

## Comments on JURI Opinion

Access, EDRi and La Quadrature du Net welcome 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, Marielle Gallo. Access, EDRi and La Quadrature du Net'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 18**

#### Article 2 - point 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 or any other service that **are provided using the Internet Protocol and operated within closed electronic communications networks relying on admission control that** provide the capability to access specific content, applications or services, or a combination thereof, **based on extensive use of traffic management in order to ensure adequate service characteristics**; and that is not marketed or widely used as a substitute for internet access service;

Justification: The proposal of the rapporteur seems to go in the right direction by specifying that specialised services will be operated within closed electronic communications networks, preventing a scenario where any online service could be considered as a specialised service. However, the amendment is not comprehensive enough to achieve its goals; it would allow to have services which fulfil these requirements and still compete directly with online services.

### **Amendment 25**

#### Article 23 - paragraph 1 - subparagraph 2

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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, speeds **and services** 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.

Justification: By adding "services", this amendment further widens the loophole that would allow operators to discriminate traffic through preferential agreements. Existing large online services could thereby leverage their dominance by offering deals that would exclude competitors from the market. Furthermore, to ensure legal certainty, "shall be free" has to be changed into "shall have

the right”.

## Amendment 26

### Article 23 - paragraph 5 - point d

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d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.

d) **prevent or** minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.

Justification: The addition of “prevent” is vague and difficult to verify. This would open a loophole that would enable ISPs to engage in discriminatory traffic management. Traffic management measures must only be used in demonstrated, transient cases of network congestion and have to be necessary, proportionate, temporary, targeted, transparent and in accordance with relevant laws.

## Amendment 27

### Article 23 - paragraph 5 - subparagraph 2

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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 be set in a transparent way, **be limited to the time period necessary and entail processing of data that is necessary** and proportionate to achieve the purposes set out in this paragraph.

Justification: While the reference to a specific time period for traffic management brings the amendment in the right direction, further improvements will be required to provide legal certainty. Namely, it is not clear what the circumstances in which a processing of data or the limited time period is “necessary”.

## Amendment 28

### 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

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 from an open Internet**, compliance with **reasonable traffic management measures as referred to in** 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

monitoring and findings.	regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings.
<p>Justification: The added clarifications are helpful, however some suggested improvements include changing "freedoms" to "rights", and to make these reports readily available to the public. Furthermore, in order to better frame the role of the NRA, it should be mandatory to create an enforcement mechanism geared to guarantee freedom of expression of end users, as well as competition and innovation in the digital economy. For this reason, NRA should be requested to put in place appropriate, clear, open and efficient procedures aimed at addressing network neutrality complaints.</p>	

### Amendment 29

Article 24 - paragraph 3	
<p>3. The Commission may adopt implementing acts defining uniform conditions for the implementation of the obligations of national competent authorities under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33 (2).</p>	Deleted
<p>Justification: This is beyond our purview.</p>	

### Amendment 30

Article 25	
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<p><b>1. Providers of electronic communications to the public shall, save for offers which are individually negotiated, publish transparent, comparable, adequate and up-to-date information on:</b></p> <p><b>a) their name, address and contact information;</b></p> <p><b>b) for each tariff plan the services offered and the relevant quality of service parameters, the applicable prices (for consumers including taxes) and any applicable charges (access, usage, maintenance and any additional charges), as well as costs with respect to terminal equipment;</b></p> <p><b>c) applicable tariffs regarding any number or service subject to particular pricing conditions;</b></p> <p><b>d) the quality of their services, in accordance with implementing acts provided for in paragraph 2;</b></p> <p><b>e) internet access services, where offered,</b></p>	deleted

**specifying the following:**

- (i) actually available data speed for download and upload in the end-user's Member State of residence, including at peak-hours;**
- (ii) the level of applicable data volume limitations, if any; the prices for increasing the available data volume on an ad hoc or lasting basis; the data speed, and its cost, available after full consumption of the applicable data volume, if limited; and the means for end-users to monitor at any moment the current level of their consumption;**
- (iii) a clear and comprehensible explanation as to how any data volume limitation, the actually available speed and other quality parameters, and the simultaneous use of specialised services with an enhanced quality of service, may practically impact the use of content, applications and services;**
- (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;**
- f) measures taken to ensure equivalence in access for disabled end-users, including regularly updated information on details of products and services designed for them;**
- g) their standard contract terms and conditions, including any minimum contractual period, the conditions for and any charges due on early termination of a contract, the procedures and direct charges related to switching and portability of numbers and other identifiers, and compensation arrangements for delay or abuse of switching;**
- h) access to emergency services and caller location information for all services offered, any limitations on the provision of emergency services under Article 26 of Directive 2002/22/EC, and any changes thereto;**
- i) rights as regards universal service, including, where appropriate, the facilities and services mentioned in Annex I to Directive 2002/22/EC.**

**The information shall be published in a clear, comprehensive and easily accessible form in the official language(s) of the Member State where the service is offered, and be updated regularly.**

**The information shall, on request, be supplied to the relevant national regulatory authorities in advance of its publication. Any differentiation in the conditions applied to consumers and other end-users shall be made explicit.**

**2. The Commission may adopt implementing acts specifying the methods for measuring the speed of internet access services, the quality of service parameters and the methods for measuring them, and the content, form and manner of the information to be published, including possible quality certification mechanisms. The Commission may take into account the parameters, definitions and measurement methods set out in Annex III of the Directive 2002/22/EC .Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).**

