



PROTECTING DIGITAL FREEDOM

**Position on the Draft Opinion  
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 welcomes the 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 rapporteur, Petra Kammerevert. EDRi's comments can be found below. For ease of reading, the headings are highlighted:

- 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 1

### Recital 3

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(3) In a seamless single market in electronic communications, **the freedom to provide electronic communications networks and services to every customer** in the Union and the right of each end-user to choose the best offer available on the market should be ensured and should not be hindered by the fragmentation of markets along national borders. **The current regulatory framework for electronic communications does not fully address such fragmentation, with national, rather than Union-wide general authorisation regimes, national spectrum assignment schemes, differences of access products available for electronic communications providers in different Member States, and different sets of sector-specific consumer rules applicable. The Union rules in many cases merely define a baseline, and are often implemented in diverging ways by the Member States.**

(3) In a seamless single market in electronic communications, the **right of each individual to access electronic communications networks and services** in the Union, **the freedom to provide these** and the right of each end-user to choose the best offer available on the market should be ensured and should not be hindered by the fragmentation of markets along national borders.

- EDRI's comments: This amendment strengthens the end-users "right" to choose out of all services within the digital single market, offers legal certainty and gives a clearer definition of the goals of the regulation.

## Amendment 2

### Recital 17

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(17) Radio spectrum is a public good and an **essential** resource for the internal market for mobile, wireless broadband and satellite communications in the Union. Development of wireless broadband communications contributes to the implementation of the Digital Agenda for Europe and in particular to the aim of securing access to broadband at a speed of no less than 30 Mbps by 2020 for all Union citizens and of providing the Union with the highest possible broadband speed and capacity. However, the Union has fallen behind other major global regions - North America, Africa and parts of Asia - in terms of the roll-out and penetration of the latest generation of wireless broadband technologies that are necessary to achieve those policy goals. The piecemeal process of authorising and making available the 800 MHz band for wireless broadband communications, with over half of the Member States seeking a derogation or otherwise failing to do so by the deadline laid down in the Radio Spectrum Policy Programme (RSPP) Decision 243/2012 of the European Parliament and the Council, testifies to the urgency of action even within the term of the current RSPP. Union measures to harmonise the conditions of availability and efficient use of radio spectrum for wireless broadband communications pursuant to Decision 676/2002/EC of the European Parliament and the Council have not been sufficient to address this problem.

(17) Radio spectrum is a public good and an **extremely scarce** resource. It is vital for the achievement of a wide range of societal, cultural, social and economic objectives. The 2009 telecoms review specified that the Commission must take equal and appropriate account of all these aspects in the context of spectrum management. The requirements set out in the telecoms package thus form the basis for any radio spectrum policy in the European Union. For that reason, it is also vital that future radio spectrum policy should be consistent with that legal framework and with the principles laid down therein.

- EDRI's comments: not within our scope

## Amendment 3

### Recital 18

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(18) The application of various national policies creates inconsistencies and fragmentation of the internal market which hamper the roll-out of Union-wide services and the completion of the internal market for wireless broadband communications. It could in particular create unequal conditions for access to such services, hamper competition between undertakings established in different Member States and stifle investments in more advanced networks and technologies and the emergence of innovative services, thereby depriving citizens and businesses of ubiquitous integrated high-quality services and wireless broadband operators of increased efficiency gains from large-scale more integrated operations. Therefore, action at Union level regarding certain aspects of radio spectrum assignment should accompany the development of wide integrated coverage of advanced wireless broadband communications services throughout the Union. At the same time, Member States should retain the right to adopt measures to organise their radio spectrum for public order, public security purposes and defence.

(18) Radio spectrum serves the public interest in a wide range of areas in the Member States. In that connection, due account has to be taken of a host of specific national and regional characteristics. Member States should therefore also retain the right to adopt measures to organise their radio spectrum which are required to carry out specific cultural and social tasks. Alongside terrestrial broadcasting and the cultural and creative sectors, this also includes public order, public security and defence. In the event of disputes between Member States regarding the use of spectrum, the Commission shall play a supplementary coordinating role in support of the Member States.

