

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: The open internet and net neutrality in Europe’

COM(2011) 222 final

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On 19 April 2011, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions — The open internet and net neutrality in Europe

COM(2011) 222 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 7 October 2011.

At its 475th plenary session, held on 26 and 27 October 2011 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 151 votes in favour and 1 abstention.

1. Conclusions and recommendations

1.1 The concepts of an open internet and net neutrality, ‘net freedoms’, are key to any regulation aimed at guaranteeing freedom to use the Internet as a means of communication.

1.2 Guaranteeing an open internet and net neutrality has been recognised as a fundamental political target at EU level, in several important documents, and has been particularly mentioned as political objective in the Digital Agenda, one of the most important pillars of the 2020 Strategy.

1.3 Therefore the EESC welcomes the Communication of the Commission aimed at monitoring the impact of market and technological developments on net freedoms. However, this Communication fails to meet the legitimate expectations of the EESC.

1.4 The Commission recognises certain situations which might lead to the violation of these principles but, instead of taking action to protect them it is advocating a ‘wait and see’ approach.

1.5 Given the acute importance of the issue to the economic and social future of Europe, the EESC strongly recommends that the principles of an open internet and net neutrality should be formally enshrined in EU law as soon as possible, always bearing in mind the evolution of technologies (‘state of the art’) in this field.

1.6 Moreover, the EESC believes that now is the right time to define the principles which would guarantee an open and neutral internet, and the Committee is recommending a set of principles which in its opinion should be adopted, as stated in point 7.12.

1.7 The EESC also believes that these principles are paramount to the future development of the internet as a tool for better citizenship on the grounds of the EU Charter on fundamental Rights and as an essential condition for the fulfilment of the WSIS Targets defined in Geneva (2003) and Tunis (2005).

1.8 The EESC is of the opinion that immediate action in this field will be decisive for the accomplishment of the goals of the Europe 2020 Strategy, the implementation of the Digital Agenda and the further realisation of the internal market, and welcomes recent public statements by Commissioner Kroes in this regard.

1.9 Thus the Committee demands that the European Parliament and Member States follow a proactive approach to safeguard net freedoms and assumes that the Commission will act accordingly.

2. Gist, nature and contents of the Commission Communication

2.1 The Communication is a political document which fulfils the commitment given by the European Commission in its declaration with the 2009 telecoms reform package⁽¹⁾ to ‘... monitor the impact of market and technological developments on “net freedoms” reporting to the European Parliament and the Council before the end of 2010 on whether additional guidance is required’.

2.1.1 In that declaration the Commission stated its strong and unequivocal commitment to ‘... preserving the open and neutral character of the internet, taking full account of the will of the co-legislators now to enshrine net neutrality as a policy objective and regulatory principle to be promoted by national regulatory authorities’.

⁽¹⁾ OJ L 337, 18.12.2009.

2.2 We should remember that in its Digital Agenda for Europe, the Commission announced that it would ‘monitor closely the implementation of the new legislative provisions on the open and neutral character of the internet’⁽²⁾.

2.3 The Communication describes the public consultation and fact-finding process undertaken by the Commission in 2010⁽³⁾ and also the joint summit organised by the Commission and the Parliament on 11 November 2010⁽⁴⁾.

2.4 The Commission concludes that no action should be taken now because there is insufficient evidence to recommend that further legislation is needed at this time.

2.4.1 During the consultation process several stakeholders and the Body of European Regulators for Electronic Communications (BEREC) reported that some Internet Service Providers (ISP) have been ‘throttling’, ‘blocking’ and charging discriminatory prices to deliver certain types of traffic⁽⁵⁾.

2.4.2 However, the Commission hopes that the rules on contracts⁽⁶⁾, transparency⁽⁷⁾, switching⁽⁸⁾ and quality of service⁽⁹⁾ that form part of the revised EU electronic communications framework should contribute to producing competitive outcomes.

