

Public debriefing 49th BEREC Plenary Meeting

Michel Van Bellinghen, BEREC Chair
Virtual meeting, 15 December 2021

Body of European Regulators
for Electronic Communications

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Part I

- BEREC Work Programme 2022 - *Annemarie Sipkes (ACM) – Incoming BEREC Chair 2022*
- BEREC report to enable comparable national broadband coverage indicators throughout Europe – *Sal WG Co-Chairs (ANCOM/CNMC)*
- Draft BEREC Report on the Update to the BEREC Net Neutrality Regulatory Assessment Methodology – *OI WG Co-Chairs (ILR/Traficom)*
- Information on the ECJ judgements related to the application of the Open Internet Regulation - *OI WG Co-Chairs (ILR/Traficom)*

Q&A

Part II

- Draft BEREC Report on a consistent approach to migration and copper switch-off – *FNE WG Co-Chairs (PTS/RTR)*
- BEREC Opinion on the market and technological developments and on their impact on the application of rights of end-users in the EECC - *End-User WG Co-Chairs (AGCOM/ANACOM)*
- BEREC Opinion on the national implementation and functioning of the general authorisation – *RF WG Co-Chairs (AGCOM/NMHH)*
- BEREC Report on COVID-19 crisis - lessons learned regarding communication networks and services for a resilient society - *RF WG Co-Chairs (AGCOM/NMHH)*

Q&A

Adopted documents that are not subject to presentation

- 9th BEREC Report on transparency and comparability of international roaming tariffs
- Report on termination rates at the European level – 30 June 2021
- Report on the diversification of the 5G ecosystem
- Report of the Workshop on NRA experiences with 5G
- Report of the Workshop on EMF – How BEREC can best promote science-based EMF exposure limits recommended by experts

<u>WG</u>	<u>Project</u>	<u>Launch date of PC</u>	<u>Closing date of PC</u>
Open Internet	Draft BEREC Report on the Update to the BEREC Net Neutrality Regulatory Assessment Methodology	15 December 2021	28 January 2022
Fixed Network Evolution	Draft BEREC Report on a consistent approach to migration and copper switch-off	15 December 2021	28 January 2022

BEREC WP 2022

Annemarie Sipkes (ACM)
Incoming BEREC Chair 2022

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ACT

Comparison Tools
Roaming
Open Internet
...



Innovate

Digital markets
Emerging technologies
5G Value chain
Internet ecosystem
Sustainability
...

Learn

Open RAN
AI
Business services
...

	Q1 2022	Q2 2022	Q3 2022	Q4 2022	Q1 2023	Q2 2023	Q3 2023	Q4 2023
Workshop		1	2	2				
Final Opinion / Study	1		1					
Draft Guidelines	2	2						
Final Guidelines		1	1	2				
Draft Report	1	4	5	5	2		1	
Final Report	1	4	2	8	4	6		

- Responses from 15 stakeholders
- Stakeholders represent consumers, incumbents, new entrants, fixed, mobile and satellite operators
- Comments were in general quite supportive of the choices made

- Final Work Programme and Report on the outcome of the public consultation can be found on the BEREC website:
<https://berec.europa.eu>

- Meet & greet
- Conference
- And socializing
- Survey
- Next Stakeholder Forum:
- Brussels
- 23 March 2022



BEREC Report to enable comparable national broadband coverage indicators throughout Europe

Iulia Zaim-Grigore (ANCOM) and Begoña García-Mariñoso (CNMC)
Statistics and Indicators WG

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Context:

- The Broadband Coverage in Europe Study aims at tracking the progress in broadband coverage towards the targets set by the EC. Some of its indicators are showcased in the DESI Reports.
- The Study is well-established, comprehensive and complex.
- Article 22 of the EEC Directive and the BEREC Guidelines provide the basis for more comparable coverage metrics across Europe.

Objective of the Report:

- To reflect on the possible ways to improve the comparability of the national, rural and NUTS 3 coverage indicators included in the Study and to establish useful recommendations.

The recommendations are:

- partly, but not exclusively, based on the BEREC Guidelines on Article 22;
- based on BEREC's insights throughout the process and the discussions with the stakeholders;
- some are of a general nature, other methodological.

Main general recommendations

- The sourcing of data should entirely rely on the public authorities in charge of the Article 22 broadband maps. The provision of data by operators should be exceptional and where properly justified.
- A higher degree of transparency is recommended.

