision of a European ASQ connectivity product if it is supplied in accordance with the minimum parameters listed in Annex II and cumulatively meets the following substantive requirements:</p> <ul style="list-style-type: none">(a) ability to be offered as a high quality product anywhere in the Union;(b) enabling service providers to meet the needs of their end-users;(c) cost-effectiveness, taking into account existing solutions that may be provided on the same networks;(d) operational effectiveness, in particular in respect of limiting to the extent possible implementation obstacles and deployment costs for customers; and(e) ensuring that the rules on protection of privacy, personal data, security and integrity of networks and transparency in accordance with Union law are respected. <p>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to adapt Annex II in light of market and technological developments, so as to continue to meet the substantive requirements listed in paragraph 4.</p>	deleted
Justification : The Commission has failed to demonstrate the need for an introduction of ASQ.	

Article 23

Paragraph 1

Amendment A23P1

Article 23 Paragraph 1	
<p>1. End-users shall be free to access and distribute information and content, run applications and use services of their choice via their internet access service.</p> <p>End-users shall be free to enter into agreements on data volumes and speeds with providers of internet access services and, in accordance with any such agreements relative to data volumes, to avail of any offers by providers of internet content, applications and services.</p>	<p>1. End-users shall be free have the right to access and distribute information and content, run applications, connect hardware and use services and software of their choice via their internet access service.</p> <p>End-users shall be free have the right to enter into Providers of internet access services may however offer agreements that differentiate according to on data volumes and speeds with providers of internet access services and, in accordance with any such agreements relative to data volumes, to avail of any offers by providers of internet content, applications and services provided that they do not discriminate based on the content, application or service themselves, or specific classes.</p>
<p>Justification: It has been estimated that British consumers alone pay approximately <u>[1]</u>5 billion pounds a year too much, due to their "freedom" to choose between numerous confusing service options. This article would give users the "freedom" to choose discriminatory services, which will ultimately be negative for them and negative for the broader online innovative environment.</p>	

Paragraph 2

Amendment A23P2-1

Article 23 Paragraph 2	
<p>2. End-users shall also be free to agree with either providers of electronic communications to the public or with providers of content, applications and services on the provision of specialised services with an enhanced quality of service.</p> <p>In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of</p>	<p>2. End-users shall also be free have the right to agree with either providers of electronic communications to the public or with providers of content, applications and services on the provision of specialised services with an enhanced quality of service.</p> <p>In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of</p>

<p>electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair in a recurring or continuous manner the general quality of internet access services.</p>	<p>electronic communications to the public shall be free to may enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair in a recurring or continuous manner the general quality of internet access services.</p>
<ul style="list-style-type: none"> Justification: Further safeguards are needed to ensure that specialised services are not confounded with internet access services. The wording "in a recurring or continuous manner" is very unclear. The degradation of best effort internet has to be avoided. 	

Paragraph 3

Amendment A23P3-1

Article 23 Paragraph 3	
<p>3. This Article is without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted.</p>	DELETED
<ul style="list-style-type: none"> Justification: In conjunction with Article 23.5.a this paragraph can be used to circumvent the general net neutrality principle with national legislation and allow for discrimination and blocking. (also see Opinion of the European Data Protection Supervisor Point 19) 	

Paragraph 5

Amendment A23P5

Article 23 Paragraph 5	
<p>5. Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by blocking, slowing down, degrading or discriminating against specific content, applications or services, or specific classes thereof, except in cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent,</p>	<p>5. Within the limits of any contractually agreed data volumes or speeds for internet access services, Providers of internet access services shall not restrict the freedoms rights provided for in paragraph 1 by blocking, slowing down, degrading, altering or discriminating against specific content, applications or services, or specific classes thereof, except in certain special cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent, non-</p>

non-discriminatory, proportionate and necessary to:	discriminatory, and strictly proportionate and necessary to:
<ul style="list-style-type: none"> Justification: Clarification of the concept of ‘relevance, proportionality, efficiency, non-discrimination and transparency,’ identified by BEREC and Arcep. Highlight of the strictly exceptional character of the following list. 	

