BEUC The European Consumer Organisation

The Consumer Voice in Europe

Telecoms Single Market – Achieving a Connected Continent

Proposal for a Regulation 2013/0309 (COD)

BEUC Position Paper

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SUMMARY

The ambitious reform of the telecommunications regulatory framework must safeguard the interests and reinforce the rights of consumers as a condition without which the proposed reform will not succeed in this important economic sector. The following are the most important improvements to the framework which should be done:

- A thorough evaluation of the impact the proposed reform will have on **competition in all markets**, with a specific focus on price evolution, consumer welfare and protection.
- **Articles 25 to 30** need to be transformed into **amendments to the Universal Service Directive** with additional provisions converting them to **minimum harmonisation**.
- Provisions related to **pre-contractual and contractual information need to be strengthened**.
- Consumers need access to **consumption control mechanisms by default**, free of charge and they must be able to decide the financial limit for themselves.
- **Contract termination penalties should not be used**, save for very limited exceptions. Consumers need to be able to easily switch to another provider if they are dissatisfied.
- If a provider **unilaterally changes the terms and conditions** of a contract or fails to deliver the quality of service to which they are bound, consumers are entitled to leave the contract at no cost whatsoever.
- When a consumer decides to switch, the **receiving provider must lead the switching process**. Regulatory guidelines establishing the roles and responsibilities of each provider are necessary.
- Transferring providers must help consumers **unlock equipment** and receiving providers must allow consumers to **use the equipment of their choice**.
- The **leftover minutes, SMS or data** which consumers do not use as part of their bundle must **be transferred to the next billing period** and this should be possible for at least 3 billing periods.
- Providers shall give consumers **advice on what is the best subscription for them** at least once per year, including on newly available packages and prices.
- Consumers need to be able to use i**nternational services within the EU at a level equivalent to domestic services**. National markets need to be closely monitored to avoid unjustified price increases.
- By **2015, roaming fees should disappear and consumers be able to use their domestic plans while travelling**. In the meantime, roaming caps shall continue to decrease.
- The **right to access an open internet free of discrimination needs to be strengthened and safeguarded.** Solid safeguards should be in place to protect Internet Access Services from undue impact of specialised services.

The **internet ecosystem in Europe must be protected** at all levels; for the end-user but also the transit layer of the internet. The right incentives must be in place for investments to improve the infrastructure related to the provision of Internet Access Services.

1. Introduction

BEUC welcomes the European Commission's intention to reform the telecommunications regulatory framework by adopting forward-looking measures which lay the grounds to create a Single Market for electronic communications services. Yet we must underline the importance of understanding and protecting the interests of consumers as conditions without which the proposed regulatory reform of this important economic sector will not succeed.

Telecom markets remain an important sector of concern for all European consumers, as general satisfaction with telecom services remains low. In an ever more interconnected world, consumers spend increasing amounts of time and money on the internet, connecting with others and leading digital lives. Much remains to be done in order to establish a real Single Market that consumers can enjoy and tackle the most important consumer issues on which these markets still fail to deliver, namely on guaranteeing a high level of consumer protection and securing a right to access the open internet.

The proposed Regulation[1] modifies the current legislative framework and creates new regulatory mechanisms on top. Moreover, it harmonises basic consumer rights related to issues such as contractual information, contract termination or switching, while it aims to safeguard consumers' ability to access an open internet and creates new incentives which should lead the market towards the end of roaming.

While many of the declared objectives in this proposed Regulation go in the right direction, others are causes of serious concern. This position paper analyses the proposed Regulation from a consumer perspective and highlights the shortfalls, improvements and additions which should be undertaken in order to make it a success for all European consumers.

[1] 2013/0309 (COD) - Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC, and 2002/22/EC, and Regulations (EC) No 1211/2009 and (EU) No 531/2012.

2. Choice of instrument and entry into force

The nature of the instrument is very important because a Regulation is directly applicable in all Member States to citizens and organisations and entails maximum harmonisation of its provisions. While establishing a common set of rules ensures predictability and could help foster consumer trust, fully harmonising certain consumer rights could lead in time to their fossilisation. In particular in the fast-evolving telecoms sector, Member States and National Regulatory Authorities (NRAs) must always have the capacity to react swiftly when new abuses arise.

Many of the consumer protection issues which are part of the proposed Regulation are regulated within the Universal Service Directive (USD)[2], a legal instrument already transposed to national law in Member States. Issues such as contract information, contract termination, consumption control, switching and portability should only be amended as part of the existing framework, not arbitrarily removed from the USD and fully harmonised within a Regulation. Articles 25 to 30 of the proposed Regulation must be transformed into amendments to the USD and, importantly, switched to minimum harmonisation.

Other issues which are not part of the existing legal framework and where establishing full harmonisation is justified should remain as part of the Regulation itself. More details can be found in each of the sections.

Regarding the entry into force of the proposed Regulation, a special derogatory period has been foreseen whereby only Chapter IV on harmonised end-user rights would be applicable as of 1 July 2016, whereas the rest of the Regulation would be applicable as of 1 July 2014.

Understandably, Member States need a certain amount of time to implement the changes the Regulation will entail on their national legislative framework. And yet it is unacceptable that such a special derogatory period has been foreseen for only the consumer aspects of the proposal. Therefore, article 40, paragraph 2[3] needs to be amended so as to eliminate this unjustified derogation.

BEUC Demands

- Articles 25 to 30 need to be transformed into amendments to the Universal Service Directive.
- Articles 25 to 30 need to carry additional provisions converting them to a minimum harmonisation approach.
- Article 40, paragraph 2 must be amended so as not to exclude the consumer protection provisions from the entry into force of the Regulation.

[2] Universal Services and Users' Rights Directive 2002/22/EC, as amended by Directive 2009/136
[3] "However, Articles 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 shall apply from 1 July 2016" must be deleted.

3. Competition must continue to be the guiding principle

To a large extent, the current regulatory framework for telecommunications is based on pro-competitive principles such as infrastructure-based competition and technology neutrality. These principles have allowed a significant degree of competition to develop in Europe, both in fixed and mobile markets alike.

European consumers need vibrant, competitive telecom markets, where telecom providers of all sizes and natures continuously compete against each other to earn consumers' trust and satisfaction with high quality, affordable services. Any modification to the regulatory framework should continue to have these objectives as guiding principles. Therefore, the fact that the proposed Regulation departs from these objectives is a matter of utmost concern.

