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13 Jan 2016

## EDRI's first input to EU regulators on net neutrality guidelines (<https://edri.org/edris-first-input-on-net-neutrality-guidelines/>)

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By Maryant Fernández Pérez

The Body of EU Telecoms Regulators known as “BEREC” has held its first round of discussions with stakeholders to exchange views on how BEREC should interpret the uncertainties created by the EU Regulation on net neutrality. These include questions surrounding traffic management measures and their

**16.06.2016**  
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transparency, Internet Access Services' quality parameters, so-called "specialised services" and commercial practices like "zero-rating".



[\(https://edri.org/supporters/\)](https://edri.org/supporters/)

The meeting with civil society took place on 15 December 2015. It preceded the 20-working-days public consultation that BEREC aims to hold in June 2016. Bearing in mind that the US Federal Communications Commission (FCC) received 3.7 million responses to its public consultation on net neutrality – including EDRI's [\[http://apps.fcc.gov/ecfs/document/view?id=7521479150\]](http://apps.fcc.gov/ecfs/document/view?id=7521479150) -, how is BEREC going to manage to adequately incorporate citizens' concerns in such a short period of time? We don't know and we aren't sure that they know either.

As a first step to this procedural challenge, EDRI has produced an extensive written response [\[https://edri.org/files/BEREC\\_Hearing2015\]](https://edri.org/files/BEREC_Hearing2015) to BEREC's questions. If you do not have time to read it now, these are the most important points that are worth noting:

- The Regulation on net neutrality must be read in light of the Charter of Fundamental Rights, including the right to receive, seek and impart information (Article 11 of the

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**20.06.2016**

BEUC Digiforum 2016

Brussels, Belgium  
[\[http://www.beuc.eu/press-media/news-events/beuc-digiforum-2016-%E2%80%93-registration-now-open\]](http://www.beuc.eu/press-media/news-events/beuc-digiforum-2016-%E2%80%93-registration-now-open)

**20.06.2016**

Fundamental Rights Forum

Vienna, Austria  
[\[http://fundamentalrightsforum.e](http://fundamentalrightsforum.e)

[view all \(https://edri.org/agenda/\)](https://edri.org/agenda/)

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Charter); the freedom to conduct business (Article 16) and citizens' right to provide services in all 28 Member States (Article 15(2)).

- Traffic management measures must be application-agnostic as a general rule. Differentiation among different categories of traffic must always be the exception and conducted in very strict terms of transparency, necessity, proportionality and duration. In fact, class-based traffic management is likely to prevent the roll-out new services, harm competition, innovation, privacy, users and regulators. For instance, we provided examples on how congestion can affect end-users' choice if not properly managed, in compliance with the Regulation.
- EU Telecoms Regulators must not allow the reclassification of online services and applications as "specialised services", since this could be a way to circumvent the principle of non-discrimination set forth in the Regulation, as evidenced (<http://www.euractiv.com/sections/digital-telekom-chief-causes-uproar-over-net-neutrality-319028>) most clearly by Deutsche Telecom's announcement right after the adoption of the EU net neutrality rules.
- Sub-Internet offers are illegal under the Regulation as this would entail Internet Access Provider (ISP) blocking or restricting specific

content and/or applications, which is (thankfully) clearly forbidden under the regulation.

- BEREC, NRAs and competition authorities should stop Internet Access Providers from making access to their customer base a new form of monopoly and ultimate push uncompetitive market consolidation between Access Providers and Content Application and Service Providers (CAPs).
- It is reasonable to interpret that zero-rating is prohibited under the Regulation, since it affects individual users' freedom to impart information; it is a commercial practice; it violates the Regulation's ban on blocking and throttling; the traffic management measures attached to it would not be temporary, as requested by the Regulation; and it distorts competition and limits end-users' choice.
- Specific content monitoring (e.g. via Deep Package Inspection) could be interpreted as being prohibited or at least not permitted by the Regulation.

On top of publishing our written report for BEREC, EDRi is exploring possibilities with its [Save The Internet](https://savetheinternet.eu/) (<https://savetheinternet.eu/>) coalition partners on how to engage people in the next steps to defend net neutrality in the European Union.

In BEREC's hearing with civil society, EDRi

was accompanied by its member [Initiative für Netzfreiheit \(https://netzfreiheit.org\)](https://netzfreiheit.org), EDRI-member [Access Now \(https://www.accessnow.org/rekindling-net-neutrality-our-meeting-with-eus-telecoms-regulators/\)](https://www.accessnow.org/rekindling-net-neutrality-our-meeting-with-eus-telecoms-regulators/) and the [European Consumer Organisation \(http://www.beuc.eu/digital-rights/telecoms-single-market\)](http://www.beuc.eu/digital-rights/telecoms-single-market) (BEUC), among others, which also expressed their views.

EDRI Written response to BEREC stakeholder dialogue with representatives of end-users/consumers and civil society (15.12.2015)  
[https://edri.org/files/BEREC\\_Hearing2015](https://edri.org/files/BEREC_Hearing2015)  
[\[https://edri.org/files/BEREC\\_Hearing2015](https://edri.org/files/BEREC_Hearing2015)

Net neutrality – now it is the regulators' turn to bring clarity (15.12.2015)  
<https://edri.org/net-neutrality-now-it-is-the-regulators-turn-to-bring-clarity/>  
[\[https://edri.org/net-neutrality-now-it-is-the-regulators-turn-to-bring-clarity/\]](https://edri.org/net-neutrality-now-it-is-the-regulators-turn-to-bring-clarity/)

Deutsche Telekom chief causes uproar over net neutrality (30.10.2015)  
<http://www.euractiv.com/sections/digital/d-telekom-chief-causes-uproar-over-net-neutrality-319028>  
[\[http://www.euractiv.com/sections/digital/c-telekom-chief-causes-uproar-over-net-neutrality-319028\]](http://www.euractiv.com/sections/digital/c-telekom-chief-causes-uproar-over-net-neutrality-319028)

Regulation (EU) 2015/2120 on net neutrality and roaming charges (25.10.2015)  
<http://eur-lex.europa.eu/legal->

[content/EN/TXT/?uri=CELEX:32015R2120](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2120)  
[\[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2120\]](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2120)

Save The Internet

<https://savetheinternet.eu>  
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