



# La Quadrature du Net proposal for amendments on Single Market Regulation

## Net neutrality

### Specialised services

Two kinds of services are essentially provided: the Internet access services and the specialised services. Whilst the first provide connectivity to the public on the basis of the best effort principle, the second ones should be operated within closed network in order not to impair the quality of the Internet commons. The proposal of the European Commission does not stress the importance of that separation, and build a system where specialised services are de facto in capacity to impair the quality of internet access services.

### Amendment 4

Amendment 4 Recital 50	
Commission	Amendment
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	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 <b>could serve to</b> 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

<p>arrangements should allow providers of electronic communications to the public to better balance traffic and prevent network congestion. Providers of content, applications and services and providers of electronic communications to the public should therefore be free to conclude specialised services agreements on defined levels of quality of service as long as such agreements do not substantially impair the general quality of internet access services.</p>	<p>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 <b>quality characteristics are technically necessary for the functionality of the service</b> and agreements do not substantially impair the general quality of internet access services.</p>
<p><i>Justification</i></p> <p><i>A specialised service must not be considered as an arbitrary way for Internet Service Providers and Internet Access Providers to be completely free to enter with each other into commercial agreements, by passing “open internet” provisions, violating both freedom of communication as well as competition and innovation in the digital economy. For this reason, it is mandatory to specify that specialised services shall be distinct from Internet access services, and they shall not replicate an already-existing service already accessible on the best-effort internet. That being said, if a specialised service does not run separately from the Internet, it definitely entails a high risk of impairment for best effort internet by diverting available bandwidth. A “substantial” impairment of the “general quality of Internet access services” does not guarantee a preservation of the open Internet. On the contrary, the way too vague wording of the European Commission will leave room to the degradation of those services available on the open Internet below what a “minimal” or “sufficient” quality of service should be.</i></p>	

## Amendment 5

<b>Amendment 5 Article 2 (15)</b>	
Commission	Amendment
<p>(15) "specialised service" means an electronic communications service or any other service that provides the capability to access specific content, applications or services, or a combination thereof, and whose</p>	<p>15) "specialised service" means an electronic communications service <del>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</del></p>

<p>technical characteristics are controlled from end-to-end or provides the capability to send or receive data to or from a determined number of parties or endpoints; and that is not marketed or widely used as a substitute for internet access service;</p>	<p><del>or provides the capability to send or receive data to or from a determined number of parties or endpoints</del> <b>operated within closed electronic communications networks using the Internet Protocol with strict admission control;</b> and that is not marketed or widely used as a substitute for internet access service <b>or functionally identical to services available over the public internet access service;</b></p>
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*Justification*

*The definition provided for by the European Commission gives a very generic indication of the nature of a specialised service; it seems to include any kind of content, application or service, whether they are already freely accessible on internet or not. A wide definition could be used to circumvent the principle of Net Neutrality.*

*Our amendment is entirely based on the BEREC definition, which points out the idea that a specialised service cannot be operated on the best effort internet, but has to run separately from it, namely within “closed network with strict admission control”. Furthermore a specialised service must not replicate any service already existing on the internet or else it would simply circumvent Net Neutrality.*

## Amendment 13

<b>Amendment 13</b> <b>Article 23.2</b>	
Commission	Amendment
<p>2. End-users shall also be free to agree with either providers of electronic communications to the public or with providers of content, applications and services on the provision of specialised services with an enhanced quality of service. 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</p>	<p>2. End-users shall also be free to agree with either providers of electronic communications to the public or with providers of content, applications and services on the provision of specialised services with an enhanced quality of service. 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</p>

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.

defined quality of service or dedicated capacity, as long as such specialised services operate on closed-networks with strict admission control and are not marketed or widely used as a substitute for internet access service **or functionally identical to services available over the public internet access service.** The provision of specialised services shall not impair ~~in a recurring or continuous manner the general~~ quality of internet access services.

