

**Proposal amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks**

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| <i>New</i><br>Recital 14b   |   |
| <b>Council political agreement</b>  | <b>Proposal for amendments/position by industry coalition</b>   |
|   | (14b) Management of networks in order to, for example, address congestion and capacity constraints and to enable new services should not per se be considered an example of a restriction requiring intervention under Directive 2002/22/EC, and due account should be taken of the right of network and service operators to diversify their offerings in a competitive market, including through the imposition of reasonable usage restrictions, price differentiation and other legitimate competitive practices. Temporary non-compliance with any minimum quality of service requirements due to unforeseeable circumstances beyond the reasonable control of the service and/or network provider (force majeure) should not be subject to sanctions. |
| <b>Justification</b>  |   |
| To provide more legal certainty, appropriate guidance on intervention under the new legal basis for NRAs regarding QoS in Art. 22 (3) needs to be put in place (s. below on Art. 22 (3)). A Recital is therefore needed that gives legal certainty to operators that specific legitimate practices will not be called into question by NRA intervention, as this would hamper innovation in the network with a negative impact on network integrity and new business models to emerge. The text proposed here had been adopted by the responsible Parliament committee IMCO in first reading. |   |
| <b>Recital 16</b>   |   |
| <b>Council political agreement</b>  | <b>Proposal for amendments/position by industry coalition</b>   |
| (16) A competitive market should ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the   | (16) A competitive market should also ensure that users are able to have the quality of service they <del>require</del> <b>have contracted to purchase</b> , but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as <b>to address</b> <del>to prevent</del> <b>unjustified degradation of service, usage restrictions and/or limitations</b> and <del>the slowing of</del>   |

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| <i>blocking of access and the slowing of traffic over the networks. [...]</i>  | <i>traffic.</i>   |
| <p style="text-align: center;">Justification</p> <p style="text-align: center;">To be aligned with the new article 22.3</p>  |   |
| <b>Council political agreement</b>   | <b>Proposal for amendments/position by industry coalition</b>   |
| <p>Article 22</p> <p><b>Quality of service</b></p>   |   |
| <p><i>3. In order to prevent degradation of service and hindering or slowing of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks. [...]</i></p>   | <p>3. In order to <b>address</b> <del>prevent</del> <b>unjustified</b> degradation of service and hindering or slowing of traffic over networks, Member States shall ensure that national regulatory authorities are able to <b>issue guidelines setting</b> <del>set</del> minimum quality of service requirements <b>for different service offerings</b> <del>on an undertaking or undertakings</del> providing public communications networks. [...]</p> |
| <p style="text-align: center;">Justification</p> <p>The current EU legal framework and the new rules on transparency proposed in this Directive in principle already provide for sufficient safeguards to ensure the ability of end-users to access content and applications of their choice. In particular, a competitive market for retail broadband access - where necessary ensured by wholesale ex-ante access obligations under Directive 2002/19/EC - and transparency requirements regarding restrictions of quality of service under this Directive will penalise any undue restrictions of users' ability to access the content of their choice. Abusive behaviour such as anti-competitive discrimination in upstream wholesale markets will moreover be addressed under competition rules by the competent authorities. If NRAs are nevertheless given the power to intervene in QoS, it should be clarified that this can be done only to address observed harmful practices that are not justified by legitimate interests of network management. <b>A Recital to the Citizens Rights Directive should give legal certainty to operators that specific legitimate practices will not be called into question by NRAs.</b> To the contrary, any text that would per se restrict welfare enhancing differentiation of quality of service would negatively affect network innovation and quality differentiation needed to maintain and improve quality of service for end-users. It also risks impeding new business models which can help to bring about much-needed investments in increased speed in the access network. Finally, if measures on minimum QoS requirements are considered necessary, guidelines would be the appropriate tool to deal with the emerging NGN environment. The introduction of an option to take any "other measures" as proposed by the EP would create high legal uncertainty.</p> |   |