



ANCOM
National Authority for Management and
Regulation in Communications of Romania

Monitoring compliance with the provisions of the Regulation (EU) no. 2015/2120 on open internet access

01 May 2019 - 30 April 2020



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1. General overview

1.1. Legal framework

Regarding the open internet access, there were no major changes to the applicable legislation in the reference period, hence this matter abides by the same primary and secondary normative acts. Thus, the Romanian legal framework is represented by Regulation (EU) 2015/2120¹ (hereinafter referred to as *the Regulation*) and by the secondary legislation developed by ANCOM on setting quality indicators for the provision of the internet access service and the publication of the related parameters², as well as on the transparency of certain information that providers are required to make available to end-users³.

The Romanian legal framework in the field is also complemented by the national transposition of the transparency obligations related to the traffic management practices provided by the Universal Service Directive, implemented into national law through the provisions of Government Emergency Ordinance no. 111/2011 on electronic communications, approved, with amendments and completions, by Law no. 140/2012⁴, with the subsequent amendments and completions.

In completion to the legal framework previously mentioned, in the reference period, ANCOM issued Guidelines on the implementation of the requirements regarding the inclusion in the contracts of information on the speeds of fixed and mobile internet access services⁵. The Guidelines are intended for providers of internet access services and offer recommendations on how to express the speeds mentioned in the provisions of Article 4 para. (1) (d) from the Regulation and on how to establish the procedure for measuring the speed of the internet access service by the end-users, for both fixed and mobile networks. Further details on these guidelines can be found in Section 3 of the present report. The guidelines are not mandatory, but include recommendations addressed to providers on how the provisions of Article 4 para. (1) (d) of the Regulation may be applied, as well as on the steps that consumers may take in order to obtain the remedies available to them under national legislation.

Based on the analysis conducted by ANCOM on the occasion of the formal action⁶ conducted by the Authority which aimed at verifying whether the information mentioned in the provisions of Article 4 para. (1) (a)-e) from the Regulation was included in the contracts concluded with the end-users by the main providers of both fixed and mobile internet access services, it was concluded that the Guidelines were taken into account and followed by the majority of the providers for defining the speeds and establishing the procedure for measuring the speeds of the internet access service by the end-users, for both fixed and mobile networks. ANCOM also

¹ Regulation (EU) 2120/2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012;

² ANCOM President's Decision no. 1112/2017 on setting quality indicators for the provision of the internet access service and the publication of the related parameters, with the subsequent amendments and completions;

³ ANCOM President's Decision no. 158/2015 on the obligations to inform the end-users, with the subsequent amendments and completions;

⁴ The consolidated version (text available in Romanian) of the Government Emergency Ordinance no. 111/2011 on electronic communications is available at the following address: http://www.ancom.org.ro/uploads/links_files/O_U_G_Nr_111_2011.pdf;

⁵ ANCOM guide is available on the Authority's website, in the Industry/ Provider guides section, at the following link: [https://www.ancom.ro/uploads/links_files/2019-10-09_Ghid_masurare_viteze_\(002\).pdf](https://www.ancom.ro/uploads/links_files/2019-10-09_Ghid_masurare_viteze_(002).pdf);

⁶ More information on the control campaign conducted by ANCOM and its results can be found in Section 2.3 of the current report;

noted that the remedies provided by national legislation were introduced by the controlled providers in the standard contracts (the standard contracts are used as a model for the contracts concluded by the ISPs with the end-users).

According to Article 5 paragraph (1) of the Regulation, ANCOM “*shall closely monitor and ensure compliance with Articles 3 and 4*” and “*shall publish reports on annual basis regarding their monitoring and findings*”. The present report refers to the period elapsed between 01 May 2019 and 30 April 2020.

1.2. The institutional implications of Regulation (EU) 2015/2120

Several national authorities ensure the monitoring and supervision as regards the application of the Regulation.

The main authority responsible for monitoring and ensuring compliance with the provisions of the Regulation is ANCOM, who can verify the compliance by the internet access service providers (hereinafter *providers* or *ISPs*) with most of the provisions under the Regulation.

No amendments to national laws were required for ANCOM to receive and exercise these powers as the national legislation already contained the necessary provisions in this regard.