- EDRI's comments: not within our scope

## Amendment 4

### Recital 20

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(20) Coordination and consistency of rights of use for radio spectrum should be improved, **at least** for the bands which have been harmonised for wireless fixed, nomadic and mobile broadband communications. This includes the bands identified at ITU level for International Mobile Telecommunications (IMT) Advanced systems, as well as bands used for radio local area networks (RLAN) such as 2.4 GHz and 5 GHz. It should also extend to bands that may be harmonised in the future for wireless broadband communications, **as envisaged in Article 3(b) of the RSPP and in the RSPG Opinion on "Strategic challenges facing Europe in addressing the growing radio spectrum demand for wireless broadband" adopted on 13 June 2013, such as, in the near future, the 700 MHz, 1.5 GHz and 3.8-4.2 GHz bands.**

(20) Coordination and consistency of rights of use for radio spectrum should be improved for the bands which have been harmonised for wireless fixed, nomadic and mobile broadband communications. This includes the bands identified at ITU level for International Mobile Telecommunications (IMT) Advanced systems, as well as bands used for radio local area networks (RLAN) such as 2.4 GHz and 5 GHz. It should also extend to bands that may be harmonised in the future for wireless broadband communications **under Directive 2002/21/EC.**

- EDRI's comments: not within our scope

## Amendment 5

### Recital 24

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(24) As regards the other main substantive conditions which may be attached to rights of use of radio spectrum for wireless broadband, the convergent application by individual Member States of the regulatory principles and criteria set down in this Regulation would be favoured by a coordination mechanism whereby the Commission and the competent authorities of the other Member States have an opportunity to comment in advance of the granting of rights of use by a given Member State **and whereby the Commission has an opportunity, taking into account the views of the Member States, to forestall implementation of any proposal which appears to be non-compliant with Union law.**

(24) As regards the other main substantive conditions which may be attached to rights of use of radio spectrum for wireless broadband, the convergent application by individual Member States of the regulatory principles and criteria set down in this Regulation would be favoured by a coordination mechanism whereby the Commission and the competent authorities of the other Member States have an opportunity to comment in advance of the granting of rights of use by a given Member State.

- EDRI's comments: not within our scope

## Amendment 6

### Recital 36

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**(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.**

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- EDRI's comments: The Commission assumes that there is a demand for the introduction of access tiering in the form of mandatory ASQ - and that this would have positive effects. This assumption is contrary to the opinion of EDRI, BEREC and many other experts, and, in light of an insufficient impact assessment, it is doubtful that the Commission's assumptions are based on evidence, hence this recital should be removed.

## Amendment 7

### Recital 42

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**(42) Where the provisions in Chapters 4 and 5 of this Regulation refer to end-users, such provisions should apply not only to consumers but also to other categories of end-users, primarily micro enterprises. At their individual request, end-users other than consumers should be able to agree, by individual contract, to deviate from certain provisions.**

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- EDRI's comments: Net neutrality should also be binding to companies, so recital 42 should stay. However, problems may arise due to the creation of legal unclarity by mixing up consumers and enterprises in one category.

## Amendment 8

### Recital 45

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(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.

(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 users of internet services have in principle access to all content, services or applications on the internet or can offer these themselves. Access network operators are subject to a general obligation to forward data packages by providing transfer services of an appropriate level of quality that reflects advances in technological progress to users, regardless of origin and destination or the content, services and applications to be transferred. The open and non-discriminatory nature of the Internet is the key driver of innovation and economic efficiency. These essential characteristics help secure the freedom and diversity of expression, the media and culture.** 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. **An open internet which works exclusively on the best-effort principle should not be undermined by the development of other products and services.**

- EDRi's comments: We welcome this amendment because it explicitly defines the general equality principle of net neutrality, the must-carry obligation of ISPs and the high value those principles provide to our society, economy and democracy. Those values should not be risked or harmed by new discriminatory business models or services.

## Amendment 9

### Recital 46

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(46) The **freedom** of end-users to access and distribute information and "lawful" content, run applications and use services of their choice is subject to the respect of Union and compatible national law. **This Regulation defines the limits for any restrictions to this freedom by providers of electronic communications to the public but is without prejudice to other Union legislation, including copyright rules and Directive 2000/31/EC.**

(46) The **right** of end-users to access and distribute information and content, run applications and use services of their choice is subject to the respect of Union and compatible national law.

