

Public debriefing 48th BEREC Plenary Meeting

Michel Van Bellinghen, BEREC Chair
Virtual meeting, 6 October 2021

Body of European Regulators
for Electronic Communications

BEREC

The logo for BEREC (Body of European Regulators for Electronic Communications) features the word "BEREC" in a bold, sans-serif font. The letters "BERE" are in blue, and the letters "EC" are in a dark red color. A blue curved line sweeps under the "E" and "C", ending under the "C".

Part I

- Draft BEREC Work Programme 2022 - *Annemarie Sipkes (ACM) – Incoming BEREC Chair 2022*
- BEREC Report on how to handle third-party payment charges on mobile phone bills - *End-User WG Co-Chair (AGCOM)*
- BEREC Report on the implementation of the Open Internet Regulation – *OI WG Co-Chairs (ILR/Traficom)*
- Recent ECJ rulings regarding net neutrality - *OI WG Co-Chairs (ILR/Traficom)*

Q&A

Part II

- Draft BEREC Report on regulatory treatment for fixed and mobile backhaul - *MEA WG Co-Chairs (ARCEP/CNMC)*
- BEREC Report on the *ex ante* regulation of digital gatekeepers - *MEA WG Co-Chairs (ARCEP/CNMC)*
- BEREC Report on harmonised definitions for indicators regarding over-the-top services, relevant to electronic communications markets – *Sal WG Co-Chairs (ANCOM/CNMC)*

Q&A

Adopted documents that are not subject to presentation

- The 27th BEREC International **Roaming Benchmark Data Report** (with data from October 2020 to March 2021)
- The 2nd BEREC Benchmark Data **Report on Intra-EU communication**
- BEREC's medium-term **strategy for international cooperation**
- BEREC's medium-term strategy for **institutional cooperation**

<u>WG</u>	<u>Project</u>	<u>Launch date of PC</u>	<u>Closing date of PC</u>
Planning and Future Trends	Draft BEREC Working Programme 2022	6 October 2021	5 November 2021
Market and Economic Analysis	Draft BEREC Report on regulatory treatment for fixed and mobile backhaul	5 October 2021	5 November 2021

Draft BEREC Work Programme 2022

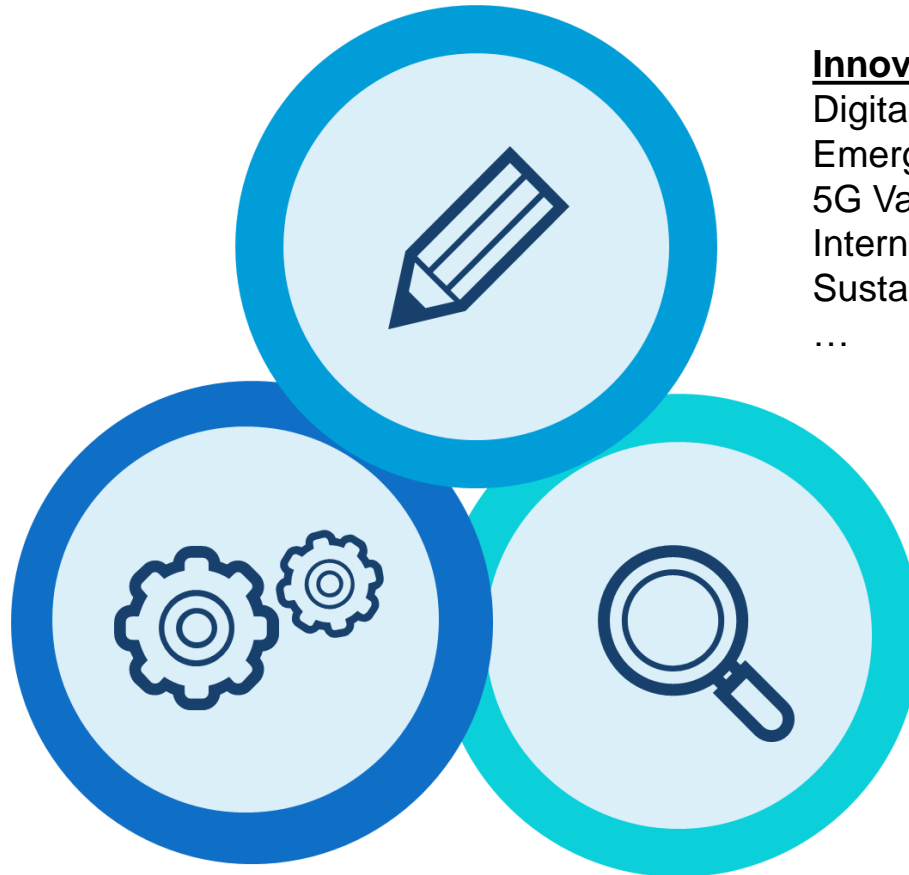
Incoming BEREC Chair 2022
Annemarie Sipkes (ACM)

Body of European Regulators
for Electronic Communications

BEREC

The logo for BEREC (Body of European Regulators for Electronic Communications) features the word "BEREC" in a bold, sans-serif font. The letters "BERE" are in blue, and the letters "EC" are in a dark red color. A blue curved line sweeps under the "E" and "C", starting from the bottom of the "E" and ending under the "C".

