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**BELGIAN INSTITUTE FOR POSTAL SERVICES  
AND TELECOMMUNICATIONS**

**ANNUAL REPORT  
REGARDING  
NET NEUTRALITY MONITORING  
IN BELGIUM**

**(period from 1 May 2018 - 30 April 2019)**

## Contents

Chapter 1. General .....	3
1.1. PRELIMINARY PROVISION .....	3
1.2. CONTEXT OF THIS REPORT .....	3
1.3. THE PROVISIONS OF THE REGULATION.....	4
1.4. THE BEREC GUIDELINES.....	6
1.5. EVALUATION OF THE GUIDELINES AND OF THE REGULATION.....	8
1.6. ENISA GUIDELINE ON ASSESSING SECURITY MEASURES IN THE CONTEXT OF ARTICLE 3(3) OF THE OPEN INTERNET REGULATION.....	9
Chapter 2 The implementation of the legal framework by the BIPT .....	10
2.1. TERRITORIAL INTERNET ACCESS COVERAGE (ATLAS) .....	10
2.2. QUALITY OF EXPERIENCE .....	10
Chapter 3 Monitoring of the Regulation by the BIPT.....	11
3.1. MONITORING THE TRAFFIC MANAGEMENT PRACTICES.....	11
3.2. ZERO-RATING MONITORING.....	12
3.2.1. <i>Developments regarding zero-rating on the market</i> .....	12
3.2.2. <i>Discussions, monitoring and the BIPT intervention</i> .....	16
3.3. COMPLAINTS ABOUT THE OBSERVANCE OF REGULATION 2015/2120 .....	21
Chapter 4 Conclusion .....	23

## Chapter 1. General

### 1.1. Preliminary provision

1. This report is adopted by the BIPT.
2. On 20 June 2019, the BIPT sent its draft annual report regarding net neutrality monitoring in Belgium (period from 1 May 2018 - 30 April 2019) to the CSA, the VRM and the Medienrat. As net neutrality also concerns content-related issues, BIPT fulfils its monitoring task in cooperation with the audiovisual media regulators.
3. The CSA, the VRM and the Medienrat were more specifically invited to amend and/or complete the draft, in view of its publication and submission to the European Commission and BEREC. This report takes account of that input.

### 1.2. Context of this report

4. Article 5.1, second paragraph of Regulation (EU) 2015/2120 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<sup>1</sup> (hereinafter also referred to as "Regulation 2015/2120" or simply "the Regulation") requires for the national regulatory authorities (hereinafter also referred to as "NRAs") to publish an annual report on their monitoring compliance with this Regulation and about their findings. The NRAs send those reports to the Commission and to BEREC.
5. This report is the report referred to in Article 5.1, second paragraph of Regulation 2015/2120.
6. In accordance with the [BEREC Guidelines on the implementation by National Regulators of European Net Neutrality Rules](http://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practice/guidelines/6160-berec-guidelines-on-the-implementation-by-national-regulators-of-european-net-neutrality-rules)<sup>2</sup> (hereinafter also referred to as "the BEREC Guidelines" or simply "the Guidelines") this report will cover the period from 1 May 2018 up to and including 30 April 2019 and be delivered by 30 June 2019.
7. Under Article 5.1, first paragraph, of the Regulation the NRAs shall:
  - closely monitor and ensure compliance with Articles 3 and 4 of Regulation 2015/2120 and

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<sup>1</sup> *Official Journal*, No L 310/1, 26 November 2015.

<sup>2</sup> See No 182 of those Guidelines, published at [http://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/regulatory\\_best\\_practice/guidelines/6160-berec-guidelines-on-the-implementation-by-national-regulators-of-european-net-neutrality-rules](http://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practice/guidelines/6160-berec-guidelines-on-the-implementation-by-national-regulators-of-european-net-neutrality-rules)

- promote the continued availability of non-discriminatory Internet access services at levels of quality that reflect advances in technology.

### 1.3. The provisions of the Regulation

8. The core provisions of Regulation 2015/2120 reported on are Articles 3 and 4.

9. These Articles provide:

#### *“Article 3 Safeguarding of open internet access*

*1. End-users shall have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the end-user’s or provider’s location or the location, origin or destination of the information, content, application or service, via their internet access service.*

*This paragraph is without prejudice to Union law, or national law that complies with Union law, related to the lawfulness of the content, applications or services.*

*2. Agreements between providers of internet access services and end-users on commercial and technical conditions and the characteristics of internet access services such as price, data volumes or speed, and any commercial practices conducted by providers of internet access services, shall not limit the exercise of the rights of end-users laid down in paragraph 1.*

*3. Providers of internet access services shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.*

*The first subparagraph shall not prevent providers of internet access services from implementing reasonable traffic management measures. In order to be deemed to be reasonable, such measures shall be transparent, non-discriminatory and proportionate, and shall not be based on commercial considerations but on objectively different technical quality of service requirements of specific categories of traffic. Such measures shall not monitor the specific content and shall not be maintained for longer than necessary.*

*Providers of internet access services shall not engage in traffic management measures going beyond those set out in the second subparagraph, and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof, except as necessary, and only for as long as necessary, in order to:*

*(a) comply with Union legislative acts, or national legislation that complies with Union law, to which the provider of internet access services is subject, or with measures that comply with Union law giving effect to such Union legislative acts or national legislation, including with orders by courts or public authorities vested with relevant powers;*

*(b) preserve the integrity and security of the network, of services provided via that network, and of the terminal equipment of end-users;*