Methodological recommendations

- The Study should rely on “premises” and “premises passed” concepts as defined in the Article 22 Guidelines.
- To consider the BEREC definition of VHCN and in particular of fixed VHCN.
- To align the speeds definitions with definitions in the Article 22 Guidelines.
- Data should be collected and aggregated at the highest granularity available.
- If data is not granular, the formula suggested in the Study should be used, but Authorities may justify the use of alternatives.

Additional food for thought on “rural coverage indicators” and “5g coverage”

Draft Update to the BEREC Net Neutrality Regulatory Assessment Methodology

Véronique Ney (ILR) and Klaus Nieminen (Traficom)
Open Internet WG

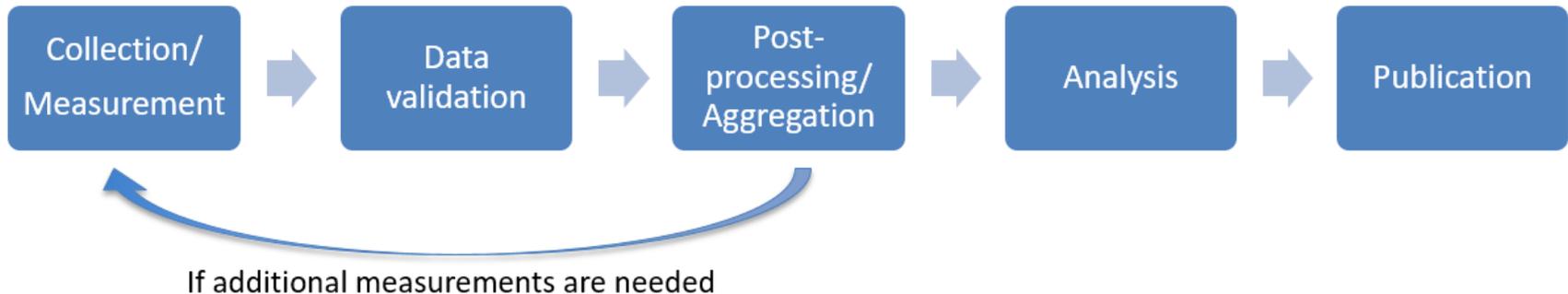
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- Objective of the updated methodology:
 - to help NRAs in the monitoring and supervision of the provisions of the Open Internet Regulation based on various net neutrality measurement tools
 - guidance on measuring internet access service quality (speed, delay, delay variation, packet loss)
 - assessment of recent developments in the market and reflection on NRAs' experience
- Roadmap:
 - Public consultation: **15 December 2021 – 28 January 2022 (17:00 CET)**
→ NNRAM-Consultation@berec.europa.eu
 - Publication of the final methodology and consultation report: **June 2022**

- **Speed measurement methodology redrafted**
- Some of the unused net neutrality measurements and some guidance on individual results assessment removed
- Chapter on end-user environment factors updated and reorganised
- New chapter on privacy added
- **Guidance provided to assess the general quality of internet access services**



- Multi-platform
 - measurement initiated by an end-user via his/her usual device
 - measurement can run on other hardware such as games consoles, modem clients, TV-boxes
- Measurements within a web browser or within the restricted sandbox of an on-device app
 - no installation of personal computer client software
- Resulting speed measurement objectively reflect the speed available to the end-user
- Time for individual speed measurement short enough and transparent to the end-user
- Support of the typical speeds available in the relevant markets (optical and 5G networks)
- Support of both IPv4 and IPv6

Information on the ECJ rulings related to the application of the Open Internet Regulation

Véronique Ney (ILR) and Klaus Nieminen (Traficom)
Open Internet WG

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- Call for input: 6 – 20 October 2021
 - Early engagement with stakeholders
 - To feed into the BEREC internal legal analysis
- 26 responses received from various stakeholders
 - 23 non-confidential responses are [published](#)
 - No publication of a summary report
- Many thanks for the contributions!
- Outlook:
 - **March 2022** – Launch of **public consultation** on the draft updated Guidelines
 - **June 2022** – **Publication** of the final Guidelines and consultation report

- Zero tariff offers are incompatible with the OIR Art. 3(3) equal treatment obligation
→ by the mere activation of the zero tariff option
- ECJ did not assess the individual limitations of use
 - “incompatibility remains, irrespective of the form or nature of the terms of use”
- It is irrelevant whether such a zero tariff option is based on an agreement or whether there is actual demand by customers or content providers for such an offer

Equal treatment obligation applies also to ZR offers without technical discrimination

→ zero tariff offers violate the equal treatment obligation

→ the same conclusion is likely to be applicable also to some other offers not directly addressed by the ECJ rulings (like sponsored data)

