

**Annual Report of the Communications Regulation Commission
on the fulfillment of the requirements under Article 3 and Article 4 of Regulation (EC)
2015/2120**

I. Legal basis

According to Article 5(1) of Regulation (EU) 2015/2120¹ (Regulation) the Communications Regulation Commission (CRC/Commission) shall publish reports on an annual basis regarding its monitoring and findings about the implementation of Articles 3 and 4 of the Regulation, and provide those reports to the European Commission (EC) and to the Body of European Regulators for Electronic Communications (BEREC).

This is the first report after the entry into force of the Regulation. In accordance with the BEREC Guidelines², the report covers the period from 30 April 2016 to 30 April 2017, and shall be published and submitted to EC and BEREC by 30 June 2017.

II. Monitoring activities

CRC has monitored the commercial practices and technical conditions related to the implementation of the Regulation by the internet service providers (ISPs) for the period 30 April 2016 - 30 April 2017. The actions taken include:

1. Review of the ISP's websites for published terms of service provision related to the implementation of the Regulation. Collecting information with annual questionnaires completed by ISPs in accordance with Article 5 of the Regulation.

CRC has checked the published by the ISPs on their websites terms of provision of the internet access service (IAS) and the compliance of these terms with the transparency measures under Article 4 of the Regulation. The check covered the ISPs which provide IAS to 85% of fixed-access and 100% of mobile-access end-users.

Given the large number of ISPs (674) which operate on the Bulgarian market of electronic communications, as well as the fact that some of them do not support websites, CRC prepared a questionnaire on the implementation of the Regulation.

Before its adoption, a discussion was held on the questionnaire with the ISPs and ISP associations.

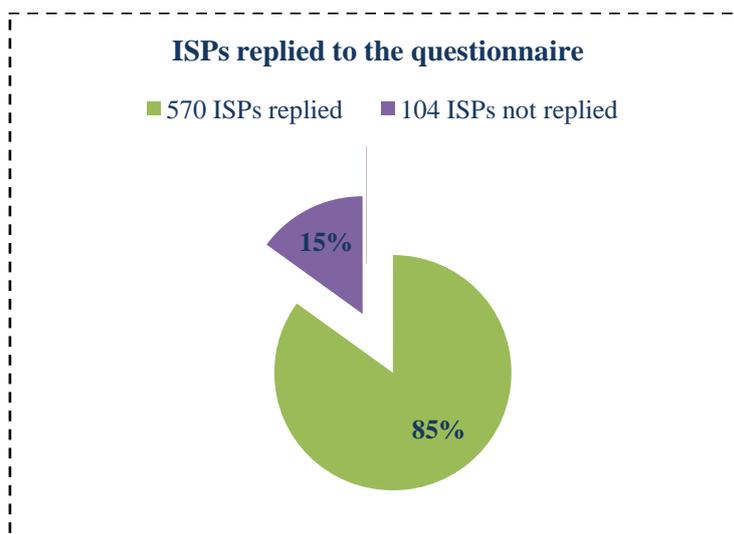
The questionnaire comprises questions related to:

- traffic management measures and network management measures applied by ISPs;
- price differentiation applied to different categories of traffic and applications;
- provision of optimized (specialized) service;
- restrictions imposed by ISPs on end-users to use certain terminal equipment;
- implementation of the provisions of Article 4(1) of the Regulation.

Completed questionnaires were submitted by ISPs which together provide services to 94.2% of the total number of fixed-access and of 100% of mobile-access end-users of IAS. The ISPs providing fixed IAS which did not submit information are providers for a negligible (5.8%) number of end users, which does not change the representativeness of the main findings and the analysis carried out in relation to the supervision and enforcement of the Regulation.

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 BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules (BoR (16) 127),



2. Questionnaire on the port blocking practices implemented by the ISPs.

According Article 3(3)(b) of the Regulation and point 84, in conjunction with point 179, of the BEREC Guidelines, CRC prepared a questionnaire on the port blocking practices implemented by the ISPs. The questionnaire was sent to the ISPs that together provide service to 85% of fixed-IAS and 100% of mobile-IAS end users. The questions covered therein address the implemented port blocking practices, the reason for blocking, the blocking period, and the transparency ensured for the end user on the port-blocking practices. Subsequently, CRC asked assistance on the issues of port blocking related to network and information security from the State e-Government Agency (SeGA) of the Republic of Bulgaria, which implements the state policy in the network and information security area. CRC expects the SeGA's position on the admissibility of such port blocking practices.

3. Information on end-users complaints related to IAS provision in compliance with the Regulation.

In compliance with its obligations, CRC pays special attention to complaints received from end-users related to IAS provision in infringement of the provisions of the Regulation.

III. Main results and analysis of the investigations related to the supervision and enforcement of the Regulation

1. Compliance assessment of ISP websites for published terms and conditions related to the implementation of the Regulation and information gathering under annual questionnaires completed by ISPs in compliance with Article 5 of the Regulation.

The information gathered and the investigations madeshowed that ISPs providing fixed and/or mobile IAS have included texts in their published general terms and conditions of IAS provision that essentially rewrite Article 3 of the Regulation on the obligation to guarantee open internet access. With regard to the transparency measures under Article 4 of the Regulation, the inspection revealed that Typically the published texts on the ISP's websites are related to the implementation of paragraph 1 of this provision and are presented in general wording, for example related to speeds. The end user protection measures are in principle declarative, even where the ISPs have provided mechanisms for consumers' legal protection in cases of QoS degradation.

