



ANCOM
National Authority for Management and
Regulation in Communications of Romania

**Monitoring compliance with
the provisions of the
Regulation (EU) 2015/2120
on open internet access**

1 May 2017 – 30 April 2018

The [National Authority for Management and Regulation in Communications](#) (ANCOM) is the body that protects the interests of the communications users in Romania, by promoting competition in the communications market, ensuring the management of scarce resources and encouraging innovation and efficient investments in infrastructure. For further information on ANCOM's activity please visit www.ancom.org.ro, www.portabilitate.ro and www.veritel.ro. For testing and monitoring your internet service quality, please access www.netograf.ro

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1. General overview

1.1. Legal framework

Regarding Net Neutrality, the Romanian legal framework is mainly represented by Regulation (EU) 2015/2120 (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, the publication of the related parameters and the transparency of certain information that providers are required to make available to end users.

The Romanian legal framework on Net Neutrality 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. 140/2012 as subsequently amended and supplemented.

ANCOM's proceedings initiated in 2017, which aimed to complement the provisions of the Regulation through secondary legislation also taking into account the provisions of the BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules (hereinafter referred to as *the BEREC Guidelines*), were finalized at the end of 2017 with the publication in the Official Journal of Romania, Part I, no. 41 of January 17, 2018 of 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 (hereinafter referred to as *Decision no. 1112/2017*). This Decision repealed ANCOM's previous Decision no. 1201/2011, with a similar scope. It increased transparency regarding the quality of the internet access service to better protect end users, by introducing certain definitions of the speeds indicated in the Regulation, with the target values of the speeds to be established by the internet access service providers. Some of the provisions of Decision no. 1112/2017 entered into force on 1 February 2018 while the provisions on transparency regarding technical quality indicators for the internet access service entered into force on 01 May 2018.

According to Article 5 (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 of time elapsed between 01 May 2017 and 30 April 2018.

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

Several national authorities ensure the monitoring and supervision as regards to 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 of the Regulation. These are new powers that the authority has received in the field of net neutrality.

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 monitoring the application of the Regulation, as follows:

- The National Consumer Protection Authority (hereinafter *CPA*) is in charge of monitoring compliance with the provisions of Article 4 (4) of the Regulation. CPA is the authority that can apply sanctions in case of non-conformity of performance with the contract provisions. However, non-conformity will have to be established using the certified mechanism agreed by ANCOM.

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

- The National Data Protection Authority (hereinafter *DPA*) is the only authority responsible for monitoring compliance by the providers with the provisions of the national legislation in the field of data protection when applying Regulation (EU) 2015/2120, including when enforcing the data protection obligations referred to in Article 3 (4) of the Regulation.

ANCOM doesn't have the power to verify data protection breaches or privacy obligations.

There is no formal agreement between ANCOM and DPA, but according to the Romanian law if one authority receives a complaint it does not 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

There are no formal dedicated ANCOM departments or teams to deal with net neutrality issues, but 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. Internal meetings have been organised in order to identify the optimal approach of emerging issues, to clarify some legal provisions or to amend the current secondary legislation, in line with the new requirements.

1.4. External organization

At national level, ANCOM has organised several (both individual and collective) meetings with stakeholders in order to clarify various aspects regarding the implementation of the Regulation provisions, including aspects mentioned in the BEREC Guidelines. The topics approached during these meetings envisaged: the quality assessment procedure, respectively the procedure for assessing discrepancies between the speeds specified in contracts and those resulting from measurements, defining the speeds laid down by the Regulation, aspects taken into

consideration by providers in establishing 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.

At international level, ANCOM was part of the drafting team in charge of developing the BEREC Guidelines, helping to ensure an application of Regulation as consistent as possible across Member states level, while taking into consideration national legislation. Also, ANCOM takes part in the Net Neutrality Expert Working Group at the BEREC level.

2. Monitoring obligations

ANCOM has focused mainly on analysing the complaints received regarding the provisions of the Regulation and, where needed, has sent requests for information to ISPs.

In the relevant period, ANCOM received almost 40 complaints on the performance of IAS (fixed and mobile), most of them being solved directly by the ISPs. On request, 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.

2.1 Commercial practices

In the relevant period, ANCOM sent requests for information with regard to zero-rating practices to all mobile ISPs. Out of the 8 ISPs (including MVNOs) providing services in Romania, only 3 have stated that they provide services which imply such practices.

The received answers mentioned zero-rating (or price discrimination) offers that included mainly the following types of services:

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

From publicly available information on ISPs' website, the following zero-rating 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 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

seem to have been concluded between the ISPs and the CAPs. End-users can easily turn the bonus on and off (in which case the tariff plan becomes a classic data-capped plan) whenever they want or as many times as they want. If bonus is activated, all data traffic is unlimited and free-of-charge both at national level as well as when roaming in the EEA (subject to regulated FUP), both directly via mobile device and via tethering.

