Net Neutrality and Consumer Protection Focus

Digital Networks Act: Quick Analysis

21. January 2026

EXECUTIVE SUMMARY

On 21 January 2026, the European Commission released their proposal for the Digital Networks Act (DNA)[1]. This overhaul of the telecommunications regulatory framework has major impacts on net neutrality, consumer rights and the future of the open internet. This quick analysis highlights the biggest risks and key takeaways from a civil society perspective.

Key Concerns:

1. We are extremely worried about the **gutting of net neutrality protections** through the removal of key provisions in the recitals that had a major impact in CJEU jurisprudence and BEREC guidelines. 18 of the 19 recitals were removed.
2. The Commission's power grab by introducing red tape to allow itself to become the arbitrator of where net neutrality ends and where **specialised services** begin, should be removed. Independent regulators are rightly tasked with enforcing the law, and their EU umbrella body, BEREC, alone should issue guidance on how to apply it.
3. The attempt to **regulate interconnection** risks establishing networks fees ("*fair share*") and therefore needs to be reformed or removed. Problems for consumers in the interconnection market must be addressed by the new rules, and regulators must be given the tools to rectify them. The rights of users to freely choose online services from anywhere should no longer be infringed.
4. Lastly, we are concerned that the **Office for Digital Networks** currently functions as a backdoor for the Commission to undermine the independence and confidentiality of BEREC.

This document is based on a first reading of the official proposal and focuses on the major issues. Follow our net neutrality document pool or topical page for subsequent publications.[2] Our non profit organisation epicenter.works, has been working on net neutrality since 2012. We are independent of corporate interests and political parties, dedicated to the facts, and always strive to provide solutions.[3]

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1 https://digital-strategy.ec.europa.eu/en/library/proposal-regulation-digital-networks-act-dna
2 https://epicenter.works/en/documents?tx_news_pi1%5BoverwriteDemand%5D%5Btags%5D=4 and https://epicenter.works/en/thema/net-neutrality
3 https://epicenter.works/en/about-us

OPEN INTERNET REGULATION

Gutting a Decade of Protections

The net neutrality provisions of the Open Internet Regulation (EU) 2015/2120 are integrated into the DNA.[4] While a superficial reading may suggest that there are no significant changes, a closer examination reveals a drastic abandonment of core protections and a gutting of the net neutrality framework.

Many of the important clarifications that have led to positive outcomes for consumers can be found in recitals 1 to 19 of the Open Internet Regulation. These recitals were carefully negotiated between the European Parliament, the Council, and the Commission during the 2015 Trilogue negotiations. Of theses 19 recitals a total of 18 have been removed by the Commission's DNA proposal, eliminating important guidance that has been vital for Europe's net neutrality framework. This frameworks consists of a decade of CJEU case law, probably hundreds of regulatory decisions, and three revisions for the BEREC net neutrality guidelines, with a public consultation regarding additional guidance on net neutrality and 5G network slicing currently underway. Without these recitals, the pillars of the framework are removed, and many determinations by courts and regulators are likely to be decided differently. The CJEU's landmark decisions on zero-rating and technical discrimination relied heavily on the recitals to interpret the law.

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Having a separate legislative instrument for net neutrality (and roaming) has also provided legal clarity, as other legislation like the EECC could simply state that it was without prejudice to it.[5] This allowed end-user protections under net neutrality to apply horizontally, even in areas regulated by other legislation that did not explicitly reference net neutrality in all eventualities. For complex technical

4 Text Comparison of the Open Internet Regulation vs Digital Networks Act https://www.diffchecker.com/1NH0aQAX/
5 See Article 1(3)(d) of Directive (EU) 2018/1972

systems, it might prove cumbersome for lawmakers to explicitly state every potential interdependency where protections should apply. Therefore, the current proposal for a DNA reduces legal clarity and might – in adversarial readings – even limit the applicability of end-user protections.

Proposed Solution

The DNA should not incorporate the Open Internet Regulation. All stakeholders agree that net neutrality must be upheld in Europe. The only way to achieve this without creating volatile regulatory uncertainty is to keep the existing framework untouched. Therefore, Article 206, 93 and 94 of the DNA should be removed.

Alternatively, recitals 3 until 17 and 19[6] of the Open Internet Regulation (EU) 2015/2120 should be incorporated, and Article 1 should clarify that nothing in this legislation may be interpreted as infringing upon Article 93 (previously Article 3).

