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New BEREC Guidelines: from “Net neutrality” to “open Internet”

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Overview of European NN rules Regulation (EU) 2015/2120

The **Regulation (EU) 2015/2120** was adopted in November 2015 and came into force on 30 April 2016

This Regulation aims to establish common rules to **safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights**

NRAs play an essential role in ensuring that end-users are able to exercise effectively their rights under this Regulation by monitoring and ensuring compliance with

- «safeguarding of open internet access » (**art. 3**), and
- «transparency requirements» in the provision of the Internet access services (**art. 4**)

NRAs have also **reporting obligations**:

- the reports must be published on an annual basis (by 30th June)
- the reports should be provided to the Commission and to BEREC

In line with this, BEREC first adopted in August 2016 **Guidelines on net neutrality** in order to provide guidance to NRAs on their implementation of the rules regarding:

1. «**commercial practices**»
2. «**traffic management practices**»
3. «**specialised services**»
4. compliance with the rules in this Regulation on «**transparency measures**» for ensuring open internet access

Overview on national activities

Regulation (EU) 2015/2120

Since the entry into force of the Regulation, NRAs have engaged in a combination of activities

1. reviewed publicly available information from ISPs
2. requested information from ISPs concerning the general terms and conditions of their contracts and conducted interviews with those ISPs
3. performed assessments of ISPs general terms and agreements on commercial and technical conditions to establish the presence or the absence of a possible violation of Article 3
 - ✓ monitored and supervised zero-rating offers that came on the market
 - ✓ monitored traffic management practices by sending a questionnaire to ISPs
 - ✓ monitored specialised services offers by sending a questionnaire to ISPs
4. acted upon complaints regarding the compliance with the Regulation
 - ✓ AGCOM has received approximately 30 complaints related to possible infringements of Articles 3(1) and 3(2) of the Regulation
5. stimulated self-assessment or internal compliance by ISPs
 - ✓ ISPs have changed commercial practices
6. drafted national guidelines on enforcement policy
7. adopted administrative orders/decisions or imposing administrative fines

The review of the old BEREC Guidelines in 2019

AGCOM and other NRAs actively contributed to the work of the BEREC expert groups for the implementation of the Net Neutrality rules. After three years of implementation, a review process started

Milestones

- The new draft Guidelines were issued for public consultation from 10 October 2019 until 28 November 2019. BEREC received 52 responses to the public consultation from various types of stakeholders.
- **Adoption of the new BEREC Open Internet Guidelines (17 June 2020)**
- Review of the Regulation 2120/2015: by 30 April 2023 and every four years thereafter

The BEREC Strategy 2018-2020 focussed on the following five strategic priorities:

- i. responding to connectivity challenges and to new conditions for access to high-capacity networks;
- ii. monitoring potential bottlenecks in the distribution of digital services;
- iii. enabling 5G and promoting innovation in network technologies;
- iv. **fostering the consistent application of the net neutrality principles;** and
- v. exploring new ways to boost consumer empowerment.

Lessons learned in 3 yrs

Here, the topics that engaged NRAs the most in the years 2017-2019

The new Guidelines on Open Internet (BoR (20) 112, 11 June 2020, BEREC Guidelines on the Implementation of the Open Internet Regulation) represent the latest evolution of the concrete experience of regulators in Europe in the application of the EC Regulation on net neutrality.

The guidelines also set the course for future decisions on the part of regulators.

	Zero rating	Traffic management	Tethering	Transparency	Specialised services
Austria					
Belgium					
Czech Republic					
France					
Germany					
Ireland					
Italy					
Netherlands					
Norway					
Spain					
Sweden					
United Kingdom					

Open internet principle

- The TSM Regulation aims to "*establish common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights. It aims to protect end-users and simultaneously to guarantee the continued functioning of the internet ecosystem as an engine of innovation.*"
- Providers of internet access services "*shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.*"



(Between brackets: a totally new issue, or is it so?)

«Reverse angle of Open Internet»



Input to BEREC consultation 2019

- Stakeholders remained divided over zero rating offers and (the definition of) specialised services
- In-flight Wi-Fi services and other satellite supported services: BEREC believes that satellite services are to be covered by the full extent of the Regulation as they fit the definition of an IAS which is a publicly available Electronic Communications Service (ECS) which provides access to the Internet, where ECS are defined according to Article 2 of the Framework Directive.

The new Guidelines (June 2020)

- BOR (20) 112
- [BEREC Guidelines on the Implementation of the Open Internet Regulation](#)

New Guidelines – some key points

- BEREC added several clarifications to the final updated guidelines, but made no fundamental changes.
- BEREC expounded that also hybrid internet access services (IAS), using a mix of fixed and mobile technology, and fixed wireless access (FWA) must meet the transparency requirements regarding their performance and speed.
- FWA is considered as a fixed network for transparency purposes, specifically where IAS at a fixed location are provided by a mobile network using dedicated equipment, reserved capacity or a specified spectrum band.

