



Czech **Telecommunication** Office

Report of the Czech Telecommunication Office

**on the results of monitoring compliance with Regulation (EU) 2015/2120
of the European Parliament and of the Council of 25 November 2015
laying down measures concerning open internet access and amending
Directive 2002/22/EC on universal service and users' rights relating to
electronic communications networks and services and Regulation (EU)
No 531/2012 on roaming on public mobile communications networks
within the Union,
for the period from 1 May 2017 to 30 April 2018**

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1. Introduction

The Czech Telecommunication Office (hereinafter also referred to as the “CTU”), as the national regulatory authority for electronic communications in the territory of the Czech Republic, has drawn up, in accordance with Article 5 (1) of Regulation (EU) 2015/2120, a report on the results of monitoring compliance therewith for the period from 1 May 2017 to 30 April 2018.

The purpose of the material is not only to assess the development in compliance with the Regulation over the reference period, but also to contribute to increase the awareness of the obligations and rights arising from the Regulation to providers of internet access services and to end-users in order to prevent the shortcomings and problems identified in the reference period from repeating.

Regulation (EU) 2015/2120 is a legislation of the European Union directly applicable to the territory of the Czech Republic, regulating the issue of so-called net neutrality. In particular, it guarantees, with effect from 29 November 2015, access to open internet, i.e. the right to access, through one’s internet access service, information, content and distribution thereof, use and provision of applications and services, as well as the possibility to use the internet access service via terminal equipment of the user’s choice. Providers of internet access services are therefore obliged to ensure open internet access, and (except in the cases and situations set out in Regulation (EU) 2015/2120) treat all data traffic equally, i.e. without discrimination, restriction and interference. In particular, it is prohibited to block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof, when providing internet access services.

In order to increase the transparency of internet access services and to enable end-users to make an informed choice of this service and its provider, Regulation (EU) 2015/2120 also lays down which basic information on the internet access service must be included in the contract for its provision. In connection with the aforementioned, it also requires that internet access providers introduce transparent, simple and effective procedures for dealing with end-users’ complaints concerning infringements of their rights guaranteed by this Regulation.

By infringing the obligations laid down in Regulation (EU) 2015/2120, a provider of internet access services may commit one of the offences specified in Section 118 (12) (p) of Act No. 127/2005 Coll., on electronic communications and on amendment to certain related acts, as amended (hereinafter referred to as the “Electronic Communications Act”). The facts of these offences were incorporated into the Czech legal system with effect from 9 July 2017. For such offences the CTU may impose a fine of up to CZK 15,000,000 or 5% of the net turnover achieved in the last completed financial year (whichever amount is higher). If the contract for the provision of internet access services is contrary to the Electronic Communications Act or certain consumer protection rules, the CTU is also entitled to order the provider to amend its contract terms.

In order to unify the interpretation of Regulation (EU) 2015/2120 in the territory of the Union, *BEREC¹ Guidelines on the Implementation by National Regulators of European Net Neutrality Rules²* (hereinafter referred to as the “BEREC Guidelines”) were issued in August 2016. Within the Czech Republic, the *Czech Telecommunication Office’s Statement on Selected Questions of Open Internet Access and on European Net Neutrality Rules³* (hereinafter referred to as “CTU’s Statement on European Net Neutrality Rules”), in which the CTU expresses its opinion on some problematic areas of internet neutrality and informs the public about the approach it will take. In particular, it deals with the issue of access to the internet, which, although provided via mobile networks (especially based on the 3G and LTE technologies), is only intended for use at a specific place or places laid down in the service provision contract (so-called internet at a fixed location via mobile networks). It also defines what the CTU will consider as failure to comply with the performance of the internet access service laid down in the contract.

According to the statistics for 2017, internet access services are provided via fixed networks to a total of 2,965,885 subscribers in the Czech Republic. Regarding access to the internet via mobile networks, the number of subscribers is 8,691,315. This number includes not only the mobile internet as such, but also the so-called internet at a fixed location provided via mobile networks. The aforementioned method of providing internet access services has been steadily increasing in recent years. According to the data for 2017, internet access services at a fixed location via mobile networks were used by a total of 279,940 subscribers.⁴

The CTU’s activities related to the net neutrality rules and open internet access can be divided into repressive activities - aimed at determining whether Regulation (EU) 2015/2120 is complied with by internet access providers and, if deficiencies are found, imposing rectification of the situation and, where appropriate, sanctions - and preventive measures, aimed at increasing the legal awareness of not only internet access providers but mainly end-users in order to ensure that users are aware of the rights guaranteed by Regulation (EU) 2015/2120 and, simultaneously, use the tools for their protection (complaints, claims) offered to them by this Regulation and contract terms. The CTU also uses the information from these activities for this report. Specifically, the information was obtained as part of the CTU’s inspection activities, in particular by reviewing draft contracts on provision of internet access service of significant providers of internet access services, with both nationwide and regional operation, by continually monitoring and assessing the situation in the Czech market, including monitoring suggestions and complaints by end-users, and by conducting analyses of compliance of newly offered services and their terms and conditions with the European net neutrality rules. Another source of information and documentation was requests for information addressed to internet access providers, as well as individual meetings of the CTU with the service providers. The CTU also began to carry out its own technical measurements using measurement technologies

¹ Body of European Regulators for Electronic Communications.

