# Questions submitted to ECJ in ‘StreamOn’ procedure

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In a decision of 20 January 2020, the *Verwaltungsgericht Köln* (Cologne Administrative Court) submitted a number of questions to the European Court of Justice concerning the interpretation of Regulation (EU) 2015/2120 and its provisions on net neutrality. The case concerns the ‘StreamOn’ service offered by the German mobile operator Telekom Deutschland GmbH in which the data transmission rates of some video streams are throttled.

‘StreamOn’ is a so-called zero-rating service that can be added to some of the mobile operator’s tariffs free of charge. The data used to stream audio and video content from specific content partners is not deducted from the data allowance included in the customer’s mobile contract. Partners include video streaming services such as Netflix or YouTube, as well as the media libraries of the German public service broadcasters. However, customers who activate ‘StreamOn’ agree to a limited broadband speed of 1.7 Mbit/s for video streaming.

In December 2017, the *Bundesnetzagentur* (Federal Networks Agency), which regulates the telecommunications market in Germany, had prohibited parts of the service. It had decided that, although a zero-rating service was admissible in principle, the bandwidth for ‘StreamOn’ should be unthrottled in order to comply with net neutrality, which protected the fundamental functional principle of the Internet for all users. This principle was violated if video streaming speeds were deliberately throttled.

The telecommunications provider had appealed against this decision. In temporary relief proceedings, the *Oberverwaltungsgericht* (Higher Administrative Court) had already provisionally confirmed the decision to ban parts of the ‘StreamOn’ service. The Cologne Administrative Court, which is responsible for the main proceedings, has now referred the case to the European Court of Justice.

The European Court of Justice will clarify whether agreements between Internet access service providers and end-users concerning price, data volumes or speeds need to conform to the equal treatment principle enshrined in Article 3(3) of Regulation (EU) 2015/2120. The Administrative Court also submitted various questions on the scope of the traffic management measures that are permitted under the Regulation.

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https://www.vg-koeln.nrw.de/behoerde/presse/Pressemitteilungen/03_200121/index.php

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