*(c) prevent impending network congestion and mitigate the effects of exceptional or temporary network congestion, provided that equivalent categories of traffic are treated equally.*

*4. Any traffic management measure may entail processing of personal data only if such processing is necessary and proportionate to achieve the objectives set out in paragraph 3. Such processing shall be carried out in accordance with Directive 95/46/EC of the European Parliament and of the Council. Traffic management measures shall also comply with Directive 2002/58/EC of the European Parliament and of the Council.*

*5. Providers of electronic communications to the public, including providers of internet access services, and providers of content, applications and services shall be free to offer services other than internet access services which are optimised for specific content, applications or services, or a combination thereof, where the optimisation is necessary in order to meet requirements of the content, applications or services for a specific level of quality.*

*Providers of electronic communications to the public, including providers of internet access services, may offer or facilitate such services only if the network capacity is sufficient to provide them in addition to any internet access services provided. Such services shall not be usable or offered as a replacement for internet access services, and shall not be to the detriment of the availability or general quality of internet access services for end-users.*

#### **Article 4**

##### **Transparency measures for ensuring open internet access**

*1. Providers of internet access services shall ensure that any contract which includes internet access services specifies at least the following:*

*(a) information on how traffic management measures applied by that provider could impact on the quality of the internet access services, on the privacy of end-users and on the protection of their personal data;*

*(b) a clear and comprehensible explanation as to how any volume limitation, speed and other quality of service parameters may in practice have an impact on internet access services, and in particular on the use of content, applications and services;*

*(c) a clear and comprehensible explanation of how any services referred to in Article 3(5) to which the end-user subscribes might in practice have an impact on the internet access services provided to that end-user;*

*(d) a clear and comprehensible explanation of the minimum, normally available, maximum and advertised download and upload speed of the internet access services in the case of fixed networks, or of the estimated maximum and advertised download and upload speed of the internet access services in the case of mobile networks, and how significant deviations from the respective advertised download and upload speeds could impact the exercise of the end-users' rights laid down in Article 3(1);*

*(e) a clear and comprehensible explanation of the remedies available to the consumer in accordance with national law in the event of any continuous or regularly recurring discrepancy between the actual performance of the internet access service regarding speed*

*or other quality of service parameters and the performance indicated in accordance with points (a) to (d).*

*Providers of internet access services shall publish the information referred to in the first subparagraph.*

*2. Providers of internet access services shall put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this Article. The requirements laid down in paragraphs 1 and 2 are in addition to those provided for in Directive 2002/22/EC and shall not prevent Member States from maintaining or introducing additional monitoring, information and transparency requirements, including those concerning the content, form and manner of the information to be published. Those requirements shall comply with this Regulation and the relevant provisions of Directives 2002/21/EC and 2002/22/EC.*

*4. Any significant discrepancy, continuous or regularly recurring, between the actual performance of the internet access service regarding speed or other quality of service parameters and the performance indicated by the provider of internet access services in accordance with points (a) to (d) of paragraph 1 shall, where the relevant facts are established by a monitoring mechanism certified by the national regulatory authority, be deemed to constitute non-conformity of performance for the purposes of triggering the remedies available to the consumer in accordance with national law.*

*This paragraph shall apply only to contracts concluded or renewed from 29 November 2015."*

10. For the purposes of the reporting also Article 5.1, first paragraph, second sentence of the Regulation is relevant. Under this provision, with a view to carrying out the tasks referred to in the first sentence of Article 5.1, first paragraph, the NRAs "*impose requirements concerning technical characteristics, minimum quality of service requirements and other appropriate and necessary measures on one or more providers of electronic communications to the public, including providers of internet access services*".

#### **1.4. The BEREC Guidelines**

11. Based on Article 5.3 of Regulation 2015/2120 BEREC, the European umbrella organisation of NRAs, has adopted guidelines to implement the NRAs' obligations with a view to consistent application of the Regulation. Those guidelines are those cited above, called "BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules".
12. As regards the annual reporting by the NRAs, the Guidelines recommend the following:

##### **"Annual reporting of NRAs**

*182. The reports must be published on an annual basis, and NRAs should publish their annual reports by 30th June for the periods starting from 1st May to 30th April. The first report is to be provided by 30th June 2017, covering the period from 30th April 2016 to 30th April 2017 (the first 12 months following application of the provisions).*

*183. As well as being published, the reports should be provided to the Commission and to BEREC. To enable the Commission and BEREC to more easily compare the reports, BEREC recommends that NRAs include at least the following sections in their annual reports:*

- overall description of the national situation regarding compliance with the Regulation;*
- description of the monitoring activities carried out by the NRA;*
- the number and types of complaints and infringements related to the Regulation;*
- main results of surveys conducted in relation to supervising and enforcing the Regulation;*
- main results and values retrieved from technical measurements and evaluations conducted in relation to supervising and enforcing the Regulation;*
- an assessment of the continued availability of non-discriminatory IAS at levels of quality that reflect advances in technology;*
- measures adopted/applied by NRAs pursuant to Article 5(1).”*