Many of the new provisions and mechanisms contained in the proposed Regulation such as those related to the Single EU Authorisation Regime, coordination of spectrum policies, access to infrastructure, competition at a wholesale level or roaming - to name but a few - will have a significant impact on the degree of competition in markets across Europe and therefore on the amount and quality of choice consumers will have.[4]

Many market players should create competitive pressure and real choice

In past years, the existence of several alternative providers in both fixed and mobile markets has created significant downward pressure on prices. Incumbent operators have had to reduce their market shares and adapt to new competitive realities, which in many cases has delivered significant benefits to consumers.[5]

Although it is often alleged that European markets are too fragmented with too many operators present, the fact remains that, taking into account overall market share statistics, the four main European mobile operators hold over 60% of the market. The top two players have a combined subscriber base of 221 million consumers, which is even more than their US counterparts.[6] This data suggests that the number and size of alternative operators is not as significant as it should be in order to create increasing competitive pressure on incumbent operators and, as a result, more innovation and consumer choice.

Therefore, further **reducing the number of market players and concentrating power in the hands of the bigger players would be unacceptable to consumers** as it would create a significant risk of halting or even inverting the general decrease in prices and increase in service quality and consumer choice.

Furthermore, while large telecommunications companies denounce the sector as over-regulated, new entrants who are challenging argue that they need a significant degree of manoeuvrability to be able to develop sustainable business models and invest in new technologies and services. **It is in every consumer's interest that a regulatory framework which fosters competition at all levels is constructed allowing** new market entrants to challenge incumbent operators and

[4] BEREC BoR (13) 142 – BEREC views on the proposed Regulation.
[5] European Commission Impact Assessment accompanying the proposed Regulation 2013/0309 (COD).
[6] BEREC BoR (13) 142 – BEREC views on the proposed Regulation.

bring the sector to a virtuous cycle of innovation, downward pressure on prices and increased consumer choice.[7]

The degree of competition between telecoms providers affects other markets too

The degree of competition in telecommunications markets can significantly impact upon media and content pluralism in Europe by potentially reducing consumers' ability to access the content and services of their choice, from any platform available on the open internet or through specialised services. If market power is further concentrated on large operators, some of which are commercially linked to media conglomerates or large content providers, it is likely that specific media outlets or content platforms will be commercially prioritised and their competitors discriminated against.

Considering all these potential challenges, co-legislators must closely evaluate the impact any modification to the regulatory framework will have on competition in all markets. This should have a specific focus on the impact on price evolution, consumer welfare, protection and, in particular, freedom of expression and the right to access content and services.

[7] For more information on BEUC's views on cost methodologies and non-discrimination access please see X/2011/121 – http://bit.ly/IFcDMI

4. Guaranteeing a high level of protection for all consumers (Articles 25–30)

The proposed Regulation aims to fully harmonise end-user rights on aspects related to transparency of information, contractual information, contract termination, consumption control, switching and portability.

To achieve this full harmonisation, the proposed Regulation amends the Universal Service Directive by deleting articles 20 on contracts, 21 on transparency and publication of information, 22 on Quality of Service and 30 on facilitating the change of provider[8]. The deletion of these articles has an extremely important impact on the current legal framework regulating the relationship between consumers and providers because they are the safeguards already implemented by Member States into national legislation.

Articles 25-30 have been inserted into this proposed Regulation without any proper analysis of their impact on national legislation and related case law. The consumer issues covered by these articles (especially on pre-contractual, contractual information and provisions to facilitate switching) are of such crucial importance to consumers that Member States must always be allowed to go further than the parameters of this proposal.

It would be totally unacceptable if some consumers were to lose certain acquired rights and safeguards due to this legislative reform. Important modifications to these articles have to be made so that they represent an improvement for each and every European consumer. Furthermore, as highlighted above, the provisions on these important consumer issues should adopt a minimum harmonisation approach and be amendments to the equivalent articles of the Universal Service Directive (USD).

All across Europe, multiple barriers to switching continue to exist. Even if a significant degree of competition has developed in the market, if there are barriers to switching, competition is unable to deliver the consumer benefits it is expected to deliver. Beyond ensuring a high level of consumer protection, the concerns and suggestions outlined below aim to reduce the number and impact of the most important switching barriers that still exist in these markets.

Article 22 - Alternative Dispute Resolution

Out-of-court procedures set up through article 34 of USD should also apply to contract disputes between consumers and providers established in different Member States.

Furthermore, providers should be obliged to participate in the ADR scheme.

In cross-border cases, the risk of poor collaboration or participation in the process are even bigger than in national cases, therefore further measures are necessary to ensure this is not the case.

[8] Article 36, paragraph 1, proposed Regulation 2013/0309 (COD).

Article 25 - Transparency and publication of information

The proposed article 25 on pre-contractual information includes important improvements to its equivalent in the USD, yet some equally important misguided elements have been added and should be removed.

The general exclusion **"save for offers which are individually negotiated"** creates an unclear exception and should be deleted. Consumers are not in a position to negotiate individually with operators and, for other types of consumers such as small and medium enterprises, the publication of this information by operators does not preclude later individual negotiation of the contract.

The publication of this information needs to be **standardised** so that consumers can compare on a like-to-like basis. It should be the task for BEREC and the NRAs to come up with a model document all operators can use.

This information should include the **total costs** the consumer is likely to incur over the duration of the contract. This allows consumers to compare offers more easily when canvassing the market in search of the right product for their needs.

It is important to ensure that operators publish all **relevant information related to Quality of Service (QoS)**, in particular for services including an Internet Access Service (IAS). Yet specifying the measuring methodology for speeds, QoS parameters and other elements should not be undertaken by implementing acts, but rather be a task for BEREC in coordination with all NRAs.

The following considerations are important to ensure QoS information is relevant to and protects consumers:

- **Information on data speeds needs to be as local as possible**, not on a regional or national scale.
- Providers must disclose **both the actual speed as well as a minimum speed** to which operators are committed at all times. These speeds shall have legal implications to determine cases where significant discrepancies between the advertised and actual speeds consumers enjoy can trigger their right to terminate the contract, as highlighted further below.
- Consumers need to understand how **data caps and the simultaneous use of specialised services** may impact the use of IAS. They need to be made aware of which services or applications are included or excluded from the cap, including for specialised services.
- Operators must clearly disclose which **network management techniques** they apply, whether it is done for a legitimate purpose such as to avoid temporary network congestion or for other purposes (which should not take place anyway, if not allowed within the scope of Article 23, paragraph 5, as outlined further below). They shall also tell consumers what these techniques mean in practice.
- The above information shall be disclosed to consumers in terms of **Quality of Experience**, using everyday concepts consumers can relate to.

