

Public debriefing 47th BEREC Plenary Meeting

Michel Van Bellinghen, BEREC Chair
Virtual meeting, 16 June 2021

Body of European Regulators
for Electronic Communications

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Part 1:

- BEREC Opinion on the proposed NIS 2 Directive and its effect on Electronic Communications – 5GCS WG Co-Chairs
- BEREC Opinion on the proposal of the Commission for amending the Roaming Regulation- IR WG Co-Chairs
- Study on consumer behaviour and attitudes towards Digital Platforms for BEREC, by PPMI – PPMI representatives
- BEREC Report on the interplay between the EECC and DMA concerning number-independent interpersonal communication services & BEREC proposals on the set-up of an Advisory Board as well as on remedies-tailoring and structured participation processes for stakeholders in the context of the Digital Markets Act - MEA WG Co-Chairs

Q&A

Part 2:

- BEREC Guidelines on Geographical surveys of network deployments. Verification of information - Sal WG Co-Chairs
- BEREC Report on Termination rates at European level (January 2021) - Sal WG Co-Chairs
- BEREC Report on WACC parameters 2021 - REM WG Co-Chairs
- Draft BEREC Report on COVID-19 crisis - lessons learned regarding communication networks and services for a resilient society - RF WG Co-Chairs
- Questionnaire on the national implementation and functioning of the general authorisation (article 122, paragraph 3 EECC) - RF WG Co-Chairs

Q&A

Adopted documents that are not subject to presentation

- BEREC Annual Report 2020

WG	Project	Launch date of PC	Closing date of PC
RF	Draft BEREC Report on COVID-19 crisis - lessons learned regarding communication networks and services for a resilient society	14 June 2021	26 July 2021
RF	Questionnaire on the national implementation and functioning of the general authorisation (article 122, paragraph 3 EECC)	14 June 2021	26 July 2021

BEREC Opinion on the proposed NIS 2 Directive and its effect on Electronic Communications

5GCS WG

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- On 16 December 2020, the Commission has published a proposal for a revised Directive on Security of Network and Information Systems (NIS 2 Directive).
- The proposal expands the scope of the current NIS Directive by adding new sectors based on their criticality for the economy and society. Providers of public electronic communications networks and services fall within its scope as essential entities.
- With the NIS 2 proposal articles 40 and 41 of the EECC, which regulate security of electronic communications network and services would be repealed.
- On 19 May 2021, the BEREC Board of Regulators adopted an [Opinion on the revised Directive on Security of Network and Information Systems \(NIS2.0 Directive\)](#) and its effect on Electronic Communications
- https://berec.europa.eu/eng/news_and_publications/whats_new/8334-proposals-of-revised-nis-2-directive-raises-concerns-over-the-european-electronic-communications-code-fragmentation-says-berec-opinion

BEREC's Concerns

- Concerns over the EECC fragmentation
- Risk of losing experience from proven existing sector-specific regulatory framework
- BEREC considers it as most appropriate to retain Articles 40 and 41 in the EECC
- Risk regarding the lack of clarity of the definitions in the NIS 2 Directive compared to the EECC

BEREC Recommends

- That the revised Directive introduces sufficient safeguards to ensure the continuation of current practices and builds on the knowledge and experience of current competent authorities
- Reviewing and clarifying the definition of “security of network and information systems” in the NIS 2 Directive
- To assess, how the NIS 2 Directive could best complement the provisions in the EECC

BEREC Opinion on the proposal of the Commission for amending the Roaming Regulation