## 1.5. Evaluation of the Guidelines and of the Regulation

13. As announced in its work programme for 2018 BEREC adopted an opinion at the end of 2018, in which it evaluated the experiences with Regulation 2015/2120 and with the BEREC Guidelines. More specifically the “[BEREC Opinion for the evaluation of the application of Regulation \(EU\) 2015/2120 and the BEREC Net Neutrality Guidelines](https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/8317-berec-opinion-for-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-berec-net-neutrality-guidelines)” of 6 December 2018<sup>3</sup> is concerned. In general BEREC concludes that the implementation of both the Regulation and the BEREC Guidelines functions properly. Nevertheless BEREC concludes that the Guidelines, after having been applied during the first two years, could be clarified for certain aspects. BEREC announced that this would be done in 2019. The opinion listed the main points that could be clarified; however, it does not include an exhaustive list of themes about which the Guidelines could be clarified.
14. NRAs’ experiences but also input from stakeholders constituted input to this opinion. Therefore, along with the opinion a BEREC [report](https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/8318-berec-report-on-the-outcome-of-the-consultation-on-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-berec-net-neutrality-guidelines)<sup>4</sup> was published summarising and discussing the answers received by BEREC to a public consultation about the evaluation of the implementation of the BEREC Guidelines on net neutrality.
15. The BIPT was actively involved in developing both BEREC documents. From 2019 onwards it was also involved in the project to update the BEREC Guidelines on a number of points, which in accordance with the [2019 BEREC work programme](https://berec.europa.eu/eng/document_register/subject_matter/berec/annual_work_programmes/8337-berec-work-programme-2019)<sup>5</sup>, should lead, in the third quarter of 2019, to a public consultation on draft texts to adapt the BEREC Guidelines.
16. The European Commission itself adopted a report, in which it evaluated Articles 3, 4, 5 and 6 of the Regulation<sup>6</sup>. That report was submitted to the European Parliament and Council on 30 April 2019 and published on the same day<sup>7</sup>. The BIPT took note that the Commission’s conclusion in that report is that it would not be appropriate to propose amendments to the Regulation at this stage.

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<sup>3</sup> [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/opinions/8317-berec-opinion-for-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-berec-net-neutrality-guidelines](https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/8317-berec-opinion-for-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-berec-net-neutrality-guidelines)

<sup>4</sup> [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/reports/8318-berec-report-on-the-outcome-of-the-consultation-on-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-berec-net-neutrality-guidelines](https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/8318-berec-report-on-the-outcome-of-the-consultation-on-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-berec-net-neutrality-guidelines)

<sup>5</sup>

[https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/annual\\_work\\_programmes/8337-berec-work-programme-2019](https://berec.europa.eu/eng/document_register/subject_matter/berec/annual_work_programmes/8337-berec-work-programme-2019)

<sup>6</sup> 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, COM(2019) 203 final.

<sup>7</sup><https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1557236522800&uri=CELEX%3A52019DC0203>



17. During the preparation of the European Commission's report the BIPT gave at various moments input to a consultant commissioned by the European Commission to make a study about the final implementation of the net neutrality provisions by the EU Member States<sup>8</sup>. This study too was published on 30 April 2019<sup>9</sup>. The BIPT takes note of the fact that this study, which provides data and analysis for the Commission's report, concludes that the Regulation, combined with the BEREC Guidelines, has contributed considerably to a more harmonised approach to establish, introduce and impose net neutrality rules.

#### **1.6. ENISA Guideline on assessing security measures in the context of Article 3(3) of the Open Internet regulation**

18. Finally, at the European level, the BIPT was also involved in the final establishment of the [ENISA Guideline on assessing security measures in the context of Article 3\(3\) of the Open Internet regulation](https://www.enisa.europa.eu/publications/guideline-on-assessing-security-measures-in-the-context-of-article-3-3-of-the-open-internet-regulation), published on ENISA's website on 12 December 2018<sup>10</sup>.
19. This technical guideline regards the security exceptions to net neutrality (see Article 3(3), subparagraph 3, b) of Regulation 2015/2120) and is destined for NRAs. The guideline can also be useful for providers of Internet access services.
20. The guideline includes among other things:
- A list of evaluation factors that NRAs can take into consideration,
  - A checklist to evaluate the factors and to weigh a measure's advantages and disadvantages, e.g. blocking certain traffic to protect the security of networks, services using the networks, or end-user equipment,
  - A justification form that could be used by NRAs to collect data from providers and to decide whether or not a security measure is justified, as well as
  - An evaluation form to help NRAs in deciding whether or not a provider is allowed to take a security measure.

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<sup>8</sup> Study on the implementation of the net neutrality provisions of the Telecoms Single Market Regulation (SMART 2017/0011) – Bird&Bird and Ecorys for the European Commission DG Communication Networks, Content & Technology, available at <https://ec.europa.eu/digital-single-market/en/news/study-implementation-open-internet>.

<sup>9</sup> <https://ec.europa.eu/digital-single-market/en/news/study-implementation-open-internet>

<sup>10</sup> <https://www.enisa.europa.eu/publications/guideline-on-assessing-security-measures-in-the-context-of-article-3-3-of-the-open-internet-regulation>

## Chapter 2 The implementation of the legal framework by the BIPT

21. In the period covered by this report the BIPT took the following implementing decisions or initiatives to promote the continued availability of Internet access services at levels of quality that reflect advances in technology.

### 2.1. Territorial Internet access coverage (Atlas)

22. As the coordinator of initiatives regarding network quality the BIPT has furthermore managed and updated the atlas of the fixed and mobile coverage. The purpose is to monitor how the roll-out of networks in Belgium is evolving and to offer transparency to users about the availability of mobile networks. Both atlases were integrated into a new data portal of the BIPT in the course of the period covered by this report: [www.bipt-data.be/en](http://www.bipt-data.be/en).
23. By means of the [fixed maps](#) the BIPT can identify the so-called white or grey spots, where some households have no access to a 30 Mbps Internet connection yet.
24. The [mobile coverage](#) maps show the coverage predicted by the operators on the Belgian territory. The BIPT checks the maps' dependability by way of ad hoc measurements in the field.