² This document is available on the BEREC’s website:

https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/6160-berec-guidelines-on-the-implementation-by-national-regulators-of-european-net-neutrality-rules; an unofficial translation of this document into Czech is available on the Czech Telecommunication Office’s website.

³ Available on the Czech Telecommunication Office’s website:

https://www.ctu.cz/sites/default/files/obsah/ctu/vyjadreni-ceskeho-telekomunikacniho-uradu-k-vybranim-otazkam-pristupu-k-otevrenemu-internetu/obrazky/vyjadreniceskehotelekomunikacnihouradukvybranimotazkampristupukotevrenemuinternetuaeavr_opskympravidlu.pdf

⁴ This data is based on the collection of statistical data carried out by the Office for 2017. However, as of the date of publication of this report, this data has not been verified.

– so far only in the test mode. Last but not least, it is also necessary to mention the coercive measures imposed by the CTU (within administrative proceedings) to ensure compliance of the terms and conditions of the provided services with the Regulation.

During the reference period, the CTU carried out more than 150 inspections of the contract terms including internet access services with 76 different providers of these services. This means that it inspected providers offering in total more than 70% of fixed-internet access (more than 75% if internet provided at a fixed location via mobile networks is included); in the area of mobile internet, the CTU inspected the contract terms of providers with more than 94% market share. In addition to the aforementioned activities, the selected mobile virtual operators (12) were also requested to provide information regarding compliance with the obligations laid down in Article 3 paragraph 3 and 5 of Regulation (EU) 2015/2120.

Not only to monitor compliance with internet neutrality rules, but also to increase the legal awareness of the providers of these services about their obligations under Regulation (EU) 2015/2120 and to provide information about the CTU's current interpretation and its approach to the individual net neutrality issues, the CTU initiated approximately 100 individual meetings with the individual providers of internet access services. It also participated in a number of professional seminars, conferences and workshops for providers of electronic communications services where the CTU presented the methods it uses (or, as the case may be, is preparing) to measure data parameters of the internet access service, as well as the practical experience gained from the measurements carried out.

Given the CTU's findings, a total of 24 administrative proceedings were initiated in the reference period, most of which were conducted as joint proceedings and related to infringements of several provisions of Regulation (EU) 2015/2120. Until 30 May 2018, 15 of them were compelled with final decisions; in all cases, the provider of internet access services was ordered to amend the contractual terms governing the provision of internet access or, as the case may be, to abstain from conduct that infringed the European net neutrality rules.

As in the previous reference period (i.e. from 1 May 2016 to 30 April 2017), subscribers' and end-users' complaints (and suggestions) related to internet access services were regularly monitored and evaluated by the CTU every calendar quarter. In addition, complaints relating to internet access services have had a more detailed structure since October 2017, depending on which of the obligations of the internet access provider laid down in Regulation (EU) 2015/2120 they are related to.

In order to ensure both the consistent application of the European net neutrality rules in the territory of the European Union and the predictability of the regulators' decision-making, the CTU also actively participated in the meetings of the expert working groups established for the area of internet neutrality by BEREC (Body of European Regulators for Electronic Communications) and monitored the development of the decision-making practice of regulatory authorities of the individual Member States of the Union.

The results of monitoring compliance with Regulation (EU) 2015/2120 for the period from 1 May 2017 to 30 April 2018 provided in this report were processed in accordance with the requirements laid down in the BEREC Guidelines (in particular paragraphs 182 and 183). However, the CTU's findings relating to Articles 3 and 4 of Regulation (EU) 2015/2120 have a

more detailed structure, using BEREC's Internal Questionnaire on the National Implementation of Regulation (EU) 2015/2120 of.

2. Activities aimed at implementing and inspecting compliance with Regulation (EU) 2015/2120 carried out in the period from 1 May 2017 to 30 April 2018

In the period 2017–2018, the Czech Telecommunication Office continued and further developed the activities aimed at implementing Regulation (EU) 2015/2120 and inspecting compliance by providers of internet access services that were launched in the previous reference period.

