



PROTECTING DIGITAL FREEDOM

**Comments on Amendments for TSM Regulation
of the Committee Culture and Education (CULT)
on the proposal for a regulation of the European Parliament and of the Council
laying down measures concerning the European single market for electronic
communications**

EDRi generally welcomes the amendments to the CULT Draft Opinion, but would like to make some comments on selected proposed amendments below. The left column repeats the Commission proposal; the right column contains the amendments proposed by the MEPs. EDRi's comments can be found below. For ease of reading, the headings are highlighted and marked with arrows:

- green for amendments which we welcome (++);
- yellow for amendments which pursue good aims, but could benefit from further suggested improvements (+);
- red for amendments which in our view should be reconsidered (-).

In each case, a short justification is given.

Amendment 48
Marietje Schaake
Proposal for a regulation
Recital 5

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<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(5) The benefits arising from a single market for electronic communications should extend to the wider digital ecosystem that includes Union equipment manufacturers, content and application providers and the wider economy, covering sectors such as banking, automotive, logistics, retail, energy and transport, which rely on connectivity to enhance their productivity through, for example, ubiquitous cloud applications, connected objects and possibilities for integrated service provision for different parts of the company. Public administrations and the health sector should also benefit from a wider availability of e-government and e-health services. The offer of cultural content and services, and cultural diversity in general, may be also enhanced in a single market for electronic communications. The provision of connectivity through electronic communications networks and services is of such importance to the wider economy and society that unjustified sector-specific burdens, whether regulatory or otherwise, should be avoided.</p>	<p>(5) The benefits arising from a single market for electronic communications should extend to the wider digital ecosystem that includes Union equipment manufacturers, content and application providers and the wider economy, covering sectors such as banking, automotive, logistics, retail, energy and transport, which rely on connectivity to enhance their productivity through, for example, ubiquitous cloud applications, connected objects and possibilities for integrated service provision for different parts of the company. Public administrations and the health sector should also benefit from a wider availability of e-government and e-health services. The offer of cultural content and services, and cultural diversity in general, may be also enhanced in a single market for electronic communications, <i>but would also require a review of Directive 2001/29/EC with the aim of establishing a harmonized and flexible system of copyright and related rights in the EU, fit for the digital age.</i> The provision of connectivity through electronic communications networks and services is of such importance to the wider economy and society that unjustified sector-specific burdens, whether regulatory or otherwise, should be avoided.</p>
<p>EDRi analysis: There is growing consensus that the disharmonisation effect of the 2001/29/EC Directive is harming the internal market.</p>	

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(6) This Regulation aims at the completion of the single electronic communications market through action on three broad, inter-related axes. First, it should secure the freedom to provide electronic communications services across borders and networks in different Member States, building on the concept of a single EU authorisation which puts in place the conditions for ensuring greater consistency and predictability in the content and implementation of sector-specific regulation throughout the Union. Second, it is necessary to enable access on much more convergent terms and conditions to essential inputs for the cross-border provision of electronic communications networks and services, not only for wireless broadband communications, for which both licensed and unlicensed spectrum is key, but also for fixed line connectivity. Third, in the interests of aligning business conditions and building the digital confidence of citizens, this Regulation should harmonise rules on the protection of end-users, especially consumers. This includes rules on non-discrimination, contractual information, termination of contracts and switching, in addition to rules on access to online content, applications and services and on traffic management which not only protect end-users but simultaneously guarantee the continued functioning of the Internet ecosystem as an engine of innovation. In addition, further reforms in the field of roaming should give end-users the confidence to stay connected when they travel in the Union, and should become over time a driver of convergent pricing and other conditions in the Union.</p>	<p>(6) This Regulation aims at the completion of the single electronic communications market through action on three broad, inter-related axes. First, it should secure the freedom to provide electronic communications services across borders and networks in different Member States, building on the concept of a single EU authorisation which puts in place the conditions for ensuring greater consistency and predictability in the content and implementation of sector-specific regulation throughout the Union. Second, it is necessary to enable access on much more convergent terms and conditions to essential inputs for the cross-border provision of electronic communications networks and services, not only for wireless broadband communications, for which both licensed and unlicensed spectrum is key, but also for fixed line connectivity. Third, in the interests of aligning business conditions and building the digital confidence of citizens, this Regulation should harmonise rules on the protection of end-users, especially consumers. This includes rules on non-discrimination, contractual information, termination of contracts and switching, in addition to rules on <i>net neutrality</i>, <i>safeguarding non-discriminatory</i> access to online content, applications and services and on traffic management which not only protect end-users but simultaneously guarantee the continued functioning of the Internet ecosystem as an engine of innovation. In addition, further reforms in the field of roaming should give end-users the confidence to stay connected when they travel in the Union, and should become over time a driver of convergent pricing and other conditions in the Union.</p>
<p>EDRi analysis: This amendment is necessary in order to be clear that the other points that are listed are not adequate on their own.</p>	

Amendment 58
Sabine Verheyen, Ivo Belet
Proposal for a regulation
Recital 36

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<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p><i>(36) In a context of progressive migration to ‘all IP networks’, the lack of availability of connectivity products based on the IP protocol for different classes of services with assured service quality that enable communication paths across network domains and across network borders, both within and between Member States, hinders the development of applications that rely on access to other networks, thus limiting technological innovation. Moreover, this situation prevents the diffusion on a wider scale of efficiencies which are associated with the management and provision of IP-based networks and connectivity products with an assured service quality level, in particular enhanced security, reliability and flexibility, cost-effectiveness and faster provisioning, which benefit network operators, service providers and end users. A harmonised approach to the design and availability of these products is therefore necessary, on reasonable terms including, where requested, the possibility of cross-supply by the electronic communications undertakings concerned.</i></p>	<p><i>Deleted</i></p>
<p>EDRi comment: The Commission's text is confused and adds nothing to the Regulation besides baseless claims that Article 19 is necessary.</p>	

Amendment 59
Marietje Schaake
Proposal for a regulation
Recital 36

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<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(36) In a context of progressive migration</p>	<p>(36) In a context of progressive migration</p>

<p>to ‘all IP networks’, the lack of availability of connectivity products based on the IP protocol for different classes of services with <i>assured service</i> quality that enable communication paths across network domains and across network borders, both within and between Member States, hinders the development of <i>applications</i> that rely on <i>access to other networks, thus limiting technological innovation.</i> Moreover, <i>this situation prevents the diffusion on a wider scale of efficiencies which are associated with the management and provision of IP-based networks and connectivity products with an assured service quality level, in particular enhanced security, reliability and flexibility, cost-effectiveness and faster provisioning, which benefit network operators, service providers and end users.</i> A harmonised approach to the design and availability of these products is therefore necessary, on reasonable terms including, where requested, the possibility of cross-supply by the electronic communications undertakings concerned.</p>	<p>to ‘all IP networks’, the lack of availability of connectivity products based on the IP protocol for different classes of services with <i>an enhanced</i> quality <i>of service</i> within <i>closed communications networks</i> hinders the development of <i>services</i> that rely on <i>this enhanced quality in order to function adequately.</i> A harmonised approach to the design and availability of these services is therefore necessary, including safeguards to guarantee that the enhanced quality is not to the detriment of the performance, affordability or quality of internet access services or undermines competition, innovation or net neutrality.</p>
<p>EDRi comment: This amendment adds some clarity to the Commission's text.</p>	

