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## **Draft of the General Authorisation and Registration Rules in the Electronic Communications Sector (Par vispārējās atļaujasun reģistrācijas noteikumiemelektronisko sakaru nozarē)**

Dear Sir or Madam,

For various reasons, we unfortunately only learned about the public consultation on the draft "General Authorisation and Registration Rules in the Electronic Communications Sector" after the end of the feedback period on 24 May.

Since we, as manufacturers of telecommunications terminal equipment (e.g. routers, modems, telephones, telephone systems or alarm systems), would be affected by the provisions of the draft rules, we would like to take the liberty of submitting a few comments to you in this way. We hope that our comments can be taken into account in the evaluation of the public consultation on the draft rules. At the very least, however, we would be pleased if you would keep the following comments in mind in the further discussion of the draft rules.

### **General remarks**

VTKE expressly welcomes the fact that with the present draft regulation the SPRK is Article 61 (7) of Directive 2018/1972 (European Electronic Communications Code, EECC) while taking account of the BEREC Guidelines on the Identification of the Network Termination Point (BoR (20) 46, hereinafter "BEREC Guidelines"). It is positive that the issue of identifying/defining the network termination point (NTP) and thus the possibility for end-users to freely choose the telecommunications terminal device at their broadband connection is being addressed.

In this context, we would like to note that the possibility for end-users to choose the terminal equipment at their broadband connection is already explicitly laid down in European law (cf. Art. 3(1) Regulation (EU) 2015/2120). A precise and unambiguous regulatory definition of the NTP at point A<sup>1</sup>

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<sup>1</sup> See "Figure 2: Different locations of the fixed NTP in case of an internet access service" in BEREC Guidelines on Common Approaches to the Identification of the Network Termination Point in different Network Topologies (BoR (20) 46), p. 5; a network termination point at "point A" corresponds to the "socket on the wall", which allows direct access to the physical transmission medium/cable (subscriber line)



by the SPRK would bring this to life in all member states of the European Union - including Latvia - and make it fully applicable in practice.

We consider the possibility for end-users to freely choose the terminal device on their broadband connection, which is also enshrined in European law, to be extremely important in order to counteract the following disadvantages of so-called "obligatory routers":

The restriction of the free choice of telecommunications terminal equipment ...

**... Restricts the end-users' freedom of choice.**

End-users are restricted in their freedom of choice, as they can no longer use the terminal device they want on their Internet connection. Especially in times of pandemics, it has become apparent how important an innovative terminal device equipped with suitable functionalities is for digital networking.

**... Prevents the optimal use of modern, high-capacity broadband infrastructure.**

Many network operators provide their customers with terminal devices that are limited in their functionality or less powerful than commercially available devices. No matter how high-performance the broadband infrastructure is – the user is unable to benefit from it.

**... Makes changing the provider more difficult.**

If the customer opts for a new provider, the worst-case scenario is that they can no longer use their old device, and may even have to purchase and set up a new device.

**... Creates a difficult data protection situation.**

If the terminal device with its local routing functions is part of the public telecommunications network, the communication within the private home networks that was previously conducted via private networks (Wi-Fi, DECT, telecommunications systems) becomes public communication, controlled by the network providers. Sending text or photos over Wi-Fi to a wireless printer, for example, would become public communication that the network provider potentially has access to. It's questionable in terms of data protection law that network providers are able to gain insight into private activities in the home network in this way.

In addition, the terminal device is „aware of“ additional, familiar technical data, such as a list of all devices present in the private network (e.g. notebooks, tablets, smartphones, printers), the times at which the above-mentioned devices are switched on and off, the assignment of Internet traffic to a particular device, telephone books, call lists, call diversions, access data to other services, connected USB devices and their contents. If the provider has sovereignty over the terminal device, this data would theoretically be visible to the network provider.

**... Causes problems with IT security.**

Compulsory routers lead to an infrastructural monoculture. In the event of security problems with a terminal device (e.g. a hacker attack), a large number of terminal devices would be affected. The end users would have to wait for their network provider to resolve the problem, remaining at risk during

the waiting period. If they could choose their own terminal equipment, they could simply purchase a new, secure terminal device and solve the situation themselves.

**... Puts net neutrality potentially at risk.**

Restricting the right to be connected would no longer allow non-discriminatory network access. Moreover, the user can no longer decide for themselves which services are transmitted with which quality.

**... Has ecological and economic disadvantages for the end-user.**

Cascading i.e. connecting a compulsory terminal device to a freely chosen terminal device, often via an Ethernet cable, is also problematic. Both devices require power, resulting in increased costs. The end user pays electricity costs for a device that does not belong to them, but over which the network provider has sovereignty. There are also purchase costs for the device stipulated by the provider.

