

# Net Neutrality Guidelines press conference

Wilhelm Eschweiler – BEREC Chair 2016

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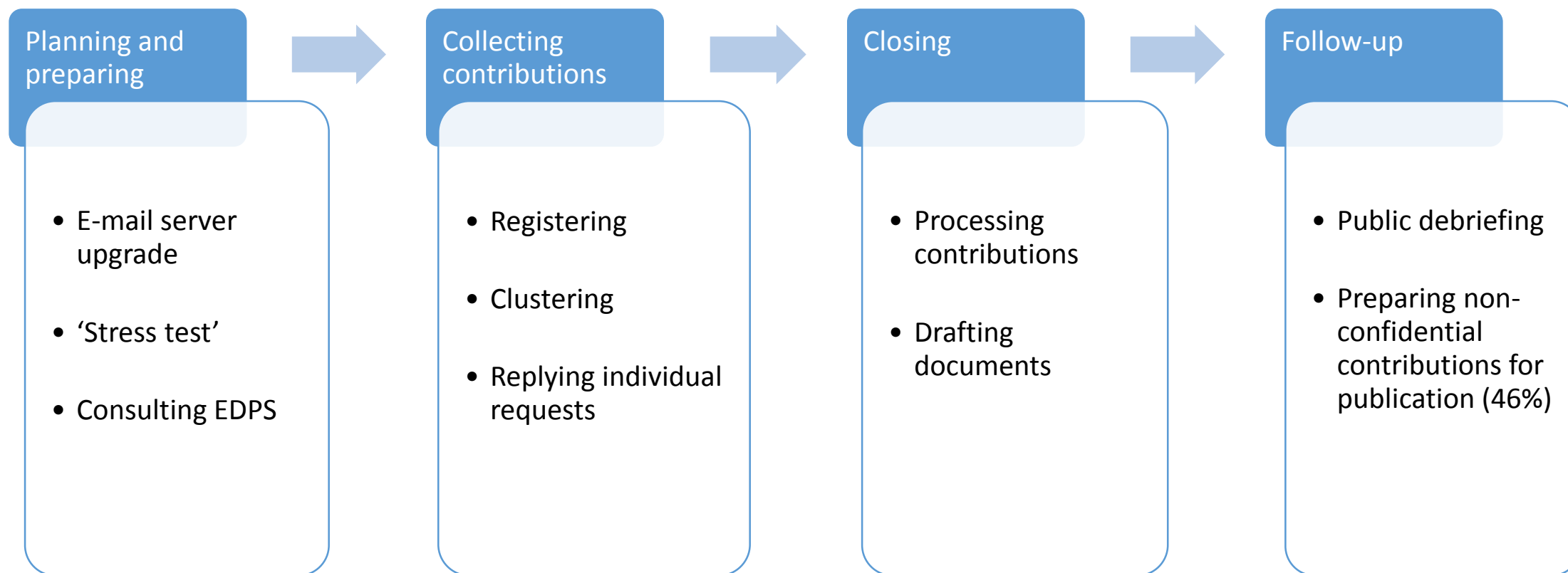
# BEREC Net Neutrality Guidelines

- High profile and ambitious task within tight timeframe
- Inclusive process of development in close cooperation with EC and involving European-level stakeholders
- Public consultation provided unprecedented number of responses from different stakeholders and many citizens
- Final Guidelines published today 30 August after taking account of comments received