In the area of technical monitoring of networks, the CTU's "*Measuring of Data Parameters of Networks Using the TCP Protocol*" methodological procedure and the "*Methodology for Measuring and Evaluating Data Parameters of Fixed Electronic Communication Networks*" were updated, based on the operational and practical experience from previous measurements of data parameters. These documents are currently being consulted with the professional public. The "*Methodology for Measuring and Assessing Data Parameters of Mobile Electronic Communications Networks*" has been available on the CTU's website since February 2017. In addition, as part of a public procurement contract, an application enabling import and visualization of radio and data parameter values of mobile radio-communications networks measured by the CTU (for example, only in the period from 30 April 2017 to 1 May 2018, the CTU carried out several thousands technical measurements of the data speed of mobile networks in selected locations of the Czech Republic). In the first phase, the visualization of the main railway corridors and motorways in the territory of the Czech Republic will be made available to the public in the form of interactive maps that will be available on the CTU's website.

In addition, the "*Measuring System of Electronic Communications*" project is being implemented, which is a comprehensive measuring infrastructure for the purposes of inspection and verification of selected parameters of electronic communications data services provided to end-users in mobile and fixed networks. In the future, this measuring system should have both a publicly available tool for measuring the current quality of internet access services and certified technology for measuring and inspection. Cyber security features will also be implemented. Currently, to verify the speed and overall quality of the internet access service, the public can use the Netmetr service (www.netmetr.cz), which is operated by the independent association CZ.NIC with CTU's support. However, this application is not (yet) certified within the meaning of Regulation (EU) 2015/2120.

Since the beginning of 2017, the CTU, together with the Slovak and Slovenian regulators for electronic communications, have been participating in the MoQos project ("*Open Crowdsourcing Data Related to the Quality of Service of High-Speed Internet*", www.moqos.eu), which aims to make it possible to compare data on the availability and quality of high-speed internet from end-users in both mobile and fixed networks and subsequently visualise the measured values. In addition to the standard measuring of data download and upload speeds, the Open Nettet application developed within this project allows a number of additional tests (over 70) to assess quality of access and compliance with net neutrality rules.

The CTU also regularly informs the professional public about these activities, especially through participation of its representatives in conferences and professional seminars such as a workshop organised by the Association of the Cable and Telecommunication Operators (November 2017), the FTTx Networks seminar (March 2018), the international conference Internet in State Administration and Local Administration 2018 and many more.

In the reference period, planned inspections were carried out of compliance of the contract terms of the providers of internet access services with Regulation (EU) 2015/2120. Compared to the previous period, when these inspections were exclusively focused on nationwide, major providers of internet access services in the Czech Republic, their scope was now extended to also cover regional internet access providers. In total, more than 150 inspections of draft contracts involving an internet access service were carried out, focusing on 76 providers of such a service. The CTU also inspected compliance with Article 3 paragraph 3 and 5 of Regulation (EU) 2015/2120, focusing on 12 other providers through requests for information, i.e. the data traffic management measures applied by them and the provision of the so-called specialised services⁵. Following the inspections carried out and the detected infringements of the Regulation, the CTU initiated 24 administrative proceedings as of 30 April 2018. In 15 cases, the decision has become effective.

In order to familiarise the providers with the conclusions of the inspection and to obtain additional information, as well as to provide the internet access providers with detailed information on the net neutrality rules and the Czech Telecommunication Office's interpretation, the CTU also initiated approximately 100 individual meetings with the providers of these services.

In addition to thematically targeted inspections of contract terms and requests for information addressed to internet access providers, the CTU also continuously monitored market developments, particularly in the area of mobile internet access, where a restriction on the amount of transmitted data is applied. A number of new products offering a certain form of zero-rating or other price bonus for some types of data services in the mobile internet market in the Czech Republic were launched in the reference period. The CTU analysed these offers in detail in all cases and, if it found that the applied practice could infringe the net neutrality rules or other legal regulations of the Czech Republic, it called upon the service provider to make adjustments. The offers of these new services continue to be closely monitored by the CTU.

Given that the legal awareness of network neutrality rules is still relatively low, according to the findings of the CTU in the Czech Republic, including many providers of internet access (especially regional or local), the CTU considers it extremely important to inform the professional public about the obligations imposed on them by Regulation (EU) 2015/2120 and about the most frequent infringements detected. For this reason, besides the aforementioned communication with service providers and participation in conferences and professional seminars, the CTU also deals with this issue in its monthly monitoring reports.

⁵ These services are defined in Article 3 (5) of Regulation (EU) 2015/2120, i.e. "*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*".

