



November 2007

### **EuroISPA's response to the ERG VoIP Consultation (ERG 07 56 Rev1)**

EuroISPA is the world's largest association of Internet Service Providers, representing approximately 1000 ISPs across the EU. Below is our response to the ERG public consultation on the draft Common Position of the High Level Policy Task Force on VoIP.

#### **General observations**

EuroISPA welcomes this ERG public consultation on the draft Common Position of the High Level Policy Task Force on VoIP. It is a matter of fact that the approach to VoIP suffers from a lack of a coordinated approach within the EU, and therefore EuroISPA fully supports the ERG's initiative to improve harmonisation in general. The ERG's proposals on numbering are innovative and timely, and are likely to improve the availability of VoIP on a pan-European level within the internal market.

Nonetheless, EuroISPA does have a number of reservations regarding aspects of the draft Common Position. We do not believe the proposed approach to treat all VoIP services in effectively the same way is beneficial to the desired rollout of the various types of business- and consumer-focused services. In particular, given that many consumers do not view category 1, 2, or 3 VoIP services as concrete substitutes for PATS, such PATS regulations should not be applied by default, as far as unnecessary regulation of such VoIP services is likely to hinder innovation and slow deployment to consumers across the EU. As we will stress herein below, we also believe that it may be unnecessary and overly burdensome to even apply all PATS obligations on category 4 VoIP services as far as such services are not a substitute for PSTN voice.

In addition, EuroISPA notes that the VoIP regulatory environment is historically paying endemic uncertainty due to the short-term approach chosen by NRAs to resolve issues. As the underlying technology for VoIP developed and was implemented in very different ways by numerous service providers, so NRAs began to address regulatory concerns by prioritising different issues and addressing questions in different ways. This inevitably gave rise to short-term solutions, which in many cases have been revised and give rise to the fragmented market situation now visible. EuroISPA therefore believes that an appropriate balance should be found between a short- and long-term approach. Whilst there are aspects of the Task Force's consultation paper with which we may agree as a transitional short-term solution, we believe that forward-looking solutions should be better elaborated in order to give more certainty to the sector.

## **1. Access to Emergency Services**

1. *All telephony service providers should be obliged to provide access to emergency services.*

EuroISPA disagrees with the proposal to consider all implementations of VoIP technology as being a “Telephony Service” with the result of imposing on VoIP providers an extensive set of regulatory obligations. In fact, such a proposal does not seem appropriate for all classes of supply and demand and it does not reflect customer demand in all classes. In addition, it seems highly unrealistic for NRAs to be able to effectively enforce such a wide-ranging obligation.

EuroISPA believes that only implementations of Service 4 (according to the ERG typology), insofar as they are electronic communications services addressed to the general public seeking to substitute traditional PSTN services, should (and can realistically) be required to provide emergency calling. This does not rule out voluntary provision of emergency calling by providers or entities falling in other categories, insofar as they can guarantee sufficient quality of service so as not to undermine the public’s trust in emergency calling.

Moreover, in any case, EuroISPA believes that, by imposing upon VoIP providers the obligation to allow free access to the emergency services, it should be clarified that such an obligation does not imply the obligation to guarantee electricity continuity, in order not to create a technical barrier to the effective development of VoIP services and NGN (since this latter may also be offered through Passive Optic Fibre which does not support electrical continuity).

2. *The ability to provide access to the emergency services should be removed as a factor in the definition of PATS in the Universal Service Directive.*

EuroISPA agrees with this proposal.

3. *Routing should be provided to the locally responsible PSAP to the extent allowed by the technology.*

EuroISPA agrees with this proposal in principle, however, we feel that it would be productive for relevant bodies in the EU to finally establish a set of public policy principles for *all* stakeholders to work towards. The lack of policy direction given to NRAs on this issue is shown by the fact that the consultation document has to work on an assumption, “*if regulators and emergency organisations accept...*”.

4. *Information about the caller’s location should be provided to the extent allowed by the technology.*

EuroISPA encourages its own members, as well as the ERG and NRAs, to become more active in standardisation efforts to achieve forward-looking solutions to identification of caller location. However, again, consistent public policy objectives would add to the quality of the end results for consumers. It appears unlikely that placing an obligation on consumers to input their own location data would be in line with any public policy approach on this issue that has so far been agreed by stakeholders. In addition, before imposing auto location requirements for nomadic VoIP services one should examine whether at this time the technology has developed sufficiently to provide such location information to the PSAPs.

5. *Telephony service providers should be obliged to provide the emergency response centre with information on whether the call originates from a fixed or a potentially nomadic user.*

EuroISPA agrees with this proposal as a short term solution, but at the same time encourages the ERG to be forward looking and to prepare the field for long-run solutions.

6. *Telephony service providers should be obliged to clearly inform subscribers about any limitations in the services as compared to the traditional telephony service.*

EuroISPA agrees with this proposal as a short-term solution. However, there is no policy direction concerning what constitutes a limitation. DECT and GSM providers do not need to inform consumers about the consequences of flat batteries or being out of range of the network. GSM operators do not need to provide warnings about less reliable location data in rural areas. Without any agreed public policy on these issues, the only possible outcome appears to be divergent approaches across the EU, undermining the very single market and innovation objectives that the ERG is seeking to encourage.

7. *The information should be provided in comparable way in different MS, e.g. in the terms and conditions of contract, by means of a sticker on device or clearly visible information in bills.*

EuroISPA agrees with this proposal as a short term solution, but at the same time encourages ERG to be forward looking and to prepare the field for long-run solutions.