### *Justification*

*This article shows the importance of reviewing the definition of specialised services as we indicate in our amendment on article 2.15. With the current configuration, a potential agreement between Internet access Providers (IAP) and Internet Content providers (ICP) would lead to a potential prioritization of specialised services to the detriment to the internet access services. If article 2.15 would not be changed, that proposal of the European Commission would result into an out and out threat for the usage of and the access to an open Internet, as we know it today. If, for example, Youtube (ICP) will be in capacity to contract any agreement with Orange (IAP), the service offered by Youtube will de facto be allowed to run on a fast track, throttling thereby the traffic for other similar services. This means that those ICP having the financial capacity to pay an IAP to prioritise their traffic could, of course, offer a better quality of service, but they would do it to the detriment of other similar players. Such a system would not only generate an unfair competition, but would reduce the end-users' freedom to access to the diversity of culture and to impart and receive the variety of information they can receive in an open internet context. In order to protect freedoms and rights of the European citizens, it is mandatory to reinforce the non-discriminatory mechanism, introducing a provision clarifying that a specialised services shall not, under any circumstances, interfere with services available on the internet. Furthermore a "general quality of Internet" not to be impaired "in a recurring or continuous manner" would leave room for interpretations and derives on the basis of a mechanism which does not imply any legal binds. For this reason it is highly necessary to delete the provisions we indicate.*

# Traffic management measures and contractually agreed limits

The Net neutrality principle could be infringed by telecom players under the pretext of ensuring a high quality of service. This would lead to the application of traffic management measures or contractually agreed limits resulting in unacceptable prioritisation of certain data flows. For this reason it is highly necessary to clearly define the scenarios in which a traffic management measure is acceptable and specify that commercial agreements cannot, under any circumstances, jeopardize end-users' freedoms.

## Amendment 3

Amendment 3 Recital 47	
Commission	Amendment
<p>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.</p>	<p>In an open internet, providers of electronic communications to the public <b>shall</b>, <del>within contractually agreed limits on data volumes and speeds for internet access services</del>, 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 <b>shall</b> be transparent, proportionate and non-discriminatory. <del>Reasonable traffic management encompasses prevention or impediment of serious crimes, including voluntary actions of providers to prevent access to and distribution of child pornography.</del> Minimising the effects of network congestion <b>shall</b> be considered reasonable provided that network congestion occurs only temporarily or in exceptional circumstances.</p>
<p><i>Justification</i></p> <p><i>Blocking, slowing down, degrading or discriminating specific contents, applications or services on the Internet, is de facto a threat for freedom of expression and information and the free movement of knowledge. For this reason it is mandatory to assert the principle in a clear and incontrovertible manner.</i></p>	

*Any possibility for Internet access providers to implement discriminatory practices – jeopardizing the freedom of expression and information – must be avoided. Due to their discriminatory potential, traffic management practices must be unquestionably transparent.*

*The notion of serious crime within the text is not defined anywhere, which generates legal uncertainty as to the law enforcement. Furthermore, the provision would entail a greater liability of Internet intermediaries and their active role to play in a potential censorship actions of the net.*

## Amendment 11

Amendment 11 Article 19	
Commission	Amendment
<p>1. Any operator shall have the right to provide a European ASQ connectivity product as specified in paragraph 4. 2. Any operator shall meet any reasonable request to provide a European ASQ connectivity product as specified in paragraph 4 submitted in writing by an authorised provider of electronic communications services. Any refusal to provide a European ASQ product shall be based on objective criteria. The operator shall state the reasons for any refusal within one month from the written request. It shall be deemed to be an objective ground of refusal that the party requesting the supply of a European ASQ connectivity product is unable or unwilling to make available, whether within the Union or in third countries, a European ASQ connectivity product to the requested party on reasonable terms, if the latter so requests. 3. Where the request is refused or agreement on specific terms and conditions, including price, has not been reached within two months from the written request, either party is entitled to refer the issue to the relevant national regulatory authority pursuant to Article 20 of Directive 2002/21/EC. In such a case, Article 3(6) of this Regulation may apply. 4. The provision of a connectivity product shall be considered as the provision of a European ASQ connectivity product if it is supplied in accordance with the minimum parameters listed in Annex II and cumulatively meets the following substantive requirements: (a) ability to be offered as a high quality product anywhere in the Union; (b) enabling service providers to meet the needs of their end-users; (c) cost-effectiveness, taking into account existing solutions that may be provided on the same networks; (d) operational effectiveness, in particular in respect of limiting to the extent possible implementation obstacles and deployment costs for customers; and (e) ensuring that the</p>	<b>deleted</b>