2.4.3 Besides, the Commission is of the opinion that sufficient time should be allowed for these provisions to be implemented and to see how they will operate in practice⁽¹⁰⁾.

2.5 The Communication does not explicitly define the key terms as they might be interpreted by European legislation. In fact it states that ‘... there is no set definition of “net neutrality”’.

⁽²⁾ COM(2010) 245 final of 26.08.2010.

⁽³⁾ http://ec.europa.eu/information_society/policy/ecomm/library/public_consult/net_neutrality/index_en.htm

⁽⁴⁾ http://ec.europa.eu/information_society/policy/ecomm/library/public_consult/net_neutrality/index_en.htm

⁽⁵⁾ Throttling: An ISP can throttle their bandwidth to purposely reduce the speed of a particular customer’s service for certain types of traffic. BEREC reported that certain providers in France, Greece, Hungary, Lithuania, Poland and the United Kingdom used ‘throttling’ of peer-to-peer (P2P) file sharing or video streaming services. Blocking: An ISP company can purposely block the IP addresses of specific websites to prevent its Internet service customers access to particular applications and services. BEREC reported that certain mobile operators in Austria, Germany, Italy, the Netherlands, Portugal and Romania were blocking or charging extra for the provision of voice over Internet protocol (VoIP) services.

⁽⁶⁾ Article 20(1)(b) Universal Service Directive as amended by the Citizens’ Rights Directive 2009/136/EC.

⁽⁷⁾ Article 21(3)(c)(d) Universal Service Directive as amended by the Citizens’ Rights Directive 2009/136/EC.

⁽⁸⁾ Paragraph 47 of Citizen’s Rights Directive 2009/136/EC.

⁽⁹⁾ Article 22(3) Universal Service Directive as amended by the Citizens’ Rights Directive 2009/136/EC.

⁽¹⁰⁾ On 19 July 2011 the Commission started proceedings against 20 Member States for failure to transpose the revised framework into national law.

2.5.1 Instead it conflates the two terms and encapsulates the EU legal position on both by referring to Article 8(4)(g) of the Framework Directive which places an obligation on National Regulatory Authorities (NRAs) to ensure that end-users have the ability to access and distribute information or run applications and services of their choice (subject to applicable law)⁽¹¹⁾.

2.6 The Communication ends with a commitment from the Commission to publish the findings of further investigations by BEREC into the practices of ISPs that might be anti-competitive and against the principles of an open and neutral Internet. If significant and persistent problems are substantiated and the Commission deems that there is a need for further regulation, then it will advise the Council on what action might be necessary.

3. What are we speaking about?

3.1 The failure to explicitly define the main terms at issue is a serious problem. Without definition there cannot be clear exposition of the arguments, nor clear guidance to the market and regulators on the intended scope of European law on this matter.

3.2 The Open Internet

3.2.1 The open Internet is a concept that dates back to the beginning of the Internet and the creation of the World Wide Web (the Web), which made the content on the public Internet available to everyone in the world with an Internet connection.

3.2.2 The open Internet is the principle that as users we are free to connect to the public Internet without restrictions from governments or ISPs on the content, sites, platforms, the kinds of equipment that may be attached, and the modes of communication allowed.

3.2.3 It is ‘open’ because it uses free, publicly available standards that anyone can use to build websites, applications and services, and because it handles all traffic more or less the same way.

3.2.4 Once you are on the public Internet, you don’t have to ask permission nor pay extra to ISPs to reach others online. If you create an innovative new service you don’t have to get permission to share it with the world.

3.2.5 This freedom to communicate and innovate is the reason for the Internet’s remarkable success.

⁽¹¹⁾ Directive 2002/21 as amended by Directive 2009/140/EC of 25 November 2009 (OJ L 337 of 18.12.2009).

3.2.6 In reality today, much of the public Internet is no longer 'open'. The Web is still open, but the applications we use on our smart phones, the social networking sites we access and the paid content we purchase are part of a closed Internet, accessible only through proprietary interfaces and APIs ⁽¹²⁾.