There is still room for price differentiation

- There is still room for price differentiation when traffic is treated equally:
 - *“Providers of internet access services shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.” (OIR Art. 3(3) 1 subparagraph)*
- Application-agnostic IAS tariffs are very likely compatible with OIR
 - IAS tariffs with different speeds, different volumes or for different user groups
 - Zero tariffs during weekend or off-peak times
 - A lower quality tariff option selected by an end-user
- National legislation (OIR Art. 3(3), exception a)) might also be applied

Relationship between the 2020 and 2021 rulings

In 2020 Telenor, the ECJ	In the 2021 rulings, the ECJ
Just answered the questions put forward by the Hungarian Court	Decided not only to answer the questions referred to him by the German Courts
Focused in particular on the relationship between the provisions of OIR Art. 3(1), (2) and (3)	Decided to assess the underlying admissibility of <i>zero tariff</i> options as such

- There is no conflict between the rulings, the latest 2021 rulings just developed the interpretation further on how to apply the OIR to zero tariffs
- In 2020 ECJ provided a general assessment framework
 - without an explicit clarification on the admissibility of zero-rating as such
- All rulings of the ECJ are of equal value

Draft BEREC Report on a consistent approach to migration and copper switch-off

Lars-Erik Axelsson (PTS) and Wilhelm Schramm (RTR)
Fixed Network Evolution WG

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- NRAs are increasingly confronted with the situation wherein the SMP operator (SMPO) wants to decommission its legacy copper-based access network and to close e.g. main distribution frames (MDFs)
- The objectives of this report are:
 - To provide an overview of the SMPOs' current status and plans for copper switch-off
 - To analyse in detail the rules set by the NRAs for the migration process and copper switch-off
 - To examine also further aspects of the migration process and copper switch-off
 - Finally, the report aims to identify a consistent approach to migration and copper switch-off
- The report is based on data provided by 32 NRAs and shows:
 - In 20 countries, the SMPO has already announced that it plans to switch-off its legacy copper access network
 - In 13 of them, the SMPO has already closed copper-based network elements
 - In 17 countries the NRA has already set rules for the migration process and copper switch-off

A consistent approach to migration and copper switch-off

- Type of procedure: The NRAs typically set the rules for the migration process and the copper switch-off in a market analysis procedure
- Level (granularity) of the rules: The level of the rules set by the NRA typically depends on which copper switch-off the SMPO pursues
 - E.g. closure of street cabinets already before or only after MDF closure
- Scope of the rules: The rules set by the NRA apply to the SMPO and to the geographic area where the NRA imposed access remedies on the SMPO
- Stakeholder involvement:
 - NRAs normally involve the stakeholders by means of a public consultation of the draft measure according to Art 23(1) of the EECC
 - Depending on national law (transposition of Art. 31(1) of the EECC), stakeholders are also party in the (market analysis) procedure which sets the rules for the copper switch-off
 - In certain circumstances further stakeholder involvement is appropriate

A consistent approach to migration and copper switch-off (contd)

- Notice period: The notice period typically is
 - 6 to 12 months in case ANOs do not use any SMPO's copper-based wholesale access products
 - 1 to 3 years in case ANOs use VULA or bitstream (same PoH after copper switch-off)
 - 2 to 3 years in case ANOs use copper-based ULL
- Alternative wholesale access products:
 - Typically, the fibre-based wholesale access products imposed on the SMPO as a “usual” remedy in a market analysis procedure are sufficient for the copper switch-off
 - The alternative wholesale access products imposed on the SMPO depend on the SMPO's infrastructure (e.g. ducts, FTTH point-to-point fibre) and, therefore, differ between countries
- Legacy copper-based wholesale access products:
 - They are normally also imposed on the SMPO in a market analysis procedure
 - Typically, the SMPO has to provide the legacy copper-based wholesale access products until the copper is switched off (e.g. MDF closure)

A consistent approach to migration and copper switch-off (contd)

- Migration costs:
 - The NRAs typically apply price regulation to the legacy copper-based wholesale access products and the alternative wholesale access products in a market analysis procedure
 - In many cases there is no need for further rules on the migration costs
- Information of the SMPO and monitoring:
 - Typically, the SMPO has to inform ANOs, and in many cases also the NRA, on the migration process and copper switch-off
 - Whether NRAs also monitor the migration process and copper switch-off depends on national circumstances, however, in many countries this is the case
- Further rules:
 - The NRAs typically also impose obligations on the SMPO:
 - To publish a reference offer for the alternative wholesale access products
 - To offer the alternative wholesale access products with key performance indicators (KPIs) and service level guarantees (SLGs) and also
 - A non-discrimination obligation
- Permission to close MDFs:
 - Normally SMPOs do not need any further explicit formal permission

Market and technological developments and their impact on the application of end-users' rights in the EECC - BEREC Opinion

Paolo Lupi (AGCOM) and Luis Manica (ANACOM)
End User WG

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BEREC shall monitor market and technological developments regarding the different types of electronic communications services. It shall publish, by 21.12.2021, an opinion on such developments and on their impact on the application of Title III of Part III.