- Rapporteur comment: The reference to Union law and Member State law is sufficient. Any further specification could be misinterpreted.

## Amendment 10

### Recital 47

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(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 should be considered reasonable provided that network congestion occurs only temporarily or in exceptional circumstances.**

(47) In an open internet, providers of electronic communications to the public **ought not to delete**, block, slow down, degrade or discriminate against specific content, applications or services or specific classes thereof except for a number of reasonable traffic management measures **that are clearly defined in this Regulation and individually justified.** Such measures **must** be transparent, **necessary and** proportionate.



- EDRI's comments: Apart from quantitative restrictions, the characteristics of internet access should not be subject to contractual limits. Deletion of content or specific transmissions have to be regulated and covered in this provision.
- “Serious crime” is not defined in this provision nor is it the obligation of ISPs to judge and police their customers and decide about the legality of the content they transmit. Any representation of child pornography should be deleted at the source via take-down notices, to censor content will neither prevent pedophiles to access the content nor solve the underlying problem, because the content is still there. This solution is merely closing the door and letting the abuse continue behind it. Moreover, censorship infrastructure can be used for many dangerous purposes once introduced in the network.

## Amendment 11

### Recital 50

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(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.

(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. **For the provision of specialised services in closed networks, it is necessary that** content, applications and service providers **have the opportunity** to negotiate such a **specific** quality of service levels with providers of electronic communications to the public **for a limited group of users. This** is expected to play an important role in the development of new services such as machine-to-machine (M2M) communications. 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 **in closed networks that are independent of internet protocol**, as long as such agreements do not impair the general quality of internet access services. **Specialised services may not be marketed as a substitute for the internet or used as such. If specialised services are offered or marketed by access network providers, the latter have an obligation to also offer an open internet access service within the meaning of recital 45. All IP-based services are subject to the best-effort principle.**

- EDRI's comments: This amended recital is trying to find a balance between best effort internet and specialised services. By narrowly defining specialised services as separate from the normal internet (as suggested by BEREC) it prevents degradation of best effort internet access and reduces market interference caused by specialised service provisions.

We suggest to modify the last sentence because it is technically not appropriate. IP based services can be also legitimate specialised services for which the best effort principle does not apply. So we would suggest to replace "IP based" with "available over the open internet access service" as a more selective category to include all non specialised services.

## Amendment 12

### Recital 51

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(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.

(51) National regulatory authorities play an essential role in ensuring that end-users are effectively able to exercise **the right** 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.

EDRI's comment: See our comment on amendment 1.

## Amendment 13

### Recital 68

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**(68) In order to take account of market and technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of adapting the Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.**

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- EDRI's comments: not within our scope

## Amendment 14

### Article 2 – paragraph 8

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(8) "harmonised radio spectrum for wireless broadband communications" means radio spectrum for which the conditions of availability and efficient use are harmonised at Union level, **in particular** pursuant to Decision 676/2002/EC of the European Parliament and the Council,<sup>1</sup> and which serves for electronic communications services other than broadcasting; 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) (OJ L 108, 24.4.2002, p. 1).

(8) "harmonised radio spectrum for wireless broadband communications" means radio spectrum for which the conditions of availability and efficient use are harmonised at Union level **through the allocation of a primary use, in accordance with the provisions and procedures of Directive 2002/21/EC and** pursuant to Decision 676/2002/EC of the European Parliament and the Council,<sup>1</sup> and which serves for electronic communications services other than broadcasting; 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) (OJ L 108, 24.4.2002, p. 1).

- EDRI's comments: not within our scope

## Amendment 15

### Article 2 – paragraph 11 a (new)

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**(11a) 'Best effort principle' means the assurance that requests for forwarding of data will be dealt with in chronological order of receipt as quickly as possible and irrespective of content, service, use, origin or destination;**

- EDRI's comments: We welcome this clear definition of the best effort principle. It is appropriate to define the norm of internet access with regard to the net neutrality principle.

