

The Consumer Voice in Europe

## BEREC'S PUBLIC CONSULTATION ON ITS DRAFT UPDATED NET NEUTRALITY GUIDELINES

BEUC's response



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## Why it matters to consumers

Protecting net neutrality both by law and in practice ensures consumers can access and surf the internet in a non-discriminatory way. Safeguarding the right to access an open and neutral internet also preserves the internet as a decentralised engine of innovation. It allows for more competition and therefore more consumer choice. Now that telecom regulators are reviewing how EU net neutrality rules apply in practice, it is crucial to clarify ambiguous wording in the current law and address challenges to the openness of the internet.

## Summary

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*BEUC generally welcomes BEREC's trajectory on net neutrality. BEREC has rightly opposed measures that would go against the Regulation. While the draft updated guidelines are good on many points, some improvements are still needed. The updated guidelines would benefit from further amendments, for example regarding zero-rating and price discrimination, transparency measures and specialised services. BEREC should also aim for more systematic and close cooperation with other competent authorities, notably consumer rights and data protection authorities.*

BEUC – The European Consumer Organisation welcomes the opportunity to respond to the Body of European Regulators for Electronic Communications (BEREC)'s [consultation](#) on its draft updated net neutrality guidelines. Below, BEUC provides comments following the structure of the guidelines, now called "BEREC Guidelines on the Implementation of the Open internet Regulation".

BEUC's input focuses on those provisions that have experienced changes and on those provisions that would merit clarification. Some of our input is based on [BEUC's consultation response on the first draft net neutrality guidelines](#). For those paragraphs that we do not comment on, we refer to BEUC's consolidated positions.<sup>1</sup>

For the purposes of this paper, [Regulation 2015/2120](#) on the Open Internet Regulation will be hereafter referred to as "the Regulation".

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<sup>1</sup> BEUC position on BEREC's Draft Guidelines on European Net Neutrality Rules - BOR (16) 94, BEUC-X-2016-075, 14 July 2016,

[https://www.beuc.eu/publications/beuc-x-2016-075\\_implementation\\_of\\_eu\\_net\\_neutrality\\_rules\\_berec\\_draft\\_guidelines\\_1.pdf](https://www.beuc.eu/publications/beuc-x-2016-075_implementation_of_eu_net_neutrality_rules_berec_draft_guidelines_1.pdf)

BEUC's response to BEREC consultation on the evaluation of Regulation 2015/2120 and the BEREC net neutrality guidelines - BoR (18) 33, BEUC-X-2018-035, 25 April 2018,

[https://www.beuc.eu/publications/beuc-x-2018-035\\_berec\\_consultation\\_on\\_net\\_neutrality\\_beuc\\_response.pdf](https://www.beuc.eu/publications/beuc-x-2018-035_berec_consultation_on_net_neutrality_beuc_response.pdf)

BEUC position paper, Net neutrality in Europe: Time for clear rules of the game, BEUC-X-2016-049, 25 May 2016

[https://www.beuc.eu/publications/beuc-x-2016-049\\_gbe\\_net\\_neutrality\\_in\\_eu-time\\_for\\_clear\\_rules\\_of\\_the\\_game.pdf](https://www.beuc.eu/publications/beuc-x-2016-049_gbe_net_neutrality_in_eu-time_for_clear_rules_of_the_game.pdf)

## Article 1. Subject matter and scope

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This review exercise can be an opportunity for BEREC to strengthen the wording of **paragraph 6**, by changing “may” into “should” and by recommending national regulatory authorities (NRAs) to monitor developments in interconnection markets to address potentially anti-competitive and discriminatory practices.

## Article 2. Definitions

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We welcome further clarification provided in **paragraph 12**. Yet, **BEREC should clarify that internet access in cafés and restaurants** are sometimes open networks provided without passwords. In such cases, they should be considered as publicly available services.

**Paragraph 18** should **not mention e-book readers**, as these devices can still be used to access the internet. As [we recently mentioned](#) to BEREC, “it must be made clear that **the Regulation does not foresee any other connectivity services beyond Internet Access Services (IAS) and specialised services**. Therefore, where the number of reachable end-points is limited by the nature of the terminal equipment used with a service, this service should be provided through or as an IAS, if possible. If this service requires a guaranteed quality of service, it can be provided as a specialised service, but it must then comply with the corresponding rules.”