Specialised Services

Background

A major topic in the negotiations of the Open Internet Regulation was the question of Specialised Services (also referred to as Managed Services, Non-Broadband Internet Access Services or Services Other Than Internet Access Services). These access services are vertically integrated between the internet provider and the content provider and do not fall under the equal treatment and non-discrimination obligations of the law. In effect, they function as paid fast lanes, allowing Internet Service Providers (ISPs) to exercise control over the network by giving preferential treatment to certain services based on commercial interests.

The Open Internet Regulation together with the BEREC Guidelines, established a balanced approach that allows for such services only where they technically require optimisation that can not be delivered via regular internet access services, and provided that the provision of specialised services does not interfere with the quality and availability of the open internet by that ISP. This ensures that ISPs cannot circumvent net neutrality by using the specialised service provisions to offer preferential treatment to services that can function on the regular internet.

In 2015, the telecom industry lobbied heavily to relax those rules, seeking permission to reclassify existing online services as specialised services. This would have allowed ISPs to offer paid fast lanes to services such as online calling or online video services that can function on the regular internet. Their argument was that innovative new technologies, like 5G and network slicing, would only materialise with fewer protections. Lawmakers rejected these arguments when they adopted the current text with a large majority.

In 2019, the Commission released its evaluation report on the Open Internet Regulation which concluded that "the Regulation's principles are appropriate and effective in protecting end-users' rights and promoting the internet as an engine for innovation. The report suggests that there is no need to amend the Regulation at this stage, in order to continue with the regulatory stability and in view of continuing protecting end-users' rights and promoting open access to the internet."[7].

In 2023, the Commission released its most recent evaluation report on the Open Internet Regulation which suggested updated BEREC guidelines or intervention by the Commission to be equally viable

6 Recital 18 seems to be the only one that has survived as the new recital 292.

7 https://digital-strategy.ec.europa.eu/en/library/commission-report-open-internet

options to address the demands from the telecom sector, while acknowledging that no other stakeholder calls for changing the rules.[8]

From 2018 to 2020, BEREC updated their guidelines to take into account all new technological changes that arose since the law was adopted. The EU was the first jurisdiction to update its net neutrality framework with a focus on 5G, providing legal clarity for the whole sector.

Importantly, BEREC is currently conducting a consultation to provide additional guidance to reflect the latest changes that might have arisen from 5G network slicing technology.[9] The regulators are diligently incorporating new facts and innovations into the regulatory framework. BEREC justifies this consultation in response to calls from the Commission for greater legal certainty, which can only be achieved when regulators in charge of enforcement engage with arguments from all sides of the debate and issue guidelines applicable to their enforcement activities. In times of deregulation and simplification the proposed changes are simply unnecessary and redundant bureaucracy.

Lastly, the "innovative" services the telecom industry is promoting for over a decade have not materialised, not in Europe, and not anywhere else in the world. If the argument is that Europe's net neutrality rules are too strict for the telecom industry to innovate, why have we not seen these specialised services adopted at any significant scale in the many jurisdictions without net neutrality (like Asia or Africa)? The absence of tangible examples for desirable, innovative, vertically integrated services should serve as caution to lawmakers when assessing calls to weaken Europe's framework.

Analysing the Changes

The core provision regarding specialised services weakens the safeguard to protect quality and availability of the open internet, so that it has to be interpreted for geographical areas instead of the overall service delivery of the ISP. This could particularly harm rural areas, where internet service quality is already lower than in urban regions.

Article 934(5) – former Article 3(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~~where*** *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.*

Importantly, the Commission grants itself the power to lay down rules that could interfere with the enforcement of this law by the competent national regulatory authorities. Article 93(6) (new):

> ***The Commission may, taking utmost account of BEREC's opinion after consulting BEREC, adopt implementing acts detailing the conditions referred to in this Article for the offering of services other than internet access services which are optimised for specific***

8 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023DC0233

9 https://www.berec.europa.eu/en/public-consultations-calls-for-inputs/call-for-input-for-further-guidance-on-5g-network-slicing?language_content_entity=en

content, applications or services, or a combination thereof. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 202.

BEREC has done an exemplary job in providing expert guidance to ensure harmonised enforcement that reflects the technical and economical realities across the Union. Furthermore, in previous BEREC investigations, it was vital that regulators were perceived as neutral actors that can provide the necessary confidentiality for an honest investigation.