### 2.2. Quality of Experience

25. By way of a drive test campaign the BIPT has collected data about the quality of experience on the mobile networks. The objective was to benchmark the operators based on 16 indicators of the mobile quality of experience (voice and data).
26. The BIPT has published the results of those drive tests here: <https://www.bipt-data.be/en/projects/drivetesting>.
27. The BIPT has also [published](#) a crowdsourcing application<sup>11</sup> in order to collect data about the signal strength on the various mobile networks in Belgium. These data will be used to bring nuance in the coverage maps of the atlas.

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<sup>11</sup> <https://www.bipt-data.be/en/projects/crowdsourcing>

## Chapter 3 Monitoring of the application of the Regulation by the BIPT

### 3.1. Monitoring the traffic management practices

28. In the previous reporting period the BIPT examined what specific use was made of DPI<sup>12</sup> by the main ISPs in Belgium and whether that use met the criteria of Article 3(3) of the Regulation.
29. In that reporting period the results of the research were mainly used to be able to participate in an informed way in the European discussion whether that technique for analysing data traffic can also be used not to charge traffic of certain packets to the end-user, as is the case with zero-rating or sponsored data. For the moment, there is no consensus about whether the use of DPI for such purposes counts as a traffic management measure and should therefore be analysed based on the criteria of Article 3(3) of the Regulation.
30. The application of DPI in the case of an incident or a user complaint, where possibly applicable<sup>13</sup>, was monitored as before, but appeared not to lead to end-user problems in that period.
31. The following two, formerly observed factors seem to play a role:
- The system does not intervene permanently in traffic, but only locally in case of significant congestion and towards upstream traffic.
  - The end-customer's normal download use is not impacted by those measures in any way, not even in locations where there would be a congestion in upstream traffic.

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<sup>12</sup> See section 3.1.1. of the annual report regarding net neutrality monitoring in Belgium (period from 1 May 2017 - 30 April 2018).

<sup>13</sup> See <https://www2.telenet.be/nl/klantenservice/telenet-netwerkbeheer/> and <http://www.voo.be/en/netzwerkmanagement/>.

### 3.2. Zero-rating monitoring

32. In the case of zero-rating the Internet Service Provider does not consider the data traffic of a specific application or category of applications for the data limit. This results in free data transmission for this specific application or category of applications.
33. Regarding this practice, which is considered to be related to open Internet access (although not explicitly regulated in Regulation 2015/2120) the BIPT gives below a survey of the main developments on the market in the period from 1 May 2018 to 30 April 2019 and next describes its activities in this matter.

#### 3.2.1. Developments regarding zero-rating on the market

##### *a. New products launched*

##### **1. Epic stories and beats from Proximus**

34. On 25 June 2018 Proximus launched a new product range for residential end-users, in which a zero-rating component was integrated: the tariff plans Epic stories and Epic beats.
35. According to declarations of Proximus in the press<sup>14</sup> the new range was launched to meet the millennials' expectations, roughly the group of customers aged between 18 and 38.
36. The core data of the Epic offers were as follows when they were launched:

- In the **Epic Stories** subscription formula end-users can make "unlimited" use (up to a volume of 20 GB<sup>15</sup>) of Facebook, Facebook Messenger, Instagram, Pinterest, Snapchat, Twitter and WhatsApp.

According to the Proximus press release users additionally get 3 GB of extra data for other mobile data use, 60 minutes of call credit and unlimited text messages.

Epic stories costs 19.99 euro a month.

- **Epic beats** costs 5 euro/month more, i.e. 24.99 euro a month.

In addition to "unlimited" use of social media such as in Epic stories, Epic beats includes unlimited music streaming by way of Apple Music, Deezer, Google Play Music, Soundcloud and Spotify.

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<sup>14</sup> Interview with Guillaume Boutin, Head Consumer Division of Proximus, on 26 July 2018 in Trends.

<sup>15</sup> Once the 20 GB per month is used up, the end-user can continue to surf without any limitation with his "endless Epic apps" at a reduced speed (512 Kbps) in Belgium or a maximum speed at the price of € 0.0072/MB (0.0054/MB from 1 January 2019 on) when the end-user is travelling in the EU. According to Proximus's declarations in answer to an extra request for explanation from the BIPT, throttling the "Epic apps" because this limit has been reached, has no effect on the speed at which access is given to other apps, when mobile data are still available in the overall 3 GB allowance.

Users of Epic beats also get 3 GB of extra data for other mobile data use, 60 minutes of call credit and unlimited text messages, the Proximus press release says.

37. In April 2019 Proximus extended the data volume included in the subscription for Epic beats from 3 to 4 GB.

## **2. Free G WIGO from Telenet**

38. In October 2018 an extra service was made available to customers of a WIGO offer, called Free G<sup>16</sup>, enabling them to watch content of four apps (TV app Yelo Play, Premium sports TV app Play Sports, Whatsapp and Facebook Messenger) on smartphones, tablets and computers, without it being counted for their volume consumption. First, the customers involved were given access based on an opt-in system, having to indicate explicitly on their personal page that they wanted to use Free G. In March 2019, Telenet changed its access policy, activating access to Free G in a standard way.

