



## **Opinion of the European Data Protection Supervisor**

**on the 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**

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>,

Having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector<sup>2</sup>,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>3</sup>, and in particular Article 28(2) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

### **1. INTRODUCTION**

#### **1.1. Consultation of the EDPS**

1. On 11 September 2013, the Commission adopted a Proposal for a Regulation 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 (hereinafter - 'the proposal')<sup>4</sup>. A request for consultation was sent by the

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<sup>1</sup> OJ L 281, 23.11.1995, p. 31.

<sup>2</sup> OJ L 201, 31.7.2002, p. 37.

<sup>3</sup> OJ L 8, 12.1.2001, p. 1.

<sup>4</sup> COM (2013) 627 final.

Commission in accordance with Article 28(2) of Regulation (EC) No 45/2001, and was received by the EDPS on 23 September 2013.

2. The EDPS had an opportunity to provide his advice before the proposal was adopted, which he welcomes. This Opinion builds on the comments provided within the context of that informal consultation.

#### 1.2. Context and objectives of the proposal

3. The proposal is adopted against the background of the Digital Agenda for Europe<sup>5</sup>, having as its overarching goal the enhancement of economic growth and social improvements derived from the European digital economy. The proposal is thus aimed at achieving a single market for electronic communications in the EU by harmonising various legal and technical aspects relating to the provision of electronic communications services to the public.
4. The proposal, firstly, facilitates the provision of cross-border electronic communications services by enabling providers to offer services across the Union based on a single EU authorisation and thus with minimum administrative hurdles. It further harmonises the conditions of radio spectrum assignment for WiFi services, as well as the features of products allowing virtual access to fixed networks.
5. Next, the proposal harmonises the rights of end-users, inter alia those relating to the open Internet. It also harmonises publication by providers of information on electronic communications services they offer and the inclusion of such information in contracts, as well as the modalities of switching an operator and charges applicable to roaming services.
6. The present Opinion focuses on those aspects of the proposal which are likely to have the most significant effect on the rights to privacy and the protection of personal data as laid down in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, as well as on the confidentiality of communications.

## 2. GENERAL COMMENTS

7. Within the past decade, the Internet has infiltrated all aspects of everyday life, including personal communications, education and work, with the types of content, applications and services available to end-users dramatically increasing as well. In that context, end-users' right to benefit from an open Internet, where information can be freely accessed and transmitted, should remain a general rule.
8. In that respect, the EDPS welcomes the inclusion of the principle of a free access to and distribution of content, applications and services by end-users - 'net neutrality' - in the proposal. However, the EDPS is concerned that the proposal provides a number of grounds for traffic management measures that scan and discriminate among various types of content. Such measures significantly limit net neutrality and interfere with end-users' rights to privacy and the protection of personal data, as laid down in the

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<sup>5</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Digital Agenda for Europe,' COM (2010) 245 final/2, 26.08.2010.

Charter and in Directive 95/46/EC, as well as the confidentiality of communications under Article 5(1) of Directive 2002/58/EC.

9. The EDPS emphasises that adherence to the rights to confidentiality of communications, privacy and personal data protection is a key part of building consumer trust and confidence in the EU electronic communications market, and thus its success. End-users need to be certain that these rights are respected whenever they make use of electronic communications services and networks, and that any interference with these rights is proportionate and necessary to achieve a clearly specified legitimate purpose. The EDPS underlines that such grounds for instituting traffic management as 'implementing a legislative provision' and 'preventing and impeding serious crimes', foreseen in Article 23(5)(a) of the proposal, appear overly broad and have a considerable potential to trigger a wide-scale, preventive monitoring of communications content. A surveillance of this kind will not only go contrary to the right to confidentiality of communications, as well as privacy and personal data protection, but furthermore may seriously undermine consumer confidence in electronic communications services across the Union.
10. While any measures allowed under the proposal that interfere with end-users' data protection and privacy rights should be subject to strict proportionality and necessity limitations, the EDPS emphasises that transparency, as further developed in this Opinion, is another key requirement for such measures. In relation to traffic management, for instance, clear and adequate pre-contractual and contractual information would enhance consumer choice, allowing end-users to opt for the services of those providers which apply less privacy-intrusive communications inspection techniques within the context of traffic management.
11. The supervision of compliance, by electronic communications providers, with the requirements of transparency, proportionality and necessity when instituting privacy-intrusive measures such as traffic management is crucial to ensuring the effectiveness of these safeguards in practice. In that regard, the role of national regulatory authorities in supervising providers' compliance with net neutrality and assessing the quality of pre-contractual information should be complemented by that of the national data protection authorities, which can add specific expertise to this oversight and thus contribute to its overall effectiveness.

