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**ANNUAL REPORT
ON THE IMPLEMENTATION OF
REGULATION (EU) 2015/2120
FOR 2018**

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I. INTRODUCTION

This annual report is the third after the entry into force of the provisions of Regulation 2015/2120 (the Regulation), covering the period from 1 May 2018 to 30 April 2019. The annual report gives an overview of the activities undertaken by the Communications Regulation Commission (CRC/the Commission) to ensure non-discriminatory treatment of traffic in providing the Internet access service (IAS) and protection of end-user rights. The report shall be submitted to the European Commission and the Body of European Regulators for Electronic Communications (BEREC) and shall be published on the CRC's website by 30.06.2019.

II. REGULATION IMPLEMENTATION MONITORING

The approach applied by the Commission to monitor and control the implementation of the Regulation provisions relating to the commercial and technical practices applied by providers consists in:

1. Collection and summarization of information on the implementation of the European rules for net neutrality which undertakings are obliged to provide via annual questionnaires.

Replies to the annual questionnaire on the activities of the undertakings in 2018 were received from all retail mobile and fixed Internet access service providers that provide the service to 99.96% of the total number of Internet access subscribers. There is a steady downward trend in the number of providers who have not submitted data to the Commission, their number being negligible (6 providers) for the period in concern (Fig.1).

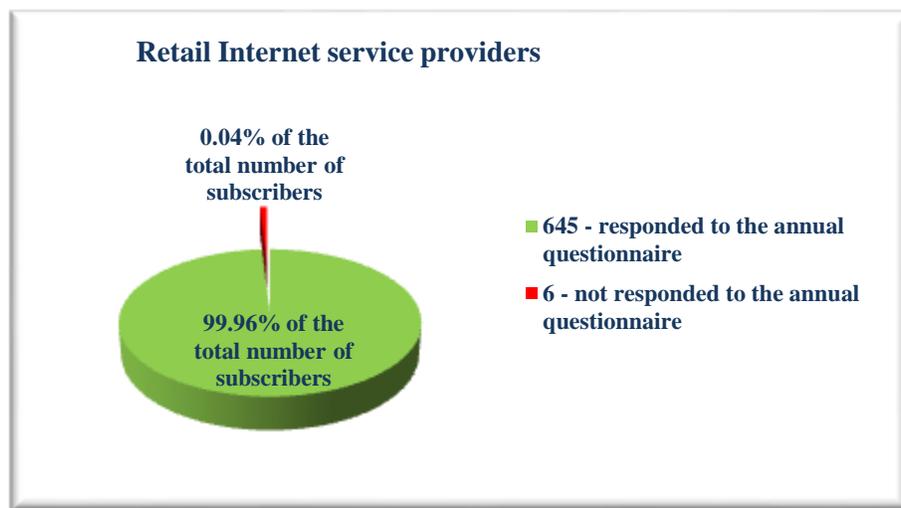


Fig. 1

2. Analysis of complaints related to the implementation of the provisions of Article 3 and Article 4 of the Regulation.

The complaints filed with the CRC during the period in question relating to the implementation of the provisions of Articles 3 and 4 of the Regulation are presented in the figure below:

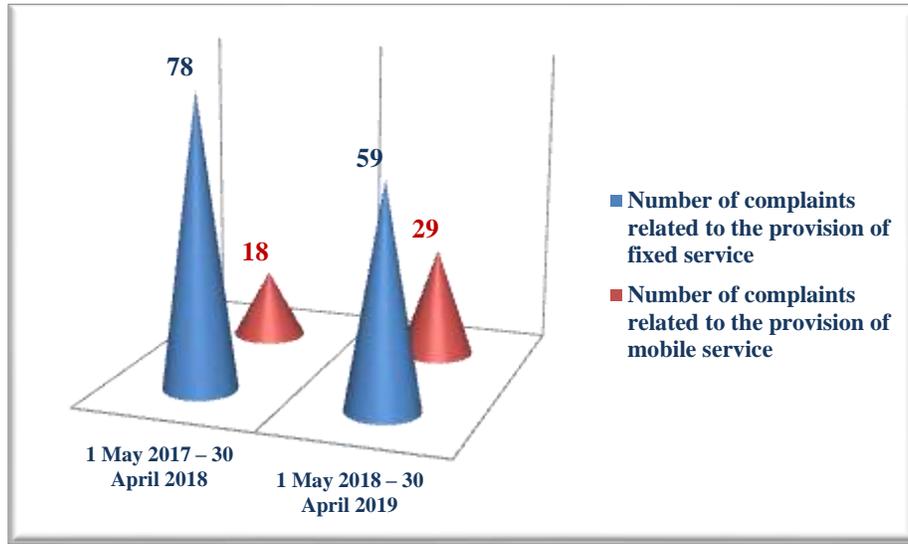


Fig. 2

➤ *Complaints related to the provision of fixed IAS*

Complaints of fixed IAS users are mostly related to actual delivered speeds lower than contractually-agreed speeds and service interruptions. Some of the cases proved to involve minor deviations from the agreed speeds. There are cases where providers themselves establish that the speeds vary significantly from those agreed and voluntarily give the opportunity to the subscriber to terminate the contract without penalty.

➤ *Complaints related to the provision of mobile IAS*

Complaints of mobile IAS users are mostly related to the lack of good network coverage in a particular location rather than to traffic management practices.

3. Review of the information published on the websites of the undertakings in respect of IAS provided by them.

The CRC continues to carry out a review of the websites of ISPs having the highest number of subscribers.

4. Review of the conditions and the information described in the individual contracts with end-users concerning IAS.

III. REGULATION IMPLEMENTATION MONITORING RESULTS

1. Implementation of Article 3 (1), Article 3 (2) and Article 3 (5)

➤ There are no practices of restrictions on the use of technically compatible terminal equipment imposed by the ISPs which are contrary to Article 3 (1) of the Regulation;

➤ There is a decline in respect of the provision of zero-rating services. As compared to the year before, a decrease was reported not only in the number of services, but also in the number of their providers (Fig.3). Only one provider offering mobile IAS included zero-rating services in its trade offers - voice and short messages and music streaming.

➤ In the provision of zero-rating services, providers noted in individual contracts that after consuming the volume of data at maximum speed, as included in the tariff plan, connection speed is reduced to 256 kbps /128 kbps /64 kbps (different for the various providers), both for the basic IAS and for the content provided at a zero price.

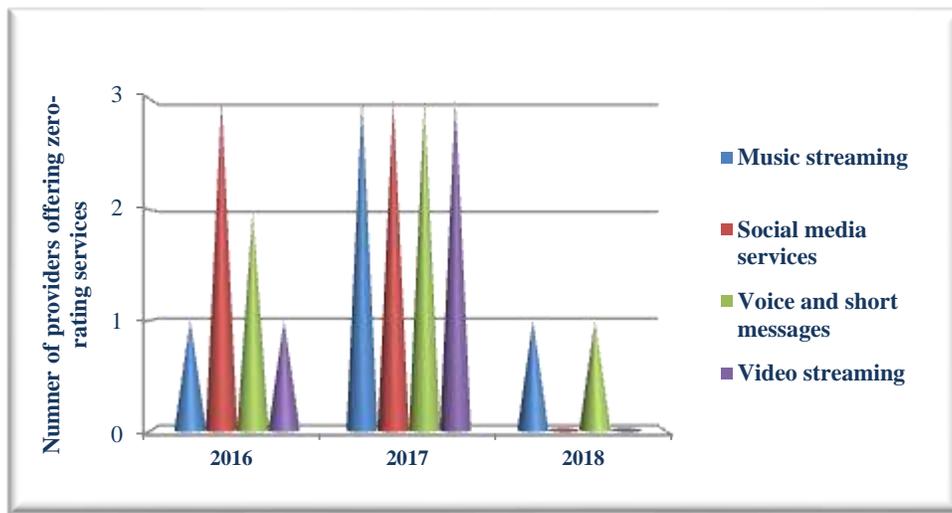


Fig. 3

During the past year, one case was established in which the ISP has failed to publish full information on the terms of use of the proposed tariff plans, including zero-rating services. The actions taken by the CRC are set out in Section IV.

