

BEREC Internal Questionnaire on National Implementation of the Regulation (EU) 2015/2120

Following the entry into force of the 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:

BEREC should monitor the implementation of the net neutrality provisions of Regulation 2015/2120 in the context of BEREC Guidelines. In addition to the annual reports to be provided by NRAs by June 30th, 2018, BEREC is also sending this internal questionnaire to NRAs in order to produce a more concise report for the second year of implementation of the regulation across all Member States, as described in the 2018 BEREC Work Programme BoR (17) 231_08, III 4.2.

Answers to this questionnaire should be based on data covering the time period from May 1st, 2017 until April 30th, 2018 – the same as we expect will be covered by the annual national reports. However, NRAs are required to produce answers in a more concise form, summarizing the issues that emerged and any policy actions.

Responses should be submitted to the BEREC office via e-mail at: pm@bereg.europa.eu and/or at **BEREC on-line platform**. The deadline for responses is **June 15th, 2018**.

Confidentiality: NRAs are requested not to submit any confidential information in answering this questionnaire as the submissions will be used as a basis for a public BEREC report.

Contextual note: Where this questionnaire asks about ISPs' practices, it is requesting a report of the information which each NRA has gathered in the course of implementing the Regulation, which in many cases will cover only a subset of ISPs (the largest, e.g. covering a large majority of the subscriber population). It is not proposing that NRAs should seek, or should have sought information from every provider of IAS.

Additional note: Where there is a question with multiple choice answers you can choose more than one option.

Explanation note: Where there is a question with Y/N answer or multiple choice answers please indicate your answer(s) by bolding the text. Open text answers please write in bold.

General questions

1. Which types of activities has your NRA engaged in during 2017/18 in order to implement the Regulation (EU) 2015/2120? Please provide a brief account of:
 - internal activities (e.g. preparing new internal procedures, dedicating teams / FTE, etc.)
 - **external activities (e.g. press-release, meetings with stakeholders or ISPs, drafting national guidelines on enforcement policy, stimulating self-assessment or internal compliance by ISPs, adopting administrative orders/decisions or imposing administrative fines etc.)**
 - any other actions of note:

CRC prepared a draft Position (national guidelines) on the implementation of Art. 3 and Art. 4 of Regulation 2015/2120, in line with BEREC Guidelines. In this draft document CRC gives explanation to the application and express its understanding of the requirements of the Regulation 2015/2120 that are left to the discretion of NRAs. The draft Position was put on a public consultation. Now CRC analyzes the received ISP's opinions and plans to adopt a final position by the end of June this year.

Art 3(1) and 3(2)

2. What approach have you taken to monitor the commercial and technical conditions related to the provision of Internet access services:
 - market survey without requesting information from ISPs (e.g. checking the relevant information on the ISP's web pages, such as the general terms and conditions)
 - **information request from ISPs,**
 - **analysis of complaints and end-user reporting,**
 - **technical network monitoring - in progress of developing a system for monitoring QoS of fixed and mobile internet services,**
 - other, please specify: _____ .

Is there any change compared to the previous period? Y/N

In the technical documentation for a QoS measurement system, measurements for mobile networks are included.

The CRC's Annual Questionnaire sent to all ISPs was updated and complied with the TCPI (Technical and Commercial Practices Investigation) questionnaire prepared by BEREC's Net Neutrality Working Group.

3. Pursuant to **article 3(1)** have you completed any formal assessment of ISP restrictions on the use of technically compliant terminal equipment? **Y/N**

If yes, briefly describe the practice and the conclusions of the assessment (and enforcement action taken where applicable)?

The information was gathered with CRC`s Annual Questionnaire which was sent to all ISPs. CRC has not identified practices of restrictions on the use of technically compatible terminal equipment imposed by ISPs, which are not in line of Art. 3 (1) of the Regulation.