## Article 3. Safeguarding of open internet access

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### Choice of terminal equipment

When NRAs assess restrictions to terminal equipment choice, NRAs should not only limit the freedom to choose terminal equipment to end-users’ “own equipment”. **Paragraph 26** should be changed so it is clear **end-users have the ability to replace equipment with any type of terminal equipment and network services that provide added value to them**.

**Paragraph 27 should make clearer that internet access providers should allow tethering**, instead of just saying that restricting it would likely constitute a restriction on the use of terminal equipment. Recital 5 is clear-cut that ISP should not impose restrictions of this kind.

### Parental controls and filtering services

During the elaboration of the Open Internet Regulation, the issue of parental controls and filtering was touched upon. As BEREC rightly points out in paragraph 78b, when parental controls or filters are set up in the terminal equipment or “client application software”, they fall outside of the Regulation. However, Art. 3(3) of the Regulation is clear that providers would not be able to offer parental controls or filtering services by default or without the consumer explicitly requesting such service. Art. 3(2) cannot and should not be used to circumvent core principles set in Art. 3(3). Therefore, **BEUC welcomes the clarifications introduced in paragraphs 78 and 78a**. In addition, by introducing yet another case-by-case assessment in the second part of **paragraph 78b**, BEREC would bring **less clarity in the enforcement of net neutrality rules and even contradict them and paragraph 37 of BEREC’s own draft updated guidelines**. BEREC should not go beyond

what the Regulation has set forth and reopen debates that already took place and were resolved during the elaboration of the Regulation.

**BEUC strongly recommends deleting paragraphs 32a, 32b and the second part of paragraph 78b** as they interpret the current Regulation in a way that is either contrary to the intention of the EU legislators or adds more uncertainty, contrary to Art. 5(3) of the Regulation. Conversely, **the beginning of paragraph 78b should be kept** (from "In contrast to..." until "i.e. outside the IAS"), as it accurately describes the limitations in scope of the Regulation.

### **Quality of Service parameters other than volume and speed (application-agnostic quality of service levels)**

**BEUC generally welcomes** that in **paragraphs 34 to 34c** BEREC clarifies that quality of service divergences should always be conducted in a transparent and in an application-agnostic way. Otherwise it would likely infringe Arts. 3(1), 3(3) and Art. 4(1) of the Regulation.

Paragraphs 34b and 34c are particularly relevant in view of 5G.

We welcome that in paragraph 34b BEREC clarifies that no internet access service subscription should be able to degrade the quality parameters of other end-users' subscriptions. However, **we recommend BEREC to delete the word "premium" or put "premium" as an example**. This is important because the detriment that other end-user subscriptions may experience could happen with an offer that is not labelled as such.

**BEREC should encourage providers that offer subscriptions with different quality of service levels to put safeguards in place** so the quality of service required by other services do not result in "low network performance". Consumers should always get the maximum quality of service possible, unless it is objectively and technically not possible.

When presented with such offers, **NRAs should proactively and swiftly adopt all measures needed to ensure an appropriate quality of service, in line with Arts. 4(1) and 5(1) of the Regulation. The same measures should apply when the internet access offer facilitates multiple quality of service levels** (paragraph 34c). Network slices should be aligned with net neutrality requirements.

### **Relationship between Articles 3(1), 3(2) and 3(3).**

**BEUC very much welcomes the clarification done in paragraph 37** about the relationship between Articles 3(1), 3(2) and 3(3) as it clarifies that the core principles of net neutrality set forth in Articles 3(1) and 3(3) cannot be bypassed by commercial agreements/practices.

### **Price discrimination, zero-rating and similar offers**

We [reiterate](#) our position that zero-rating should be banned. While the Regulation does not explicitly mention the word "zero-rating", the Regulation provides elements to consider it should be a forbidden practice in light of Articles 1 and 3 and recitals 1 and 7.

BEUC regrets that BEREC does not seem to share the view that zero-rating should be prohibited. In fact, the case-by-case approach chosen by BEREC has proven to give rise to

several problems.<sup>2</sup> Overall, we are very worried about the widespread use of zero-rating, and the precedent it sets. Zero-rating leads to increased lock-in of consumers, makes it harder to switch and harder to compare offers. Zero-rating negatively affects competition, innovation, media diversity and freedom of expression. In some countries like Norway, zero rating is also giving incumbents a major advantage, as they own their own network and can therefore offer zero-rating programmes under conditions that mobile virtual network operators (MVNOs) cannot offer.

In any case, the Court of Justice of the European Union (CJEU) will soon decide on how the regulation should be interpreted regarding this issue<sup>3</sup>. The situation should be reassessed once the Court has rendered its ruling.