ROAM WG

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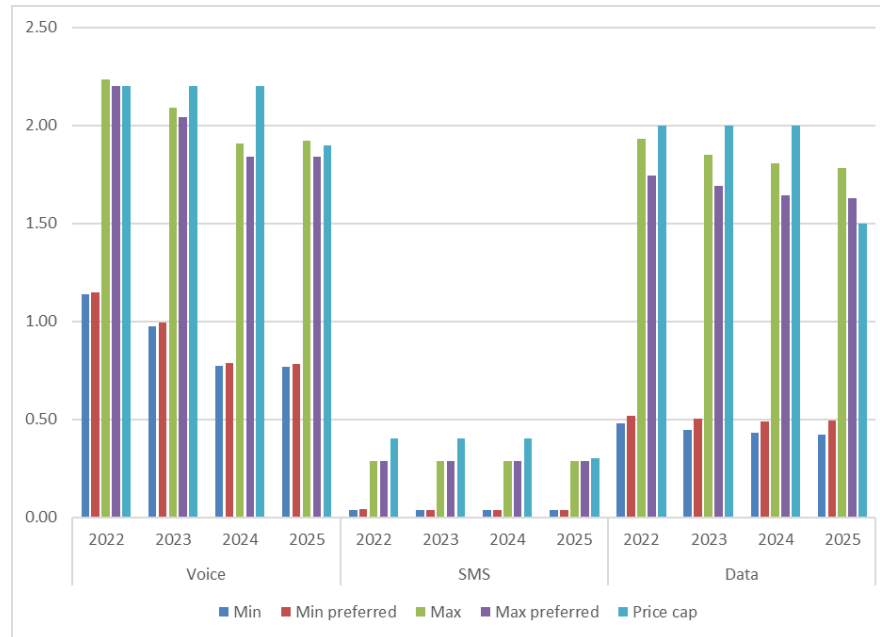
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- BEREC welcomes EC's new proposals as they extend EU roaming to a genuine RLAH experience.
- BEREC welcomes that the EC continues to assign NRAs with relevant tasks
- BEREC provides some comments regarding the provisions for QoS, VAS and Emergency Services
- BEREC proposes additional measures to be included in Regulation:
 - Measures for enhanced transparency and protection from bill shocks
 - Measures for enhancing the sustainability of MVNOs

- QoS: BEREC welcomes the proposals, but more guidance needed
- VAS: BEREC welcomes additional transparency measures, but:
 - more guidance on the retail transparency measures would be helpful
 - additional provisions to ensure harmonized provision of some VAS
 - BEREC database could be established earlier
- Emergency services: BEREC asks for:
 - more details on the frequency of receiving such information
 - a central point of information on all emergency communications
 - technical feasibility analysis on the free wholesale access to other means
- Monitoring: BEREC supports the proposed reduction of the frequency of NRAs' and BEREC's data collection

- Analysis of wholesale cost estimates from Axon cost model



- BEREC suggests a review in 2025 taking into account 5G

ANALYSING EU CONSUMER PERCEPTIONS AND BEHAVIOUR ON DIGITAL PLATFORMS FOR COMMUNICATION

KEY FINDINGS



Methodology and scope

- An **online panel survey** was at the core of the data collection activities.
 - Respondents were sampled from online panels using quotas by country, age and gender.
 - Sample size of 12,399 responses from 12 BEREC Member States: CZ, DE, EE, ES, FI, FR, IE, LT, NL, PT, RO, SE
 - The countries were selected to represent larger clusters with similar characteristics.
- Additional qualitative research – **desk research, literature reviews, interviews and focus groups.**
- Focus: 17 most popular platforms.

Key findings

- The study confirmed that in line with global trends, **various products of Facebook Inc. dominate the European consumer choices** for both social network sites and number-independent means of interpersonal communication. Facebook and Instagram are the first and third most used social network sites, with YouTube in the second place, across all 12 surveyed countries. Meanwhile, WhatsApp and Facebook Messenger dominate as the main messenger applications, although which one of them is preferred more differs by country.
 - Despite the fact that most consumers use multiple social network sites to access different types of information and different messenger applications to communicate with friends and family from different social circles, generations and countries (“multihoming”), the study also found that consumers have developed a strong attachment with and loyalty to their main messaging application services.
 - The main reasons for using application services are that they can be accessed and used **free of charge, that they are easy and convenient to use, and that provide connections with family and friends** who are on the network.
-

Key findings

- The survey data underscores the reality of the **privacy paradox** on messenger applications. Strong majorities of respondents across various demographics and countries stated that the privacy and security of their personal data is important. However, privacy is not as important as the benefits that digital platforms offer, which means that consumers are very much willing to accept these platform practices as the price for using their services.
 - The study found a very strong and unequivocal importance of the **zero-cost of digital platform communication services** for consumers, and it is a more important feature in the choice of interpersonal communication services than specific functionalities, personal data collection and display of advertising added together. Respondents of all demographic segments indicated that the fact that messenger applications are **free to use** is one of their **key motivations** to use them.
-

BEREC Report on the interplay between EECC and DMA concerning NI-ICS & BEREC proposals on the DMA

MEA WG

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- Provide a presentation of ICSs, ECSs and the current legal provisions applicable to NI-ICS (EECC, e-Privacy)
- Provide a thorough analysis of the potential overlap and/or the need for coordinated interplay between the EECC and the DMA proposal
- Propose a clarification of the scope of the DMA to avoid potential overlap with the EECC
- Share some insights on the application of the DSA proposal to NI-ICS, in line with the analysis of ICS definitions

