

WE ARE SHAPING THE INTERNET.  
YESTERDAY. TODAY. BEYOND TOMORROW.



## **Contribution on Net Neutrality Assessment Methodology Draft – BoR (21) 165**

**Berlin, 26.01.2022**

BEREC has started a consultation on its draft on the regulatory assessment methodology. The methodology intends to provide guidance to National Regulatory Authorities (NRAs) in relation to the monitoring and supervision of the net neutrality provisions of the Open Internet Regulation EU/2015/2120, and the possible implementation of net neutrality measurement tools on an optional basis. Furthermore, the methodology is also intended to contribute to the harmonisation of net neutrality measurement methodologies. This actualised draft is based on previous BEREC guidance on net neutrality, internet access service (IAS) quality monitoring and best practices.

eco welcomes the opportunity to contribute to the assessment. In this contribution, we will focus on some aspects, which we consider to be particularly crucial and central for the methodology implementing net neutrality measures.

### **I. More differentiation on usage of UDP**

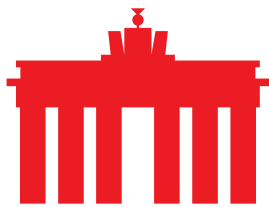
eco evaluates BEREC`s recommendation not to use the “user datagram protocol” (UDP) for download- and upload measurement as questionable and not reasonable.

BEREC states:

*“ITU and the Broadbandforum have issued standards based upon UDP-based IP capacity measurement methodologies. Furthermore, the IETF has published RFC 9097 Metrics and Methods for One-way IP Capacity on the Standards Track.” [Page 15, 3.1.6.]*

This clearly shows that BEREC recognises that UDP has several advantages, i. e. no handshake and no flow control and it has a standardised methodology which is widely accepted. As BEREC fails to show reasonable reasons not to take this approach, BEREC needs to recommend a more differentiated approach:

Several browsers can process UDP, for example webrtc (video conferencing) often uses UDP. Thus, BEREC should also recommend UDP and name the specific browsers, which can process it. Moreover, in member states which provide an installable desktop-app there is no technical reason at all to



WE ARE SHAPING THE INTERNET.  
YESTERDAY.TODAY.BEYOND TOMORROW.



dispense UDP. Such apps avoid the problem that some browsers and consumers cannot handle UDP properly.

Consequently, BEREC must recommend UDP in measurement apps for the sake of the accuracy and acceptance of measurements.

## **II. No WiFi measurements**

eco supports BEREC's recommendation, that WiFi measurement is not to use in fixed networks. ISPs have no influence on the many conditions which are relevant for the WiFi-throughput in consumers wireless home networks, e.g. the distance from router to device, walls, interferences, inaccurate settings, cross traffic etc.

## **III. Importance of End-user environment**

BEREC justly takes in account the end-users individual set-up and technical environment. Therein, many factors can reduce down- and upload rates significantly, like network cards and adapters, inhouse cable, overloaded wifi channels. Therefore, in order to measure accurately and to achieve robust results, all relevant factors in the end-user's environment have to be considered. Otherwise, the performance of the ISP's network is not reflected correctly.

## **IV. No need for device extension**

eco considers it inappropriate that measurements shall be possible on any kind of end-user device. Allowing – inter alia – games consoles, modem clients, and TV-boxes to perform measurements would create more uncertainty than reliability. The different operating systems in these device and the installed network cards and the difficulties to identify each's performance will lead to disproportional expenses for the ISPs, especially regarding customer service. Further, such devices usually are not optimized for traffic but for graphical performance and other criteria. It is therefore obvious that speed tests will not reflect the limitations of the ISP's network but those of the device.

Finally, this extension is not necessary. It is very improbable that a user who wants to measure his internet speed is forced to get back to such unusual devices, i. e. has neither smartphone nor pc/laptop, on which a standard operating system is running.



WE ARE SHAPING THE INTERNET.  
YESTERDAY.TODAY.BEYOND TOMORROW.



## V. Transparent traffic management detection needed

BEREC correctly states which factors can influence the traffic management detection. It is important, that the national regulatory authorities take these factors in consideration assessing traffic management.

## VI. Monitoring general IAS quality

eco disagrees with the black box approach to monitor general IAS quality.

Art. 5 (1), sentence 1 of the Regulation requires that  
*“...national regulatory authorities (NRA) shall closely monitor and ensure compliance with Articles 3 and 4, and shall promote the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology.”*

This rule grants no power to NRAs but references to the powers laid down in Art. 3 and Art. 4. Therefore, the legal basis for monitoring general internet access quality is Art. 3 (5), second subparagraph of the Regulation. It states that special services shall not be to the detriment of the availability or general quality of internet access services for end-users. Therefore, the essential precondition for monitoring the general IAS quality is the existence of special services. This is supported by the last sentence of Recital (17) which refers to the “impact” of special services and calls for a comparison.

---

**About eco:** With over 1,100 member companies, eco is the largest Internet industry association in Europe. Since 1995 eco has been instrumental in shaping the Internet, fostering new technologies, forming framework conditions, and representing the interests of members in politics and international committees. eco’s key topics are the reliability and strengthening of digital infrastructure, IT security, and trust, ethics, and self-regulation. That is why eco advocates for a free, technologically-neutral, and high-performance Internet.