

TSM Regulation

PRAGUE TRANSATLANTIC TALKS 2014: FACING THE ATLANTIC CYBER CHALLENGE

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Introduction

The Telecoms Single Market Regulation

Context

On 11 September 2013, the Commission proposed the “Connected Continent” package, part of which is the Telecoms Single Market (TSM) draft regulation.

The TSM Regulation introduces:

- one of the strongest legal protections of **net neutrality** in Europe so far
- more EU-wide coordination of **spectrum**, less regulation for **Wifi**
- further reductions in **roaming** charges, helping meet user demand for mobile access to the Internet, including across borders.

Microsoft welcomes the European Parliament’s plenary vote on April 3, 2014, in favour of much-needed EU ‘rules of the road’ for an open Internet.

Why it is important for Microsoft

Connectivity (and its’ availability, quality, and price) is much more important

Fast broadband networks such as fiber are essential for the growth of the cloud and online services

Up to 39% of mobile users in Europe being prevented from using VoIP / Skype

What the EP vote means

If ratified by EU governments (Council) and enshrined into EU law, it will result in the **immediate end to the restrictions and degradations of Skype traffic** for many millions of users in Europe, and more widely ensure **unhindered access** to Microsoft’s online and cloud services.

Opens the door for **wider availability and use** of dynamic **spectrum** access and unlicensed spectrum such as **TV White Spaces**

The challenge

Strong telecom lobby expected in the next 6 months to derail the measures it fears most, chiefly **roaming and net neutrality**.

The telecom lobby is **particularly strong** with some of the larger, more powerful EU governments such as **France, UK and Germany, as well as Spain and Italy**.

Clear risk that without sustained advocacy in Brussels and the field (EU capitals) in coming months, the very good protections of net neutrality will be seriously dumbed down by EU governments before the Regulation makes it into law.

General goals for ICT industry and Microsoft

Long term: Ensure that unambiguous net neutrality protections are adopted by the EU without delay, to stop current restrictions to the use of Skype, and prevent discrimination against the use of our online services in future.

Objective: ICT industry would like to ensure that Council agrees to finalize the Regulation with good NN protections in place. (On substance, the text adopted by the European Parliament on 3 April 2014 fulfils this objective.)

Outcome of the EP vote

Adopted net neutrality provisions

On 3 April, the European Parliament adopted its position on the TSM proposal, including the following provisions on net neutrality (NN):

- A **definition of net neutrality** (for the first time in EU law), as “the principle that all internet traffic is treated equally, without discrimination, restriction or interference, independent of its sender, receiver, type, content, device, service or application;”
- A definition of **specialised services** as electronic communications services “provided over **logically distinct** capacity, relying on strict admission control, **offering functionality requiring enhanced quality from end to end**”
- **End-users shall have the right** to access and distribute information and content, run and provide applications and services and use terminals of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content, via their internet access service.
- 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 detriment of the availability or quality of internet access services**. **Providers of internet access to end-users shall not discriminate between functionally equivalent services or applications.**

Changes to EC initial proposal

The EC's initial proposal:

- Had no definition of NN
- Defined specialised services less strictly
- Gave end-users the freedom to access and distribute information and content, run applications and use services of their choice via their internet access service
- Allowed the provision of specialised services with an enhanced quality of service as long as they did not impair in a recurring or continuous manner the general quality of internet access services

Different dynamics in EP

The only provisions on which MEPs did not manage to agree on were those on NN. **EPP, supported by ECR**, had opted for NN-friendly language, but not going far enough in terms of guarantees. Commissioner Kroes supported the EPP text. Eventually, the EP adopted the set of amendments put forward by a **coalition of the Socialists, the Greens and the Left, backed also by the Liberals**, introducing a definition for NN, a stricter definition for specialised services and more restrictions as to when such services are allowed. One of the main reasons MEPs took such a strong pro-NN position were the **upcoming EU elections**.

