

CRC 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

Regulation (EU) 2015/2120¹ (the Regulation) is directly applicable and mandatory in its entirety in all EU Member States, and no transposition in the national legislation is necessary. It is applied as from 30 April 2016 and identifies measures concerning open internet access. Pursuant to Article 5, para 3 of the Regulation, BEREC² adopted Guidelines to be applied by the national regulatory authorities (NRA) concerning the European net neutrality rules (the Guidelines)³. The Guidelines give directions to NRAs on fulfillment of the obligations to ensure open internet access.

The purpose of the position is to express the understanding of the Communications Regulation Commission of the application of the requirements of the Regulation, which are left up to the NRA's judgement. This shall contribute to a greater clarity, transparency and harmonization of the applied contract conditions with end users, which internet access providers (IASP) are required to draw up pursuant to the provisions of Article 3 and Article 4 of the Regulation. The position takes into consideration the Guidelines to a maximum extent and provides clarifications at certain points. The Regulation, respectively the position, comprises the services provided to residential and business users.

Pursuant to Article 13 of the APC, the administrative authorities announce in due time publicly the criteria, the internal rules and the established practice in executing their operative independence to apply the law and achieve its goals.

The present position does not constitute a binding legal act and has the only purpose to publicly announce the criteria, according to which CRC shall evaluate the implementation of the Regulation.

I. ARTICLE 3 SAFEGUARDING OF OPEN INTERNET ACCESS

Article 3, para 1 of the Regulation

Access and distribution of information and content

End users shall have the right of access and distribution of information and content. „Access and distribution” means that the provisions of the Regulation are applied both for sending and receiving data over the Internet Access Service (IAS).

The term „information and content” aims to encompass all forms of data, in which they can be sent or received over the IAS.

Choice of use of terminal equipment

End users shall have the right to use terminal electronic communications equipment (terminal equipment) of their choice, which are connected to the interface of the public telecommunications network. Pursuant to Article 271, para 1 of the Law on electronic communications (LEC) providers of public electronic communications networks and/or services, cannot refuse connection to the public

¹ Regulation (EU) 2015/2120 of the European parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union

² Body of European Regulators for Electronic Communications

³ BoR (16) 127 „BEREC guidelines on the application of the European net neutrality rules by the national regulators“; Bulgarian translation: http://crc.bg/files/_bg/7+cor++bereg-guidelines-on-the-implementation-NN_BG+1.pdf

electronic communications network of terminal equipment, if they meet the requirements of the Law on the technical requirements to the products. In this regard, providers should not relate the provision of IAS with the mandatory use of terminal equipment, offered by the provider, which cannot be replaced with own equipment of the end user.

CRC shall judge the compliance with this requirement by checking whether the IASPs oblige in the contract their subscribers to use only the terminal equipment offered by the provider and prohibit their replacement with those of the end users.

Providers can offer their equipment, when there is an objective technological necessity and the equipment offered is part of the provider's network from a technology point of view. CRC expects providers to submit to the Commission information, every 6 months, on the cases, when there is a need for the end user to utilize equipment offered by the provider. The information shall include detailed description of the technical and technological reasons, which require the use of equipment, offered by the provider. This does not preclude CRC from conducting inspections on-site at its own initiative or in case a complaint is filed, as well as requesting information with an explicit decision.

Providers place on their website information to the end users on the terminal equipment necessary to use the service and whether the subscriber is allowed to procure such equipment on its own. Example: *The provision of internet access services at a certain location and more specifically in the case of fiber-to-the-home (FTTH) and internet access through cable network (CaTV), requires a specific equipment to be installed at the end user's premises, which is part of the network. Detailed information should be available on the undertaking's website on the technical parameters, including the interfaces of these types of equipment. End users are allowed to connect to the described equipment from the operator's network all kinds of terminal equipment/devices, as long as they comply with the requirements of the Law on the technical requirements to the products.*

Article 3, para 2 of the Regulation

Commercial practices

The commercial practices of providers shall not limit the exercise of the rights of end users. Examples for commercial practices for which CRC accepts that they do not limit the exercise of end users' rights:

- Contractually-agreed tariffs for specific data volumes and speeds of the Internet access service (IAS);
- Application-agnostic offers where an end user gets uncapped access to Internet (and not just for certain applications during a limited period of time, e.g. during night-time or at weekends when the network is less busy);
- The ability for an end user to access the ISP's customer service when their data cap is reached in order to purchase access to additional data;
- Bundling the provision of the IAS with an application. For instance, a mobile operator may offer free subscription to a music streaming application for a specific period of time to all new subscribers, where the traffic associated with this application is not subject to any preferential traffic management practice, and is not priced differently than the transmission of the rest of the traffic.
- CRC considers as restricting the end users' rights the banning by the provider, set forth in the contract, for use of specific content, or one or more applications/services or categories thereof (for example, banning the use of VoIP) as well as technological restrictions resulting in impossibility to use the same.

Zero rating

IASPs, mostly the mobile, use specific commercial practice called zero rating. The IASP applies a price of zero to the data traffic associated with a particular application or category of applications and the data does not count towards any data cap in place on the IAS introduced by the

provider with regard to the general traffic. There are different types of zero rating practices which could have different effects on the end users and the open Internet, and hence on the end users' rights protected by the Regulation.

CRC considers as admissible the applied by providers zero rating practice where once the data cap is reached the access is blocked or the speed is slowed down for all applications for which the zero rating is applied.

CRC shall assess the implementation of the applied by providers zero rating practices for every specific case and taking into account the considerations and the criteria indicated in p. 40-48 of the Guidelines.

Depending on the specific case, CRC may also use other criteria indicating the relevant reasons for this. In all cases, CRC shall require transparency and encourage undertakings' campaigns and initiatives directed towards the larger end users' awareness and maximum publicity of the conditions applied.

Article 3, para 3 of the Regulation

One of the main principles of the Regulation is referred to the traffic management and the IAS provider's obligation to equally treat all traffic when providing the service. CRC believes that the equal treatment does not mean obligatory that all end users shall use the same network efficiency or quality of service (QoS).

CRC shall consider as a violation of this condition of the Regulation the case of agreements or practices where:

A) there is the so called technical discrimination which is expressed in:

- blocking, slowing down, restricting, interfering with, degrading/violating or discriminating access to specific content, one or more applications (or categories thereof);
- offering an Internet access service where the access to Internet is restricted by the provider to a limited set of applications or endpoints of the Internet network;
- a zero-rating offer where all applications are blocked (or slowed down) once the data cap is reached except for the zero-rated applications;
- taking actions by the providers on the first two bullets is justified only with a view to the exceptions of Article 3, para 3, subparagraph 3 of the Regulation.

B) the traffic management is based on commercial considerations.

The principle of equal traffic treatment does not exclude application by the IASPs of well-grounded traffic management measures in accordance with Article 3, para 3, subparagraph 2 of the Regulation. CRC considers as well-grounded/reasonable traffic management measures the ones the application of which ensure the efficient use of network resources, optimizes the overall transmission quality and contributes to improving the users' service.

CRC is of the opinion that for well-grounded/reasonable measures may also be considered the ones for preventing and recovering the network in case of cyber/hacking attacks. The providers may temporarily/until necessary (for the time of the attack and reasonable short interval after it, in order to protect from repeated attack) to block/restrict ports and protocols in cases of:

- cyber/hacking attack or malicious traffic to certain end user on determined ports and protocols from third parties related to the network (other clients) or out of the provider's network;
- cyber/hacking attack or malicious traffic from a certain end user (with or without their knowledge) or their equipment to the provider's network and/or third parties, both connected to the network (other end users) and out of the provider's network;
- cyber/hacking attack or malicious traffic generated to a certain end user, provider's network and/or third parties due to incorrect behavior/bug and/or conscious and malicious compromise and use of vulnerabilities of the equipment provided by the IASP to the end user within the service.

In relation to the principle of proportionality, the Regulation envisages that the well-grounded traffic management measure shall not be maintained for longer than necessary.