39. For each WIGO formula based on Telenet's data, the following volumes for zero-rating are available:

Type WIGO	4GB	9 GB	15 GB	25 GB	40 GB	Unlimited
België	20 GB/gezin	40 GB/gezin	100 GB/gezin	100 GB/gezin	100 GB/gezin	100 GB/gezin
EU-zone	4 GB/gezin	7 GB/gezin	9 GB/gezin	12 GB/gezin	20 GB/gezin	40 GB/gezin

## **3. Yugo from Telenet**

40. In February 2019, Telenet launched the stand-alone broadband offer Yugo, the customers having access to TV content only over the Internet by way of the Yugo app<sup>17</sup>. Similar to WIGO these customers get zero-rated access to content of four apps (Yelo Play, Play Sports, Whatsapp and Facebook Messenger) on smartphones, tablets and computers.

<sup>16</sup> <https://www2.telenet.be/nl/klantenservice/free-g/>

<sup>17</sup>Telenet: "With Free G in addition to your included mobile data allowance you get an additional mobile data allowance for a selection of apps (YUGO TV, Play Sports, Facebook Messenger (except the games), WhatsApp, hereafter collectively called the 'Free G apps'). For Play Sports you need an extra subscription. As part of Free G the data consumption of the Free G apps is limited per YUGO subscription, and per monthly invoicing period to maximum 100 GB in Belgium and maximum 12 GB in other countries of the EU area. If you exceed the use limits above with your Free G apps, Free G stops for the remaining duration of that invoicing period, your data consumption of the Free G apps will be deducted from your standard mobile data allowance in your YUGO or, if your standard mobile data allowance is used up, will be charged at the tariffs that apply for use outside the included mobile Internet volume (see [www.telenet.be/nl/tarieven/yugo](http://www.telenet.be/nl/tarieven/yugo)). For more information, see

#### **4. Epic Combo from Proximus**

41. On 2 April 2019, Proximus extended its Epic portfolio with a tariff plan Epic combo, which encompassed apart from the zero-rating included in Epic stories and Epic beats also a zero-rating of the mobile streams to Proximus TV, Netflix, Twitch and Youtube.
42. The standard price of Epic combo is € 64.99. In this tariff plan the end-user is granted 4 GB of included mobile data “for all the rest”.
43. At that price, the end-user also gets 150 minutes of call credit, unlimited text messages, unlimited fixed Internet at an advertised speed of 100 Mb per second in download and 6 Mb per second in upload. For TV, access also no longer functions at a fixed location to Proximus TV by way of a decoder, but based on a web interface, combined with a Chromecast for instance, or not.

#### ***b. Developments in already existing products***

44. In the midst of those new developments the BIPT also paid due attention to the zero-rating of the favourite app in the Proximus offers Tuttimus, Mobilus, Minimus and Bizz.
45. Pinterest and Facebook Messenger were added on 1 November 2018 as favourite apps, for end-users to choose from.
46. Pokemon Go was later (on 1 December 2018) removed from the list of favourite apps for new customers. However, existing customers who had selected Pokemon Go as their favourite app could continue to use it under zero-rating conditions.
47. To each of those offers Proximus added from 1 November 2018 on a tariff formula with “unlimited” mobile data<sup>18</sup>. Subscribers who had the largest volume of included mobile data before this addition to the tariff plan (e.g. Mobilus L) were automatically transferred by Proximus to the new “Unlimited” tariff plan of their product family (in the example given: Mobilus XL Unlimited).
48. In the margin of the new formulas Proximus also announced a price increase for Tuttimus. The monthly price of that bundle increased by 2 euro from 1 January 2019 onwards. The price of the Minimus offer remained unchanged.

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*www.telenet.be/free-g. How much data you consume with Free G, can be found on My Telenet, in consumption. Telenet reserves the right to replace the Free G apps with similar apps. Based on decisions by the proper authorities Telenet may be forced to change the offer (e.g. adapt the limits of consumption).” (free translation)*

<sup>18</sup> Proximus follows a Fair Use Policy. Up to 20 GB the customer gets the maximum speed, which is then reduced to 512 Kbps for the rest of the month.

### *c. Temporary special zero-rating offers*

#### **1. Zero-rating of the matches of the Belgian national soccer team during the 2018 World Cup on the Proximus TV app**

49. In May 2018, Proximus, as the sponsor of the Red Devils<sup>19</sup>, announced in the press that it was going to zero-rate the mobile data traffic relating to matches of the Belgian national football team during the 2018 World Cup. The temporary special offer applied more specifically to all the matches of the Red Devils during and in the build-up to the world championship, starting with the friendly warm-up game against Portugal on 2 June 2018. The zero-rating started each time 30 minutes before the start of the game and lasted until the final whistle. For Proximus customers watching TV during that time period by way of the Proximus TV app no mobile data were charged.
50. Because of the good results achieved by the Red Devils, which, as is well-known, ended third in the World Cup during the semi-final on 14 July 2018, this form of zero-rating applied to 10 games (3 warm-up matches and 7 World Cup games).

#### **2. Base for Free Time during the first World Championship match of the Red Devils on 18 June 2018**

51. On 18 June 2018, the day the Red Devils played their first match against Panama during the World Cup tournament in Russia, mobile operator Base<sup>20</sup> organised a Base For Free Time day, during which all<sup>21</sup> mobile data of Based on You subscribers were free. Such a “BFF” day is organised regularly by BASE for this group of customers and comprises, depending on the day, free mobile data or free minutes for calls to specific destinations.

