

German Proposal on Net Neutrality

Article 2 - Definitions

[...]

(14) The “Internet access service” is a public electronic communications service that provides access to the Internet and therefore connectivity between virtually all endpoints, regardless of the network technology and the terminal equipment;

(15) “Specialised service” is a public electronic communications service or another service that is optimised for specific content, applications or other services or a combination of these, a service that is provided through logically distinct capacities and with separate access control and whose technical characteristics are continuously monitored.

(16) “Public electronic communications service” is an electronic communications service that is at least also offered to the public.

[...]

Article 23 – Net Neutrality

(0new) Providers of electronic communications treat all data transmitted in the open Internet equally without considering the sending or receiving party or the type of content, service or application.

(00new) End-users are granted the right to non-discriminatory data transmission within the Internet access service. This does not lead to claims beyond Art. (3) and Art. (4) of Directive 2002/22/EC.

(1) End-users are free to conclude agreements with providers of Internet access services concerning data volumes and speeds, and in accordance with such agreements to accept any offer from providers of Internet content, applications, and services.

(2) Providers of Public electronic communications services and providers of content, applications and services are free to offer Specialised services to end users. Specialised services must not be sold as a replacement for unlimited or limited internet access. Providers of Public electronic communications services shall not discriminate between certain content or functionally equivalent applications or services. If such services are transmitted in parallel with Internet access services, network capacity must be sufficient to ensure that the availability and quality of Internet access services are not impaired.

(3) Within the data traffic in public communications networks, it is inadmissible to deteriorate, obstruct, block, slow down or discriminate without reason against certain content or any other applications or services, or within certain categories thereof. Providers of Public electronic communications can take appropriate traffic management measures, provided that such measures are transparent, proportionate and necessary in order

a) to preserve the integrity and security of the network, the services provided over the network and the end-users' terminal equipment;

b) to prevent the transmission of unsolicited communications for the purposes of Art. 13 (1), Directive 2002/58/EC, provided that end users have specifically requested such restrictive measures and that such measures are in accordance with Directives 95/46 and 2002/58/EC, especially with respect to the confidentiality of communications;

c) to minimize the effects of an exceptional network overload, as long as equivalent types of traffic are treated equally; In the context of an appropriate traffic management, only those data may be processed that are necessary and proportionate for the purposes set out in this paragraph.

(4) Should providers of Internet access services block, slow down or deteriorate the Internet access service after exceeding the limits for contracted data volumes and speeds in accordance with the contractual agreement, they must not discriminate between specific content, applications or services. Providers may exempt Specialised services of the actions described in Sentence 1.

(5) This Article does not affect the laws of the Union or national legislation on the legality of transmitted information, content, applications or services, in particular with regard to data protection law, criminal law and the protection of intellectual property. Legitimate measures under Art. 25 of Directive 2011/93/EU remain unaffected.

(6) Exercising the rights and freedoms described in paragraphs 00new and 1 is facilitated by providing complete information pursuant to Art. 25 (1), Art. 26 (2), Art. 27 (1) and (2).

Art. 24 - Provisions to ensure service quality

(1) National regulatory authorities closely monitor and ensure that end-users are effectively able to exercise freedoms and rights described in Art. 23 (00new and 1), that Art. 23 (2-4) are complied with and that non-discriminatory Internet access services that have a level of quality reflecting technological progress and that are not affected by Specialised services are continuously available. In this respect, national regulatory authorities respect the following principles:

- a. Network capacity for Specialised services should be sufficient to make them available in parallel with Internet access services; the availability and quality of Internet access services must not be compromised.
- b. Specialised services are not offered as a substitute for the Internet access service and must not affect the Best-Effort Internet and its development as a result of technical progress.
- c. Specialised services are to be provided without discriminating providers of content, applications, services or the end user.

They observe, in cooperation with other competent national authorities, the impact of Specialised services on cultural diversity and innovation.

(3) National regulatory authorities establish complaint bodies for end-users and providers of content, services and applications.

(4) National regulatory authorities report to the Commission and BEREC, at least annually, on their monitoring activities and their findings. National regulatory authorities report immediately to the Commission and BEREC about market developments that could impair the open Internet, especially when noted that the existing legal instruments are not sufficient to effectively counter undesirable market outcomes.

(5) To prevent reduced service quality of Internet access services or to ensure that end-users are still able to retrieve and distribute information or content or run applications and services of their choice on the open Internet, national regulators are authorised to impose minimum requirements for service quality for the providers of Public electronic communications.

National regulatory authorities provide the Commission with a summary of reasons for their action, the envisaged requirements and the proposed proceedings, well before imposing such requirements. This information is also submitted to BEREC. The Commission may, having examined the information, make comments or suggestions, in particular to ensure that the envisaged requirements do not affect the proper functioning of the internal market.

The Commission shall not accept the prescribed requirements for a period of two months after the receipt of complete information, unless the Commission and the national regulatory authority agree otherwise or unless the Commission notifies the national regulatory authority about a shorter review period or the Commission issues comments or recommendations. National regulatory authorities shall as far as possible take into account the comments and

recommendations submitted by the Commission and notify the Commission and BEREC about the adopted requirements.