CRC shall not consider as a violation the practice of IASPs to prioritize the traffic associated with the management and control of the network over the rest of the traffic when the efficient distribution of network congestion and safeguarding of its security are ensured. This does not release the provider from the obligation for transparency pursuant to Article 4 of the Regulation.

CRC considers that providers may apply traffic management measures determining different categories of traffic. In this case, the categories of traffic should be determined on the grounds of the technical requirements for the service quality. The categories of traffic should be clearly distinguished from the specialized services.

CRC shall make an assessment whether the traffic management is transparent, non-discriminatory and proportionate when taking into account the considerations and the criteria indicated in p. 58-75 of the Guidelines. In this regard, CRC shall require from providers the necessary information with a level of detail determined by the Commission shall perform investigations on-site and when necessary, shall give instructions for implementation of these guidelines by providers.

CRC notes that when providers make use of the three exceptions in Article 3, para 3, subparagraph 3 of the Regulation, the traffic management measures should be such as these necessary for achieving the relevant exception and they could be maintained only until overcoming the negative effect from the event in letters b) and c) or when the legal considerations drop out. The exceptions from the general rules envisaged in Article 3, para 3, subparagraph 3 of the Regulation should be strictly interpreted.

According to Article 3, para 3, subparagraph 3, letter a of the Regulation, it is admissible blocking the Internet access to webpages through which gambling games are organized by persons who have not received licenses under the Gambling Act (determined by a Decision of the Gambling Commission) when executing instructions from the President of the Sofia District Court. Article 281 of the Markets in Financial Instruments Act and Article 32 of the Anti-Terrorism Act are analogue provisions envisaging blocking the Internet access after a court's order. CRC considers that joining the project of the General Directorate for Combating the Organized Crime (<https://www.spasidete.bg/isp/>) (blocking the distribution and access to content including sexual child abuse (child pornography) is in accordance with the Regulation. In this case, blocking the Internet pages indicated in the Interpol's "black list" is admissible on the grounds of Article 3, para 3, subparagraph 3, letter a in relation to Article 3, para 1, subparagraph 2 of the Regulation.

According to Article 19, para 1 of the General requirements for carrying out public electronic communications networks and/or services, providers are obliged to cooperate for protecting the public interest, for protecting the national security and for ensuring electronic communications for the needs of the defense and in cases of crises, and depending on the networks used and/or services provided, they ensure conditions for restricting and suspending the transfer of information with content contradicting the legislation in force.

Providers may apply measures for preserving the integrity and security of the network in line with Article 3, para 3, subparagraph 3, point b of the Regulation when there is:

- flooding network components or terminal equipment with traffic to destabilize them (e.g. Denial of Service attack (DoS));
- spoofing IP addresses in order to mimic network devices or allow for unauthorized communication;
- hacking attacks against network components or terminal equipment;
- distribution of malicious software, viruses etc.

CRC considers that providers may apply the following traffic management measures in order to preserve the integrity and security of the network:

- blocking IP addresses or ranges of them because they are well-known sources of attacks;
- blocking IP addresses from which an actual attack is originating or they are object to an actual attack;

- blocking IP addresses/Internet access services showing suspicious behavior (e.g. unauthorized communication with network components, address spoofing);
- blocking IP addresses where there are clear indications that they are part of a software applications or computers working in autonomous regime and their aim is to steal personal data (bot network);
- blocking specific port numbers which constitute a threat to security and integrity of the network.

Providers may apply measures to prevent impending network congestion and mitigate the effects of exceptional or temporary network congestion in line with Article 3, para 3, subparagraph 3, letter c of the Regulation.

CRC considers that it is necessary the concepts “impending congestion”, “exceptional congestion” and “temporary congestion” of the network to be defined with a view to introducing a single understanding. For the purpose, the concepts are defined as follows:

- “impending network congestion” – this is estimated/predictable congestion which is impending regardless of the preventive measures undertaken.

- “exceptional network congestion” – this is congestion which is a consequence from unpredictable or unavoidable situation of extraordinary nature, such as technical failure in the network – broken cable, defected infrastructure device etc., where reserved resources with limited capacity are used.