<p>rules on protection of privacy, personal data, security and integrity of networks and transparency in accordance with Union law are respected.</p> <p>5. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to adapt Annex II in light of market and technological developments, so as to continue to meet the substantive requirements listed in paragraph 4.</p>	
<p><i>Justification</i></p> <p><i>A potential prioritisation of the Assured Service Quality products deserves a much more in-depth analysis as they entail potential threats for innovation and fair competition. The debate has to include not only the civil society organisations, but also the National Regulatory Authorities who were not consulted on this specific issue. After the adoption of the Regulation, a reflection could thereby be launched to consider the possibility of allowing prioritization of Internet communications, as long as three main conditions are met:</i></p> <ul style="list-style-type: none"> <li><i>• that such Quality of Service be application-agnostic (applied indiscriminately to different online services or applications);</i></li> <li><i>• that such Quality of Service be under the full control of the user so as to preserve the key architectural features of the Internet;</i></li> <li><i>• that the best-effort Internet be protected from degradation caused by the development of guaranteed QoS, for instance by ensuring a “sufficient quality of service” for the best-effort traffic delivery model (a notion already in use in some EU countries).</i></li> </ul>	

**Amendment 12**

<p><b>Amendment 12</b> <b>Article 23.1</b></p>	
<p>Commission</p>	<p>Amendment</p>
<p>1. End-users shall be free to access and distribute information and content, run applications and use services of their choice via their internet access service.</p> <p>End-users shall be free to enter into agreements on data volumes and speeds with providers of internet access services and, in accordance</p>	<p>1. End-users shall <del>be free</del> <b>have the right</b> to access and distribute information and content, run applications and use services <b>and devices</b> of their choice via their internet access service.</p> <p><b>In order to guarantee a genuine users’ freedom of choice, internet service providers shall not discriminate, restrict or interfere with the transmission of</b></p>

<p>with any such agreements relative to data volumes, to avail of any offers by providers of internet content, applications and services.</p>	<p><b>Internet traffic.</b></p> <p><b>Provided that they freely give their explicit, specific and informed consent, end-users</b> shall be free to enter into agreements on data volumes and speeds with providers of internet access services and, <del>in accordance with any such agreements relative to data volumes,</del> to avail of any offers by providers of internet content, applications and services.</p>
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*Justification*

*This paragraph is of utmost importance, as it lays down the principle of Net Neutrality, that is the founding principle of the Internet architecture. Being in capacity of using internet, exercising their own freedom of expression and communication and participating to the free movement of knowledge must be recognized as incontrovertible rights of the European citizens. For this reason the access to and the usage of Internet content, application and services shall not be conditional to any commercial agreements, especially since the latter could be used to void the principle of its substance (for instance by using data caps as a way to meter bandwidth usage and charge differently for Internet services, which would hamper competition and innovation in the digital economy as well as freedom of choice for Internet users).*

*Also, crucially missing from the Commission's definition of Net neutrality is the mention of the freedom to connect any "device" or "hardware" to the network, an aspect supported by several NRA. It is a very important aspect of Net Neutrality, allowing, for example, end-users to use self hosted server and devices empowering Internet users in relation to their Internet communications.*

**Amendment 15**

<p><b>Amendment 15</b> <b>Article 23.5</b></p>	
<p>Commission</p>	<p>Amendment</p>
<p>5. Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall not restrict</p>	<p>5. <del>Within the limits of any contractually agreed data volumes or speeds for internet access services,</del> <b>Providers</b> of internet access services shall not restrict the</p>



<p>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:</p>	<p><del>freedoms</del> <b>right</b> 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:</p>
<p><i>Justification</i></p> <p><i>The right for end-users to avail of an open Internet, based on Net Neutrality principle, cannot be conditional to commercial agreements.</i></p>	