## Amenement 16

### Article 2 – paragraph 12

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**(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;** ~~deleted~~

- EDRI's comments: ASQ should be deleted from the proposed regulation as it would fundamentally change the way the internet works. Mandatory ASQ will allow for "end to end quality of service delivery" as a two-tiered internet delivery system by which current Over-the-Top players - mostly US companies - can buy privileged access to end-users and thereby cement their market position. Legally obliging ISPs to tier internet access will lead to a legalisation of the "sending party network pays"-principle which would fundamentally change the nature of the internet, put an end to the equality principle and kill the innovation capacity we enjoyed over the last decades. For this reason, the "sending party pays" principle was fiercely rejected during the WCIT12 discussions by the European delegation.

## Amendment 17

### Article 2 – paragraph 12 a (new)

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**12a. 'justified traffic management' means traffic management which, derogating from the best effort principle, is permissible where it is dictated by technical constraints and is in line with the general principles of necessity, reasonability, efficiency assurance, non-discrimination and transparency as well as the other conditions of this regulation;**

- EDRI's comments: There should be a definition of 'justified' or 'reasonable' traffic management in this regulation as it is often at the center of debates between ISPs and regulators. It would be negligent to omit a clear definition of acceptable management practices.

## Amendment 18

### Article 2 – paragraph 14

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(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;

(14) "*open*' internet access service" means a publicly available electronic communications service that provides connectivity to the internet, and thereby connectivity between all end points connected to the internet, irrespective of the network technology used; **the Member States shall impose reasonable minimum requirements on the service quality of open internet access services, reflecting 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 proportionate, justified traffic management, in cases where the conditions for its use are clearly defined;**

- EDRI's comments: A regulation that tries to define the rules of play for telecom providers should include a strong definition of what it tries to protect: open internet access.

## Amendment 19

### Article 2 – paragraph 15

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(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 that **is made available and operated only within closed networks independent of the Internet Protocol and thus does not constitute a sector of the internet,** and that is not marketed or used as a substitute for the internet; **other services are subject to the rules of the best effort principle;**

- EDRI's comments: We welcome this BEREC inspired definition of specialised services which clearly states that they are separate from open internet services. This strong separation is necessary to control the potential threat that specialised services pose to neutral best effort internet and its innovation capacity (see Article 24.1).

## Amendment 20

### Article 8 – paragraph 1

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(1) This section shall apply to harmonised radio spectrum for wireless broadband communications.

(1) This section shall apply to harmonised radio spectrum **within the meaning of Directives 2009/140/EC and 676/2002/EC** for wireless broadband communications, **subject to the provisions of Articles 8a and 9 of Directive 2002/21/EC.**

- EDRI's comments: not within our scope

## Amendment 21

### Article 8 – paragraph 2

(2) This section shall be without prejudice to the right of the Member States to benefit from fees imposed to ensure the optimal use of radio spectrum resources in accordance with Article 13 of Directive 2002/20/EC and to organise and use their radio spectrum for public order, public security and defence.

(2) This section shall be without prejudice to the right of the Member States to benefit from fees imposed to ensure the optimal use of radio spectrum resources in accordance with Article 13 of Directive 2002/20/EC and to organise and use their radio spectrum for public order, public security, defence **and general interest purposes, such as promoting cultural and linguistic diversity and media diversity, e.g. by providing radio and TV programmes.**

- EDRI's comments: not within our scope

## Amendment 22

### Article 9 – paragraph 1

(1) The national competent authorities for radio spectrum shall contribute to the development of a wireless space where investment and competitive conditions for high-speed wireless broadband communications converge and which enables planning and provision of integrated multi-territorial networks and services and economies of scale, thereby fostering innovation, economic growth and the long-term benefit of end users.

(1) **Without prejudice to the protection of the common interest in accordance with Article 9(4) of Directive 2002/21/EC**, the national competent authorities for radio spectrum shall contribute to the development of a wireless space where investment and competitive conditions for high-speed wireless broadband communications converge and which enables planning and provision of integrated multi-territorial networks and services and economies of scale, thereby fostering innovation, economic growth and the long-term benefit of end users. **Due account shall be taken of the possibility of establishing multi-functional networks that combine broadcasting and mobile telephone technology on a single platform.**

- EDRI's comments: not within our scope

## Amendment 23

### Article 9 – paragraph 4 – point e

(e) ensuring wide territorial coverage of high-speed wireless broadband networks and a high level of penetration and consumption of related services.