BEREC debriefing June 2020



Main changes to the Guidelines since consultation

- Added subheaders for readability
- Clarifications on what is and what is not part of the IAS (**GL 12 and 78-78c**)
- Clarifications on end point-based services (**GL 32a-b**)
- Clarification of the term application agnostic (**GL 34a**)
- Clarifications in the text on Open Programmes and in the methodology in the Annex (**GL 42-42c and Annex**)
- Clarification: certain Hybrid IAS and Fixed Wireless Access IAS fall under the transparency rules for 'fixed'. (**GL 141-141b**)
- Also many other minor clarifications
 - **GL 25, 34b-34d, 40, 48, 80, 81, 108a, 112, 121, 121a, 124, 135, 138, 147, 183 and 186 + proofreading**

Topic / change

<p>Definition of internet access services (IAS) (par. 12)</p>	<p>Added examples of services which are not considered to be publicly available IAS, and therefore do not fall within scope of the TSM regulation:</p> <ul style="list-style-type: none"> •enterprise services having a closed group of end users, that are not available to the general public; and •private M2M networks, for example in factories and ports.
<p>End point-based services (par. 32a, 32b, and 78-78c)</p>	<p>In the draft text of October 2019, BEREC added paragraphs explaining that end point services executed outside the IAS fall out of scope of the regulation BEREC now added further details:</p> <ul style="list-style-type: none"> •Any functionality that takes place at the destination of the IP address provided by the end user’s computer is considered as an end point-based service. •As an example, default DNS resolvers automatically installed by an internet service provider (ISP) when activating a connection are considered part of the IAS. <p>In contrast, additional DNS resolvers and HTTP proxy servers addressed by the end user’s computer are examples of end point-based services.</p>
<p>Application-agnostic quality of service level (par. 34a)</p>	<p>In the draft text presented in October, BEREC clarified that ISPs may offer IAS with different application-agnostic quality of service (QoS) levels. A definition of the term “<i>application-agnostic</i>” is now added:</p> <ul style="list-style-type: none"> •Under Art. 3(2) of the TSM Regulation, where the ISP provides more than one level of QoS, application-agnostic means that any application may populate any QoS level as selected and controlled by the end user. •Under Art. 3(3), where the ISP provides more than one “<i>category of traffic</i>”, application-agnostic means that the treatment of traffic within each category is independent of the application. <p>To further clarify the distinction between QoS levels provided under Art. 3(2), categories of traffic provided under Art. 3(3), and specialised services provided under Art. 3(5), BEREC provided an illustration on page 13 of the consultation report.</p>

Topic/ Change

<p>Zero rating open programmes (par. 42, 42a and annex)</p>	<p>BEREC clarified the following:</p> <ul style="list-style-type: none">•The guidelines do not make a statement that open programmes are authorised or forbidden, instead they are <i>“less likely to restrict end-user choice or undermine innovation on the internet than programmes that are not open”</i>.•The methodology to assess zero-rated offers, provided in the new annex, does not supersede or replace the rules in the body of the guidelines.•The annex’s title was changed from <i>“step-by-step assessment”</i> to <i>“assessment methodology”</i>, to not prescribe a specific order of steps for NRAs to follow when assessing offers.•End users’ contracts must clearly indicate what is included in a zero-rated plan. For example, if not all content within an application is zero-rated, this should be clearly explained before the end user decides to use the application.
<p>Transparency rules (par. 141 and 141b)</p>	<ul style="list-style-type: none">•Clarification that only certain hybrid IAS services based on fixed wireless access (FWA) fall under the transparency requirements for a fixed network, for example where an IAS at a fixed location is provided by a mobile network using dedicated equipment, reserved capacity or a specified spectrum band.

After consultation in 2019

Specialised services and 5G

- Despite calls made by several stakeholders, BEREC stressed once again that the guidelines remain technology-neutral, and that the text should not refer to specific technologies such as 5G.

Monitoring of specific content

- BEREC decided to maintain the current wording of paragraphs 69 and 70.
- During the consultation process, BEREC sought feedback from stakeholders on this section dedicated to traffic management methods which do not monitor specific content.
- BEREC considered that some of the methods used for both categorisation and billing purposes (in the case of zero rating for example) are in line with the current version of the guidelines, in particular categorising by IP addresses, by QoS tags in the IP header and by heuristic methods.
- Several stakeholders raised concerns about potential privacy issues when ISPs use domain names and web addresses for traffic identification. Following the European Data Protection Board (EDPB) [public response](#) to the consultation, BEREC encourages national regulatory authorities (NRAs) and data protection authorities (DPAs) to cooperate on a case by case basis, at national level.



Thank you