### 3. SPECIFIC COMMENTS

#### 3.1. Applicability of the EU data protection framework

12. The proposal regulates the provision of electronic communications services across the EU. Such services are subject to the requirement of confidentiality of communications, while they further entail the processing of IP addresses and communications content, which both are related to end-users and thus commonly constitute personal data.<sup>6</sup> Directives 2002/58/EC and 95/46/EC are thus applicable to the processing of data envisaged under the proposal. The EDPS recommends that this be clarified in a substantive provision of the proposal, which should not be seen as derogation from EU data protection instruments.

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<sup>6</sup> See, on IP addresses, Case C-70/10 *Scarlet v SABAM* [2011] ECR I-11959, para. 51 and on communications content, by analogy, Case C-360/10 *SABAM v Netlog* [2012] ECR I-00000, para. 49.

13. In this connection, the EDPS further notes that recital 46 of the proposal states that the latter defines the *limits of the restrictions that may be imposed on the right of end-users to benefit from net neutrality* by providers of electronic communications to the public, yet is 'without prejudice to other Union legislation, including copyright rules and Directive 2000/31/EC'. The EDPS recommends complementing this text with a specific reference to Directives 95/46/EC and 2002/58/EC, which define the limits to traffic management measures from the data protection and privacy perspective.

### 3.2. Net neutrality and traffic management measures

14. Article 23(1) of the proposal grants end-users the right to freely access and distribute content, services and applications of their choice via their Internet access service, thus laying down the principle of net neutrality. Net neutrality has as its basis the impartiality of Internet service providers towards the different types of information accessed and transmitted by end-users, and thus the absence of discrimination in the quality of Internet access services based on the content, source or destination of such information.<sup>7</sup>

15. Net neutrality does not only encourage the freedom to impart and receive information and access to culture - where this principle is observed, risks of surveillance of end-users' Internet activity, based on the information they access or transmit, are minimised. In that regard, EDPS welcomes the inclusion of net neutrality in Article 23(1) of the proposal as the general principle applicable to Internet use in the Union.

16. This notwithstanding, the EDPS points out that the proposal should not leave end-users unaware of the measures that might restrict them in benefiting from the open Internet.<sup>8</sup> This is all the more crucial as, by way of exception from Article 23(1), Article 23(5) of the proposal provides for 'reasonable traffic management measures', under which ISPs could discriminate against, degrade, slow down or block traffic, but does not provide information on communication inspection techniques that underlie such measures.

17. The EDPS notes that traffic management measures based on techniques such as Deep Packet Inspection (DPI) presuppose a detailed analysis of the content of information transmitted over the Internet, which may thus reveal substantial and detailed information about users.<sup>9</sup> Should traffic management measures be based on less intrusive communications inspection techniques, such as those that analyse IP-headers, they would nevertheless reveal information on the websites visited by end-users, and thus allow *inferring* the content of their communications.<sup>10</sup> Communications content may include information on individuals' political views, religious beliefs, or health or sex life, and thus its analysis - both directly and via the IP headers - may entail processing of sensitive data within the sense of Article 8(1) of Directive 95/46/EC. In order to provide certainty for end-users on the data protection

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<sup>7</sup> EDPS Opinion on net neutrality, traffic management and the protection of privacy and personal data, 7 October 2011, p. 2.

<sup>8</sup> While this subsection addresses the aspect of transparency in relation to the text of the proposal itself, transparency requirements for the pre-contractual and contractual information provided to end-users will be discussed in points 25-33 below.

<sup>9</sup> For an overview of techniques used to inspect information transmitted over the Internet, see EDPS Opinion on net neutrality, op.cit, pp. 8-9.