<p>Amendment 60 Petra Kammerevert Proposal for a regulation Recital 36 a (new)</p>	
<p style="text-align: center;">++</p>	
<p style="text-align: center;"><i>Text proposed by the Commission</i></p>	<p style="text-align: center;"><i>Amendment</i></p>
	<p><i>(36a) The imposition by suppliers of certain terminal specifications may also limit the quality and availability of electronic communication content, applications and services. Such business practices are not consistent with the objective of ensuring a functional internal market and protecting end-user rights.</i></p>
<p>EDRi comment: The amendment seeks to eliminate practices which undermine user freedoms and the functioning of the internal market.</p>	

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<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(45) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012 and a study, commissioned by the Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of end-users are affected by traffic management practices which block or slow down specific applications. <i>These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</i></p>	<p><i>(45) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. Fundamentally equal treatment and non-discrimination in forwarding data packages, irrespective of content, service, application, origin or destination, must be safeguarded by law throughout the EU, to provide a lasting guarantee that all internet users can in principle access or provide all online content, services or applications. Access network operators are under a general obligation to forward data packages while providing users with transfer services of suitable quality and constantly adapted to technological progress, regardless of the origin, destination or nature of the content, services and applications to be transferred. The open and non-discriminatory nature of the internet is the key to stimulating innovation and economic efficiency. These essential characteristics help ensure freedom and diversity of expression in the media and in the cultural sector.</i> The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012 and a study,</p>

	<p>commissioned by the Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of end-users are affected by traffic management practices which block or slow down specific applications. These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures. <i>An open internet operating exclusively on the best-effort principle should not be impaired or restricted by the development of other products and services.</i></p>
<p>EDRi comment: This amendment provides more precision and clarity than the text proposed by the Commission.</p>	

<p>Amendment 64 Marietje Schaake Proposal for a regulation Recital 45</p>	
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<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></p>
<p>(45) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012 and a study, commissioned by the Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer</p>	<p>(45) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. <i>The key driver of the unprecedented innovation and economic activity in the digital age has been the fact that all internet traffic is treated equally, without discrimination, restriction or interference, independent of its sender, receiver, type, content, device, service or application; conform the principle of net neutrality.</i> The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body</p>

<p>perspective, showed that a significant number of end-users are affected by traffic management practices which block or slow down specific applications. These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</p>	<p>of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012 and a study, commissioned by the Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of end-users are affected by traffic management practices which block or slow down specific <i>content, services or</i> applications. These tendencies require clear rules <i>to enshrine the principle of net neutrality in law</i> at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</p>
<p>EDRi comment: This amendment provides useful analysis regarding the importance of the open internet.</p>	

<p>Amendment 65 Ivo Belet Proposal for a regulation Recital 45</p> <p style="text-align: center;">++</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></p>
<p>(45) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012 and a study, commissioned by the Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of end-users are affected by traffic</p>	<p>(45) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. <i>The openness and non-discriminatory features of the Internet are key drivers for innovation, economic efficiency as well as safeguarding media freedom and pluralism and cultural diversity.</i> The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012 and a study, commissioned by the Executive Agency for Consumers and</p>

<p>management practices which block or slow down specific applications. These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</p>	<p>Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of end-users are affected by traffic management practices which block or slow down specific applications. These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</p>
<p>EDRi comment: The amendment clarifies the importance of net neutrality for the both civil liberties and for the economy.</p>	

<p>Amendment 66 Piotr Borys Proposal for a regulation Recital 46</p>	
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<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></p>
<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, <i>including copyright rules and Directive 2000/31/EC.</i></p>	<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.</p>
<p>EDRi comment: The deleted text is obviously superfluous. It makes sub-standard drafting on the part of the Commission to clarify that the legislation is without prejudice to other Union legislation in general and then specify a sub-set of EU legislation (copyright) and one specific Directive.</p>	

Amendment 67 Marietje Schaake Proposal for a regulation Recital 46	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(46) The freedom of end-users to access and distribute information and lawful content, run applications and use services of their choice is subject to the respect of Union and compatible national law. This Regulation defines the limits for any restrictions to this freedom by providers of electronic communications to the public but is without prejudice to other Union legislation, including copyright rules and Directive 2000/31/EC .	(46) The right 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 right by providers of electronic communications to the public but is without prejudice to other Union legislation, including Directive 2000/31/EC.
EDRi comment: The amendment is positive, but does not address the incoherence of the last sentence in the recital proposed by the Commission.	

Amendment 68 Emma McClarkin Proposal for a regulation Recital 46	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(46) The freedom of end-users to access and distribute information and lawful content, run applications and use services of their choice is subject to the respect of Union and compatible national law. This Regulation defines the limits for any restrictions to this freedom by providers of electronic communications to the public but is without prejudice to other Union legislation, including copyright rules and Directive 2000/31/EC .	(46) The freedom of 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, Directive 2000/31/EC and Directive 2011/93/EC, in particular Article 25 thereof, which allows Member State measures to block access to web pages containing or disseminating child pornography .
EDRi Comment: The amendment quite clearly adds no meaning to the already very confused and badly drafted Commission text.	

Amendment 69
Jean-Marie Cavada
Proposal for a regulation
Recital 47

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<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(47) In an open internet, providers of electronic communications to the public should, <i>within contractually agreed limits on data volumes and speeds for internet access services</i>, 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. <i>Such measures</i> 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. Minimising the effects of network congestion should be considered reasonable provided that network congestion occurs only temporarily or in exceptional circumstances.</p>	<p>(47) In an open internet, providers of electronic communications to the public should 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. <i>Any price discrimination against content, applications or services or any discriminatory conditions regarding data flow and volumes should be prohibited. Reasonable traffic management measures</i> 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. Minimising the effects of network congestion should be considered reasonable provided that network congestion occurs only temporarily or in exceptional circumstances.</p>
<p>EDRi comment: The original French text is somewhat unclear, but the intention is positive.</p>	

Amendment 70
Sabine Verheyen
Proposal for a regulation
Recital 47

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<i>Text proposed by the Commission</i>	<i>Amendment</i>
<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</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</p>

<p>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. Minimising the effects of network congestion should be considered reasonable <i>provided that</i> network congestion <i>occurs only temporarily or in exceptional circumstances</i>.</p>	<p>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. Minimising the effects of network congestion should be considered reasonable <i>in demonstrated punctual cases of acute</i> network congestion, <i>provided that equivalent types of traffic are treated equally</i>.</p>
<p>EDRi comment: The intention appears positive, but adds no particular clarity beyond what the Commission has already proposed and even introduces new undefined concepts with “demonstrated punctual” cases of congestion.</p>	

<p>Amendment 71 Marietje Schaake Proposal for a regulation Recital 47</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></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. 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 <i>should</i> be considered reasonable provided that network congestion occurs only temporarily or in</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 <i>clearly defined</i> 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, <i>subject to ex post judicial review</i>. Minimising the effects of network congestion <i>could</i> be considered reasonable provided that network congestion occurs</p>

exceptional circumstances.	only temporarily or in exceptional circumstances.
EDRi comment: This amendment seeks to bring the text into line with the Charter of Fundamental Rights. However, blocking is not “traffic management” and it would be preferable to delete this text completely. Also, there seems to be no good reason to insist on the judicial review being “ex post”.	

Amendment 72 Petra Kammerevert, Helga Trüpel Proposal for a regulation Recital 47 a (new)	
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<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>(47a) This Regulation is without prejudice to 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).</i>
EDRi comment: This is an important clarification.	