Working now and preparing for tomorrow



Innovate

Digital markets
Emerging technologies
5G Value chain
Internet ecosystem
Sustainability

...

ACT

Comparison
Tools
Roaming
Open Internet

...

Learn

Open RAN
AI
Business services

...

- Public consultation: 6 October – 5 November 2021
- Stakeholder Forum: 28 October 2021
- Final WP 2022: 15 December 2021
- Call for Input Outline WP 2023: 6 October – 5 November 2021

Date: 28 October 2021, Brussels

Programme:

Morning: Meet & Greet with BEREC Working Group Co-Chairs

Afternoon:

- Hosted by Philippe Defraigne (Cullen)
- Programme
 - ✓ Introduction of the draft Work Programme 2022
 - ✓ Contributions from Michel van Bellinghen and Dan Sjöblom

 - ✓ Introduction of the MiniBoR 2022
 - ✓ Mr. Villar Garcia (iClaves): post Covid measures to close the digital divide

Registration: <https://bereg-stakeholder-forum.eu/>

BoR (21) 118 Report on how to handle third party payment charges on mobile phone bills

BoR (21) 117 Report on the outcomes of the Public consultation

End-User WG

Paolo Lupi (AGCOM)

Body of European Regulators
for Electronic Communications

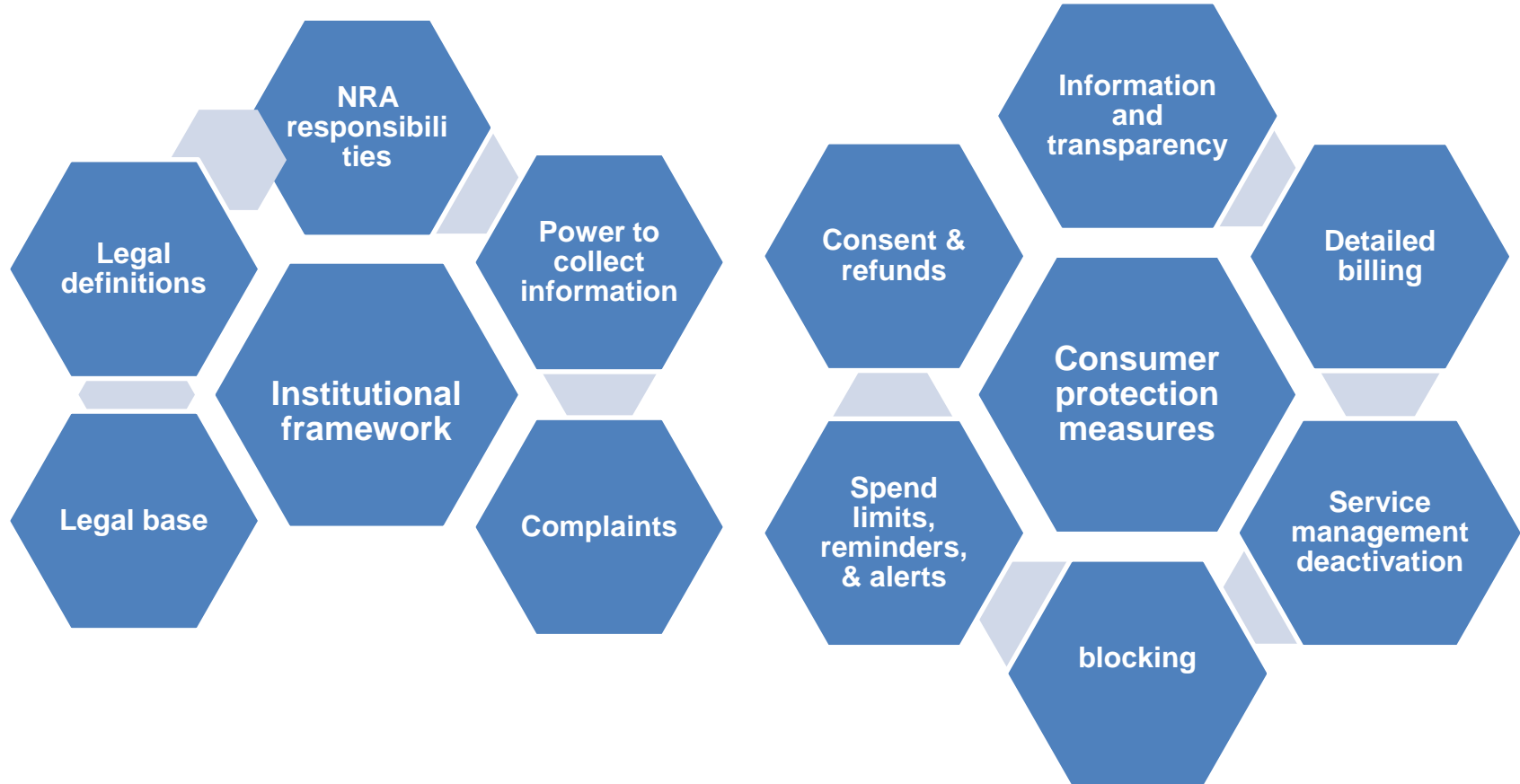
BEREC

The logo for BEREC (Body of European Regulators for Electronic Communications) features the word "BEREC" in a bold, sans-serif font. The letters "BERE" are in blue, and the letters "EC" are in a dark red color. A blue curved line sweeps under the "E" and "C", ending under the "C".

Aim of the Report

- Overview of the status of third party payment charges in Member States
- Data based on questionnaire completed by NRAs Oct 2020 (pre transposition of EECC)
- Report focuses on Premium Rate Services and Direct Carrier Billing, two different ways of charging users with similar basic markets relationships
- Six responses to the public consultation (march 2021): ECTA, MVNO Europe, Deutsch Telecom AG, Vodafone Group Services Limited, Three Ireland and WindTre
- Lot of detailed information resulting in a 50+ pages report