Having said that, **BEUC broadly welcomes that BEREC followed BEUC's recommendation to provide greater certainty in this area.** Below, BEUC suggests further improvements:

- Overall, BEUC welcomes further guidance given in relation to open zero-rated programmes. However, **BEREC should propose stronger wording about which zero-rated programmes would violate the Regulation and should therefore not be allowed**, as BEREC infers itself in the **Annex**. As a start, "closed" programmes would likely lead to clear infringement of net neutrality rules. This should be expelled out more clearly.
- BEUC asks BEREC to **change paragraph 39** as it implies that distinct categories of data traffic can be priced differently without infringing Article 3(1) of the Regulation. This contradicts paragraph 48 of BEREC's guidelines.
- BEUC urges BEREC to **change all references to "price of zero" (e.g. in paragraphs 40, 42a, 48)**. Zero-rating does not amount to applying a price of zero to the traffic of a specific application or applications. From an economic perspective, the consumer always pays to enable internet access services, so it is indirectly paying for the zero-rated app(s). In fact, research has found<sup>4</sup> that in those European countries where zero-rating programmes are offered, consumers pay higher prices. Another possibility is, as BEREC has now clarified, for Content Application Providers (CAPs) to "subsidise their own data" or for the subscriber to pay an extra fee. Therefore, **it is not coherent to define zero-rating as applying a price of zero to data associated to an application or several applications.**

**Paragraph 40 should define zero-rating** as a commercial practice where the internet access service provider does not count the traffic generated by a/several content application provider(s) against the data cap contracted by the consumer.

- We very much welcome BEREC's amendments in **paragraph 42**, as it follows BEUC's past recommendations. Following BEREC's logic, **non-open or closed**

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<sup>2</sup> See, for example, input provided by German BEUC member vzbv to BEREC, Nachbesserungsbedarf beim Zero-Rating, 7 June 2018, <https://www.vzbv.de/meldung/nachbesserungsbedarf-beim-zero-rating>. See also our Norwegian member Forbrukerrådet's take on zero-rating in the Norwegian mobile market, 9 November 2017, <https://fil.forbrukerradet.no/wp-content/uploads/2017/11/2017-11-09-brev-nulltaksering-eng.pdf>. Since then, our member has not seen much improvement in the market.

<sup>3</sup> Cases c-807/18

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=213041&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=15244207>; and C-39/19 <http://curia.europa.eu/juris/document/document.jsf?text=&docid=213055&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=15252619>

<sup>4</sup> Epicenter.works Report, The Net Neutrality Situation in the EU. Evaluation of the First Two Years of Enforcement, 29 January 2019, [https://epicenter.works/sites/default/files/2019\\_netneutrality\\_in\\_eu-epicenter.works-r1.pdf](https://epicenter.works/sites/default/files/2019_netneutrality_in_eu-epicenter.works-r1.pdf)

**zero-rating programmes would be in contravention of the Regulation. BEREC should make that clear in this and following paragraphs.**

- The first sentence of **paragraph 42a** (“*Taking as an example a zero-rating offer where a specific music streaming application is zero rated, an end-user would not be prevented from using other streaming applications that are not zero rated.*” (emphasis added)) should be changed. In 2016, BEUC asked BEREC to provide examples, so we are happy this recommendation has been taken on board. However, this sentence should be clarified as it can lead to unfortunate interpretations, in violation of Article 3(2) and (3) of the Regulation. For example, consumers in Italy were being “prevented from using music streaming applications that [were] not zero rated” when resorting to H3G (Wind Tre)’s [Music by 3](#) zero-rated offer. As the Autorità per le Garanzie nelle Comunicazioni (AGCOM) [found](#), Music by 3 could be accessed “for free” by consumers, while other traffic were either slowed down or blocked, in clear contradiction with Article 3(3) of the Regulation.
- BEREC’s new **paragraph 42b should be strengthened** (“may” must be turned into “should” or “must”). In addition, **BEUC considers offering large and/or unlimited data caps is the best practice on the market** (not open zero-rating programmes), **as large data volume turns zero-rating programmes unnecessary**. It secures the end-users’ right to access and distribute information and content without discrimination.
- **Paragraph 42c** provides further clarification on transparency of open zero-rating programmes. We recommend **amending it slightly to ensure that transparency of terms and end-user awareness takes place before consumers enter into such programmes** – and not just before using it, as suggested in the example provided by BEREC.
- BEUC suggests some slight modifications to **paragraph 42d**:
  - **Adding a requirement for ISPs to respond to CAPs within a reasonable time**, setting a specific deadline or a time frame, as experience shows this is not always the case.<sup>5</sup> This would secure uniform practice.
  - **Another example of discriminatory treatment** from ISPs towards CAPs **should be added. If ISPs proactively approach certain CAPs, de facto discriminating on other providers (most probably start-ups and SMEs), this could challenge the open nature of the zero-rating programme.**
- **BEUC welcomes new paragraph 42e** as it provides further guidance to assess whether zero-rating programmes’ terms are fair and reasonable.
- **Paragraph 48.** As mentioned above, **open zero-rating programmes are not the best practice one can find in the market.** Offering large data caps is, as it turns zero rating redundant. The fifth bullet point of paragraph 48 should be modified accordingly. With regards to the last bullet point of this paragraph, guidance from BEREC should not lead to further burden on NRAs to demonstrate infringements of the Regulation. **The burden of proof should be on the side of operators.**
- **BEUC welcomes** BEREC’s pragmatic approach to prove a step-by-step assessment of zero-rating and similar offers provided in **the Annex**. This can help improve the enforcement of current rules. **The Annex should be clearer about when NRAs should act to declare zero-rating and similar offers illegal. If a zero-rating or similar offer infringes the Regulation, “effective, proportionate and**