3.2.6.1 Increasingly countries ⁽¹³⁾, companies ⁽¹⁴⁾ and network operators ⁽¹⁵⁾ are restricting access to the public Internet, or changing how it operates, for political, technological or commercial reasons.

3.2.7 However, the concept of the open Internet is the reason that the Internet has driven economic innovation, democratic participation, free speech and learning online across the world. It is a vitally important concept to our values of freedom, equality and human rights, as stated in the EU Charter of Fundamental Rights.

3.2.8 Without being explicitly named, the principle of the open Internet is dealt with by Article 1 (3a) and Article 8(4) (g) of the framework directive on electronic communications and by paragraph 28 of the Citizens' Rights Directive 2009/136/EC.

3.3 Net Neutrality

3.3.1 The principle of net neutrality is derived from the concept of the open Internet. Whereas the open Internet relates to open standards and the freedom to connect to and use the Internet, net neutrality deals with the commercial treatment of Internet customers by Internet Service Providers. It seeks to protect the consumer's rights under the principle of an open Internet without unreasonable commercial interference by the network provider.

3.3.2 The principle of net neutrality means that companies providing Internet service should treat all sources of similar Internet data equally and not discriminate between different types of traffic for commercial motives.

⁽¹²⁾ An application programming interface (API) is programming code inserted between two programmes so that they can link to each other and work together.

⁽¹³⁾ China's 'great firewall' already imposes tight controls on internet links with the rest of the world, monitoring traffic and making many sites or services unavailable. Other countries, including Iran, Cuba, Saudi Arabia and Vietnam, have done similar things, and other governments are tightening controls on what people can see and do on the internet.

⁽¹⁴⁾ Users of Apple's mobile devices access many internet services through small downloadable software applications, or apps, rather than a web browser. By dictating which apps are allowed on its devices, Apple has become a gatekeeper. As apps spread to other mobile devices, and even cars and televisions, other firms will do so too.' Economist, 2/9/10.

⁽¹⁵⁾ ISPs and Telecom network operators looking for new sources of revenue are using technology to discriminate between types of Internet traffic on their network so that they can charge extra, degrade or even block certain services.

3.3.2.1 It is the principle that Internet users should be in control of what content they view and what applications they use on the Internet; that ISPs should not be permitted to use their market power to discriminate against competing applications or content.

3.3.2.2 This principle can be compatible with traffic management measures, as long as these measures are non-discriminatory, are made transparent to the consumers, and are taken in pursuit of legitimate quality of service goals. Traffic management measures must not, however, create incentives for slowing down network development in order to charge higher prices due to a scarcity of resources.

3.3.3 The principle argues that the market for connectivity should be kept legally separate from the market for content and applications, meaning that companies that operate in both markets must properly separate the management of the respective markets.

3.3.4 However this principle could be under threat ⁽¹⁶⁾. ISPs could use their infrastructure to block Internet applications and content (e.g., websites, services, protocols), particularly those of competitors, or to change their business models to reduce the quality and scope of access that different users enjoy. Such changes in business models could result in unfair price discrimination and service quality discrimination.

3.4 Previous EESC Opinions

3.4.1 The EESC in several Opinions took a clear position in favour of these two principles mainly on the grounds of freedom and human rights; data protection and protection of privacy; democratic and collaborative governance; inclusion and empowerment; innovation and economic growth ⁽¹⁷⁾.

⁽¹⁶⁾ In its reply to 30 June 2010 EC public consultation BEREC listed three main concerns regarding future developments: 1) the scope for pricing discrimination through the use of techniques like deep packet inspection, combined with economic incentives and the potential for vertical integration, would create anticompetitive effects; 2) the potential for longer-term negative consequences for the internet economy (on innovation, freedom of expression, etc.); 3) Consumer confusion/harm due to lack of transparency.