Third Party Payment Charges – Main Issues



- Stakeholder responses

- Welcomed opportunity to comment, appreciated that the report is descriptive rather than prescriptive and that includes data referenced to individual country regimes
- General view that report provides useful and comprehensive information
- Stress on diversity of national situations
- Overlaps with PSD2

- NRAs comments

- Identified further updates to country specific data

Implementation of the Open Internet Regulation and recent ECJ rulings

Open Internet WG

Véronique Ney / Klaus Nieminen (ILR / TRAFICOM)

Body of European Regulators
for Electronic Communications

BEREC

The logo for BEREC (Body of European Regulators for Electronic Communications) features the word "BEREC" in a bold, sans-serif font. The letters "BERE" are in blue, and the final "C" is in a dark red color. A blue curved line sweeps under the "C" and extends to the left, ending under the "E".

Main body of the report

Most recent activities of the last 12 months

NRAs activities on monitoring and supervision

NRAs activities on promoting good internet

Covid-19 Special Reporting Mechanism

Annex I – describes the status quo on

All relevant national rules, regulations and specifications in force

Internet access quality monitoring tools provided

Open Internet Regulation related court proceedings

Approach	Member States	Number
Internal activities (e.g. preparing new internal procedures, dedicating teams / FTE, etc.)	AT, CZ, CY, DK, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK	23
External activities (e.g. press release, meetings with stakeholders or ISPs, drafting national guidelines on enforcement policy, stimulating self-assessment or internal compliance by ISPs, adopting administrative orders/decisions or imposing administrative fines etc.)	AT, BE, BG, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK	25
Any other actions of note	AT, CZ, EL, ES, FR, IT, LT, PL, PT, RO, SE	11