<sup>10</sup> Cf EDPS Opinion on net neutrality, op.cit, p. 8.

and privacy impact of traffic management measures, Article 23(5) should thus provide clear information on communications inspection techniques that are allowed to be used within the context thereof.

18. Next, any traffic management measures instituted on the basis of the proposal should be subject to strict proportionality and necessity limitations. The EDPS notes that Article 23(5) of the proposal lists the grounds on which traffic management measures could be instituted. These grounds include 'implementing a legislative provision' and 'preventing and impeding serious crimes' (Article 23(5)(a)). The EDPS is concerned about the reference to these two grounds as a possible basis for instituting traffic management measures.
19. As regards the ground of 'implementing a legislative provision', the EDPS notes that Article 23(3) of the proposal explicitly provides that this provision is 'without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted'. Read in conjunction with the implementation of a legislative provision as a ground for traffic management this would, essentially, give green light to discriminating against, degrading or blocking *any* content deemed unlawful under the EU or national legislation. Given both the overly broad scope of traffic management measures that may be instituted under this ground and the fact that they may entail the processing of sensitive data, the EDPS emphasises that such measures would disproportionately affect end-users' rights to confidentiality of communications, privacy and data protection, going contrary to Articles 7 and 8 of the EU Charter of Fundamental Rights, as well as Article 5(1) of Directive 2002/58/EC and Directive 95/46/EC. The EDPS thus considers it an absolute necessity that the ground of implementing a legislative provision is excluded from the text of the proposal.
20. In relation to the ground of preventing or impeding serious crimes, the EDPS emphasises that Article 23(5)(a) already provides for traffic management measures for the purposes of implementing a court order - thus, allowing such measures in specific cases where, inter alia, serious crime may be at stake. Preventing or impeding serious crimes is a much broader purpose, which could trigger wide-scope traffic management measures used for *preventive* and potentially systematic analysis of communications content. This is, as the Court of Justice stated in *Scarlet v SABAM*, contrary to the fundamental right to personal data protection<sup>11</sup>, as well as privacy and confidentiality of communications. For this reason, and in view of the fact that Article 23(5)(a) already allows for traffic management within the context of specific legal proceedings, the EDPS strongly recommends removing the reference to preventing or impeding serious crimes from Article 23(5)(a) of the proposal.
21. Article 23(5)(c) provides for a further ground of traffic management - namely, preventing the transmission of unsolicited communications to end-users based on their prior consent. In that regard, the EDPS recalls that such consent should be informed, specific and unambiguous, as well as freely given.<sup>12</sup> In the case at hand, a freely given consent entails a situation where, in case end-users do not agree to traffic management for the purposes of preventing the transmission of unsolicited communications, this does not prevent them from benefiting from the services of a particular electronic

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<sup>11</sup> Case C-70/10 *Scarlet v SABAM*, op. cit., paras. 39, 51 and 53.

<sup>12</sup> See e.g. EDPS Opinion on net neutrality, op. cit., p.13.

communications service provider.<sup>13</sup> The EDPS recommends that principles applying to end-user consent are reiterated in a recital to the proposal.

22. The EDPS welcomes the fact that Article 23(5), last subparagraph, states that reasonable traffic management allowed by the proposal 'shall only entail *processing of the data that is necessary and proportionate* to achieve the purposes set out in [that same provision]'. In that regard, the EDPS notes that, in a number of cases, processing of IP headers may provide sufficient basis for discriminating, for instance, among various types of content accessed by end-users, while being less privacy-intrusive than a full communications content inspection. The EDPS thus recommends that Article 23(5) explicitly provides that, whenever sufficient for the achievement of one of the purposes set out in that provision, traffic management measures will involve communications inspection techniques based on the sole analysis of the IP-headers, as opposed to those involving DPI.
23. The EDPS notes that Article 24(1) of the proposal foresees that national regulatory authorities will monitor and ensure the ability of end-users to benefit, inter alia, from net neutrality, as well as ensure compliance with the restrictions applicable to traffic management measures. In view of the effect of such measures on confidentiality of communications, privacy and the protection of personal data, the EDPS recommends that Article 24(1) further refers to the cooperation between national regulatory authorities and national *data protection* authorities.