Together with ANCOM, two other national authorities are involved in ensuring the observance of the Regulation, as follows:

- The National Consumer Protection Authority (hereinafter *ANPC*) is the authority that can apply sanctions in case of non-observance of the contract provisions, according to the primary national legislation.

In 2010, ANCOM signed an official collaboration agreement with ANPC establishing in detail how the two authorities collaborate, especially in order to enhance efficiency in solving the complaints received from the consumers.

- The National Data Protection Authority (hereinafter *ANSPDCP*) is the only authority responsible for monitoring compliance by the providers with the provisions of the national legislation in the field of data protection, also when enforcing the data protection obligations referred to in Article 3 paragraph (4) of the Regulation.

ANCOM does not have the power to verify data protection breaches or privacy obligations.

There is no formal agreement between ANCOM and ANSPDCP, but, according to the Romanian law, if one authority receives a complaint and doesn't have the legal power to solve, then it must send the complaint to the competent authority within a 5-day timeframe.

1.3. Internal organization

In the reference period, there were no formal dedicated ANCOM departments or teams to deal with open internet access issues. Tasks regarding monitoring and ensuring compliance with the

Regulation are carried out by different persons from various ANCOM units covering economic, legal and technical expertise, along with their regular tasks.

1.4. External organization

At national level, ANCOM has organised several (both individual and collective) meetings with industry stakeholders in order to clarify various aspects regarding the implementation of the Regulation's provisions, including aspects mentioned in the BEREC Guidelines⁷ on the implementation by national regulators of European open internet access rules (hereinafter referred to as the *BEREC Guidelines*). The topics approached during these meetings concerned: the quality assessment procedure, respectively the procedure for assessing discrepancies between the speeds specified in contracts and those resulting from measurements, how to define in the contracts the speeds laid down by the Regulation, aspects taken into consideration by providers in establishing (committing to ensure) the respective values, as well as traffic management practices. Discussions with the internet access service providers revealed different approaches to the analysed aspects, so that one cannot refer to a common approach as regards defining speeds or interpreting the meaning of "significant discrepancy, continuous or regularly recurring" in the Regulation. However, the ANCOM Guidelines helped to standardize these approaches so that the end-user has clearer, more concise and comparable information, as far as possible.

At international level, ANCOM continued its active presence in the BEREC Expert Working Group dealing with issues regarding open internet access, taking part in the drafting team in charge of updating the BEREC Guidelines, helping to ensure an application of the Regulation as consistent as possible across EU Member States, while taking into consideration national legislation, as well as the drafting team working on the BEREC report on the implementation of the provisions of the Regulation, in the Member States of the European Union.

2. Monitoring obligations

ANCOM has focused mainly on analysing the complaints received from end-users regarding the provisions of the Regulation and, where needed, has sent requests for information to the internet access service providers. In the reference period, ANCOM received about 90 complaints on the performance of the internet access service (fixed and mobile), most of them being solved by either offering explanations on the applicable contract and legal provisions, or directly by the ISPs. In some cases, to amicably settle the complaints, ISPs even agreed to terminate end-user contracts without any penalties for early termination, despite the end-users being still within the minimal contract period.

Furthermore, the formal action conducted by ANCOM to check the extent to which the information specified in Article 4 para. (1) letters a) to e) of the Regulation is reflected in the

⁷The full version in English is available at

https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/6160-berec-guidelines-on-the-implementation-by-national-regulators-of-european-net-neutrality-rules;

contracts concluded by the main ISPs from Romania, has been finalized. Further details on this action are provided in Section 2.3 below.

2.1 Commercial practices

In the reference period, ANCOM continued to monitor the commercial practices carried on the Romanian telecommunication market. Regarding zero-rating practices there were no notable differences from the previous period; the main services identified were:

- music and video streaming;
- social media;
- instant messaging (including voice and video);
- email;
- maps;
- cloud services;
- applications used for cost control, top-up credit, add/remove (extra)options.

From publicly available information on ISPs' websites and from the information the ISPs made available in response to the information requests submitted by ANCOM, the following practices were identified:

- Upon concluding a new contract or renewing the existing one for a period of 12 or 24 months, Telekom Romania Mobile Communications S.A. (Telekom Mobile) offers as a bonus unlimited access to internet at speeds up to 1.5 Mbps for video-streaming and up to 150 Mbps for any other content. Thus, the quality of video content is limited to a maximum of 480p. No commercial agreements have been concluded between the ISPs and the CAPs. Customers can easily activate or deactivate the bonus (in which case the tariff plan becomes a classic data-capped plan) as many times as they want during the contractual period. If the bonus is activated, all data traffic is free-of-charge both at national level as well as when roaming in the EEA (subject to regulated FUP), both directly via the mobile device and via *tethering*.