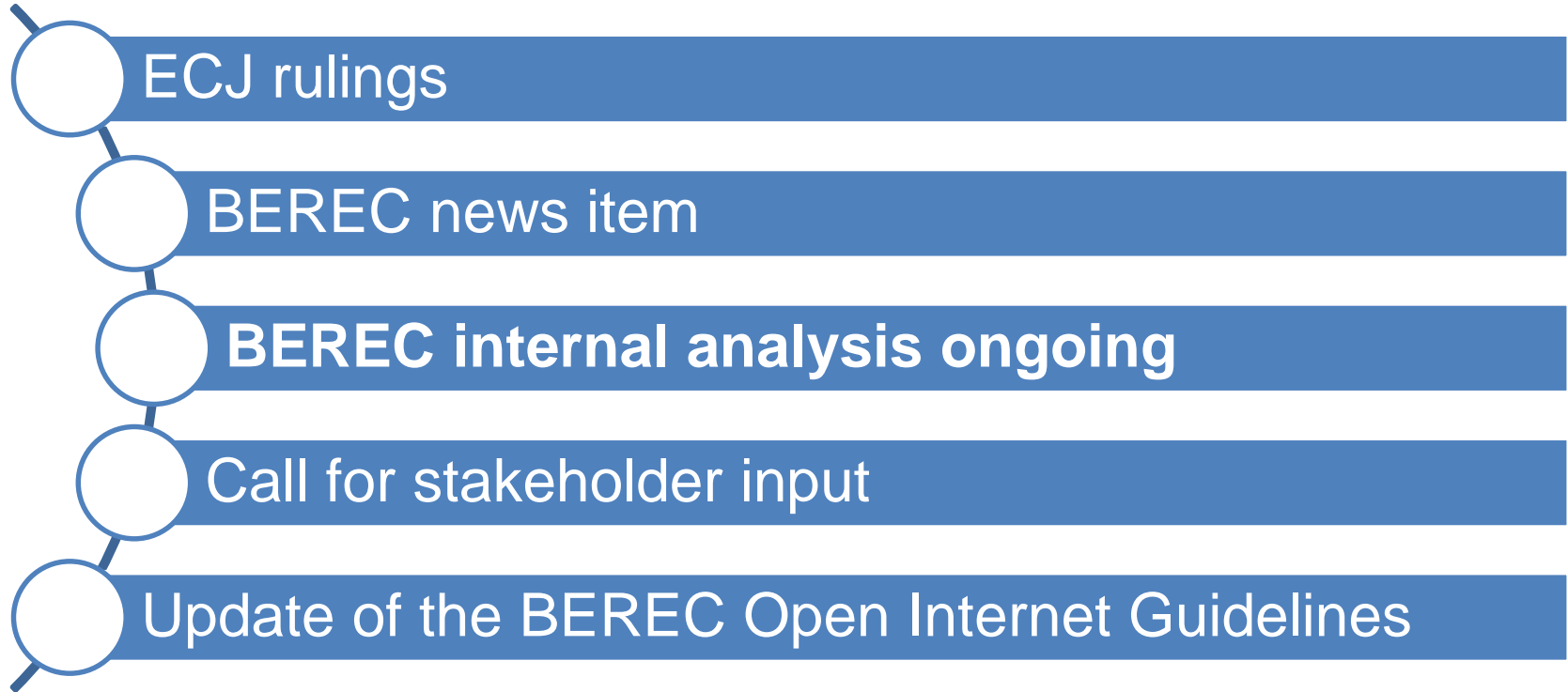
Approach	Member States	Number
Internal activities (e.g. preparing new internal procedures, dedicating teams / FTE, etc.)	AT, CZ, CY, DK, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK	23
External activities (e.g. press release, meetings with stakeholders or ISPs, drafting national guidelines on enforcement policy, stimulating self-assessment or internal compliance by ISPs, adopting administrative orders/decisions or imposing administrative fines etc.)	AT, BE, BG, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SK	25
Any other actions of note	AT, CZ, EL, ES, FR, IT, LT, PL, PT, RO, SE	11

5th year of the application of the Regulation (from 1 May 2020 to 30 April 2021)

- The adoption of different monitoring methods has increased
- Quite a few zero-rating and traffic management cases
- Handful of formal decisions were reached
- Six NRAs reported progress in Open Internet related court proceedings
- All NRAs may now impose penalties in cases of infringements
- Networks performed well and the Covid-19 crisis did not create issues for the availability or general quality of IAS

Zero-rating services are offered widely

Type of zero-rating service	Member States	Number of NRAs reporting
Music streaming services	AT, BE, BG, CZ, DE, DK, EE, EL, ES, HR, HU, IT, LT, LU, MT, NL, NO, PT, RO, SE, SI, SK	22
Video streaming / IPTV services	AT, BE, BG, CZ, DE, DK, EL, ES, FR, HR, HU, IT, LT, LU, MT, PL, PT, RO, SE, SI, SK	21
Gaming	AT, DE, PT, SK	4
Social media services	AT, BE, CZ, DE, DK, EL, ES, HR, HU, IT, LT, LU, LV, PL, PT, RO, SE, SI, SK	19
Voice and short messages	AT, BE, CZ, EL, ES, HR, HU, IT, LT, LV, PL, PT, RO, SI, SK	15
Cloud services	AT, CZ, EL, IT, PL, PT, RO, SK	8
E-mail services	EL, PL, PT, RO	4
Other	AT, DE, DK, EL, ES, HU, IT, LV, PL, PT, RO, SK	12