Amendment 73 Marietje Schaake Proposal for a regulation Recital 48	
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<i>Text proposed by the Commission</i>	<i>Amendment</i>
(48) Volume-based tariffs should be considered compatible with the principle of an open internet as long as they allow end-users to choose the tariff corresponding to their normal data consumption based on transparent information about the conditions and implications of such choice. At the same time, such tariffs should enable providers of electronic communications to the public to better adapt network capacities to expected data volumes. It is essential that end-users are fully informed before agreeing to any data volume or speed limitations and the tariffs	(48) Volume-based tariffs should be considered compatible with the principle of an open internet as long as they allow end-users to choose the tariff corresponding to their normal data consumption based on transparent information about the conditions and implications of such choice. At the same time, such tariffs should enable providers of electronic communications to the public to better adapt network capacities to expected data volumes. It is essential that end-users are fully informed before agreeing to any data volume or speed limitations and the tariffs

<p>applicable, that they can continuously monitor their consumption and easily acquire extensions of the available data volumes if desired.</p>	<p>applicable, that they can continuously monitor their consumption and easily acquire extensions of the available data volumes if desired <i>and that volume limits on internet traffic are applied in a non-discriminatory manner, independent of the sender, receiver, type, content, device, service or application in accordance with the principle of net neutrality.</i></p>
<p>EDRi comment: This is an important clarification. If some services are included in volume-based offers and some are not, this will undermine free speech, competition and innovation.</p>	

<p>Amendment 74 Marietje Schaake Proposal for a regulation Recital 49</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></p>
<p>(49) There is also end-user demand for services and applications requiring an enhanced <i>level of assured service quality</i> offered by providers of electronic communications to the public or by content, applications or service providers. Such services may comprise inter alia broadcasting via Internet Protocol (IP-TV), video-conferencing and certain health applications. End-users should therefore also be free to conclude agreements on the provision of specialised services with an enhanced quality of service with either providers of electronic communications to the public or providers of content, applications or services.</p>	<p>(49) There is also end-user demand for services and applications requiring an enhanced <i>quality of service</i> offered by providers of electronic communications to the public or by content, applications or service providers. Such services may comprise inter alia broadcasting via Internet Protocol (IP-TV), video-conferencing, <i>gaming</i> and certain health applications. End-users should therefore also be free to conclude <i>voluntary</i> agreements on the provision of specialised services with an enhanced quality of service with either providers of electronic communications to the public or providers of content, applications or services. <i>Where such agreements are concluded with a provider of internet access services, that provider shall ensure that the enhanced quality is not to the detriment of the performance, affordability or quality of internet access services and does not restrict net neutrality.</i></p>
<p>EDRi Comment: While this text is better than the Commission's proposal, it still does not solve the problems inherent in the original text. If there is an appropriate definition of "specialised services", this recital is entirely unnecessary. If there is no appropriate definition of "specialised services", this recital is profoundly contradictory.</p>	

Amendment 75
Ivo Belet
Proposal for a regulation
Recital 49

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<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(49) There is also end-user demand for services and applications requiring an enhanced level of assured service quality offered by providers of electronic communications to the public or by content, applications or service providers. Such services may comprise inter alia broadcasting via Internet Protocol (IP-TV), video-conferencing and certain health applications. End-users should therefore also be free to conclude agreements on the provision of specialised services with an enhanced quality of service with either providers of electronic communications to the public or providers of content, applications or services.</p>	<p>(49) There is also end-user demand for services and applications requiring an enhanced level of assured service quality offered by providers of electronic communications to the public or by content, applications or service providers. Such services may comprise inter alia broadcasting via Internet Protocol (IP-TV), video-conferencing and certain health applications. End-users should therefore also be free to conclude agreements on the provision of specialised services with an enhanced quality of service with either providers of electronic communications to the public or providers of content, applications or services. <i>However these specialised services should remain the exception and should not be marketed or widely used as a substitute for internet access service;</i></p>
<p>EDRi comment: This amendment creates some consistency. By narrowing the scope of what is considered to be a “specialised service”, the danger of this recital being abused to undermine net neutrality is reduced.</p>	

Amendment 76
Petra Kammerevert, Helga Trüpel, Sabine Verheyen
Proposal for a regulation
Recital 50

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<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(50) In addition, there is demand on the part of content, applications and services providers, for the provision of transmission services based on <i>flexible</i> quality parameters, <i>including lower levels of priority for traffic which is not time-sensitive. The possibility for</i> content, applications and service providers to negotiate such <i>flexible</i> quality of service levels with providers of electronic communications to the public is necessary</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 quality parameters. <i>For the provision of specialised services in closed networks, it is necessary that</i> content, applications and service providers <i>have the opportunity</i> to negotiate such a <i>specific</i> quality of service levels with providers of electronic communications to the public <i>for a limited group of users.</i></p>

<p><i>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.</i></p>	<p><i>This is expected to play an important role in the development of new services such as machine-to-machine (M2M) communications. Special services must neither impair open internet access service quality nor be marketed or used as an internet substitute. They are admissible only if there is a manifest technical and de facto need, over and above economic self-interest, to be able to supply real-time critical applications of a particular quality. If special services are offered or marketed by access network providers, they are also under the obligation to provide an open internet access service as referred to in recital (45). All open internet services are subject to the best-effort principle.</i></p>
<p>EDRi comment: This amendment creates some consistency. By narrowing the scope of what is considered to be a “specialised service”, the danger of this recital being abused to undermine net neutrality is significantly reduced.</p>	

<p>Amendment 77 Marietje Schaake Proposal for a regulation Recital 50</p>	
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<p style="text-align: center;"><i>Text proposed by the Commission</i></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,</p>	<p style="text-align: center;"><i>Amendment</i></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 could foster 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</p>

<p>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>should therefore be free to conclude specialised services agreements on defined levels of quality of service as long as such agreements do not impair the general quality of internet access services, in accordance with the principle of net neutrality.</p>
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<p>Amendment 78 Róza Gräfin von Thun und Hohenstein Proposal for a regulation Recital 50</p>	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<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 impair the quality of internet access services.</p>
<p>EDRi comment: While this amendment is helpful, in that it removes the vague wording of the Commission's text, it does not address all of the problems in the recital like some of the other amendments.</p>	

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<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(51) National regulatory authorities play an essential role in ensuring that end-users are effectively able to exercise this freedom to avail of open internet access. To this end national regulatory authorities should have monitoring and reporting obligations, and ensure compliance of providers of electronic communications to the public and the availability of non-discriminatory internet access services of high quality which are not impaired by specialised services. In their assessment of a possible general impairment of internet access services, national regulatory authorities should take account of quality parameters such as timing and reliability parameters (latency, jitter, packet loss), levels and effects of congestion in the network, actual versus advertised speeds, performance of internet access services compared with specialised services, and quality as perceived by end-users. National regulatory authorities should be empowered to impose minimum quality of service requirements on all or individual providers of electronic communications to the public if this is necessary to prevent general impairment/degradation of the quality of service of internet access services.</p>	<p>(51) National regulatory authorities play an essential role in ensuring that end-users are effectively able to exercise this freedom to avail of open internet access. To this end national regulatory authorities should have monitoring and reporting obligations, and ensure compliance of providers of electronic communications to the public and the availability of non-discriminatory internet access services of high quality which are not impaired by specialised services. <i>National regulatory authorities should establish clear and comprehensible notification and redress mechanisms for end-users subjected to discrimination, restriction or interference of online content, services or applications.</i> In their assessment of a possible general impairment of internet access services, national regulatory authorities should take account of quality parameters such as timing and reliability parameters (latency, jitter, packet loss), levels and effects of congestion in the network, actual versus advertised speeds, performance of internet access services compared with specialised services, and quality as perceived by end-users. National regulatory authorities should be empowered to impose minimum quality of service requirements on all or individual providers of electronic communications to the public if this is necessary to prevent general impairment/degradation of the quality of service of internet access services.</p>
<p>EDRi comment : Such procedures are clearly necessary, although it would have been more helpful to specify that the notification and redress mechanisms should cover all user rights that are under the responsibility of NRAs. It is also important that the NRAs have the means – and the obligation – to investigate, resolve and, where appropriate, penalise breaches of citizens' rights.</p>	

Amendment 82 Marietje Schaake Proposal for a regulation Article 1 – paragraph 2 – point e a (new)	
++	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>ea) to ensure that all internet traffic is treated equally, without discrimination, restriction or interference, independent of its sender, receiver, type, content, device, service or application;</i>
EDRi comment: Useful additional clarification.	

