

Submission in the Call for Evidence

Digital Networks Act

11. July 2025

Introduction

We want to thank the Commission for the opportunity to provide a submission in the call for evidence for the upcoming proposal for a Digital Networks Act¹. Our answers are also informed by the accompanying questionnaire about potential amendments of the legal framework for electronic communications².

Epicenter.works is a digital rights NGO working for over 15 years at the intersection of human rights and technology. We have been following the issue of net neutrality since 2012³, were involved in the creation of the Open Internet Regulation from 2013 till 2015, all subsequent BEREC reforms from 2016 till today, contributed to the network fee debate since 2022⁴ and participated in the regulatory and judicial debates around net neutrality in Germany, Portugal, Austria, India, Brazil and Colombia⁵.

This Submission is supported by the IT-Political Association of Denmark (EU transparency register number: 685809321315-95) and the digital rights NGO Initiative für Netzfreiheit (Austrian registration number: 675848645).

Upholding Net Neutrality

We want to strongly object to the premise that the Open Internet Rules lack legal clarity and are in need of reform⁶. There is no evidence to support the need for “interpretative guidance”⁷ that risks stripping essential protections away from consumers.

The Commission’s own evaluation of the Open Internet Regulation (EU) 2015/2120 from 2019⁸ emphasizes the legal clarity this regulatory framework brings and how important those protections are for European citizens. The ECJ has only further clarified the legal situation by prohibiting zero-rating offers in 2021⁹, which helped complement the net neutrality framework in light with fundamental rights and the protection of end-user rights.

1 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14709-Digital-Networks-Act_en

2 <https://ec.europa.eu/eusurvey/runner/c9221526-34d4-5f9f-0554-c594a4adb139#>

3 <https://epicenter.works/en/thema/net-neutrality>

4 https://epicenter.works/en/documents?tx_news_pi1%5BoverwriteDemand%5D%5Btags%5D=4 and

<https://epicenter.works/content/report-the-net-neutrality-situation-in-the-eu>

5 <https://netzbremsen.de/en/>, <https://epicenter.works/content/submission-to-anacom-on-portuguese-net-neutrality-violations>, <https://epicenter.works/content/submission-to-indian-regulator-trai-on-regulatory-mechanism-for-over-the-top-ott-communication-services-and-selective-banning-of-ott-service>, <https://epicenter.works/content/submission-to-the-consultation-of-brazilian-telecom-regulator-anatel-on-network-fees> and <https://epicenter.works/content/submission-to-the-constitutional-court-of-colombia-about-the-constitutionality-of-zero-rating>

6 See page 2 of the call for evidence: “a lack of legal clarity of the Open Internet Rules concerning the regulatory treatment of innovative services”

7 See page 3 of the call for evidence: “The DNA could include: [...] a clarification of the Open Internet rules concerning innovative services, e.g. by way of interpretative guidance, while fully preserving the Open Internet principles.”

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

9 C-854/19, C-5/20 and C-34/20, as well as their implementation in BoR (22) 81

There is only one historical example of repealing net neutrality protections: the first Donald Trump administration. We urge the Commission to refrain from this historic mistake! In the absence of new evidence the decision to open Europe's essential net neutrality framework risks undermining the trust of Europeans in the objectivity and public interest of the EU.

Nothing supports 5G conflicting with Net Neutrality

The premise put forward for reform of the net neutrality rules is that 5G technology elements require adaptation of the legal framework to ensure legal clarity for promised new innovative services. Yet, BEREC continuously investigated this question and could not find any evidence supporting the claim that 5G technology offers challenges to Europe's net neutrality rules: *"To date, BEREC is not aware of any concrete example from stakeholders where the implementation of 5G technology as such would be impeded by the Open Internet Regulation."*¹⁰

Besides the above mentioned collective opinion of Europe's telecom regulators, there are also no international examples of 5G technology enabling the kind of innovative services the telecom industry promises. This holds true also in regions without net neutrality protections, like in most Asian countries or in all but two states of the USA. In most developed countries 5G technology is being rolled-out for about five years now and nowhere did such innovative services emerge with any widespread adoption.

The net neutrality framework of the EU was drafted technologically neutral. Its goal was to protect consumers and the innovative capacity of the open internet. Examples around self-driving cars, telemedicine and other industry promises were discussed at length in 2015 during the trialogue phase of the negotiations. Commissioner Günther Oettinger even managed to inspire satirical videos¹¹ with his baseless claims about the negative effects net neutrality would bring. His fears have since been proven to be unfounded, yet we find the European Commission using the same examples of 5G enabled services, that were dismissed a decade ago. Importantly, even in countries without any net neutrality framework 5G technology has neither delivered on self driving cars nor widespread adoption of telemedicine applications.

Specialized Services

The legal provisions on Specialized Services¹² in the Open Internet Regulation were intentionally designed by lawmakers to allow for new innovation as long as it technically requires optimization that cannot be delivered via the open, best effort internet. Any deviation from this principle would allow telecom companies to reclassify existing online services as specialized services, which would give them preferential treatment and surmount to a paid fast lane.

Importantly, the Open Internet Regulation is drafted technologically neutral. There is nothing in the law that contradicts or excludes technological features of 5G or 6G technology. To the contrary, 5G was already a strong talking point in the negotiations and has been reflected by lawmakers. Subsequently, the BEREC Guidelines for the Implementation of the Open Internet Regulation were reformed in 2020 to further incorporate technological features of 5G into the net neutrality framework.

10 https://www.berec.europa.eu/en/all-topics/5g?language_content_entity=en

11 <https://www.youtube.com/watch?v=g6fXpo8uQtA>

12 Also referred to as "Managed Services", non-BIAS services or Services other than Internet Access Service according to Article 3(5) of Regulation (EU) 2015/2120.