It is of utmost importance that **comparison tools** are available and accessible in every market. In this sense, the concept of a "reasonable price" remains unclear and should not be allowed. Voluntary certification schemes play an important role in ensuring that PCTs comply with the general principles of independence, accuracy, transparency, up-to-dateness, clarity, user-friendliness and so on. Providers of telecom services must be obliged to provide the information necessary for these tools to run comparisons for consumers.[9]

The obligation for operators to provide **Public Interest Information** as mandated by public authorities, already included in the USD and copied into the proposed Regulation, includes a list of example categories of supposedly unlawful activities. While it is legitimate for public authorities to have operators inform citizens about common unlawful practices and prevent the dissemination of harmful content, a specific list of examples shall not be included in this sector specific legislation as it creates a bias towards which kind of uses are to be considered unlawful.

Article 26 – Contractual information requirements

Where this article applies to the same issues as those highlighted above related to Article 25, the same demands and considerations apply. Therefore, this section only deals with those outstanding issues only related to Article 26.

Consumers must be provided with a wide choice of **payment methods which do not carry any surcharge**. NRAs should analyse the current practices used by different telecom providers and assess if the current system and the choice of payment methods benefits consumers. In addition, EU legislators should altogether ban surcharges on any payment method and introduce a guarantee for unconditional and immediate refund rights for direct debits.[10]

The contractual information related to **minimum usage or duration obligations, or to charges related to switching and early termination** of contracts must comply with the general rules on contract termination as highlighted below for article 28.

If the **contracted service quality levels are not met** the contract needs to make an explicit reference to the statutory rights of the end-user, including the right to terminate the contract free of charge. More details are explained below as part of our comments on article 28.

Given the length and complexity of contracts, consumers must also receive a **summary with the most important contract conditions and details of the product**. These summaries shall be provided in a format to be standardised by BEREC and NRAs.

Contracts should never include **Public Interest Information** as it could theoretically lead to the assumption the consumer is obliged to carry out certain actions or omissions as described in the disclosed information. As highlighted above, if this information is to be disclosed, it can only be part of the pre-contractual information consumers receive.

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[9] For more details on BEUC's views about comparison tools, please see X/2012/065 – http://bit.ly/1d7YbWy

[10] For more details on our position on the revision of the Payment Services Directive, see X/2013/079 – http://bit.ly/ICfBRS

Article 27 – Control of consumption

The enhanced **provisions on control of consumption** are welcome, but need to be transformed into an **opt-out mechanism**. Consumers should be entitled to have a consumption control mechanism at a level of their choice turned on by default. This in turn means that information on accumulated consumption should be mandatory and free of charge, unless consumers decide not to receive it. If the consumer does not establish the financial limit there should be a general rule, like for roaming services, where it is 50 euro. In cases of bundles with a certain number of minutes, SMS and data included, the limit could be established by a certain consumption percentage with respect to the monthly fee e.g. 150%.

Notifications to consumers when a certain percentage of the financial limit has been reached are important, not only for telephony services, but also for **data services**. In the same way that consumers must be able to receive calls, SMS, access 'free-phone' numbers and emergency services free of charge beyond the limit and until the end of the billing period, they should be able to continue having access to the internet with a reduced capacity. More than ever, consumers need access to the internet to access information or manage essential services and therefore being disconnected from the internet is increasingly problematic. These provisions shall also be made applicable to pre-paid services.

For **services with special or premium pricing**, information needs to be provided immediately prior to connecting the call, as the USD foresaw. The possibility of allowing NRAs to waive this obligation by establishing prior derogations has not been sufficiently justified and can be contrary to current consumer protection rules.

Consumers should always get **itemised bills by default**, free of charge and should have the right to choose whether to receive the bill in paper or electronic format without additional cost.

Article 28 – Contract termination

Despite the fact that the USD already called on operators to offer consumers **12 month contracts on top of the default 24-month option**, there are many Member States where this is still not properly in place and unacceptably long contracts exist. **Some Member States have 12 or 6-month contracts as the norm**, while others have implemented the USD in a way in which no minimum duration period is required and consumers can switch after one day. These Member States tend to have more fluid markets with higher switching rates and ever-decreasing prices. This legislative reform needs to ensure the situation is improved, not worsened, in every single Member State.

Termination penalties are inserted into contracts with the explicit objective of deterring consumers from switching before the contract comes to an end. While these penalties may give operators some predictability and allow them to offer special promotions by temporarily lowering prices or by providing subsidised equipment, in order to allow consumers to truly vote with their feet they need to be limited as much as possible and never be default practice.

Termination penalties should therefore **only be used when particular advantages for the consumer are present**, such as when a contract comes with

subsidised equipment. They **shall only apply within the first months of the contract, and up to six as a maximum**. No termination penalties should be possible beyond the first six months.

In the particular case of **subsidised equipment**, companies normally attach **compensation plans** to recover the value of equipment if the consumer terminates the contract before it has been fully paid. These compensation plans need to be based on customary depreciation methods and proportionate to the duration of the contract and the elapsed time, while reflecting the real market value of the equipment. Beyond the first six months of the contract only these compensations, and hence no penalties, should be allowed to exist. **National Regulatory Authorities shall clarify and standardise the methodologies used to calculate these compensations.**

Furthermore, the **notification period** that a consumer has to respect to terminate a contract should be set at a maximum (and not minimum) of one month in the European framework in order to allow those consumers with the acquired right of being able to terminate within one day to continue to be able to do so.

If a **contract is tacitly extended**, consumers shall be allowed to terminate at any later time while respecting the notice period, without cost and including the residual value of equipment that should already have been recovered. At this point all equipment should already be unlocked and if not companies must provide the necessary information for free.

Regarding consumers' right to terminate the contract in cases of **unilateral changes to the terms and conditions**, it is unacceptable that an exception is inserted in case "the changes are exclusively to the benefit of the end-user". This exception is unclear and allows operators to determine what they consider to be to the benefit of consumers and therefore should not be allowed.

In cases of **unilateral changes to the terms and conditions in essential elements of the contract (such as price, duration or service quality)** the consumer must be able to terminate the contract without any cost whatsoever, including any due compensation. In these cases, the consumer agreed to a product or offer with certain characteristics which no longer exist. If the changes are truly to the benefit of consumers, it is unlikely they will want to refuse them.

In cases where there are **discrepancies between the actual performance regarding quality parameters, including speed, and the performance to which the operator is bound**, this should amount to non-conformity of performance and entitle consumers to exercise their rights. It must be clearly specified that consumers are entitled to terminate the contract without cost, including any due compensation. The legislation foresees that the discrepancies are to be "significant and non-temporary". These terms must be clearly defined so as to facilitate the enforcement of this provision.

For the cases where **restarting the initial contract** is to be a possibility, this shall only be admissible if there is the explicit agreement of the consumer after having been duly informed that the contract would be renewed under the new conditions or new services attached.
The general rule that providers shall not apply conditions and procedures for contract termination which raise obstacles to or disincentives against switching is

already covered by the **Unfair Commercial Practices Directive.** This article should hence make explicit reference to that horizontal consumer protection instrument.