Amendment A23P5a

Article 23 Paragraph 5.a	
a) implement a legislative provision or a court order, or prevent or impede serious crimes;	a) implement a legislative provision or a court order; or prevent or impede serious crimes;
<p>Justification: To prevent or impede serious crime without a legal basis or a court order would lead to law enforcement activities by private companies outside the rule of law. This amendment is necessary to bring the proposal into line with Article 52 of the European Charter on Fundamental Rights.</p>	

Amendment A23P5b

Article 23 Paragraph 5.b	
b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminals;	b) preserve the integrity and security of the European electronic communications provider's network, services provided via this network, and the end-users' terminals;
<ul style="list-style-type: none"> Justification: Clarification. 	

Amendment A23P5c

Article 23 Paragraph 5.c	
c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures;	c) prevent the transmission of unsolicited communications for direct marketing purposes to end-users who have given their prior consent to such restrictive measures;

- Justification: The term "unsolicited communications" in internet context needs to be clarified in order to avoid broad interpretations which could lead to arbitrary restrictions. This amendment brings the text into line with the unproblematic wording of Directive 2002/58/EC.

Amendment A23P5d

Article 23 Paragraph 5.d	
d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.	d) minimise mitigate the effects of temporary and exceptional network congestion provided that equivalent types of traffic are treated equally.
Justification: Only in cases where application-agnostic measures fail to solve the problem, application-specific measures should be allowed to be taken as long as those measures deal with equivalent types of traffic equally. It must be clear in the legislation that recurrent "temporary" problems should not be exploited to undermine the open nature of the Internet.	

Amendment A23P5

Article 23 Paragraph 5	
Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph.	Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph. Processing of the content part of the communication during transmission for these purposes is not permitted.
Justification: To protect the users privacy network management shall never be based on the content part of data transmissions.	

Amendment A23P6

Article 23 Paragraph 6	
-	Providers of electronic communications to the public do not make the prices for internet access services subject to the internet content, applications and services used or offered through the Internet access service.
Justification: safeguard against data cap leverage scenario where ISP has very low data caps on public internet access but offers unlimited data for specialised services. Inspired by Dutch net	

neutrality law (7.a. sub 3).

Article 24

Amendment A24P1

Article 24 Paragraph 1	
<p>1. National regulatory authorities shall closely monitor and ensure the effective ability of end-users to benefit from the freedoms provided for in Article 23 (1) and (2), compliance with Article 23 (5), and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology and that are not impaired by specialised services. They shall, in cooperation with other competent national authorities, also monitor the effects of specialised services on cultural diversity and innovation. National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings.</p>	<p>1. National regulatory authorities shall closely monitor and ensure the effective ability of end-users to benefit from the freedoms provided for in Article 23 (1) and (2), compliance with Article 23 (5) and Article 2 (15), and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology and that are not impaired by specialised services. They shall, in cooperation with other competent national authorities, also monitor the effects of specialised services on cultural diversity, competition and innovation. National regulatory authorities shall report on an annual basis to the public, the Commission and BEREC on their monitoring and findings.</p>
<p>Justification: This amendment extends the monitoring obligations of the national regulation authority to competition, which is crucial for innovation in the online environment, and to ensure that the reporting obligation includes a requirement to make the reports public.</p>	

Amendment A24P2-3

Article 24 Paragraphs 2 and 3	
<p>2. In order to prevent the general impairment of quality of service for internet access services or to safeguard the ability of end-users to access and distribute content or information or to run applications and services of their choice, national regulatory authorities shall have the power to impose minimum quality of service requirements on providers of electronic communications to the public.</p>	<p>2. In order to prevent the general impairment of quality of service for internet access services or to safeguard the ability of end-users to access and distribute content or information or to run applications and services of their choice, national regulatory authorities shall have the power to impose minimum quality of service requirements on providers of electronic communications to the public.</p>
<p>National regulatory authorities shall, in good</p>	<p>National regulatory authorities shall, in good</p>

