

ETNO Reflection Document to BEREC Consultation on Cross-border Issues under Article 28 of Universal Service Directive



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Executive Summary

- ETNO welcomes the opportunity to respond to this consultation about cross-border issues under Article 28 of the Universal Service Directive (USD).
- ETNO has concerns regarding non-geographic numbers access provisioning at international level as there are existing unresolved issues and they are likely to be exacerbated when implemented at EU level.
- In this position paper, ETNO wishes to explain the disadvantages of provisioning access to all non-geographic numbers in Member States and to present its views to the consultation questions.

General comments

ETNO thanks the Body of European Regulators for Electronic Communications (BEREC) for the opportunity to engage in a consultation on its draft report on cross-border issues under Article 28 of the USD, BoR (10) 62.

We take the opportunity to highlight some fundamental issues for NRAs regarding the implementation of amended Article 28 to ensure harmonised national transposition -- especially as regards the required access to non-geographic numbers across Member States.

Non-geographic numbers access provisioning at international level has remaining, existing unresolved issues that are likely to be exacerbated when systematically implemented at EU level.

Article 28 of the Citizens' Rights Directive (2009/136/EC) should be read considering that, in the real world, the misuse of ITU-T E.164 numbers is omnipresent and taking into account the extremely diverse national regulatory frameworks throughout Europe imposed for the use of non-geographic numbers at national level. These elements constitute a major problem in the implementation of this new requirement.

Access to all geographic numbers and services using non-geographic numbers

In various Member States, practical solutions for the protection of users, service providers and operators are in place without any harmonisation which might at this moment lead to the conclusion that there are no true viable solutions to implement Article 28 without undermining customer protection. There are major differences across Member States in the implementation and commercialisation of non-geographic numbers. Some examples of current practice include different requirements concerning tariff announcements, different levels of maximum allowed tariffs applicable for each specific range of non-geographic services, different rules concerning overall consumption notifications, different requirements to provide options for call barring to increase customer protection, and different legal and contractual responsibility of stake holders in the implementation of non-geographic services. This situation leads to the conclusion that it is unrealistic to open access to non-geographic numbers from other countries from 'one day to the next.'

In this context, we find it useful to consider also the Recital 46 of the Citizens' Rights Directive (2009/136/EC), amending the USD:

"A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States and to access services using non-geographic numbers within the Community, including, among others, freephone and premium rate numbers. [...] Cross-border access to numbering resources and associated services should not be prevented, except in objectively justified cases, for example to combat fraud or abuse (e.g. in connection with certain premium-rate services), when the number is defined as having a national scope only (e.g. a national short code) or when it is technically or economically unfeasible. Users should be fully informed in advance and in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes."

This recital should serve as guidance, motivating the implementation of Article 28.

The weaknesses of the proposed open access approach, considering existing experience with the premium rate service (PRS)¹ market, would be:

¹ "Premium rate services" refers to services that are accessed by the use of a premium rate telephone number in which the caller pays a special premium rate that is above the normal tariff for voice calls or SMS communication

- Regarding the policy objective of a single market, normally, the scope of numbering regulation at EU level is to focus on end-user numbering. A possible open access to national non-geographic numbers would only increase the likelihood of fraud and misuse of numbers and would significantly decrease customer protection. It would be unrealistic to think that every Member State NRA knows in detail for which services certain number ranges are opened in all other Member States given the number of EU Member States (including Accession Countries) and the constant evolution of national numbering plans;
- The above justifies our support for the use of internationally defined and managed numbering, such as managed by ITU-T, for PRS provisioning (or to provision other services accessible by any country, associated with geographic or non-geographic numbers). With these international numbers, users can recognise what they actually are accessing, decreasing the chances of misuse. Open access of nationally-defined numbers for internationally accessible services is likely to increase misuse and fraud;
- Currently, formally established international services mainly use international numbers defined by ITU-T, such as International Freephone Numbers, +800, International Shared Cost Numbers, +808, International Premium Rate Numbers, +979, International Personal Numbers for Universal Personal Telecommunications, +878. As ETNO has argued in past contributions, only this type of non-geographic international numbers, which have been in use for many years, are well defined by means of stable operator agreements and are well known by and serve to protect end users. Nevertheless, even for these international number ranges, it remains a great challenge to ensure customer protection is guaranteed and that national legislation on customer protection is not jeopardised, e.g. with the use of international premium rate numbers;
- An alternative to open access would be to open individual types of non-geographic numbers one-by-one on the basis of actual demand, making sure that the services comply with the national regulation regarding PRS.

