

**AMENDMENTS TO THE DRAFT TELECOM REGULATION  
PROPOSED BY BITS OF FREEDOM**



Amendment	Recital no.	Original version	Amendment	Explanation
1.	Recital 47	<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 <b>prevention or impediment of serious crimes, including voluntary actions of providers to prevent access to and distribution of child pornography. Minimizing</b> 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 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 <b>the implementation of court orders, and the prevention of the transmission of unsolicited communications.</b> Minimizing the effects of network congestion should be considered reasonable provided that network congestion occurs only temporarily or in exceptional circumstances.</p>	<p>The reference to impeding or preventing serious crimes should be deleted from this recital, as it gives raise to serious concerns.</p> <p>A law that requires or allows internet access services to take measures to prevent or impede 'serious crimes' is in the first place unclear, as there is no definition of what serious crimes entail. Such a legal requirement will lead to uncertainty for both access providers and internet users, as it is wholly unclear when and under which circumstances traffic will be blocked, slowed down or throttled.</p> <p>Moreover, this form of traffic management will lead to private policing activities carried out by internet access providers. These providers are not equipped or qualified to employ such activities. As such, they should not be allowed to carry out law enforcement activities. Law enforcement should always be carried out by qualified agencies and based on specific laws and objectives.</p>
2.	Recital 50	<p>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</p>	<p>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</p>	<p>The requirement that impairment of the general quality of internet access services should be “substantial” has been deleted from article 23(2) but is still present in this recital. In order to ensure the successful coexistence of</p>

		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 <b>as long as</b> such agreements <b>do not substantially</b> impair the general quality of internet access services.	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 <b>unless</b> such agreements impair the general quality of internet access services.	specialized services with a neutral and open internet, it is absolutely necessary that so-called specialized services do not impair the functioning of the public internet. Stating that such impairments may not be 'substantial does not provide adequate protection. See article 23(2) for a related amendment.
3.	Article 1(15)	(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 <b>marketed or widely</b> used as a substitute for internet access service;	(15) "specialised service" means an electronic communications service or any other service that provides the capability to access specific content, applications or services, or a combination thereof, and whose technical characteristics are controlled from end-to-end or provides the capability to send or receive data to or from a determined number of parties or endpoints; and that <b>does not function or</b> is not used as a substitute for internet access service;	The definition of specialized services needs to be amended to provide substantial protection of the open internet. Specialized services should not form a de facto substitute for internet access services.
4.	Article 23(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 <b>in a recurring or continuous manner</b> the general quality of internet access services.	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 the quality of internet access services.	See previous comments; recital 50 and article 1(15) also relate to specialized services. Although this article attempts to minimize the impairment allowed by specialized services, the risk of such services affecting the quality of internet access services is still too high. Impairment should be fully prevented by removing the words 'recurring or continuous', as well as 'general'.
5.	Article	5. Within the limits of any contractually agreed	5. Within the limits of any contractually agreed	See also our explanation to Recital

	23(5)(a)	<p>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:</p> <p>a) implement a legislative provision or a court order <b>or prevent or impede serious crimes</b>;</p>	<p>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:</p> <p>a) implement a legislative provision or a court order;</p>	<p>47; the reference to impeding or preventing serious crimes should be deleted from this article, as it gives raise to serious concerns.</p> <p>A law that requires or allows internet access services to take measures to prevent or impede 'serious crimes' is in the first place unclear, as there is no definition of what serious crimes entail. Such a legal requirement will lead to uncertainty for both access providers and internet users, as it is wholly unclear when and under which circumstances traffic will be blocked, slowed down or throttled.</p> <p>Moreover, this form of traffic management will lead to private policing activities carried out by internet access providers. These providers are not equipped or qualified to employ such activities. As such, they should not be allowed to carry out law enforcement activities. Law enforcement should always be carried out by qualified agencies and based on specific laws and objectives.</p>