- “temporary network congestion” – this is congestion during public events (concerts, rally and other gatherings of great number of people at a public place).

The providers should immediately inform CRC about each case where applying the measures in line with Article 3, para 3, subparagraph 3 of the Regulation.

CRC shall evaluate the implementation by providers of Article 3, para 3, subparagraph 3 of the Regulation taking into account the considerations and criteria indicated in point 81-93 of the Guidelines. In this regard and given that the indicated exceptions may be used as a reason for circumvention of the Regulation, CRC shall require from providers to submit the respective justifications for each specific case and where necessary, it shall make investigations and give instructions.

Article 3, para 5 of the Regulation

CRC considers that providers should offer specialized services only when the network capacity is sufficient such that the IAS is not degraded (e.g. due to increased latency, jitter or lack of bandwidth). The provision of specialized services should not be to the detriment of the general quality of IAS for end users. CRC shall consider the opposite of this for failure to observe Article 3, para 5 of the Regulation.

In cases where the provision of a specialized service inevitably leads to deterioration of the IAS quality for a particular end user (but not to the general quality of the IAS), then this user should be notified when concluding the agreement what shall be the effect from using the specialized service on the quality of its IAS, but not only about the possible consequences. In these cases it is necessary a higher level of transparency in order to enable the user to make an informed choice whether to conclude the agreement or not.

CRC shall make an assessment of the methodology for provision of specialized services taking into account the considerations and criteria indicated in points 115-127 of the Guidelines. In this regard, CRC shall require from providers the information necessary with a level of detail determined by the Commission, it shall perform inspections on-site and shall give instructions when necessary for implementation of these guidelines by providers.

II. ARTICLE 4: TRANSPARENCY MEASURES FOR ENSURING OPEN INTERNET ACCESS

Article 4 of the Regulation lays down the transparency measures for ensuring open internet access that IAS providers are obliged to comply with.

The provisions of the contract under Article 4, para 1, subparagraph 1, letters (a-c) and (e) of the Regulation are primarily informative and CRC sees no obstacle to their inclusion in the general terms.

Providers of fixed internet access include in the individual contracts with end users the required speeds under Article 4, para 1, subparagraph 1, letter (d) of the Regulation.

The inclusion in the general terms of the required speeds under Article 4, para 1, subparagraph 1, letter (d) of the Regulation is permissible where mobile internet is concerned, which, inter alia, shall simplify the individual contract text. In circumstances where the maximum speeds are different after reaching data cap of the chosen tariff plan, same should be explicitly stated in the individual contract (e.g. a limit up to 64Kbps, 128 Kbps or 256 Kbps for download/upload).

The information should be presented in a comprehensible form with minimal use of complex technical terms, without abbreviations of concepts or technologies that are not widely disseminated. Where this is not possible, without losing the meaning of the text, clarifications should be given.

CRC considers that information is detailed, clear and comprehensible when:

- the information is easily accessible and recognizable with respect to the subject to which it relates;
- the information is correct and up-to-date;
- the information makes sense to end users, i.e. relevant, unambiguous and presented in an accessible manner;
- the information does not create misperceptions about the service provided to the end user;
- the information should be at least comparable between the offers of one and the same provider, but preferably also between the different IASPs.

The end user should be able to make an easy comparison which shows the differences and similarities between the offers.

The requirements of Article 4, para 1-3 of the Regulation shall apply to all contracts, regardless of the date on which they are concluded, including contracts with expired initial period. In view of this, providers should choose the way to notify/provide their subscribers with information as required in the Regulation. The provisions of the LEC and the General requirements for carrying out public electronic communications regarding unilateral changes in the General conditions and/or individual contracts and/or the specification/tariff applicable should be taken into account when it is part of the internet access service contract. Regardless of the approach chosen by the particular provider, the subscribers should be duly informed of the change and their rights in this regard.