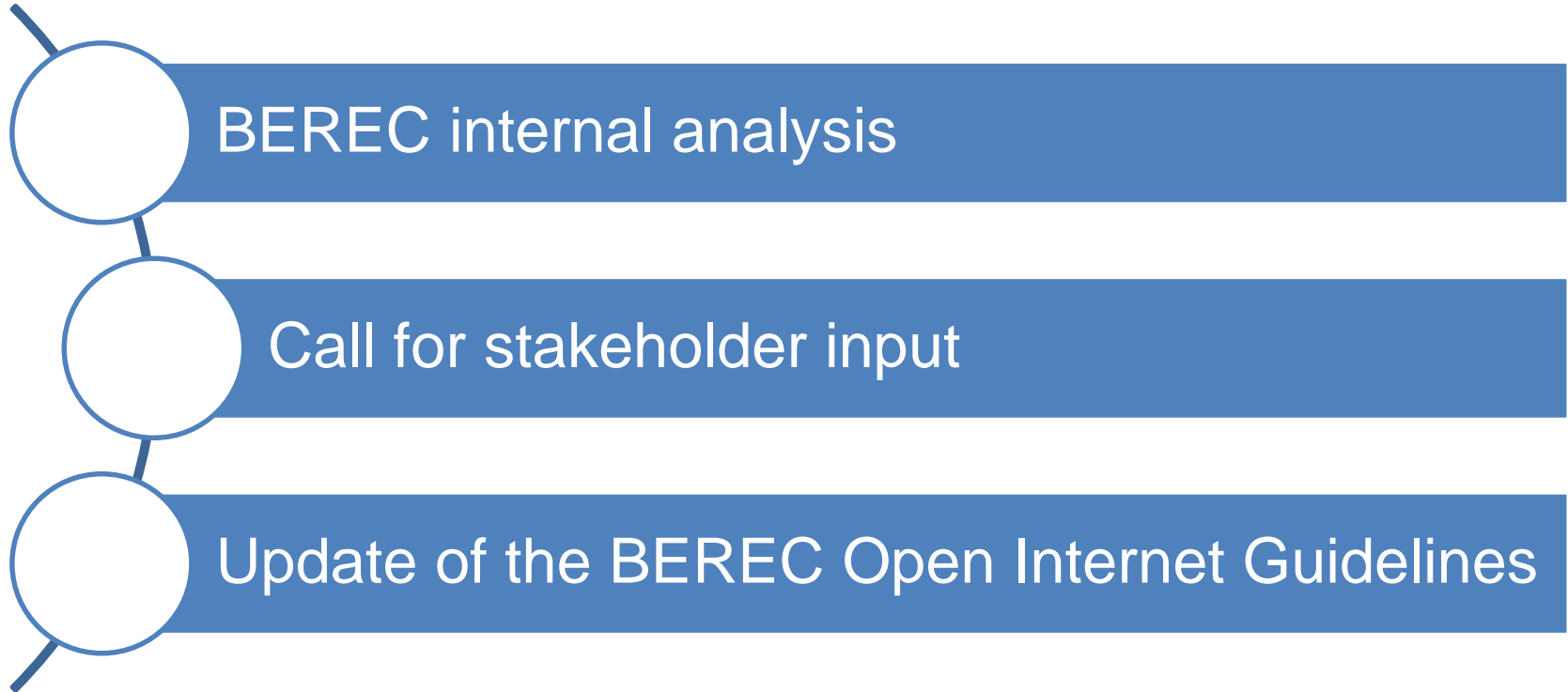
All three judgements:

- Concern zero-tariff options
- Refer to obligation of equal treatment of traffic (Article 3(3) of the Open Internet Regulation) in relation to practices based on commercial considerations
- Although in only one of the 3 cases the national judge directly asked a question on this

- Likely that less kinds of zero-rating are allowed than under the interpretation of the Open Internet Regulation in the current BEREC Guidelines
- The exact extent of this change needs further scrutiny, as it brings up all kinds of legal questions
- Review of the Guidelines to be done in close cooperation with the EC, taking note of the stakeholders' input and focusing on the topics addressed in the ECJ rulings
- BEREC's final views on the ECJ rulings and their implications on the BEREC Guidelines have yet to be determined

- Opportunity for the stakeholders to contribute to BEREC's ongoing analysis
- **Stakeholder views to be supported by an appropriate justification (legal references)**
- BEREC will not provide individual responses to inputs received nor publish a public consultation report
- Non-confidential stakeholder inputs will be published
- Inputs to be submitted by **20 October 2021 17:00 CET** to ECJ_Inputs@berec.europa.eu

- Adapt the BEREC Guidelines in light of the ECJ rulings
- Limit the scope of the update to the impact the ECJ rulings have on BEREC's guidance on zero-rating
- Details on the substance only available at the moment of public consultation, as further analysis is required
- Planning:
 - **March 2022** – Launch of **public consultation** on draft updated Guidelines
 - **June 2022** – **Publication** of the final Guidelines and consultation report



Draft BEREC Report on regulatory treatment for fixed and mobile backhaul

Market and Economic Analysis WG
Jorge Infante González (CNMC)