⁽¹⁷⁾ See EESC Opinions 984/2008 on Electronic Communication networks (TEN/327-329 of 29 May 2008) Rapp. Hernandez Bataller, mainly points 1.1., 1.2.7 and 4.4; 1915/2008 on High speed access for all: development of the scope of universal service for electronic communications (TEN/353 of 3 December 2008) Rapp. R. Hencks mainly point 1.5; CESE 1628/2010 on A Digital Agenda for Europe (TEN/426 of 13 December 2010), Rapp McDonogh, mainly points 1.6, 1.9 and 4.5; CESE 525/2011 on the Single Market Act (INT/548 of 15 March 2011) Rapp. Federspiel, Siecker and Voles; and in particular the recent CESE 669/2011 on Enhancing digital literacy, e-skills and e-inclusion (TEN/453) Rapp. L. Batut.

3.4.2 Particularly in its CESE 362/2011 Opinion the EESC has already stated that 'The Committee considers the principle of Net Neutrality to be critically important to the future of Internet services in Europe' (18).

4. The economics behind the Principles: the link to the 2020 Strategy and the Digital Agenda

4.1 The Digital Economy

4.1.1 Under the flagship programme of the Digital Agenda (19), the Europe 2020 strategy (20) seeks to leverage the tremendous growth potential of the Internet and the digital economy.

4.1.2 Two billion people are now connected to the Internet, and almost EUR 5.5 trillion is transacted in eCommerce each year. Internet related consumption and expenditure is now bigger than agriculture or energy, and in countries with more mature Internet penetration it has contributed 21 % of GDP growth in the last five years (21).

4.1.3 A recent study by McKinsey (22) of almost 5 000 SMEs found that those with a strong Web presence grew more than twice as quickly as those that had minimal or no presence. They also created more than twice the number of jobs as others.

4.1.4 To get the greatest benefit from this powerful engine of growth and transformation every effort should be made to maximise access to the Internet and the freedom to use it, and to minimise the its cost for consumers and businesses.

4.2 SMEs, innovation, employment and growth

4.2.1 A major focus of the Europe 2020 strategy is to especially improve the business environment for SMEs, to reduce transaction costs, to stimulate SME innovation, and to nurture start-ups.

4.2.2 Any policies that abandon the principles of an open Internet and net neutrality to favour the large network operators at the expense of Europe's 23 million SMEs (23) and consumers will hurt Europe's ability to transform the economy and society as envisaged by the Europe 2020 strategy.

(18) See EESC Opinion CESE 362/2011 on 'First radio spectrum policy programme and European Broadband' (TEN/434-435).

(19) A Digital Agenda for Europe - COM(2010) 245 final.

(20) COM(2010) 2020 final.

(21) From McKinsey Global Institute 'Internet matters: The Net's sweeping impact on growth, jobs, and prosperity', May 2011.

(22) McKinsey Global Institute 'Internet matters: The Net's sweeping impact on growth, jobs, and prosperity', May 2011 http://www.mckinsey.com/mgi/publications/internet_matters/pdfs/MGI_internet_matters_full_report.pdf.

(23) Eurostat (Eurostat Yearbook 2010, http://epp.eurostat.ec.europa.eu/portal/page/portal/publications/eurostat_yearbook_2010).

4.3 Internal Market and Fair Competition

4.3.1 An open Internet and net neutrality which would guarantee fair competition and stimulate innovation are also essential principles for achieving a strong Digital Single Market (24).

5. Some Network Operators argue against the principle of net neutrality

5.1 Some network operators have been lobbying with national governments, the Commission and the EP to help them increase their share of Internet revenues (25). They argue that unless they are able to create new revenue streams from delivering content they will not be able to afford the capital investment required to provide the high speed broadband that Europe needs (26).

5.1.1 Some privately owned network operators that compete in the marketplace for Internet connectivity and seek short-term returns on investment, are cautious about investing in this area at the moment because they do not perceive a sufficiently profitable business case, especially when talking about peripheral regions.