Article 29 – Bundled offers

The provision to expand the rights related to contract termination and switching to other services that may be part of a bundled contract is welcome. Offering consumers a bundled offer with several services for which different rights apply is confusing and only fosters consumer mistrust.

Consumers should be allowed to cancel part of a bundled contract without any penalty. In the same way that contract terminations should generally not carry penalties, this principle must also apply to any other contract which is part of a bundle.

Article 30 – Switching and portability of numbers

The initiative to install the **general principle that the receiving provider shall lead the switching process** is welcome. In markets where consumers have to deal with both the receiving and the transferring providers in order for the switch to happen, all sorts of abuses and barriers to the switch appear. Therefore, consumers should only have to deal with their new provider of choice and the entire technical and administrative process should take place smoothly between the operators without requiring any further action from the consumer.

In some markets, **when the switch fails, the transferring provider is obliged to take up the service again within one day**, therefore ensuring that consumers are not cut off. It is important to ensure that this rule is present in all Member States to protect consumers during switching processes.

When switching, **consumers shall never face a cost in order to be able to port their number to a new provider**. Furthermore, if they are ever switched against their will, the legislation should explicitly foresee that the contract with the new provider is void.

BEREC and National Regulatory Authorities must be tasked with developing guidelines on the detailed roles and responsibilities of both the transferring and the receiving provider during the process, as well as the rights and protections to which consumers are entitled. Where consumers have an email account with the transferring provider, they should have the right to have their **emails forwarded for 24 months for free**. Beyond 24 months, NRAs should issue guidance as to how much operators can charge, based on proportionality criteria and always reflecting the real costs incurred by this service.

These guidelines shall also establish the process through which consumers are able to **return rented equipment to the transferring provider**, at no cost.

The missing consumer protection issues in articles 25 to 30

In addition to the provisions that have been included in the proposed Regulation and which should be modified as specified above, the following consumer protection issues have not been dealt with and therefore should be tackled by legislators:

1. **Interoperability of equipment** – consumers shall always have the right, where technically possible, to use the equipment of their choice. For example, in broadband services, it is important that routers, modems, TV decoders and other related equipment are not locked or are easily unlocked at no cost to the consumer so they can re-use the equipment with a new provider. Providers shall therefore be obliged to offer the necessary technical information to consumers, free of charge, so they can reconfigure the equipment to the new provider. This should help increase switching as current restrictions on equipment usage are a clear barrier to switching. It should also help the sector be more sustainable by reducing the amount of unnecessary equipment which circulates in the market.

2. **Unused credit to be accumulated -** the leftover minutes, SMS or data that consumers do not use as part of their bundle must be transferred to the next billing period, and this should happen for at least 3 months in a row if the consumer does not use up the allotted credit. Consumers lose significant amounts of money by buying bundles they do not need. On certain occasions, for example when on holiday abroad, they may not use any credit at all yet still pay for it.

3. **Consumers to get best-offer advice at least once per year** - Operators shall give consumers advice on what is the best subscription for them at least once per year, including within the new packages and prices made available after the consumer becomes a customer, so as to reduce the amount of consumers remaining on old and expensive subscriptions. Operators should also notify consumers via SMS or telephone about the fact this advice is available.

4. **The information transparency and pre-contractual information articles must be linked to the Consumer Rights Directive** (CRD). It must be clarified that the list included in article 25 is without prejudice to the information and the formal requirements of CRD, in particular in off-premises/distance contracts.

5. The **right of withdrawal has to be added to pre-contractual information**. Consumers have the right to withdraw from the contract within 14 days of conclusion at distance or off-premises, therefore this article should make a specific reference to CRD.

6. **The use of Deep Packet Inspection (DPI) should be regulated.** The argument put forward by operators that DPI technology is necessary to prevent network congestion and ensure equitable network distribution to all their customers fails to respond to net neutrality concerns. Operators should only be allowed to look into network and transport layers gathering the necessary information in order to efficiently manage networks. Any deeper inspection should be forbidden unless specifically authorised due to legal or security requirements and should only occur exceptionally.

   In addition to net neutrality, the use of DPI techniques raise serious privacy concerns because they can involve the inspection of information sent from one end-user to another. DPI technology has the capability to look into the content of messages sent over the internet, thereby enabling third parties to draw inferences about users' personal lives, interests, purchasing habits and other activities. This gives providers and other organisations widespread access to vast amounts of personal information sent over the internet. The European Data

Protection Supervisor has also raised a number of general concerns[11] as well as views on the concrete proposal[12].

A provision must therefore be inserted regulating the use of DPI techniques, and ensuring that they are in full compliance with the net neutrality related provisions as well as with data protection legislation.

7. **Broadband should be included in the scope of the Universal Service Obligation.** Therefore Chapter II and any other related provisions of the Universal Service Directive should be modified accordingly.

[11] 'Opinion of the European Data Protection Supervisor on net neutrality, traffic management and the protection of privacy and personal data', October 2011.
[12] 'Opinion of the European Data Protection Supervisor on the Proposal for a Regulation (…)', November 2013.

5. Constructing a true Single Market for consumers

The telecoms regulatory framework remains based on distinct national markets, a fact which creates tangible obstacles to the cross-border provision and consumption of services. These obstacles represent barriers to a real Single Market for EU consumers. For example, a telephone call between cities only a few kilometres away but in two different Member States is still up to five times more expensive than a telephone call between two cities hundreds of kilometres apart in the same Member State.[13]

From a consumer perspective, services such as phone calls, SMS and access to the internet should be usable seamlessly across the EU, without any geographical discrimination. There are two sides to this coin: when the consumer is home and wants to connect with someone in a different Member State and when the consumer is travelling within the EU (roaming).

Article 21 - elimination of restrictions and discrimination

Seeking to abolish any type of discriminatory practice, whether on access to services or prices for cross-border services, is very important for the creation of a true Single Market for consumers. The **prohibition of price differentiation based on the geographical origin and destination of a service** is an adequate approach, and telecom providers should therefore never be allowed to have access or pricing policies based on these elements, unless unavoidable and significant additional costs need to be covered to offer the service. In these cases, the proposal foresees a wide exception where "objectively justified" additional costs are present. It remains unclear what criteria are to be used to determine what is understood as "objectively justified" costs. Therefore this needs to be precisely clarified and defined.

Some examples of criteria to be used are included in Recital 44, namely if the operator carries additional costs and the possibility to add a "reasonable" related margin. **The wide criteria "additional costs" is inadequate** because it opens the door to operators justifying discriminatory pricing on any unrelated, avoidable cost they may carry. Where wholesale costs do actually create a real barrier in implementing these provisions, the surcharge on the price of the services should at the very least be cost reflective. The term "reasonable" related margin is unacceptably vague too.