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<sup>5</sup> *Ibid.*

**dissuasive” sanctions should be imposed, in line with Article 6 of the Regulation.** BEREC should clearly mention this obligation to act, as we are lacking proper enforcement at the moment. **NRAs should not wait for providers’ changes to impose penalties.** Stricter enforcement is needed as there seems to exist zero-rating programmes in breach of the Regulation. For example, our Norwegian member Forbrukerrådet has noticed that some CAPs providing podcasts are being left out of zero-rating programmes for music even though Spotify offers those.

### Interconnection

BEREC rightly points out in **paragraphs 6 and 50** that interconnection markets fall outside the scope of the Regulation. However, this does not mean **NRAs should not closely monitor them to assess whether discriminatory and anticompetitive practices take place and take action accordingly.** BEREC should clarify that, in line with Art. 61 of the European Electronic Communications Code (EECC).

### Monitoring traffic for security reasons

**BEUC is strongly against deleting the footnote related to the need for strict interpretation and proportionality in paragraph 85. Exceptions to both the Regulation and confidentiality of communications rules as set forth in the ePrivacy Directive must be narrowly interpreted. BEREC cannot give *carte blanche* to constant traffic monitoring.** As stated by paragraph 87, this net neutrality exception can be abused, therefore deleting such footnote is not wise. In addition, we reiterate the **importance of systematic and close cooperation with data protection authorities.** BEREC should add this to paragraph 85.

Furthermore, **BEREC should specify what it means by “recognised security organisations” in paragraph 86. At least, BEREC should provide criteria and examples about how to determine the independence and trustworthiness of such organisations.**

### Prohibition to monitor specific content

BEUC considers that **paragraphs 69 and 70 are broadly clear** and in line with Article 3(3) of the Regulation when it sets forth that traffic must be treated equally, “without discrimination, restriction or interference”, and that “[reasonable traffic management] measures shall not monitor the specific content and shall not be maintained for longer than necessary”. Recital 10 of the Regulation is very clear as well, as it states that “[r]easonable traffic management does not require techniques which monitor the specific content of data traffic transmitted via the internet access service.” (emphasis added)

Contrary to what a few stakeholders have been advocating for, we consider that **BEREC should not consider domain names as generic content.** This would not be necessary or proportionate, lead to discriminatory traffic treatment and affect end-users’ privacy.<sup>6</sup>

BEUC is aware of a report that has found several ISPs using deep package inspection techniques.<sup>7</sup> We consider this to be a clear violation of the Regulation. **Providing more**

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<sup>6</sup> For more information, see Digital Rights and academics' open letter warning against Deep Packet Inspection, 15 May 2019

[https://edri.org/wp-content/uploads/2019/05/20190515\\_EDRiOpenLetterDeepPacketInspection.pdf](https://edri.org/wp-content/uploads/2019/05/20190515_EDRiOpenLetterDeepPacketInspection.pdf)

<sup>7</sup> Epicenter.works Report, The Net Neutrality Situation in the EU. Evaluation of the First Two Years of Enforcement, 29 January 2019, [https://epicenter.works/sites/default/files/2019\\_netneutrality\\_in\\_eu-epicenter.works-r1.pdf](https://epicenter.works/sites/default/files/2019_netneutrality_in_eu-epicenter.works-r1.pdf)

**transparency about practices that would not be in compliance with the Regulation would not solve the issue. Enforcement is needed.** In addition, BEUC would like to **recall** that these paragraphs would benefit from **cross-referencing the General Data Protection Regulation (GDPR) and the [ePrivacy Directive](#).**

### Specialised services

In the past and current version of the guidelines, BEREC had set forth very important clarifications of the Regulation on this topic, particularly in paragraphs 101 to 105 and 116 to 120. Now, BEREC has introduced several amendments, some of which need to be reconsidered.