- Vodafone Romania offers zero-rated access to certain categories of applications. Each category (e.g. social media, video-streaming, audio-streaming, maps, email services) 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 for 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 mobile device and via tethering.

- Orange Romania offers zero-rated access to certain applications in different categories of 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).

As the Regulation does not prohibit *per se* this type of practices, ANCOM has requested detailed information from the ISPs and is carrying in-depth analysis taking into consideration the provisions of the BEREC Guidelines, amongst other. By 30 April 2018, none of the analysis proceedings had been finalised; preliminary conclusions were to be drawn at a later stage.

2.2 Traffic Management

With a view to 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.

In the relevant period, ANCOM has not received any complaints on this issue.

During the first semester of the current year, ANCOM participated in a research conducted by ENISA¹. This questionnaire targeted ISPs holding at least 10% market share. The objective of the questionnaire was to collect information about the security measures taken under exception b) set out in Article 3(3) third indent of Regulation (EU) 2015/2120. The data collected following this research will be used by ENISA for developing a document that gives an overview of how these exceptions are being used, what are the good practices in this area, challenges etc.

Having consolidated the answers provided by Romanian ISPs, ANCOM found, among others, the following:

- The most common reason for applying the security measures taken under exception b) set out in Article 3(3) third indent is to preserve the integrity and security of network and services;
- Typically, the security issues that ISPs are trying to prevent are related to: malware/viruses propagation, denial of service (DoS) attacks, phishing, spam, distributed denial of service (DDoS) attacks;

¹ European Union Agency for Network and Information Security

- The security measures most commonly applied by ISPs are: port filtering, IP filtering, URL² filtering, DNS³ filtering, port blocking, IP blocking and DNS blocking;
- The ports most commonly blocked/filtered are: 25, 110, 123, 135:139, 143, 445.

3. Transparency measures for ensuring open internet access

Considering the provisions of the Regulation (EU) 2015/2120 and the BEREC Guidelines emphasizing the importance of ensuring transparency, which is essential in end-user assessment of ISPs' performance and also, due to the fact that the Authority has received more and more requests and complaints regarding the quality of internet access service, ANCOM updated Decision no. 1201/2011 on establishing the quality indicators for the provision of the internet access service and the publication of the due parameters. The new Decision (Decision no. 1112/2017) was issued at the end of 2017 and repealed Decision no. 1201/2011. The provisions of the new decision aim to establish a relevant set of (technical and administrative) quality indicators for the provision of the internet access service from the end-users' point of view, to define and establish the measuring methods for the relevant set of parameters, imposing 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 through the contract on the provision of the internet access service concluded with end-users, irrespective of the payment method (prepaid or post-paid).

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

- supply time for 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 no. 1112/2017, 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

² Uniform Resource Locator

³ Domain Name Server

providers and to step-in subsequently, as appropriate. Moreover, the decision establishes also the quality parameters measured by the end-users, so that they can monitor and assess the contracted service quality.

3.1. Data transmission speed

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 on the basis of the transport layer protocol payload.

For internet access services in case of 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 in case of 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:

- 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 in the case of 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 in the case of 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 is 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, at the national internet exchange point (IXP). 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, the decision 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

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 and jitter.

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 his internet access service offer, and the access type (wired/wireless, indoor/outdoor).

The values of 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, from the technical quality indicators' perspective. 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).

ANCOM is currently developing a project aimed at introducing new features to Netograf that are meant to simplify the measuring process for end users.

The new features consist (among others) in the followings:

- free of charge applications dedicated to mobile terminals (for the top three operation systems – considering their usage level), which could 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 operation systems – considering their usage level), the installation kits of which the users will be able to 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 module 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 module based on advanced technologies, which enables measuring speeds above 300 Mbps with greater accuracy.

According to the Decision no. 1112/2017, ISPs are required not to charge, limit or block the data traffic consumed by end-users from and to Netograf.ro.

Thus, the users of internet access services will be able to 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 taking into account the measurement methodologies established by the ISPs, internet access services users will be able to monitor the conformity of the contract provisions regarding the quality of service, by comparing the performance committed by the providers under contract to that resulting from a set of measurements performed by means of Netograf.ro. Moreover, the end-users will be able to access the statistics based on the tests performed by other users over a defined period. The end-users could compare the quality of the services ensured by different providers and could make informed choices when they conclude a contract with a provider of internet access services or intend to switch providers. Furthermore, the end-users will be able to view the results of all the measurements, geographically distributed on the map of Romania, according to the selected criteria.

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

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 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's taking the purchasing decision.

Thus, based on Decision no. 158/2015 with the subsequent amendments, starting 01 May 2018, in the first description of each tariff plan containing an internet access service, ECS providers will be required to publish on their websites the values of each type of speed established by the Regulation.

From 01 May 2018, ECS providers will 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 ECS providers' shops.

Furthermore, from 01 May 2018, the ECS providers' website will 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. From 01 May 2018, the ECS providers will 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. Report on the quality of the internet access service

Every year, ANCOM provides a report on the quality of the internet access service, based on the measurements performed by the end-users through Netograf.ro. The report presents comparative statistics on service quality, as well as analyses on the dynamics of service quality. In 2017, statistics were generated upon analysing approx. 273,414 valid tests, 50% more than in 2016, when about 183,000 tests had been analysed. Out of all the valid tests, 86.10% were performed using fixed connections and 13.90% were performed over mobile connections. This difference may be due to the fact that the mobile internet service is generally limited in respect of the data volume that can be transferred by the users and therefore, the latter are rather reluctant to performing tests over mobile connections.

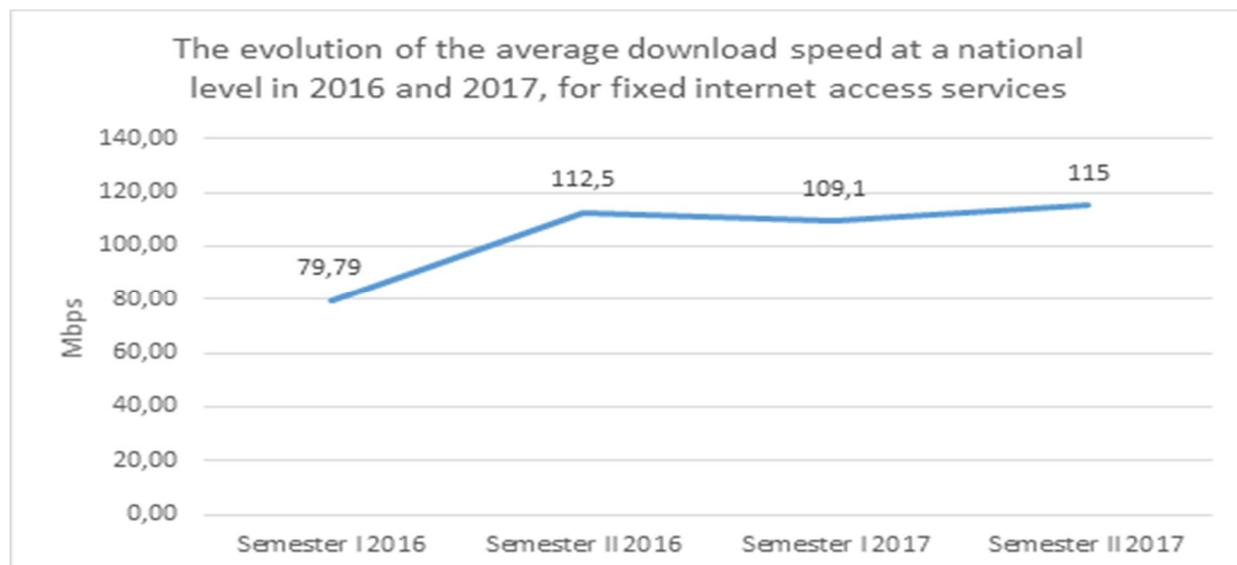
Taking into account the fact that fixed and respectively mobile internet access connections feature different technical characteristics and subsequently trigger substantially different values of the quality parameters, ANCOM's analysis was conducted separately for providers of internet access services using fixed networks and respectively for providers of internet access services using mobile networks.

4.1. Quality of internet access service in the case of fixed networks

According to the results of the tests performed using Netograf.ro, in the second half of 2017, Romanian end-users experienced average download speed on a national level of 115 Mbps for the fixed internet access service. The average upload speed on a national level was 92.77 Mbps.

Compared to the first semester of 2017, in the second half of the year, the download speed using fixed networks increased on a national level, by 5.5% (in the first semester the average speed achieved was 109.1 Mbps). During the two semesters 2017, the upload speed remained approximately constant for this connection type.