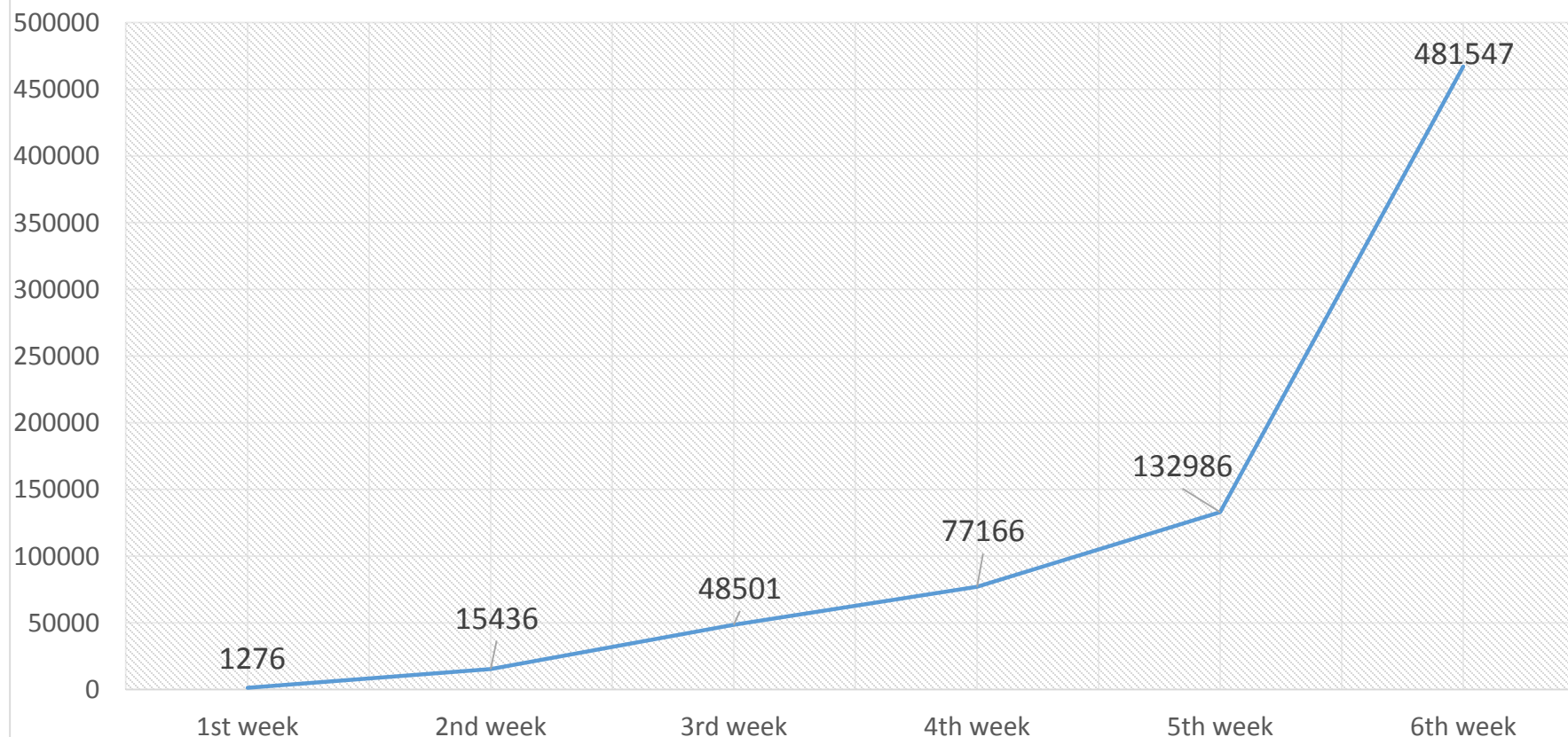
# The role of BEREC's Guidelines

- BEREC's Guidelines not about creating new rules; rather, about providing guidance on the regulatory implementation of existing rules
- Regulation to be enforced by national regulators (NRAs)
- BEREC tasked with providing guidance to NRAs to contribute to consistent implementation across Europe, ref. Art. 5(3)
- Guidelines follow structure of the Regulation

# Unprecedented challenge



# Contributions received



6 EU languages

EU, USA, Middle East,  
China, Korea, Australia

640 contribution / min  
on 15/7/2016

# Overview of consultation responses

Competing arguments, for example

- some proposals for stronger guidelines, in some cases beyond Regulation (generally civil society / consumer organisations)
- other proposals for weaker guidelines, in some cases to allow practices the Regulation prohibits and / or felt BEREC had gone beyond Regulation (generally ISPs)

indicate BEREC struck appropriate balance for many aspects in accordance with the Regulation

# What's covered by the Regulation

- The open internet right applies to “end-users” using IAS:
  - Individual consumers as well as business users
  - Content and application providers (CAPs)
- In scope:
  - IAS (including sub-internet services, which would be an infringement)
  - Specialised services
- Out of scope:
  - Private networks, e.g. internal corporate networks
  - Services where access to internet is limited by nature of terminal equipment
  - IP interconnection services

# Main changes – scope of Regulation

## VPNs (paras 11 and 115)

- Clarification that the operation of a specific VPN would be a private network, although the offer of VPNs is considered publicly available
- More complete explanation of how provision of VPNs by ISP need to comply with Regulation with fuller reference to Recital 17

## Non-public networks (para 12)

- Replaced explanations of why specific examples could be considered non-public with criteria NRAs could use to make assessments of whether networks are provided publicly

# Main changes – Art 3 in general

BEREC clarified misunderstanding / lack of clarity

- New para 21 to clarify Regulation does not require ex ante authorisation regarding commercial practices, traffic management, specialised services

BEREC brought the text closer in line with the provisions and recitals of the Regulation (paras 20 and 82)

- Two paragraphs added on the Charter of Fundamental rights closely in line with Recitals 13 and 33.

# Commercial practices, e.g. zero-rating

- Not prohibited *per se*
- Many types of zero-rating
- Some will clearly infringe
  - e.g. all applications blocked except the zero-rated application(s) when the data cap is reached
- Others less clear – to be assessed on case-by-case basis
- Guidelines set out criteria NRAs should use to make these assessments

# Zero-rating assessment criteria

Criteria taken from Regulation and its reasoning:

- Circumvention of general aims of Regulation
- Market position of ISPs and CAPs involved
- Any effects on end-user rights of consumers/businesses
- Any effects on end-user rights of CAPs
- The scale of the practice and availability of alternative offers

# Main changes – Art 3(2)

## Concrete examples of commercial practices (para 35)

- Some commercial practices which are likely to be acceptable, such as ability of end-users to access ISP's customer service when data cap is reached in order to purchase additional data.