- NI-ICS are also covered in the EECC, allowing NRAs to impose a series of regulatory measures
- The e-Privacy directive set also some relevant obligations for NI-ICS establishing limits to data use for confidentiality reasons
- NI-ICS in the DMA: Ecosystem effect is key. BEREC already proposed to add ecosystem criterion for designation and in the design of the regulatory intervention
- Overlapping between EECC and DMA: When imposing DMA obligations to NI-ICSs, structured consultation needed between EC and competent authorities for ECSs to ensure legal and regulatory certainty
- DSA: BEREC considers that ICS are not “online platforms” since they are used among a finite number of persons. For the “hybrid” NI-ICS including “broadcasting” bundled functions → DSA obligations should only apply to functions which allow “*dissemination of information to the public*”

BEREC proposal for amendment of Art. 1 of DMA

Art,1(3). This Regulation shall not apply to **markets**:

- (a) **related to** electronic communications networks as defined in point (1) of Article 2 of Directive (EU) 2018/1972 of the European Parliament and of the Council;
- (b) **related to** electronic communications services as defined in point (4) of Article 2 of Directive (EU) 2018/1972 other than **those related to number-independent** interpersonal communication services as defined in point (47) of Article 2 of that Directive.

Art,1(4). ~~With regard to interpersonal communication services to~~ This Regulation is without prejudice to the powers and tasks granted to the national regulatory and other competent authorities by virtue of **Article 61 of** Directive (EU) 2018/1972

BEREC proposal for additional recital

Clarifying that NI-ICS fall in the scope of the EECC for the purpose, among others, of promoting competition in the provision of ECNs and ECSs

- **Public consultation on the draft BEREC Report on the *ex ante* regulation of digital gatekeepers**
 - 16 responses received
 - Summary of responses and definitive version to be published after P3 (October 2021)
- **Two new papers on the DMA**
 - ***BEREC proposal on remedies-tailoring and structured participation processes for stakeholders in the context of the DMA (BoR (21) 94)***
 - ***BEREC proposal on the set-up of an Advisory Board in the context of the DMA (BoR (21) 93)***

Both papers further develop BEREC's proposals from its "Opinion on the European Commission's proposal for a Digital Markets Act" and "Draft Report on the *ex ante* regulation of digital gatekeepers" and aim to contribute to the ongoing debate on the DMA proposal

BEREC Guidelines on Geographical Surveys of Network Deployments. Verification of information.

Sal WG

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The Guidelines:

- provide guidance on how to verify the current reach and QoS of broadband networks as declared by the operators, including the declaration of an area or grid as being covered with a VHCN;
- describe different verification methods and provide recommendations to be considered by Authorities when carrying those out. Authorities may choose amongst verification methods, depending on their needs and on the availability of information sources;
- require Authorities to publish their verification methodologies and outline the verification results.

- The Draft Guidelines were on public consultation from the 15th December 2020 to the 27th January 2021.
- BEREC received 7 responses from a wide array of stakeholders: operators, operators' associations, public authorities and others.
- BEREC is thankful for these contributions and has assessed them carefully.
- The main comments received were of four types:
 - Regarding the legal basis for verification;
 - Expressing strong support for BEREC's recommendations on transparency and accountability of the verification process;
 - Regarding the proportionality of additional data requests;
 - Regarding the different verification methods and its limitations.

- BEREC considers that assuring the quality of the data provided by operators in an Article 22 survey is intrinsic to a consistent implementation of the obligations under the said Article.
- BEREC has strengthened the case for proportionality in paragraph 36, which encourages data re-use and a careful assessment of new data requests.
- Regarding the primary sources of infrastructure related data, BEREC has clarified that, in principle, access taker should not provide infrastructure data.
- Overall, BEREC considers that the Guidelines exercise enough caution with respect to the limitations of verification methods, but that, nevertheless, those are valid to assess the coverage and QoS declarations of operators.
- Finally, in many instances, further clarification and adaptation of the text of the Draft Guidelines was done, in accordance with the comments received.