**Amendment 16**

<p><b>Amendment 16</b> <b>Article 23.5.a</b></p>	
<p>Commission</p>	<p>Amendment</p>
<p>a) implement a legislative provision or a court order, or prevent or impede serious crimes;</p>	<p>a) implement <del>a legislative provision or a court order, or prevent or impede serious crimes;</del></p>
<p><i>Justification</i></p> <p><i>A traffic management measure cannot result in the involvement of the liability of an electronic communication provider who is not qualified or entitled either to implement a legislative provision nor prevent or impede a serious crime. This kind of task shall be performed by a judge in order to guarantee the rule of law, founding pillar of our democracies. Such a provision, if maintained, could only lead to a widely and broadly unjustified internet censorship.</i></p>	

## Amendment 17

Amendment 17 Article 23.5.b	
Commission	Amendment
b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminals;	b) preserve the integrity and security of the <b>European electronic communication provider's</b> network, services provided via this network, and the end-users' terminals;
<i>Justification</i>  <i>More clarification is provided.</i>	

## Amendment 19

Amendment 19 Article 23.5.d	
Commission	Amendment
d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.	d) <del>minimize</del> <b>mitigate</b> the effects of temporary or exceptional network congestion, <b>primarily by means of application-agnostic measures<sup>1</sup> or, when these measures do not prove efficient, by mean of application-specific measures</b> , provided that equivalent types of traffic are treated equally.
<i>Justification</i>  <i>Network congestion should not be a pretext to harm the Net Neutrality principle. For this reason it is highly necessary that an Internet Service Provider primarily tries to solve the congestion, ensuring that no specific Internet applications, content or service will be subject to discrimination.</i>	

<sup>1</sup> The expression “application-agnostic” refers to Internet traffic management practices, measures and techniques that do not depend on the characteristics of specific applications, content, service, devices and uses.

# Enforcement of the Net neutrality principle

In order to efficiently guarantee digital rights and freedoms of the European citizens, it is mandatory to endow National Regulatory Authorities with legal powers, geared to enforce the Net Neutrality principle.

## Amendment 21

Amendment 21 Article 24.1	
Commission	Amendment
<p>1. National regulatory authorities shall closely monitor and ensure the effective ability of end-users to benefit from the freedoms provided for in Article 23 (1) and (2), compliance with Article 23 (5), and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology and that are not impaired by specialised services. They shall, in cooperation with other competent national authorities, also monitor the effects of specialised services on cultural diversity and innovation. National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings.</p>	<p>1. National regulatory authorities shall closely <del>monitor and</del> 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. <b>To that purpose, the competent national regulatory authority shall:</b></p> <p><b>a) be mandated to regularly monitor and report on Internet traffic management practices and usage policies, in order to ensure network neutrality, evaluate the potential impact of the aforementioned practices and policies on fundamental rights, ensure the provision of a sufficient quality of service and the allocation of a satisfactory level of network capacity to the Internet. Reporting should be done in an open and transparent fashion and reports shall be made freely available to the public;</b></p> <p><b>b) put in place appropriate, clear, open and efficient procedures aimed at addressing network</b></p>

**neutrality complaints. To this end, all Internet users shall be entitled to make use of such complaint procedures in front of the relevant authority;**

**c)respond to the complaints within a reasonable time and be able to use necessary measures in order to sanction the breach of the network neutrality principle.**

**This authority must have the necessary resources to undertake the aforementioned duties in a timely and effective manner.**

They shall, in cooperation with other competent national authorities **and the European Data Protection Supervisor**, also monitor the effects of specialised services on cultural **diversity, competition** and innovation. National regulatory authorities shall report on an annual basis to **the public**, the Commission and BEREC on their monitoring and findings.