The Commission, by contrast, lacks the expert knowledge of the regulators, acts politically and simply lacks the ability for trusted, confidential investigations. Importantly, while regulators are tasked with enforcing the law, the Commission's proposal would place its implementing acts above any guidance issued by BEREC, allowing it to override the guidelines developed by the independent expert regulators.

It is noteworthy that the Digital Omnibus proposal of 19 November 2025 includes a similar provision[11], whereby the Commission empowers itself to adopt implementing acts on pseudonymisation methods that would place certain data processing activities outside the scope of the privacy protections of the GDPR. In both cases the Commission would decide unilaterally without the involvement of MEPs on the limits of protections for Europeans.

Proposed Solution

The proposed changes to the Articles governing specialised services should not be adopted. As the ongoing BEREC consultation asking for input for further guidance on 5G network slicing shows, BEREC is already addressing the problem that the Commission wants to solve. There is no need for the Commission to insert itself into this process and politicise the application of the Open Internet protections.

INTERCONNECTION AND NETWORK FEES

Background

The internet is made up of autonomous networks that exchange data among themselves by connecting with each other ("interconnection"). Two types of interconnection agreements can be distinguished, transit and peering. Peering connects two networks with each other. Transit connects a network with all other networks. The majority of peering interconnection agreements are unpaid and often do not even exist in written form. In 2011, only 0.27% of interconnection agreements were paid[12], and by 2021 that number had fallen to only 0.0004%[13]. The business model of the internet is bill and keep, meaning that an ISP earns its revenue from its own customers and connects to everyone else because global connectivity is the actual product it sells to those customers.

The telephony sector has always operated differently by allowing telecom companies to charge termination fees for making their customers reachable by calls from other networks. Since 2000, several attempts have been made to establish termination fees into the open internet[14], under the names such as Sending Party (Network) Pays, Assured Service Quality, fair share or network (usage) fees. All of these attempts have failed because imposing the business model of the telephony era on

11 See Article41a of 2025/0360 (COD)
12 https://www.pch.net/resources/Papers/peering-survey/PCH-Peering-Survey-2011/PCH-Peering-Survey-2011.pdf
13 https://www.pch.net/resources/Papers/peering-survey/PCH-Peering-Survey-2021/PCH-Peering-Survey-2021.pdf
14 https://www.epluseurope.com/Network%20Fees%20Project.pdf

the open internet would risk fracturing global connectivity, reduce consumer choice, and require heavy regulation to implement, among other drawbacks.

In this mandate the Commission is keen to reduce bureaucracy and "cut red tape" with its simplification agenda, supposedly to increase competitiveness and simplify regulation.[15] Telecom regulators[16], as well as the majority of both small and big market participants in the interconnection market, have all stated that this market should remain unregulated. Ideas to establish networks fees or a "*fair share*" mechanism have been rejected in multiple public consultations, by a majority of member states in council, by media and competition regulators, private and public media, consumer groups and civil society. Yet, the Commission has proceeded to implement exactly what everyone advised against and thereby increased bureaucracy and red tape.

Analysing the Changes

The proposed changes are vague at best and contradictory at worst. Undeniably, for the first time there would be a regulatory regime for the interconnection market that is not limited to providers of public telecommunication networks. Proponents of the "*fair share*" concept within the telecom industry have always wanted an arbitration mechanism, as is evident from the original ETNO/Axion study that kickstarted this debate in May 2022[17]. Article 191, 192 and 193 provide for such a mechanism with the involvement of BEREC and ODN, but many questions remain.

The new and undefined "ecosystem cooperation" would include a broad range of stakeholders, up to CDNs. The proposal is unclear about its outcomes, particularly regarding what happens if the conciliation mechanism is not entered into by all parties or if the outcome is disputed. This could very well lead to a situation in which the current playbook of the biggest last-mile ISPs[18], extorting termination fees for access to their customers, further proliferates across the Union. Right now only a handful of the largest telecom companies are demanding these fees from networks/broadcasters/content providers/CDNs/etc. seeking to reach their customers. Without intervention, this will proliferate, as is already happening[19]. If the new rules fail to prevent this practice, and more network operators begin demanding payment to allow online services to reach their customers, the digital single market would face significant new barriers to the provision of online services. This drastically harms consumers' ability to use the applications of their choice, as demonstrated by the materials submitted in our net neutrality complaint against Deutsche Telekom for their interconnection practices in Germany.[20]

We urge lawmakers to scrutinise the proposal in light of these risks and to prevent the proliferation of a termination monopoly model, as detailed in the 2024 BEREC report on IP interconnection[21].