Other criteria listed in the recital to determine when additional costs are acceptable include the differences in related price elasticity, and the easy availability to all end users of alternative prices from providers that offer cross-border services at little or no extra charge, or of information society services with comparable functionalities.

These last two criteria are equally inadequate and unacceptable. Allowing operators to be exempt from the non-discrimination rules just because there are market competitors offering cross-border service, or alternative, equivalent online services is in effect a **vast exemption for most if not all operators, in most if not all markets**. The reality is that there are indeed IP-based services running on the 'best efforts' internet, such as Voice over IP services or instant messaging platforms which do not discriminate across borders and offer voice and messaging services at

[13] European Commission Impact Assessment, accompanying the proposed Regulation 2013/0309 (COD).

very competitive prices, if not for free. Not every European consumer has access to a data connection and a device on which to use these services and platforms and, even if all did, this would still mean they need two different providers, possibly two different devices and two different legal frameworks depending on whether the service is domestic or cross-border. This model obviously runs counter to a Single Market and increases complexity for consumers.

The proposed Regulation must include **more legal clarity as to what should be the general principles to determine exemptions to the non-discrimination rule** and then mandate BEREC and NRAs to develop more detailed guidelines. Furthermore, the Regulation should call on NRAs to closely monitor on a case-by-case basis that service providers are respecting the criteria when their prices are discriminatory.

Lastly, one of the amendments to the Universal Service Directive[14] is to delete the first sentence in article 1, paragraph 3: "This Directive neither mandates nor prohibits conditions, imposed by providers of publicly available electronic communications and services, limiting end-users' access to, and/or use of, services and applications, where allowed under national law and in conformity with Community law, but lays down an obligation to provide information regarding such conditions". The deletion of this provision is coherent only if the above rules forbidding discriminatory practices are strengthened.

Every service at the price of a domestic service

The European Commission has been ambitious and forward-looking in tackling the issue of cross-border services within the EU, where pricing policies today constitute a major artificial barrier to the building of a Single Market. The proposed Regulation stipulates that prices for fixed cross-border services should not be higher than domestic services and that prices for mobile cross-border services should not be higher than the regulated euro-tariffs of the Roaming Regulations[15].

The **solution for mobile markets is unacceptable**. Firstly, prices for mobile cross-border services may already be lower than roaming prices for many operators. Therefore this not only does not achieve any downward pressure on those cases, but rather comes at the risk of legitimising price increases. Secondly, the reasoning behind the abolition of price differentiation based on territoriality is based on the logic that a Single Market should have no technological or economic barriers, yet the proposed Regulation is setting the bar on an instrument (roaming euro-tariffs) that is in itself also contrary to the idea of a Single Market.

Therefore, this article should include a **clear, well-defined prohibition on pricing policies which discriminate based on the cross-border nature of services, lowering them to domestic prices for all types of services**, fixed and mobile alike. Well-defined and clearly stipulated exceptions where significant additional costs are incurred by operators and which NRAs determine case by case following pre-defined criteria, as above, can be envisaged.

[14] Proposed Regulation, Article 36, paragraph 1.
[15] Regulation (EU) No 531/2012 of the European Parliament and the Council on roaming on public mobile communications within the Union.

Operators often denounce the amount of revenue they theoretically will stop receiving if they cannot overprice cross-border services. Yet it is of equal importance to understand that **the disappearance of these expensive charges will increase the use of cross-border telecom services, generate more demand and therefore more revenue for operators**.

No Single Market in exchange for expensive domestic services

The existence of a significant degree of competition in markets across Europe has allowed for the presence of downward pressure on prices over the past couple of years. It is very important to ensure the elimination of artificial geographical barriers do not entail unjustified and significant rises in domestic prices as a consequence. **Any potential *waterbed effect*[16] must be analysed and kept under control as much as possible**.

It is a major concern that the proposed Regulation does not include any provision at all to this effect. The proposal should **mandate that each NRA is to closely monitor the impact that the new provisions of this Regulation will have on national markets**, concretely in terms of prices and any potential abusive practices. These reports should be done at least once per year, at the time of the Regulation's adoption and BEREC should produce an overview of the entire EU on the basis of the reports. Where significant *waterbed effects* are detected, concrete actions must be envisaged to counteract them and ensure that downward price pressure continues to be the norm.

Article 37 - Roaming IV

A real Single Market will not see the light of day as long as roaming charges continue to exist. In order for consumers to reap the benefits of a fully integrated telecoms Single Market, they need to not only be able to use their services at home without caring about borders, but importantly they want and need to be able to continue using their services no matter where they are within the Union.

For over ten years, BEUC has been calling on European decision makers to continuously lower roaming caps and adopt regulation which effectively leads to the abolition of roaming charges as early as possible. Time has now run out. The Digital Agenda for Europe already states that "the difference between roaming and national tariffs should approach zero by 2015"[17], while the **European Parliament has gone a step further and clearly demanded a roaming-free Europe by 2015**[18].

[16] A "waterbed effect" occurs in markets when prices are pushed down, for example through regulation, on only one side of the market, resulting in a re-balancing of prices on the other side, just as a waterbed would react if you were to push down on one side of it. In this case, operators would react to the decrease in revenue coming from cross-border services by increasing their domestic prices.
[17] Digital Agenda for Europe – http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0245R%2801%29:EN:NOT
[18] European Parliament Resolution on the Digital Agenda for Growth, Mobility and Employment - http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-377

An opportunity to reduce roaming caps

While the objective of this reform should be to put an end to roaming altogether, reducing caps in the meantime is very important too. The Roaming III Regulation adopted in 2012 took a step in the right direction by lowering caps for calls and text messages, but failed to sufficiently lower others like for data, which remain unacceptably high.

Unfortunately, the proposed Regulation does very little to improve this situation. Reducing the price of roaming for incoming calls to zero is a welcome initiative, but in itself insufficient. The co-legislators must ensure that, given the fact that the Roaming III Regulation is being modified, both **wholesale and retail caps are significantly reduced for all services**.

Retail roaming caps shall be set at a maximum of double the level of the equivalent wholesale caps as of July 2014. According to Roaming III, wholesale caps for calls, SMS and data will be lowered to: 5 cents, 2 cents and 5 cents respectively. Therefore, retail caps should also be lowered to the following values, if not lower: 10 cents, 5 cents and 10 cents respectively, as requested in 2012 during the Roaming III negotiations[19].