**3. End-users shall have access to independent evaluation tools allowing them to compare the performance of electronic communications network access and services and the cost of alternative usage patterns. To this end Member States shall establish a voluntary certification scheme for interactive websites, guides or similar tools. Certification shall be granted on the basis of objective, transparent and proportionate requirements, in particular independence from any provider of electronic communications to the public, the use of plain language, the provision of complete and up-to-date information, and the operation of an effective complaints handling procedure. Where certified comparison facilities are not available on the market free of charge or at a reasonable price, national regulatory authorities or other competent national authorities shall make such facilities available themselves or through third parties in compliance with the certification requirements. The information published by providers of electronic communications to the public shall be accessible, free of charge, for the purposes of making available comparison facilities.**

**4. Upon request of the relevant public authorities, providers of electronic communications to the public shall distribute public interest information free of charge to end-users, where appropriate, by the same means as those ordinarily used by them in their communications with end-users. In such a case, that information shall be provided by the**

**relevant public authorities to the providers of electronic communications to the public in a standardised format and may, inter alia, cover the following topics:**

**(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of data protection rights, copyright and related rights, and their legal consequences; and**

**(b) the means of protection against risks to personal security and unlawful access to personal data when using electronic communications services.**

Justification: Although transparency alone is not sufficient to protect the net neutrality principle, the provisions introduced on that matter by the European Commission represent a genuine step forward to the protection of European citizens' freedoms online. Its deletion from the proposed Regulation and proposed inclusion in the USD Directive from 2002 is not welcome as it is opposed to an harmonised approach, which is necessary to implement the single market of telecommunications and meet the goal of the European Commission proposal.

## **Amendment 31**

### **Article 26**

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**1. Before a contract on the provision of connection to a public electronic communications network or publicly available electronic communications services becomes binding providers of electronic communications to the public shall provide consumers, and other end-users unless they have explicitly agreed otherwise, at least the following information:**

**(a) the identity, address and contact information of the provider and, if different, the address and contact information for any complaints;**

**(b) the main characteristics of the services provided, including in particular:**

**(i) for each tariff plan the types of services offered, the included volumes of communications and all relevant quality of service parameters, including the time for the initial connection;**

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**(ii) whether and in which Member States access to emergency services and caller location information is being provided and any limitations on the provision of emergency services in accordance with Article 26 of Directive 2002/22/EC;**

**(iii) the types of after-sales services, maintenance services and customer support services provided, the conditions and charges for these services, and the means of contacting these services;**

**(iv) any restrictions imposed by the provider on the use of terminal equipment supplied, including information on unlocking the terminal equipment and any charges involved if the contract is terminated before the end of the minimum contract period;**

**(c) details of prices and tariffs (for consumers including taxes and possibly due additional charges) and the means by which up-to-date information on all applicable tariffs and charges are made available;**

**(d) payment methods offered and any cost differences due to the payment method, and available facilities to safeguard bill transparency and monitor the level of consumption ;**

**(e) the duration of the contract and the conditions for renewal and termination, including:**

**(i) any minimum usage or duration required to benefit from promotional terms;**

**(ii) any charges related to switching and portability of numbers and other identifiers, including compensation arrangements for delay or abuse of switching;**

**(iii) any charges due on early termination of the contract, including any cost recovery with respect to terminal equipment (on the basis of customary depreciation methods) and other promotional advantages (on a pro rata temporis basis);**

**(f) any compensation and refund arrangements, including an explicit reference to statutory rights of the end-user, which apply if contracted service quality levels are not met;**

**(g) where an obligation exists in accordance**

**with Article 25 of Directive 2002/22/EC, the end-users' options as to whether or not to include their personal data in a directory, and the data concerned;**

**(h) for disabled end-users, details of products and services designed for them;**

**(i) the means of initiating procedures for the settlement of disputes, including cross-border disputes, in accordance with Article 34 of Directive 2002/22/EC and Article 22 of this Regulation;**

**(j) the type of action that might be taken by the provider in reaction to security or integrity incidents or threats and vulnerabilities.**

**2. In addition to paragraph 1, providers of electronic communications to the public shall provide end-users, unless otherwise agreed by an end-user who is not a consumer, at least the following information with respect to their internet access services:**

**(a) the level of applicable data volume limitations, if any; the prices for increasing the available data volume on an ad hoc or lasting basis; the data speed, and its cost, available after full consumption of the applicable data volume, if limited; and how end-users can at any moment monitor the current level of their consumption;**

**(b) the actually available data speed for download and upload at the main location of the end-user, including actual speed ranges, speed averages and peak-hour speed, including the potential impact of allowing access to third parties through a radio local area network ;**

**(c) other quality of service parameters;**

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

**(e) a clear and comprehensible explanation as to how any volume limitation, the actually available speed and other quality of service parameters, and the simultaneous use of specialised services with an enhanced quality**



**of service, may practically impact the use of content, applications and services.**

**3. The information referred to in paragraphs 1 and 2 shall be provided in a clear, comprehensive and easily accessible manner and in an official language of the end-user's Member State of residence, and shall be updated regularly. It shall form an integral part of the contract and shall not be altered unless the contracting parties expressly agree otherwise. The end-user shall receive a copy of the contract in writing.**

**4. The Commission may adopt implementing acts specifying the details of the information requirements listed in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).**

**5. The contract shall also include, upon request by the relevant public authorities, any information provided by these authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security and unlawful processing of personal data, referred to in Article 25(4) and relevant to the service provided.**

Justification: This article improves users understanding of their contractual rights. Information on requirements for contracts is a necessary component of this Regulation. Its deletion from the proposed Regulation and proposed inclusion in the USD Directive from 2002 is not welcome.