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15 https://media.ccc.de/v/39c3-throwing-your-rights-under-the-omnibus-how-the-eu-s-reform-agenda-threatens-to-erase-a-decade-of-digital-rights

16 BoR (24) 177 https://www.berec.europa.eu/system/files/2025-01/BoR%20%2824%29%20177_BEREC%20Report%20on%20the%20IP-IC%20ecosystem_0.pdf

17 https://connecteurope.org/sites/default/files/2024-09/downloads/reports/europes%2520internet%2520ecosystem.%2520socio-economic%2520benefits%2520of%2520a%2520fairer%2520balance%2520between%2520tech%2520giants%2520and%2520telecom%2520operators%2520by%2520axon%2520for%2520etno.pdf

18 Last-mile ISPs are Internet Service Providers that have among their customers mostly consumers. Their products connect the majority of the population with the internet and their networks provide connectivity on the last mile towards users.

19 https://ppc.land/vodafone-withdraws-from-public-internet-exchanges-in-germany/

20 https://netzbremse.de/en/

21 https://www.berec.europa.eu/en/all-documents/berec/reports/berec-report-on-the-ip-interconnection-ecosystem

Recital 403 states that interconnection agreements "should not lead to disproportionate or economically unsustainable investment needs for network providers". Similarly, recital 164 states that "such traffic may give rise to disproportionate or unsustainable investment needs for the receiving providers". Such claims have been disproven.[22] For last-mile ISPs almost all traffic reaching their network is requested by their paying subscribers. Delivering the traffic their customers have requested is inherently part of the product of ISPs. The variable cost of data volume is negligible, both for fixed and mobile networks. Furthermore, until the CJEU prohibited zero-rating offers in 2021 most bigger last-mile ISP were subsidising traffic from popular online services by not deducting it from their customers data volume.[23] Comparisons with leaks before the interservice consultation suggest that this language was added in the final stages of drafting in January.[24]

While we welcome recital 165, the provision stresses that parties shall "conclude such agreements on a commercial basis". For last-mile ISPs, the reality in the interconnection market is settlement-free peering without monetary compensation. The default conclusion of any agreement should be an interconnection agreement at no cost, or at most covering the cost of the technical equipment. Additionally, it shouldn't matter which party sends a request for interconnection for the conclusion of a deal, since consumers are harmed irrespective of which side refuses to interconnect.

We welcome recital 168.

Throughout the proposal we find the terminology "end-to-end connectivity". We urge lawmakers to be aware that, while any particular connection between a user and Content and Application Provider (CAP) indeed involves end-to-end connectivity, this perspective does not accurately reflect the interconnection market as a whole. While data might flow from one network to another, this does not imply that it originates there. Networks typically maintain up to thousands of connections among themselves and routinely carry each other's traffic. Given that the internet consists of approximately 100.000 autonomous networks, all interconnected, viewing it as a two-sided market is inherently flawed. It is more like a 100.000^100.000-sided market in which attribution is largely irrelevant. The resilience of the internet, which we all rely on, stems precisely from this decentralised architecture.

Further scrutiny is needed to assess the impact of these provisions on Internet Exchanges, an area of the digital economy in which world-leading companies are actually emerging from Europe.

We would also question some of the language in the proposal regarding environmental impacts and energy efficiency. While more efficient codecs can reduce the bandwidth requirements for transmissions, they might increase energy consumption at both ends of the connection for encoding and decoding. Similarly, any calculation based on energy efficiency that requires replacing (network) equipment has to factor in the energy and resource requirements for those devices. Content providers already have incentives to reduce the bandwidth used for their services, as continued innovation in codecs over the past decades has shown. Regulating the use of codecs could stifle innovation, might not be necessary and would contradict the simplification agenda.