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<sup>19</sup> That is the surname given to the Belgian mens’ national football team.

<sup>20</sup> BASE is the brand name of mobile network operator Telenet Group.

<sup>21</sup> This special offer did not apply to “unfair use”, defined by Base as a data consumption of more than 5 GB per day. See <https://www.base.be/en/private/campaigns/base-for-free-time.html>

3. **The offer of Orange Belgium (between 10 December 2018 and 31 March 2019) of a social media pass to customers of specific prepaid tariff plans**

52. From 10 December 2018 up to and including 31 March 2018 Orange offered the option of “Fun Pass Social Media” to some of its prepaid customers. The option was more specifically offered to the customers of the tariff plans Tempo Giga, Tempo Touch and Tempo Easy. After having chosen the option the offer was valid for three months. The option cost € 5. In exchange the customer got 10 GB, with which he could surf for 31 days on the following social media websites: Facebook, Instagram, Twitter, Pinterest, Snapchat, Tik Tok/Musically, LinkedIn, Google+, Whatsapp, Messenger, Telegram.
53. The customer could use the option only if enough allowance was put on the prepaid card during the entire duration of the option. When that was not the case, access to the option was blocked<sup>22</sup>.

**3.2.2. Discussions, monitoring and the BIPT intervention**

***a. (Proactive) discussions***

54. Except for the Base For Free Time special offer during one day described above, all product launches and temporary special offers described above were discussed bilaterally with the BIPT. In case of one ISP this did not always happen proactively: as a result one special offer was first announced in the press and in another case measures were communicated to the BIPT beforehand, but at such short notice before the start that there reasonably was not enough time for effective analysis and discussion before the roll-out. The BIPT's dissatisfaction with this approach was communicated to the ISP involved.
55. The BIPT favours proactive discussions. One of the results of such discussions is that sufficient attention is given to clear red lines from the BEREC Guidelines, such as continuing to allow zero-rating at normal speed, while other data traffic is blocked or throttled, in case the volume of data included in the allowance is used up.
56. Also the correct relation between the Roam Like at Home principle and the consumption of zero-rated applications within the EU (e.g. when determining the Fair Use Policy (FUP)) was treated during this proactive phase. Because of the complexity of certain cases the BIPT was not always contacted sufficiently in advance, so that technicalities regarding the FUP were not implemented until later.

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<sup>22</sup> The customers were informed about this by text message. There was also a text message when customers had consumed 80% and 100% of the GB volume. The option and the volumes could be used in the European Union.



## **b. Monitoring**

57. As for Free G WIGO and Yugo the BIPT has verified whether there was any discrimination on the Internet traffic, after end-users had exceeded their commercial data allowances. In case of Free G all Internet traffic is blocked at that moment. In case of Yugo the customer pays the out-of-bundle tariff for all extra traffic. In addition the volume measurements for both products indicate that up to now there has not been a competition problem: enough commercial volume remains to use the apps competing with the zero-rated apps. Therefore the BIPT concluded that the impact of zero-rating is not as big as to lead to a factual limitation of end-users' choice.

## **c. BIPT intervention**

### **1. As to zero-rating of the Red Devils at Proximus**

58. Considering the large number of customers that could profit from the zero-rating of the Proximus TV app and knowing that a World Cup match of the Red Devils is one of the most watched TV moments in Belgium, as soon as the special offer had been announced in the press the BIPT was quick to send a preliminary analysis of the temporary special offer to Proximus for reply.

59. Following this analysis and right before the start of the actual World Cup campaign, Proximus stopped an implementation of zero-rating on one of its platforms which went against Article 3(3) of the Regulation. Proximus specifically stopped an implementation where the zero-rating of the stream to the TV app during Red Devils games in case the data volume included in the subscription was used up continued (at the same quality as before), while the speed of the other traffic was lowered. This involved an (older) platform that processed a small minority of the mobile data traffic of Proximus customers.

60. Furthermore under pressure from the BIPT *prima-facie* analysis Proximus extended the scope of the zero-rating to all broadcasts by way of the Proximus TV app at the moment when the Red Devils games were zero-rated under the terms of the temporary special offer.

61. Finally Proximus declared it was prepared to allow the zero-rating advantage also on competing platforms that also broadcast live the Word Cup matches and that would submit a request.

62. On the occasion of the reply and in answer to some of the requests for information made by the BIPT, the BIPT also gained insight into the extension of the capacity deployed by Proximus to support its special offer. Proximus also declared that during the time blocks of broadcasting the Red Devils matches no prioritisation of the stream of the Proximus app was applied.

63. At regular times after the reply from Proximus the BIPT received statistical information about the number of users who used the app during each Red Devils match<sup>23</sup>. This information showed that the impact of the zero-rating on the end-user rights of Article 3(1) of the Regulation could be considered to be rather limited, because many users within the scope of the special offer of Proximus opted among the channels available to them for those products or events that enabled them to follow the match (or other programmes) on a bigger screen.

## **2. As to zero-rating as part of Epic at Proximus**

64. One month before the launch of Epic beats and stories the BIPT sent an extensive questionnaire to Proximus, which was answered early September 2018. This was followed by exchanges with Proximus about the figures, including updates.