### *Justification*

*It is compulsory to better define the role of the National Regulatory Authorities in order to guarantee the enforcement mechanism, mandatory to properly enforce the Net Neutrality principle and guarantee the freedom of expression and information of the end-users, as well as competition and innovation in the digital economy.*

*In the wake of the effects those measures have on confidentiality of communication, the European Data Protection Supervisor is fully entitled to monitor on how specialised services can impact on this particular aspect of the life of the European citizens.*

*As previously pointed out, cultural diversity and fair competition shall be protected where a specialised service is introduced.*

# Spectrum

To date, the access to the radio spectrum is subject to a heavy state regulation; unluckily, it has been proved that the exclusive allocation of the airwaves actually turns into an underutilization of the spectrum<sup>2</sup>. This scenario could have severe repercussions on the innovative and democratical potential, introduced by Internet. For this reasons, we propose measures geared to highlight the importance of shared and unlicensed use of spectrum, with a special focus on the benefits for not-for-profit sector and small and medium-sized enterprises.

## Amendment 1

<b>Amendment 1 Article 1.2 d)</b>	
Commission	Amendment
d) to facilitate innovative and high-quality service provision;	d) to facilitate <b>both</b> innovative and high-quality service provision <b>and affordable access to broadband communications, having regard in particular to the contribution and needs of small and medium-sized enterprises as well as the not-for-profit sector operators providing Internet access services;</b>
<i>Justification:</i>  <i>Small and medium-sized enterprises and the not-for-profit sector play a key role to provide efficient yet low-cost and flexible access to the Internet and help to bridge the digital divide. Therefore, there is a need to ensure that regulators give proper consideration to such actors and regulatory schemes.</i>	

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2 In Europe the radio spectrum rate is indeed estimated to be under 10%

## Amendment 6

Amendment 6 Article 9.1	
Commission	Amendment
<p>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.</p>	<p>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.</p> <p><b>They shall also take full consideration of the contribution of unlicensed uses of spectrum as all as the granting of rights of use to small and medium-sized enterprises and the not-for-profit sector to provide efficient and affordable access to broadband communications.</b></p>
<p><i>Justification</i></p> <p><i>The importance of shared and unlicensed use of spectrum was recognized in the EU Parliament in its resolution on a “common approach to the use of the spectrum released by the digital switchover” , adopted in 2008<sup>3</sup>. The resolution stresses that Member States should recognize the social, cultural and economic value of unlicensed uses of spectrum, in particular by small and medium-sized enterprises and the not-for-profit sector. The latter already play a key role for provide low-cost and flexible wireless access ot the Internet and help bridge the digital divide. The references to open spectrum policies in the 2011 Radio Spectrum Policy Programme have so far been overlooked at the policy level. Therefore, there is a need to ensure that regulators give proper consideration to such actors and regulatory schemes when crafting spectrum regulation.</i></p>	

<sup>3</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-0451>

## Amendment 7

Amendment 7 Article 9.3	
Commission	Amendment
When establishing authorisation conditions and procedures for the use of radio spectrum, national competent authorities shall have regard in particular to equal treatment between existing and potential operators and between European electronic communications providers and other undertakings.	When establishing authorisation conditions and procedures for the use of radio spectrum, national competent authorities shall have regard in particular to equal treatment between existing and potential operators and between European electronic communications providers and other undertakings. <b>They shall also have regard to collective use of spectrum as well as shared and unlicensed use of spectrum.</b>
<p><i>Justification</i></p> <p><i>The references to open spectrum policies in the 2011 Radio Spectrum Policy Programme have so far been overlooked at the policy level. There is a need to ensure that regulators give proper consideration to such regulatory schemes that can help bridge the digital divide and foster innovation in wireless communications.</i></p>	

## Amendment 8

Amendment 8 Article 13.1	
Commission	Amendment
(i) the reservation of radio spectrum for certain types of operators, or the exclusion of certain types of operators;	(i) the reservation of radio spectrum for certain types of operators, <b>including operators in the not-for-profit sector</b> , or the exclusion of certain types of operators;

### *Justification*

*All across the EU<sup>4</sup>, citizen organizations provide wireless community networks providing a viable alternative commercial wireless networks for consumers, often in areas that are neglected by traditional operators. Given their contribution to fostering the objectives of the Digital Agenda, they should be further included in telecom policy discussions. This amendment aims to ensure that national competent authorities engage with such groups when issuing a general authorisation, grant individual rights of use of radio spectrum or amend existing rights and obligations.*