Last but not least, safeguard provisions to avoid bill shocks and control consumption should also include roaming outside the EU and be applicable to all services - not only for data, but also calls and SMS. Furthermore, the data roaming safeguard limit should be applicable for all tariffs and packages; post-paid as well as pre-paid.

Market reforms which deliver the end of roaming… or not

In the Roaming III Regulation structural market reforms intended to deliver more competition in the roaming market and hopefully push prices down are already foreseen. These measures include Article 3 of the Roaming III Regulation which ensures that Mobile Virtual Network Operators and resellers get access to networks in order to offer roaming-only packages, and Article 4 of the same Regulation which mandates roaming providers to decouple their services so that the sale of roaming packages is a new market in itself, and consumers can become customers of two different companies for their domestic and roaming services. Despite the fact that the impact of these new measures has not been evaluated, it is clear that market solutions alone will not deliver the end of roaming.

The proposed Regulation intends to create market incentives that should theoretically push operators to come to agreements amongst themselves and offer Rome Like at Home (RLAH) packages for consumers. Following a RLAH approach makes sense from a consumer perspective, but unfortunately the **supposed incentive mechanism on collective roaming agreements is entirely unsatisfactory for the following reasons**:

[19] For more detailed information on BEUC's position on Roaming III, please see X/2011/108 – http://bit.ly/IPn2ov

1. **The creation of collective roaming agreements raises competition questions** as they could lead to harmful consequences, for example alliances always made of the same four or five larger groups and smaller operators are *de facto* excluded from membership.

2. **The proposed measures could further stifle competition** because they provide no incentives for larger players to cooperate with smaller ones, who are the ones who generally stimulate competition. In addition, the proposed mechanism offers a general exemption to the decoupling obligation from Roaming III, which will simply be a clear benefit to many operators in exchange for nothing, or very little.

3. **The rules that determine what is to be considered a collective roaming agreement raise several concerns**. The fact that collective agreements are only *de facto* to cover 21 Member States and 85% of the EU's population could result in the creation of a *2-speed roaming Europe.* The consumers who live in Member States where the collective agreement is not present would not benefit from RLAH offers. Some consumers will get RLAH offers but only applicable across a subset of EU countries. **This patchwork solution will exacerbate confusion and consumer mistrust.**

4. Allowing the possibility to insert a **limitation of 'reasonable use'** will not necessarily ensure consumers can "confidently replicate their domestic consumption pattern" while travelling within the EU. Ideally, consumers should be able to use their mobile devices while roaming as if they were in their home Member State, with the same conditions and service quality levels.

5. The proposal includes a **right for consumers to opt out from the collective roaming agreement's benefits**, thereby remaining a 'normal' roaming customer "in return for other advantages". While this provision aims to guarantee consumers have the choice to explore which option is better suited to their needs, it needs to be made much clearer how service providers shall offer this to consumers. It could be the case where service providers heavily market their *off-agreement* services and hide their *on-agreement* ones – or vice versa, to the detriment of consumers. Further, criteria that help identify what is meant by "other advantages" would be necessary and should be closely monitored and enforced by NRAs.

Constructing a more ambitious path towards the end of roaming

Given the **significant pitfalls of the proposed mechanism** to incentivise the market to go towards RLAH offerings, **BEUC proposes a different, more ambitious regulatory approach** which should, together with a reduction in regulated roaming tariffs, lead to the **abolition of roaming by 2015**[20].

[20] Considering the current co-legislative process and the fact that the proposed Regulation is highly unlikely to be adopted by July 2014 as was the original intention, this date may have to be modified to be in accordance with the legislative timeline.

In order for the concept of roaming to fully disappear in theory and in practice, **Roam Like at Home must be the reality of all roaming offers of all operators across the EU**. Consumers should therefore be able to replicate their domestic consumption while abroad, enjoying the same package, exactly as if they were home.

Where there are unavoidable and significant additional operating costs for providers offering roaming services, some limitation to the use of mobile services while roaming may be inserted and clearly disclosed to consumers according to "reasonable use criteria". These criteria shall be developed by BEREC in coordination with all NRAs, must always be cost-reflective and strictly linked to the proven existence of these costs. In the absence of such additional costs, no limitation to the use of roaming services should exist other than what is already part of the domestic package in that same contract.

All operators, large and small, shall be bound by this mechanism, and in order to foster more competition in the roaming market, decoupling obligations should be maintained and no exemptions granted. A market where RLAH is the rule, where operators are decoupled and therefore can compete against each other on the provision of cross-border services, should deliver more benefits to consumers. If by 2016, an analysis of the impact of the decoupling mechanism shows that the desired effects have not been achieved, reform of this particular mechanism only could be envisaged.

In the period between the adoption of the proposed Regulation and July 2015[21] when roaming charges should be abolished with the mandatory introduction of RLAH plans, both wholesale and retail caps should be further reduced to the levels indicated in the previous section.

Last but certainly not least, the adoption of a general RLAH rule should not entail an increase in domestic prices. As highlighted above, it must be a task for NRAs to closely monitor any potential *waterbed effect* the abolition of roaming might create. Operators often denounce the amount of revenue they will theoretically stop receiving with the end of roaming. Yet it is of equal importance to understand that **the disappearance of roaming will increase the use of telecom services abroad, generate more demand and therefore more revenue for operators**.

Article 37 of the proposed Regulation must therefore be modified to adopt the mechanism explained above instead of the suggested industry-driven collective roaming agreements.

[21] Considering the current co-legislative process and the fact that the proposed Regulation is highly unlikely to be adopted by July 2014 as was the original intention, this date may have to be modified to be in accordance with the legislative timeline.

6. Safeguarding consumer's right to access an open internet

Protecting a fundamental pillar of the internet

Net neutrality is one of the fundamental principles of the internet and has allowed it to significantly enhance citizens' participation in society, access to knowledge and diversity, while promoting innovation, economic growth and democratic participation. Net neutrality is a fundamental pillar and has defined the internet as we know it, offering European consumers unparalleled opportunities to access create and share content. Protecting the right to access the open internet is protecting the internet itself, as the only way to ensure it remains open and neutral.

From the consumer perspective, net neutrality is the principle that all electronic communication passing an internet access service is treated equally, independent of content, application, service, device, source or target.

With internet access services, consumers are entitled to:

1. A connection to the internet of the speed and service qualities advertised to them.
2. A connection to the internet which 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 which do not harm the network;
    d. Use any communication method to reach any destination from any point on the internet without discrimination;
3. A connection to the internet which is free from technical and economic discriminations as to the type of application, service or content.
4. Competition between network, application, service and content providers.
5. Know which network and traffic management practices telecom providers deploy and how they impact the normal usage of their connection.