- Vodafone Romania S.A. offers zero-rated access to certain categories of applications. Each category (e.g. social media, video-streaming, audio-streaming, maps, email) is open. Every interested CAP can request to join the programme for free, subject to a commercial agreement and in compliance with specific conditions presented on ISP's website. The CAP should provide certain information such as IP address of the servers or media-storage in order to enable the ISP to identify the specific traffic. All zero-rated applications benefit from unlimited and free-of-charge data traffic both at national level and when roaming in the EEA (subject to regulated FUP), both directly via the mobile device and via *tethering*.

Following an investigation which concerned the practices of Telekom Mobile, ANCOM found that this provider breached the provisions of Article 3 paragraph (3) indents (1) and (3) of the Regulation and imposed Telekom Romania to remove the discriminatory traffic treatment applied for video-streaming as opposed to the other traffic categories. The provider challenged ANCOM decision in Court, asking for its suspension and annulment. In the first instance, the Bucharest Court of Appeal admitted the request to suspend the ANCOM decision until a court ruling on its annulment is pronounced. ANCOM appealed the ruling of the Court of Appeal on the admission of the suspension request, but the appeal was rejected on 12.12.2019 by decision of the High Court of Cassation and Justice, Administrative and fiscal contentious section. The

decision on the suspension has therefore become final. Regarding the case on the annulment of the decision, it is still judged in first instance at the Bucharest Court of Appeal, Section VIII - Administrative and fiscal contentious.

As for the practices of the other providers, given that the Regulation does not prohibit *per se* the provision of zero-rating offers, ANCOM did not consider necessary any intervention, but has continued to monitor their evolution. In the reference period, there were no sufficient indications on the breach of the legal provisions to justify the Authority's intervention.

At the request of the Ministry of Foreign Affairs, ANCOM submitted observations to the Court of Justice of the European Union (hereinafter referred to as the *CJEU*) in two cases concerning several issues raised by the application of the Regulation, that had as object the pronouncement of preliminary rulings by the CJEU, as follows:

- 1) In the joined cases **C-807/18 and C-39/19**, the CJEU sought to clarify:
 - whether discrimination in data traffic is permitted if there is an agreement of will between the ISP and the end-user, materialized in the conclusion of a contract providing for the mechanism of such discrimination;
 - if a possible violation of Article 3 para. (3) of the Regulation also takes into account recital 7 of the preamble to the same Regulation, if the prohibition in this article is general, unconditional and objective or can be removed by the terms of the contract signed by the ISP with the end-user;
 - if the violation of Article 3 para. (3) of the Regulation can be determined without the need for an additional assessment of the market or of the impact of that violation.

- 2) In the **C-5/20** case, the CJEU sought to clarify:
 - whether the end-users have the right to use tethering considering the provisions of Article 3 para. (1) of the Regulation;
 - if, after interpreting the provisions of Article 3 para. (1) and (2) of the Regulation it results that the end-users have the right to use tethering and a technical limitation is not applicable, it can be established, by contract, that in the case of an active zero-rating offer, the volume of data used via tethering is to be billed differently from the volume of data used if this offer is not activated, without it being included in a zero-rating offer, but deducted from a basic data-cap and charged separately if exceeded.

2.2 Traffic management

Regarding monitoring the traffic management practices used/applied by ISPs, ANCOM has paid close attention to end-users' complaints that could be due to specific practices.

During the reference period, ANCOM was notified about certain issues related to the conditions of use of the mobile internet access service in the case of a provider, namely the blocking of the subscribers' possibility to use the service via the "hotspot" function.

As a result of the tests performed by the ANCOM representatives, it was found that the internet access services provided through the network in question can be used with the help of the hotspot function, therefore this complaint was considered not-grounded.

The application of traffic management practices was also monitored through the reporting mechanism set up⁸ by the European Commission and BEREC with the support of national regulatory authorities, in order to periodically monitor the traffic in each Member State so that it can quickly respond to network capacity issues due to the Covid-19 pandemic.