**Paragraphs 108 and 108a need changes.** For example, what does BEREC mean by “novel networking paradigms”? In addition, the justification provided by BEREC seems to come particularly because of 5G (cf. consultation document). And yet, operators argue that precisely **thanks to 5G, network capacity will substantially increase. Therefore, there appears to be a contradiction** between 5G promises for greater capacity and the apparent future demand for more specialised services. As BEREC itself points out in the consultation document, “[o]verall IAS quality will evolve positively over time leaving to a situation where a SpS might no longer be necessary”.

**Paragraph 112 should be reverted to its original version. The amendment proposed,** asking for a transition period, asking NRAs not to review specialised services and therefore to ignore its duties **is in clear contravention of the Regulation.** According to **recital 16** of the Regulation, “[n]ational regulatory authorities should verify whether and to what extent such optimisation is objectively necessary.” In addition, **Article 5 (1)** clearly obliges NRAs to “closely monitor and ensure compliance” of the Regulation, **Article 3(5)** included. The Regulation does not say that whenever it is not convenient for providers, NRAs should look the other way, failing their supervision and enforcement duties.

**BEUC however very much welcomes BEREC’s amendment to paragraph 115,** as it provides more clarity related to VPNs.

**BEUC urges BEREC to reconsider the amendments to paragraph 121,** as it narrows down the application of the paragraph to IAs provided “over the same network”. The Regulation does not do that. Because of 5G, BEREC and stakeholders cannot go beyond what is established in the Regulation. Also, changing “would” for “may” significantly weakens the balance of interests reached in the previous consultation.

**Paragraph 121a** on BEREC’s net neutrality measurement tool and future measurement methodology for general quality of internet access services **is very much welcomed.**

**Paragraph 122** should be modified to introduce more legal certainty to benefit consumers. We recommend BEREC to **add that consumers should get the maximum speed possible on the internet access service, unless this is objectively technically not feasible. This rule should apply to any end-user,** not just to those who are not the subscribers of both services.

**Paragraph 123** needs more clarity. **BEREC should further expand on the three criteria outlined to assess the negative impact of specialised services in mobile networks** (i.e. “unavoidable, minimal and limited to a short duration”).

**Modifications in paragraph 124** do not present objections if NRAs believe this would clarify their tasks.



**“Perceptible” in paragraph 125 should be deleted.** It adds uncertainty as it is unclear what “perceptible” means in this context. The precedent version was clearer.

## Article 4. Transparency measures

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**The last bullet point of paragraph 130 must be modified to bring it in line with Article 103 of the EEC.** Comparison between different ISPs must be possible, and not only “preferably”.

**Paragraph 131** should include that providers will be obliged to include a summary of the information required in Art. 4(1) of the Regulation in their contract summaries, in line with Article 102 of the EEC.

**“[M]ight” in paragraph 133 must be changed to “may”** to reflect the legal language used in Article 3(3) of the Unfair Contractual Terms Directive. The choice of terms has different legal implications. Also, **footnote 42 should be modified to reflect much-needed cooperation between NRAs and other competent authorities.** When NRAs may not be competent to assess whether contractual terms may be unfair but have noticed the existence of contractual clauses that may be in violation of said Directive, NRAs must cooperate with competent authorities.

**We welcome the amended paragraph 135** as it further clarifies what information must be provided on how traffic management may affect the quality of the internet access service, the privacy and personal data protection of end-users. Having said that, **it must be added that** when NRAs assess the methods used for traffic identification, **NRAs must seek feedback from and closely collaborate with data protection authorities.**

Not only data volumes, but also **speeds (paragraph 137) should be defined in quantitative terms. Terms like “fast” or “ultrafast” should not be permitted**, as there is no common definition that would prevent abuses.

