



**FSFE's position to SPRK's public
consultation regarding the draft of
"General Authorization and Registration
Regulations in the Electronic
Communications Sector"**

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Introduction

The Free Software Foundation Europe (FSFE) would like to thank the Latvian Regulatory Agency (SPRK) for asking for public feedback on the draft regulation of the "General Authorization and Registration Regulations in the Electronic Communications Sector" (hereinafter Draft Regulation).

Since 2001, the FSFE has been working to protect and enhance freedoms of technology users in Europe and deeply involved on defending the rights of end-users to choose and use terminal equipment for internet connection. We are pleased to provide our expertise for the matter of the proposed regulation.

As we elaborate further below, we argue that for reasons of freedom of choice, privacy and data protection, compatibility, fair competition, and security, end-users must have the possibility to use their own telecommunications terminal equipment (TTE). **Besides, we argue that by allowing internet access providers (hereinafter IAPs) to determine "technological necessity" to limit the end-users' freedom of choice to use their own equipment, the current Draft Regulation, in its Section III, 16, does not comply with European Law, specially art. 3(1) Regulation (EU) 2015/2120 and Point 3 of the BEREC Guidelines on the NTP (BoR (20) 46).**

We urge SPRK to amend the Section III, 16 of the Draft Regulation in order to protect end-users' rights in the context of network neutrality in Latvia.

Router Freedom is protected by European laws

Router Freedom is the principle that people are free to choose and use their private equipment (modems and routers) to connect to the Internet. **Article 3(1) of Regulation 2015/2120 as well as Recital 3 of Directive 2008/63/EC unambiguously demand to give end-users the right to use their own terminal equipment.** When accessing the Internet, end-users should be free to choose between various types of equipment. IAPs should not impose restrictions on the use of terminal equipment connecting to the network in addition to those imposed by manufacturers or distributors of terminal equipment.

The current Draft Regulation (Section III, 16) fails to capture this principle by allowing IAPs on its to impose barriers on end-users on the basis of "technological necessity". **This is not compliant with European laws.** We urge SPRK intend to to specify the position of the Network

Termination Point (the NTP) at Point A, following the BEREC Guidelines on the NTP¹. **SPRK is the only competent authority to determine the existence of technological necessity in Latvia. IAPs should not determine technological necessity by themselves.**

Why should SPRK determine the position of the NTP

The BEREC Guidelines on NTP (BoR (20) 46), which were designed in accordance with Article 61(7) of the EEC, provide guidance to NRAs when they specify the location of the NTP. The NRAs, including SPRK, should take utmost account in defining the NTP in three pre-determined points (A, B and C). As seen below, for reasons of freedom of choice, privacy and data protection, compatibility, fair competition, innovation and security, Point A is the only position which respects rights and interests of end-users.

- According to Regulation 2015/2120 and Directive 2008/63/EC, end-users must have the right to freely choose the electronic devices in order to connect to the internet, which includes both the modem and the router. This **freedom of choice** enables them to choose devices that suit their individual needs best.
- Routers and modems are gatekeepers of most online activity for end-users and businesses alike. Therefore, end-users need to be able to pick a device that allows them to use certain **privacy and data protection** features which fulfill their requirements.
- End-users regularly change their IAPs. Only if they can continue using their own device, they can port their settings and existing devices to the new provider. If their equipment was owned by the IAP, the **compatibility** to other providers and their specific requirements would be drastically limited.
- NTP at Point A foster **innovation** on terminal equipment market. End-users are better served by a greater variety of options, providing better adequacy to consumer and business' performance needs. Router/modem manufacturer have better access to market and can supply products to a larger group of consumers. Such manufacturers have a greater incentive to develop products aimed at specific consumer and business niches, fostering innovative solutions. The BEREC Guidelines on NTP explicitly recognizes the Point A contributes to the fostering of innovation and competition in the TTE market and to the availability of TTEs in the TTE market that are tailored to end-users' needs to a higher degree (paragraph 46).

1 https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/9033-berec-guidelines-on-common-approaches-to-the-identification-of-the-network-termination-point-in-different-network-topologies



- End-users profit from the free and **fair competition** that guarantees free choice and steady improvement of products. The lack of competition would, eventually, come at the cost of the user because (security) features would be continually reduced and the user-friendliness would drop. A vital equipment market will foster innovation that benefits the European industry and citizens.
- NTP at Point A decreases the probability that large parts of the router market is dominated by only one or a few product families or manufacturers. In those settings, major problems or security holes affect an enormous number of users at once. That is particularly problematic when manufacturers and providers are very slow in the delivery of critical updates and users are not allowed to perform updates themselves. A larger number of available types of routers/modems benefits the general **security** of the complete landscape. It enables end-users to take own security precautions and/or commission an equipment manufacturer or service provider to take care of updates and preventive measurements.

We, therefore, urge SPRK to specify the NTP at Point A and not letting the *de facto* definition to IAPs by allowing them to limit end-users' right to choose their own equipment.

Why allowing IAPs determining technological necessity is a bad idea

The FSFE has been working since 2013 to safeguard end-users rights and promote innovation on terminal equipment market. During all these years, **the European experience has demonstrated that no objective technological necessity is observable to exclude the free choice of routers/modems.** On the contrary: in countries where Router Freedom is established, a significant number of end-users decided to make use of this freedom, a vital market for terminal equipment is evolving, and there were no such breakdowns in neither the cable nor the DSL network. **Latest reports² indicate a steady growth of end-users employing their own router/modem instead of IAP provided ones.**

IAPs frequently argue that the use of a limited number of different types of equipment in the public network could make network operations less complex compared to a case where many

2 <https://fsfe.org/news/2020/news-20200302-01.en.html>

different types of equipment are used which is not owned by the network operator. However such false sense of simplicity entails severe **security problems**. Less models available to end-users increase the probability that large parts of the router market is dominated by only one or a few product families or manufacturers. In those settings, major problems or security holes affect an enormous number of users at once. Therefore, a larger number of available types of routers/modems benefits the general security of the complete landscape. It enables end-users to take own security precautions and/or commission an equipment manufacturer or service provider to take care of updates and preventive measurements.

The argument of endangered network security and stability has been brought up on many occasions before by some IAPs and network providers. However, in several years of practical experience, **we are not aware of any occurrence where liberalisation of the TTE market caused significant harm to the public network**. Electronic devices sold in Europe meet high requirements, and the standards for access technologies like DSL or DOCSIS are mature and well-understood by manufacturers of network equipment.

The argument that IAPs care best for their clients security has been proven wrong by many incidents where routers did not receive updates for known vulnerabilities and therefore caused massive disruptions for end-users. **Instead of trying to create a false sense of security by isolating the public network from TTE not provided by the IAPs, network providers and manufacturers have to work together to maintain the high stability of these networks.**

The Draft Regulation should be amended

Based on all arguments raised so far, **the FSFE urges SPRK to perform an amendment in Section III, 16 by first, specifying the location of the NTP and determining whether there are technological necessity in Latvia**. Such amendment must be done in respect to art. 3(1) Regulation (EU) 2015/2120 and Point 3 of the BEREC Guidelines on the NTP (BoR (20) 46).

Conclusion

Overall, the FSFE acknowledges the SPRK initiative to involve stakeholders on this public consultation. However, we strongly oppose the current solution of allowing IAPs to define by their own the technological necessity to hinder end-users' rights. The current framework is not compliant with European laws and will likely violate end-users' rights to a neutral and safe internet access.