Article 4, para 1, subparagraph 1, letters (a-c) of the Regulation:

The description of the traffic management measures applied should contain detailed, clear and comprehensible information on:

1. Traffic management measures applied, such as network management, support and optimization, blocking of IP addresses or ranges of them, blocking of IP ports, blocking of certain services/applications and others.
2. Specific traffic management measures applied in relation to the provisions of Article 3, para 3, subparagraph 3, letters (a-c) of the Regulation.
3. All measures applied to traffic management that use personal data, the types of personal data used, as well as the manner that IAS providers ensure the end users' privacy and safeguard their personal data when managing traffic.
4. The manner how the traffic management measures applied might have an impact on the quality of internet access service. Providers should explain how, as a result of the traffic management measures applied, speed and data volumes changes/limitations, packet loss, delay variation (jitter), two-way delay (ping) affect internet access and the usage of the following applications/content/services at least: web browsing, e-mail, video, audio streaming and online

television or online games. The description should be written in such a manner that end users understand the impact of these parameters on the use of applications and whether certain applications cannot actually be used due to the high latency or low speed of internet access service. Providers could provide examples of widely disseminated application categories dependent on these parameters.

Example: If a consumption limit is provided, it should be clearly specified in quantitative terms (e.g. MB), explaining what that means in practice and the consequences of exceeding it (blocking of traffic, additional charges, speed limitations, etc.) The consequences of exceeding the limit should be clearly specified in the contract and where speed limitation is envisaged, that should be taken into account when defining speeds in a contract and in publishing the information. Mobile internet service providers should explain the impact on the applications and services used, listing, for example, the most commonly used ones (Skype, Viber, WhatsApp, Facebook, Facebook messenger, YouTube, Spotify, e-mail using, web browsing, video streaming), when the service continues to be provided at a limited speed applied after the maximum amount of data volume provided according to a contract for internet access via a mobile network has been exhausted.

An indicative manner to provide the above information where the maximum speed is limited up to 64/128/256 Kbps:

„Effect of the introduced speed limit up to 64/128/256 Kbps:

<i>Website browsing</i>	<i>It may take a few minutes to load websites instead of a few seconds.</i>
<i>Sending an e-mail</i>	<i>Working with the e-mail client is slow. Attaching files, depending on their size, may take a few minutes.</i>
<i>Video calling through applications such as Skype, Viber, WhatsApp and Facebook Messenger</i>	<i>They are not possible because they require a much faster download and upload speed.</i>
<i>Sending text messages through applications such as Skype, Viber, WhatsApp and Facebook Messenger</i>	<i>This functionality is still available.</i>
<i>Sending files through applications such as Skype, Viber, WhatsApp and Facebook Messenger</i>	<i>It takes minutes, depending on the file size and the upload speed at the moment.</i>
<i>Music streaming on websites such as YouTube</i>	<i>It is not possible in real time as it requires a much higher download speed (0.5 Mbps). In order to listen a song, it is required to wait for it to load, which shall take at least a few minutes. The loading time for a song varies depending on the quality selected.</i>
<i>Spotify music streaming</i>	<i>Impossible at speed limitation up to 64 Kbps, the song is likely to interrupt at a limitation up to 128 Kbps (96 Kbps constant speed is required for normal quality listening).</i>

End users should bear in mind that after limiting the speed of the IAS, the specified speeds „up to 64/128/256 Kbps“ are maximum and they are not guaranteed to the end users all the time.”

Information from the above-mentioned example or more comprehensive, at the discretion of

the provider, shall be published in an appropriate place on its website. Regarding the information as a contract provision, it may be provided in a more synthesized form, if the IAS provider has provided more comprehensive and up-to-date information on its website. The place of publication of the more comprehensive information should be indicated in the contract. The current practices to simply declare that speed limitation can affect services do not meet the requirements of the Regulation.

Regarding specialized services, specific traffic management measures relating to the specific specialized service should be specified in a detailed, clear and comprehensible manner. Specialized services do not provide internet connectivity, so the provision of such services should not be detrimental to the general quality of internet access services for end users.

IASPs publish clear and comprehensible information about the possible impact that specialized services included in the end user's subscription plan may have on the internet access service.

