

Consultation paper on the evaluation of the application of Regulation (EU) 2015/2120 and the BEREC Net Neutrality Guidelines

8 March 2018

Introduction and scope of the consultation

In this paper BEREC invites stakeholders to participate in a public consultation on an evaluation of the application of the BEREC Net Neutrality Guidelines¹ (the “Guidelines”) in the context of the Net Neutrality Regulation² (the “Regulation”) The objective of this consultation is to gather information on how stakeholders have experienced the application of the Regulation, as provided for in the Guidelines, since April 30th 2016.

BEREC realizes the importance many in the public domain attach to expressing their position on the general subject of net neutrality. Yet, in this consultation BEREC focuses on the actual experiences of stakeholders with the application of the current Regulation and Guidelines. It is noted that early 2019 the Regulation itself will be evaluated by the European Commission³.

In addition to the general aspects of the application of the Regulation and Guidelines, BEREC is especially interested in the experiences of stakeholders concerning impact of the Guidelines on the adoption of new technologies.

The public consultation is open from 14th of March 16:00 CET to 25 April 17:00 CET 2018. During this period, responses can be either:

- send by email to NN-Evaluation-Consultation@berec.europa.eu
- or be posted on <https://consultations.berec.europa.eu/en/berec>

Your input will be used to prepare for a BEREC Opinion for the European Commission in relation to the mentioned evaluation of the Regulation. BEREC aims at publishing this Opinion at the end of 2018.

Please answer with regard to both national and pan-European practices, where you find such distinction appropriate.

¹ BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules, ref. BoR (16) 127.

² This report refers to “the Regulation” as the net neutrality rules contained in 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.

³ Stipulated by article 9 of the Regulation.

A. General experience with the application of the Regulation and BEREC NN Guidelines

1. In your view – have the Guidelines helped NRA's apply the Regulation in a consistent, coherent and correct way? Please explain.
2. Did the Guidelines provide additional clarity regarding how to apply the Regulation? Please explain.
3. On which subjects would you expect the Guidelines to be more explicit or elaborated? How should the text of the Guidelines be adapted on these points, in your view. Please explain.
4. For ISPs: Did you discontinue certain products or services following the adoption of the Regulation and/or the Guidelines?
5. Did the application of the Regulation, or the implementation of the Regulation by the Guidelines, prevent you from launching certain products or services?
6. Do you have any additional comments on the application of the Regulation and Guidelines?

B. Definitions (article 2 of the Regulation)

7. Do you think that the Guidelines should provide further clarification in relation to the definitions in the Regulation? If yes, please provide concrete suggestions.

C. Commercial practices such as zero-rating (articles 3(1) and 3(2))

8. Does the current assessment of zero-rating as recommended in the Guidelines, offer sufficient protection of end-users' rights as referred to in article 3(1) of the Regulation? Please explain.
9. How could the assessment methodology for commercial practices in the Guidelines (ref. in particular to paras 46-48) be improved? Is there a need for more simplification, flexibility and/or more specification? Please provide concrete suggestions.
10. In your view, did the assessment methodology for commercial practices in the Guidelines influence the development of new content and applications offered on the internet? Please explain.
11. Do you think that the current application of the Regulation and the Guidelines concerning commercial practices, such as zero-rating, sufficiently takes account of possible long term effects of such practices? If not, how could BEREC further facilitate this?

D. Traffic management (article 3(3))

12. Is there a need for improvement of the Guidelines concerning reasonable traffic management (ref. in particular to paras 49-75)? If yes, how could this text be improved? Please provide concrete suggestions.
13. Is there a need for improvement of the Guidelines concerning traffic management measures going beyond reasonable traffic management measures (ref. in particular

paras 76-93)? If yes, how could this text be improved? Please provide concrete suggestions.

14. Does the text of the Guidelines concerning traffic management influence the development of network technologies offered on the market? Please provide concrete examples.
15. Do any terms used in article 3(3) concerning traffic management need further explanation in the Guidelines? If yes, please specify.

E. Specialised services (article 3(5))

16. Is there a need for improvement of the Guidelines concerning specialized services (ref. in particular paras 99-127)? If yes, how could this text be improved? Please provide concrete suggestions.
17. Does the text of the Guidelines concerning specialized services influence the development of specialised services offered on the market? Please provide concrete examples.
18. Do any terms used in article 3(5) concerning specialised services need further explanation in the Guidelines? If yes, please specify.

F. Transparency (article 4)

19. What has been your experience regarding the application of the transparency measures in the Regulation and the Guidelines, particularly in relation to speed of mobile internet access services? Is there a need for improvement? If yes, how could this be improved by BEREC? Please provide concrete suggestions.
20. How could BEREC further assist consumers, ensuring that they get the internet access service that they pay for?

G. New technologies (horizontal)

21. Do you think the Regulation and the Guidelines provide sufficient flexibility to adopt new technologies which are likely to be used in 5G? Please explain, preferably with examples.
22. Considering the rules for traffic management and specialized services in the Regulation, are the Guidelines providing sufficient clarity to the adoption of new network technologies such as “network slicing” and “edge computing”? Please explain in detail.
23. If not, which specific points are unclear in the Guidelines and how could BEREC improve this? Please provide concrete suggestions.

H. Other comments

24. Do you want to share any additional comments?