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- EDRI's comments: not within our scope

## Amendment 24

### Article 9 – paragraph 4 – point e a (new)

(ea) preventing harmful interference, including the possibility of imposing obligations to resolve interference problems with other users and to assume the costs thereby incurred.

- EDRI's comments: not within our scope

## Amendment 25

### Article 10 – paragraph 1 – point a

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(a) the technical characteristics of different available radio spectrum bands, (a) the technical characteristics **and the current and planned use** of different available radio spectrum bands;

- EDRI's comments: not within our scope

## Amendment 26

### Article 10 – paragraph 1 – point a a (new)

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(aa) the efficient use of radio spectrum bands already allocated for use by mobile broadband;

- EDRI's comments: not within our scope

## Amendment 27

### Article 10 – paragraph 2 – point a

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(a) the most efficient use of the radio spectrum in accordance with Article 9(4)(b), taking into account the characteristics of the band or bands concerned; (a) the most efficient use of the radio spectrum in accordance with Article 9(4)(b), taking into account the characteristics of the band or bands concerned **and their current and planned use**;

- EDRI's comments: not within our scope

## Amendment 28

### Article 10 – paragraph 2 – point a a (new)

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**(aa) that the costs incurred by the existing user in clearing the spectrum range are taken into consideration;**

- EDRI's comments: not within our scope



## Amendment 29

### Article 11 – paragraph 1

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(1) Where the technical conditions for the availability and efficient use of harmonised radio spectrum for wireless broadband communications make it possible to use the relevant radio spectrum under a general authorisation regime, national competent authorities shall avoid imposing any additional condition and shall prevent any alternative use from impeding the effective application of such harmonised regime.

(1) Where the technical conditions for the availability and efficient use of harmonised radio spectrum for wireless broadband communications make it possible to use the relevant radio spectrum under a general authorisation regime, national competent authorities shall avoid imposing any additional condition and shall prevent any alternative use from impeding the effective application of such harmonised regime. **This shall be without prejudice to the provisions of Article 2(8).**

- EDRi's comments: not within our scope

## Amendment 30

### Article 12 – paragraph 2 – point d

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**(d) define the date of expiry of any existing rights of use of harmonised bands other than for wireless broadband communications, or, in the case of rights of indefinite duration, the date by which the right of use shall be amended, in order to allow the provision of wireless broadband communications.**

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- EDRi's comments: not within our scope

## Amendment 31

### Article 12 – paragraph 2 a (new)

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**(2a) Paragraph 2 shall not affect the provisions of Article 9(3) and (4) of Directive 2002/21/EC.**

- EDRi's comments: not within our scope

## Amendment 32

### Article 13 – paragraph 1

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(1) Where a national competent authority intends to subject the use of radio spectrum to a general authorisation or to grant individual rights of use of radio spectrum, or to amend rights and obligations in relation to the use of radio spectrum in accordance with Article 14 of Directive 2002/20/EC, it shall make accessible its draft measure, together with the reasoning thereof, simultaneously to the Commission and the competent authorities for radio spectrum of the other Member States, upon completion of the public consultation referred to in Article 6 of Directive 2002/21/EC, if applicable, and in any event only at a stage in its preparation which allows it to provide to the Commission and the competent authorities of the other Member States sufficient and stable information on all relevant matters.

(1) Where a national competent authority intends to subject the use of radio spectrum to a general authorisation or to grant individual rights of use of radio spectrum, or to amend rights and obligations in relation to the use of radio spectrum **for wireless broadband services** in accordance with Article 14 of Directive 2002/20/EC, it shall make accessible its draft measure, together with the reasoning thereof, simultaneously to the Commission and the competent authorities for radio spectrum of the other Member States, upon completion of the public consultation referred to in Article 6 of Directive 2002/21/EC, if applicable, and in any event only at a stage in its preparation which allows it to provide to the Commission and the competent authorities of the other Member States sufficient and stable information on all relevant matters.