Body of European Regulators
for Electronic Communications

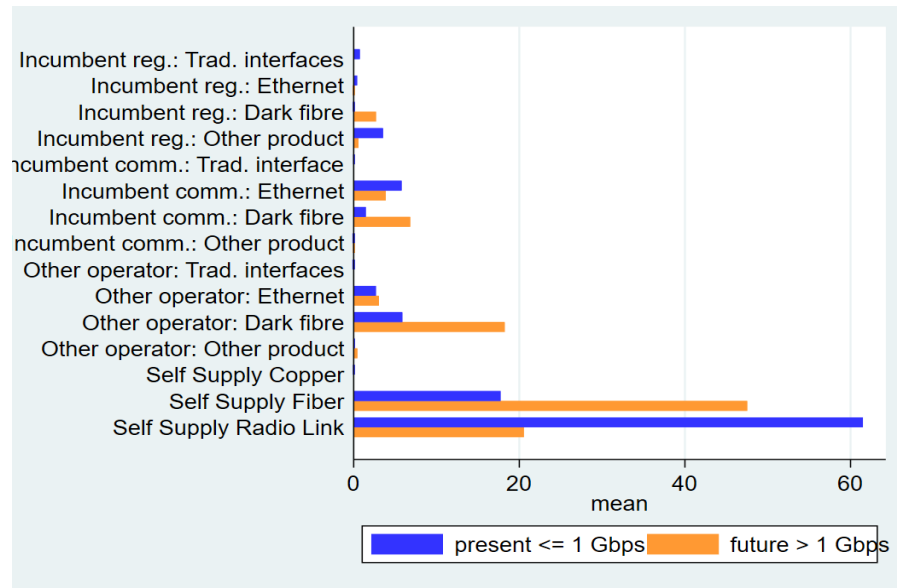
BEREC

The logo for BEREC (Body of European Regulators for Electronic Communications) features the word "BEREC" in a bold, sans-serif font. The letters "B", "E", "R", and "E" are blue, while the "C" is maroon. A blue swoosh underline starts under the "R" and curves under the "C".

- Motivation:
 - Backhaul especially relevant for deployment of 5G and VHCN in rural/remote areas
 - New EC recommendation on relevant markets addresses mobile backhaul
- Based on two comprehensive questionnaires for NRAs and operators sent in April 2021: 35 responses from NRAs and 60 responses from Operators
- Workshop with stakeholders' associations organised by BEREC in June 2021
- To be opened to public consultation 5th October-5th November 2021
- Final report to be published after P1 2022

Operators' input: main findings

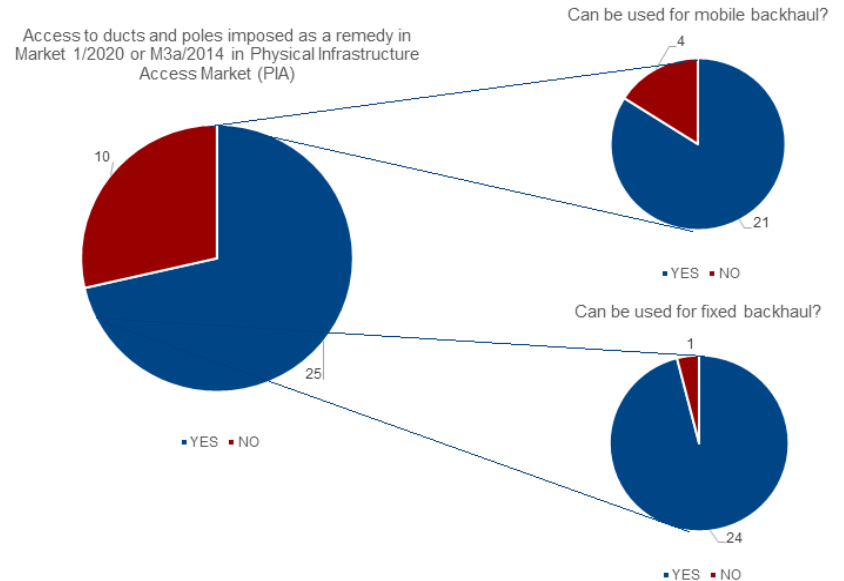
- Increasing need for higher (≥ 1 Gbps) speeds
- Shift from radio links to fibre (5G), and from Ethernet to dark fibre and passive infrastructure to deploy own backhaul lines
- Self-supply and commercial inputs very much used. However, most alternative operators consider that there is a present and future need for regulated wholesale products



Mobile backhaul: inputs (present and future)

NRAs' input: main findings

- Backhaul included in M2/2020- M4/2014 in nearly half of NRAs, and also part of them regulate backhaul as ancillary service in M1/2020-M3a/2014 or M3b/2014
- When including in the market, no differentiation for backhaul
- Apart from leased lines and Ethernet services, access to passive infrastructure also imposed by most NRAs regulating backhaul, and consider it particularly important
- Backhaul contributes to effectiveness of remedies in M1/2020-M3a/2014 and M3b/2014 and deployment of 5G. Avoid not only over- but also under-regulation



BEREC Reports on the ex ante regulation of digital gatekeepers

Market and Economic Analysis WG
Chiara Caccinelli (ARCEP)

Body of European Regulators
for Electronic Communications

BEREC

The logo for BEREC (Body of European Regulators for Electronic Communications) features the word "BEREC" in a bold, sans-serif font. The letters "BERE" are in blue, and the letters "EC" are in a dark red color. A blue curved line underlines the letters "EREC", starting from the bottom of the 'E' and ending under the 'C'.