Amendment 84 Ivo Belet Proposal for a regulation Article 2 – point 12	
++	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>(12) ‘assured service quality (ASQ) connectivity product’ means a product that is made available at the internet protocol (IP) exchange, which enables customers to set up an IP communication link between a point of interconnection and one or several fixed network termination points, and enables defined levels of end to end network performance for the provision of specific services to end users on the basis of the delivery of a specified guaranteed quality of service, based on specified parameters;</i>	<i>Deleted</i>
EDRi comment: There is no apparent need for the introduction of ASQ nor has it been justified by the Commission. This recital and Article 19 should be deleted.	

Amendment 85 Marietje Schaake Proposal for a regulation Article 2 – point 12	
++	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>(12) ‘assured service quality (ASQ)</i>	<i>Deleted</i>

<p><i>connectivity product' means a product that is made available at the internet protocol (IP) exchange, which enables customers to set up an IP communication link between a point of interconnection and one or several fixed network termination points, and enables defined levels of end to end network performance for the provision of specific services to end users on the basis of the delivery of a specified guaranteed quality of service, based on specified parameters;</i></p>	
<p>EDRi comment: This point is unnecessary, possibly damaging and needs to be removed.</p>	

<p>Amendment 86 Marietje Schaake Proposal for a regulation Article 2 – point 12 a (new)</p>	
<p>++</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></p>
	<p><i>(12a) "net neutrality" means the principle that all internet traffic is treated equally, without discrimination, restriction or interference, independent of its sender, receiver, type, content, device, service or application;</i></p>
<p>EDRi comment : Due to the rather confused, contradictory and unclear references to «net neutrality » in the Commission's text, a definition is helpful.</p>	

<p>Amendment 87 Sabine Verheyen Proposal for a regulation Article 2 – point 14</p>	
<p>+</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></p>
<p>(14) 'internet access service' means a publicly available electronic communications service that provides connectivity to the internet, and thereby connectivity between <i>virtually</i> all end points connected to the internet, irrespective of the network technology</p>	<p>(14) '<i>open</i> internet access service' means a publicly available electronic communications service that provides connectivity to the internet <i>at a level of quality that reflects the advances in technology</i>, and thereby <i>allows for</i> connectivity between all end points</p>

used;	connected to the internet, irrespective of the network technology used <i>and without any restrictions to the legal content exchanged. It enables end-users to run any application utilising the electronic communication function of the Internet. Unrestricted Internet access service is based on the best efforts principle, the only exceptions allowed are proportionate technical traffic management measures or implementation of court order.</i>
EDRi comment: While this amendment is broadly helpful, the reference to “legal content” and court orders are mutually contradictory, redundant and irrelevant in this context. The word “open” has no obvious meaning and should be deleted.	

Amendment 88 Petra Kammerevert, Helga Trüpel Proposal for a regulation Article 2 – point 14	
++	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(14) "internet access service" means a publicly available electronic communications service that provides connectivity to the internet, and thereby connectivity between virtually all end points connected to the internet, irrespective of the network technology used;</p>	<p><i>(14) "open internet access service" means a publicly available electronic communications service that provides connectivity to the internet, and thereby connectivity between virtually all end points connected to the internet, irrespective of the network technology used; the Member States shall impose reasonable minimum requirements in respect of open internet access service quality, which must be constantly adapted to technological progress; an open internet access service enables end-users to use any internet-based application in accordance with the best effort principle; the only permissible derogation from this principle is proportional and justified traffic management where the conditions for its use are clearly defined;</i></p>
EDRi comment: The word “open” adds no obvious meaning. In an open environment, there appears to be no need to define quality of service. However, the clarification that the best effort principle must be maintained is valuable.	

Amendment 89
Helga Trüpel
Proposal for a regulation
Article 2 – point 15

++

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(15) "specialised service" means an electronic communications service or any other service <i>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;</i></p>	<p>(15) " specialised service" means an electronic communications service or any other service <i>provided and operated only within a closed, electronic communications networks and not marketed or used as an internet substitute or functionally identical to open internet content, applications or services. A special service shall only be only admissible if there is a manifest technical and de facto need, over and above economic self-interest, for particular real-time critical applications or applications requiring special safeguards which meet particular quality criteria.</i></p>
<p>EDRi comment: Clear, positive amendment.</p>	

Amendment 90
Petra Kammerevert
Proposal for a regulation
Article 2 – point 15

++

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>15) "specialised service" means an electronic communications service or any other service <i>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;</i></p>	<p>15) " specialised service" means an electronic communications service or any other service <i>provided and operated only within a closed, electronic communications networks and not marketed or used as an internet substitute or functionally identical to open internet content, applications or services. A special service shall only be admissible if it there is a manifest technical and factual need, over and above economic self-interest, for particular real-time critical applications meeting particular quality criteria. It is characterized by clearly defined and guaranteed customized quality-of-service</i></p>

	<i>parameters and subject to continuous end-to-end management up to the 'last mile' by the special service provider. A special service may not be limited to an endpoint controlled by the service provider.</i>
EDRi comment: This is a very thorough definition of “specialised service” the leaves little room for misunderstanding.	

Amendment 91 Sabine Verheyen, Ivo Belet Proposal for a regulation Article 2 – point 15	
+	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(15) ‘specialised service’ means an electronic communications service or any other service that <i>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;</i> and that is not marketed or widely used as a substitute for internet access service;	(15) ‘specialised service’ means an electronic communications service or any other service that <i>is provided and operated within a closed electronic communications network using the internet protocol, relying on strict admission control</i> and that is not marketed or widely used as a substitute for internet access service;
EDRi comment: This amendment is well-intentioned, but may be difficult to implement.	

Amendment 92 Emma McClarkin Proposal for a regulation Article 2 – point 15	
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<i>Text proposed by the Commission</i>	<i>Amendment</i>
(15) ‘specialised service’ means an electronic communications service <i>or any other service that provides the capability to access</i> specific content, applications or services, or a combination thereof, <i>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</i>	(15) ‘specialised service’ means an electronic communications service <i>optimised for</i> specific content, applications or services, or a combination thereof, <i>by deploying traffic management to ensure the appropriate level of network capacity and quality.</i>

<i>endpoints; and that is not marketed or widely used as a substitute for internet access service;</i>	
EDRi comment: This amendment is entirely devoid of meaning.	

Amendment 93 Jean-Marie Cavada Proposal for a regulation Article 2 – point 15	
++	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(15) "specialised service" means an electronic communications service or any other service that provides the capability to access specific content, applications or services, or a combination thereof, and whose technical characteristics are controlled from end-to-end or provides the capability to send or receive data to or from a determined number of parties or endpoints; and that is not marketed or widely used as a substitute for internet access service;	(15) "specialised service" means an electronic communications service 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; it is provided within a closed electronic communications network using the internet protocol, relying on strict admission control. A specialised service must not be marketed or used as a substitute for internet access service;
EDRi comment: This is a useful clarification. The reference to "internet protocol" appears either redundant or possibly counterproductive, however.	