3. Compliance with Article 3 of Regulation (EU) 2015/2120 by providers of internet access services in the Czech Republic in the period from 1 May 2017 to 30 April 2018

In monitoring compliance with Article 3 of Regulation (EU) 2015/2120 in the Czech internet access services market, the CTU particularly used the information obtained by carrying out the activities specified in the Preamble and Section 1 of this report. In particular, it carried out inspections of the contract terms and made requests for information addressed to the operators. Technical monitoring of networks, the primary objective of which was to verify whether the right of open internet access has been ensured and whether the providers treat all data traffic equally, has not yet been implemented, in addition to testing the measurement procedures. Currently, however, the CTU is preparing a draft technical concept to verify whether offers of zero-rating for music and video streaming services limit data flow.

3.1. Restrictions on the use of technically compatible terminal equipment by providers of internet access services (Article 3 (1) of Regulation (EU) 2015/2120)

In the reference period, the CTU recorded 3 basic types of practices that could lead to restrictions on end-user rights to use terminal equipment of their choice when accessing the internet. In the practice used by the providers of internet access services with nationwide operation, the agreement on the internet access service was either inseparably connected to the acquisition (usually purchase) of the terminal equipment offered by such a provider, or the customer could draw a wrong conclusion about the connection between the service and the terminal equipment due to the unclear or incomprehensible nature of the contract terms. With regard to the regional internet access providers, the use of terminal equipment other than that offered to the user by the internet access provider was often tied to the service provider's prior approval. However, no conditions were laid down to be met for granting such consent, and the granting of consent was thus entirely at the internet access provider's discretion.

Due to suspected infringements of the end-user right to use terminal equipment of their choice, the CTU initiated a total of 14 administrative proceedings, of which 5 have been already completed with final decisions; in all of these cases, the service provider was ordered by the decision to amend the internet access service provision contracts and their published drafts so as not to restrict the choice of terminal equipment. In two cases, the defective state was rectified during the administrative procedure, and the administrative proceedings were therefore closed.

3.2. Zero-rating and other practices offering a price bonus for certain services (Article 3 paragraph 1 and 2 of Regulation (EU) 2015/2120)

In the period from 30 April 2017 to 1 May 2018, zero-rating was applied in the Czech market for music streaming services, video streaming, social media services, text messaging services and access to selected websites (such as certain internet daily news), which were usually related to other business activities of the provider of internet access services or its business partners. It was offered to subscribers either in the form of a bonus provided free of charge for a certain fixed plan or prepaid service, or for payment, as an additional service or package that

the subscriber could order (in addition) to the existing fixed plan or prepaid service. Having ordered such an additional service or package and having paid the price, the subscriber, or user, had the right of unlimited use of the applications and services covered by zero-rating, while the data usage in using them was not included in the data volume of their fixed plan or prepaid service.

In addition to the standard zero-rating, specialised data packages were also offered in the Czech Republic which could only be used for the purposes predetermined by the provider (especially in connection with the use of the so-called social media services).

The CTU dealt with the issue of zero-rating or similar practices offering a price bonus for certain services and their compliance with Regulation (EU) 2015/2120, both in relation to the inspection of contract terms and as part of market developments monitoring.

Following the inspections carried out, 2 administrative proceedings were initiated. In the first case, relating to zero-rating applied to one of the so-called social media services, the provider removed the commercial practice immediately after the proceedings were initiated, and the proceedings were therefore closed. Currently, this internet access provider offers special data packages that can only be used for (different) social media services and messaging services. Such special packages are provided free of charge as a bonus for certain types of data packages for general use. The data from special packages may only be used if the subscriber has not used up the data from the package for general use. The second case involved a failure to include the data used when using a music streaming application in the data volume agreed by the subscriber. The music application (Spotify) to which zero-rating was related could then be used even after the data volume had been used up – i.e. at the time when all other applications, services and content available via the internet were blocked. The CTU concluded that this practice was an infringement of the first and third subparagraphs of Article 3 paragraph 3 of Regulation (EU) 2015/2120 (different treatment of data traffic) and, given the fact that once the data limit was reached the subscribers' internet access was restricted to a single musical application, also an infringement of Article 3 paragraph 1 and 2 of this Regulation. For this reason, the CTU issued a decision ordering the provider to adjust this commercial practice to comply with Regulation (EU) 2015/2120.

No differences in the treatment of data traffic and restrictions on the end-user's right to open internet access were identified within market monitoring and analyses of newly offered services (such as Vodafone Pass and StreamOn). However, the Vodafone Pass contractual terms and conditions allowed the provider to modify (reduce) the quality of the video included in this service. With regard to StreamOn, the provider reserved the right to change the contractual terms and conditions in the future, which would result in a reduction in the speed of data transmissions. Given that such an action, if it occurred, could constitute an infringement of Article 3 paragraph 3 of Regulation (EU) 2015/2120, these service providers were called upon by the CTU to amend their contract terms. These providers complied with the CTU's call.