- Draft BEREC report submitted to PC from 16 March to 4 May 2021
 - 16 response received:
 - Telco sector: ETNO, GSMA, MVNO Europe, Telefónica, Vodafone
 - Audiovisual: CRTV, EBU
 - Established platforms: ACT (App association), CCIA, Facebook, One confidential
 - Challenger platforms: DuckDuckGo, Open-Xchange
 - Civil society: BEUC, Privacy International, one coordinated response from Amnesty International, Article 19, Electronic Frontier Foundation and others

BEREC now publishes two reports:

- **BoR (21) 130 BEREC Report on the outcome of the public consultation on the draft BEREC Report on the ex ante regulation of digital gatekeepers**
- **BoR (21) 131 BEREC Report on the ex ante regulation of digital gatekeepers**

Strong support by respondents for most of BEREC's proposals and for its relevance in contributing to the debate on the DMA.

- Telco sector: much in line with BEREC views, especially on NRAs/BEREC involvement in the DMA
- Audiovisual: raising their sector-specific problems with gatekeepers
- Established platforms: the sector is complex and fast-evolving, careful assessment is needed before every intervention, more case-by-case needed
- Challenger platforms: intervention is needed and must be reinforced, current obligations to be complemented with remedy-tailoring and end-user protection, involvement of different stakeholders is key
- Civil Society: broad regulatory dialogue and end-user protection needed, warn against NI-ICS exclusion, propose additional measures on privacy and interoperability

Overview of BEREC's proposal

A table after the executive summary presents all BEREC's proposals and guides the reader through the report

	Objectives	For contestable and fair digital markets: reinforce some regulatory measures → See Chapter 7 Additional objective: digital environment must be open, users sufficiently empowered and their ability to access and/or provide content and applications not hampered even beyond the network layer → See Chapter 4
	Scope & GK designation	NI-ICS: For ECN/ECS, priority to EECC provisions. To be addressed by the DMA for issues not in the EECC. Cooperation mechanism needed among the EC, BEREC, the NRAs and/or the DMA Advisory Board. → See Chapter 5 & BEREC report on DMA & EECC provisions on NI-ICS Ecosystem aspect: Should be considered when designating gatekeepers (non-cumulative criterion) and designing the corresponding regulatory measures → See Chapter 6 & Table 1 Produce guidelines for gatekeeper designation under Article 3(6) → See Chapter 6 Implement a structured participation of all types of stakeholders → See Chapter 8
	Enforcement	Regulatory measures Art. 5 & 6 DMA → See Chap. 7 & Table 1
		For more clarity, distinguish between obligations which i) would apply to all CPSs and ii) would only apply to specific CPSs. Article 5(c): Gatekeeping OSs must refrain from imposing technical and commercial restrictions limiting access to key device functionalities. Articles 6(1)(c) & 6(1)(f): • Vertical interoperability to be extended to all relevant CPSs. • Horizontal interoperability to be imposed on certain CPSs for GK's key services and functionalities needed to provide competing services (not only ancillary services) (as a tailored remedy). • For unjustified denial of access, obligations to access the platform's functionalities when needed to conduct business to be extended to all relevant CPSs (not only OSs). Article 6(1)(d): • Prohibit default settings favouring gatekeeper's services on some CPSs. • Obligations on ranking extended to all CPSs where ranking occurs. Article 6(1)(k): • Fair and non-discriminatory conditions applied across all CPSs (not only to software application store). • Add reference to "end-users". Impact of tying and bundling to be more extensively considered: tying prohibited <i>per se</i> , bundling potentially after an assessment.
		Regu. measures Tailored remedies → See Chapter 7
		A new article should give additional powers to the EC to tailor remedies i) when there is a risk that harmful behaviours are not (effectively) addressed by the obligations in Articles 5 & 6 of the DMA proposal, and ii) for more technical remedies (e.g. horizontal interoperability and access to key inputs/assets) which require proportionality considerations and where their effectiveness is highly dependent on the correct design of the intervention.
		End-users
Dispute resolution	Directly address some issues affecting end-users even when business users and/or potential competitors are not concerned by the gatekeeper's practices → See Chapter 7 Set up a dispute resolution mechanism to minimise negative effects on competition and innovation → See Chapter 8 & Annex II for the experience in the ECS sector	
Advisory Board & national	Create a technical and independent Advisory Board composed of national independent authorities from different sectors to complement the DMAC. It would: i) harmonise national support to the EC for gathering of relevant data (from gatekeepers and national business users or end-users), ii) continuous monitoring of national markets and of compliance, iii) providing an information and complaints desk, iv) dispute resolution for many cases; and • be a body for reflection, debate and advice to the EC, EP and the Council at their request or on its own initiative. → See Chapter 9	