### 3.3. End-users' rights

#### a) *Itemised billing*

24. The EDPS recalls that Article 7(1) of Directive 2002/58/EC grants subscribers the right to receive *non-itemised* bills. In that regard, the EDPS notes that Article 27(4) of the proposal appears to reverse this situation, granting end-users the right to opt for receiving *itemised* bills. While *non-itemised* bills do not reveal the identities of call addressees or calling subscribers, thus ensuring that end-users' communications remain confidential, *itemised* bills, on the other hand, grant end-users an opportunity to access their own personal data and where relevant rectify them, for instance, where there is a mistake on the bill. For the purposes of legal certainty there is a need to clarify the exact interrelationship between Article 7(1) of Directive 2002/58/EC and Article 27(4) of the proposal. In case the latter provision is aimed at amending Article 7(1) of Directive 2002/58/EC, this should be justified and specified in the 'Organisational and final provisions' of the proposal.

#### b) *Information to be provided to end-users*

##### – *Transparency and publication of information*

25. Article 25(1) of the proposal obliges providers of electronic communications to the public to publish 'transparent, comparable, adequate and up-to-date information', inter alia, on their contact details, services offered and relevant quality of service parameters, prices and applicable charges, as well as specific information on Internet access services. The EDPS welcomes this obligation, as well as a further requirement

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<sup>13</sup> See EDPS Opinion on net neutrality, op. cit., pp. 13-14; Cf. Article 29 Working Party Opinion 15/2011 on the definition of consent, 13 July 2011, WP18, pp. 12-13.

upon communications providers in Article 25(1) to publish such information, inter alia, in a clear, comprehensible and easily accessible manner and regularly update it.

26. The EDPS further welcomes the fact that Article 25(1)(e), point iv, obliges communications providers to publish information on the procedures they implement to 'measure and shape traffic so as to avoid congestion of a network', as well as the potential effect of such procedures on the protection of personal data.
27. However, the EDPS notes that Article 25(1)(e) does not presuppose the provision of information on traffic management instituted for any other purposes listed in Article 23(5), such as, for instance, implementation of a court order. In view of a significant effect of such measures on the rights to privacy and data protection, the EDPS recommends that Article 25(1)(e) requires the provision of clear and adequate information on traffic management measures instituted for all purposes listed in Article 23(5) of the proposal. Such information should, in particular, provide an indication of the communications inspection technique used for traffic management, as well as explain its effect on end-users' privacy and data protection rights.
28. The EDPS further notes that, according to Article 25(1), communications providers may supply information for end-users, before its publication and upon request, to the relevant national regulatory authority. In view of the fact that such information will also address traffic management measures, the EDPS recommends including, in Article 25(1), a further obligation on communications providers to provide information on traffic management measures, upon request, to the competent national data protection authority. The provision should further foresee cooperation between national regulatory authorities and national data protection authorities in their assessment of the quality of information to be provided to end-users.

– *Information requirements for contracts*

29. Similarly to Article 25(1)(e), point iv, Article 26(2)(d) mandates that communications providers, in their contracts with end-users, supply information on the procedures they establish to 'measure and shape traffic so as to avoid congestion of a network', and the data protection impact of such procedures. Furthermore, Article 26(1)(j) obliges providers to inform end-users on the type of action that might be taken in response to 'security and integrity incidents or threats and vulnerabilities'. While Article 26(1)(j) does not explicitly mention traffic management measures, the EDPS notes that such measures could be used as a response to security and integrity threats - for instance, in order to locate and block harmful traffic in case of distributed denial-of-service (DDoS) attacks.
30. In view of the above, Article 26 thus appears to require the provision of information on traffic management measures undertaken for the purposes of minimising the effects of network congestion, as well as those aimed at preserving security and integrity of the network, which the EDPS welcomes. However, the EDPS notes that Article 26(1)(j) should not only require to provide information on the *types* of security-related traffic management measures, but also on the communications inspection techniques that underlie such measures, as well as their effect on end-users' privacy and data protection rights.