- Licensed antivirus software remains a main additional service for fixed IAS users;
- IPTV service is provided as a specialized service. All providers claim that this service does not affect the overall quality of the IAS for end-users.

2. Implementation of Article 3 (3)

- In general, undertakings comply with the requirements laid down in Article 3 (3) of the Regulation;
- No port blocking in conflict with the rules of the Regulation was identified;
- The CRC established one case of incorrectly chosen method of restricting the access to websites determined by court order. In fulfilment of the court order, the provider blocked the IP address of the host that supports these websites thus stopping the access to all websites hosted on this IP address. After a check performed by the CRC, the provider changed the method of restricting the access to certain websites in a prompt and voluntary manner.

3. Implementation of Article 4

On the basis of the information collected with the annual questionnaire for the implementation of the net neutrality rules and the review of part of the individual contracts signed between the larger providers and their subscribers (fixed ISPs providing the service to 99.96% of the total number of subscribers and the three mobile ISPs), the CRC established the following:

- Contracts of mobile and fixed ISPs contain values of the minimum, normally available, maximum and advertised speed in the case of fixed networks, and of the estimated maximum and advertised speed in the case of mobile networks, but they do not contain any explanations;
- Individual contracts for mobile IAS contain clarifications that:
 - advertised and maximum speeds are equal, as the download and upload maximum speeds are described for each mobile network generation - 2G / 3G / 4G; maximum speed is not guaranteed and is achievable under certain conditions - a suitable device, coverage and workload of the network, etc.
 - reducing the speed to a minimum (expressly stated by the provider), after consuming the volume of data at maximum speed, may impede the access and distribution of certain types of information and content as well as the access to applications and services requiring another minimum speed for their use. The clarifications, however, do not describe the effect of the introduced speed limitation (e.g.: loading of websites may take more time, it is not possible to make video calls in applications such as Skype, Viber, WhatsApp and Facebook Messenger, etc.)
- In their general terms and conditions, some providers give information on the so-called "realistic conditions of use", listing factors with a significant impact on the speed and quality of access such as: type of technology, density of buildings, location of end-user, and model of terminal equipment.
- The check of the conditions published on the providers' websites for the provision of fixed IAS showed that these conditions meet the requirements of Article 4 of Regulation 2015/2120.

In fulfilment of the provisions of Article 4 (4), the CRC is close to finalising the ToR for the award of a public procurement for the building of a system to measure the quality of Internet access via fixed and mobile networks. The contractor selection procedure is expected to start in the first half of 2019.

IV. CONTROL MEASURES TAKEN PURSUANT TO ARTICLE 5 (1)

1. By its Decision No 170/18.04.2019, the CRC adopted a "Position on the implementation of the requirements of Article 3 and Article 4 of Regulation (EU) 2015/2120 by providers of Internet access to end-users".

The position does not constitute a legally binding act and has the objective both to harmonize the understandings of the CRC and the IAS providers in respect of the implementation of the Regulation and to announce publicly the criteria according to which the CRC will evaluate its implementation. The position is consistent with the established problems related to the implementation of Regulation No 2015/2120, including on the degree of detail of the particulars contained in IAS contracts.