Changes in final BEREC report

- Scope & designation
 - Not against NI-ICS inclusion in DMA. DMA & EECC complementary, EECC priority
 - Ecosystems criterion important for GK designation (non-cumulative) and for corresponding regulatory measures
- Regulatory measures
 - Support for Articles 5 and 6 (with concrete proposals)
 - *Additional* tailored remedies i) when harmful behaviours not (effectively) addressed by Articles 5 & 6 and ii) for more technical measures which need proportionality consideration and correct tailoring
 - Directly address some issues affecting end-users
- Clarified and detailed how a Dispute resolution mechanism could work
- Detailed the role and scope of the proposed Advisory Board and national support

BEREC Report on harmonised definitions for indicators regarding over-the-top services, relevant to electronic communications markets

Statistics and Indicators WG

Begoña García-Mariñoso and Iulia Zaim-Grigore
(CNMC / ANCOM)

Body of European Regulators
for Electronic Communications

BEREC

The logo for BEREC (Body of European Regulators for Electronic Communications) features the word "BEREC" in a bold, sans-serif font. The letters "BERE" are in blue, and the "C" is in a dark red color. A blue curved line sweeps under the "C" and extends to the left, ending under the "E".

Report on harmonised definitions for indicators regarding over-the-top services, relevant to electronic communications markets

Objective:

To identify and define relevant indicators for NRAs with respect to OTT services, which are useful for performing their regulatory tasks and proportionate to collect.

- Focus on: **NI-ICS** (voice, video and messaging provided over the internet) and **video-streaming services**

Context:

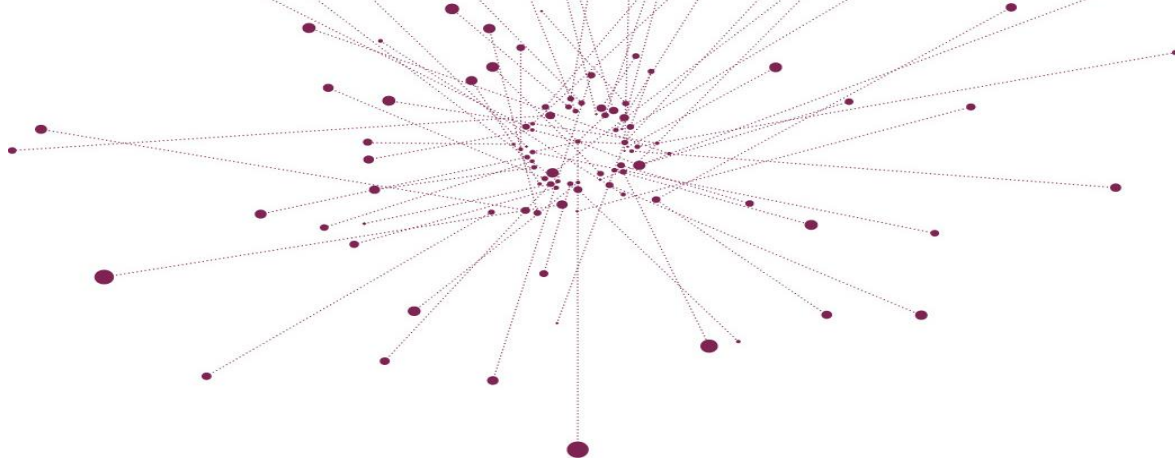
Draft report publicly consulted in Spring 2021; Final report approved in P3 2021

- Overall, the stakeholders:
 - have been supportive of BEREC's attempt to harmonize definitions of NI-ICS and urged NRAs to adhere to its guidance;
 - appreciated that the metrics included are used by NI-ICS providers in their ordinary course of business;
 - consider that NRAs should exchange data reporting experience with the EC and other public institutions;
 - support further BEREC engagement with respect to NI-ICS specific metrics and regular updates of the indicator list as NRAs gain experience.
- One stakeholder expressed that more NI-ICS related indicators should have been included and more regular data collections recommended.
- Video-streaming providers urged NRAs to be cautious in requesting information, as this should be exceptional.

List of indicators and changes in those indicators

<u>Indicators</u>	<u>Main recommendations</u>
NI-ICS (required per NI-ICS and country of residence of the user)	
Number of monthly active users	Quarterly data collection
Number of registered users	
Number of monthly active business users	Business users definition Quarterly data collection
Number of registered business users	
Usage metrics: number and minutes of voice/video calls & number of instant messages sent	Quarterly data collection
Video-streaming services (required required per country of residence of the client and per service)	
Number of registered users	For video-streaming services, the data requests are exceptional No periodicity recommended
Number of “simultaneous streams” marketed with the subscriptions	
Number of content pieces sold	
Number of registered users	
Number of monthly active users	
User-based revenue from video-streaming services	
Other direct user revenue	

- No data traffic related metric is proposed by BEREC.
- BEREC will follow-up its work on NI-ICS pertinent metrics and assessment of related data collection practices in 2022.



Thank you!

Body of European Regulators
for Electronic Communications

BEREC