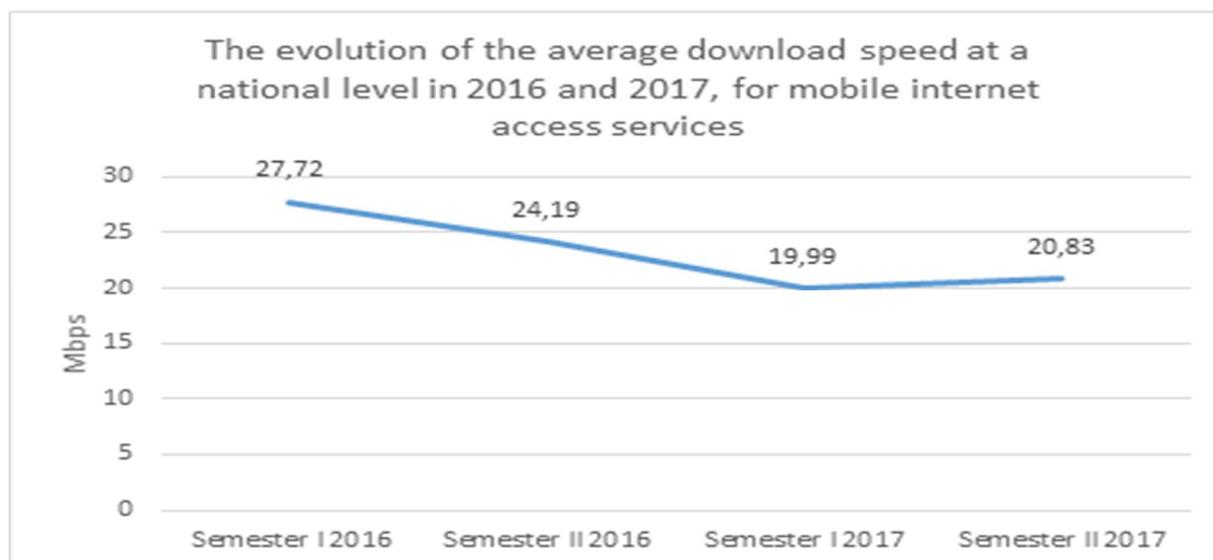
The evolution of the average download speed at a national level in 2016 and 2017, for fixed internet access services is presented in the figure below.



4.2. Quality of internet access service in the case of mobile networks

According to the results of the tests performed using Netograf.ro, in the second half of 2017, Romanian end-users experienced average download speed on a national level of 20.83 Mbps for the mobile internet access service. The average upload speed on a national level was 9.49 Mbps. Compared to the first semester of 2017, in the second half of the year we witnessed an increase in the download speed on a national level, by 4.3%, respectively by 10% in the upload speed.

The evolution of the average download speed at a national level in 2016 and 2017, for mobile internet access services is presented in the figure below.



Data registered by means of Netograf.ro regarding transfer speeds are correlated with the general trend resulted from the providers' statistical data reports, corresponding to their committed transfer speeds. Thus, in 2017, in the case of internet access connections using fixed networks, the number of connections ensuring speeds up to 30 Mbps dropped by 13%, respectively by 36% for speeds ranging from 30 Mbps to 100 Mbps, whereas the number of connections ensuring speeds above 100 Mbps increased by 32%, compared to 2016. Regarding mobile internet access connections, in 2017, the number of connections corresponding to 3G and higher technologies increased by 15.5%, while the number of 4G connections increased by 113%, compared to 2016.

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

According to the secondary legislation issued by ANCOM⁴, providers have to publish on their website and also to hand in the 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.

Concerning the minimum required content of the procedure, in ANCOM'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 the NRA or can use other Alternative Dispute Resolution procedure if he/she is not satisfied by 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's decision no. 158/2015.

⁴ http://www.ancom.org.ro/uploads/forms_files/decizia_2015_1581428306401.pdf (Romanian version only)

6. 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.

According to the provisions of Article 142 indent 55 of Government Emergency Ordinance no. 111/2011, the non-observance by the providers of 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. Therefore, ANCOM can sanction any breach of the provisions of the Regulation, with the exceptions mentioned above related to the competence of the national CPA and the national DPA.

Government Emergency Ordinance no. 111/2011 also provides for penalties applicable to infringements of the provisions of Articles 3, 4, and 5 of the Regulation.

According to Article 142 item 55 and Article 143 of the Government Emergency Ordinance no. 111/2011, breach of the obligations laid down by this Regulation constitutes a contravention that can be sanctioned by ANCOM as follows:

- with fines ranging from 5,000 RON (~1,100 EUR) up to 60,000 RON (~13,000 EUR) and, in case of repeated breach, up to 100,000 RON (~22,000 EUR);
- with fines of up to 2% of the annual turnover or 5% in case of repeated breach, for the providers with an annual turnover of more than 3,000,000 RON (~660,000 EUR).

Where an infringement has been found, according to the provisions of Article 149 (1) letter a) of the 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 remedying 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.

Between 01 May 2017 and 30 April 2018, ANCOM did not impose any sanctions for breaches of the provisions of Regulation (EU) 2015/2120.

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