The guidelines given in this position are also a consequence of the analysis of implementation of the requirements of Article 3 and Article 4 of the Regulation by providers of Internet access, the most important being:

➤ Every 6 months, providers should submit to the Commission information on cases where end-users have to use equipment made available by the provider. The information should contain a detailed description of the technical and technological reasons requiring the use of equipment made available by the provider. Providers should publish on their websites information on the terminal equipment necessary for the use of the service and whether the subscriber can provide them himself, for his own account;

➤ The CRC considers the traffic management measures aimed at preventing and restoring the network in case of cyber/hacker attacks and the blocking of IP addresses or ranges to be justified/reasonable;

➤ In connection with the implementation of Article 3 (3), third subparagraph, letter (c) of the Regulation, the following terms were defined:

- "impending network congestion" - represents predicted congestion which, despite the preventive measures, is inevitable.
- "exceptional network congestion" - congestion resulting from the occurrence of unpredictable or unavoidable event of extraordinary nature such as a technical network failure due to broken cables, faulty infrastructure device, etc. in which backup resources of limited capacity are used.
- "temporary network congestion" - congestion in public events (concerts, rallies and other gatherings of many people in a public place).

➤ Providers should include in their contracts with end-users not only a numerical value of speeds offered in the provision of mobile and fixed IAS, but also an explanation of these parameters.

➤ Providers should publish on their websites information on the consequences of Internet access speed reduction after consuming the volume of data at maximum speed and how this information should be presented in the contracts.

➤ The minimum and normally available download and upload speeds provided via fixed networks were defined as follows:

- minimum speed - 20% of the maximum speed for the relevant subscription plan, but not less than 4 Mbps;
- normally available speed - 80% of the maximum speed achievable in 80% of the time within one day.

➤ The terms "significant continuous discrepancy" and "regularly recurring discrepancy" from the agreed quality of Internet access were defined as follows:

- Any discrepancy which lasts up to 2 consecutive weeks within one accounting period shall be considered to be a "significant continuous discrepancy".
- A "regularly recurring discrepancy" shall be more than one temporary deviation within one accounting period (the CRC has also introduced the term "temporary discrepancy" which covers a period of time up to 3 consecutive days within one accounting period).

The full text of the position was published on the CRC's website¹. The text is only available in the Bulgarian language.

2. The CRC adopted Decision No 250 of 27.06.2018 obliging one of the mobile IAS providers to complement the information concerning the terms of use of zero-rating services, included in tariff plans with a limited volume of data. The provider should:

- Complement the conditions with information that, under this offer, the Internet traffic to Facebook, FB Messenger and WhatsApp does not use the volume of data at maximum speed included in the tariff plan.
- Explicitly indicate in its website terms of use whether video services (video streaming, video calls) through/via Facebook, FB Messenger and WhatsApp are an exception from the offered additional unlimited volume of data at maximum speed with zero rating.
- Publish in its website terms of use, for each plan containing specific conditions for access to the relevant applications via a mobile browser that uses data compression technology, concrete examples of the most popular and most used browsers.
- Notify all subscribers with effective contracts under this plan of the amended conditions.

V. IMPLEMENTATION OF ARTICLE 6 - IMPOSITION OF PENALTIES ON IAS PROVIDERS IN THE EVENT OF FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE REGULATION

Penalties applicable to infringements of Articles 3, 4 and 5 of the Regulation are laid down in the Law on Electronic Communications. Infringements of Article 3 are penalized by the imposition of fines ranging from approximately EUR 1,000 to 100,000. Infringements of Article 4 are penalized by the imposition of fines ranging from approximately EUR 250 to 2,500. Infringements of Article 5 (2) are penalized by the imposition of fines in the amount of approximately EUR 2,000 to 20,000.

In the period under review, the CRC has not imposed any penalties for non-compliance with the provisions of Regulation No 2015/2120. During the said period, the court appeals of five penal decrees issued in previous accounting periods for infringement of Article 4 (1), first subparagraph, letters "b" and "d" of Regulation No 2015/2120 were completed. Four of the penal decrees were confirmed and one was repealed. The decisions of the court are final.

¹<https://crc.bg/bg/statii/1673/poziciq-na-krs-otnosno-izpylnenie-na-iziskvaniqta-na-chl-3-i-chl-4-na-reglament-es-2015-2120>