4. What types of 0-rating services exist in your country?

- None
- Music streaming services
- **Video streaming/IPTV services**
- **Social media services**
- **Voice and short messages**
- Cloud services
- Email services

Other _____

Is there any change compared to the previous period? **Y/N**

Some of the ISP`s have included Video streaming services with zero rating in their commercial offers.

5. Pursuant to **article 3(2)** have you performed any formal assessments of agreements on commercial and technical conditions as well as commercial practices such as zero rating or traffic price discrimination practices? **Y/N**

If yes, briefly describe the practice and the conclusions of the assessment (and enforcement action taken where applicable)

Art. 3(3)

6. If you started any monitoring of traffic management practices by ISPs what **approach** have you taken?

- market survey without requesting information from ISPs,
- **information request from ISPs,**
- **analysis of complaints and end-user reporting,**
- technical monitoring,
- other, please specify: _____

Is there any change compared to the previous period? **Y/N**

7. Pursuant to **article 3(3)1 to 3(3)3**, have you completed any formal assessments of an ISP's traffic management practices? **Y/N**

If yes, briefly describe the practice and main conclusions of the assessment (and enforcement action taken where applicable).

Traffic management practices applied from the ISPs include:

- **prioritization for the traffic for network management and control over the rest of the traffic;**
- **optimization for specific content, applications or services, or a combination thereof, where the optimization is necessary in order to meet the requirements of services for a specific level of quality;**
- **blocking specific ports and /or websites.**

Analysis of the collected information shows that the described traffic management practices seem in line with Regulation 2015/2120.

8. Did you conduct any research or survey on port blocking practices by ISPs? **Y/N**

If yes, please briefly describe significant findings.

Some ISPs block certain ports in order to preserve the integrity and security of the network and to protect terminal equipment and end-users from DDOS attacks and SPAM.

Art 3(5)

9. What **approach** have you taken to monitoring services other than IAS (called specialised services below)?

- market survey without requesting information from ISPs (e.g. checking ISP's offers on their web pages)
- **information request from ISPs**
- **analysis of complaints and end-user reporting**
- technical network monitoring
- other, please specify _____

Is there any change compared to the previous period? **Y/N**

10. Is there an NRA or **national interpretation of or guidance on "services other than internet access services"**, which has not yet been mentioned in the BEREC NN Questionnaire of 2017? **Y/N**

If yes, please provide any information and examples other than the once mentioned in BEREC Guidelines (VoLTE, IPTV).

11. Have you completed any formal assessments of the provision of specialised services by ISP? **Y/N**

If yes, briefly describe the practice and the conclusions of the assessment (and enforcement action where applicable)

The information about the implementation of the Regulation, collected with the Annual Questionnaires, shows that some ISPs provide IPTV as a specialised service. ISPs declare that the provision of IPTV does not reflect in any way to the availability or to the overall quality of the IAS for the end-users.

Art 4:

Art. 4(1)

12. What **approach** have you taken to monitoring and enforcing ISPs' compliance with their transparency obligations set out in **article 4**?

- **market survey without requesting information from ISPs (e.g. checking the applicable "terms and conditions"),**
- **(formal or informal) information request from ISPs,**
- **analysis of complaints and end-user reporting,**
- other _____

Is there any change compared to the previous period? **Y/N**

13. Have you completed any formal assessments of the ISPs' contract conditions and their compliance with requirements set out in **article 4(1)a-e**? **Y/N**

If yes, please describe the main findings. [Note: detail of compliance in relation to speeds information requested below under Q16, 17]

Please see below answers to questions 16-17.

14. Have national **specifications** been set in relation to the different **types of speeds laid out in article 4(1)d**? **Y/N**

If yes, please provide details.

In the draft Position (see answer to question 1) CRC set requirements regarding the speeds of the IAS in fixed and mobile networks. The final version of the Position is expected to be adopted by the end of June 2018.

Were requirements:

- imposed by NRA or other competent Authority?
- agreed upon by market players?

15. Are these requirements or the NRA's opinion/recommendation legally binding? **N/A**

These requirements will not be legally binding, however CRC will follow them when examining compliance with Regulation 2021/2015.

