

To:

**European Commission**  
**Directorate-General for Communication Networks, Content and Technology,**  
**Directorate B: Electronic Communications Networks and Services**  
**Unit B2: Electronic Communications Policy**  
**Brussels**  
**1049**  
**Belgium**

August 18<sup>th</sup>, 2018

Dear Sir, Madam,

The European Commission has started a study aimed at collecting information about the implementation of the net neutrality provisions of Regulation (EU) 2015/2120 ('Regulation') across the European Union. This study has been awarded to the law firm Bird & Bird in consortium with the research and consultancy company Ecorys.<sup>1</sup>

The undersigned organisations have concerns about awarding this study to a law firm which represents the interests of a particular group of stakeholders that are regulated by the net neutrality provisions that are the object of the study. In EU Member States like the Netherlands, Bird & Bird represents most major telecom operators on matters related to the telecommunications regulatory framework, including net neutrality. For example, Bird & Bird represents T-Mobile in the pending court case Bits of Freedom has initiated against the decision of the Dutch Regulatory Authority ACM to not take action against T-Mobile's zero-rating offer. This court case revolves around the practice of zero-rating and the interpretation of the net neutrality provisions of the Regulation.

Although the undersigned organisations acknowledge the legal expertise and experience of Bird & Bird, we have concerns with awarding this particular study to Bird & Bird. Given the fact that this firm represents telecom operators in conflicts surrounding this legislation, there are reasonable doubts about its independence and impartiality conducting the study. It raises questions about the validity of the results and could be damaging to the credibility of and the confidence in the evaluation of the net neutrality provisions by the European Commission and the resulting measures taken to mitigate any issues by the European Commission.

We ask the European Commission to provide a written confirmation of the impartiality of this study. Such a confirmation should include a list of all measures taken by the European Commission and/or Bird & Bird to ensure the independence of the evaluators conducting the study and the quality of the report.

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<sup>1</sup> <https://ted.europa.eu/udl?uri=TED:NOTICE:84329-2018:TEXT:EN:HTML>

To avoid similar issues in the future, we urge the European Commission not to award studies evaluating EU legislation to organisations representing the specific interests of parties that are directly affected by the legislation being evaluated or that are actively involved in a legal conflict about the interpretation of said legislation. Such criteria of conflicts of interest should be included in any upcoming tender of such nature. Particularly in light of these problems it is vital that the Commissions presents a balanced report based on the findings of Bird & Bird.

Kind regards,

Access Now, Brussels  
Bits of Freedom, Netherlands  
Digitalcourage, Germany  
Digitale Gesellschaft e.V., Germany  
EDRi, Brussels<sup>2</sup>  
epicenter.works, Austria  
EFN, Norway  
Frënn vun der Ënn, Luxemburg  
Hermes Center, Italy  
IT-Pol, Denmark  
Vrijschrift, Netherlands

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<sup>2</sup> Representing 39 digital civil rights organisations in Europe. See <https://edri.org/members>