In this context, in order to support the steps initiated at European level, ANCOM has implemented a mechanism for collecting information on the changes registered by the providers of electronic communications networks and services regarding the traffic data and the measures they are taking or planning to take. This mechanism provided for a reporting every two weeks, by all providers of mobile electronic communications networks and services and by the top 5 providers of fixed electronic communications networks and services, based on the number of connections declared in the previous year. In the event of any significant changes between the reporting periods, the providers were to communicate them to the Authority as soon as possible.

Although networks are sized to support much higher traffic than the normally registered traffic, in the unprecedented situation caused by the Covid-19 pandemic, providers have warned (in case of increased traffic to unexpectedly high values for long periods of time) about the possibility of requesting support from ANCOM, in order to be able to apply band and/or speed limitations per type of traffic, so as to ensure a minimum quality of service for users. During the relevant period, ANCOM did not receive such requests from providers.

In this context, following an analysis of the answers to the questionnaire sent by ANCOM, it was concluded that, in the case of one provider, the traffic management practices applied in case of congestion contravene the Regulation. Following the Authority's intervention, such practices were eliminated.

Having these tools at its disposal, ANCOM will continue to monitor the way the provisions of the Regulation are applied.

2.3. Transparency in the contracts concluded with the end-users

The formal action initiated by ANCOM in the previous reference period, which concerned the verification of the extent to which the information mentioned in the provisions of Article 4 para. (1) indent (1) letters a)-e) of the Regulation are reflected in the contracts concluded by the main⁹ providers of fixed and mobile internet access services with the end-users, showed that, in general, the contracts analysed by ANCOM contained information on the aspects regulated by the provisions of Article 4 para. (1) indent (1) letters a)-c) of the Regulation.

Lack of complete information was however noticed regarding the speeds of the fixed and mobile internet access service, which must be found in the contracts pursuant to Article 4 para. (1) indent (1) letter d) of the Regulation. Thus, the contracts analysed by ANCOM during this campaign comprised information on the value of the speeds that a user can reach, but the

⁸ More details available at the following link: https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=65793

⁹ The 6 providers that were analysed hold almost 100% market share in the mobile internet market and approx. 92% market share in the fixed internet market;

procedure that the consumer needs to follow in order to measure the agreed speeds and to obtain the remedies provided for by the national law was either incomplete, or was not included by the majority of the analysed providers. Another piece of information only partly reflected in the contracts verified by ANCOM concerned the explanations on the remedies at the consumers' disposal according to the national law in the event they discover significant discrepancies, continuous or regular, between the actual performance of the internet access service in terms of speed or other service quality parameters and the performance indicated in the contract, termination being a remedy that was not included by most of the scrutinized providers.

The formal action was finalized with the imposition of measures for the remediation of the breaches discovered. The analysed providers have been obliged to modify the provisions of the standard contract that they use when concluding a contract with the end-users having as object the provision of fixed or mobile internet access services. Therefore, the contractual provisions regarding the speeds that the user can benefit from under the contract concluded with the internet access service provider have been improved and supplemented. Furthermore, the procedure for measuring the quality of the internet access service that the consumer can follow in order to benefit from the remedies provided by the national legislation (compensation or termination of the contract having as object the provision of internet access services) has been either introduced or modified, as applicable.

ANCOM noted that, when drafting or amending the new contractual clauses, the ISPs largely took into account the provisions of the ANCOM Guidelines on the implementation of the requirements regarding the inclusion in the contracts of information on the internet access speeds through fixed and mobile networks.

3. Transparency measures for ensuring open internet access

The obligation to ensure transparency regarding the quality of the internet access service laid down by Article 4 para. (2) of the Regulation is detailed in the secondary legislation elaborated by ANCOM, i.e. ANCOM President's Decision no. 158/2015, as well as ANCOM President's Decision no. 1112/2017. ANCOM President's Decision no. 158/2015 sets the steps required for making available to the public the information regarding the quality of the internet access service. ANCOM President's Decision no. 1112/2017 establishes a relevant set of (technical and administrative) quality indicators for the provision of the internet access service from the end-users' point of view, definitions and measuring methods for the relevant set of parameters, as well as imposition on the providers the obligation to publish the quality parameters and to include them in the contracts concluded with the end-users. The Decision does not impose target-values for these parameters. The committed value of the parameters (quality level) is established by the providers under the contract on the provision of the internet access service concluded with the end-users, irrespective of the payment method (prepaid or post-paid).