BEREC Report on Termination rates at European level (January 2021)

Sal WG

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Objectives:

- To track the evolution of fixed and mobile voice termination rates in Europe
- To detail on the cost models used to set the regulated prices for termination services

Participants (37 overall):

- EU countries (27)
- Iceland, Liechtenstein and Norway (EEA)
- Balkan countries and participants: Albania, Montenegro, North Macedonia, Serbia and Kosovo
- Turkey and Switzerland

As of January 2021, the TRs have the following coordinates:

- Lowest regulated FTR of incumbents (simple average)
 - European level: 0.2446 €cents/min (-23%);
 - EU: 0.1973 €cents/min (-1%).
- MTR (simple average)
 - European level: 0.7460 €cents/min (-10%);
 - EU: 0.6704 €cents/min (-3%).
- MTR (weighted average)
 - European level: 0.6234 €cents/min (-6%);
 - EU: 0.7179 €cents/min (-5%).

- The Delegated Regulation EU 2021/654 is applicable as of 1st July 2021;
- For EU countries, the Delegated Regulation prescribes:
 - Max FTR 0.07 €cents/min (0.2 €cents/min in Jan.21, simple average);
 - Max MTR 0.2 €cents/min (0.67 €cents/min in Jan.21, simple average);
 - Adjustments in certain cases, by max 31 December 2023.
- In 2022 BEREC will reflect on the future of the Termination Rate report and discuss the annual reporting obligations for NRAs on the application of Article 75 EEC (paragraph 3, Article 75).

BEREC WACC parameters Report 2021

REM WG

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- The non-binding **Notice** of the Commission on the calculation of the cost of capital for legacy infrastructure in the context of the Commission's review of national notifications in the EU electronic communications sector and the Commission Staff Working Document (SWD) OJ 2019/C 375/01 of 6th Nov. 2019 will be applied by the Commission as of **1st July 2021** to assess notifications of NRAs – the transitional one-year period ends on 30st June 2021.
- The Notice aims to ensure a **consistent calculation** of the WACC by NRAs thereby contributing to the development of the internal electronic communications market.
- As the Notice has not changed, the **WACC parameters Report 2021** will follow the **same methodology** as in last year's Report providing consistency over time. This has the advantage that any change in the results can be attributed to factual developments, mainly Brexit which implies that the EU-ERP for the EU-27 NRAs will be calculated without the UK, i.e. EU27-ERP.
- Additionally BEREC calculated a separate EU/EEA-ERP incl. the EU27 plus Norway + Iceland for use only by Nkom + PFS.
- As last year the **Report 2021** contains for each of the WACC parameters the results of BEREC's calculations following the Notice as closely as possible. NRAs are assumed to take into account those parameter values in their own WACC calculations.
- The parameter values are the result of complex calculations and a long process, but BEREC can draw on the experiences of last year and improved data quality due to the early availability of the Bloomberg terminals, and the latest Morningstar (DMS) data set for the calculation of the EU-ERP (and EU/EEA-ERP).
- The WACC experts have worked carefully and cross-checked all results describing in detail the calculation steps so that NRAs can replicate the results and can be confident that they are robust and derived using state-of-the art professional standards.
- In order to allow NRAs to reference the Report 2021, it will be published before 1st July 2021.

Chapter	Parameter	Results	Reference (Table)
Chapter 1	Introduction WACC formula		
Chapter 2	RFR	RFR for each EU member state	Table 2
Chapter 3	Peer group	BEREC Peer Group 2020 comprising 14 companies	Table 3
Chapter 4	Debt premium, Cost of debt	Debt premium, Cost of debt for each of the 14 companies of the BEREC Peer Group	Table 4
Chapter 5	Equity beta, Gearing, Asset beta	Equity beta, Gearing, Asset beta for each of the 14 companies of the BEREC Peer Group	Table 6
Chapter 6	ERP	EU-wide ERP	Table 10 + 11
Chapter 7	Summary	All WACC parameters as calculated by BEREC	Table 12 + 10

- The WACC methodology as provided for in the Notice and the BEREC WACC parameters Report carefully balance consistency, transparency and continuity, i.e. aiming to reflect market realities of 27 EU Member States as well as the convergence towards an EU-wide capital market.
- BEREC considers that the appropriate value of the **EU-ERP** is **5.50% (AM)** slightly increasing from last year's value (5.31% (AM)) which is due to the one-off effect of BREXIT.
- The EU/EEA-ERP is 5.48% (AM), i.e. nearly the same as the EU-ERP.
- The **BEREC peer group 2021** is almost identical to last year, only BT drops out and as companies of the EU/EEA area could be included as long as they fulfill the eligibility criteria, Telenor replaces BT, all other peers remain in the peer group of 14 companies.
- For the calculation of the cost of equity the Notice foresees a **CAPM** approach based on **long term historic data series (DMS)** to catch long term trends of returns rather than reflecting short term investor expectations and to smooth out short term volatilities.
- The CAPM assumes a **rational investor** acting in an **efficient capital market** which is the state of the art approach to estimate the cost of equity (as a fair reward for taking the risk to invest) and thus provides *objective* results of expected returns based on the comprehensive historic data series.
- BEREC points out the advantages of this *evidence-based approach* instead of relying on „survey data“ of investors' *subjective* expectations.
- Finally using the same methodology shows the fact that we continue to be in a low interest period which is reflected in low(er) risk free rates for nearly all Member States.

Call for input on General Authorisation and public consultation about report on the COVID-19 crises

RF WG

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Call for input on general authorization pursuant to article 122 (3) EECC

Aim and scope of Opinion

Pursuant to Article 122 (3) EECC, aim and scope of the Opinion is to analyse the overall working of the GA regime in the EU, in terms of:

- national implementation solutions of the relevant *acquis* (including changes introduced by the EECC);
- actual operation and effectiveness of the GA regime with a view to the single market goal;
- potential identification of areas of improvement and relevant proposals.

Interested stakeholders are invited to provide their inputs by means of answers to a set of questions on:

- **the EU GA legislative framework**
 - experience with the GA regime since 2002 onwards
 - experience with the 2018 EECC so far - main changes introduced and expectations
- **Preliminary experience on the notification template as in the BEREC Guidelines and the EU GA database held by BEREC and overall effectiveness of articles 12-19 in view of the Single Market**
- **Any additional considerations on the whole GA-related system and potential improvements**

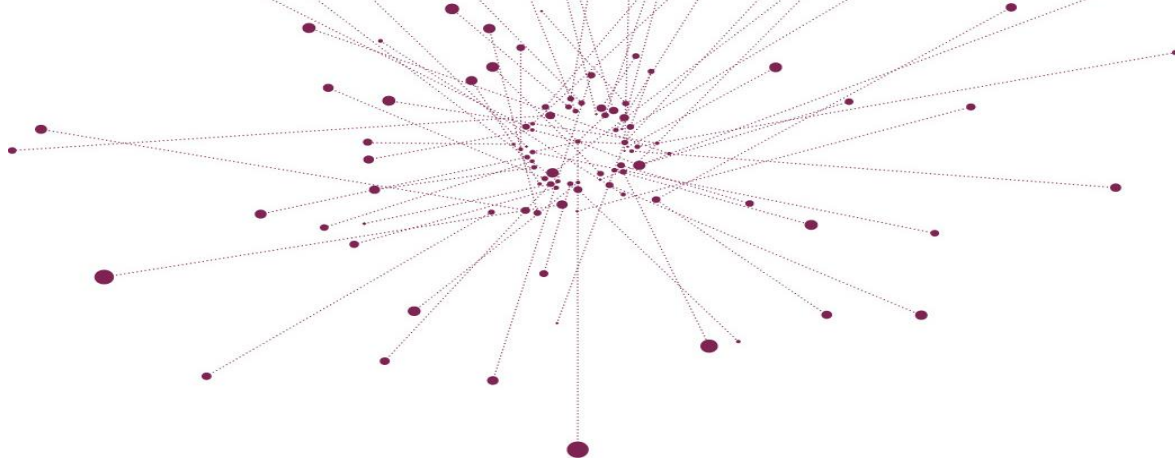
Aim and scope of the report

- Compile a report on the measures that NRA's implemented during the COVID-19 pandemic
- Assess the impact of the crisis on the sector
- Collect case studies
- Identify further necessary measures

Structure of the report

1. Measures applied by the Member States
2. The impact of the COVID-19 crisis on the European telecommunications networks and open internet perspectives relating to Regulation (EU) 2015/2120
3. Case studies
4. Regulatory lessons and further measures
5. Questions for consideration

1. Were the measures implemented by NRAs during the pandemic effective?
2. What areas of interventions/ specific measures taken by NRAs were the most important ones?
3. What further NRAs' interventions/measures could have helped to fight against the pandemic?
4. Do NRAs have sufficient regulatory tools to deal with the pandemic?
5. What is expected from NRAs in a crisis situation like this?
6. Do you consider that the current sectoral institutional framework has proven to be fit to deal with the crises? What solutions could be envisaged to improve all stakeholders' (including institutions) ability to cope with systematic emergency situations in the future?



Thank you!

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