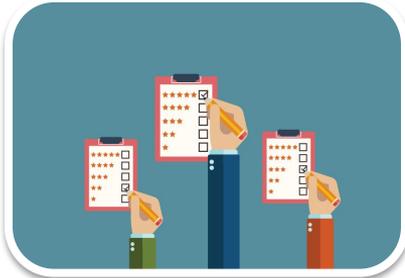
In that opinion, BEREC shall assess to what extent Title III of Part III meets the objectives set out in Article 3 and in particular:



a) if end-users of ECS are able to make free and informed choices and are able to easily switch their provider
b) if any lack of abilities referred to in point (a) has resulted in market distortions or end-user harm; c) if effective access to emergency services is threatened by an increased use of NI-ICS and d) the likely cost of any potential readjustments of obligations in Title III of Part III or impact on innovation for providers of ECS.



The Commission shall publish a report on the application of Title III of Part III and shall submit a legislative proposal to amend that Title where it considers this to be necessary to ensure that the objectives set out in Article 3 continue to be met.



**Questionnaire to
NRAs**



**Letters to
stakeholders**



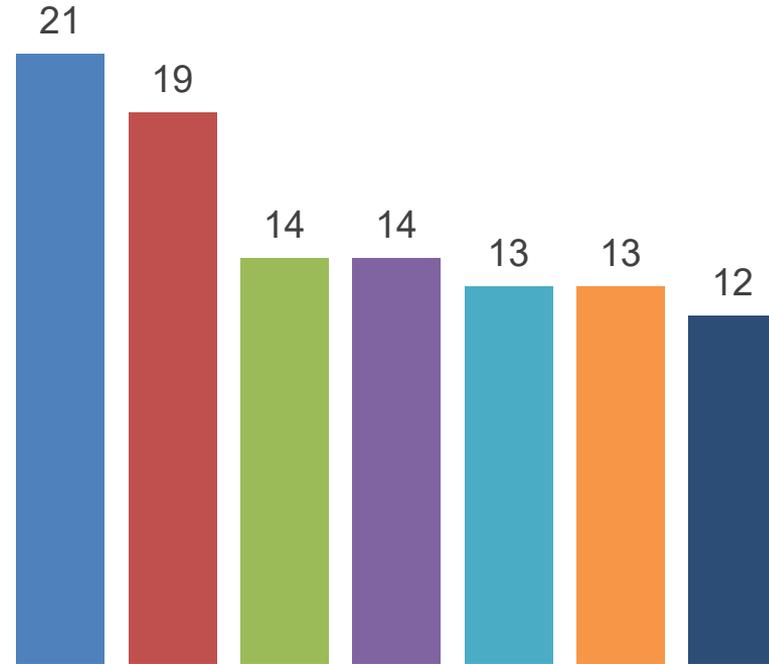
**Survey on
e-communications
in the EU
(June 2021)**

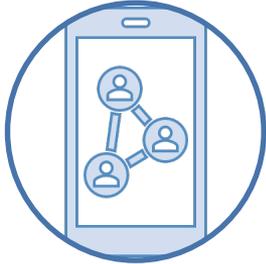


**BEREC Reports
and Studies**

Main market and technological developments relating to end-user rights

- Continued growth and importance of data-usage in mobile communications
- Significant increase of demand for connectivity and well-functioning high-capacity internet connections (in general)
- Electronic Communication Services are more and more provided in the form of bundles
- Impact of the COVID-19 crisis in the sector





General remark

Market and technological developments will likely not impact on the application of end-user rights and there is no significant risk of not meeting the objectives of Art. 3



Transparency and contractual information

The provisions on transparency and contractual information should have a positive impact on end-users and foster the development of the retail market.