The *administrative quality indicators* established under the Decision no. 1112/2017 are the following:

- term for providing the internet access service;
- frequency of the end-user complaints;
- fault report rate;

- frequency of bill correctness complaints;
- fault repair time;
- end-user complaint (other than fault-related) resolution time.

The *technical quality indicators* established through the decision in question are the following:

- data transmission speed
- packet transmission delay
- jitter and
- packet loss rate.

Within the Decision, ANCOM defined the technical quality parameters provided in the Regulation, without interfering with other issues regarding these parameters. The parameters were defined in broad terms, precisely for not hindering/restricting the providers. Thus, ANCOM aims to closely monitor the implementation of the Regulation's provisions by the providers and to step-in subsequently, as appropriate. Moreover, the decision also establishes the quality parameters measured by the end-users, so that they can monitor and assess the quality of the contracted service.

In order to apply the provisions of Article 4 para. (1) letter (d) of the Regulation as uniformly as possible, ANCOM developed and published the **Guidelines on the implementation of the requirements regarding the inclusion in the contracts of information on the speeds of fixed and mobile internet access services**. The Guidelines are intended to the providers of electronic communications networks and services and bring clarifications and examples of good practices concerning the legal requirements the providers must implement as regards the inclusion in the contracts of the information on the internet access speeds through fixed and mobile networks, such as:

- how the speed values should be expressed;
- factors that may influence reaching certain speeds, so that users understand the issues that may affect the results of a measurement;
- the conditions in which measurements should be performed by the users to obtain the internet access speeds from the contract, for example conditions related to the terminal from which the measurements are performed;
- aspects to be included in contracts in order to identify significant discrepancies, continuous or regularly recurring, between the actual performance of the service and that indicated in the contract, for example how many days to perform measurements, how many measurements are performed per day and at what time intervals;
- how a user can submit a complaint regarding the non-compliance with the contractual clauses, in order to be able to benefit from remedies.

3.1. Data transmission speed

According to the provisions of ANCOM President's Decision no. 1112/2017, **data transmission speed** is the data transmission rate, measured in Megabits/second (Mbps), achieved separately for the transmission of the test files downstream, respectively upstream, between the end-user's terminal equipment and a test server.

The data transfer speed is specified based on the transport layer protocol payload.

For **internet access services on fixed networks**, the following parameters have been defined:

- *Minimum speed* – the lowest data transmission rate that an end-user can experience in accessing the service, according to the contractual or general conditions, as appropriate. In principle, the actual speed, experienced by the end-users, should not be lower than the minimum speed, except in cases of service interruption.
- *Normally available speed* – the data transmission rate that an end-user can experience most of the time when accessing the service, during a specified period.
- *Maximum speed* – the data transmission rate that an end-user can experience at least once during a specified period.
- *Advertised speed* – the data transmission rate that a provider uses in advertising materials, in promoting commercial offers. The advertised speed should not exceed the maximum speed.

For **internet access services on mobile networks**, the following parameters have been defined:

- *Estimated maximum speed* – the data transmission rate that an end-user can experience in realistic usage conditions. This speed will be specified separately, for different network technologies.
- *Advertised speed* – the data transmission rate that a provider uses in advertising materials, in promoting commercial offers. The advertised speed should not exceed the estimated maximum speed.

In order to ensure the possibility to assess the quality of the service provided, the technical quality parameters will be accompanied by the following information – according to the provisions of ANCOM President’s Decision no. 1112/2017:

- a description of the conditions under which the minimum speed, the normally available speed and the maximum speed could be achieved, for internet access services on fixed networks;
- a description of the methodology used to ascertain the estimated maximum speed and a description of factors influencing the achievement of the estimated maximum speed, for internet access services on mobile networks.

The data transmission speed measured by ANCOM’s application – *Netograf* – is calculated in real time for internet access services, in the cases of both fixed and mobile networks, dividing the dimension of the test file by the transfer time required for error-free transmission. The results will be presented to the user after the measurement has been completed. Measurements are performed at the edge of the network by means of which the internet access services are provided (e.g. at the end-users’ premises, for fixed access, or via the radio access network, for mobile access). The test server is located outside the network that provides the internet access service, at the national internet exchange point. The measurement uses multiple TCP connections for saturating the measured path.