16. To the extent your NRA has reviewed the terms and conditions in ISP contracts, did ISPs define in their contracts minimum, maximum, advertised and normally available upload and download speeds of the IAS in the **fixed** network? **Y/N**. Please briefly explain the main findings.

CRC has reviewed the terms and conditions in some ISP's contracts for IAS provided via fixed network. Non-compliance with Art. 4 (1) b and Art. 4 (1) d was found in three cases. In two of those cases CRC determined that one major fixed operator did not include in its contracts information about the usually available speeds for download/upload. In a third case, lack of information about the usually available speeds for download/upload was found in the contracts of one relatively big local fixed operator.

17. To the extent your NRA has reviewed contracts of **mobile** ISPs, did they define in their contracts advertised and estimated maximum upload and download speeds of the IAS in the mobile network? **Y/N**

Please briefly explain the main findings.

CRC identified the following cases of non-compliance:

1) Lack of information about what is the impact on the IAS and accessing and distribution of content, application and services when the volume limitation is exceeded in the contract terms of two mobile operators:

- **download speed is lowered up to 64 Kbits when the volume limitation is exceeded;**
- **both ISPs included texts which state nothing more than users can expect difficulties using some applications and services which require higher speeds than the imposed limits.**
- **no explanation or examples were provided about which popular services, applications and content can or cannot be used when the download speed is lowered „up to 64 kbits“.**

2) Lack of information about the maximum speed when the volume limitation is reached in the contract terms of one mobile operator:

- **according to the contract, the download speed is limited to 64 Kbits.**
- **unclear whether this speed is the maximum available or the exact speed the user can expect (the mobile operator claimed to be the maximum available speed).**

If available, please provide information regarding contractual conditions, such as examples of “realistic usage conditions” under which the estimated maximum speed can be achieved (NN guidelines 153).

Some ISPs provide information about “realistic usage conditions” in their General conditions. There they enumerate factors with significant influence over the speed and QoS of IAS, such as the type of technology, density of buildings, location of the end-user and model of the terminal equipment.

Art. 4(2)

18. Have ISPs established “transparent, simple and efficient procedures to address end-user complaints...” according to **article 4(2)**? Y/N

ISPs use existing complaint procedures. CRC has yet to examine the details of the procedures. In general ISPs are determined to resolve the complaint in one month.

If yes: What kind of procedures have there been established by ISPs (e.g. hotlines, complaint templates)?

Is there an industry wide approach in relation to these procedures? Y/ N

If yes, was this approach:

- imposed or facilitated by the NRA,
- prescribed by national legislation,
- voluntarily agreed upon by the market players,
- other _____

Is there any change compared to the previous period? Y/ N

Art. 4(3)

19. Did you nationally (e.g. NRA, Ministry) provide guidance or impose **additional** transparency or information requirements on ISPs following the enforcement of the Regulation? Y/N

No. At present CRC has initiated two administrative proceedings – one against the main fixed operator regarding normally available upload and download speeds of ADSL services and one against one mobile operator regarding explanation of zero rated data for Facebook. Final decisions in both procedures are yet to be adopted.

Since the requirements are contained in draft decisions we cannot provide a definitive answer. If adopted we will include the requirements in the questionnaire for the period 2018-2019.

If yes, please provide details of the requirements.

Art. 4(4)

20. Is there an NRA or national **interpretation of “significant discrepancy, continuous or regularly recurring”**? Y/N

If yes,

- How are these terms interpreted?

- Was the definition:
 - imposed by the NRA (e.g. using article 5 (1)),
 - voluntarily agreed upon by the market players
 - other _____

With publication of the draft Position, CRC has asked ISPs to propose definitions of terms "significant and continuous" and "regularly recurring". The proposals are varied, but all ISPs are on the opinion that definitions are needed and expect these to be determined by the CRC.

