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Subject: Draft Council conclusions on Net Neutrality

Delegations will find attached a Presidency text on the above-mentioned subject with a view to the meeting of the Telecommunications and Information Society Working Party on 9 November 2011

ANNEX

Draft**Council Conclusions on Net Neutrality¹**

THE COUNCIL OF THE EUROPEAN UNION

1. WELCOMES²

The Commission Communication of 19 April 2011 on "The open internet and net neutrality in Europe".³

2. RECALLS

- a) The Commission Staff Working Paper - Digital Agenda Scoreboard of 31 May 2011;⁴
- b) The Commission Communication of 13 April 2011 "Single Market Act. Twelve levers to boost growth and strengthen confidence - Working together to create new growth";⁵
- c) The conclusions of the Spring European Council of March 2011 highlighting the importance of the Single Market in delivering growth, employment and promoting competitiveness;⁶
- d) The Commission Communication of 25 August 2010 on "Progress Report on the Single European Electronic Communications Market 2009 (15th Report)";⁷
- e) The Council Conclusions of 31 May 2010 on "Digital Agenda for Europe";⁸

¹ Changes to document **14209/11** are indicated in ~~striketrough~~ and **bold underlined**.

² **LU "Takes note of"**

³ Doc. 9350/11

⁴ Doc. 11041/11

⁵ Doc. 9283/11

⁶ Doc. 10/1/11

⁷ Doc. 10245/2/10

⁸ Doc. 10130/10

- f) The Commission Communication of 19 May 2010 on "A Digital Agenda for Europe";⁹
- g) The Council Conclusions of 18 December 2009 on "Post-i2010 Strategy - towards an open, green and competitive knowledge society";¹⁰
- h) The Commission Declaration on Net Neutrality of 18 ~~November~~ December 2009¹¹;
- i) The conclusions of the Spring European Council of March 2009, recalling the fundamental role of telecommunications and broadband development in terms of European investment, job creation and overall economic recovery;¹²
- j) The amended EU Regulatory Framework for Electronic Communications Networks and Services, including the amended Directives 2002/21/EC and 2002/22/EC.

3. RECOGNISES

- a) That ICT is a key driver which contributes significantly to economic growth, innovation and job creation in the EU and has a key role to play in helping the EU economy emerge from the current financial crisis in a better condition;
- b) That the timely implementation of the objectives of the Digital Agenda for Europe will further spur innovation and economic growth;
- c) That having a competitive digital single market offering affordable and secure high bandwidth communications and rich and diverse online content, applications and services is an important policy objective;

⁹ Doc. 9981/1/10 (revised version of 26 August 2010)

¹⁰ Doc. 17107/09

¹¹ OJ C 308/2 of 18.12.2009

¹² Doc. 7880/1/09

- d) The importance of preserving the open character of the Internet and ensuring the maintenance of a robust best efforts Internet for all ~~in a framework that promotes and~~ **while** respecting fundamental rights such as **media pluralism, linguistic diversity,** freedom of expression and information as well as freedom to conduct **a** business;
- e) The need to encourage investment in new network infrastructures **by both the public and private sector** and to allow innovative business models to serve the needs of the market.

4. NOTES

- a) That, although ICT is fundamental to the running of EU economies across all sectors, the establishment of a well-functioning competitive digital single market still poses challenges that need to be addressed;
- b) That the open character of the Internet fosters innovation by creating a level playing field for all actors involved and significantly contributes to the fulfilment of the Digital Agenda for Europe goals;
- c) The existence of some concerns, in regards to
- **Discriminatory forms of** ~~T~~traffic management and ~~equal~~ treatment of data, in particular throttling of data and blocking of ~~lawful~~ **content, applications and** services;
 - Price transparency and quality of service, in particular the discrepancy between advertised and actual delivery speeds for an Internet connection;
 - Network congestion, mainly as a result of growing data streams;
 - Sustainability of business models of network operators and Internet service providers, due to investments needed to adequately respond to the growing Internet traffic;
 - Personal data protection.

- d) The positive steps that can be taken by industry, in consultation with other stakeholders **and in coordination with National Regulatory Authorities**, to provide **effective** transparency to ~~consumers~~ **end users, notably on the scope of their services and** on issues such as traffic management, connection speeds and any restriction placed on data delivery.

5. UNDERLINES

- a) The need to preserve the open and neutral character of the Internet and ~~enshrine~~ **consider** net neutrality as a policy objective, which is consistent and interrelated with a number of policy objectives already identified in article 8 of Directive 2002/21/EC (Framework Directive) and with the corresponding provisions included in the amended EU Regulatory Framework for Electronic Communications Networks and Services, namely in aspects such as the promotion of the ability of end users to access and distribute information or run applications and services of their choice, the increased transparency in the characteristics and conditions of the service providers and the powers conferred to National Regulatory Authorities to impose minimum requirements on quality of service;
- b) The need for promotion of innovative solutions by both content providers and electronic communications services operators to foster a unified, non-discriminatory and accessible digital single market, in particular by leveraging the new European Research Framework Programme (Horizon 2020);
- c) The need to undertake further steps towards the completion of the digital single market by 2015, especially by removing barriers which hinder cross-border electronic services, **in particular through the promotion of open and interoperable standards for IP-based Quality of Service interconnection across networks**;
- d) The need to enhance citizens' and businesses' trust and confidence in the online environment and electronic communications services;

