

European Commission
DG for Communication Networks, Content and Technology
Directorate B: Electronic Communications Networks and Services
Unit B2: Implementation of the Regulatory Framework
1049 Bruxelles/Brussel
Belgium

Body of European Regulators for Electronic Communications (BEREC)
Zigfrīda Annas Meierovica bulvāris № 14, 2nd floor
LV-1050 Rīga
Republic of Latvia

30 April 2019

Joint statement on the publication of the European Commission's evaluation report on Europe's net neutrality rules

Today, the European Commission published its implementation report on the EU's net neutrality rules contained in Regulation (EU) 2015/2120 laying down measures concerning open internet access.

Net neutrality is one of the central reasons for the success of the internet and the foundation of its technological structure. Net neutrality is crucial for innovation, competition and for the free flow of information by allowing internet traffic to move freely without discrimination. Most importantly, a neutral and open access, as safeguarded in Article 3 of the Regulation, gives the internet its ability to generate new means of exercising fundamental rights such as the freedom of expression and the right to receive and impart information – without interference by telecom companies.

The undersigned organisations therefore welcome the European Commission's decision to uphold the EU's net neutrality legislation. While we welcome certain positive elements in the report, such as stating the Commission's aim to protect European internet users and the release of the underlying study of Bird & Bird, many obvious problems, such as the market entry barriers for participation in the class-based zero-rating offers, particularly [affecting cross-border content and application providers](#) in the Digital Single Market, the ongoing throttling of certain applications by telecom operators, the complete lack of dissuasive and proportionate penalty provisions by member states have been ignored or overlooked.

The undersigned organisations feel that, regardless of the brief evaluation period, the report falls short of an in-depth analysis and we are disappointed that the Commission did not put more efforts into a substantive, evidence-based report.

New barriers to enter the market

The most significant issue, which is unfortunately not covered in the report, is the lack of enforcement as regards commercial practices such as differential pricing offers (zero-rating) which undermine the rights of end-users.

A recent study by EDRi member epicenter.works found that since the EU's net neutrality rules came into effect, the discriminatory practice of zero-rating has spread to all but two EU countries with a total of 186 cases in Europe. Among the top 20 applications and services that receive preferential treatment, 15 are from the US and only three are based in the EU. As applications and services from EU Member States other than the country where the telecom service is offered are rarely zero-rated and telecom companies thus created new market entry barriers¹, the implementation has weakened European applications and services and led to further fragmentation of the European Digital Single Market.

Lack of harmonisation

The undersigned organisations firmly believe that an in-depth analysis of the state of harmonisation as regards the implementation of Regulation (EU) 2015/2120 is necessary.

Three serious shortcomings were highlighted to the Commission, BEREC and other experts but unfortunately not covered by the Commission's implementation report:

1. A majority of national regulators have not implemented effective and dissuasive penalties (BG, CY, DE, DK, EE, ES, FI, GR, HR, IE, IT, LU, LV, NO, PT, SE, SI)² as required by Article 6 of the Regulation;
2. There have been contradicting decisions by national regulators (notably regarding congestion management as well as port blocking, which is critical for consumers to deploy self-hosted and decentralised email servers and service providers that rely on the digital single market);
3. Many national regulators are not compliant with their annual reporting obligations and most crucially only 8 regulators report numbers on the development of internet speeds that should meet increasing demands³.

Finally, we remain hopeful that BEREC's work to review the Guidelines will lead to a more efficient and harmonised implementation. An essential part of this work will be to offer further guidance to national regulators when assessing differential pricing practices and their effect on material infringements of end-user rights and on cross-border provision of online services. Most importantly, Europe will lead the way as regards a clarification which (and if any) changes are needed in the net neutrality framework to incorporate the upcoming 5G mobile network standard. An evidence-based discussion will be of utmost importance in this matter.

¹ Report: The net Neutrality Situation in the EU, pages 21-29: <https://epicenter.works/document/1522>

² Report: The net Neutrality Situation in the EU, pages 13-15: <https://epicenter.works/document/1522>

³ Report: The net Neutrality Situation in the EU, pages 9-13: <https://epicenter.works/document/1522>

We remain at the Commission's and BEREC's disposal for any support and expertise that we can provide to work towards a true Digital Single Market that protects and promotes an open, neutral and non-discriminatory access to the internet.

Signed,

AccessNow (International)
Alternatif Bilisim (AIA, Turkey)
Asociația pentru Tehnologie și Internet (ApTI, Romania)
Bits of Freedom (Netherlands)
Chaos Computer Club (CCC, Germany)
Chaos Computer Club Wien (C3W, Austria)
Defesa dos Direitos Digitais (D3, Portugal)
Digitalcourage (Germany)
Digitale Gesellschaft e. V. (Germany)
Digital Rights (Ireland)
Electronic Frontier Norway (EFN, Norway)
Epicenter.works (Austria)
European Digital Rights (EDRi, Belgium)
Fitug e. V. (Germany)
Föreningen för digitala fri- och rättigheter (DFRI, Sweden)
Frënn vun der Ënn (Luxemburg)
Hermes Center (Italy)
Homo Digitalis (Greece)
IT-Pol (Denmark)
Iuridicum Remedium (IuRe, Czech republic)
Liga voor Mensenrechten (Belgium)
Net Users' Rights Protection Association asbl (NURPA, Belgium)
OpenMedia (International)
Open Rights Group (United Kingdom)
quintessenz (Austria)
SHARE (Serbia)
vibe.at (Austria)
Wikimedia Deutschland e. V. (Germany)
Xnet (Spain)