## **Amendment 9**

### **Amendment 9 Article 13.1 (k)**

Commission	Amendment
the possibility to use radio spectrum on a shared basis;	the possibility to use radio spectrum on a shared basis, <b>including on an unlicensed basis</b> ;
<i>Justification</i>  <i>In order to maintain the EU competitiveness in wireless markets and foster the goals of the Digital Agenda, NRA should consider shared and unlicensed uses of spectrum when they intend to subject the use of radio spectrum to a general authorisation.</i>	

## **Amendment 10**

### **Amendment 10 Article 14.1**

<sup>4</sup> See a non-exhaustive list of such organizations:  
[http://www.laquadrature.net/wiki/Community\\_Wireless\\_Networks\\_in\\_Europe](http://www.laquadrature.net/wiki/Community_Wireless_Networks_in_Europe)



access to their radio local area networks by other end users, including on the basis of third-party initiatives which federate and make publicly accessible the radio local area networks of different end user

networks by other end users, including on the basis of third-party initiatives which federate and make publicly accessible the radio local area networks of different end user. **They shall also adapt the legal framework so as to foster the spread of cellular basestations and wireless mesh networks.**

*Justification*

*Cellular basestations can be used by citizens and businesses in conjunction with land-line broadband networks. This amendments aims at underlining the importance of these technologies to expand mobile broadband coverage in less populated or remote areas, thus bridging the digital divide, in particular when they are used with shared and unlicensed uses of spectrum.*

# Data Protection

The proposal of the European Commission does not avoid intrusive communications inspection techniques, especially in the framework of the implementation of traffic management measures. For this reason, it is necessary to introduce provisions reinforcing end-users' rights to the protection of their personal data.

## Amendment 2

<b>Amendment 2</b> <b>Recital 46</b>	
Commission	Amendment
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.	The freedom of end-users to access and distribute information and <del>lawful</del> 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, <b>Directive 1995/46, Directive 2002/58</b> and Directive 2000/31/EC.
<i>Justification</i>  <i>The reference to Directive 1995/46 and Directive 2002/58 define the limit to traffic management from data protection and privacy perspective.</i>	

## Amendment 14

Amendment 14 Article 23.3	
Commission	Amendment
3.This Article is without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted.	<del>3.This Article is without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted.</del>
<p><i>Justification</i></p> <p><i>The lawfulness of the content risks to become a ground of traffic management for extra-judicial censorship, for instance through privacy-invasive methods (such as so-called “deep packet inspection”) as underlined by the European Data Protection Supervisor.</i></p>	

## Amendment 18

Amendment 18 Article 23.5.c	
Commission	Amendment
c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures;	c) prevent the transmission of unsolicited communications <b>for direct marketing purposes</b> to end-users who have <b>freely</b> given their prior <b>explicit and informed</b> consent to such restrictive measures;
<p><i>Justification</i></p> <p><i>It is important to better define the nature of unsolicited communications in order to better identify them and not to extend the prevention to other forms of similar communications. An explicit, informed and freely given consent is a further guarantee for end-users who would disagree to traffic management measures geared to prevent</i></p>	

*the transmission of unsolicited communications.*

## Amendment 20

### Amendment 20 Article 23.5

Commission

Amendment

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

Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph. **The processing of data shall not reveal any information concerning the content of the communication the end users access.**

*Justification*

*Traffic management measures shall not be based on intrusive communications inspection technique as Deep Packet Inspection (DPI). This provision is extremely necessary to protect freedoms of the European citizens regarding the respect for their private and family life and the protection of personal data, in accordance to article 7 and 8 of the Charter of the Fundamental Rights of the European Union.*

## Amendment 22

<b>Amendment 22 Article 25.1.e.iva</b>	
Commission	Amendment
	<b>iva) the communication inspection techniques used for traffic management measures, instituted for the purposes listed in article 23.5, and their repercussions on end users privacy and data protection right.</b>
<i>Justification</i>  <i>This provision aims at completing the framework and better guarantee the rights of the European citizens regarding the respect for their private life and their protection of personal data, according to articles 7 and 8 of the Charter of Fundamental Rights of the European Union.</i>	