65. At the beginning of December 2018 the BIPT let Proximus know that it was of the opinion that the updated figures and the answers from Proximus to certain questions of the request for information indicated that the form of zero-rating marketed by Proximus in the Epic tariff plans was problematic to the BIPT, in view of the obligation under Article 3.2 of Regulation (EU) 2015/2120 for Proximus to ensure that the tariff plans it develops do not imply a limitation of the end-user rights referred to in Article 3(1) of the Regulation. More specifically the BIPT was of the opinion that the advantage of zero-rating granted to a few selected Content and Application Providers (CAPs) and not to others created a negative impact on the end-user rights of CAPs not included in Epic. The BIPT based this view mainly on the following findings and considerations:

### **i. There was insufficient free commercial room for competing CAPs**

The data volume included in the subscription fee (hereafter also called “the commercial room”) given by Proximus at the time of the analysis in the Epic tariff plans to consumers/end-users amounted in both Epic variations, so both stories and beats, to 3 GB.

The BIPT considers that this commercial room should be ample enough to prevent an exclusionary or other anticompetitive effect of zero-rating on end-user rights of CAPs who cannot profit from zero-rating.

Therefore, in the BIPT’s opinion, zero-rating forms a threat to competition when a tariff plan’s allowed data volume, excluding the zero-rated volume, would not make it possible to use a similar data volume<sup>24</sup> for services that compete with the zero-rated

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<sup>23</sup> Apart from among other things the total data volume consumed during those moments and a subdivision per category of (big) consumers.

<sup>24</sup> The BIPT recognises that the volume effectively consumed of a zero-rated service will be larger than the volume that would be consumed if that service was not zero-rated. However, considering that an analysis of the effect of zero-rating on the CAP end-user rights should also be performed prospectively (also see the competition analyses in general and sector competition law) and considering the general trend of increasing mobile data traffic on the Belgian market, the BIPT decides that such a working hypothesis can be maintained. Moreover, this working hypothesis gives the examined ISP also a certain guarantee that the remedy he would apply to counter the problem observed can remain valid in the longer term.

services. The commercial room should therefore enable consumers to use the same data volume, even when services are concerned to which zero-rating does not apply. If that is not the case, there is a risk that consumers adapt the use of a specific application to the zero-rating.

The figures received up to that moment<sup>25</sup> showed that more than half of the Epic customers could not copy their zero-rated data consumption to their commercial volume.

- ii. The problem of insufficient free commercial room explained above was according to the BIPT **not sufficiently removed by a proactive engagement from Proximus** either, for instance in answer to the relevant questions from the BIPT in its request for information, **to really open up its zero-rating platform to all competing apps falling into the same category as stories or beats.**
- iii. The figures provided finally also showed that **the percentage of data traffic processed through zero-rating within the framework of the Epic tariff plans was high.**

To the BIPT this constituted the confirmation of an incentivising effect resulting from the zero-rating, as a consequence of which competing, possibly smaller, CAPs were denied the chance of becoming popular among the millennials specifically, which in turn, according to the BIPT, created a negative impact on innovation and competition between CAPs (or at least posed a high risk in that respect). After all, the millennials were the target group of the Epic tariff plans (see declarations of Proximus above), but according to the BIPT analysis also the group of users that is the driving force for innovation on the Internet, because it is more inclined to try out new apps and applications and to promote their uptake.

66. Therefore, the BIPT asked Proximus to submit a proposal to eliminate the concerns stated above and the negative impact.

67. The BIPT mentioned a few possible options (independent of any options Proximus was free to develop and submit to the BIPT) to that end:

1. Raise the data volume included in the subscription fee to a level where there can no longer be a negative impact on competition between CAPs.
2. Elaborate an access offer of (competing) CAPs to zero-rating within the Epic context, in which Proximus gives access to zero-rating within the Epic context based on objective, published criteria to every CAP who meets the criteria approved by the BIPT and who demands access.

Such an offer had to contain sufficiently open and clear criteria for entry, in line with the choices made by Proximus when selecting the zero-rated apps among the respective variations of Epic.

At the operational level the offer to be established had to include at least the following:

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<sup>25</sup> It should also be pointed out that the data provided by Proximus until now, were only averages, in line with the BIPT's questions. As a result, for the larger consumers of the Epic tariff plans the situation regarding the capability to compete of the alternative, non zero-rated CAPs was even more problematic.

- The path, including milestones and indicative timing, to be followed by a competing app provider to be given access to the zero-rating within the Epic context;
- The specific (technical, operational or other) conditions that applicant has to fulfil to be given access to the Epic zero-rating programme.

68. At the end of January 2019, Proximus let the BIPT know it did not agree with the BIPT opinion and analysis. However, Proximus also sent to the BIPT (without recognising that Proximus had presumably violated the rules of Regulation 2015/2120/EU) a draft proposal to open up its zero-rating platform to competing CAPs, along with an indicative roll-out schedule.
69. In the build-up to the launch of Epic combo, on 2 April 2019, the Proximus access offer became more concrete.
70. The BIPT ultimately sent its remarks about the draft of “General Terms & Conditions for the participation of Content Partner in the Epic Zero-Rating Offer of Proximus SA” submitted at the end of March, by letter of 24 April 2019, along with the request to integrate those remarks in a new version of the “General Terms & Conditions” and to submit that version for comments or approval to the BIPT no later than 14 May 2019.
71. The BIPT also instructed Proximus to publish the approved version of the General Terms & Conditions on the tab “Join the Zero-Rating Platform” next to the link to the entry form on its website<sup>26</sup>.
72. On the occasion of launching Epic combo Proximus also raised the mobile data volume included in the Epic beats allowance from 3 GB to 4 GB. This was one of the other options to respond to the BIPT analysis of the beginning of December 2018, but in the period covered by this report the BIPT has not analysed whether that raise was sufficient to comply with the option given.