5.2 However, aided by investment supports from Europe to provide high-speed broadband (27) and the attractive growth rates in demand for bandwidth, new infrastructure providers are entering the market for connectivity. And as a more competitive market is developing in Europe for broadband infrastructure, the availability of bandwidth and the cost of providing it are also being positively impacted by the development of new technologies for both terrestrial and wireless broadband. For example, major projects are underway to provide high speed Internet, especially in rural areas, by exploiting the digital dividend from the switch from analogue to digital broadcasting.

(24) As defined in both the Communication 'Towards a single Market Act for a highly competitive social market economy – 50 proposals' (COM(2010) 608 final/2 of 11/11/2010) and the Communication 'Twelve levers to boost growth and strengthen confidence – Working together to create new growth' (COM(2011) 206 final of 13/04/2011), point 2.7.

(25) Four of Europe's biggest ISPs - Deutsche Telekom, France Telecom, Telecom Italia, and Telefónica - commissioned a study to make their case. A.T. Kearney, 2010, A Viable Future Model for the Internet.

(26) Europe's largest ISPs operators argue that if they upgraded their networks to meet forecast broadband demand to 2014 without any extra revenue, their returns on capital would fall by 3 percentage points to about 9 per cent. A.T. Kearney, 2010 - A Viable Future Model for the Internet.

(27) See COM(2010) 471 final – 1st Radio Spectrum Policy Program, COM(2010) 472 final – European Broadband: investing in digitally driven growth, and 2010/572/EU (see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:251:0035:0048:EN:PDF>). Commission Recommendation on Regulated Access (NGA) networks; see also the Digital Agenda Scoreboard (SEC(2011) 708 final of 31/05/2011).

5.3 The problem is that the proposals from some ISPs to change their business models by negating the principle of net neutrality will increase the cost of content and services on the Internet or reduce the openness of the Internet.

5.3.1 If the principle of net neutrality is successfully undermined thereby allowing ISPs to 'tax', throttle or block Internet traffic between customers and service providers, then the cost of Internet services will increase in Europe with detrimental effects on innovation, growth, employment and the Europe 2020 strategy.

5.3.2 Even the fulfilment of the World Summit on the Information Society (WSIS) targets, set up in Geneva (2003) and in Tunis (2005) in line with the Millennium development Goals (MDGs) ⁽²⁸⁾, would be in danger.

6. KPN ⁽²⁹⁾ provokes the creation of net neutrality law in The Netherlands

6.1 In the Communication of the Commission on 19 April it stated that it had insufficient evidence of operators interfering with Internet traffic for commercial advantage to warrant introducing further legislation now to protect the principle of net neutrality.

6.2 However, subsequently, on 10 May the Dutch ISP KPN ⁽³⁰⁾ indicated that from July it was planning to charge customers extra for accessing certain Internet applications such as VoIP (Skype) and the SMS-substitute smartphone application WhatsApp.

6.2.1 It was disclosed that KPN, like other ISPs, had been using a technology called deep packet inspection (DPI) ⁽³¹⁾ to analyse their customers' Internet traffic and it was planning to surcharge VoIP calls, WhatsApp traffic and any other content that it wanted to inhibit or profit from.

6.2.2 Because it was in their strategic interest to ignore the principle of net neutrality and because there was no legal requirement to respect the principle, KPN was openly declaring its intent to proceed with 'taxing' certain types of Internet traffic.

⁽²⁸⁾ See 'Monitoring the WSIS Targets A mid-term review' (World Telecommunication/ICT Development Report 2010, ITU, Geneva, 2010).

⁽²⁹⁾ KPN is the Dutch telecommunications company with interests in numerous European countries. It is the largest ISP in The Netherlands, revenue in 2010 was EUR 13,4 bn with profits of EUR 1,8 bn.

⁽³⁰⁾ See webcast of the KPN Investor Day: Group Strategy at http://pulse.companywebcast.nl/player/v1_0/default.aspx?id=12193&bb=true&swf=true.