Amendment 94 Marietje Schaake Proposal for a regulation Article 2 – point 15	
-	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
(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	(15) 'specialised service' means an electronic communications service or any other service with an enhanced quality of 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

endpoints; and that is not marketed or widely used as a substitute for internet access service;	a determined number of parties or endpoints; and that is not marketed or used as a substitute for internet access service;
EDRi comment: While well-intentioned, this amendment does not solve all of the problems associated with the Commission's text.	

Amendment 114 Claudiu Ciprian Tănăsescu Proposal for a regulation Article 23 – title	
++	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>Freedom to provide and avail of open internet access, and reasonable</i> traffic management	<i>Right to open internet access, specialised service and justified data</i> traffic management
EDRi comment: This is about rights and not freedoms. The amendment therefore makes more sense that the Commission's proposal.	

Amendment 115 Sabine Verheyen Proposal for a regulation Article 23 – title	
++	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>Freedom to provide and avail of open internet access, and reasonable</i> traffic management	Open internet access, <i>specialised services,</i> and reasonable traffic management
EDRi comment: This is about rights and not freedoms. The amendment therefore makes more sense that the Commission's proposal.	

Amendment 116 Claudiu Ciprian Tănăsescu Proposal for a regulation Article 23 – paragraph 1 – subparagraph 1	
++	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
End-users shall <i>be free</i> to access and distribute information and content, run	End-users shall <i>have the right</i> to access and distribute information and content, run

applications and use services of their choice via their internet access service.	applications and use services of their choice via their internet access service.
EDRi comment: This is about rights and not freedoms. The amendment therefore makes more sense that the Commission's proposal.	

Amendment 117 Jean-Marie Cavada Proposal for a regulation Article 23 – paragraph 1 – subparagraph 1 ++	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
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.	Open internet access shall be globally guaranteed under Article 2 (14) to allow end-users to access and distribute all information and content of their choice, run applications and use services and terminal equipment of their choice via their open internet access service, irrespective of the source or destination of the information, content, applications or services. Access network managers shall bound by a general obligation to comply with the best effort principle.
EDRi comment: Helpful re-statement of the need to keep the internet open and neutral.	

Amendment 118 Emma McClarkin Proposal for a regulation Article 23 – paragraph 1 – subparagraph 1 +	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
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.	End-users shall be free to access and distribute information and content, run applications and use services of their choice, irrespective of their origin or destination , via their internet access service.
EDRi comment: The second paragraph seems redundant, but the amended paragraph is an improvement on the Commission's text.	

Amendment 119 + Marietje Schaake Proposal for a regulation Article 23 – paragraph 1 – subparagraph 1	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
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.	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 <i>in accordance with the principle of net neutrality.</i>
EDRi comment: This amendment does not rectify the legal uncertainty created by the term “end-users shall be free”. It would therefore give users the "freedom" to choose discriminatory services, which will ultimately be negative for them and negative for the broader online innovative environment.	

Or. en

Amendment 120 ++ Jean-Marie Cavada Proposal for a regulation Article 23 – paragraph 1 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>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.</i>	<i>deleted</i>
EDRi comment: This amendment deletes text which would create the possibility for Internet access providers to offer differentiated offers and give end-users “the freedom” to sign up to discriminatory deals - it is therefore a welcome clarification and strengthens the provisions on net neutrality.	

</Original>

Amendment 121 + Sabine Verheyen Proposal for a regulation Article 23 – paragraph 1 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
End-users shall be free to enter into agreements on data volumes and speeds with providers of internet access services <i>and, in accordance with any such agreements relative to data volumes, to avail of any offers by providers of internet</i>	End-users shall be free to enter into agreements on data volumes and speeds with providers of internet access services. <i>Providers of Internet access services shall advertise with the minimum guaranteed data volume and speed they can provide</i>

<i>content, applications and services.</i>	<i>for, not the maximum speed.</i>
EDRi comment: This amendment does not solve the loophole created by the words “shall be free”, see our comments on amendment 118. The addition of requiring access providers to advertise the minimum speed is however welcome.	

Or. en

Amendment 122 + Marietje Schaake Proposal for a regulation Article 23 – paragraph 1 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
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.	End-users shall be free to enter into agreements on data volumes and speeds with providers of internet access services <i>with due account to the principle of net neutrality</i> and, in accordance with any such agreements relative to data volumes, to avail of any offers by providers of internet content, applications and services.
EDRi comment: See our comments on AM 118. However, the additional reference to the principle of net neutrality is welcome and prevents loopholes.	

Or. en

Amendment 123 ++ Petra Kammerevert, Sabine Verheyen Proposal for a regulation Article 23 – paragraph 1 – subparagraph 2 a (new)	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>Under agreements concerning data volumes and speeds, selected content, services or applications may not be deducted from consumption volumes or exempted from data speed restriction on consumption of agreed data volumes.</i>
EDRi comment: This amendment clarifies that services, applications or content shall not be exempt from agreements on data volumes, and that once the volume has been used up, no service or application should be exempt. It addresses the loophole created by the Commission text in the first sentence of Article 23 – paragraph 5.	

</Original>

Amendment 124 ++ Petra Kammerevert Proposal for a regulation Article 23 – paragraph 1 a (new)	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>(1a) No restriction by suppliers of access to communications networks, contents, applications, facilities or services for end-users operating devices not manufactured or recommended by them shall be admissible.</i>
EDRi comment: This is a good amendment since it clarifies that access to the Internet shall not be restricted if the end-user uses a device which has not been recommended or provided by the access provider.	

</Original>

Amendment 125 ++ Petra Kammerevert, Sabine Verheyen, Helga Trüpel Proposal for a regulation Article 23 – paragraph 2 – subparagraph 1	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>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.</i>	<i>Providers of electronic communications to the public or providers of content, applications and services may offer specialised services to a limited number of users granted restricted access, through a closed electronic communications network. Special services may not be marketed or used as an internet substitute or offer content, applications or services functionally identical to those of the open internet.</i>
EDRi comment: We welcome this amendment since it clarifies the definition of specialised services, by stating that access providers are allowed to enter into agreements with content providers to offer specialised services as long as these services are not functionally identical to an online service and are entirely off the public internet.	

Or. de

Amendment 126 ++ Jean-Marie Cavada Proposal for a regulation Article 23 – paragraph 2 – subparagraph 1	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
Les utilisateurs finaux sont également	Les utilisateurs finaux sont également

libres de conclure un accord soit avec des fournisseurs de communications électroniques au public soit avec des fournisseurs de contenus, d'applications et de services sur la fourniture de services spécialisés d'un niveau de qualité de service supérieur.	libres de conclure un accord soit avec des fournisseurs de communications électroniques au public soit avec des fournisseurs de contenus, d'applications et de services sur la fourniture de services spécialisés <i>fournis à l'intérieur de réseaux électroniques fermés</i> d'un niveau de qualité de service supérieur.
EDRi comment: This is a good amendment since it takes into account the definition of the BEREC for specialised services and prevents that these are offered as a substitute to the open Internet.	