Example:

In cases where a subscriber is provided with a packet service including a specialized service, such as IPTV, the impact on the quality of the internet access service from the simultaneous use of the specialized service should be explained in a comprehensive, clear and comprehensible manner. The practice of part of the providers, which is specifying the specialized service parameters, leaving the end user by calculation to draw conclusions about the impact of the specialized service on the internet access speed, for example, does not comply with the provisions of the Regulation. The general expression "the use of the IPTV service on the fixed internet may impede the user's access to the internet" does not comply also with the Regulation, because it does not provide information on the actual impact on the most frequently used applications. The internet provider should explain what the impact of specialized services is on the above-mentioned online applications.

If necessary blocking of network ports/IP addresses in order to ensure integrity and security of the networks, providers should not announce in full detail the specific measures taken. On the other hand, providers should allow their subscribers, upon their explicit request, to obtain sufficient information (e.g. for alternative ports), so that they can adjust the necessary user settings for an application.

In cases where providers apply additional interim measures to overcome impending or ongoing network congestion as well as to mitigate the consequences of emergency or temporary network congestion, providers shall inform end users in an appropriate manner (via website announcement, SMS, e-mail, etc.) for the period of application of these measures.

CRC notes that when conducting inspections for compliance with the transparency requirements of the Regulation, where necessary, shall provide instructions for supplementing or modifying published information in order to harmonize it.

Article 4, para 1, subparagraph 1, letter (d) of the Regulation

Pursuant to Article 4, para 1, subparagraph 1, letter (d) of the Regulation, end user contracts, among other conditions, should include a clear and comprehensible explanation of the following speeds:

- for fixed networks: minimum, normally available and maximum speeds;
- for mobile networks: estimated maximum speed;
- for fixed and mobile networks: advertised speed.

The requirement applies to download speed and upload speed. For each speed, a corresponding numerical value is specified, with units being Kbps/Mbps or Gbps. CRC considers it inadmissible to indicate the speed as a percentage or to be calculated by the end user according to predefined output data and conditions

CRC emphasizes that the indicated speeds should be thoroughly in detail, clearly and understandably explained and their digital values determined by suppliers in the individual end user contracts, so that they can be verified and used to identify differences between the actual and agreed speeds. If the offer includes a limited amount of data, the individual contract should specify the amount of the restriction (in quantitative terms, e.g. MB), what this means in practice and the consequences of exceeding it (e.g. additional fees, speed limits, blocking). CRC considers that information on technology through which the service is to be provided can be published on the website of the providers where the offers/subscription plans are announced and in the general conditions. CRC point out that the requirements for the provision of this information do not apply to the advertising of IAS offers through television/radio ads or on billboards.

Example: Internet access with a speed of “20 Mbps is provided through technologies: ADSL, VDSL, FTTH, FTTB”; “45 Mbps Internet access is provided through technologies: VDSL, FTTH, FTTB”.

For the sake of clarity on the agreed speeds, factors beyond those of Article 3 (in and out of the supplier's control) that may affect speed have to be stated.

CRC emphasizes that in individual contracts with end users it is obligatory to specify the type of subscriber access, through which the service of Internet access is provided on fixed networks, respectively technologies in the contract for mobile Internet access.

1. SPEEDS FOR THE INTERNET ACCESS SERVICE PROVIDED THROUGH A FIXED NETWORK - ADVERTISED, MINIMUM, NORMALLY AVAILABLE, MAXIMUM

Advertised speed

Advertised speed is the speed that the IAS provider uses in its commercial communications, including advertising and marketing, in connection with the promotion of internet access service offers. CRC considers that when there are technical and technological factors affecting the speed previously known to the provider, the advertised speed (for each specific offer) should be accompanied by additional information (e.g. the effect of line length on xDSL access and the impact of up to 5% of signaling information transmitted). The additional information should be part of the offer/tariff plan when advertising/offering it as well in the individual contract with the end user.

CRC believes that the advertised speed should not exceed the maximum speed specified in the individual contract.

In cases when the advertised speed coincides with the maximum speed of the operator's interface used for connectivity (10/100/1000 Mbps), it is permissible the advertised speed to be higher than the maximum speed specified in the individual contract.

