

ISOC European Regional Bureau Newsletter

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Net neutrality

EU: Member States delay net neutrality compromise while the adoption of new national laws adds pressure

- On 27 November, **EU telecom ministers rejected a compromise** on the **Connected Continent package**. Suggested by the Italian Presidency, the compromise included a **principle-based framework for net neutrality**, where the term would be introduced but not strictly defined by law.
- Although the main reason for this rejection was a failure to agree on how to phase out roaming charges (ministers asked BEREC to issue an opinion by mid-December), views on net neutrality seem to diverge as well.
- While discussions on the whole package have been evolving at a slow pace in 2014, **some Member States** (such as Slovenia, the Netherlands and more recently Finland) **adopted national laws** which are more detailed compared to the Italian proposal. For example, the new **Finnish law** which will come into force in January 2015 clearly states that an ISP may not restrict a subscriber's or user's ability to use an Internet service. **Germany** also made clear that it has developed a proposal for a national law on net neutrality, which might be adopted if EU negotiations fail. These Member States say that potential EU rules on net neutrality should not grant lower protection to their citizens than their national laws currently do. This is in contrast with other Member States (such as Estonia) which have been advocating in favour of a lighter framework.
- The possibility that more Member States introduce national provisions on net neutrality is now putting some pressure on the Council to reach a deal on the issue and begin trilogue negotiations with the European Parliament. **Günther Oettinger, EU Commissioner for the Digital Agenda**, and **MEP Pillar del Castillo**, Rapporteur on the proposed Telecom package, both urged the Council to agree on the reform ASAP.
- However, **Andrus Ansip, Vice-President of the Commission** responsible for the Digital Single Market, **joined the Member States which ask for stricter rules**. The Vice-President stated that the net neutrality concept has to be solid and clearly defined. The Council experts will clearly face challenges in reconciling views in the next few weeks.

EU: A group of MEPs call on the Council to enshrine net neutrality in EU law

- Ahead of the Telecom Council meeting, a **group of 131 MEPs** from across the political spectrum signed a **letter** addressed to Antonello Giacomelli, Undersecretary of State of the Ministry of Economic Development (Italy), urging the **Council not to weaken the proposed Connected Continent package** and to **enshrine net neutrality in EU law**.
- The MEPs expressed **concerns with regards to the latest proposal** by the Italian Presidency that waters down strong definitions of net neutrality and specialised services, thus undermining the Digital Single Market.
- The initiative was led by **MEP Marietje Schaake** (ALDE, the Netherlands).

Data protection

EU: Article 29 WP says right to be forgotten needs to apply to .com domains

- The **Article 29 Data Protection Working Party** (WP) adopted **guidelines** on the implementation of the right to be forgotten. The WP **noted** that with the ruling, the Court of Justice of European Union set a milestone for EU data protection.
- The guidelines contain the common interpretation of the ruling and criteria to be used by the data protection authorities (DPA) when addressing complaints.
- In order to guarantee complete and effective protection of data subjects' rights, **de-listing decisions must be implemented in a way that does not circumvent EU law**. The WP argued that limiting de-listing to EU domains cannot be considered a sufficient means to guarantee the rights, thus calling for de-listing to **be effective on all relevant .com domains**.
- The guidelines also contain a list of **13 main criteria**, to be considered as a flexible working tool, which would help DPAs handle complaints

EU: Presidency's note on the one-stop shop principle

- The Council of the EU has published a **note** by the Italian Presidency on one of the key elements of the proposed data protection Regulation, **the one-stop shop** principle.
- The **compromise text foresees three types of cases**: local cases not covered by one-stop shop provisions, cross-border cases, and dispute resolution system for cross-border cases.
- Underlining that the one-stop shop mechanism should only apply in important cross-border cases, the text noted that the functioning of the provision relies on an **enhanced cooperation between a lead data protection authority** and other **concerned DPAs**.
- The **lead DPA** will primarily be that of the main establishment of the controller or processor, or the authority overseeing processing by a controller or processor established in one Member State but substantially affecting data subjects outside this state.
- The note **strengthened the involvement of all concerned DPAs**, as the lead authority cooperates with other DPAs concerned to reach consensus. Should the lead DPA and the DPAs concerned not reach a joint decision, the compromise text introduced a **dispute-resolution system**.
- In case of a dispute, the **European Data Protection Board**, which will be composed of all EU DPAs and will have a legal personality, will act as appropriate forum for dispute resolution.

EU: Parliament confirms Buttarelli as European Data Protection Supervisor

- On 27 November, European Parliament's Conference of Presidents (President Schulz and leaders of the political groups) gave a green light to **the appointment of the next European Data Protection Supervisor** (EDPS) **Giovanni Buttarelli** and his Assistant Supervisor **Wojciech Rafał Wiewiórowski**.
- Parliament's President Schulz underlined that protection of **personal data is a key fundamental right that needs to get renewed attention in the digital age**.
- The final stage of the procedure will be the signature of the nomination decision by both Parliament and the Council.

Internet regulation

EU: In a market dominated by US digital players, EU steps up pressure to rewrite digital sector rules

- On 27 November, the European Parliament adopted a **non-legislative resolution** on the **EU Digital Single Market**.
- While the media mostly report on a certain anti-Google angle of the resolution (the part which addresses the possible unbundling of search engines from other businesses they operate), the resolution also called for a speedy start of negotiations on the proposed **telecom package**. The MEPs called on EU

Member States and the Commission to **break down barriers to digital market growth**, and underlined the **importance of preventing online companies from abusing dominant position**.

- Alongside the resolution, a joint letter suggesting that **essential digital platforms should be better regulated** was submitted to the Commission. The letter signed by France's **Axelle Lemaire** (Digital Affairs Minister) and Germany's **Brigitte Zypries** (Parliamentary State Secretary at the Federal Ministry for Economic Affairs and Energy) on behalf of their respective governments, called for either bringing essential platforms under existing rules for telecoms markets, designing a standalone regulation or specially tailored antitrust rules.
- The letter called on the European Commission to **launch a public consultation on the matter**.

Open Internet/Data protection

UK: Association of ISPs defends service providers

- **ISPA**, the UK association of Internet Service Providers criticised a report of the Intelligence and Security Committee of the UK Parliament on the murder of a British soldier. The report suggested that the Internet is a safe haven for terrorists.
- The association argued that it is up to the intelligence agencies and not service providers to identify potential subjects, underlining that under the existing provisions for law enforcement access to communication data, **providers assist with investigations as required**.

Internet governance

EU: Member States support a more coordinated EU voice on Internet governance

- In a Council meeting on 27 November, **EU telecom ministers** decided that Member States and the Commission should coordinate their positions and work closely together in relevant fora and **organisations dealing with Internet governance**.
- According to the Council, the **EU should deliver a more consistent messaging** in its international discussions with governments and stakeholders, while respecting the particular interests of its Member States.
- In the conclusions, the ministers re-affirmed their **commitment to a multistakeholder model of Internet governance** and the values of human rights, freedom online, privacy and freedom of association.
- While supportive of the **ICANN and IANA transition processes**, EU ministers warned that they should not be exposed to narrow commercial or government interests. They added that conflicts of jurisdiction on the Internet **might have implications with respect to the EU acquis**, e.g. with regards to data protection and geographical indications.
- The Council conclusions reiterated the commitment to the success of the so-called **WSIS+10 process**, building on the work of the **IGF** and the outcome of **NETmundial**. As a next step, the ministers asked the Commission to report on the progress made in key elements of its 2014 Communication on Internet governance.