</Original>

Amendment 127 ++ Marietje Schaake Proposal for a regulation Article 23 – paragraph 2 – subparagraph 1	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
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.	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. <i>Where such agreements are concluded with the provider of internet access services, that provider shall ensure that the enhanced quality of service is not to the detriment of the performance, affordability or quality of internet access services, in accordance with the principle of net neutrality.</i>
EDRi comment: This is a good amendment since it clarifies that specialised services are completely off the open Internet and do not harm the quality of Internet access offers.	

Or. en

Amendment 128 ++ Petra Kammerevert Proposal for a regulation Article 23 – paragraph 2 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>In order to enable</i> the provision of specialised services <i>to end-users, providers of content, applications and services and providers of electronic communications to the public shall be</i>	<i>The</i> provision of specialised services <i>shall not impair the quality of internet access services. Neither shall they impair existing, generally recognised technical standards and their further</i>

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.

development.

Special services shall only be admissible where there is a manifest technical and de facto need for them, over and above economic self-interest, so as to be able to provide real time critical applications meeting particular quality standards.

EDRi comment: This is a good amendment since it clarifies that specialised services are completely off the open Internet and do not harm the quality of Internet access offers. Furthermore, the additional text clarifies the definition of specialised services and defines that they must be technically necessary and go beyond economic self-interest in order to offer real time critical applications.

Or. de

Amendment 129

++

Helga Trüpel

Proposal for a regulation

Article 23 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair in a recurring or continuous manner the general quality of internet access services.

The provision of specialised services shall not impair the quality of internet access services. Neither shall they undermine existing, generally recognised technical standards and their development.

Special services shall only be admissible where there is a manifest technical and de facto need for them, over and above economic self-interest, so as to be able to provide real time critical applications or applications requiring special safeguards and meeting particular quality standards.

EDRi comment: See our comments on AM 128.

Amendment 130 + Sabine Verheyen Proposal for a regulation Article 23 – paragraph 2 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair in a recurring or continuous manner the general quality of internet access services.</i>	<i>Providers of electronic communication services or providers of content, applications and services may offer specialised services to end-users provided they are offered in addition to an open internet access service at a level of quality that reflects the technical progress and provided that they do not impair the general performance, affordability, or quality of open internet access services. Specialised services shall only be offered if the network capacity is sufficient to provide such services in addition to the open internet access. Take-up by end-users or by content and application providers of commercial offers to support managed services should be on a voluntary and non-discriminatory basis.</i>
EDRi comment: This amendment clarifies that end-users should not be forced into agreements to use specialised services. However, it is not clear what the “general” performance means and therefore it could open the loophole that open Internet services may be interpreted as specialised services.	

Amendment 131 - Emma McClarkin Proposal for a regulation Article 23 – paragraph 2 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair in a recurring or continuous manner the general quality of internet</i>	<i>Providers of electronic communication services or providers of content, applications and services shall be allowed to offer specialised services provided that such offers are in addition to internet access services and are not to the material detriment of their affordability or quality.</i>

<i>access services.</i>	
EDRi comment: This is not a good amendment since it weakens the Commission text further. It would allow access providers to offer any kind of service as a specialised service due to the undefined addition of “material detriment”. Furthermore, the reference to the “work done by BEREC, Council of Europe and other independent experts” lacks an indication of the sources and is thus simply not credible.	

Or. en

Amendment 132 + Marietje Schaake Proposal for a regulation Article 23 – paragraph 2 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with <i>a defined</i> quality of service or dedicated capacity. The provision of specialised services shall not impair <i>in a recurring or continuous manner the general quality of</i> internet access services.</p>	<p>In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with <i>an enhanced</i> quality of service or dedicated capacity <i>within closed electronic communications networks</i>. The provision of specialised services shall not impair <i>the general quality of internet access services. Where network capacity is shared between internet access services and specialised services, the provider of these services shall publish clear and unambiguous criteria based on which network capacity is shared.</i></p>
EDRi comment: This is a broadly good amendment because it is based on the BEREC definition of specialised services. We also welcome the addition of transparency requirements for the provider. It is however a pity, that the undefined term “general quality” has been added.	

Or. en

Amendment 133 - Claudiu Ciprian Tănăsescu Proposal for a regulation Article 23 – paragraph 2 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to</p>	<p>In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to</p>

<p>the public shall be <i>free</i> 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>the public shall be <i>entitled</i> 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>EDRi comment: This is amendment does not address the problem of the Commission text which would allow that there is no clear distinction between specialised services and internet access services. It does not delete "in a recurring or continuous manner" which is very unclear wording proposed by the Commission. The degradation of best effort internet has to be avoided.</p>	

Or. ro

<p>Amendment 134 ++ Jean-Marie Cavada Proposal for a regulation Article 23 – paragraph 2 – subparagraph 2</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></p>
<p>In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair <i>in a recurring or continuous manner</i> the <i>general</i> quality of internet access services.</p>	<p>In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair the quality of internet access services.</p>
<p>EDRi comment: This is a good amendment since it deletes unclear the wording "in a recurring or continuous manner" and "general" which is very unclear. The degradation of best effort internet has to be avoided.</p>	

Or. fr

<p>Amendment 135 ++ Ivo Belet Proposal for a regulation Article 23 – paragraph 2 – subparagraph 2</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></p>
<p>In order to enable the provision of specialised services to end-users, providers of content, applications and services and</p>	<p>In order to enable the provision of specialised services to end-users, providers of content, applications and services and</p>

<p>providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair <i>in a recurring or continuous manner</i> the general quality of internet access services.</p>	<p>providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair the general quality of internet access services.</p>
<p>See comment on AM 135.</p>	

Or. en

<p>Amendment 136 ++ Petra Kammerevert, Sabine Verheyen Proposal for a regulation Article 23 – paragraph 2 – subparagraph 2 a (new)</p>	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>Access network providers who simultaneously offer or market specialised services shall be subject to the same provision obligation as an open internet access service under Article 2(14). They may not discriminate against other content providers who are reliant on the network operator’s forwarding services, and shall be required to charge transparent and fair market rates for this service.</i></p>
<p>EDRi comment: This is a good clarification.</p>	

Or. de

<p>Amendment 137 - Emma McClarkin Proposal for a regulation Article 23 – paragraph 2 – subparagraph 2 a (new)</p>	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>For national authorities to be able to assess such potential material detriment, providers of electronic communications services or providers of content, applications and services shall transmit to the national authorities, upon request, precise information regarding the capacities assigned to the two types of services.</i></p>

EDRi comment: This amendment adds little to the text, it allows operators to withhold information on their traffic management measures as long as the NRA is not asking for it and even then customers or other providers are not informed.

Or. en

Amendment 138 ++ Jean-Marie Cavada Proposal for a regulation Article 23 – paragraph 2 a (new)	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p>2a. Providers of vertically integrated public electronic communications shall not discriminate in any way against traffic generated by providers of content, services or applications competing with their own services or those provided by them under exclusive agreements.</p>
<p>EDRi comment: This is a good clarification since net neutrality violations mostly occur where operators are vertically integrated. These operators should not be able to discriminate against traffic for commercially motivated reasons.</p>	

Or. fr

Amendment 139 ++ Róza Gräfin von Thun und Hohenstein Proposal for a regulation Article 23 – paragraph 3	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<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
<p>EDRi comment: This is a good amendment. This paragraph should be deleted since it could be used by the Member States to circumvent the general net neutrality principle with national legislation and allow for discrimination and blocking.</p>	

</Original>

Amendment 140 - Piotr Borys Proposal for a regulation Article 23 – paragraph 3	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>3. This Article is without prejudice to Union or national legislation related to the</p>	<p>3. This Article is compatible with Union or national legislation related to the</p>

lawfulness of the information, content, application or services transmitted.	lawfulness of the information, content, application or services transmitted.
EDRi comment: See comment on amendment 139	

Amendment 141 + Sabine Verheyen Proposal for a regulation Article 23 – paragraph 4	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>4. <i>The exercise of the freedoms provided for in paragraphs 1 and 2 shall be facilitated by the provision of complete information in accordance with Article 25(1), Article 26 (2), and Article 27 (1) and (2).</i></p>	<p>4. <i>End-users as well as content, application, and service providers, including the media and cultural industries and governments at all levels, shall be provided with complete information in accordance with Article 20 (2), Article 21 (3) and Article 21a of Directive 2002/22/EC, including information on any reasonable traffic management measures applied that might affect access to and distribution of information, content, applications and services as specified in paragraphs 1 and 2.</i></p>
EDRi comment: This amendment seems to add further transparency obligations, however the references to Articles 25(1), 26(2) and 27(1,2) should not be deleted.	

Or. en

Amendment 142 ++ Emma McClarkin Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – introductory part	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p><i>Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by blocking, slowing down, degrading or discriminating against specific content, applications or services, or specific classes thereof, except in cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent, non-discriminatory,</i></p>	<p>Providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by discriminating against, restricting, or otherwise interfering with the transmission of internet traffic except in cases where it is necessary to apply reasonable traffic management measures or to implement a court order.</p>

<i>proportionate and necessary to:</i>	
EDRi comment: We welcome the deletion of the first sentence and the clarification that operators are not allowed to interfere in traffic.	

Amendment 143 ++ Sabine Verheyen, Ivo Belet Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – introductory part	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p><i>Within the limits of any contractually agreed data volumes or speeds for internet access services,</i> 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 <i>management</i> measures shall be transparent, non-discriminatory, proportionate <i>and necessary to:</i></p>	<p>Providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by blocking, slowing down, degrading or discriminating against, <i>restricting</i> specific content, applications or services, or specific classes thereof, except in cases where it is necessary to apply reasonable traffic management measures <i>or to implement a court order.</i></p>
	<p><i>Traffic management measures shall be considered reasonable when they are deployed to more efficiently manage traffic on the network in order to preserve the integrity and security of the network, and more efficiently manage traffic on the network in demonstrated punctual cases of acute congestion, provided equivalent types of traffic are treated equally. These</i> measures shall be transparent, non-discriminatory <i>and</i> proportionate.</p>
EDRi comment: This is a good amendment since it deletes the loophole in the first sentence which would allow for discriminatory measures outside of contractually agreed data volumes. Furthermore, it clarifies the definition of “reasonable traffic management” and narrows acceptable measures down to “punctual cases of acute congestion”.	

Or. en

Amendment 144 + Marietje Schaake Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – introductory part	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall <i>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</i>, except in cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent, non-discriminatory, proportionate and necessary to:</p>	<p>Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall <i>treat all internet traffic in accordance with the principle of net neutrality</i>, except in cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent, non-discriminatory, proportionate, <i>subject to clear, comprehensible and accessible redress mechanisms</i> and necessary to:</p>
<p>EDRi comment: This amendment clarifies that all traffic needs to be treated equally. However, it does not address the loophole in the first sentence which would allow for discriminatory measures outside of contractually agreed data volumes.</p>	

Or. en

Amendment 145 ++ Sabine Verheyen Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point a	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p><i>a) implement a legislative provision or a court order, or prevent or impede serious crimes;</i></p>	<p><i>Deleted</i></p>
<p>EDRi comment: This is a good amendment since it deletes the violation of Article 52 of the Charter of Fundamental Rights. This is a dangerous exception for arbitrary interferences in communications traffic flows of reasonable traffic management. Moreover, interferences to implement policy goals should not be the subject of a legislative text on network neutrality.</p>	

Or. en

Amendment 146 ++ Emma McClarkin Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point a	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p><i>a) implement a legislative provision or a court order, or prevent or impede serious crimes;</i></p>	<p><i>a) such measures shall be set by transparent procedures, not be maintained longer than strictly necessary</i></p>

	<i>and provide adequate safeguards; in particular to ensure that any restrictions are limited to what is necessary, non-discriminatory and proportionate. Those safeguards shall be subject to periodic review and include the possibility of judicial redress;</i>
EDRi comment: This is a good amend, it deletes the violation of Article 52 of the Charter of Fundamental Rights and adds criteria and safeguards for the application of traffic management measures (necessity, proportionality, transparency and that they shall be temporary).	

Or. en

Amendment 147 ++ Piotr Borys Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point a	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
a) implement a legislative provision or a court order, <i>or prevent or impede serious crimes</i> ;	a) implement a legislative provision or a court order;
EDRi comment: This is a good amendment since it deletes the violation of Article 52 of the Charter of Fundamental Rights. “To prevent or impede serious crime” without a legal basis would lead to law enforcement activities by private companies outside the rule of law.	

Or. en

Amendment 148 ++ Marietje Schaake Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point a	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
a) implement a legislative provision or a court order, <i>or prevent or impede serious crimes</i> ;	a) implement a legislative provision or a court order;
See our comment on amendment 147.	

Or. en

Amendment 149 ++ Sabine Verheyen Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point b	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>b) preserve the integrity and security of the network, services provided via this</i>	<i>Deleted</i>

<i>network, and the end-users' terminals;</i>	
EDRi comment: This is a good amendment, in conjunction with amendment 143.	

Or. en

Amendment 150 ++ Emma McClarkin Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point b	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminals;</i>	<i>Deleted</i>
EDRi comment: In conjunction with amendment 146, this is a good amendment.	

Or. en

Amendment 151 ++ Sabine Verheyen Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point c	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures;</i>	<i>Deleted</i>
EDRi comment: This is a good amendment, in conjunction with amendment 143.	

Or. en

Amendment 152 ++ Emma McClarkin Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point c	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures;</i>	<i>Deleted</i>
EDRi comment: In conjunction with amendment 146, this is a good amendment.	

Or. en

Amendment 153 ++ Sabine Verheyen Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point d	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.</i>	<i>Deleted</i>
EDRi comment: This is a good amendment since it deletes a loophole which would permit operators to discriminate at their discretion. It must be clear in the legislation that recurrent "temporary" problems should not be exploited to undermine the open nature of the Internet.	

Or. en

Amendment 154 ++ Emma McClarkin Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point d	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.</i>	<i>Deleted</i>
See our comment on amendment 153.	

n

Amendment 155 + Marietje Schaake Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point d	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
d) minimise the effects of temporary or exceptional network congestion provided that <i>equivalent types of traffic are</i> treated equally.	d) minimise the effects of temporary or exceptional network congestion provided that <i>all traffic is</i> treated equally.
EDRi comment: This is a broadly good amendment. It clarifies that there should not be any discrimination. In the Commission text, it is not clear who should decide which "types of traffic" are "equivalent" or not. However, this amendment does not address the loophole which would permit operators to discriminate at their discretion, based on the operators' interpretation of "minimising".	

</Original>

Amendment 156 + Marie-Thérèse Sanchez-Schmid Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 – point d	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.	d) minimise the effects of observed temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.
EDRi comment: It is not clear what “observed” means and who would be responsible for the observation.	

</Original>

Amendment 157 ++ Petra Kammerevert Proposal for a regulation Article 23 – paragraph 5 – subparagraph 1 a (new)	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>The Commission shall be empowered to adopt delegated acts under Article 32 in order to define as closely as possible the technical criteria referred to in Article 23(5) for establishing the existence of an exceptional situation. The highest possible criteria shall be applied in establishing the existence of an exceptional situation.</i>
EDRi comment: This is a good amendment since it aims at further defining the technical criteria for exceptional situations in which traffic management is acceptable.	