Minimum speed

Minimum speed is the lowest speed that the IAS provider is obliged to deliver to the end user under a contract for such service.

The provider must not provide speed below the minimum, except in the event of failure.

CRC considers that a minimum speed of 20% of the maximum speed for the relevant subscription plan is a reasonable proportion of the latter but not less than 4 Mbps.

Normally available speed

Normally available speed is the speed that the end user should expect to receive most of the time when accessing the service and has two dimensions:

- numerical value of the speed;
- availability of the speed (in percentage) over a period of time.

Providers should determine both the normally available speed and the percentage value for its availability.

CRC considers that the normally available speed is 80% of the maximum speed and that it should be achievable (received by the end user) 80% over the day.

The percentages determined by CRC are in accordance with the Guidelines.

Maximum speed

Maximum speed is the speed that the end user can expect to receive over a period of time (e.g. at least once a day), in accordance with the one specified in the contract. If this is not the case it should be presumed that, there is a discrepancy between the service received and the contract.

The IAS provider is not obliged to technically limit the speed to the declared maximum speed, i.e. the provision of a service at a maximum speed higher than that specified in the contract does not constitute a breach of the Regulation.

CRC notes that the maximum speed specified by the provider should be achievable and valid for the specific tariff plan/offer for which the individual contract was concluded, and not in general to reflect the network's capabilities or to be applicable to another similar plan with the same/similar name and/or more expensive subscription.

The particular subscriber's contract must include the maximum rate only for the offer/tariff plan chosen by the subscriber.

2. SPEEDS FOR INTERNET ACCESS SERVICE PROVIDED VIA MOBILE NETWORK- ADVERTISED SPEED, ESTIMATED MAXIMUM SPEED

Advertised speed

CRC considers that the maximum speed and the advertised speed of data transmission when accessing internet via mobile network overlap.

If the internet providers advertise speeds in their offers, CRC accepts that the advertised speed for mobile internet access service is based on theoretical accessible speed for every technology taking into account the influence of technical facts known in advance by the provider (used bandwidth, class of terminal equipment, measurements made by providers (drive tests), etc.).

The Information, provided by the supplier in advertising internet access, should enable the end user to make informed choice. The providers are also obliged to indicate in a clear, comprehensible and detailed way the factors important for the limitation of speed reached by the end users.

Estimated maximum speed

The estimated maximum speed should not be lower than the advertised speed for the same service. The providers define the estimated maximum speed separately for the different network technologies (4G, 3G, 2G) in each tariff plan. The providers should point in their General terms and/or in the individual end users contract (CRC recommends the providers to strive to prepare short and clear individual contracts) the maximum speed and a detailed, clear and comprehensible explanation of the factors limiting the reaching of this speed for each network (for example used terminal equipment, coverage of the concrete place where the service is used, the number of simultaneously served consumers, etc.).

CRC accepts that the estimated download and upload speed may be different depending on the geographical location. The estimated/measured speed values of the network in all places with declared coverage could be pointed on the coverage map of the provider's network in case such data are available to the operator. In addition to the mentioned above speeds it can be said that the Regulation doesn't require a minimum speed for the service of mobile internet access regarding the mobile networks. However, the providers are not hindered to insert by themselves such a parameter in the contracts/the general terms. If one provider has set a minimum speed in the contract then this contract

term is treated as contractual commitment and has the force of the law between the provider and his subscribers.

Article 4, para 1, subparagraph 1, letter (d)

CRC accepts that any short-term or temporary deviation from the agreed quality of internet access couldn't be considered as a discrepancy in the received service respectively in the individual contract.

CRC considers as short-term deviation a period of time up to 1 day within a reporting period and as temporary deviation a period of time up to 3 consecutive days within a reporting period.

CRC considers that the internet access provider has failed to fulfil its obligations under the individual contract every time when the service quality is significantly and continuously or repeatedly lower than the agreed one for every package and every kind of access.

CRC notes that the lack of service is also considered as a failure of the individual contract.

“Significant and continuous deviation” is deviation that lasts up to 2 consecutive weeks within one billing period.