Net neutrality is being violated across Europe

Operators have repeatedly and are increasingly violating this fundamental principle of the internet by engaging in restrictive and discriminatory practices. The sector is heading in the wrong direction: towards a fragmented online environment, where innovators no longer have equal access but depend on the underlying commercial agreements and practices on the infrastructure layer, where many end-users can no longer decide for themselves what they want to do through their internet access services (IAS).

There is growing, overwhelming evidence that European operators and ISPs, particularly in the mobile sector, are using technical measures for their own commercial interests, tampering with citizens' ability to access the internet. The evidence collected by the Body of European Regulators for Electronic Communications[22] and through citizen platforms such as Glasnost[23] and

[22] https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Traffic%20Management%20Investigation%20BEREC_2.pdf
[23] Glastnost test results visualized, net neutrality map – www.netneutralitymap.org

RespectMyNet[24] provide a crystal clear picture of the numerous, harmful neutrality violations already taking place in Europe.

In addition to these technical discriminations, there are numerous examples already in European markets where providers of internet access service undertake practices that in effect represent economic discrimination between different types of content. These commercial practices inevitably create an incentive for end-users to become users of a specific content provider, to the detriment of competing content providers and their own end-users, who see their connectivity possibilities diminished. These commercial practices come at the risk of significantly impacting innovation possibilities on the internet and further consolidating market power of big content providers, hence reducing consumer choice.

Constructing the right solution for all European consumers

Given the divergent implementation by Member States of the related provisions in the 2009 Telecoms Package, and their inadequacy in solving the issue at hand, BEUC has continuously called upon European policymakers[25] to reform the regulatory framework to guarantee all European consumers have and can exercise a right to access an open internet.

The initiative to regulate the provision of internet access services so as to ensure that consumers can access an open internet without discrimination is therefore warmly welcomed. **Yet the European instrument should never undermine acquired rights in those Member States like the Netherlands and Slovenia** where consumers already enjoy strong rights to access an open and neutral internet.

The approach used in the proposed Regulation is in principle satisfactory, in the sense that it safeguards the freedom to use an internet access service which is free of discrimination as the default rule, with only well-defined and limited exceptions. The proposal goes further as it defines and regulates the offering and use of specialised services. Nevertheless, **both elements of this proposal contain worrying loopholes and vague language** which could render the provisions useless. Therefore these provisions need to be significantly improved as outlined in the following section.

Consumers are entitled to a right to access the open internet

In order for the aforementioned objectives to be implemented in practice, a well-defined right to access the open internet must be safeguarded for all European consumers. In doing so, a legal definition of net neutrality is not necessary. Rather, as the proposed Regulation does it is important to define what consumers are entitled to, and clearly set out the prohibitions and permissions of what operators can and cannot do.

The following changes to the proposed text are necessary in order to prevent abuses and loopholes existing. Where applicable, the previous work of BEREC on definitions and concepts should be used.

[24] RespectMyNet: http://respectmynet.eu
[25] BEUC/EDRi Joint Call for Action, April 2013 – http://bit.ly/1aUS5pD

1. The definitions in article 2 must include what **"reasonable traffic management"** means, and must be linked to the principles of relevance, proportionality, efficiency, non-discrimination and transparency.

2. The **definition of "specialised services"** in article 2 must be modified as the current one is overly complex, does not offer legal clarity and could be easily confused with an Internet Access Service.

3. **Accessing the open internet free of discrimination is a right, not a freedom**. Legal certainty is ensured by codifying these principles as a right for end-users, with accompanying obligations on service providers. This is also more coherent with the fact that the rest of Chapter 4 deals with the rights of end-users, not freedoms. The definition of this right needs to be in line with what is generally used in academia and by regulators, while always including end-to-end connectivity.

   Article 23, paragraph 1 should be largely based on the following definition that contains the most important elements of what this right should entail for consumers: *End-users have the right to access and distribute information and content, run applications, connect hardware and use services and software of their choice. Providers of internet access services can thus not block, discriminate against, impair or degrade, including through price surcharges or preferential treatments, the ability of any end-user to use a service to access, use, send, post, receive or offer any content, application or service of their choice, irrespective of source or target*.

   The European instrument does not deal with the issue of **pricing discriminations** based on the transmitted content and hence must include a provision to that extent. This is of particular importance as such provisions exist in the Dutch legal framework and it would be unacceptable for Dutch consumers to lose rights as a consequence of the European instrument's adoption. The following passage should therefore be included: "*Providers of internet access services shall not make the prices of these services dependent on the content, applications and online services that are offered or used via these internet access services.*"

4. In order to strongly protect the open internet from undue influence from specialised services, **article 23, paragraph 2 needs significant improvement** to include well-defined criteria which explicitly lay out the conditions under which specialised services are allowed. Some examples of such criteria are: that internet access services are not impaired as regards their affordability and beyond cases of exceptional congestion; that end-users are offered such services on a voluntary and non-discriminatory basis; and that telecoms providers cannot discriminate in a way that is anti-competitive.

5. **Article 23, paragraph 5 should be more stringent** and include clear criteria to determine what is a "reasonable traffic management measure" linked to a definition in Article 2, and not just a few examples in Recital 47. As highlighted further below, the case "impede serious crimes" needs to be deleted.

Every layer counts to restore and safeguard net neutrality

The most problematic deviations from the principle of net neutrality occur in the lower layers of the internet value chain, specifically within the networks of providers of internet access services. As BEREC's findings show, numerous operators use discriminatory traffic management techniques to create traffic bottlenecks. **Yet market developments in the IP-interconnection layers are of crucial importance to ensure the 'best efforts' internet continues to function efficiently** and that large telecoms and network operators cannot influence the availability of content or the possibility to easily innovate by managing their traffic in an anti-competitive manner.

In that context, the freedom to develop **connectivity products with an Assured Service Quality** (ASQ, article 19) could be reasonable, taking into account technological and economic trends. Nevertheless, it is of utmost importance to analyse the concrete impact these services may have on the 'best efforts' internet, both at IP-interconnection and end-user levels. As BEREC has highlighted, **encouraging the development of this type of product goes directly against the entire notion of ensuring specialised services do not impair the use and availability of the 'best efforts' internet**.[26]

Similarly to specialised services, it must be ensured that ASQ products do not hinder or impair the capacity of end-users to fully benefit from their internet access services, free of discriminatory practices and use their contracted bandwidth without interferences.

Furthermore, the **economic impact that these ASQ products will have on the general Internet ecosystem must be carefully analysed** to ensure the same degree of freedom of expression, innovation and consumer choice are kept on the open internet, before the creation and deployment of these products are standardised and legalised.