The quality of an internet access service must not be assessed based exclusively on data transmission speed. Packet transmission delay, jitter and packet loss rate are the parameters

that, besides data transmission speed, may create a thorough and accurate image of the internet access service quality. ANCOM did not impose on the providers the obligation to publish the three quality parameters and to include them in the contracts concluded with the end-users. Nevertheless, ANCOM President's Decision no. 1112/2017 defines these parameters and ANCOM's application will measure them. Thus, the end-users are able to receive relevant, complete, comparable and easily accessible information on the quality of the internet access services.

3.2. The certified monitoring mechanism – Netograf

3.2.1. Description and role of Netograf

At the end of 2014, ANCOM made available to the interested parties Netograf.ro, an online application where internet access users can assess the providers' performance from the technical quality parameters perspective, as well as their evolution over time, respectively the improving or the degrading quality of the internet access service offered. The application is available on www.netograf.ro.

Using this application, internet access service users can measure parameters such as the download speed, the upload speed, delay, jitter and packet loss rate.

Before performing a test, the user is presented a series of information fields (IP address, location detected, information regarding the terminal equipment used). Furthermore, although the provider is automatically detected, the user can choose another provider, if the identified one is not the respective user's provider. To perform a test, the user must select the type of connection – cable or WiFi (only for the web application) and optionally, the user can select the type of internet access service offer they have (valid for all types of applications).

When testing their own connection, the values of the quality parameters resulted from the measurement are displayed in real time to the users. The users can compare the measured values with the nominal values of the respective parameters indicated by the providers in the contract. Moreover, for registered and logged-in users, the application enables viewing a history of individual measurements, offering a series of additional functions, such as the possibility to sort measurements by tested connection and to display graphs and tables with the historic values of the performed tests.

By means of this application, ANCOM publishes regular statistics on the quality of the internet access services, based on the technical quality indicators. Thus, in order to compare the quality achieved by different providers of internet access services, or to assess the quality of various connections from one provider, the application returns the number of measurements and average values of the quality parameters, according to the options selected by end-users (period, offer type, test location).

In view of simplifying the measuring process for end-users, ANCOM decided to introduce new features to Netograf. The new features, developed early in 2019 (by means of a third party), consist (among others) of the following:

- free of charge applications dedicated to mobile terminals (for the top three most used operation systems), which can be downloaded from the official applications' shops, which enable the users to measure the technical quality parameters of their mobile internet connection and to view statistics/history/information on the performed tests;
- free of charge applications dedicated to fixed terminals (for the top two most used operation systems), the installation kits of which the users can download from www.netograf.ro and which enable them to measure the technical quality parameters of their fixed internet connection and to view statistics/history/information on the performed tests;
- a method for mapping the results, by means of which the users will be able to see the measurement results distributed geographically on the map of Romania;
- a measurement method based on advanced technologies, which enables measuring speeds above 300 Mbps with greater accuracy.

The new features of the Netograf.ro platform were officially launched on the market in June 2019. These features are in a continuous optimization process.

To verify whether the measurements were carried out under optimum conditions and the results were not influenced by exogeneous factors, the Netograf applications made available to the end-users implement a series of checks to discover any problems. By the type of application, a series of indicators are collected such as processor load, memory load, download/upload background traffic before the test. If, in the case of a measurement, a certain pre-set threshold for one of these indicators is exceeded, the application pinpoints the factors that influenced the respective measurement.

To obtain the values under the contract for the quality parameters of the internet access service, Netograf offers several recommendations for the fixed and mobile internet (e.g. relating to limitations due to the operation system, use of terminal with inferior characteristics, background traffic during measurements, use of an antimalware or a firewall).

Measuring the quality parameters of the internet access services does not require creating a user account. However, if the user wishes to create an account, the applications for fixed and mobile terminals make available several additional features such as the possibility to display graphs and tables with the historical values of the completed tests, and to schedule tests at periodical time intervals, during one or several days.

Hence, the users of internet access services can benefit from a unique, independent, objective and free of charge tool for quality assessment, measuring the technical parameters by which they will be able to measure their own connections through a dedicated browser and dedicated applications, on fixed or mobile terminals, with access to the history of their own measurements.