⁽³¹⁾ Deep Packet Inspection (DPI) is a technique used by an ISP to examine the packet of data in detail as it passes an inspection point. Deep Packet Inspection (and filtering) enables advanced network management, user service, and security functions as well as Internet data mining, eavesdropping, censorship etc.

6.3 The public disclosure of KPN's actions and future intentions caused a political storm in The Netherlands, resulting in the passing on 22 June in the lower house of the Dutch parliament of Europe's first laws to protect the principals of an open Internet and net neutrality.

6.4 The statement of intent by KPN proved categorically that some network operators do not view the provisions of the revised Framework on electronic communications nor EU competition law as serious protection of the net neutrality principle.

7. Should the EU take action now or 'wait and see'?

7.1 In the Communication the Commission advocates a 'wait and see' approach.

7.2 The Communication posits that the transposition of the revised regulatory framework into national laws should provide sufficient protection of the open Internet principle. And in the event that an operator breaks the law then the NRA has the clear powers to act decisively.

7.3 However, according to the Communication there would not be any need to enforce the principal of net neutrality. Instead the Commission is proposing that a competitive market for broadband connectivity, coupled with the transparency and consumer switching provisions in the revised framework should be adequate.

7.4 The Communication implies that it would be better to wait and see if the existing laws and competitive conditions will be adequate protection for the principle of net neutrality; that implementing ad hoc legislation now could adversely affect the development of Europe's Internet economy by deterring investment, or preventing other innovative business models from emerging.

7.5 Advocates for a 'wait and see' approach point to Europe's competitive market for ISP services, saying that if network operators introduce discriminatory pricing for content delivery, then unhappy customers will move to another ISP.

7.5.1 However, this argument underestimates the real difficulty that many customers have in switching carriers ⁽³²⁾, and also the insidious effect that collective action by the largest ISPs could have if they all decided to levy discriminatory charges for content delivery.

⁽³²⁾ Ofcom review of switching in the UK (10 Sep 2010) found that, if they have a choice, 45 % of broadband customers find switching 'too much hassle' and that consumers are unlikely to move just because one or two of their Internet uses are prohibited or over charged: <http://stakeholders.ofcom.org.uk/binaries/consultations/consumer-switching/summary/switching.pdf>.

7.6 61 % of households in Europe who are currently accessing the Internet now buy their Internet access as part of a bundled offering of Internet, telephony and television. Furthermore, 92 % of households with bundled service packages have not switched provider even though 36 % have considered it⁽³³⁾. It is clear that by clever marketing practices ISP market power is growing, and this adversely affects customer switching behaviour – smart marketing weakens consumer power. Smart marketing will enable the ISPs to exploit their position and get away with practices contrary to the principle of net neutrality, thus earning excessive profits, weakening competition and innovation; unless legislation prevents them.

7.7 In any case, the process of evaluating the effectiveness of the new electronic communications rules is going to take a considerable amount of time.

7.7.1 Given how long it can take for regulatory action to be considered, drafted, and to take full effect in EU27, and given how quickly the ISPs are apparently moving to introduce new business models, net neutrality might already be an irrelevant concept before any regulations are written.

7.8 The EESC suggests a different proactive approach mainly based on the principles of prevention and precaution described in its previous Opinion on a 'Proactive approach to EU Law'⁽³⁴⁾ and welcomes very recent public statements of Commissioner Kroes, which apparently support this approach.

7.9 According to this approach the principles of open Internet and net neutrality should be unambiguously defined and enshrined in European law as an endorsement of citizens' rights as defined in the EU Charter of fundamental Rights.

7.10 The Commission should draft the principles for an open and neutral Internet after careful consideration of various formulations and consultation with all stakeholders and taking into consideration the evolution of technology ('state of the art') in this field.

7.11 Although the open Internet principle is more or less adequately covered in EU law by Articles 1 (3a) and 8 (4) (g) of the Framework Directive⁽³⁵⁾, in conjunction with paragraph 28 of the Citizens' Rights Directive⁽³⁶⁾, it could be made more explicit and unambiguous. However, the specific principle of net neutrality is not defined in EU law, nor is it adequately covered by any combination of provisions.

