

About C4C

The Coalition for Creativity ([C4C](https://coalition4creativity.org)) is a broad-based coalition working for an informed debate on how copyright and the wider digital framework can promote innovation, access, and creativity. Its membership brings together libraries, scientific and research institutions, digital rights groups, technology businesses, and educational and cultural heritage organisations. C4C members are both significant contributors to and heavy users of the digital ecosystem, and their capacity to create, disseminate, and reach European and global audiences depends on an open, competitive, and non-discriminatory internet.

For questions on this submission, please contact us at secretariat@coalition4creativity.org.

Executive Summary

C4C supports the goal of a simpler and more integrated single market for electronic communications. Its comments here are confined to the provisions that determine whether the open internet survives that simplification: interconnection (Articles 65 to 71), open internet access (Articles 93 and 94), and the new ecosystem cooperation and voluntary conciliation mechanism (Articles 191 to 193).

Two features of the proposal threaten the open internet. The first is a network usage fee payable by content and application providers (CAPs) to network operators, latent in the interconnection recitals and the conciliation facility. The second is an erosion of net neutrality, triggered by a new power for the European Commission to set the conditions for specialised services through implementing acts. Both would raise costs for Europe's creative and knowledge sectors, entrench the largest incumbents, and reach consumers in the form of higher prices and thinner choice.

C4C asks the Department to support four positions in Ireland's engagement on the file:

1. Keep **interconnection** commercial and grounded in competition law. Remove from the recitals the framing that traffic handover creates “disproportionate or unsustainable investment needs” and that the benefits of increased traffic “should be shared,” which imports a sending-party-pays logic into the text.
2. Confine Articles 191 to 193 to genuine technical and efficiency **cooperation**. The “commercial arrangements” within reach of the Article 192 conciliation facility must be defined to exclude any payment for the delivery of traffic requested by end-users, and the Article 193(2) review clause, which leaves open the conversion of the facility into a mandatory mechanism, should be deleted.
3. Keep **net neutrality** in primary law. Delete or tightly bound the Article 93(6) power to detail the conditions for specialised services by adopting implementing acts, so that comitology can never lower the quality floor for the general internet or authorise commercial prioritisation.
4. Legislate on the **evidence**. The Body of European Regulators for Electronic Communications (BEREC) has repeatedly found the interconnection market to be competitive and its prices falling, and the European Parliamentary Research Service has [found](#) that the proposal's own impact assessment neither properly addresses the question of cooperation between actors in the connectivity ecosystem nor discusses policy options on it. No market failure on the record justifies these interventions. The Regulatory Scrutiny Board issued a negative opinion on the draft impact assessment in October 2025 and cleared it only with reservations in December 2025.

Scope of This Response

This submission addresses the open internet and its consequences for the creative and knowledge economy. It comments on interconnection (Articles 65 to 71), open internet access (Articles 93 and 94), and ecosystem cooperation and voluntary conciliation (Articles 191 to 193), together with the recitals that give those articles their direction, in particular recitals 15, 164, 168, 254, 255, and 403 to 405. C4C takes no position here on the many other parts of the proposal.

Open, Non-Discriminatory Access Serves Europe's Creators

Recital 254 states that merging the open internet rules into this Regulation is meant to leave untouched the principle of equal and non-discriminatory treatment of traffic. C4C takes the Commission at its word and reads the operative articles against that commitment. The interconnection recitals, however, treat the handover of traffic by content and application providers as a burden for which network operators should be compensated, which assumes a balance to be struck between two comparable parties. As Dean Bubley has [put it](#): “You can't create a 'level playing field' between a runner, a cyclist and a swimmer, even if they occasionally compete in triathlons.” CAPs already pay their own access providers, invest in the delivery infrastructure that reduces network load, and generate the demand that makes connectivity worth buying. The carriage that matters for Europe's creators is open and non-discriminatory, letting a small archive, an independent studio, or a university repository reach an audience on the same terms as a global platform. Several provisions of the proposal place a toll booth or a slow lane on that carriage.

Interconnection: Articles 65 to 71

The Market Works, and the Proposal's Own Recital Says So

Article 65 preserves the freedom of undertakings to negotiate technical and commercial interconnection arrangements, and Articles 66 to 71 build the access framework around it. That structure is sound and should stay. The market it governs is competitive, technically dynamic, and marked by consistently falling transit prices, as BEREC's own analysis of the interconnection ecosystem has repeatedly confirmed. The “funding gap” that a network fee is said to fill has never been substantiated, and BEREC has also found that a shortage of revenue is not the binding constraint on network rollout in Europe. A measure aimed at a problem the regulator cannot find is a measure in search of a justification.

