

## Who is protecting net neutrality in Europe?

EDRi and Access prepared the following table comparing the ITRE Rapporteur's, Pilar del Castillo Vera, final Compromise Amendments (CAs) with MEP Catherine Trautmann's alternative CAs. We have provided comments below each change Ms. Trautmann introduces to Ms. Castillo's compromises.

It is regrettable that despite the progress made in the negotiations in ITRE, MEP Del Castillo's proposals still contain loopholes that would undermine freedom of communication, innovation and competition in the digital single market. Ms. Trautmann's CAs are not perfect, however they do bring needed legal clarity to the text, and close the dangerous loopholes in Castillo's proposal.

### Recital 45

Pilar del Castillo Vera -	Catherine Trautmann ++
<p>(45) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. The principle of “net neutrality” <b><i>in the open internet</i></b> means that traffic should be treated equally, without discrimination, restriction or interference, independent of the sender, receiver, type, content, device, service or application. As stated by the European Parliament resolution of 17 November 2011 on the open internet and net neutrality in Europe 2011/2866, the internet's open character has been a key driver of competitiveness, economic growth, social development and innovation – which has led to spectacular levels of development in online applications, content and services – and thus of growth in the offer of, and demand for, content and services, and has made it a vitally important accelerator in the free circulation of knowledge, ideas and information, including in countries where</p>	<p>(45) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. The principle of “net neutrality” means that traffic should be treated equally, without discrimination, restriction or interference, independent of the sender, receiver, type, content, device, service or application. As stated by the European Parliament resolution of 17 November 2011 on the open internet and net neutrality in Europe 2011/2866, the internet's open character has been a key driver of competitiveness, economic growth, social development and innovation – which has led to spectacular levels of development in online applications, content and services – and thus of growth in the offer of, and demand for, content and services, and has made it a vitally important accelerator in the free circulation of knowledge, ideas and information, including in countries where access to independent media is limited. The</p>

<p>access to independent media is limited. The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012 and a study, commissioned by the Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of end-users are affected by traffic management practices which block or slow down specific applications. These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</p>	<p>existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012 and a study, commissioned by the Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of end-users are affected by traffic management practices which block or slow down specific applications. These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.</p>
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**Comment:**  
The deletion of “in the open internet” brings clarity to the text as the principle of net neutrality should always apply.

**Article 2.14**

<p>Pilar del Castillo Vera -</p>	<p>Catherine Trautmann ++</p>
<p>(14) “internet access service” means a publicly available electronic communications service that provides connectivity to the internet, and thereby connectivity between virtually all end points of the internet, irrespective of the network technologies or terminal equipment used;</p>	<p>(14) “internet access service” means a publicly available electronic communications service that provides connectivity to the internet <b>in accordance with the principle of net neutrality</b>, and thereby connectivity between virtually all end points of the internet, irrespective of the network technologies or terminal equipment used;</p>
<p><b>Comment:</b></p>	

We welcome the addition of Catherine Trautmann. Ensuring that Internet Access Service has to be in accordance with the principle of net neutrality as defined in Recital 45, hence making in binding, is an adequate safeguard.

## Article 2.15

Pilar del Castillo Vera -	Catherine Trautmann ++
<p>(15) “specialised service” means an electronic communications service optimised for specific content, applications or services, or a combination thereof, provided over logically distinct capacity and relying on strict admission control <b>with a view to ensuring enhanced quality</b> from end to end and that is not marketed or usable as a substitute for internet access service;</p>	<p>(15) “specialised service” means an electronic communications service optimised for specific content, applications or services, or a combination thereof, provided over logically distinct capacity and relying on strict admission control from end to end . <b>It is not marketed or usable as a substitute for internet access service; its application layer is not functionally identical to services and applications available over the public internet access service;</b></p>
<p><b>Comment:</b>            The core thing that needs to be avoided is that online services can buy access to end-users by subsidising "specialised services". This would destroy competition and maintain existing (almost entirely foreign) online service monopolies like Google and Facebook.</p> <p>Such anti-competitive behaviour would be permitted by Ms Del Castillo's text, because this fails completely to address the types of service being accessed (it only regulates the access service). Ms Trautmann's text explicitly tries to solve this problem.</p> <p>Bizarrely, the completely unclear "enhanced" wording (ANY enhancement would make a service enhanced) is presented by Ms Del Castillo as meaningful. On the other hand, the much narrower and therefore more meaningful "functionally identical" wording from Ms Trautmann is being portrayed by her as being impossible to implement.</p> <p>It is an essential criterion for specialised services that they require optimised quality, which can only be achieved if met on all points of transit in the network, hence “from end to end”. Ms Del Castillos definition only requires the intent to do so (“with a view to”), which generates considerable uncertainty regarding the intended meaning of the text. It appears very odd to legislate a network issue based on the network provider's assumed intentions.</p> <p>If we are talking about access services and if we are talking about services (such as IPTV)</p>	

that *need* specialised services and if we want to avoid anti-competitive closed alternative “mininternets” we absolutely have to ensure that the services being accessed are not functionally identical to services that do not need specialised access services. Contrary to the comments of Ms Del Castillo, this safeguard can not be achieved with the provision regarding “substitute for internet access service”, because this refers to the access service and not the service being accessed.

We welcome Ms Trautmann's addition of “application layer” which brings the clarification between access and online service.

### Article 23.2

Pilar del Castillo Vera -	Catherine Trautmann ++
<p>Providers of internet access, of electronic communications to the public and providers of content, applications and services shall be free to offer specialised services to end-users. Such services shall only be offered if the network capacity is sufficient to provide them in addition to internet access services and they are not to the material detriment of the availability or quality of internet access services. Providers of internet access to end-users shall not discriminate between <b>such</b> services.</p>	<p>Providers of internet access, of electronic communications to the public and providers of content, applications and services shall be free to offer specialised services to end-users. Such services shall only be offered if the network capacity is sufficient to provide them in addition to internet access services and they are not to the material detriment of the availability or quality of internet access services. Providers of internet access to end-users shall not discriminate between services.</p>
<p><b>Comment:</b>  “Such” restricts the non-discrimination obligation solely and unnecessarily to specialised services. In most cases, providers of internet access have no interest in discriminating their own products. Ms Trautmann's amendment offers a higher safeguard for net neutrality.  This clarity is still missing in Article 23.5, however.</p>	