

## **EXCEPTIONAL RULES ENACTED TO PREVENT NETWORK CONGESTION IN PORTUGAL DUE TO COVID-19**

In the context of the ongoing emergency responses surrounding the Covid-19 pandemic, the Portuguese Government has enacted specific legislation enabling electronic communications operators to adopt exceptional traffic management measures in order to prevent or mitigate network congestion. This follows the recent publication, on March 19th, of a Joint Statement from the Commission and the Body of European Regulators for Electronic Communications (BEREC) on coping with the increased demand for network connectivity due to the Covid-19 pandemic<sup>1</sup> in which the imminent need for exceptional traffic management measures was discussed in light of the Open Internet Access rules set out in [Regulation \(EU\) 2015/2120, of 25 November](#).

The fact that a significant proportion of the population will be, to a large extent, confined to their homes for a potentially long period has already led to a sizeable increase in traffic volumes on fixed and mobile networks both as a result of work-from-home policies and a more intensive use of entertainment and interactive services.

[Decree-Law no. 10-D/2020, of 23 March](#), seeks to respond to these circumstances in Portugal by adopting exceptional and temporary measures for the electronic communications sector such as identifying critical electronic communications services and defining categories of customers who are to benefit from priority status. It also temporarily exempts operators from several obligations that might jeopardize these goals.

Services defined as critical are to be given priority for purposes of service continuity and include the following: (i) voice and SMS on fixed and mobile networks; (ii) continuous access to

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<sup>1</sup> [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/others/9236-joint-statement-from-the-commission-and-the-body-of-european-regulators-for-electronic-communications-berec-on-coping-with-the-increased-demand-for-network-connectivity-due-to-the-covid-19-pandemic](https://berec.europa.eu/eng/document_register/subject_matter/berec/others/9236-joint-statement-from-the-commission-and-the-body-of-european-regulators-for-electronic-communications-berec-on-coping-with-the-increased-demand-for-network-connectivity-due-to-the-covid-19-pandemic).

emergency services, including information on caller location, and issuance of warnings to the public; (iii) data services, on fixed and mobile networks, required to ensure a minimum set of broadband internet services (these include e-mail, search engines, online teaching tools, online news, online shopping, job search, online banking, financial and insurance services, online services provided by public authorities and messaging services);<sup>2</sup> (iv) free-to-air television broadcasting and digital terrestrial television.

When providing these critical services, network and service providers must prioritize several categories of customers, notably public sector entities mainly involved in the provision of healthcare, security and logistical services. The list of priority customers mostly replicates the similar concept of “relevant clients” set out in [Regulation no. 303/2019, of 1 April](#) (approved by the national regulatory authority, ANACOM), on the security and integrity of electronic communications networks and services and includes, among others: (i) the Ministry for Health and healthcare providers from the Portuguese national health service; (ii) the entities responsible for managing the emergency communications integrated system; (iii) the Ministry for Internal Affairs (regarding civil protection authorities and the national internal security network); (iv) the Portuguese armed forces; (v) the national cybersecurity center; (vi) police authorities; (vii) support services to the Portuguese Presidency, Parliament and Government (and to the equivalent regional bodies for the autonomous regions of the Azores and Madeira); (viii) the regulatory authority for the media sector (*Entidade Reguladora para a Comunicação Social*, ERC), the Portuguese Central Bank (*Banco de Portugal*) and other regulatory authorities; (ix) providers of essential services (e.g. energy, transport, banking, healthcare providers, water distribution and digital infrastructure) and managers of critical infrastructure; and (x) the Ministry of Education, in respect of online teaching tools.

In order to prioritize continuity of the services defined as critical, electronic communications network and service providers are authorized to, when necessary, implement exceptional measures consisting of traffic and network management (including by means of mobile network capacity reservation) and prioritization of repair and maintenance tasks. If necessary, operators may propose the adoption of additional measures to the Government. In addition, operators are also authorized to

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<sup>2</sup> The list of minimum services for fixed broadband internet access includes, in addition, networking connections for professional purposes (e.g. VPN services) and standard quality audio and videoconferencing.

resort to mobile network systems and technologies to reinstate critical services supported by fixed networks. These measures must be implemented in a proportionate and transparent manner and must not remain in place for longer than is necessary to ensure continuity of services affected by the network congestion.

In order to ensure network integrity and safety and prevent congestion, electronic communications network and service providers must prioritize traffic categories, according to a decreasing priority scale. For landline communications, voice services and fixed broadband minimum services are priority 1; video contents are priority 2; non-linear audiovisual services, video platforms and restart TV are priority 3; and services such as online gaming and peer-to-peer platforms bring up the rear, as priority 4. For mobile network communications, the grading of priorities is very similar: voice and SMS, as well as the minimum set of mobile broadband services, are priority 1; videoconferencing (standard quality) and VPN solutions for work-at-home purposes are priority 2; and video contents, online gaming and peer-to-peer platforms are in the last category as priority 3 services.

If necessary, certain service functionalities in the lower priority categories may be limited or inhibited. These include non-linear audiovisual services, video platforms, restart TV, online gaming and peer-to-peer applications. Furthermore, if that proves necessary to prevent or mitigate network congestion, operators are authorized to adopt other measures for network and traffic management, notably by blocking, slowing down, altering, restricting or degrading contents in relation to specific services or applications. Traffic from interpersonal communications services may be routed through messaging or voice applications and operators may preemptively reserve mobile network capacity for voice and SMS services.

Any of these traffic management measures must be notified to the Government and to ANACOM prior to adoption or, when their urgency does not allow for prior notice, within 24 hours after implementation.

As a complement to the implementation of the measures described above, with the goal of prioritizing continuity of critical services, Decree-Law no. 10-D/2020 also temporarily exempts electronic communications network and service providers from complying with several obligations. These include, among others, certain quality of service parameters; the standard deadlines for

responding to consumer complaints; specific time periods within which to ensure specific mobile broadband coverage obligations (originally imposed in the context of the auction procedure for the award of 4G spectrum); and an extension of remote portability request implementation deadlines, to 5 business days.

This legislative instrument is in line with the exceptions provided for in Article 3(3) of Regulation (EU) 2015/2120 and with the analytical framework set out in the Commission and the BEREC's recent Joint Statement. It comes into force today and shall remain in effect for as long as the exceptional legal framework to address the Covid-19 emergency stays in place and, it is hoped should provide Portuguese operators with much-needed flexibility to handle network congestion issues which are already becoming apparent across Europe during the most recent weeks.

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