<p>time before imposing any such requirements, provide the Commission with a summary of the grounds for action, the envisaged requirements and the proposed course of action. This information shall also be made available to BEREC. The Commission may, having examined such information, make comments or recommendations thereupon, in particular to ensure that the envisaged requirements do not adversely affect the functioning of the internal market. The envisaged requirements shall not be adopted during a period of two months from the receipt of complete information by the Commission unless otherwise agreed between the Commission and the national regulatory authority, or the Commission has informed the national regulatory authority of a shortened examination period, or the Commission has made comments or recommendations. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations and shall communicate the adopted requirements to the Commission and BEREC.</p> <p>3. The Commission may adopt implementing acts defining uniform conditions for the implementation of the obligations of national competent authorities under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33 (2).</p>	<p>time before imposing any such requirements, provide the Commission with a summary of the grounds for action, the envisaged requirements and the proposed course of action. This information shall also be made available to BEREC. The Commission shall, having examined such information, make comments or recommendations thereupon, in particular to ensure that the envisaged requirements do not adversely affect the functioning of the internal market. The envisaged requirements shall not be adopted during a period of two months from the receipt of complete information by the Commission unless otherwise agreed between the Commission and the national regulatory authority, or the Commission has informed the national regulatory authority of a shortened examination period, or the Commission has made comments or recommendations. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations and shall communicate the adopted requirements to the Commission and BEREC.</p> <p>3. The Commission should adopt, after consultations with BEREC and other stakeholders, implementing acts defining uniform conditions for the implementation of the obligations of national competent authorities under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33 (2).</p>
<p>Justification: In order to achieve harmonisation, the EU should set up minimum standard rules to apply to all NRAs.</p>	

Transparency

Article 25

Amendment A25P3

Article 25 Paragraph 3	
<p>3. End-users shall have access to independent evaluation tools allowing them to compare the performance of electronic communications network access and services and the cost of alternative usage patterns. To this end Member States shall establish a voluntary certification scheme for interactive websites, guides or similar tools. Certification shall be granted on the basis of objective, transparent and proportionate requirements, in particular independence from any provider of electronic communications to the public, the use of plain language, the provision of complete and up-to-date information, and the operation of an effective complaints handling procedure. Where certified comparison facilities are not available on the market free of charge or at a reasonable price, national regulatory authorities or other competent national authorities shall make such facilities available themselves or through third parties in compliance with the certification requirements. The information published by providers of electronic communications to the public shall be accessible, free of charge, for the purposes of making available comparison facilities.</p>	<p>3. End-users shall have access to independent evaluation tools allowing them to compare the performance of electronic communications network access and services and the cost of alternative usage patterns. To this end Member States shall establish a voluntary certification scheme for interactive websites, guides or similar tools. Certification shall be granted on the basis of objective, transparent and proportionate requirements, in particular independence from any provider of electronic communications to the public, the use of plain language and open source software and open methodologies, the provision of complete and up-to-date information, and the operation of an effective complaints handling procedure. Where certified comparison facilities are not available on the market free of charge or at a reasonable price, national regulatory authorities or other competent national authorities shall make such facilities available themselves or through third parties in compliance with the certification requirements. The information published by providers of electronic communications to the public shall be accessible, provided in open data formats, free of charge, for the purposes of making available comparison facilities.</p>
<ul style="list-style-type: none">• to allow for trustworthy comparison the methodology and software implementation has to be open for review• to allow oversight over the whole range of internet products the means for average users to confirm their internet product is delivering the contractually agreed specifications those tools have to be free of charge.• to allow the creation for independent comparison facilities the network monitoring data has to be provided by the principle of open data, e.g. easily machine readable, standardised and under a free licence	