- EDRI's comments: not within our scope

## Amendment 33

### Article 19

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- EDRI's comments: ASQ should be deleted from the proposed regulation as it would fundamentally change the way the internet works. Mandatory ASQ will allow for "end to end quality of service delivery" as a two-tiered internet delivery system by which current Over-the-Top players - mostly US companies - can buy privileged access to end-users and thereby cement their market position. Legally obliging ISPs to tier internet access will lead to a legalisation of the "sending party network pays"-principle which would fundamentally change the nature of the internet, put an end to the equality principle and kill the innovation capacity we enjoyed over the last decades. For this reason, the "sending party pays" principle was fiercely opposed by the European delegation during the WCIT12 discussions.

## Amendment 34

### Article 21 – paragraph 1

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(1) The **freedom** of end-users to use public electronic communications networks or publicly available electronic communications services provided by an undertaking established in another Member State shall not be restricted by public authorities.

(1) The **right** of end-users to use public electronic communications networks or publicly available electronic communications services provided by an undertaking established in another Member State shall not be restricted by public authorities.

- EDRi's comments: not within our scope

## Amendment 35

### Article 23 – title

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**Freedom to provide and avail of** open internet access, and reasonable traffic management

Open internet access, **specialised services** and reasonable, **justified** traffic management

- EDRi's comments: Clarification and hence more appropriate title.

## Amendment 36

### Article 23 – paragraph 1

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(1) End-users **shall be free** to access and distribute information and content, run applications and use services of their choice via their internet access service.

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.**

(1) **Open internet access shall be fully guaranteed in accordance with Article 2(14), so as to enable** end-users to access and distribute **any** information and content '**they choose**, run applications and use services **and terminal devices** of their choice via their **open** internet access service, **irrespective of the source or destination of such information, content, applications or services.**

**Access network operators shall be subject to a general forwarding obligation in accordance with the best effort principle.**

End-users shall be free to enter into agreements on data volumes and speeds with providers of internet access services.

- EDRI's comments: We welcome the proposed definition of net neutrality and the clarification of the rights for European internet users. Contractual obligations may not interfere with this central principle of the internet. A general forwarding "must carry" obligation for ISPs is immensely important in light of the critical function of the internet for our economy and society as a whole.

## Amendment 37

### Article 23 – paragraph 2

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(2) End-users shall also be free to agree with either providers of electronic communications to the public or with providers of content, applications and services on the provision of specialised services with an enhanced quality of service.

In order to enable the provision of 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.

(2) Providers of electronic communications to the public or providers of content, applications and services **may provide end- users with** specialised services with an enhanced quality of service **via a closed electronic communications network independent of the Internet Protocol for a restricted circle of users. Specialised services shall not be identical to content, applications or services of the open internet or be offered or marketed as a substitute therefor. All IP-based services shall be subject to the best effort principle.**

In order to enable the provision of specialised services to **a restricted circle of 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. The provision of specialised services shall not impair the quality of internet access services. **Neither shall these services impair existing, generally recognised technical standards and their development.**

**Access network providers who simultaneously offer or market specialised services shall be subject to the same provision obligation as an open internet access service, in accordance with 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 for forwarding in a transparent manner and at fair market prices.**

- EDRI's comments: This amendment introduces much needed clarifications about the nature of specialised services and their relation to other content, applications or services of the open internet. The Rapporteur introduced sufficient safeguards to justify the legal introduction of specialised services.
- However, we suggest to modify the sentence "All IP-based services shall be subject to the best effort principle." because it is technically not appropriate. IP-based services can also be legitimate specialised services for which the best effort principle does not apply. Therefore, we suggest to replace "IP based" with "available over the open internet access service" as a more selective category to include non-specialised services.

## Amendment 38

### Article 23 – paragraph 3

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(3) This Article is without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted.

**deleted**

- EDRI's comments: This paragraph would allow to circumvent the whole article by passing national legislation - we welcome the proposed deletion.

## Amendment 39

### Article 23 – paragraph 4

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(4) 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).

(4) The exercise of the **rights** 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).

See our comments on amendment 1 above.