Proposed Solutions

Serious attention must be given to ensure ISPs cannot use interconnection practices to infringe consumers' right to use and offer any service via internet access service. Net neutrality protections in paragraph 1 of Article 93 (formerly 3) protect consumers' right to use the applications of their choice,

22 https://epicenter.works/content/myths-about-net-neutrality-debate-on-network-fees-aka-fair-share
23 https://epicenter.works/content/report-the-net-neutrality-situation-in-the-eu
24 Comparison between the leak and the official version: https://api.draftable.com/compare/yAfnsbqnqtWJ

regardless of the location (e.g., the network or CDN), from where the service is delivered. ISPs sell their customers access to the entire internet, and their interconnection practices must provide sufficient capacity for all services that their customers wish to use. As BEREC's 2024 Interconnection Report makes clear, under the current Open Internet Regulation, consumers already have the right to launch a complaint to NRAs should they believe the interconnection practices of their ISP to be violating their rights. Nevertheless, NRAs would benefit from stronger investigative and enforcement powers into the interconnection market to handle such complaints.

The voluntary conciliation mechanism and the guidelines governing it have to include safeguards to prevent the commercialisation of the interconnection market. Particularly in negotiations between undertakings with large differences in negotiating power, the outcome of arbitration has to be settlement-free peering in all cases, which is essential for the completion of the digital single market.

Last-mile ISPs with significant market power must ensure that adequate transit capacity toward their networks is available at all times. Interconnection agreements that include conditions aiming to exclude traffic from or to particular networks should be invalid and constitute grounds for enforcement action by NRAs. Furthermore, provisions should clarify that for every last-mile ISP with significant market power, peering instead of transit must remain an option in interconnection negotiations, irrespective of the ratio between in- and outbound traffic.

Lastly, we urge lawmakers to use the opportunity of the DNA to establish strong transparency obligations for the interconnection market. NRAs need to be empowered to obtain a complete picture of the commercial agreements and technical realities between networks in their territory, while BEREC would benefit from obtaining and aggregating such data at EU level. Lastly, scientific research and the work of public watchdogs should be enabled by gaining access of such data.

REGULATORY INDEPENDENCE

Background

The work of BEREC has proven invaluable, providing professional, independent and fact-based guidance on the enforcement of EU rules and the assessment of complex and challenging technical developments. The organisation enjoys the trust of lawmakers, market participants, civil society and academia. Its track record over the past decade is a testament to what can be achieved when national expert authorities collaborate at the EU level to reach consensus on complicated matters.

Furthermore, the December 2024 BEREC report on the IP interconnection market would not have been possible without the trust of market participants that their responses to this investigation would be treated confidentially by BEREC.

Importantly, BEREC does not shy away from issuing expert opinions on politically contested issues. Since the Commission initiated its lobbying campaign to establish network fees in 2022, BEREC has issued several reports that have brought the debate back to the facts. This role of BEREC as independent experts is vital for a healthy democracy, which requires neutral facts for decision making.

Analysing the Changes

We are deeply concerned by the restructuring of the BEREC office in Riga as the Office of Digital Networks (ODN), which would grant even greater influence to the Commission. The confidentiality and impartiality of BEREC working groups are fundamental pillars of its work. Article 146(1)(a) would allow

ODN, and by extension the Commission, to participate in all BEREC working groups. The 2018 reform of the BEREC Regulation already extended the Commission's influence over the inner workings of BEREC. Extending the influence and access of the Commission towards BEREC would undermine the independence of the regulators, impair their work, and erode stakeholder's trust in the institutions. Effectively, the proposed changes could be seen as creating a backdoor for the Commission to neutralise one of the main critics of its current agenda.

Proposed Solutions

The setup and tasks of ODN[25] should be scrutinised to ensure the independence and confidentiality of the work of BEREC's work. References to ODN regarding the voluntary conciliation mechanism in Article 191 should be removed.

FINAL REMARKS

Certified Network Monitoring Mechanism

From a consumer perspective, the monitoring mechanism certified by national regulatory authorities plays a vital role in obtaining remedies against non-compliant internet service contracts. If an ISP fails to deliver the contractually agreed bandwidth and quality-of-service parameters, this monitoring mechanism (network measurement tool) is often the only way for consumers to exit this contract. However, we have seen widely varying approaches and timelines for the provision and certification of these monitoring tools.

In the spirit of completing the digital single market and empowering consumers to make informed decisions, we would suggest tasking BEREC (or the ODN) with providing and certifying a monitoring mechanism and ensuring its recognition in all Member States.[26]

Furthermore, such a network measurement tool could help both consumers and NRAs to obtain better insights into the interconnection situation in practice, by hosting measurement servers in various networks and countries and tunnel traffic via transit connections in order to complement the picture. Such measurement data should be made available as open data after anonymisation.

25 See Title V and Article 146
26 See Article 97(4) and Article 122