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<sup>26</sup> At the time of the analysis this tab could be reached by clicking at the bottom of the page [https://www.proximus.be/epic/en/id\\_zwpe\\_p/makeitepic/mobile.html](https://www.proximus.be/epic/en/id_zwpe_p/makeitepic/mobile.html) on “conditions”.

### 3.3. Complaints about the observance of Regulation 2015/2120

73. The BIPT is not a body that treats individual complaints. However, it does treat complaints as signals, on the basis of which (among other things) it decides to intervene in order to structurally solve shortcomings on the market with regard to the law and the interests the BIPT must defend.
74. The BIPT itself received 5 complaints, or rather utterances of dissatisfaction or concern, relating to the observance of Regulation 2015/2120.
75. The body tasked in principle with treating individual end-user complaints is the Office of the Ombudsman for Telecommunications, which sometimes forwards complaints touching the obligations of Regulation 2015/2120 to the BIPT to get its opinion.
76. In the period covered by this report no such opinion had to be delivered.
77. On occasion, the office of the Minister of Telecommunications and the Digital Agenda also receives complaints or at least utterances of dissatisfaction about the supposed violation of net neutrality, which it forwards to the BIPT to get an opinion. This happened 3 times in the period covered by this report.
78. Below the BIPT describes the reported facts received, its answer and where still necessary, the follow-up of these reports:

Subject	ISP(s)	Number	BIPT answer and/or follow-up
Zero-rating	Proximus Telenet	6	<p>The BIPT explained, either directly or through the Minister,</p> <ul style="list-style-type: none"><li>– The applicable framework (including the fact that zero-rating is not <i>per se</i> forbidden by the Regulation and that intervention is only possible after the launch, following analysis of the facts and figures), as well as</li><li>– Its actions in the field of zero-rating (including reference to its <a href="#">analysis report</a> on Tuttimus, Mobilus and Bizz offers and its further monitoring activities)</li></ul>

Preventing tethering <sup>27</sup>	Lycamobile	1	Based on the complaint the BIPT carried out a random check with a Lycamobile SIM card and SIM cards of two other providers. None of those BIPT checks revealed any blocking of tethering.
Inspecting sites to carry out zero-rating	Orange	1	The BIPT gave the necessary technical explanation and set the limits of what it thinks is acceptable. The BIPT pointed out that for the purposes of carrying out zero-rating ISPs are definitely not allowed to monitor the content of the site or application being read, watched or listened to.

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<sup>27</sup> "Tethering" is the sharing of a connection. It allows end-users to share the Internet connection of a telephone or a tablet with other devices, such as laptops.

## Chapter 4 Conclusion

78. In this third annual report regarding net neutrality monitoring the BIPT has primarily described the evolutions in Belgium with respect to the measures taken in the broad scope of open Internet access.
79. The past period covered was the one in which the BIPT rolled out important projects regarding measurement of the quality of experience of the Internet access service. For example, the BIPT launched an application that allows to measure the quality of experience in the field by way of the users (*crowdsourcing*). The BIPT also published on its new data portal [www.bipt-data.be](http://www.bipt-data.be) the results of drive tests carried out with BIPT measuring vehicles in September 2018.
80. Zero-rating was mainly monitored in the period from 1 May 2018 to 30 April 2019, generally without there appearing to be a reason for intervention. However, in two cases the BIPT thought it had to intervene, in both cases against Proximus.
81. In the first case (the temporary special offer of zero-rating the Belgian national team's games during the World Cup in Russia) Proximus adapted under pressure from the quick, preliminary BIPT analysis its implementation for a few important aspects and before the start of the actual World Cup games.
82. In the second case (the zero-rating in the context of Epic stories and beats) the BIPT was, in a file based on the merits of the case, of the opinion that a shortage that was or could become threatening for the protection of the end-user rights could be observed. In this instance its intervention led to a mix of corrective measures imposed on Proximus, among which opening up its zero-rating platform to other Content Partners, a situation that will be followed up with special attention in the next period. Furthermore Proximus has also decided to raise the commercial data allowance from 3 GB to 4 GB for Epic beats. The latter measure has not been analysed yet by the BIPT. As for the first measure the BIPT reserved the right to require besides the remarks it made<sup>28</sup>, any further adaptations of clauses from the General terms and conditions, based on (motivated) remarks communicated by interested Content Providers (or others) to the BIPT, following the specific treatment of entry cases by Proximus or after publication of the General terms and conditions on the Proximus web site.
83. The BIPT registered only a few complaints about net neutrality and answered them in accordance with the legal framework and the BEREC Guidelines.
84. By and large the BIPT is of the opinion that there are no major reasons for concern in Belgium as far as open Internet access is concerned:

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<sup>28</sup> And processed by Proximus in the period after 30 April 2019.

- No cases of blocking services or applications in the network have been found.
- As for the end-users choice, the mobile data volumes included in the ISP offers have again increased, in order to meet the increasing mobile data traffic.
- In the case of the zero-rating in Epic the BIPT has intervened though, as described above.

85. As for zero-rating the BIPT also observes that in Belgium, up to now mobile network operators are the only ones to launch this commercial practice. The BIPT intends to study the cause or causes thereof, including the question whether the wholesale offers of mobile network operators who apply zero-rating, leave sufficient economic room for their MVNOs to establish retail offers with a zero-rating component.

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