3.3. Data traffic management measures (Article 3 paragraph 3 of Regulation (EU) 2015/2120)

In assessing the compliance of the data traffic management measures applied by the providers of internet access services with Regulation (EU) 2015/2120, the CTU relied, in particular, on the information obtained from the inspections of draft internet access provision contracts

carried out, as well as on the individual meetings with the internet access providers. Beyond the aforementioned activities, the CTU also requested selected mobile virtual operators (12) for information concerning compliance with the obligations laid down in Article 3 paragraph 3 of Regulation (EU) 2015/2120.

Based on the CTU's inspection activity, a total of 4 administrative proceedings were conducted which concerned infringements of the first and third subparagraphs of Article 3 (3) of Regulation (EU) 2015/2120. In most cases (3), the transmission speed was automatically limited (decreased) after the specified volume of data for certain types of applications, services and content was exceeded. With regard to other services (for example, when browsing websites running on the http internet protocol or data transmissions carried out in connection with the use of electronic mail (email)), the download and upload speeds remained unchanged. The CTU concluded that these practices constituted different treatment of data traffic prohibited by Article 3 paragraph 3 of Regulation (EU) 2015/2120 and therefore, by its decision, ordered the providers to refrain from such defective practice. The last of these administrative proceedings concerned the zero-rating practice. This practice allowed, inter alia, the use of 1 specific music streaming service (Spotify) even after the subscriber's data volume was used up and the provision of the internet access service was interrupted (i.e. all other applications, services and content available through internet access other than that to which zero-rating was applied were blocked). In this case, the provider was also ordered by the CTU's decision to ensure that the provider's contract terms comply with Regulation (EU) 2015/2120.

Data traffic management measures were also dealt with by the CTU in the case of newly offered zero-rating services for music streaming services and video streaming services in the Czech market (Vodafone Pass and StreamOn services). In both cases, the internet access provider reserved in its contract terms the right to introduce (or to introduce in the future) data traffic management measures in order to restrict the quality of the video included in the zero-rating or to reduce its transmission speed. These measures were not to apply to the data transmissions included in the subscriber's basic data volume. Given that according to the CTU's findings none of the aforementioned data traffic measures were implemented in practice, no administrative proceedings were initiated in the matter. Within the communication, the providers of internet access services were strongly urged by the CTU to remove all defective arrangements from their contract terms.

3.4. Offering so-called specialised services (Article 3 paragraph 5 of Regulation (EU) 2015/2120)

Within its supervisory activity, the CTU did not come to the conclusion that the so-called specialised services were offered in the Czech Republic as a substitute for internet access services or to the detriment of their availability. That is also why the so-called specialised services have not yet been further defined by the CTU.

However, the persistent problem indicated by the CTU is the definition of the impact of the use of specialised services on internet access services (Article 4 paragraph 1) letter c) of Regulation (EU) 2015/2120). According to the CTU's findings made during the reference period, the definition of these facts is often missing in the contract terms or is incomprehensible to users (especially to consumers). The situation has not yet been rectified by the internet access providers with nationwide operation, which were ordered to specify these facts in their contract terms including an internet access service by a decision issued within the administrative proceedings. In cases where defects were found, the CTU also called upon major local internet access providers to rectify the situation.

4. Compliance with Article 4 paragraph 1 of Regulation (EU) 2015/2120 by providers of internet access services in the Czech Republic in the period from 1 May 2017 to 30 April 2018

In general, it can be said that, based on the results of the assessment of compliance of the contract terms of the providers of internet access services with the requirements laid down in Article 4 paragraph 1 letter a) through e) of Regulation (EU) 2015/2120, most identified deficiencies were related to the obligations laid down in Article 4 paragraph 1 letter b), c) and d) of Regulation (EU) 2015/2120.

The information required by the Regulation was either completely missing in the contracts including internet access or was not explained in a clear and comprehensible form. For example, the requirements laid down in Article 4 paragraph 1 letter b) of Regulation (EU) 2015/2120 were often interpreted by providers of internet access services in the way that such obligations do not apply to them unless the volume of the transferred data is limited. Very unclear or even incomprehensible statements were also used in the contract terms to define data download and upload speeds. Information about the practical impact of the services defined in Article 3 paragraph 5 of Regulation (EU) 2015/2120 on internet access services (provided to the same end-user) was then mostly stated in the contract terms of the specialised services offered by the provider, not in the internet access provision contract, as required by Regulation (EU) 2015/2120. What was also frequent was mutual adoption (copying) of contractual provisions between the service providers, even after the CTU found some provisions or the way of expressing transmission speeds to be contrary to the requirements of Regulation (EU) 2015/2120.