31. The EDPS further notes that Article 26 is silent on the information that could be provided to end-users on traffic management instituted, inter alia, for the purposes of implementing a court order or preventing the transmission of unsolicited communications to end-users, as laid down in Article 23(5), (a) and (c). Clear and adequate information on the types of traffic management measures set in place to achieve these purposes, the communications inspection techniques that underline such measures, as well as their data protection impact, should form an integral part of the contracts between communications providers and end-users, and thus be required under Article 26 of the proposal.
32. In relation both to the public provision of information (Article 25(2)) and information to be provided in contracts with end-users (Article 26(4)), the proposal grants powers to the Commission to adopt implementing acts, setting out the details of information to be supplied. In view of the necessity to ensure that clear and adequate information is provided to end-users, and especially taking into account that such information will include the description and the data protection and privacy impact assessment of traffic management measures, the EDPS welcomes further consultation on such implementing acts.
33. Article 26(1)(g) further obliges providers of electronic communications to the public to include the following information into the contracts with end-users: '*where an obligation exists in accordance with Article 25 of Directive 2002/22/EC, the end-users' options as to whether or not to include their personal data in a directory, and the data concerned*'. In that regard, the EDPS recalls that Article 25 of Directive 2002/22/EC is to apply subject to the requirements of Article 12 of Directive 2002/58/EC. In view of the indirect and complex character of such referencing, the EDPS recommends that Article 26(1)(g) is amended to include a reference to Article 12 of Directive 2002/58/EC, which further foresees that end-users should be informed about the purposes of the directory in question, as well as any further possibilities of the use of their personal data based on search functions available in that directory. According to Article 12 of Directive 2002/58/EC, end-users should also be further given information on the modalities of exercising their rights to verify, correct or withdraw their personal data from the directory in question.
- 3.4. Public registry of notifications by communications providers
34. Article 4(5) of the proposal provides for the establishment, by the Body of European Regulators for Electronic Communications (BEREC) Office, of a publicly accessible registry of notifications made by communications providers to the regulatory authority of the home Member State on their intention to begin the provision of electronic communications networks and services. Article 4(2) further provides the categories of the data to be included in the notification, among them being the name, legal status and form and, where applicable, registration number of the provider, geographical address of its main establishment, its contact person and the description of services and networks to be provided. According to Article 4(5), notifications are to be transferred to the BEREC Office by the regulatory authority of the home Member State of the provider.
35. The EDPS points out that some of the data to be included in the registry may relate to natural persons - this being the case for the contact persons of communications

providers or, in very limited cases, where the name of a communications provider identifies a natural person.<sup>14</sup>

36. The EDPS notes that Article 4(3) of the proposal obliges communications providers to notify the relevant national regulatory authority of *any changes* to the information provided in the notification within one month of such change. This provision thus effectively enables rectification of the data by communications providers and is therefore welcomed by the EDPS.
37. However, the EDPS notes that Article 4(5) neither provides information on the format of the registry or explicitly specifies its purpose, nor lays down the retention periods for the data included in notifications. The provision further does not provide for a right of a communications provider to request deletion of the data from the registry. This information should be provided in Article 4(5). This provision should also specify that, regardless of the format (electronic or printed) of the registry selected by BEREC Office, the latter should apply adequate security measures in its maintenance of the registry, in accordance with Article 22 of Regulation (EC) No 45/2001. Finally, Article 4(5) should provide for an obligation upon BEREC to grant communications providers information in accordance with Article 12 of Regulation (EC) No 45/2001, which can be disseminated via the regulatory authority of a provider's home Member State.