For all the reasons highlighted above, BEUC agrees with BEREC[27] and considers that the time is not ripe to standardise ASQ products in a context where, not only is there no market failure, but importantly its concrete impact on the 'best efforts' internet has not been properly analysed. **Therefore, BEUC strongly calls for the deletion of article 19**.

Investing to protect the future of the internet

Allowing the open internet to thrive and guaranteeing consumers' right to have a neutral access are both necessary elements to protect the future of the internet ecosystem in Europe. A third crucial element is the infrastructure needed for the internet to work on and the investments necessary to continue deploying faster and better broadband.

When considering the distinction between internet access services and specialised services, the proposed Regulation must also ensure that **sufficient investments are being dedicated to the infrastructure that underpins the 'best efforts' internet**. There is a significant risk that operators may want to focus solely or

[26] BEREC BoR (13) 142 – BEREC views on the proposed Regulation.
[27] BEREC BoR (13) 142 – BEREC views on the proposed Regulation.

mainly on specialised or 'on-net' services and therefore invest in that sector, which will be to the detriment of the public internet in Europe. **If products like ASQ or other specialised services become mainstream, it will be more lucrative to continue having bandwidth scarcity for the 'best efforts' internet.** The idea of a 'dirt road' internet[28] is not an abstract, theoretical model, it is a probable occurrence if action is not taken.

Telecoms operators do not get to decide when to be law enforcers

The provision included in article 23.5.a of the proposed Regulation, which requires providers of Internet Access Services to implement traffic management **in order to "prevent or impede serious crimes" goes against the principle of the rule of law** and puts consumers' fundamental rights and freedoms at risk. Therefore, BEUC is strongly against such provision and we seek its deletion.

Providers of internet access services are poorly placed to determine whether or not content is an infringement or otherwise unlawful - a task generally reserved to courts and the law. Article 23.5.a requires the active involvement of providers in the prevention and enforcement of illegal behaviour; however such a provision conflicts with the prohibition of general monitoring as outlined in Article 15 of the e-Commerce Directive and therefore should be rejected.

Mandating the enforcement of law by private entities runs contrary to the fundamental right to an effective remedy and to a fair trial. The Charter of Fundamental Rights of the European Union explicitly grants everyone the right to a fair and public hearing by an independent and impartial tribunal[29]. The European Court of Justice has explicitly affirmed the principle of effective judicial protection as a general principle of Community law[30].

The need to respect this principle becomes even more important in the context of specific cases, namely Intellectual Property Rights enforcement, which often involve complex legal analysis, making it impossible to *prima facie* ascertain the infringing character of copyright protected content.

The current legal framework already provides for a wide range of legal tools at the disposal of right holders to enforce their rights[31]. Therefore such an exception is not required. The purpose of defining what kind of network management is acceptable is to allow and promote the proper technical functioning of a network, not provide mechanisms to determine whether any particular subscriber activity violates the law.

Furthermore, Article 23.5.a introduces a significant loophole to the exercise of consumers' right to access an open internet. As long as providers of Internet Access Services claim they are trying to prevent an illegal behaviour, without

[28] The "dirt road" expression refers to the scenario where operators focus their efforts, both commercial and investment-wise, on specialised services, to the detriment of their internet access services. The latter are therefore left rather abandoned with no continuously improving quality and dedicated infrastructure.
[29] Article 47 of the Charter of Fundamental Rights of the European Union.
[30] ECJ, 13 March 2007, Case C-432/05, UNIBET.
[31] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. And Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

oversight they would be exempted from the obligations contained in these provisions and can interfere with consumers' ability to exercise their rights.

Safeguards for Quality of Service

The imposition of minimum quality of service requirements, foreseen in article 24, is inadequate to prevent the general service quality impairment for internet access services. They run the risk that the quality of the open internet will be limited to these minimum requirements. In addition, a definition of "general impairment of quality of service for internet access services" is lacking and should be explicitly included. Furthermore, the bandwidth available to the open internet must be at least at the same level as the bandwidth reserved for specialised services.

7. The Single EU Authorisation regime (Articles 3-7)

The Single EU Authorisation will allow telecoms operators to notify the National Regulatory Authority (NRA) of one Member State of its intention to offer its services and this will automatically confer permission to operate in all other Member States. Creating such a regime will theoretically allow telecommunications providers to operate more easily in multiple markets, but it **should in turn help reduce costs and retail prices - in particular cross-border prices**. There are **crucial aspects for consumers which remain unclear in the proposed Regulation**, in particular regarding the powers of National Regulatory Authorities (NRAs) with respect to the application of other pieces of legislation, such as consumer protection law, beyond the areas covered by the proposed Regulation itself.

Importantly, the draft Regulation arguably **worsens the problem of *forum shopping*** in several instances. For example, by not outlining clear criteria to determine what the "main establishment" of an operator is, the draft Regulation allows picking and choosing, potentially to the detriment of consumers, in case the operator chooses a Member State with weaker enforcement bodies as their main establishment.

We welcome the fact that the Regulation makes the **host NRA** of the consumer's place as that competent to apply and enforce the provisions of the proposed Regulation and all other relevant sectorial legislation, which is consistent with other consumer protection law where the **country of destination principle** applies.

Nevertheless, the **rules which define the collaboration procedures between the *host NRA* and the *home NRA*** of the country of the establishment of the operators remain an issue of concern as it needs to be ensured sufficient clarity is given as to what are the powers of each of the two NRAs, preventing undue delays in the application of remedies and sanctions.

BEUC strongly suggests that the following provisions are added to the Chapter on the Single EU Authorisation to ensure that the presence of **strong safeguards for consumers** within the new regulatory framework.

1. **Obligation for Member States to provide NRAs with the appropriate financial, human and technical resources to fulfil their duties**. Otherwise, there is an increased risk of *forum shopping* with telecoms operators deciding to move their establishment to those Member States where NRAs are weaker or less resourced.

2. **Obligation of cooperation between NRAs**. There needs to be more clarity as to the procedures in place for NRAs to assist each other. In cross-border operations, NRAs should have an obligation to cooperate and decisions be subject to co-decision.

3. **Joint operations of NRAs**. Provisions are needed to pave the way for joint operations between NRAs from different Member States, in order to step up co-operation.

4. **Right to lodge a complaint with any NRA**. Given the cross-border nature of electronic communications services and the objective of creating a true Single Market where consumers will increasingly use their national services abroad, it

must be ensured any consumer can lodge a complaint related to this Regulation with the NRA of the Member State of their residence. Specific rules need to be introduced to ensure the handling of complaints works efficiently.

5. **Right to a judicial remedy against an NRA.** When a consumer seeks a judicial remedy against a decision by an NRA in a different Member State, it must be ensured the request can be filed with the NRA of the consumer's Member State, which shall bring the proceedings against the other NRA on his/her behalf.

END