The proposal contains its own answer to the fee proponents. Recital 168 states that national measures which tie the terms of access or interconnection to a party's degree of investment in network infrastructure, rather than to the interconnection services actually provided, “may cause market distortion and may therefore not be compatible with competition rules.” C4C agrees, and asks the Department to hold the Commission to that sentence.

The Fair-Share Logic Has Been Placed in the Recitals

The difficulty is that other recitals point the opposite way. Recital 164 states that the handover of traffic by private networks, including CAPs, “may give rise to disproportionate or unsustainable investment needs” for receiving operators, to be addressed through BEREC ecosystem cooperation guidelines and, where appropriate, the voluntary conciliation facility. Recital 403 goes further, directing that the benefits of increased traffic “should be shared in a manner conducive to continued investment.” This is the sending-party-pays proposition, rewritten as guidance and routed through the new cooperation mechanism rather than proposed openly as a charging

obligation. It sits in direct tension with recital 168 and with the equal-treatment principle the proposal claims to preserve.

The consequences of that model are on the record. South Korea's sending-party-pays regime produced less efficient traffic routing, higher consumer prices, degraded content quality, and an incentive for traffic exchange to move offshore. Interconnection disputes, once monetised, become weapons: the peering dispute between Init7 and Swisscom ran for eleven years, a cost a well-resourced incumbent can absorb and a small CAP cannot. Payments of this kind would fall hardest on European small and medium-sized enterprises, start-ups, and cultural and creative organisations, diverting money from the works and services that give networks their value, and reaching citizens in the form of higher prices and narrower choice. They would also blunt the incentive for CAPs to keep investing in the caching, content delivery networks, and compression that already reduce the very load these recitals treat as a burden.

Recommendation on Articles 65 to 71

Interconnection should remain a commercial matter subject to competition law and the equal-treatment principle. The Department should support removing from recitals 164 and 403 the “unsustainable investment needs” and “benefits should be shared” framing, and should oppose any reading of Articles 65 to 71, or of the cooperation mechanism that references them, under which a national regulatory authority (NRA) or BEREC mediates or facilitates payments from CAPs to network operators for carrying requested traffic.

Ecosystem Cooperation and Voluntary Conciliation: Articles 191 to 193

A Voluntary Forum With a Loaded Rulebook Is Not Neutral

Article 192 requires an NRA, on request, to convene a conciliatory meeting between two network operators, or between an operator and another undertaking, on the “technical and commercial arrangements” covered by the BEREC ecosystem cooperation guidelines under Article 191. BEREC must be informed within one week and must issue an opinion on the case within two months. C4C does not oppose structured technical cooperation. Its concern is the word “commercial.” Read with recital 403, the guidelines that define the conciliation's subject matter are already tilted toward the proposition that CAPs should contribute to network investment. A standing, regulator-convened forum whose reference framework favours one side of a contested economic question is not a neutral venue, however, optional attendance may be. The mechanism also arrives without the analysis that should support it. In its [initial appraisal of the impact assessment](#), the European Parliamentary Research Service identifies the conciliation facility as the one notable addition the proposal makes beyond the policy options that were assessed, describes it as a mechanism for resolving disputes between telecommunications operators and content providers over technical and commercial arrangements, and finds that it was not properly addressed in the impact assessment. The same appraisal records that the impact assessment does not examine the cooperation question in depth and fails to explore policy options on it, an omission it connects to the ongoing debate on network cost contribution. A mechanism aimed at operators and content providers has therefore entered the text without the evidence base that the Better Regulation Guidelines require.

The asymmetry is the point. Between a dominant network operator and a small content provider, the operator's ability to summon a process, generate a BEREC opinion, and sustain the surrounding cost is itself leverage, whatever the label on the procedure. The German Netzbremse [complaint](#) against Deutsche Telekom, which alleges engineered congestion to extract payment, shows the direction of travel. As the Association of Cloud Infrastructure Service Providers in Europe (CISPE) has observed, the few interconnection disputes that arise are traceable to breaches of the existing open internet rules, not to any gap in cooperation that would justify a new facility. As information labs has [documented](#), a mechanism styled as voluntary counselling can, through repetition and imbalance, operate as pressure rather than mediation.

Recital 404 appears to offer a safeguard, stating that the matters addressed in the guidelines should not be subject to the dispute resolution mechanism, which should be limited to enforcing obligations laid down in the Regulation and should not extend to arrangements of a cooperative or voluntary nature. On inspection, that carve-out does little work. Article 66 imposes an obligation to negotiate interconnection, and obligations under Article 66 are themselves obligations laid down in this Regulation. The boundary between a cooperative arrangement outside dispute resolution and an Article 66 obligation inside it is therefore left to be drawn in practice, at the very point where the money is at stake.