Using this certified monitoring tool and considering the measurement methodologies established by the ISPs, internet access services users will be able to observe any non-conformities between the real/ measured service performance and the performance indicated by providers in the contract.

This issue is detailed in the Guidelines on the implementation of the requirements regarding the inclusion in the contract of information on the access speeds on fixed and mobile networks.

Thus, for the fixed internet access service, ANCOM established, through the Guidelines, the conditions that need to be met and the procedure that a user must follow in order to ascertain **significant discrepancies** and, on the other hand, **discrepancies that are continuous or regularly recurring**.

In order to ascertain **significant discrepancies**, the user must perform, under certain conditions, at least 6 measurements within 24 hours, out of which at least one must be taken in between 23:00 and 07:00. Measurements must be carried out at intervals of at least one hour apart. A discrepancy is considered to be significant if it meets at least one of the following conditions:

- the minimum speed is not achieved for at least two measurements;
- at least half of the measurements performed by the user do not exceed 50% of the normally available speed indicated in the contract.

In order to ascertain **discrepancies that are continuous or regularly recurring** between the contractual speeds and the actual performance of the internet access service, the user is required to perform measurements, under certain conditions, for at least 5 days (out of which at least one day should be in the weekend), during a maximum of 30 consecutive days, performing a minimum of 6 measurements per day, out of which at least one daily measurement should be in between 23:00 and 07:00. Measurements must be made at least one hour apart. A discrepancy is considered to be continuous or regularly recurring if it meets at least one of the following conditions:

- the minimum speed is not achieved for at least two measurements;
- at least half of the measurements do not reach the normally available speed;
- no measurement reaches the maximum speed.

For the mobile internet access service, ANCOM has established the procedure that a user must follow in order to ascertain the **discrepancies that are significant, continuous or regularly recurring** between the contractual speeds and the actual performance of the internet access service. Thus, the user is required to perform measurements, under certain conditions, for at least 5 days (out of which at least one day should be in the weekend), during a maximum of 30 consecutive days, performing a minimum of 6 measurements per day, out of which at least one daily measurement should be in between 23:00 and 07:00. Measurements must be made at least one hour apart. A discrepancy is considered to be significant, continuous or regularly recurring if at least half of the measurements performed are below certain values, assumed by providers in the contracts.

Moreover, users will have at their disposal statistics with the values of the technical quality parameters, obtained after performing tests by other users, in a determined period of time. Based on such statistics, a user who wishes to conclude a contract with an ISP or to change their current provider, can compare the quality of the services offered by different providers and can therefore make an informed decision.

3.2.2. Monitoring the compliance with the legal provisions regarding Netograf

According to the provisions of ANCOM President's Decision no. 1112/2017, ISPs are required to not charge, limit or block the data traffic used by end-users from and to Netograf.ro. In order to ensure compliance with these obligations, ANCOM requested from the providers a series of information regarding the implementation of these provisions. Upon receipt of the replies, the tests carried out by the control staff revealed that, in the case of one mobile internet access provider, the obligation in question was breached as the data traffic to and from Netograf was deducted from the data-cap included in the active mobile data option at the time of the tests, on the respective prepaid card, which constitutes a contravention. The situation has been remedied by sanctioning the provider in question.

3.3. Means of ensuring the transparency of the information regarding the quality of the internet access service

ANCOM President's Decision no. 1112/2017 also introduced specific obligations on the providers of electronic communications services (hereinafter *ECS providers*) in respect of the means of ensuring transparency regarding the quality of the internet access service provided, by amending accordingly the provisions of ANCOM President's Decision no. 158/2015 establishing various transparency obligations for the ECS providers, regarding the tariffs charged, the conditions of use of the services, as well as the quality of the service, which were considered relevant for the end-user to make an informed decision. Thus, based on ANCOM President's Decision no. 158/2015, with the subsequent amendments, the providers are required to publish on their websites, in the content of the first description of each tariff plan containing an internet access service, the values of each type of speed established by the Regulation.

To this moment, as a result of a notification submitted to ANCOM for settlement, only one provider has been sanctioned for non-compliance with the obligation of transparency, according to the provisions of ANCOM President's Decision no. 158/2015 detailed above.

Furthermore, based on the provisions of this decision, the providers also have the obligation to communicate to end-users, before the conclusion of an internet access service contract, information on the values for each type of speed established by the Regulation. This obligation applies to contracts concluded in the presence of the two parties in the providers' shops.