Yet, should the Commission believe that further evidence has emerged that would require another reform of Europe's net neutrality rules, the best and most efficient way for an update is tasking BEREC with a review of the Open Internet Guidelines to incorporate any new technical realities. This would ensure a just and evidence based reform in light of the collective knowledge of all stakeholders.

Preserve the Independence of BEREC

We are worried about the assumption of the Commission in the call for evidence that the existing regulatory setup has shown limitations¹³. The independence of regulatory agencies is vital for ensuring fair market conditions for all participants and a healthy competitive environment for consumers that leads to freedom of choice and low prices.

The suggestion in the Call for evidence to provide "interpretative guidance" to the Open Internet rules resembles the 2013 Telecom Single Market proposal in which the Commission gave itself many of the powers that the lawmakers entrusted to BEREC in the final legislation¹⁴. This would turn back the clock and undermine the role of BEREC as an expert institution known to act impartial and evidence based.

The current regulatory setup was discussed in the reform of the BEREC regulation in 2018 and both the Council and Parliament came to the conclusion not to change it. BEREC and NRAs have proven their ability to provide expert and impartial analysis in light of a changing technological landscape that leads to effective regulation. All telecommunication networks are inherently local and the national regulatory agencies are best suited to decide on matters concerning their member states. Hence, it would be unfounded to centralize telecom regulation on EU level.

Importantly, BEREC is a sober voice that speaks truth to power – also in light of proposals by the European Commission that appear to cater more to the special interest of powerful industry players instead of being guided by facts and the interests of citizens. Any impairment on the independence of BEREC risks undermining an important source of independent analysis that all stakeholders – particularly citizens and the European Parliament rely upon.

Dispute Resolution leads to Network Fees and Sending Party Pays

The call for evidence indicates that the DNA aims to tackle "*challenges in the cooperation between the various digital players in the digital infrastructure ecosystem*"¹⁵ and under the heading "Level Playing Field" the policy option "*creating effective cooperation among the actors of the broader connectivity ecosystem giving the empowerment of NRAs/BEREC to facilitate cooperation under certain conditions and in duly justified cases*"¹⁶ is proposed. The accompanying questionnaire on the Digital Single Market specifies in the question about IP interconnection and Level Playing Field a Dispute Resolution Mechanism among other options¹⁷.

13 See page 2 of the call for evidence: "Finally, on governance, the past 15-year experience has shown the limitations of the existing governance system with the Body of European Regulators for Electronic Communications (BEREC) and the Radio Spectrum Policy Group (RSPG) having an advisory role vis-à-vis the Commission, and limited role to contribute to furthering the single market."

14 See Article 24(3), Article 25(2) or Article 26(4) of COM (2013) 627

15 See page 2 in the call for evidence.

16 See page 3 in the call for evidence.

17 See question 20 <https://ec.europa.eu/eusurvey/runner/c9221526-34d4-5f9f-0554-c594a4adb139#>

Importantly, even the first ETNO study that kickstarted the network fee debate in 2022 included a dispute resolution mechanism as one of the policy options for establishing Sending Party Pays (“fair share”)¹⁸.

In multiple public consultations from the Commission these ideas have been rejected by a very broad and diverse group of stakeholders¹⁹. They found that such ideas would lead to higher prices for consumers, infringements on net neutrality, harm innovation and reduce media plurality. BEREC has also published several analyses voicing concerns and raising the alarm about the impact of such proposals²⁰. In the most recent interconnection report from December 2024 the regulators also found no evidence that would justify regulatory intervention²¹.

All these arguments are well known to the Commission²². An evidence based approach has to lead to the rejection of a regulatory intervention of the interconnection market. The existing net neutrality framework provides enough protections, if it were applied to the few problems that very large telecom operators are artificially creating in the interconnection market. We have filed a complaint to the German regulator Bundesnetzagentur to highlight these exceptional problems and indicated in line with the findings of BEREC, how the existing regulatory framework allows to address these²³.

Conclusion: No need for a DNA

To conclude, we cannot find any evidence that supports the premise of the Commission that there is a need for a Digital Networks Act. The risks of undermining user protections, reducing competition and thereby increasing prices, far outweigh any potential benefits. The basic premise of the DNA is similar to the elements that were removed in the Telecom Single Market proposal from 2013 based on broad consensus in the parliament and council²⁴ (EU wide authorization, harmonization of spectrum, centralize telecom regulation, interference in the interconnection market, etc.) There are few reasons to believe that the outcome for these old ideas will be different a decade later.

Furthermore, EECC has only recently been adopted in most Member States. Reforming this framework so soon and elevating it from a Directive to a Regulation risks regulatory overreach. Telecom regulation is inherently local and should give leeway for Member States to account for the diversity of their particular regulatory landscape.

Finally, if the Commission does believe there are technical realities that need to be accounted for in the net neutrality framework, it can task BEREC with updating their guidelines.

18 https://www.telefonica.com/en/wp-content/uploads/sites/5/2022/05/20220425_Axon-Full-Report-Final-corrected.pdf

19 <https://political-intelligence.com/news/unlocking-the-future-of-connectivity-an-in-depth-analysis-of-the-public-consultation-on-the-white-paper/>

20 <https://www.berec.europa.eu/en/document-categories/berec/others/berec-input-to-the-ecs-exploratory-consultation-on-the-future-of-the-electronics-communications-sector-and-its-infrastructure>

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

22 <https://epicenter.works/content/myths-about-net-neutrality-debate-on-network-fees-aka-fair-share>

23 <https://netzbremse.de/en/>

24 COM (2013) 627