



Katharina Dröge
Dr Konstantin von Notz
Dieter Janecek
Renate Künast
Tabea Rößner

Members of the German Bundestag
Bündnis 90/Die Grünen parliamentary group in the Bundestag

Joint statement by the Members of the Bundestag Katharina Dröge, Konstantin von Notz, Tabea Rößner, Renate Künast and Dieter Janecek in response to the public consultation by the Body of European Regulators for Electronic Communications (BEREC) on the draft BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules

The draft BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules published on 2 June are designed to provide guidance on how the net neutrality rules contained in EU Regulation 2015/2120 should be interpreted by the national regulatory authorities. As such, the Guidelines are of great importance in safeguarding net neutrality.

The neutrality of transmission networks, i.e. the principle that there should be no discrimination against data on the basis of content, sender or receiver, is a key justice issue in the digital society. Rigorously safeguarding genuine net neutrality is of fundamental importance for people's rights in the digital world and for fair competition in the digital economy.

The draft published by BEREC rightly highlights several areas where regulation is needed and contains many sensible rules; however, these rules are not yet rigorous enough to guarantee genuine protection of net neutrality. BEREC must therefore draw the appropriate conclusions in the next version and guarantee genuine net neutrality.

With regard to the individual proposals for regulation:

It is to be welcomed that BEREC finds that end-users' rights are limited by sub-internet services, as they are known. A ban on them is therefore consistent with the idea of net neutrality and a positive development for consumers.

The finding that end-users' rights are limited by zero-rating offers which remain available even once a high-speed data cap is reached is also right and important. If such zero-rating offers were to continue to be allowed, this would have severe negative consequences for both the free internet and competition on the internet.

The BEREC draft states that zero-rating offers where only a specific application (for example, an application run by the internet service provider (ISP) itself) does not count towards any data cap in place are more likely to undermine end-users' rights. Yet such offers are not just more likely to undermine end-users' rights; they definitively do so. The draft should therefore be changed to ban zero-rating offers where a specific application does not count towards any data cap in place. The Bündnis 90/Die Grünen parliamentary group in the Bundestag is therefore calling for "the legal prohibition of violations of net neutrality and the blocking, throttling and unequal treatment of data



Katharina Dröge
Dr Konstantin von Notz
Dieter Janecek
Renate Künast
Tabea Rößner

Members of the German Bundestag
Bündnis 90/Die Grünen parliamentary group in the Bundestag

transmissions on economic grounds, including economic discrimination through what is known as ‘zero-rating’” (Bundestag printed paper 18/5382).

BEREC’s recognition that end-users’ rights are violated by practices which apply *higher* prices to the data traffic associated with specific applications is to be welcomed. Such practices would deter end-users from using specific applications.

However, all zero-rating practices lead to an increase in the price of all other data traffic compared to the zero-rated data traffic. As a result, it would only be logical to ban all zero-rating practices.

It is positive that the Guidelines state that ISPs may not treat encrypted traffic less favourably because of its encryption. However, this leaves open the question of whether “objective” traffic management is even possible.

It is counterproductive to the aim of a free internet for ISPs to be able to treat traffic categories with “objectively” different quality-of-service requirements in different ways for the purpose of traffic management. This allows ISPs to artificially restrict the speed of certain applications. BEREC must improve its draft with regard to this point and prohibit the categorisation of data traffic by ISPs for the purpose of traffic management.

The stipulation that the general quality of internet access services must not suffer as a result of specialised services is highly significant. The finding that services may only be offered as specialised services if they are not a substitute for an internet access service is equally important. This is another area where BEREC should make improvements to its draft: specialised services are a danger to the free internet. They limit end-users’ rights, inhibit investment in a better network infrastructure, and have a negative impact on competition on the internet. The Bündnis 90/Die Grünen parliamentary group in the Bundestag is therefore calling for “the rejection of preferential treatment, for an extra charge, of certain content, types or classes of applications (“specialised services”, “managed services”, “classes of services”) due to the negative effects on participation in online communication and on equal terms of competition” (Bundestag printed paper 18/5382). The current proposal that national regulators should decide on a case-by-case basis which specialised services are allowed is counterproductive, however. This approach conflicts with the principle of a single internal market and makes regulation more unpredictable. In addition, such forms of artificial bandwidth scarcity would have a negative impact on the broadband roll-out which is urgently needed for the “best-effort internet”, with providers instead concentrating on and monetising specialised services.

It is to be welcomed that national regulatory authorities are to be empowered by the Guidelines to impose requirements on ISPs to actually deliver the speeds which are advertised to end-users. In this context, please refer to the motion “Introducing minimum quality requirements for internet access” (Bundestag printed paper 18/8573, <http://dip21.bundestag.de/dip21/btd/18/085/1808573.pdf>)



Katharina Dröge
Dr Konstantin von Notz
Dieter Janecek
Renate Künast
Tabea Rößner

Members of the German Bundestag
Bündnis 90/Die Grünen parliamentary group in the Bundestag

tabled by the Bündnis 90/Die Grünen parliamentary group in the Bundestag, which calls, among other things, for it to be ensured “that at least 90% of the contractually agreed maximum bandwidth is actually available to consumers at all times, that the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway imposes requirements regarding technical characteristics and minimum quality of service requirements on ISPs, in accordance with Article 5 (1) of the Telecom Single Market Regulation, and for there to be provision for fines and for consumers to be entitled to flat-rate compensation in the case of significant, continuous or regularly recurring discrepancies relating to speed or other service quality parameters for internet access services”.

The many restrictions which BEREC places on specialised services and zero-rating offers clearly show that it has recognised the dangers posed by these offers and by the restriction of the best-effort internet. Such offers are to the detriment of consumers, as they may be able to use fewer offers in future and there is a danger of them receiving lower quality internet access. This curtails their right to access and distribute information and content and to use applications and services without discrimination.

Competition suffers, as artificial barriers to market entry are put in place for SMEs compared to dominant market actors. Young companies which cannot afford the expensive fast lanes are deprived of the opportunity to offer their applications and services. That will have a negative impact on Europe’s position as a location for business.

The only way to preserve the free internet is to continue to clearly minimise traffic management options to what is absolutely essential, and to ban zero-rating offers and specialised services as a substitute for the best-effort internet.

Finally, we would like to draw attention to the most recent motion on this subject tabled by the Bündnis 90/Die Grünen parliamentary group in the Bundestag, “Introducing effective legal safeguards for net neutrality as the prerequisite for a fair and innovative digital society” (Bundestag printed paper 18/5382, <http://dipbt.bundestag.de/dip21/btd/18/053/1805382.pdf>), which contains many concrete proposals on rigorously safeguarding genuine net neutrality, and we request that it is taken into consideration in the consultation.