The providers' website must also display information on the speeds measurement procedure that allows a consumer to identify 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 the contract. The providers also have to publish on their website the remedies available to the consumer in accordance with the national law, if such discrepancies are found by using the certified quality measurement mechanism.

4. Transparent, simple and efficient procedures to address end-user complaints

According to the secondary legislation issued by ANCOM¹⁰, ISPs have to publish on their website and also to hand in to end-users, upon the contract conclusion, a procedure that details the steps an end-user has to follow in order to submit a complaint related to the provision of electronic communication services. This is a general procedure that also applies to the complaints related to the application of the Regulation.

No changes occurred during the reference period as regards the procedure the end-users can follow in order to complain about issues related to the application of the Regulation's provisions.

Concerning the minimum required content of the procedure, in ANCOM President's Decision no. 158/2015, the Authority has established that internet access service providers should include in the procedure and thus make available, in a transparent manner, the following information:

- the means by which an end-user can submit a complaint;
- the name, address and the working program of the department in charge of solving the complaints;
- the maximum timeframe for submitting the complaint, if applicable;
- the maximum timeframe for solving the complaint;
- the maximum timeframe for remedying the disturbance;
- the compensations applicable if the provider exceeds the timeframe for solving the complaint and for remedying the disturbance;
- the timeframe and means by which the provider informs the end-user on the outcome of his/her complaint;
- a specification of the fact that the end-user can address a complaint to ANCOM or can use other Alternative Dispute Resolution procedure if he/she is not satisfied with the way in which his/her complaint has been solved by the provider.

All electronic communications service providers have implemented this procedure, as it is mandatory, and may trigger sanctions, if not implemented according to the conditions set by ANCOM President's Decision no. 158/2015.

5. Penalties

Regarding the sanctions applicable in case of non-compliance with the provisions of the Regulation, no changes have occurred in the legal framework, from the previous reporting period. Thus, according to the provisions of Article 142 indent 55 of Government Emergency Ordinance no. 111/2011, the non-compliance by the providers with the obligations deriving from the regulations of the European Union in the field of electronic communications, where the competence of monitoring and verification of the compliance with these obligations belongs to the national regulatory authority, is a contravention that can be sanctioned by ANCOM.

¹⁰ ANCOM President's Decision no. 158/2015, whose text in Romanian is available at the following link: http://www.ancom.org.ro/uploads/forms_files/decizia_2015_1581428306401.pdf

Therefore, ANCOM can sanction any breach of the provisions of the Regulation, with the exceptions mentioned above, related to the competence of the national ANPC and the national ANSPDCP, as mentioned in point 1.2 above.

Government Emergency Ordinance no. 111/2011 also provides for the penalties applicable in case that the contraventions provided by Article 142 indent 55 are observed, as a result of infringements of the provisions of Articles 3, 4, and 5 of the Regulation.

There were no changes from the previous reporting period, the maximum thresholds of the fine that can be applied to the providers with a turnover above 3,000,000 RON remained at 5% of the turnover, respectively 10% of the turnover in the case of repeated breaches.

Thus, according to Article 143 of Government Emergency Ordinance no. 111/2011, a breach of the obligations laid down in the Regulation constitutes a contravention that can be sanctioned by ANCOM as follows:

- with fines ranging from 5,000 RON up to 60,000 RON and, in case of repeated breach, up to 100,000 RON;
- with fines of up to 5% of the annual turnover or 10% of the turnover in case of repeated breach, for the providers with an annual turnover of more than 3,000,000 RON.

The assessment of the contravention provided in Article 142 indent 55 of the Government Emergency Ordinance no. 111/2011, and the application of appropriate penalties, are made by decision of the ANCOM President. The decision constitutes an enforceable title and can be challenged in administrative contentious, at the Bucharest Court of Appeal, within 30 days from the time it was communicated.

Where an infringement has been found, according to the provisions of Article 149 paragraph (1) letter a) of Government Emergency Ordinance no. 111/2011, ANCOM may also require the cessation of the infringement either immediately or within a reasonable timeframe, as well as any other measures necessary to ensure the cessation of the infringement and the remedy of the occurred situation. The measures shall be proper and proportionate to the committed breach and shall provide a term within which the provider must comply with them.

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