## Brought the text closer in line with the provisions and recitals of the Regulation (para 46)

- Clarifies that “freedom of expression and media pluralism” relate to effects on end-users and CAPs (diversity of content and applications), which is now reflected in footnotes instead of a separate bullet point.

# Traffic management (TM)

‘Traffic management’ = the way traffic is forwarded in networks

1. As long as traffic management is done independently of applications and end-users, the traffic is normally considered to be treated equally
2. As a second step, the Regulation allows “reasonable traffic management” which may be used to differentiate between “categories of traffic”.
3. As a third step, the Regulation describes three specific exceptions which are allowed under stricter conditions.

# Reasonable and exceptional TM

- Reasonable traffic management
  - Categories of traffic could e.g. be defined by reference to application layer protocol or generic application type, but only in so far as:
    - i. this requires objectively different technical quality of service
    - ii. applications with equivalent requirements are handled in the same category
    - iii. the justification given is relevant to the category of traffic in question
  - NRAs should ensure such measures do not monitor specific content
- Exceptional traffic management
  - a) compliance with other laws
  - b) preservation of integrity and security
  - c) congestion management measures

## Main changes – Art 3(3)

Slight modification on text about reasonable traffic management for clarification reasons and to avoid misunderstandings, e.g. to clarify:

- that categories of traffic should be based on QoS requirements of the traffic
- that commercial considerations could also cover commercial interests and not necessarily explicit charging for traffic categories.

# Specialised services

## **Examples that may be considered specialised services:**

- VoLTE (high-quality voice calling on mobile networks)
- Linear (live) broadcasting IPTV services with specific quality requirements
- Real-time remote health services

## **Specialised services must meet requirements of:**

- Necessity – are they necessary to meet requirements for a specific level of quality?
- Capacity – is network capacity sufficient that quality of internet access services is not degraded?
- No substitution – are specialised services usable or offered as a replacement for IAS?

## Main changes – Art 3(5)

- Added footnote clarifying that 5G services using network slicing could be provided as specialised services.
- Provided consistent reference to “objectively necessary” regarding QoS requirements of specialised services (ref. Recital 16).
- Clarified provision of specialised services as not providing connectivity to the internet. A possible way to implement them is “logically separated” from IAS. Reference to “strict admission control” deleted since potentially too prescriptive and could exclude other technical solutions (para 110).
- Clarified that exception for end-user controlled use of *dedicated* capacity where specialised services compete with IAS is to be understood as cases where impact is technically impossible to avoid, such as IPTV provided over some xDSL access lines (para 122).

# Transparency requirements

**Guidelines set out best practices which NRAs should look for**

- Information should be easily accessible, accurate, meaningful and comparable
- Information should cover:
  - Any traffic management measures used, and any impact on the end-user
  - Complaint-handling procedures
  - Data caps
  - Speeds (different metrics depending on fixed and mobile)
- Guidelines provide high-level definitions of speeds as well as examples of detailed requirements that NRAs could set to define the various speeds

# Main changes – Art 4

- BEREC maintains position that Regulation applies also to existing contracts, but clarifies that modification of contracts is subject to national legislation (para 134).
- Maximum speed (fixed) now defined as “speed end-user could expect to receive”, since original text could’ve been misinterpreted as overly prescriptive.
- Regarding estimated/measured maximum speed (mobile), the term “indoor and outdoor coverage” is deleted, since not explicitly required by the Regulation.
- Regarding advertised speed in fixed/mobile networks, text modified to make clear that NRAs could set requirements to how contractual speed related to advertised speed, and not the other way round.

# Role of the regulators

## ■ **Supervision**

- Monitoring contract information, commercial practices, traffic management practices and specialised services
- By means of assessment of practices in the market, technical measurements, information-gathering

## ■ **Enforcement, e.g.**

- Requiring ISPs to deal with degradation of IAS
- Requiring ISPs to cease or revise problematic traffic management practices
- Requiring ISPs to cease providing specialised services in absence of sufficient capacity for IAS or when usable as substitute for IAS
- Imposing fines on ISPs

# What happens next

- *“BEREC should foster the exchange of experiences by NRAs, on an ongoing basis, on their implementation of the Regulation”* (new para 168)
- NRAs to provide first annual report on implementation to BEREC and Commission by 30 June 2017 (Para 182)
- In the future, *“These Guidelines constitute compliance with this provision. BEREC will review and update the Guidelines as and when it considers it to be appropriate.”* (Para 185)

# Q&A