- e) The importance of ensuring efficient transparency, i.e. enabling consumers to make better and informed choices, particularly through effective implementation of articles 20 and 21 of Directive 2002/22/EC (Universal Service Directive) and the promotion of innovative technological solutions;
- f) The importance of addressing the issues of discrimination and degradation of service that may arise from certain traffic management practices (inter alia blocking, ~~hindering~~ **throttling** and restrictive interconnection policies), particularly through effective implementation of article 22 of Directive 2002/22/EC (Universal Service Directive).
- g) The importance of promoting the ability of users to create, distribute and access online content, applications and services of their choice, as required in Directive 2002/21/EC (Framework Directive);
- h) The importance of the application of the principle of technology neutrality, underlying the objectives of the EU Regulatory Framework for Electronic Communications Networks and Services;
- i) The importance of continuing monitoring the implementation and effects of the EU Regulatory Framework for Electronic Communications Networks and Services;
- j) The need to reduce the digital divide by further developing educational programmes aiming at raising ICT skills and at preventing and reducing digital exclusion;
- k) The importance of the role of BEREC, in conjunction with National Regulatory Authorities, in analysing the market; and of assessing compliance of operators and ~~the general openness of~~ **competition in** the market subsequent to the implementation of the EU Regulatory Framework for Electronic Communications Networks and Services.

6. WELCOMES

- a) The Commission's intention to **assess the need, based on BEREC's investigations, for more stringent measures and to publish additional guidance on net neutrality if necessary**; ~~publish by the end of 2011 the evidence that will come to light from BEREC's investigations in regards to blocking or throttling certain types of traffic or lawful services, practical obstacles regarding change of operator and the discrepancy between advertised and actual delivery speeds occurring in the Member States, and assess whether additional guidance on net neutrality is necessary.~~
- ~~b) The Commission's intention to assess the need for more stringent measures if significant and persistent problems emerge;~~
- c) The Commission's commitment to monitor the implementation of the EU Regulatory Framework for Electronic Communications Networks and Services;
- d) The Commission's commitment to issue a Code of EU Online Rights by 2012¹³.

7. INVITES THE COMMISSION TO

- a) ~~Enhance~~ **Encourage** its dialogue with Member States and stakeholders on net neutrality while ensuring the rapid development of broadband;
- b) Monitor, jointly with BEREC, the issue of traffic management to allow for a smooth flow of proportional, necessary, **and** transparent ~~and limited in time~~ traffic management practices that do not affect net neutrality;

¹³ As an **compilation** ~~amalgamation~~ of existing rights, **Cf. emerging**, for instance, ~~from~~ the Granada Ministerial Declaration on the European Digital Agenda (http://www.eu2010.es/export/sites/presidencia/comun/descargas/Ministerios/en_declaracion_granada.pdf)

- c) **Continue analysing, jointly with Member States, the sharing of costs of traffic and financial flows between players of the Internet value chain, in particular with regards to the evolution of the IP interconnection market;**
- d) Continue studying, with the support of BEREC's investigations, ~~the~~ **any** aspects of net neutrality where significant and persistent problems are substantiated, including charges and conditions that mobile operators impose on VoIP providers **users** as well as throttling of lawful **content, applications and** services (i.e. **e.g.** peer-to-peer);
- e) **Further assess, jointly with BEREC, the discrepancy between advertised and actual delivery speeds occurring in Member States, and report to the Council and to the European Parliament on the situation thereof by 2012;**
- f) Provide additional information on traffic management best practices and on how to respond to the requirements of global service providers concerning quality and pricing of services.

8. INVITES MEMBER STATES TO

- a) Enable the National Regulatory Authorities to enforce the provisions under the EU Regulatory Framework for Electronic Communications Networks and Services (**inter alia article 20 of Directive 2002/21/EC -Framework Directive-, article 5 of Directive 2002/19/EC -Access Directive-, articles 20, 21 and 22 of Directive 2002/22/EC -Universal Service Directive-**), including promoting the publication of transparent, comparable, adequate and up-to-date information on applicable prices and tariffs as well as quality of service;
- b) Encourage the application of the principle of net neutrality, **without pre-empting the coordinated analysis currently underway**, and continue their dialogue with the Commission and stakeholders on the openness of the Internet and net neutrality;
- c) Ensure the open and neutral character of the Internet as their policy objective.

9. INVITES STAKEHOLDERS TO

- a) Continue the dialogue with Member States, ~~and~~ National Regulatory Authorities **and the Commission** to further the benefits of an open and innovative Internet;
 - b) ~~Uphold the principle of net neutrality and thus to refrain from blocking or impeding~~ **Develop behaviours and economic choices that support an open Internet platform, thus preventing the exclusion of small players and innovative models, and enabling** access to, or the transmission of, online content, applications and lawful services;
 - c) Seek ~~industry~~-wide consensus on the aspects of net neutrality through balanced discussions between all participants in the knowledge economy and the Internet **and electronic communications** sector, **civil society and users' organisations**.
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