

26.3.2014

A7-0190/237

Amendment 237

Catherine Trautmann

on behalf of the S&D Group

Amelia Andersdotter

on behalf of the Verts/ALE Group

Cornelia Ernst, Rina Ronja Kari

on behalf of the GUE/NGL Group

Report

Pilar del Castillo Vera

European single market for electronic communications

COM(2013)0627 – C7-0267/2013 – 2013/0309(COD)

A7-0190/2014

Proposal for a regulation

Recital 45

Text proposed by the Commission

(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. 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'

Amendment

(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 principle of "net neutrality" means that traffic should be treated equally, without discrimination, restriction or interference, independent of the sender, receiver, type, content, device, service or application. As stated by the European Parliament resolution of 17 November 2011 on the open internet and net neutrality in Europe 2011/2866, the internet's open character has been a key driver of competitiveness, economic growth, social development and innovation – which has led to spectacular levels of development in online applications, content and services – and thus of growth in the offer of, and demand for, content and services, and has made it a vitally important accelerator in the free circulation of knowledge, ideas and information, including in countries where access to independent media is***

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measures.

limited. *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. 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.

Or. en

Justification

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Amendment 238

Catherine Trautmann

on behalf of the S&D Group

Amelia Andersdotter

on behalf of the Verts/ALE Group

Cornelia Ernst, Rina Ronja Kari

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Pilar del Castillo Vera

European single market for electronic communications

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Proposal for a regulation

Recital 49

Text proposed by the Commission

(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.

Amendment

(49) ***It should be possible to meet*** end-user demand for services and applications requiring an enhanced ***or*** assured service quality. Such services may comprise inter alia broadcasting, 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 ***internet access services, providers of*** electronic communications to the public or providers of content, applications or services. ***Where such agreements are concluded with the provider of internet access, that provider should ensure that the enhanced quality service does not cause detriment to the quality of internet access. Furthermore, traffic management measures should not discriminate between competing services and applications.***

Or. en

Justification

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Amendment 239

Catherine Trautmann

on behalf of the S&D Group

Amelia Andersdotter

on behalf of the Verts/ALE Group

Cornelia Ernst, Rina Ronja Kari

on behalf of the GUE/NGL Group

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Proposal for a regulation

Recital 50

Text proposed by the Commission

(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

Amendment

(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 **may also be** necessary for the provision of **certain** services such as machine-to-machine (M2M) communications. Providers of content, applications and services and providers of electronic communications **should therefore continue to** 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 **service**.

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agreements do not *substantially* impair the
general quality of internet access *services*.

Or. en

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Amendment 240

Catherine Trautmann

on behalf of the S&D Group

Amelia Andersdotter

on behalf of the Verts/ALE Group

Cornelia Ernst, Rina Ronja Kari

on behalf of the GUE/NGL Group

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Pilar del Castillo Vera

European single market for electronic communications

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Proposal for a regulation

Recital 51

Text proposed by the Commission

(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

Amendment

(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 **internet access services, other providers of** electronic communications **and other service providers** 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 **enhanced quality** services, and quality as perceived by end-users. National regulatory authorities should **establish complaint procedures providing**

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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.

effective, simple and readily available redress mechanisms for end users and be empowered to impose minimum quality of service requirements on all or individual providers of *internet access services, other providers of* electronic communications *and other service providers* if this is necessary to prevent impairment/degradation of the quality of service of internet access services.