**... Leads to a lack of competition which in turn affects innovation and technical progress.**

Restricting freedom of choice of terminal equipment counteracts the open competition of a free market economy. The consequences of this are: terminal device manufacturers' incentive to innovate decreases, innovation cycles get longer, end users benefit less from innovation and it has a knock-on effect on the employment situation of the industry.

**... Puts the EU's digital sovereignty in the terminal equipment sector at risk.**

The lack of competition for the best terminal device in the EU reduces the clout of European manufacturers and Europe's ability to act.

In order to ensure that the right of end-users to free choice of terminal equipment, as laid down in Art. 3 Para. 1 of Regulation (EU) 2015/2120, is also applied in practice, we would like to appeal to you as the national regulatory authority to make use of your competence to "uniformly define" the network termination point and - in line with and taking the "utmost" account of the BEREC Guidelines - to define it in a binding manner for all market participants at so-called "point A" (passive network termination point; "socket on the wall"/connection socket to the line).

**On individual points of the draft rules**

*[From the introduction:]*

*Taking into account BEREC Guideline BoR (20) 46<sup>4</sup> of 5 March 2020, which was developed pursuant to Article 61(7) of the Directive, the draft Regulation sets out separate definitions for a fixed electronic communications network connection point and a mobile electronic communications network connection point, defines the location of the connection point and requires an electronic communications undertaking to inform the end-user of the technological necessity for the provision of an electronic communications service to place its equipment on the end-user's premises.*

*[From the draft rules:]*

*14. The service boundary of an electronic communications service shall be defined by the electronic communications undertaking at the same point as the point of connection to the electronic*



*communications network, which shall be the electronic communications network home boundary, unless otherwise agreed between the end-user and the electronic communications undertaking.*

The problem of "obligatory routers" lies in the fact that due to the lack of a regulatory definition of the network termination point, the network operators arbitrarily determine where the network termination point is located.

This is the basis for widespread "obligatory routers" because the network operator's definition of the network termination point commonly deviates from the localisation of the network termination point at "point A" (passive network termination point; "socket on the wall"/connection socket to the line), which is favoured/intended as the rule by the BEREC Guidelines.

The resulting restriction of the free choice of terminal equipment and the fragmentation of the connection situation due to the arbitrary definition of the network termination point is to be counteracted with the competence of the national regulatory authority to carry out the "consistent definition" of the location of the network termination point as set out in Art. 61 Para. 7 of Directive (EU) 2018/1972 (EECC).

It must precisely not be in the hands of the network operators to determine where their public network ends and where the private network of the end-user begins. Rather, the EECC provides that a competent, neutral body should do this - namely the national regulatory authorities (see Art. 61 Para. 7 EECC). In addition, according to the EECC, the definition of the network termination point should be "consistent" which is why it cannot be defined individually by each network operator and possibly differently.

In order to achieve the goal of a completely free choice of terminal equipment, we would like to suggest that a precise definition of the network termination point should be made by the SPRK in order to eliminate any room for interpretation by market participants. Only an unambiguous definition of the network termination point as "point A" or "passive" creates clarity for end-users, network operators and terminal equipment manufacturers, restores the free choice of terminal equipment intended by European regulation (Art. 3 Para. 1 of Regulation (EU) 2015/2120) in Latvia and prevents uncertainty as well as market fragmentation.

The current wording regarding the "point of connection to the electronic communications network" (network termination point) in the draft rules is, in our opinion, not clear enough to ensure that end-users will be able to connect and use a terminal device of their choice in the future. Against this background, the draft rules need to be clarified, for example as follows:

*14. The service boundary of an electronic communications service shall be ~~defined by the electronic communications undertaking~~ at the same point as the point of connection to the electronic communications network, ~~which shall be the electronic communications network home boundary,~~ **which shall be passive** ~~unless otherwise agreed between the end-user and the electronic communications undertaking.~~*

However, from our point of view, it is very welcome that the provisions on the "point of connection to the electronic communications network" should apply to all access technologies - i.e. fibre, cable and DSL.



Experience from markets where there is already a free choice of telecommunication terminals (e.g. Italy or Germany) shows very clearly that a passive network termination point ("point A") can be implemented for all access technologies without any problems.

***15. An electronic communications service provider shall have the right to prohibit the connection to a connection point of end-user terminal equipment that does not comply with the applicable technical parameters of the electronic communications network connection point published on the website of the electronic communications service provider.***

The possibility for the network operator to refuse connection of terminal equipment that does not meet the technical requirements of the respective network is certainly an essential prerequisite for ensuring interoperability between network and terminal equipment.