Or. de

Amendment 158 ++ Emma McClarkin Proposal for a regulation Article 23 – paragraph 5 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
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 Article .
EDRi comment: Good amendment, in conjunction with amendment 146.	

Or. en

Amendment 159 ++ Marietje Schaake Proposal for a regulation Article 23 – paragraph 5 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
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, <i>therefore all techniques to inspect or analyse data shall be in accordance with privacy and data protection legislation. By default, such techniques should only examine header information.</i>
EDRi comment: Good amendment, it adds the requirement that inspection techniques should only examine header information.	

Or. en

Amendment 160 ++ Marietje Schaake Proposal for a regulation Article 23 – paragraph 5 a (new)	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>5a. Where the integrity and security of the network, services provided via this network, or the end-users' terminals, as meant under Article 23.5 point b, are infringed upon by traffic originating from an end-users' terminal, the provider of internet access services shall contact the end-user prior to the enactment of a reasonable traffic management measure in order to offer the end-user the possibility to end the infringement.</i>
	<i>Where prior notification is not possible due to the urgency of the reasonable traffic management measure to be taken, the provider of internet access services shall notify the end-user at the earliest possible moment.</i>
	<i>Prior notification by providers of internet access services shall not be required when the integrity and security of the network, services provided via this network, or the end-users' terminals are infringed upon by an end-user from another provider of internet access services.</i>

EDRi comment: Good amendment. It adds the requirement to notify the end-user before any measure is taken to preserve the integrity of the network.

Or. en

Amendment 161 ++ Marietje Schaake Proposal for a regulation Article 23 – paragraph 5 b (new)	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>5b. The provisions in Article 23.5.a (new) shall be without prejudice to judicial review and subject to clear, comprehensible and accessible redress mechanisms in order to prevent privatization of law enforcement.</i>
EDRi comment: This amendment adds further safeguards to prevent that there are arbitrary interferences in the freedom of communication by private companies.	

Or. en

Amendment 162 + Sabine Verheyen, Ivo Belet Proposal for a regulation Article 24 – paragraph 1	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
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), <i>compliance with Article 23 (5)</i> , and the continued availability of <i>non-discriminatory</i> 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 <i>monitor</i> the effects of specialised services <i>on</i> cultural diversity and innovation. National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings.	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) and the continued availability of <i>open</i> 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 <i>ensure that</i> the effects of specialised services <i>do not impair</i> cultural diversity, <i>media pluralism</i> and innovation. <i>National regulatory authorities shall also closely monitor and ensure the application of reasonable traffic management measures in compliance with Article 23 (5) taking the utmost account of the BEREC guidelines specified in paragraph 2 of this Article and in paragraph 3a of Article 21(3a) of the Directive 2002/22/EC. Reasonable traffic management measures shall be subject to periodic review to</i>

	<i>reflect advances in technology</i> . National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings.
EDRi comment: This amendment adds a safeguard by requiring that traffic management measures shall be subject to periodic review. Furthermore, NRAs should be responsible for the monitoring of net neutrality violations. Unfortunately, this amendment does not include a publication of the reports in addition to the submission to the Commission and BEREC.	

Or. en

Amendment 163 + Petra Kammerevert, Sabine Verheyen Proposal for a regulation Article 24 – paragraph 1	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<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 rights provided for in Article 23 (1) and (2), compliance with Article 23 (5), and the continued availability of open internet services under point 14 of Article 2(2) that are not impaired by specialised services. They shall, in cooperation with other competent national authorities, also monitor the effects of specialised services on freedom of opinion and information, linguistic and cultural diversity, media freedom and diversity and innovation. National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings.</p>
See our comment on amendment 163 above.	

Or. de

Amendment 164 + Marietje Schaake Proposal for a regulation Article 24 – paragraph 1	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<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-</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 the continued availability of non-</p>

<p>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>discriminatory internet access services <i>in accordance with the principle of net neutrality</i> 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>EDRi comment: While the addition of the “principle of net neutrality” is a welcome addition, this amendment does not include a publication of the reports in addition to the submission to the Commission and BEREC.</p>	

Or. en

<p>Amendment 165 ++ Petra Kammerevert Proposal for a regulation Article 24 – paragraph 1 a (new)</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></p>
	<p><i>(1a) Public electronic communications providers shall be required to document and report immediately to the national regulatory authorities any exceptional situation arising under Article 23(5) and all individual traffic management measures adopted accordingly.</i></p>
<p>EDRi comment: This is a welcome addition since it requires operators to report exceptional measures to the NRAs.</p>	

Or. de

<p>Amendment 166 ++ Marietje Schaake Proposal for a regulation Article 24 – paragraph 1 a (new)</p>	
<p><i>Text proposed by the Commission</i></p>	<p><i>Amendment</i></p>
	<p><i>1a. National regulatory authorities shall establish clear and comprehensible notification and redress mechanisms for end-users subjected to discrimination, restriction, interference, blocking or throttling of online content, services or applications.</i></p>
<p>EDRi comment: The addition of redress mechanisms for end-users is positive, it could</p>	

however be made clearer that discrimination, restrictions, interferences etc should be only be allowed in accordance with Article 23.5.

Or. en

Amendment 167 / Petra Kammerevert Proposal for a regulation Article 24 – paragraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>(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.</i>	<i>deleted</i>
<i>National regulatory authorities shall, in good 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</i>	

<i>the Commission and BEREC.</i>	
/	

Or. de

Amendment 168 ++ Ivo Belet Proposal for a regulation Article 24 – paragraph 2 – subparagraph 1	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>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>In order to prevent the 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 and other regulatory measures on providers of electronic communications to the public.</p>
EDRi comment: This amendment adds legal clarity and increases the NRAs possibilities to enforce the law.	

Or. en

Amendment 169 ++ Sabine Verheyen Proposal for a regulation Article 24 – paragraph 2 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>National regulatory authorities shall, in good 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</p>	<p>National regulatory authorities shall, in good 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. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations and shall communicate the adopted requirements to</p>

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.

the Commission and BEREC. BEREC shall lay down and develop general guidelines for the application of reasonable traffic management in close cooperation with the Commission and all stakeholders on the basis of Article 23 and this Article.

EDRi comment: This amendment would enable the contribution of guidelines by independent experts from the IT community and is therefore more in line with the working processes of existing internet expert groups like the IETF.

Or. en

Amendment 170 ++ Róza Gräfin von Thun und Hohenstein Proposal for a regulation Article 24 – paragraph 2 – subparagraph 2	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>National regulatory authorities shall, in good 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 <i>may</i>, 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>National regulatory authorities shall, in good 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 <i>shall</i>, 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>
EDRi comment: This amendment is welcome since it clarifies that the EU shall set up minimum standard rules to apply to all NRAs in order to achieve harmonisation.	

Or. en

Amendment 171 ++ Sabine Verheyen, Ivo Belet Proposal for a regulation Article 24 – paragraph 2 a (new)	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>2a. National regulatory authorities shall put in place appropriate complaint procedures for issues regarding the performance of internet access service for end-users and providers of content,</i></p>

	<i>applications and services.</i>
EDRi comment: This is a good amendment since it adds the requirement to introduce complaint mechanisms for end-users.	

Or. en

Amendment 172 / Sabine Verheyen Proposal for a regulation Article 24 – paragraph 3	
<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>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).</i>	<i>deleted</i>