## Amendment 40

### Article 23 – paragraph 5

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(5) Providers of internet access services shall not restrict the **rights** provided for in paragraph 1 by:

- **deleting**, blocking, slowing down, degrading or discriminating against specific content, applications, services **or terminal devices**, or specific classes thereof,

- **prioritising specific content, applications, services or terminal devices, or specific classes thereof, or**

- **concluding special pricing agreements with the end-user which make accessing particular content, applications, services or terminal devices or specific classes thereof seem less economically attractive,**

except in cases where it is necessary to apply **justified and** reasonable traffic management measures. **Such** measures shall be transparent, non-discriminatory, proportionate and necessary to:

- preserve the integrity and security of the network, services provided via this network, and the end-users' terminals, **or**

- minimise the effects of temporary **and** exceptional network congestion,

**provided that all content, applications and services are treated in accordance with the best effort principle.**

**No packet inspection going**

(5) **Within the limits of any contractually agreed data volumes or speeds for internet access services**, providers of internet access services shall not restrict the **freedoms** provided for in paragraph 1 by blocking, slowing down, degrading or discriminating against specific content, applications or services, or specific classes thereof, except in cases where it is necessary to apply reasonable traffic management measures. **Reasonable traffic management** measures shall be transparent, non-discriminatory, proportionate and necessary to:

(a) **implement a legislative provision or a court order, or prevent or impede serious crimes;** (b) **preserve the integrity and security of the network, services provided via this network, and the end-users' terminals;** (c) **prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures;** (d) **minimise the effects of temporary or exceptional network congestion** provided that equivalent types of traffic are treated equally.

Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph.

- EDRI's comments: We welcome this amendment because it broadens the protection against potential breaches of net neutrality and potential abuses of ISPs market dominance via the prioritisation of certain services and pricing models (as we have seen in the case of Deutsche Telekom and Spotify, where data caps exclusion are being sold for only one single music streaming provider). This amendment fixes the loophole in the Commission text which would have allowed prioritisation via pricing model or data cap exclusion and brings the net neutrality provisions in line with the Dutch (telecommunicatierichtlijnen 7.4a.3) and the Slovenian (Zakon o Elektronskih Komunikacijah 203.5) laws.
- The prevention or impediment of serious crime is not the task of any private company, especially if this happens outside the rule of law and would therefore be in breach of the EU Charter of Fundamental Rights. Therefore, we welcome the deletion of the original 23(5)(a).
- This amendment also respects the opinion of the EDPS which states that packet inspection has to be limited to header information.
- We disagree with the inclusion of one sentence in this amendment since it seems redundant: "provided that all content, applications and services are treated in accordance with the best effort principle." But this is a minor issue.

## Amendment 41

### Article 24 – paragraph 1

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(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.

(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 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 **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.

See EDRI's comments on amendment 1 above.

## Amendment 42

### Article 25 – paragraph 1 – point e – subpoint i /

(i) actually available data speed for download and upload in the end-user's Member State of residence, including at peak-hours;

(i) actually available data speed for download and upload in the end-user's Member State of residence, including at peak-hours, **and the tools available at any time to end-users in a generally recognised manner to monitor for themselves in real time, for the duration of the contract, the upload and download speeds available to them;**

## Amendment 43

### Article 25 – paragraph 1 – point e – subpoint iv /

(iv) information on any procedures put in place by the provider to measure and shape traffic so as to avoid congestion of a network, and on how those procedures could affect service quality and the protection of personal data;

(iv) information on any procedures put in place by the provider to measure and shape traffic so as to avoid congestion of a network, and on how those procedures could affect service quality and the protection of personal data, **and all measures pursuant to Article 23(5); the tools available at any time for end-users to ascertain, in a generally recognised and comprehensible manner, the procedures and measures put in place to measure and shape traffic under Article 23(5), must also be shown;**

- EDRI's comments: not within our scope

## Amendment 44

### Annex II /

#### **MINIMUM PARAMETERS OF EUROPEAN ASQ CONNECTIVITY PRODUCTS**

Network elements and related information – A description of the connectivity product to be provided over a fixed network, including technical characteristics and adoption of any relevant standards. Network functionalities: – connectivity agreement ensuring end-to-end Quality of Service, based on common specified parameters that enable the provision of at least the following classes of services: – voice and video calls; – broadcast of audio-visual content; and – data critical applications.

**deleted**

- EDRI's comments: not within our scope.