However, the denial of the right to connect terminal equipment to the public network, which is also enshrined in European regulation (cf. Art. 3b) of Directive 2008/63/EC), presupposes that the network operators actually and fully comply with their obligation to adequately publish the technical characteristics of the interfaces of the public network (network termination point) on their website.

It should also be noted that the denial of the right to connect should only apply if the lack of interoperability ultimately actually causes disruptions in the network.

***16. An electronic communications service provider shall be obliged to inform the end-user of the need to place the electronic communications service provider's equipment on the end-user's premises if it is objectively technologically necessary for the provision of the electronic communications service, by publishing a justification of the need on its website.***

According to the BEREC Guidelines, exceptions to a network termination point at "point A" (passive network termination point) should only be possible if justified by "objective technological necessities" (cf. Guidelines 18., 28., 29., 49. and 52.).

Based on our experience from countries where end-users have the possibility of using a terminal device of their own choice on their broadband connection, it is very clear that there are no technical reasons whatsoever that speak against a passive network termination point and thus a free choice of terminal equipment.

Against this background, we believe it is necessary for a neutral body to decide on the legitimacy of any "objective technological necessities" put forward by the network operator(s) for a non-passive network termination point.

With the transfer of the competence to decide on the technological necessity of whether a terminal device is part of the private home network of the end-user or part of the public network under the sovereignty of the provider to the network operators, the "consistent definition" of the network termination point demanded by the EECC is not taken into account at all. On the contrary, there is still a real danger of fragmentation of the market and connection situation as well as a continuation of "obligatory routers" due to the arbitrary declaration of "objective technological necessities", which beyond that may differ from network operator to network operator. The consumers suffer most from

this as they will continue to not be able to freely decide on the terminal device at their broadband connection in most cases in the future.

From a procedural point of view, it should be ensured that the justification for the exception from the rule - the passive network termination point ("point A") - is not examined only after the introduction of a product (excluding products existing at the time of the adoption of these rules), but in advance. This is the only way to prevent network operators from creating facts that can only be reversed retroactively with great effort.

*49. Before providing an interconnection, electronic communications undertakings shall agree on the technical and operational conditions of the electronic communications network, specifying the following information in the interconnection agreement:*

- 49.1. a description of the technological solution for the interconnection;*
- 49.2. the location of the point where a physical connection of electronic communications networks is established (hereinafter referred to as the interconnection point) within the territory of the Republic of Latvia or the location of the interconnection point outside the territory of the Republic of Latvia, if this is technologically feasible;*
- 49.3. the mechanical characteristics of the interface at the point of interconnection;*
- 49.4. the electrical characteristics of the interface of the interconnection point;*
- 49.5. an electronic communications service for which an interconnection is used;*
- 49.6. the payment arrangements for interconnection;*
- 49.7. procedures for reporting and paying for damage repairs;*
- 49.8. the time needed to repair the damage;*
- 49.9. the procedure for installing an additional interconnection line or connection;*
- 49.10. dispute settlement procedures*
- 49.11. the conditions for the operation, amendment and termination of the interconnection agreement;*
- 49.12. other information, if necessary*

As described above, we consider it incompatible with European (legal) requirements and detrimental to the objective of free choice of terminal equipment for end-users that network operators independently determine the location/definition of the network termination point and specify it in accordance with No. 49.2. We therefore propose deleting this passage from No. 49.

## Summary

In summary, we would like to state that we welcome the fact that the SPRK is dealing with the issue of the definition of the network termination point and the associated possible restoration of free choice of telecommunications terminal equipment in Latvia.

However, we consider the regulatory requirements in the draft rules to be either insufficient or even counterproductive to achieve this goal.

First and foremost, it is not the network operators who may decide on the definition of the network termination point and "objective technological necessities" for exceptional cases, but – in line with the requirements of the EECC - this must be done by the national regulatory authorities.



Furthermore, we consider it necessary that the SPRK defines the network termination point at "point A" (passive network termination point) in a binding manner. This is provided for in the BEREC Guidelines, which shall be taken "utmost account" of by national regulatory authorities when defining the network termination point, as a rule.

In this way, the end-users' right to free choice of terminal equipment, which is enshrined in Art. 3 (1) of Regulation (EU) 2015/2120, can be implemented in practice for all access technologies.

We are happy to be available for further information or an exchange of views. Please do not hesitate to contact us.

Yours sincerely

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