

Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 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 (Text with EEA relevance)

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 [F¹national 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:

- [F²a comply with national legislation, to which the provider of internet access services is subject, or with measures giving effect to such 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.

Changes to legislation: This version of this Regulation was derived from EUR-Lex on IP completion day (31 December 2020 11:00 p.m.). It has not been amended by the UK since then. Find out more about legislation originating from the EU as published on legislation.gov.uk. (See end of Document for details)

Such processing shall be carried out in accordance with Directive 95/46/EC of the European Parliament and of the Council⁽¹⁾. Traffic management measures shall also comply with Directive 2002/58/EC of the European Parliament and of the Council⁽²⁾.

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.

Textual Amendments

- F1** Words in Art. 3(1) substituted (31.12.2020) by [The Open Internet Access \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1243\)](#), regs. 1, **3(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Art. 3(3)(a) substituted (31.12.2020) by [The Open Internet Access \(Amendment etc.\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1243\)](#), regs. 1, **3(4)(b)**; 2020 c. 1, **Sch. 5 para. 1(1)**

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- (1) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23.11.1995, p. 31](#)).
- (2) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ([OJ L 201, 31.7.2002, p. 37](#)).

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