Or. en

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26.3.2014

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Amendment 241

Catherine Trautmann

on behalf of the S&D Group

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on behalf of the Verts/ALE Group

Cornelia Ernst, Rina Ronja Kari

on behalf of the GUE/NGL Group

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Pilar del Castillo Vera

European single market for electronic communications

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Proposal for a regulation

Article 2 - paragraph 2 – point 12 a (new)

Text proposed by the Commission

Amendment

(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;

Or. en

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Amendment 242

Catherine Trautmann

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Cornelia Ernst, Rina Ronja Kari

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Proposal for a regulation

Article 2 - paragraph 2 – points 14 and 15

Text proposed by the Commission

(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**;

(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;

Amendment

(14) "internet access service" means a publicly available electronic communications service that provides connectivity to the internet **in accordance with the principle of net neutrality**, and thereby connectivity between virtually all end points **of** the internet, irrespective of the network **technologies or terminal equipment used**;

(15) "specialised service" means an electronic communications service **optimised for** specific content, applications or services, or a combination thereof, **provided over logically distinct capacity, relying on strict admission control, offering functionality requiring enhanced quality from end to end** and that is not marketed or **usable** as a substitute for internet access service;

Or. en

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Amendment 243

Catherine Trautmann

on behalf of the S&D Group

Amelia Andersdotter

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Cornelia Ernst, Rina Ronja Kari

on behalf of the GUE/NGL Group

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Proposal for a regulation

Article 23

Text proposed by the Commission

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

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.

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

Amendment

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

1. End-users shall *have the right* to access and distribute information and content, run *and provide* applications and *services and use terminals* of their choice, *irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content*, via their internet access service.

2. *Providers of internet access*, of electronic communications to the public *and* providers of content, applications and services *shall be free to offer specialised services to end-users. Such services shall only be offered if the network capacity is*

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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.

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

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).

*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*

sufficient to provide them in addition to internet access services and they are not to the detriment of the availability or quality of internet access services. Providers of internet access to end-users shall not discriminate between functionally equivalent services or applications.

4. End-users shall be provided with complete information in accordance with Article 20(2), Article 21(3) and Article 21a of Directive 2002/22/EC, including information on any traffic management measures applied that might affect access to and distribution of information, content, applications and services as specified in paragraphs 1 and 2 of this Article.

*5. Providers of internet access services and end-users may agree to set limits on 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, **altering**, degrading or discriminating against specific content, applications or services, or specific classes thereof, except in cases where it is*

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.

necessary to apply traffic management measures. Traffic management measures shall be transparent, non-discriminatory, proportionate and necessary to:

- a) implement a court order;
- b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminals;
- d) **prevent or mitigate** the effects of temporary **and** exceptional network congestion provided that equivalent types of traffic are treated equally

Traffic management measures shall not be maintained longer than necessary.

Without prejudice to Directive 95/46/EC, traffic management measures shall only entail such processing of personal data that is necessary and proportionate to achieve the purposes set out in this paragraph, and shall also be subject to Directive 2002/58/EC, in particular with respect to confidentiality of communications.

Providers of internet access services shall put in place appropriate, clear, open and efficient procedures aimed at addressing complaints alleging breaches of this Article. Such procedures shall be without prejudice to the end-users right to refer the matter to the national regulatory authority.

Or. en

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Amendment 244

Catherine Trautmann

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Proposal for a regulation

Article 24

Text proposed by the Commission

Amendment

Safeguards for quality of service

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**.

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,

Safeguards for quality of service

1. **In exercising their powers under Article 30a with respect to Article 23, national regulatory authorities shall closely monitor** compliance with Article 23(5) and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology. They shall, in cooperation with other competent national authorities, also monitor the effects on cultural diversity and innovation. National regulatory authorities shall **publish reports** on an annual basis **regarding their monitoring and findings, and provide those reports to the Commission and BEREC**.

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 , **services and software** of their choice, national

national regulatory authorities shall have the power to impose minimum quality of service requirements on providers of electronic communications to the public.

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 the Commission and BEREC.

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).*

regulatory authorities shall have the power to impose minimum quality of service requirements, *and where appropriate, other quality of service parameters, as defined by the national regulatory authorities*, on providers of electronic communications to the public.

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 the Commission and BEREC.

3. *Within six months of adoption of this Regulation, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, lay down general guidelines* defining uniform conditions for the implementation of the obligations of national competent authorities under this Article, *including with respect to the application of traffic management measures and for monitoring of compliance.*

Justification