Given the ever growing number of subscribers using internet access at a fixed location via mobile networks, which can be considered a specific feature of the Czech internet access services market, it was defined in the "*Czech Telecommunication Office's Statement on Selected Questions of Open Internet Access and on European Net Neutrality Rules*" which of the parameters specified in Article 4 paragraph 1) letter d) of Regulation (EU) 2015/2120 must be laid down in the contract that includes such an internet access service. This statement, although not legally binding and having merely advisory nature, says that what is decisive is not the technology used for the internet access, but the way of conceiving the internet access offer. Thus, if internet access (according to the contract terms) is only offered at a specific place or places, and the availability of the service outside of these locations is limited, the transparency requirements laid down for services provided via fixed networks always apply to it, even if data is transmitted via mobile networks.

Given the aforementioned findings, the CTU initiated 24 administrative proceedings in the reference period. However, only about half of them have been ended with final decisions. In these cases, the providers were ordered by the CTU's decision to amend the contract terms of their internet access services and to ensure that they comply with Regulation (EU) 2015/2120.

Although the market situation in this area (compliance with the requirement under Article 4 paragraph 1 of Regulation (EU) 2015/2120) has improved compared to the previous period, it cannot yet be stated that the objective set by this Regulation has been achieved, i.e. to ensure the possibility of informed choice of an internet access service and its provider for all subscribers in the Czech market and the possibility of verifying that the service provided by such a provider really corresponds to the contractually agreed parameters. This is mainly due to the considerable fragmentation of the electronic communications services market (these

services are provided by over 2,000 entities in the Czech Republic), low legal awareness of Regulation (EU) 2015/2120, both with regard to providers of internet access services and subscribers and end-users, late inclusion of sanctions for infringement of the obligations laid down in Regulation (EU) 2015/2120 in the Czech legislation (effective from 9 July 2017), and the very nature of Article 4 paragraph 1 of this Regulation, which does not specify these obligations in detail.

Given these facts, the CTU will continue to focus on the issue of compliance with Article 4 paragraph 1 of Regulation (EU) 2015/2120. The number of administrative proceedings initiated in this matter can therefore be expected to increase. In addition, the CTU is considering using its authorization under Article 5 paragraph 1 of Regulation (EU) 2015/2120 and taking a regulatory measure, which will further specify the transparency obligation laid down in Article 4 paragraph 1 of this Regulation.

4.1. Compliance with the content requirements of the contract including an internet access service at a fixed location

As stated above, failure to define the speed limits laid down in Article 4 paragraph 1) letter d) of Regulation (EU) 2015/2120 in internet access provision contracts and unclear or incomprehensible definitions of such speeds are among the most common ways of infringing this Regulation.

The CTU found that unclear or incomprehensible explanations, especially for commonly available and minimum speeds, were mainly used by the largest (considering the number of subscribers) internet access providers in the Czech Republic. The commonly available speed was often defined as an interval, or its level depended on the parameters the values of which could not be ascertained by the customer before concluding the internet access provision contract. The minimum speed, as defined in the contractual terms and conditions, was often not the “*the lowest speed that the ISP undertakes to deliver to the end-user, according to the contract which includes the IAS*”⁶. For example, the values it could take exceeded the normally available speed (or, as the case may be, the lower limit of the interval used to define the normally available speed), or the contract terms defined multiple different minimum speeds. In particular the regional providers also specified the minimum speed depending on aggregation.

A frequent problem, in particular for regional providers of internet access services, was also the confusion between the minimum speed as defined in Article 4 paragraph 1 letter d) of Regulation (EU) 2015/2120 and the definition of the offered service quality under Article 20 (2) (b) of the Universal Service Directive⁷. The Electronic Communications Act⁸, which transposed the Universal Service Directive into the Czech legislation, requires that the contract for the provision of publicly available electronic communications services, inter alia, defines “*the minimum level of quality of the service provided*” and “*the minimum guaranteed level of quality of the service provided*”. These parameters were often confused with the requirements laid down in Regulation (EU) 2015/2120, in particular the minimum data transmission speed.

⁶ BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules, paragraph 143.

⁷ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive).

⁸ Namely Section 63 (1) (c) (3) of this Act.

No major deficiencies were found in the maximum and advertised data transmission speeds, but most providers of internet access services define these parameters with the same value.