It should be noted that open access to non-geographic numbers, such as 0800 and some types of low premium rate numbers, is available today. In particular, there exist already solutions to allow access to 0800 in other countries.

Regarding the amended Article 28 and the reference to European Telephone Numbering Space (ETNS), it should be considered that the ETNS “+3883” country

between end-users. Examples of services are sports information services, games, popular voting (as opposed to electoral voting), chat lines and business information services, as per BoR (10) 62.

code has been 'spare' as of January 2011, lacking market demand. As a consequence, national transposition would more appropriately focus on dedicated ITU-T country codes for universal services provisions, avoiding the introduction of further confusion on international services access and numbering.

It should be noted also that certain service providers are tempted to migrate their services to international, highly charged numbers in order to escape from stricter national regulations for PRS. It is therefore clear that a global approach is required to guarantee a reasonable demand based access to premium rate numbers, including throughout Europe, and to guarantee customers a coherent and implementable protection of their interests.

Actions taken in case of fraud and misuse

Amended Article 28(2) establishes enforcement powers in relation to access to numbers or services where this is justified by fraud or misuse, including on a cross-border basis. It specifies:

"Member States shall ensure that the relevant authorities are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block, on a case-by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues."

It has to be underlined that it is likely to not be feasible for national network operators or service providers to block international calls towards non-geographic numbers of another country on a "case-by-case basis" and to withhold payments, since it would be impossible to know for which services certain numbers or number ranges are opened in all other countries.

In addition, fraudulent content providers change very frequently the numbers associated to their services to circumvent their services being blocked. There thus would be the risk for network operators and service providers to be obliged to block huge ranges of numbers, including numbers not misused and geographic numbers. The most extreme measure would be to block entire country codes (as it already happens towards some small or developing countries where both geographic and non-geographic numbers are misused).

Another aspect of number blocking, or call barring, is the existence of national regulation to block adult content related numbers. If operators were obliged to open access to non-geographic numbers, there would need to be a guarantee and a clear common understanding of the difference between adult content and other content. As there is no such guarantee in each country, operators would depend on the application abroad. In addition, it would be technically very difficult to implement adult call barring options which take account of all international numbering plans.

Technical and operational limitations of accessing non-geographic numbers

Particular attention should be given to the technical and operational limitations of allowing access to non-geographic numbers across Member States:

- pricing aspects: Pricing principles vary considerably across Member States. It should be operationally manageable for operator to define pricing and to update pricing on request of the service provider; it should be possible also to provide sufficient pricing information to end users;
- taxation aspects (e.g., value-added tax (VAT)): Across Member States, there are different tax rules applicable. This will result in incompatibilities of the business models between countries that need to be addressed;
- numbering plan aspects: Each Member State applies different rules as regards non-geographic numbers and short codes. Accessibility requires also a clear strategy to allow customers to call foreign non-geographic numbers;
- fraud/misuse: There should be sufficient measures in place to allow control and combating of fraud and misuse on an international level;
- complaint handling: The complaint handling procedure is to be extended and harmonised at EU level;
- origin dependant call barring: It is mentioned that service providers could request to bar access to their services from specific areas. Such call barring is technically limited and dependent on the availability of CLI information.

Based on these implications, we conclude that it is not feasible to open all non-geographic numbers. An alternative possibility is to investigate opening up services to non-geographic numbers one-by-one on the basis of real demand, while ensuring that the services comply with national regulations and taking into account the constraints indicated above.

Specific answers to the questions in the Consultation

Below are ETNO's replies to individual consultation Questions – to some extent repeating arguments elaborated above.

Consultation Question 1: Do you consider that the current technical and commercial limitations on cross-border access – in practice, leading to a fairly low provision of cross-border services and therefore instances of cross-border fraud/misuse – might change in the future, leading to greater provision of cross-border services, and a greater need for cross-border enforcement against fraud or misuse? If so, how?

