



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

Electronic Communications Networks and Services
Electronic Communications Policy

Brussels,
CNECT.B.1/SL

Dear Mr Penfrat,

We thank EDRi and its co-signatories for the letter of 30 April 2019 concerning the recent publication of the European Commission's Report on the implementation of the open internet access provisions of Regulation (EU) 2015/2120. In your joint statement you expressed your conviction that net neutrality is central for the success of the internet and that the provisions of Regulation (EU) 2015/2120 safeguard a neutral and open internet access and support fundamental rights such as the freedom of expression and the right to receive and impart information without interference by telecom companies. In your letter you welcome the European Commission's decision to uphold the legislation, however, you claim that the Report would ignore or overlook issues such as market entry barriers for participation in zero-rating offers, ongoing throttling of certain applications and the lack of dissuasive and proportionate penalty provisions by Member States.

Firstly, I would like to re-iterate our commitment to protect European internet users, as expressed in the Report.

Then, as regards the treatment of zero-rating offers, I would like to recall that the Report contains a dedicated part on that matter and quotes Articles 3(2), which states in particular that agreements on commercial conditions such as price shall not limit the exercise of the rights of end-users laid down in paragraph 1. The Report summarises various positions including those of consumer associations. It also details and explains the approach taken in the BEREC Guidelines which were developed in close collaboration with the Commission. This approach is based on the legal text and consists in a case-by-case analysis.

Regarding the ongoing throttling of certain applications by telecom operators, we understood from consumer associations that while this practise did not entirely disappear, complaints about it had almost stopped thanks to the Regulation. This was for example the feedback we noted at the stakeholder workshop on 5 December 2018.

Concerning the lack of harmonisation, the Commission report acknowledges that the types and levels of sanctions differ widely between Member States. At the same time, the Commission is monitoring how the existing sanctioning powers are used in practice and whether national regulators apply effective and dissuasive penalties when necessary to ensure compliance.

Regarding contradicting decisions, the study SMART 2017/0011 found out that when different decisions were taken on port blocking, it was for slightly different cases with

different security assessments, which could be explained by the difference in national markets. We work in close collaboration with BEREC on updating the Guidelines and we support their activity to exchange practises and strive to maintain consistency in their application of the Regulation. As the Report mentions, we consider that this coordination process led the decision-making in the Member States to converge widely.

Concerning the annual reporting obligations, all national regulatory authorities publish reports regarding their monitoring and findings, and provide those reports to the Commission and to BEREC in line with Article 5(1), sub-para. 2 of Regulation (EU) 2015/2120. The Commission services receive these reports through BEREC and publish them under the following link: <https://ec.europa.eu/digital-single-market/en/open-internet-net-neutrality>. The level of detail of the annual reports may vary depending on the specific situation in a given Member State as well as the requirements imposed on providers of electronic communications.

Finally, we thank you for your continuing support and for sharing your expertise on this matter with us. We share your objective of a Digital Single Market that protects and promotes an open, neutral and non-discriminatory access to the internet.

Yours faithfully,

Stefan Lechler
Head of Unit (acting)