In addition, in **paragraph 138** BEREC should recommend that consumers be clearly presented with **choice, e.g. between having their speed decreased and paying for additional data volumes. In case fair use policies apply to “unlimited” data plans, providers should not be allowed to present it as “unlimited”** as in practice it would be restricted. Otherwise, consumers could be easily misled.

The same way BEREC provides guidance on transparency requirements related to traffic management measures, **paragraph 139 needs to expand on what information elements would be needed** in relation to the impact specialised services might have on internet access services. Right now, the paragraph is rather ambiguous and refers to paragraph 122, which in itself does not provide legal certainty (see comments above).

**BEUC welcomes BEREC’s clarification of the rules for fixed wireless and hybrid access services in paragraphs 141, 141a and 141b.**

BEUC would like to strongly recommend **BEREC to change its approach in relation to how it defines speeds for both fixed and mobile networks:**

- **Minimum speeds in fixed networks (paragraphs 143-144).** As [mentioned](#) in the past, “if minimum speeds are defined as the lowest speed at any point in time, this would create an incentive for providers to define very low minimum speeds. To

avoid this potential misuse, there should be a relationship between the minimum and the normally available (or maximum) speeds, for instance by establishing a percentage, in the same way that it has been done for the normally available and maximum speeds (paragraph [148]).”

- **Maximum speeds in fixed networks (paragraphs 145-146)** should not be defined only by the maximum speed that a consumer gets once a day. Consumers expect the maximum speed to be what they would get under normal circumstances – definitely more than once a day. What would be the value of having a maximum speed otherwise? Providers could comply with such an approach by offering the maximum speed for example for one minute, as the “at least once a day” criteria is not specified to a degree that would prevent abuses.
- **Normally available speeds in fixed networks (paragraphs 147-148).** While we generally welcome the approach taken, BEUC recommends BEREC to turn the examples it provides in paragraph 148 into a set of criteria. This way, it will ensure a more coherent application and enforcement approach, which is the goal set forth under Article 5(3) of the Regulation.
- **Advertised speed in fixed and mobile networks (paragraphs 151 and 157).** Similarly to what BEREC pointed out in paragraph 133, it is important for BEREC to clarify that if providers advertise speeds that are higher/different to those contracted or delivered, this can lead to an unfair commercial practice under [Directive 2005/29/EC](#). In case NRAs are not competent to do so they should be encouraged to work together with national competent authorities to address this situation.
- The **estimated maximum upload and download speed in mobile networks (paragraph 155) should** (and not just “could”) **be provided in a geographical manner**. This has huge implications for consumers.

Finally, **BEUC strongly urges BEREC to modify paragraph 164 to ensure systematic and close cooperation with data protection authorities when dealing with privacy matters** so as to ensure compliance with national laws implementing the GDPR and the ePrivacy Directive. NRAs may be faced with privacy considerations when monitoring internet access service performance. However, not all NRAs have full competences in this field. Even when some NRAs are competent of ensuring compliance with national laws implementing the ePrivacy Directive, personal data considerations may be involved. Therefore, systematic cooperation with data protection authorities is crucial.

## Articles 5 and 6. Supervision, enforcement, penalties

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While BEUC generally welcomes these provisions, we urge BEREC and NRAs to put more emphasis and resources on the implementation and enforcement of the rules.

For example, according to the European Commission’s own report on the implementation of the Regulation on Open Internet Access, “[o]nly very few penalties have been imposed to date and all of them were well below the applicable maximum. Since effective, dissuasive and proportionate sanctions are crucial for the correct implementation of the regulation, the Commission is monitoring the implementation of this provision in the Member States”.<sup>8</sup>

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<sup>8</sup> COM(2019) 203 final, Report from the Commission to the European Parliament and the Council on the implementation of the open internet access provisions of Regulation (EU) 2015/2120, 30 April 2019, available at <https://ec.europa.eu/digital-single-market/en/news/commission-report-open-internet>

Therefore, while **paragraph 187** of the BEREC guidelines establishes that no guidance to NRAs is needed, it is important for BEREC to acknowledge that protections on paper are not enough.

In addition, we have also noticed that net neutrality rules are underenforced, particularly in the case of zero rating or other issues such as the unlawful use of deep package inspection<sup>9</sup>.. BEUC urges NRAs to keep working to ensure appropriate enforcement and redress to consumers.

END

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<sup>9</sup> See, for example "At least 186 EU ISPs use deep-packet inspection to shape traffic, break net neutrality", 18 May 2019, <https://www.zdnet.com/article/186-eu-isps-use-deep-packet-inspection-to-shape-traffic-break-net-neutrality/>



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