”Regularly recurring deviation” means more than one temporary deviation within the billing period.

The remedies in the event of failure of the contractual obligations are generally regulated in the legislation. Providers are obliged to explain clearly for consumers and to include in the contracts with end users specific clauses regulating the consequences due to the non-performance of obligations by the supplier. CRC considers that the clauses should not be general and declarative but should cover all obligations of the provider relating to the provision of a service with specific parameters (for example speed with a specific numerical expression) and respectively the consequences of their failure. In this regard it is important to define different speeds according to the mentioned above because they serve as a basis for determining a non-performance to the agreed and delivered speed of the service.

Examples of remedies include: defined procedure for reducing the price depending on the failure, possibility for terminating the contract early without penalty, compensation for damages, provision of different compensation mechanisms for non-performance, etc. As far as the fixed internet access is concerned, where there is regular recurring inability to reach maximum speed, CRC considers that the compensation should be larger in amount than the corresponding part of the monthly fee owed for the period in which there is a deviation from the minimum agreed speed. The same rule must apply in case of significant and continuous inability to be reached the minimum speed according to the contract. The specific amount of the compensation should be determined by the internet service providers themselves.

Internet service providers should include in their contracts such clauses related to the right of the consumers to terminate their contracts without penalty when there is a significant and continuous or recurring discrepancy between the agreed service parameters and the actually provided.

Article 4, para 1, subparagraph 2 of the Regulation

The information must be clear, comprehensible and detailed, and it should be both included in the contracts and published, which is an explicit requirement of Article 4, para 1, subparagraph 1 of the Regulation. The publication should be done on the providers' websites. It is important the information to be accurate, up-to-date, useful and easily accessible to users (for example, by using a keyword by the search engine).

Article 4, para 2 of the Regulation

CRC considers it appropriate that providers put in contracts with end users a text indicating the possibility of filing a complaint according to the procedures and deadlines indicated in the General conditions. In the General conditions, the supplier shall describe in detail the means of the communication, the procedures for complaint handling, the deadlines and the methods for adjudication and the legal possibilities for resolving the problem in case the consumer is not satisfied with the provider's response.

Taking into account the nature of the service, the possibility of filing complaints electronically (on a dedicated email or via online form) is a good practice, as well as the possibility for the consumer to obtain a reference to the progress of their complaint. It would also be a good practice the consumer to be informed by SMS of the progress and/or the result of their complaint. This could also be done by operator's calling to the subscriber, in which case it shall be traced whether the complainant still encounters the same problem with the service or has already been overcome. Similar practices have already been introduced by some operators.

It is also strongly recommended that providers avoid standardized/blank answers, which in addition to not solving the client's problem in substance, also provoke greater dissatisfaction and indignation. In many cases considered by CRC, when the complaint is for slow speed or frequent interruption of the service, the operator is given the answer that the service is properly configured and the quality of the signal is good, respectively shall not compensate the user for the time during which there is no service until eventually it appears that there is a disconnected/depreciated cable in the subscriber's compartment. In such cases, the on-site inspection by technicians in advance convenient for the subscriber time is imperative.

Article 4, para 4 of the Regulation

The Regulation enables CRC to define the criteria for the measurement mechanism referred to in Article 4, para 4 of the Regulation that the consumer can use when establishing a discrepancy between the service received and agreed in the contract. This mechanism can be managed by CRC or a third party and NRA may designate one or more mechanisms to be used by end users. The aim is the user to be able to use such a measurement mechanism to collect facts (measurement results), which can be ascertained whether the characteristics of the service deviate significantly from that specified in the contract.

CRC is in a process of developing a mechanism to monitor the quality of the Internet access service in a fixed location. Until the introduction of a mechanism approved by the CRC, speed measurements or other parameters for quality of service, carried out by means of the freely accessible on Internet, as well as measurements by measurement provided by the service provider shall be taken into account as guidance information when dealing with complaints from end users. Measuring instruments freely available on Internet shall also be used by CRC if necessary in the event of the handling of complaints. The same is applicable also to existing online measurement applications, offered by some providers.

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