⁽³³⁾ All statistics are from the e-Communications household Survey from Special Eurobarometer 362, July 2011, http://ec.europa.eu/public_opinion/archives/ebs/ebs_362_en.pdf.

⁽³⁴⁾ See EESC Opinion CESE 1905/2008 on 'The proactive law approach: a further step towards better regulation at EU level' OJ C 175, 28.7.2009, p. 26.

⁽³⁵⁾ Directive 2002/21 as amended by Directive 2009/140/EC of 25 November 2009 (OJ L 337 of 18/12/2009).

⁽³⁶⁾ 2009/136/EC.

7.12 In the Committee's opinion, based mainly on a review of principles contained in the Norwegian guidelines for Internet neutrality⁽³⁷⁾, the BEUC response to the EC consultation on Net Neutrality⁽³⁸⁾, the Resolution on net neutrality of the Trans Atlantic Consumer Dialogue (TACD)⁽³⁹⁾ and the recently passed Dutch law⁽⁴⁰⁾, the definition of the principles should contain at least the following elements:

i. Freedom and quality of Internet access

The European Commission should agree a common EU standard on 'minimum quality of service' according to the principles of general interest, and should ensure that there is effective monitoring of its application.

ii. Non-discrimination between Internet traffic streams

As a general rule, no differentiation be made between the way in which each individual data stream is treated, whether according to the type of content, the service, application, device or the address of the streams origin or destination. This applies to all points along the network, including inter-connection points.

There may be exceptions to this principle, provided they comply with the guidelines set out in proposed recommendation no. iii.

iii. Supervising Internet traffic management mechanisms

Marking exceptions to the principles stated in proposals nos. i and ii, and to limit any possible deviations from these, when ISPs do employ traffic management mechanisms for ensuring the quality of access to the Internet, that they comply with the general principles of relevance, proportionality, efficiency, non discrimination between parties and transparency.

⁽³⁷⁾ Guidelines for Internet Neutrality, 2009: <http://www.npt.no/ikbViewer/Content/109604/Guidelines%20for%20network%20neutrality.pdf>.

⁽³⁸⁾ Consumers should be entitled to:

1. An Internet connection of the speed and reliability advertised to them.
2. An Internet connection that enables them to:
 - a. Send and receive content of their choice;
 - b. Use services and run applications of their choice;
 - c. Connect hardware and use software of their choice that do not harm the network.
3. An Internet connection that is free from discrimination with regard to type of application, service, or content or based on sender or receiver address.
4. Competition among network, application, service, and content providers.
5. Know what network management practices are deployed by their network providers (http://ec.europa.eu/information_society/policy/ecomms/doc/library/public_consult/net_neutrality/comments/08industry_social_consumer_orgs_ngos_etc/beuc.pdf).

⁽³⁹⁾ TACD Resolution of April 2010 (doc. n°: INFOSOC 42-09).

⁽⁴⁰⁾ Unofficial translation: <https://www.bof.nl/2011/06/15/net-neutrality-in-the-netherlands-state-of-play/>.

iv. Managed services

To maintain the capacity of all players' to innovate, electronic communications operators must be able to market 'managed services' alongside Internet access, provided that the managed service does not degrade the quality of Internet access below a certain satisfactory level, and that vendors act in accordance with existing competition laws and sector-specific regulation.

v. Increased transparency with respect to end users and a defined set of standardised information

There should be clear, precise and relevant information on the services and applications that can be accessed through ISPs: their quality of service, their possible limitations, and any traffic management practices. The EC should guarantee transparency for consumers, including clear information on terms and conditions, the right to use any lawful application and the means of switching providers. The EC should promote more dialogue and effective co-regulatory mechanisms between industry and the national regulators, under the auspices of the EC, in order to agree on EU-wide transparency principles and a set of standardised information.

Brussels, 26 October 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