4.2. Compliance with the content requirements of the contract including mobile internet access services

As in the case of fixed internet, most deficiencies identified in contracts including mobile internet access services were related to compliance with the obligations laid down in Article 4 paragraph 1) letter d) of Regulation (EU) 2015/2120.

The regional mobile internet providers often did not define the parameters required by Regulation (EU) 2015/2120 at all. In some cases, the contract terms only included one data download and upload speed, without further specifying the type of transmission speed (estimated maximum, advertised or minimum speed). In addition, the problem with mobile internet providers, operating as so-called virtual operators, is that provision of information on service parameters by network operators is not contractually secured in the vast majority of cases.

On the contrary, the largest providers of mobile internet access in the Czech Republic defined these parameters in an unclear or incomprehensible way. The advertised speed and, in some cases, the estimated maximum download and upload speeds were in many cases defined in the form of interval or as “up to” a certain numerical value or, as the case may be, they were defined only for some end-users (a certain percentage of the total number of end-users). Its expression was also often the same as the estimated maximum speed.

In the course of individual meetings with the mobile internet access providers, the CTU also recommended that data transmission speeds should be specified for individual locations or areas covered by the mobile network in the form of geographical maps. However, this recommendation was not entirely accepted by the internet access providers because they consider it very costly. Currently, only maps showing the signal coverage by individual technologies can be found on these providers’ websites. The estimated maximum speed is also displayed for each technology. This data does not represent values that were actually measured or calculated by the providers in the given area or location taking into account the standard network load, and the advertised data download and upload speeds are not specified either.

5. Procedures to address complaints of end-users relating to the rights and obligations laid down in Articles 3 and 4 (1) of Regulation (EU) 2015/2120 – compliance with the condition of their transparency, simplicity and efficiency (Article 4 (2) of Regulation (EU) 2015/2120)

The Czech legislation does not further regulate the obligation of providers of internet access services laid down in Article 4 paragraph 2) of Regulation (EU) 2015/2120, i.e. to put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and Article 4 paragraph 1 of Regulation (EU) 2015/2120. Their approach to addressing such complaints was not even unified at the initiative of the CTU (or other public authority) or of the internet access providers operating in the Czech market. The way of meeting the obligation to address complaints has thus been determined individually by the individual internet access providers.

According to the CTU’s findings, most providers address such complaints as complaints about the service provided. The time limit for the settlement of the complaint by the provider and the

remedies that can be used against the result of the complaint procedure are laid down in the Electronic Communications Act.

During the inspection aimed at compliance with the obligations laid down in Regulation (EU) 2015/2120, the CTU therefore also examined when and under what conditions such a complaint may be applied. If the internet access service is not entirely or partially usable, or if the service does not have agreed parameters, under the contract terms it is usually necessary to notify this fact to the provider (without undue delay upon finding). Defects can be notified by means of a dedicated telephone line, by chat or by email; major internet access providers offer continuous availability of these services.

Based on such a notification, the provider should determine the technical defect, if any, and its cause (and whether it is a defect on the part of the provider) and ensure that it is removed. It is only on the basis of these findings that some of the internet access providers accept complaints. In the CTU's opinion, this approach, which determines that several consecutive steps must be taken to settle complaints lodged by subscribers or, as the case may be, end-users, may not comply with the conditions of *transparency, simplicity and efficiency* laid down in Article 4 paragraph 2 of Regulation (EU) 2015/2120. For this reason, the CTU emphasises, in any cases of mutual communication with the representatives of internet access providers, the suitability of initiating the complaint procedures automatically upon detection of any service defect (not caused by the end-user), and it will continue to monitor this issue in detail.

6. Numbers and characteristics of complaints and suggestions relating to the issues regulated by Regulation (EU) 2015/2120

The CTU regularly monitors end-user complaints and suggestions relating to publicly available electronic communications services, including internet access services. An overall assessment of these complaints is then carried out every calendar quarter to be subsequently published as an annex to the monitoring report on the CTU's website.

Compared to the previous period, when the CTU recorded complaints according to their subject (such as service quality, billing amount, etc.), separate records of complaints were set up last October for complaints and suggestions related to internet access, focusing specifically on issues of net neutrality. Within this database, complaints and suggestions sent to the CTU by subscribers or end-users are classified and monitored separately according to the rights and obligations arising from Regulation (EU) 2015/2120.

Although the most significant providers in the Czech Republic made fundamental changes to the contract terms of internet access services in 2017 and at the beginning of 2018 (especially as a result of the CTU's decision-making activity), and this process continues with other regionally important providers of internet access services, the CTU did not record any increase in the number of complaints and suggestions relating to internet access compared to the previous reference period. The total number of complaints thus continues to be only a few dozen in the reference period.

