

Joint Statement from the Commission and the Body of European Regulators for Electronic Communications (BEREC) on coping with the increased demand for network connectivity due to the Covid-19 pandemic.

The European Commission and BEREC are committed to participate to the collective effort to support individuals and businesses to continue their activities and contacts in the best possible way through the Internet during these unprecedented times. As measures to limit physical interactions imply increased volumes of online teaching and teleworking arrangements, the demand for Internet capacity has increased. Telecom operators, content and application providers and users can contribute to the smooth functioning of the Internet during this critical period. Thus, people are encouraged to make responsible use of the Internet with settings that reduce data consumption; content and application providers are also called to cooperate with telecom providers and to consider temporarily adapting the throughput of video streaming.

The increase in Internet traffic has not led to a general network congestion so far. The data gathered so far from European operators indicate however that Internet traffic is increasing. In anticipation of capacity issues, the Commission and BEREC take initiative to preserve the proper functioning of the Internet.

Preserving Open Internet Access in the specific circumstances of the Covid-19 crisis

The European Commission and BEREC remain fully committed to ensuring an Open Internet in the EU and to enforce the Open Internet Access provisions of [Regulation \(EU\) 2015/2120](#). The Regulation prohibits operators from blocking, slowing down or prioritising traffic. Traffic management measures are authorised if they are reasonable, meaning that the measures shall be transparent, non-discriminatory, proportionate and based on objectively technical differences of traffic (Article 3(3)). Such measures cannot monitor specific content and cannot be maintained longer than necessary.

Pursuant to the Regulation, operators are authorised to apply *exceptional* traffic management measures, *inter alia*, to **prevent impending network congestion** and to mitigate the effects of exceptional or temporary network congestion, always under the condition that equivalent categories of traffic are treated equally. This could become relevant, following the confinement measures taken to address the Covid-19 crisis. Operators can avail themselves of this exception, if such traffic management measures are *necessary* to solve or to prevent the congestion and they can only be maintained for as long as necessary.

What to do in case of (impending) network congestion?

Being an exception to the abovementioned general principle of the Regulation on Open Internet, this provision is to be interpreted restrictively. In case of impending network congestion, operators should take into account the following considerations.

- Operators need to objectively assess that the levels of traffic are very high compared to a similar reference period, and that absent the envisaged measures users would be negatively affected by the congestion.
- An exceptional congestion should be understood as referring to situations which -even when applying the highest standards of professional diligence in network management- result in unpredictable and unavoidable situations of congestion in mobile or fixed networks (e.g. possibly caused by multiple technical failures, unexpected changes in routing of traffic not under the operator's control, or large increases in network traffic linked to the current pandemic crisis or other emergency situations beyond the control of providers of Internet access services).¹
- When implementing exceptional traffic management measures, operators should consider proportionate solutions to the problem observed that would guarantee access to Internet to all users while being effective to manage congestion that might be caused by peak traffic, be limited in time to the strict necessary and ensure that equivalent categories of traffic are treated equally.

The European Commission and BEREC call on operators to closely cooperate with national regulatory authorities (NRAs) or competent authorities and to inform them timely on the measures taken in order to ensure the necessary transparency for individuals and businesses and that NRAs and competent authorities can efficiently and effectively perform their monitoring tasks.

Follow-up

The European Commission and BEREC note and welcome the civic responsibility of all individuals and economic operators in these difficult times.

To support these efforts, the European Commission and BEREC, with the support of national regulatory authorities (NRAs) or competent authorities, are setting up a **special reporting mechanism** to ensure regular monitoring of the Internet traffic situation in each Member State to be able to respond swiftly to capacity issues.

The European Commission and BEREC will assess the reports from the special monitoring process and continue to follow-up the evolution of traffic and user experience.

¹ See also Recital 15 of Regulation (EU) 2015/2120