8. *Emergency calls should be setup with the priority, quality and availability to the extent allowed by the technology.*

EuroISPA agrees with this proposal as a short-term solution, but at the same time encourages ERG to be forward looking and to prepare the field for long-run solutions.

## **2. Numbering**

1. *All providers of fixed Telephony services should be authorised to permit nomadic use by their subscribers. Geographic numbers should be available for this purpose.*

EuroISPA fully supports this proposal.

2. *Numbering plans should be technologically neutral, based on the service descriptions and the same number ranges should be available within those service description. This means that geographical numbers for traditional telephony services and geographical numbers for VoIP services should share the same number range, that is, come from a common "number pool".*

EuroISPA fully supports this proposal.

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| 3. <i>Nomadism is an essential feature of VoIP services which should not be restricted. Nomadism does not preclude member states from maintaining the geographical meaning of geographical numbers if wished; this can be achieved by allocating such a number only to subscribers with a main location (address) in the corresponding geographical zone, as defined in the national numbering plan.</i> |
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EuroISPA fully supports this proposal. However, we also note that the Task Force proposes that out of area/out of country use of geographic numbers could be restricted “if wished”. If an EU Member State has clearly defined public policy objectives that lead to consumer choice needing to be limited, these need to be presented in the form of published and specific justifications, and not wishes.

### **3. Number Portability**

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| 1. <i>Number portability is important from a user and competition point of view.</i> |
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EuroISPA supports this proposal.

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| 2. <i>There should be an obligation to port numbers to any service provider which satisfies the conditions of use of the appropriate number ranges.</i> |
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EuroISPA agrees that there should be an obligation to port numbers to any service provider which satisfies the conditions of use of the appropriate number ranges.

However, further research and consultation is needed with regard to numbers subject to restrictions, such as out of country use where this is restricted in Member States or numbers are subject to industry regulation or self-regulation obligations. These issues underline the point made above in section 2.3 that all restrictions on the use of numbers should be made subject to mandatory publication of a list of compelling public policy objectives that can only be achieved through their imposition. Failure to do this will lead to fragmentation and barriers to the single market, innovation and competition.

### **4. Quality of Service**

While the consultation document only makes reference to Quality of Service (QoS) within the context of calls to emergency services, there are wider concerns that need to be addressed in this context.

The issue of wholesale NGN interconnection and interoperability has not been addressed in great detail so far, meaning that the issue of end-to-end service quality has not attracted sufficient attention. It is important to avoid a situation whereby the best QoS that a consumer will be able to experience is equivalent to the weakest link in the communications chain. In the interests of competition and innovation, it is also crucial to avoid a situation where dominant operators offer themselves a higher level of QoS than to third parties.

Addressing these issues at an early stage is not alone good for competition, but will also avoid more direct regulatory intervention later – resulting in possible re-engineering and reconfiguration of dominant operator networks.

One option that could be considered is regulation at a wholesale level, with providers offering a range of guaranteed QoS options, giving providers the option to provide different levels of service to their different types of customers.

Finally, QoS regulation should be referred not only to the carriage of voice/data communications but should also be extended to signalling services (this issue may be resolved by providing a sort of NAP opened to all service providers where the latter exchange their signalling).

## **5. Access to Directory Enquiry Services**

EuroISPA agrees with the recommendation that also the subscribers of non-PATS VoIP electronic communications services should have a right to be included in directories.

However,

(a) given the importance of directory services, it should in addition be ensured that all VoIP electronic communications services should also ensure access to directory services;

(b) given that the existing formulation does not guarantee that consumers are made aware of their possibilities to be listed in a directory, VoIP electronic communications service providers should be obliged to explicitly ask their subscriber while concluding the contract about how the subscriber wants to appear in the directory.

## **6. Cross Border Issues**

EuroISPA shares the concerns raised by the Task Force regarding cross border issues and agrees with the interim conclusions proposed in the consultation document. Cross border provision is, however, an objective reality, and we believe that the review of the EC directives cannot ignore this reality.

## **7. Definitions**

EuroISPA accepts that there is a certain degree of circularity in the PATS definition, and that other definitions could usefully be re-examined, notably in order to remove this circularity and to clarify the role of VoIP technology implementations functioning at the control/application layer and using networks controlled by other operators, especially in an NGN environment. However, we do not believe that the ERG's mandate permits it to encourage NRAs to deviate from the stipulations of EC Directives (and NRAs' mandate does not permit them to deviate from national law).

As regards contractual obligations/consumer protection/transparency, we reiterate that are perfectly clear reasons to apply differential treatment for business customers as opposed to individual consumers, and perfectly legitimate reasons to treat cases differently depending on supply and demand conditions. EuroISPA does not support the extension of PATS consumer protection obligations and transparency obligations onto non-consumer customers of PATS and on non-PATS implementations of VoIP technology.

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#### **About EuroISPA:**

EuroISPA is the world's largest association of Internet Service Providers, representing approximately 1000 ISPs across the EU. EuroISPA is a major voice of the Internet industry on information society subjects such as cybercrime, data protection, e-commerce regulation, EU telecommunications law and safe use of the Internet. Its secretariat is located in Brussels. EuroISPA is predominantly funded by its member and associate member associations and the members of the EuroISPA Industry Forum.

For further information on this and other matters concerning EuroISPA, please contact Richard Nash, Regulatory Affairs Manager and Secretary General, at the address set out below.