In more than half cases, the complaints (approximately 56% of the total number of complaints) were related to failure to comply with the contractually agreed quality parameters. They were also related to traffic management measures, namely blocking or throttling certain types of applications, services and content available via the internet and the issue of zero-rating or similar commercial practices. In other areas, such as restrictions on the choice of terminal equipment and the impact of specialised services on the quality of the internet access service,

no complaints were recorded. Given that the CTU also focused within its activity on increasing the legal awareness of end-users, who had not been sufficiently acquainted with the rights guaranteed by Regulation (EU) 2015/2120 and, therefore, had not fully used all the instruments for their protection (complaints, suggestions, claims), it is possible to expect an increase in the number of complaints related to net neutrality issues in the next reference period.

7. Measures of the Czech Telecommunication Office taken in accordance with Article 5 paragraph 1 of Regulation (EU) 2015/2120 (setting requirements for the technical characteristics of internet access services or minimum quality requirements for such services), measuring the quality of internet access services and measuring availability of high quality internet access services

The CTU has not yet laid down any requirements regarding the quality or technical characteristics of internet access services in the form of a regulatory measure. However, in its “*Czech Telecommunication Office’s Statement on Selected Questions of Open Internet Access and on European Net Neutrality Rules*”, published in March 2017 on the CTU’s website, it specified a significant discrepancy, continuous or regularly recurring, between the actual service performance and the contractually determined transmission speeds.

As is clear from Article 4 paragraph 4) of Regulation (EU) 2015/2120, 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 in the contract for its provision⁹, if established by a monitoring mechanism certified by the regulatory authority, is deemed to constitute non-conformity of the performance of the service. However, such a significant discrepancy, continuous or regularly recurring, of the speed is not further specified by Regulation (EU) 2015/2120 and the BEREC Guidelines, and this issue is left to be adapted by the individual regulatory authorities. For this reason, the CTU defined the so-called detectable change in the performance of the internet access service for detecting discrepancies under the methodical measurement procedures. With regard to internet access at a fixed location, a decrease in at least one of the actually achieved data download or upload speeds below 50% of the value of the speeds specified in the contract terms as a normally available speed is deemed to be a detectable change in service performance. In the case of the mobile internet, a decrease in at least one of the actually achieved data download or upload speeds below 25% of the value of the speeds specified in the service provision contract as the advertised data download and upload speeds is deemed to be a detectable change in service performance. On this basis, significant continuous and regularly recurring discrepancies were also defined. A discrepancy that creates a continuous detectable change in the performance of the internet access service longer than 30 minutes is deemed by the CTU to be a significant continuous discrepancy compared to the normally available speed (for internet access at a fixed location) or the advertised download and upload speeds (for the mobile internet). A discrepancy involving at least three detectable changes in the performance of the internet access service longer than 1 minute over a 1-hour period is then a regularly recurring discrepancy compared to the normally available or advertised download and upload speeds.

Given that the “*Czech Telecommunication Office’s Statement on Selected Question of Open Internet Access and on European Net Neutrality Rules*” is not legally binding, its definition of a significant discrepancy, continuous or regularly recurring, is only a recommendation. Thanks

⁹ In accordance with Article 4 (1) (a) through (d) of Regulation (EU) 2015/2120.

to the considerable efforts of the CTU, which also focused on this issue in the individual cases of communication with the providers of the internet access service, the definition of discrepancies laid down by the CTU had been incorporated by the end of the reference period in the contractual terms and conditions of a large part of the internet access providers operating in the Czech market. Despite this fact, the CTU considers that, in order to clarify the obligations imposed on providers of internet access services, it will take other regulatory measures.

To assess the quality of the internet access services available in the territory of the Czech Republic, the CTU carried out several thousand technical measurements of the data speed of mobile networks in selected locations. The measured results have been continuously processed and will also be available in visual form within interactive maps in the future. In accordance with the methodological procedures of the CTU, a series of test measurements of the qualitative data parameters of the fixed internet (xDSL, DOCSIS, FTTx, Wi-fi 5 GHz and LTE technologies) were carried out, especially in individual time segments and within individual days. These test measurements were aimed at verifying the principle of measuring the actually achieved data download and upload speeds compared to the normally available speed and at practical testing of the way of detecting discrepancies defined by the CTU.

The CTU assumes that it will use the technical solution developed as part of the MoQoS project to measure the availability of access to the high-quality internet. To qualify the availability of broadband connections and to verify transmission speeds, the CTU is also considering a solution in the form of a pocket test terminal that would be equipped with an FPGA chip and an algorithm for measuring service quality parameters. The CTU's aim is to carry out long-term monitoring, without any distortion caused by the end-user's router or other equipment.