



UK Representation
to the EU Brussels

30 May 2016

Alexander Italianer
Secretary General
European Commission
Rue de la Loi 200
1049 Brussels

[REDACTED]
UK Representation to the EU

Avenue d'Auderghem 10
1040 Brussels
Belgium

Tel.: +32 [REDACTED]
e-mail: [REDACTED]@fco.gov.uk

Dear Secretary General,

THE OPEN INTERNET ACCESS (EU REGULATION) REGULATIONS 2016

I am writing to inform you that on 26 May the UK Government laid in Parliament the above Statutory Instrument, which provides Ofcom (as National Regulatory Authority) with the necessary powers to monitor and ensure compliance with the open internet access provisions of EU Regulation 2015/2120. It also sets out penalties and offences in relation to non-compliance. A copy of the Regulations, along with an Explanatory Memorandum, Transposition Note and Impact Assessment, are attached and can be found at the following [link](#). The Regulations come into force on 17 June 2016.

The Open Internet Access (EU Regulation) Regulations 2016 concern the open internet access provisions of the EU Regulation and provide for the following:

- the designation of Ofcom as the National Regulatory Authority to monitor and ensure compliance with the EU Regulation in the UK;
- a power for Ofcom to be able to set requirements on providers to ensure compliance with Articles 3 and 4 of the EU Regulation, and/or to ensure the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology (as envisaged by Article 5(1) of the EU Regulation);
- a power for Ofcom to be able to certify one or more monitoring mechanisms to measure internet access services' performance levels for the purpose of Article 4(4) of the EU Regulation;
- a power for Ofcom to be able to require such information as Ofcom considers necessary for the purposes of carrying out their functions under the EU Regulation and these Regulations;
- procedures for notifications of breaches of the EU Regulation and these Regulations;
- penalties for breaches of the EU Regulation and these Regulations (see below);

- the appeals procedure against Ofcom decisions under the EU Regulation or these Regulations (appeals to be heard by the Competition Appeal Tribunal); and
- offences and penalties in relation to breach of an information requirement (“information requirement” means a requirement under Article 5(2) of the EU Regulation or regulation 17 of these Regulations).

Article 6 of the EU Regulation requires that Member States lay down the rules on penalties for infringements of the Regulation, and that these must be “effective, proportionate and dissuasive”. We have set out penalties that are consistent with the existing framework supporting Ofcom’s regulation of electronic communications under the Communications Act 2003 and other relevant legislation. The Regulations also require that penalties should be determined by Ofcom at a level that is appropriate and proportionate to the breach. We have set out the following maximum fines:

- For breach of an information requirement, an amount not exceeding £2m.
- For any other breach, an amount not exceeding 10% of the turnover of the notified provider’s relevant business.
- For continuing breach of an information requirement, a penalty not exceeding £500 per day.
- For continuing breach of any other requirement, a penalty not exceeding £20k per day.

In relation to information requirements, we have also set out the following (these sanctions are again consistent with the existing UK regulatory framework):

- Where a communications provider fails to provide requested information in accordance with an information requirement, they will be guilty of an offence and liable on summary conviction to a fine in England and Wales, or in Scotland and Northern Ireland to a fine not exceeding the statutory maximum; or on conviction on indictment to an unlimited fine.
- Where a person knowingly provides false information, or is reckless as to whether or not it is false, they will also be guilty of an offence and liable on summary conviction to a fine in England and Wales, or in Scotland and Northern Ireland to a fine not exceeding the statutory maximum; or on conviction on indictment to imprisonment for a term not exceeding two years, or to an unlimited fine, or both.

I hope this is helpful. Please contact [REDACTED] ([REDACTED]) in Internet & International Team, DCMS, 100 Parliament Street, London SW1A 2BQ if you have any queries.

Yours sincerely,

[REDACTED]

[REDACTED]