The three-year review clause in Article 193 is another pressure point. A cycle of disputed findings and settlements reached in the shadow of regulatory intervention becomes the evidence base for the 2028 review, where the natural argument will be that voluntary tools have proven insufficient. Soft instruments rarely stay soft across successive review cycles.

Recommendation on Articles 191 to 193

The Department should support defining the “commercial arrangements” within the scope of Article 192(1) to exclude any payment for the delivery of end-user-requested traffic, and should work to ensure that the Article 191 guidelines cannot embed a fair-share or shared-benefits premise. Conciliation should be confined to technical interoperability and efficiency gains that benefit the whole ecosystem, and BEREC opinions under Article 192(2) should not become de facto pricing signals for interconnection. The Department should also seek the deletion of the review clause in Article 193(2), so that a mechanism justified as voluntary cannot acquire a built-in route to becoming compulsory.

Open Internet Access: Articles 93 and 94

The Core Rules Are Right and Should Be Preserved Without Change

Article 93 carries the substance of Regulation (EU) 2015/2120 into the new Regulation. Paragraph 1 preserves the end-user right to access and distribute content and to use applications, services, and terminal equipment of choice. Paragraph 3 requires equal treatment of traffic and permits only reasonable traffic management that is transparent, non-discriminatory, proportionate, and, in the proposal's own words, “not based on commercial considerations but on objectively different technical quality of service requirements.” Paragraph 5 preserves the narrow specialised-services exception: optimisation must be necessary, capacity must be sufficient, the service must not substitute for internet access, and it must not be to the detriment of the availability or general quality of the open internet. Recital 254 confirms that the merger is meant to leave these principles untouched. C4C supports keeping paragraphs 1 to 5 exactly as they stand.

Article 93(6) Moves a Fundamental-Rights Boundary Into Comitology

The new element is paragraph 6, which empowers the Commission to adopt implementing acts “detailing the conditions” for specialised services, through the examination procedure in Article 199(4). The 2015 Regulation contained no such power. Recital 255 shows its purpose: to define specialised business services “for interconnecting data centres, in provision of edge computing and for AI services,” to address network slicing and “differentiated industrial use-cases,” and, most consequentially, to set “quality-of-service parameters or minimum levels to be ensured for general internet access services.” The boundary between the open internet and a paid, prioritised slice is the boundary that decides whether net neutrality holds. Placing it in an implementing act, guided by BEREC guidelines, moves a question of fundamental rights and market structure out of the primary law that Parliament and Council debated and into a low-visibility procedure where influence is confined to a handful of well-resourced actors and public scrutiny is minimal. A “minimum level” set for general internet access is, in substance, the floor of a slow lane.

The genuine specialised uses the proposal cites do not require this power. Critical communications, drone detection, and comparable safety applications already fit within the paragraph 5 exception, as recital 35 effectively concedes. The paragraph 6 power is therefore not needed to authorise them, and its breadth invites the opposite use. The analysis that should underpin a power of this reach was never carried out. The European Parliamentary Research Service [finds](#) that the impact assessment does not thoroughly assess the impact on fundamental rights, and that for several policy options it simply asserts that no such impact is expected.

Recommendation on Articles 93 and 94

The Department should support deleting Article 93(6) or, failing deletion, confining it so that an implementing act may only strengthen the paragraph 5 safeguards, may never set an internet-access “minimum level” that permits general degradation, and may never authorise prioritisation on commercial grounds. Article 93 should reaffirm that blocking, throttling, and paid prioritisation of internet access services are prohibited. The supervisory architecture in Article 94, including the biennial BEREC reporting, should be retained and used to police these boundaries rather than to relax them. The proposal's rework of BEREC's role in this area is examined by [information labs](#), and the Department is encouraged to draw on that analysis.

Conclusion

For the sectors C4C represents, open and non-discriminatory access is the outcome that matters: creativity, research, and public-interest services reaching the public without paying a network operator for the privilege and without being relegated to a degraded default lane. The Digital Networks Act can deliver the simpler, more integrated single market it seeks without either outcome. That requires interconnection to stay commercial and competition-based, the cooperation and conciliation mechanism to stay technical and genuinely voluntary, and the boundaries of net neutrality to stay in primary law.

C4C urges the Department to base Ireland's position on the independent evidence, above all BEREC's findings that the interconnection market functions well and requires no charging intervention, and to weigh the interests of the whole digital ecosystem, including consumers, smaller providers, and the cultural, research, and creative sectors, against the narrower interest in new revenue for the largest network operators. C4C would welcome the opportunity to provide further detail on any of the points above.