Regulation 2015/2120 prohibits blocking, slowing down, degradation of or discrimination between specific content or services, or categories thereof, with three categories of exceptions: legal obligations, preservation of network security & temporary or exceptional congestion. Reasonable traffic management does not allow downgrading the quality of services transmitted.

Implementation of the rules is a task of the national regulatory authorities. BNetzA 15 December 2017 decision prohibits certain aspects of the StreamOn zero-rating service. Zero rating is a practice consisting in not counting the data volume of certain applications or services against the user’s limited monthly data volume. It must not limit the exercise of end-users’ right to access and distribute the content of their choice and its compatibility is to be assessed case-by-case taking into account the Body of European Regulators for Electronic Communications (BEREC) Guidelines.

This decision shows that BNetzA is taking steps to ensure non-discriminatory traffic management and protect end-users’ rights to access and distribute content and application of their choice over their internet access service.

Under the roam-like-at-home (RLAH) rules in place since 15 June 2017, and as long as roaming services are provided, zero-rated services compliant with Regulation 2015/2120 should be available and not counted against the domestic allowance while roaming in the EU, like in the home country. For unlimited data packages, the RLAH rules foresee the possibility to apply a fair use data limit to the consumption of roaming at no extra-charge. As unlimited data services, zero-rated services may therefore be subject to a fair use data limit calculated in accordance with the Commission Implementing Regulation 2016/2286.

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2 For an outline of the factors which may restrict end-user’s rights, cf para 46 of the BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules, BoR (16) 127.

3 Commission Implementing Regulation (EU) 2016/2286 of 15 December 2016 laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment.