



ERG (09) 42rev1

## **IRG/ERG Work Programme 2010**

*Maximising the internal market in electronic communications and applying institutional change*

### **Introduction**

The IRG/ERG Work Programme for 2010 as set out below aims to build on the achievements in the work performed in 2009 and previous years while at the same time preparing for the challenges of 2010 and future years, including much anticipated legal and institutional changes.

According to the good practice of recent years, the Draft Work Programme was subject to public consultation. The public consultation ran from 14th October to 6<sup>th</sup> November 2009 with an oral hearing held on 4<sup>th</sup> November. The role of public consultation is to increase transparency and to provide IRG/ERG with valuable feedback from stakeholders. 12 responses were received, from a variety of stakeholders. These stakeholders included network operators, service providers, industry and user representative bodies. Submissions received are available on the ERG website.

The IRG/ERG welcomes this feedback and thanks the respondents for their efforts and submissions. Many of the suggestions can be accommodated within the proposed work programme. In response to several comments, an additional workstream has been added relating the application of non-discrimination provisions, particularly functional separation, in the context of the revised regulatory framework.

Under the changes to the regulatory framework, BEREC will replace ERG early in 2010. BEREC will have a statutory duty to consult on its work programme. As this cannot be done until BEREC is brought into being, the IRG/ERG Work Programme will provide the foundation for the eventual BEREC work programme.

Matthias Kurth, BNetzA  
**Chair 2009**

John Doherty, ComReg  
**Chair 2010**

## Background

When the IRG/ERG Work Programme for 2009 was initially prepared, there was an expectation that 2009 would see the conclusion of the review of the regulatory framework. As we know, eventual agreement was delayed but the discussions between the European Institutions have now successfully concluded and we can therefore look forward to enactment of the revisions shortly.

2010 will therefore see the beginning of the change from the current regulatory framework to the updated rules of the revised framework. Some measures will come into immediate effect, particularly the powers and responsibilities of the Commission, while others must await national transposition. The revised framework includes major institutional change with the immediate establishment of BEREC as the successor to ERG. BEREC will have enhanced powers and duties under the proposed new framework.

Under the new arrangements BEREC will have a statutory duty to consult on its work programme. As this cannot be done until BEREC is brought into being, the IRG/ERG Work Programme will provide the foundation for the eventual BEREC work programme. Once BEREC has been established, it is planned to hold an immediate public consultation on its work program, in accordance with the Regulations.

Meanwhile despite the economic turndown, market developments are continuing, with changes in services offered to users arising from technological change, changes in the state of competition in individual markets and the need for investment in high-speed networks.

The Work Programme 2010 aims to deal with these challenges and is therefore organised around the following priority areas:

- Harmonisation and benchmarking
- Forward-looking challenges
- Revised regulatory framework

In practice, the majority of planned activities are a continuation of, or a follow-on from, the 2009 Work Programme, thereby ensuring consistency and continuity. As mentioned above, one of the features of the revised framework will be the establishment of BEREC as the successor to the ERG, supported by a full-time Office. Recruitment for and establishment of the Office, under the supervision of the NRAs, through the BEREC Board of Regulators, will be a major task. The establishment of the Office will provide professional and administrative support to the Work Programme.

IRG will also analyse the amended provisions of the regulatory framework on an in-depth basis for the purpose of creating a common understanding among NRAs and to act as a forum for the exchange of views in the context of national transposition.

The first priority area relates to continuing and expanding the ERG's programme of *further improving harmonisation*. The second area is designed to anticipate *emerging challenges* arising from market developments, while the third aims to directly implement or assist in implementing the expected *changes to the legal regulatory framework*.

# 1.Improving Harmonisation

## **1.1. International Roaming**

In 2009, the Roaming Regulation 717/2007/EC was revised to extend its scope and duration. ERG will continue to monitor the implementation of the Regulation through preparing a report on its operation in Member States as requested by the Commission. Taking into account the trans-European aspect of roaming, it is necessary to coordinate the regular data collection and monitoring exercises of the NRAs on the legal basis of various articles of the Roaming Regulation. ERG has performed this task since the 2007 Regulation came into effect.

Deliverable:      *ERG Reports*  
Deadline:        *1<sup>st</sup> and 4<sup>th</sup> quarters of 2010*  
Consultation:    *No*

Under the 2009 revision to the Roaming Regulation, the Commission is required to assess methods other than price regulation which could be used to create a competitive internal market for roaming. In doing so it is required to have regard to an independent analysis carried out by a body of European regulators. ERG will, including on the basis of its analysis of data collected as part of the monitoring exercise, assess compliance, market developments, consumer needs, the continued need for regulation and analyse alternatives to price regulation. ERG will make submissions to inform the Commission's interim report due in June 2010 and also for the full report which is due in June 2011.

Deliverable:      *ERG Opinions*  
Deadline:        *1<sup>st</sup> and 4<sup>th</sup> quarters of 2010*  
Consultation:    *No*

## **1.2. Next Generation Networks – Access**

In May 2009 ERG published a report on the economic analysis of Next Generation Access<sup>1</sup> in light of developments, including on-going roll-out and the draft Commission Recommendation on NGA. An Annex to the report contained extensive information on actual and planned NGA roll-out in 22 countries. ERG plans to update this Annex during 2010 in order to continue to monitor developments and to inform possible further consideration of Next Generation Networks in 2011. ERG also plans, as part of this project, to consider the situation of Multi-Fibre networks.

Deliverable:      *ERG Report*  
Deadline:        *4<sup>th</sup> quarter 2010*  
Consultation:    *No*

### **Implementation Issues related to the Commission Recommendation on NGA**

The Commission conducted a second round of public consultation on Next Generation Access networks in July 2009 and the resulting Recommendation is expected to be published early in 2010. ERG participated in both public consultations and will, once the Recommendation is published, review follow-up actions, taking into consideration all of

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<sup>1</sup> ERG (09) 17 – Report on next Generation Access – Economic Analysis and Regulatory Principles

the previous ERG efforts on this topic. At this stage it is not planned that ERG will publish a report but this will be kept under review.

ERG also intends to consider the regulatory aspect of open access, particularly in the context of the recently published Community Guidelines on State Aid Rules and the rapid deployment of broadband networks across Member States.

ERG will also conclude during the 1<sup>st</sup> half of 2010 two workstreams related to NGNs which commenced in 2009 – future charging mechanisms/long term termination issues and NGN Wholesale Products.

Deliverable: *ERG Report on the Regulatory principles of Open Access*  
Deadline: *4<sup>th</sup> quarter 2010*  
Consultation: *Yes*

### **1.3. Conformity with ERG Common Positions**

ERG is committed to a regular programme of monitoring of the conformity of national regulatory practices with its Common Positions, both as a tool for encouraging consistency in regulation across Europe and in order to keep the Common Positions relevant and up to date.

In 2010 ERG will review conformity with Common Positions on wholesale broadband access, wholesale unbundled access, and wholesale leased lines, and will consider practical implementation issues regarding geographic differentiation. The exercise in respect of symmetry of termination rates, begun in 2009, will also be completed.

The above-mentioned Common Positions relating to wholesale access remedies are highly relevant to the question of the competitive supply of business services (see below). These exercises were originally expected to be conducted in 2009 but it became clear that it would be appropriate to take into account the lessons of ERG's work in this area. If the monitoring exercises lead to the conclusion that any Common Position needs to be updated, there would of course be a consultation on the relevant changes.

Deliverable: *ERG Reports*  
Deadline: *Symmetry of termination rates – 1<sup>st</sup> half 2010*  
*Broadband Common Positions – 2<sup>nd</sup> half 2010*  
Consultation: *No*

### **1.4. Benchmarking Activities**

In 2010 ERG will continue to collect data to support the calculation of benchmarks on a range of indicators. ERG will also consider methodologies and continue to provide input where appropriate into external benchmarking development including in particular work being currently undertaken by the Commission.

Deliverable: *ERG MTR Benchmark Snapshot*  
Deadline: *2<sup>nd</sup> and 4<sup>th</sup> quarters of 2010*  
Consultation: *No*

## **1.5. Regulatory Accounting**

The Regulatory Accounting Report will continue to be updated regularly to assess the level of harmonisation achieved by NRAs.

To this end it will also investigate the extent to which further alignment among Member States might be achievable. This could include carrying out additional analysis of NRAs' regulatory accounting approaches in key wholesale markets, aiming in particular at identifying the rationale behind different price control methods and modelling choices, taking into account that some parameters are set at different values, generally for reasons related to national circumstances. Subject to our findings, this could be the basis for the development of more consistent regulatory approaches across the internal market.

The pricing/costing issues raised by NGA wholesale products (in particular duct access, but also dark fibre) will be analysed in more detail from a cost accounting perspective. The proposals regarding costing principles made in the Commission's Draft Recommendation on NGA will be analysed in detail for their implications on pricing.

<u>Deliverable:</u>	<i>ERG Report</i>
<u>Deadline:</u>	<i>4<sup>th</sup> quarter of 2010</i>
<u>Consultation:</u>	<i>No</i>

## **2. Emerging Challenges**

### **2.1. Business services market**

In 2009, ERG accepted a proposal by ECTA, EVUA and INTUG to investigate the state of competition for the supply of communications services to large multi-site businesses, in particular the availability and specification of wholesale services on which competitive suppliers would to some extent need to rely.

As part of its commitment to regular reviews of best practice in regulation, ERG considered that it is now appropriate to investigate a particular aspect of wholesale regulation. All NRAs have now put in place a full package of regulatory measures under the Framework, which have been largely effective in facilitating competition. But regulation of some wholesale markets remains necessary and NRAs are required to carry out regular market reviews.

In 2009, ERG began its investigations into NRA approaches to the regulation of wholesale services and the part played by business-specific issues, the extent to which NRAs apply specific wholesale access remedies, which are considered particularly important to the large business segment, and the broad experiences of large multi-site business end-users in choosing a retail supplier. Those stakeholders argue that there is in practice a limited choice of supplier to this segment, in particular because of problems of availability and specification of wholesale services on which competitive suppliers would to some extent need to rely. Arising from the outcome of the investigation, ERG will continue this work in 2010. ERG will seek stakeholder feedback and input by way of public consultation, including a public hearing early in 2010.

Deliverable: *ERG Report*  
Deadline: *4<sup>th</sup> quarter of 2010*  
Consultation: *Yes*

## **2.2. Convergence**

The development of new convergent networks and services raise new regulatory challenges. ERG will analyse new convergent services and consider if and how these may be subject to regulation as Electronic Communications Services under the regulatory framework. The work will focus initially on market developments, and then consider whether the regulatory framework is fit for purpose to deal with these challenges or whether these developments require new regulatory instruments or adjustment of existing ones.

Deliverable: *ERG Report on convergent services regulation*  
Deadline: *2<sup>nd</sup> half of 2010*  
Consultation: *No*

In view of the growing importance of bundled products in the field of market definition, ERG has been keeping developments under review. During 2010 ERG will continue to monitor commercial developments and the impact they might have on the regulatory environment.

Deliverable: *ERG Report on impact of bundled offers in retail and wholesale market analysis*  
Deadline: *4<sup>th</sup> quarter of 2010*  
Consultation: *No*

## **2.3. Cross-border enforcement**

Traditionally consumer protection issues in the electronic communications sector have been limited to within the consumer's own Member State borders, largely because service providers were based within the Member States where their customers were, using national networks. However, new technology (especially the Internet) means that there is increasing scope for consumers to consume services provided from Member States other than their own. This has already created some new consumer protection challenges for NRAs, and it is expected that cross-border consumer protection challenges will increase as service providers are increasingly able to provide services to consumers outside their own national borders.

One particular example of cross-border service provision is in the area of numbering. Article 28 of the revised Universal Service Directive provides that (subject to some caveats), consumers in one Member State should be able to access any number in the Community. The new Article also anticipates that these consumers may become victims of fraud or misuse (of numbering resources) and empowers NRAs to block access to the numbers in question and to require operators to withhold interconnection revenues.

ERG began in 2009 to consider the scope of problems associated with cross-border enforcement. During 2010, ERG will continue this work and will focus particularly on the numbering aspect with reference to Article 28 USD.

Deliverable:      *ERG Report*  
Deadline:        *4th quarter of 2010*  
Consultation:    *Yes*

## **2.4. ERG-RSPG Co-operation**

Starting from the very good work carried out in cooperation during 2009, the ERG and the Radio Spectrum Policy Group (RSPG) will maintain and further develop the newly created joint working group. This working group is focused on intertwined issues in market regulation and spectrum policy.

Spectrum management and market regulation increasingly impact on each other and also have a mutual dependence. The main drivers are, in particular, that

- the distinction between different access methods is becoming less important given that similar services can be provided over a number of different electronic communications platforms;
- there is growing convergence in infrastructure and services;
- the introduction of more flexible spectrum usage and the increased opportunities for trading spectrum usage rights are expected to reduce spectrum scarcity and lower barriers to entry. While this is expected to be beneficial for competition and promote innovation, it is important to ensure that the move to a more market-driven approach does not have negative consequences for competition in electronic communications services and networks, especially over the transitional period.

For the 2010 Work Programme some areas have been identified by ERG where further analysis may be beneficial. These are ERG's proposals and have not as yet been reviewed and agreed by RSPG.

The first workstream could be based on reporting on the possible effects on competition of electronic communications infrastructure sharing between wireless broadband operators, including spectrum sharing, noting that this may provide some scope for increasing the capacity of networks and addressing potential spectrum shortages.

A further workstream could be the continuation of the work on competition (transitional) issues including the impact of legacy spectrum distribution and of assignment and pricing methods and how to avoid competition distortions between incumbent users and newcomers resulting from the transition to a liberalised spectrum management regime.

Deliverable:      *ERG/RSPG Joint Reports*  
Deadline:        *2<sup>nd</sup> half of 2010*  
Consultation:    *No*

## **2.5. Future of Universal Service Obligation**

In 2010, the Commission is expected to publish proposals for legislative changes to the scope and funding of the Universal Service Obligation. As part of the 2009 Work Programme, ERG has been examining issues surrounding Universal Service and this

work will continue. ERG will be in a position to contribute to the debate on all relevant aspects of the proposals.

*Deliverable:* *ERG Opinion*  
*Deadline:* *Depending on timing of Commission proposals*  
*Consultation:* *No*

## **2.6. Accessibility Services for disabled end-users**

An issue related to Universal Service is the question of ensuring that disabled users have equivalent access to and choice of electronic communications services to that enjoyed by the majority of end-users. The revision to the Universal Service Directive introduces a provision which would empower NRAs to set requirements as a general obligation where this would be appropriate. Where such requirements are not set, Member States are required to take specific measures as part of the Universal Service Obligation.

ERG will review how accessibility services are currently provided, conduct a high-level analysis of the costs and benefits associated with different accessibility services and produce a report to facilitate consideration of the issues at the national level.

*Deliverable:* *ERG Report*  
*Deadline:* *4<sup>th</sup> quarter of 2010*  
*Consultation:* *Yes*

## **2.7 Net Neutrality**

During 2010, the debate on enhancing net neutrality is likely to develop further. The revision to the regulatory framework will make important revisions to strengthen requirements in this area. ERG will contribute to this debate and examine issues which fall within the scope of the electronic communications regulatory framework. In particular, ERG will work with the Commission and provide input to any measures or communication which will be developed by the Commission including a formal opinion in response to public documents issued by the Commission.

*Deliverable:* *ERG Opinion on Commission communication*  
*Deadline:* *Depending on timing of Commission initiatives*  
*Consultation:* *No*

# **3. Changes to the legal regulatory framework**

## **3.1. Transition from ERG to BEREC**

The BEREC Regulation comes into effect 20 days after publication in the Official Journal. It is likely therefore that BEREC will come into being early in 2010. In the course of 2009 ERG has made a number of preparations in anticipation of an early adoption of the revised regulatory package, including the BEREC Regulation. When the Regulation comes into effect, a number of tasks must be undertaken including governance arrangements for BEREC in accordance with the Regulation and the establishment of the Office as a support to BEREC.



In addition, ERG will engage directly with the Commission on procedural issues related to some of the new provisions in the revised regulatory framework.

Deliverable: *Timely establishment of BEREC in accordance with the Regulation, appointment of Administrative Manager and recruitment of staff for Office*

Deadline: *Continuous*

Consultation: *No*

In the course of the consultation on the Draft Work Programme, two issues emerged. Firstly, a number of stakeholders proposed that BEREC should facilitate stakeholder involvement in its work programme and clarify its consultation procedures. ERG has always sought stakeholder input where appropriate. As part of the transition to BEREC, it is planned to set out the principles for stakeholder involvement including consultation and consultation methodologies.

Deliverable: *Establishment of BEREC public consultation procedures*

Deadline: *1<sup>st</sup> half of 2010*

Consultation: *Yes*

### **3.2. Functional Separation**

A further issue which arose from the public consultation was a call from a number of stakeholders to clarify the position in respect of the new remedy of Functional Separation. Building on the 2007 ERG Opinion on Functional Separation, ERG will develop guidelines for the implementation of the new provisions as set out in Articles 13a and 13b of the Access Directive.

Deliverable: *ERG Report*

Deadline: *2<sup>nd</sup> half of 2010*

Consultation: *Yes*

### **3.3. Article 7 Expert Reports**

As a consequence of the success of the IRG's voluntary commitment to assist its member NRAs upon request during the second phase procedure of the Framework Directive's Article 7, it was decided during 2007 that a team of independent experts would be set up automatically upon the launch of every second phase procedure. The establishment of the relevant team, the study of the details of the case and draft the report, including recommendations, within a maximum of 60 days is quite a challenging and resource-intensive exercise for the experts of the NRAs.

When the new provisions of the Framework Directive become operative, BEREC will be responsible for delivering opinions under Art 7 and 7a. As part of the transition process from ERG to BEREC, ERG will set in motion arrangements to transform the existing procedure of considering Phase II cases to the procedures required to comply with the new provisions while noting that some aspects of the revised Framework Directive will not come into effect until the required date for national transposition.

Deliverable: *Expert Reports of Article 7 Expert Team*

Deadline: *As required*

Consultation: *No*

### **3.4. Switching Providers**

In 2009, ERG began to consider issues related to the ability of consumers to switch service providers, taking advantage of competition by selecting a service provider which best meets their needs in terms of price and range and quality of service. Issues of consumer protection also arise through the marketing process e.g. through “slamming”. The ability of consumers to switch providers also has a direct bearing on the development of competition, as foreclosure of the market may result from customers being locked into contracts with existing suppliers for lengthy periods.

ERG will review the current experience of NRAs and identify key principles for facilitating switching and ensuring effective consumer protection in accordance with the new provisions in the draft Citizens’ Rights Directive.

<u>Deliverable:</u>	<i>ERG Report</i>
<u>Deadline:</u>	<i>2<sup>nd</sup> quarter of 2010</i>
<u>Consultation:</u>	<i>Yes</i>

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