21. Do you collect and monitor the number of end-user complaints? **Y/N**

If yes, what was the level of end-user complaints about the performance of the IAS, relative to contracted parameters (speeds or other QoS parameters):

Yes, but only complaints received by CRC. We do not collect data on all consumer complaints. Overall consumer complaints claim insignificant divergence from contracted parameters for fixed IAS.

In most complaints about mobile IAS related to service quality, was found that the main reason is poor network coverage, not traffic management practices.

Those complaints prevalently consist of claims that the speeds, that the subscribers are not able to achieve the speeds, which are set in their contracts. In some cases the ISPs voluntarily allow those subscribers to terminate their contracts without any negative consequences – usually when the ISP determines that it indeed cannot provide the contracted speeds to its subscriber.

22. Have specific additional remedies been introduced for consumer redress in relation to non-conformance of IAS with the contract terms (e.g. legal action before courts and/or NRA, right to early termination, compensation)? **Y/N**

No. General civil law applies.

23. Do you currently provide any IAS quality monitoring tool for consumers to use? **Y/N**

- If yes, briefly describe this tool, and say whether you consider it as certified according to **article 4(4)** and in line with BEREC Guidelines, para. 161
- If not, please outline any plans you may have for setting up such a tool.
- Is this tool used by the NRA to investigate any potential deviations in speeds or any other contractual parameter or – beyond the scope of **article 4(4)** – for detecting infringements of the Regulation (e.g. throttling, blocking)?

Art. 5(1)

24. Did you impose any QoS requirements on any ISP under the Regulation (EU) 2015/2120 (other than definition of contractual speeds)? **Y/N**

If yes, which requirements were imposed?

25. What approach have you taken to measure the **availability of high quality IAS**:

- market survey without requesting information from ISPs,
- **information request from ISPs,**
- **analysis of complaints and end-user reporting**
- technical network monitoring
- other, please specify -
CRC has published a survey on the consumer satisfaction regarding QoS on it's web site.

Is there any change compared to the previous period? **Y/N**

The survey has been completed by a relatively small number of users. The analysis of the results shows that, in general, the number of positive assessments of the quality of the Internet access service (via fixed and mobile networks) is twice as high as the unsatisfactory estimates.

26. If you performed measurements of IAS quality, please report the main findings in relation to the provisions of the Regulation. **N/A**

27. Have you taken any other steps to ensure compliance with **articles 3 and 4** according to **article 5(1)** not mentioned elsewhere in this questionnaire? **Y/N**

If yes, which?

Art. 6

28. What rules on penalties to infringements of **articles 3, 4, and 5** pursuant to **article 6** of Regulation (EU) 2015/2120 do you apply?

The rules on penalties applicable to infringements of Articles 3, 4, and 5 pursuant to Article 6 of Regulation (EU) 2015/2120 are regulated in the following provisions of the Law on Electronic Communications

Art. 331. (10) (new - SG 103/16) Undertakings providing public electronic communications networks and/or services which, at the request of the commission, fail to provide information under Art. 5, paragraph 2 of Regulation (EU) № 2015/2120 of the European Parliament and of the Council of 25 November 2015 establishing measures concerning access to the open internet and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) № 531/2012 on roaming on public mobile communications networks within the Union (OJ, L 310/1 of 26 November 2015), hereinafter referred to as "Regulation (EU) № 2015/2120", or provide false, incomplete, inaccurate information, or miss the deadline specified in the request, shall be punished with a property sanction from 4 000 to 40 000 BGN.

Art. 334d. (new - SG 103/16) (1) For a violation of Art. 3 of the Regulation (EU) № 2015/2120 shall be imposed a proprietary sanction from 2 000 to 200 000 BGN.

(2) For a violation of Art. 4 of Regulation (EU) № 2015/2120 shall be imposed a proprietary sanction from 500 to 5 000 BGN.

(3) Where the violation under par. 1 or 2 is repeated, proprietary sanction shall be imposed double the amount of the sanction imposed for the first violation.