Trade Associations

VONEurope, BEUC, EDRI, La Quadrature du Net, and OpenForum Europe had a joint statement in favour of the EP text. **CCIA** also positive to the EP text.

ETNO, Cable Europe, ECTA and the GSMA are against the text adopted by the EP, as it reflects very restrictive views on how the internet should work and on how specialized services could be offered.

DIGITALEUROPE is also concerned that the voted text is too technical and overly specific about how networks should function.

Timeline of the Council review

March 2014

Beginning of detailed examination of TSM proposal in the Telecoms Council WP

Greek Presidency

6 June 2014

Telecoms Council – Presentation of Progress Report by the Greek presidency (and possible discussion)

29 April 2014

First discussion on NN in the Telecoms WP

Italian Presidency

July 2014

A possible first compromise text to be proposed and discussions to continue throughout the Italian Presidency

November 2014

The Telecoms Council possibly to agree on a Council common position

End 2014/beginning 2015

Beginning of trilogue negotiations (to last for 3-4 months at least)

Latvian Presidency

April/June 2015

An agreement could be reached (at the earliest)

Intensify advocacy efforts in the **capitals** and focus on technical level to influence Council common position

Efforts to influence trilogue discussions; **Brussels & capitals**

Brussels outreach to gather intelligence through “friendly” attachés; co-ordination with trade association and consumer groups; From September also reach out to MEPs

Briefing material / position

Text of the proposal: Regulation [laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent](#) (COM(2013) 627).

- The Commission's proposal to enhance the Single Market for electronic communications with the 'Connected Continent' Regulation has the potential to bring more welcome competition, consumer choice, and innovation in this market, which will help in particular to stimulate continued demand for and investment in high speed Internet access across Europe.
- We strongly support the introduction of unambiguous safeguards for the open Internet (net neutrality). If Europe is to benefit fully from our 'digital century' it needs to guarantee genuinely unhindered access to all Internet information, applications and services for all European users.
- We welcome the European Parliament's plenary vote on April 3, 2014, in favour of much-needed EU 'rules of the road' for an open Internet. These rules will reinforce the dynamism of the Internet in Europe, and benefit everyone in the ecosystem – from end-users, to telecom companies, online platforms, [broadcasters and the cultural sectors](#), and in particular entrepreneurs driving new innovations.

Briefing material / position

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- **We now look to the Council of EU governments to ratify this important result as quickly as possible** - and then for regulators to stamp out urgently and proactively the ongoing bad practices which have taken root in Europe over the past years, and prevent any further wrongdoing. The Regulation needs to be strong enough to put an end to the widespread arbitrary restrictions to the use of Skype, VoIP and Peer to Peer applications evidenced across Europe (which affect up to 39% of mobile users in Europe, according to BEREC).
- **We support the proposal providing for the development of innovative 'specialised services' that run parallel to the Internet. It remains crucial however that the open Internet, protected by a principle of non-discrimination between traffic flows, remains the norm** rather than exception, a baseline enabling online innovation by anyone and for any user. Specialised services should not be delivered in such a way that it is to the material detriment of the quality, availability or affordability of the open Internet.

Briefing material / position

Text of the proposal: Regulation [laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent](#) (COM(2013) 627).

- We believe that **the text agreed by the European Parliament provides a good balance**
 - On one hand, the Parliament has vowed to protect unhindered innovation and the free flow of information on the Internet, with the rule that *"[e]nd-users shall have the right to access and distribute information and content, run and provide applications and services and use terminals of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content, via their internet access service."*
 - At the same time, the text leaves the door open for so-called 'specialised services', which would be distinct from Internet access and provide enhanced quality of delivery, as long as *"they are not to the detriment of the availability or quality of internet access"*. As [VON Europe added](#) *"[t]he text adopted today in Plenary will help maintain a high quality Internet for all and, contrary to some claims, will not prohibit services [...] such as VPNs for businesses, IP-TV and telepresence."*