### 3.5. Data protection by design

38. Article 17(1)(f) of the proposal lists the requirements to be met by a European virtual broadband access product, among them being '*respect of the rules on protection of privacy, personal data, security and integrity of networks and transparency in conformity with Union law*'. The EDPS welcomes this reference to privacy and data protection rules and recommends that, in addition, compliance with the principle of data protection by design, laid down in Article 23 of the proposal for a General Data Protection Regulation, is added to the list of relevant requirements.
39. According to Article 23 of the proposal for a General Data Protection Regulation, compliance with the 'data protection by design' principle should encompass respect, inter alia, for accuracy, security, integrity and confidentiality of end-users' personal data at all stages of its processing. European virtual broadband access products should thus comply with the requirements of data security, integrity and confidentiality within the context of transmission of communications over the network. Data accuracy, security, integrity and confidentiality requirements should further be met by relevant ancillary IT systems as mentioned in Annex I of the proposal, such as, for instance, those used for managing maintenance and repair requests and end-user billing. In that regard, the EDPS welcomes further consultation on delegated acts to be adopted by the Commission under Article 17(2), adapting technical requirements for European virtual broadband access products specified in Annex I.
40. Similarly to the conditions applicable to the European virtual broadband access product, Article 19(4)(e) provides for respect for privacy and data protection as requirements for the European Assured Service Quality (ASQ) connectivity product. While welcoming this general reference, the EDPS further recommends specifying, in Article 19(4)(e), that European ASQ products are to comply with the data protection

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<sup>14</sup> See, by analogy, Joined cases C-92/09 and 93/09 *Volker und Markus Schecke* [2010] ECR I-11063, para. 53.

by design requirement. In relation to the ASQ connectivity products, such compliance should entail respect for the confidentiality, integrity and security of the data processed within the course of transmitting communications over the network.

41. The EDPS further notes that Article 19(5) of the proposal grants the Commission the power to adopt delegated acts in order to adapt the requirements for European ASQ connectivity products, specified in Annex II. In view of the fact that only a very limited number of such requirements are provided in that Annex, the EDPS recommends, firstly, amending it to further specify the list of relevant requirements. Next, the EDPS highly welcomes further consultation on the relevant delegated acts.
42. Finally, in view of the necessity for both the European virtual broadband access product and the European ASQ connectivity product to comply with the data protection and privacy rules, including the principle of data protection by design, the EDPS equally welcomes consultation on the implementing acts specifying technical and methodological rules for the implementation of these products, adopted pursuant to Article 20(2).

#### 4. CONCLUSIONS

43. The EDPS recalls that respect for the rights to privacy and the protection of personal data, and for the confidentiality of communications, is crucial to building consumer trust and confidence in the European single market for electronic communications. In that regard, the EDPS provides the following key recommendations:
  - Traffic management measures constitute a restriction to net neutrality, which the proposal sets out as the key principle applicable to Internet use in the EU, and interfere with end-users' rights to confidentiality of communications, privacy and personal data protection. In view of this, such measures should be subject to strict transparency, necessity and proportionality requirements. In particular:
    - Using traffic management for the purposes of implementing a legislative provision or preventing and impeding serious crimes may entail a wide-scale, preventive and systematic monitoring of communications content which would be contrary to Articles 7 and 8 of the EU Charter of Fundamental Rights, as well as Article 5(1) of Directive 2002/58/EC and Directive 95/46/EC. Reference to these grounds should be removed from Article 23(5)(a) of the proposal;
    - Article 23(5) of the proposal should provide clear information on communications inspection techniques that are allowed within the context of traffic management measures;
    - Article 23(5) should explicitly provide that, whenever sufficient for the achievement of one of the aims set out in that provision, traffic management measures will involve communications inspection techniques based on the sole analysis of the IP-headers, as opposed to those involving Deep Packet Inspection;
    - Articles 25(1) and 26 of the proposal should require the provision of information on traffic management measures, instituted for *all purposes* laid down in Article 23(5). In particular, these provisions should require providers to indicate the communications inspection techniques underlying

- such traffic management measures, as well as explain the effect of such techniques on end-users' privacy and data protection rights;
- Article 24(1), laying down the powers of national regulatory authorities to, inter alia, supervise the application of traffic management measures, should include the possibility for the latter to cooperate with national *data protection* authorities. Similarly, Article 25(1) should provide for a possibility for national data protection authorities to obtain for inspection information on traffic management measures before its publication;
  - The interrelationship between Article 7(1) of Directive 2002/58/EC and Article 27(4) of the proposal should be clarified;
  - Both Articles 17(1)(f) and 19(4)(e) of the proposal should be amended to include the requirement for the European virtual broadband access product and the European ASQ connectivity product, respectively, to comply with the principle of data protection by design.

Done in Brussels, 14 November 2013

**(signed)**

Peter HUSTINX  
European Data Protection Supervisor