In our opinion, the possible open access to national non-geographic numbers of other Member States can only increase the likelihood of fraud and the misuse of numbers. It would be unrealistic to think that every Member State knows for which services certain number ranges are opened in all other Member States given the large number of EU Member States (including Accession Countries) and the constant evolution of national numbering plans.

Current national rules for the use of numbers in relation to customer protection are not aligned from country-to-country. There is no harmonised minimum set of legal requirements to protect customer interest at national level across Member States. Opening non-geographic numbers from other countries would thus undermine national efforts to increase customer protection with regards to access to value-added services, e.g., there are measures to protect customers with regards to gambling, adult content... It would also encourage some market players to take advantage of the international differences, bypassing national regulations.

At EU level, ITU-T's dedicated international non-geographic numbers should be supported or, at least, favourably considered, such as International Freephone Numbers, +800, International Shared Cost Numbers, +808, International Premium Rate Numbers, +979, International Personal Numbers for Universal Personal Telecommunications, +878. These services are well known by the end users since they have been used for many years.

Consultation Question 3: Are there additional cross-border issues, other than those identified in Section 2, to be considered within the scope of Article 28 of the USD? If yes, please describe them.

The cross-border misuse of numbers is a dynamic process, since as soon as a method is found to stop a given abuse; the fraudulent content providers will invent a new way of making money in a fraudulent manner.

In addition, national regulation regarding premium rate services is not aligned across Member States. Having such divergent regulations applicable to premium rate services could have important consequences. Countries that have a stricter regulation will be impacted by those countries where premium rate services are less regulated.

It has to be underlined that it is likely to be impossible for network operators or service providers to block international calls towards non-geographic numbers of another country on a case-by-case basis and to withhold payments. In fact, it is impossible to know for which services certain number ranges are opened in different countries given the number of EU Member States (including Accession Countries) and the constant evolution of national numbering plans.

An alternative possibility is to investigate opening up services to non-geographic numbers one-by-one on the basis of real demand, making sure that the services comply with the national regulation regarding premium rate services and taking into account the identified constraints.

In this way, there would be a guarantee that national regulation is respected by the international premium rate service that becomes accessible. For example, a Member State's national regulation might impose that end users be informed by way of an announcement of any pricing above 1€; whereas, in another Member State, such an announcement would not be required. In order to protect competition across Member States, if this amended article would require open access, there is a need for a correct alignment of rule, e.g., one Member State might limit the maximum duration for the premium rate service to 10 minutes to remain below the spending ceiling.

In addition, fraudulent content providers change very often the numbers associated to their services (as soon as one of their numbers get blocked, they open a new number).

In the end, there would be the risk for network operators and service providers, to be obliged to block huge ranges of numbers including numbers not misused and geographic numbers. The most extreme measure would be to block entire Country Codes (as it already happens towards some small or developing Countries where numbers, both geographic and non-geographic, are misused).

Consultation Question 4: In your country, which national authority(ies) is (are) expected to be the relevant one(s) for the purposes of Article 28(2) of the USD? Please identify the “relevant authorities” according to the type of network or service.

Generally, a coordinated action among different national authorities would be necessary. Up-scaling these complex processes to the EU level would be very complex or even not actually viable.

Consultation Question 5: Bearing in mind the high-level description in Section 3, what measures or procedures do you consider important to allow “relevant authorities” to effectively put in place Article 28(2) of the USD?

Regarding international services access, ITU-T's well-defined dedicated numbers should be supported by NRAs for Article 28(2) transposition, allowing the possible use of national non-geographic numbers for very specific and well-defined market cases and based on bilateral agreements between different operators.

Consultation Question 6: Do you agree with the proposals for further work presented in Section 4? Are there other proposals, which should be considered? Are some proposals more important than others?

Considering the above proposals, we would consider useful further analysis by BEREC on how to avoid the increasing misuse by / of services in certain numbering ranges and related fraud in the EU along with studying the increased use of ITU-T international numbering in the EU.

Consultation Question 7: What are your views on the scope of the cooperation mechanisms foreseen in Section 4, as regards NRAs or other “relevant authorities”?

Taking into consideration previous ETNO considerations, cooperation mechanisms among NRAs, based upon sharing of experiences and best practices, are always very useful and will be useful even more in a converging European market.