The network capacity and traffic management measures implemented by ISPs are related to maintaining the integrity and security of the network. The only restrictions implemented by the undertakings are explained with the restrictions imposed according to an order of the Chairman of the Sofia Regional Court for blocking the overall national territorial access to certain websites for gambling games, supported by persons, who are not licensed under the Gambling Low. This restriction is a permissible exception to the reasonable traffic management measures, as it concerns the execution of a judicial act, lawfully enacted in the sense of Article 3(3), third subparagraph, letter (a), in conjunction with Recital 13 of the Regulation. The restriction does not in principle unduly prejudice the right of users to access and use services and applications provided by ISPs. From the provided information, it can be concluded that there are no reported

cases of QoS degradation and/or of restricted access to applications/websites as a result of implemented traffic management measures.

The gathered information indicates that in general the mobile ISPs apply price differentiation to certain applications or traffic. For example, zero rating is applied to certain applications - jukebox apps, Teracom apps, Viva apps, Viva apps radio, Voicer, or for access to certain websites - Facebook, Liverpool portal, Ronaldo's portal, Scoreme portal and others. Currently, CRC is further investigating these practices to assess whether they constitute abusive price- differentiation practices.

Part of ISPs informed that they provide IPTV as an optimized service (Article 3(5) in conjunction with Recital 16 of the Regulation) but declared that its provision does not require, and therefore does not imply, changes in the traffic management of the IAS. Offering this service does not in any way lead to degradation of the IAS general quality. Specific parameters that ISPs monitor when providing IPTV are delay, jitter and packet loss. All ISPs providing IPTV have stated that they have no registered cases of degradation of the general IAS quality and have not received any complaints from their end-users in that respect.

CRC has not identified practices of restrictions for end-users on the use of technically compatible terminal equipment imposed by the ISPs which are contrary to Article 3(1) in conjunction with Recital 5 of the Regulation.

ISPs providing fixed, respectively mobile, IAS declare that the download and upload IAS speeds (minimum, normally available, maximum and advertised, resp. estimated maximum and advertised for mobile IAS) are defined in the individual contracts with the end-users. The additional compliance checks made by CRC verified that the content of the existing contracts is in line with the provisions of Article 4(1), in conjunction with Article 4(4), second subparagraph of the Regulation. CRC continues to process and analyze the information provided.

2. Analysis of the results of the consultation to enterprises in terms of practices for blocking certain ports in the provision of IAS

The results of the CRC`s monitoring of the port-blocking practices of ISPs, in accordance with Art. 3(3), third subparagraph, letters "a", "b" and "c" of the Regulation, show that:

- the majority of ISPs have practices of temporary or permanent blocking of some network ports, the stated main reasons for applying these practices being: maintaining the integrity and security of the network, and of end-users and devices, protection from DDOS attacks, SPAM, password fishing, viral attacks.
- as a part of the network security measures, some ISPs do not provide public information about their port blocking practices. Other undertakings have included such information in the published general terms and conditions of IAS provision.
- ISPs that report the implementation of port-blocking practices intended for network and end-user protection from damaging actions have also provided information on the specific blocked ports. Most often, this is port 25 that is blocked by default for protection against hacker attacks. SPAM can be sent through this port from infected computers via e-mail to the network. Other ports which are often blocked are 137-139, 445, because most of the viruses attacking the Windows operating system are distributed via these ports. ISPs also informed for other network ports, the blocking of which is also intended to fulfill network and end-user security functions.

3. Analysis of the information gathered on end-user complaints related to IAS provided in infringement of the Regulation

During the period under consideration, there are complaints filed with CRC concerning the implementation of the provisions of Articles 3 and 4 of the Regulation.

➤ Complaints related to the provision of fixed IAS

The complaints of fixed IAS users are mostly related to:

- actual speeds lower than contractually-agreed speeds;
- speed limitation in certain time intervals;
- packet loss;
- blocked access to certain network ports.

Each of the complaints submitted to CRC is considered independently in accordance with the provisions of the Regulation. The implemented compliance checks reveal that there are no deviations in the quality of fixed IAS.

➤ ***Complaints related to the provision of mobile IAS***

Complaints of mobile IAS users are mostly related to decreased speed for applications like Facebook and WhatsApp, which are implemented after reaching the contracted data cap, irrespective of the fact that the contract conditions provide for supporting the maximum speed for these applications.;

Each of complaints submitted to CRC is considered independently in accordance with the provisions of the Regulation.

IV. Measures adopted/imposed by the NRAs under Article 5(1) of the Regulation

During the period under review, CRC has not imposed any obligations under Article 5(1) in conjunction with Recital 19 of the Regulation.

V. Conclusions and forthcoming actions of the CRC

For the period under review CRC has not established practices, which do not comply to the provisions of the Regulation.

The implemented restrictions by the ISPs are in compliance with Article 3(3), third subparagraph, in conjunction with Recitals 13 to 15 of the Regulation, and in principle do not unduly affect the right of users to access and use services and applications provided over electronic communications networks.

The provision of optimized services does not degrade the general quality of IAS provided to end-users.

CRC did not identify any restrictions imposed by ISPs on end-users terminal equipment.

CRC shall continue the monitoring of the IAS offered to the end-users and their compliance with the provisions of the Regulation.

The commission is working on introducing a monitoring mechanism under Article 4(4) and Recital 18 of the Regulation. CRC intends to introduce its own system for measuring the quality parameters of the fixed IAS.

CRC is in the process of drafting its own guideline on specific provisions of the Regulation. The purpose of the document shall be to provide detailed explanations on basic concepts, including speeds and other QoS parameters, and on transparency in contractual terms. The CRC`s guideline will be in line with the BEREC Guidelines.