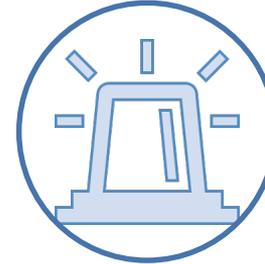
Topics of attention:
DCB - PRS
Fraud
Implementation of CST



Contract duration and termination and provider switching

No need at the present time to introduce amendments in the provisions concerning contract duration and termination and provider switching and number portability

Topics of attention:
Bundles
E-SIM



Effective access to emergency services

No need at the present time to introduce amendments in the provisions concerning effective access to emergency services

Topics of attention:
Nomadic VoIP services
Location of SIP servers



Equivalent access and choice for end-users with disabilities

The very recent and therefore limited experience with the new regulatory framework makes difficult to provide general considerations



BEREC Opinion on the national implementation and functioning of the general authorisation

Antonello De Tommaso (AGCOM) and Ervin Kajzinger
(NMHH)

Regulatory Framework WG

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- Pursuant to Article 122.3, BEREC shall, by 21 December 2021 “*publish an opinion on the national implementation and functioning of the general authorisation, and on their impact on the functioning of the internal market*”
- The BEREC Opinion may be followed by a Commission’s report on the application of GA-related provisions in the EECC and by legislative review proposals
- The Opinion shall cover the overall working of the GA regime in the EU, in terms both of national implementation solutions, and of operation and effectiveness of this scheme in view of the single market

BEREC:

- collected NRA’s experiences with implementing the new framework
- launched a call for input 14 June – 9 August 2021 – 10 contributions received

Chapter 1: State of the national transposition processes

Chapter 2: The stakeholders' views

- ✓ **2.1: Functioning of the GA scheme**

Challenges detected within and outside the ECNS sector

- ✓ **2.2: Forward-looking considerations around broadening the scope of the GA regime**

- ✓ **2.3: The EU Database**

Chapter 3: Conclusions and possible further steps

- Overall satisfaction for the main features and functioning of the GA scheme
- Challenges identified by the stakeholders mostly refer to the legislative framework pre-EECC
- Positive expectations on the capacity of the GA-related provisions in the EECC to further streamline the system
- EECC effectiveness to be tightly monitored by BEREC
- Forward looking reflections around the scope of the GA regime to be also checked after full transposition, based on a sounder experience of the EECC national implementation experiences

BEREC Report on COVID-19 crisis – lessons learned regarding communications networks and services for a resilient society

Antonello De Tommaso (AGCOM) and Ervin Kajzinger (NMHH)

Regulatory Framework WG

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BEREC Summary Report on the status of internet capacity, regulatory and other measures in light of the Covid-19 crisis

In a joint statement with the European Commission, on 19 March 2020, on how network operators can cope with the increased demand of network capacity, BEREC committed to a special reporting mechanism to ensure regular monitoring of the Internet traffic situation in each Member State, in order to be able to respond swiftly to capacity issues. Furthermore, BEREC is collecting information on other measures implemented by National Regulatory Authorities (NRAs) as well as on other initiatives by public and private parties throughout Europe.

Between March 2020 and June 2021, BEREC published its summary report on a regular (primarily monthly) basis. As the reported situation stabilised, and updates from NRAs moderated, it was agreed that a final iteration of the report would be published at 2021 year end. Thus, this report focuses on, and summarises, the main updates provided by NRAs (to cover the intervening period since end of June 2021) as of 15 November 2021.

The report provides an update on the information collected by BEREC regarding the status of internet traffic in Member States (see section 1.1. below) and on the status of networks (see section 1.2. below) based on a 'traffic light' illustration. During the entire reporting period (i.e. since BEREC first published a report on how the Covid-19 crisis is impacting internet capacity etc.), 33¹ NRAs have shared their data about the impact of the crisis on electronic communications networks and the actions taken so far in their respective Member States.

Please refer to the previous iterations of this summary report² for further details on some of the early measures applied by NRAs during the crisis.

1. Status of internet capacity

In general, while traffic on fixed and mobile networks have increased during the (approximate) twenty months of the Covid-19 crisis, no major congestion issues have ever been reported by NRAs to BEREC.

¹ The following NRAs have contributed so far to the information gathering exercises: AL, AT, BE, BG, CH, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, ME, MK, MT, NL, NO, PL, PT, RO, RS, SE, SI, and SK
² The previous iterations of the summary report can be found at: https://berec.europa.eu/eng/document_register/search?reference_number=title-summary-report&contents-&category_id=&date_from=&date_to=&search=1

Study on post Covid measures to close the digital divide Final Report

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BEREC Report on COVID-19 crisis – lessons learned regarding communications networks and services for a resilient society

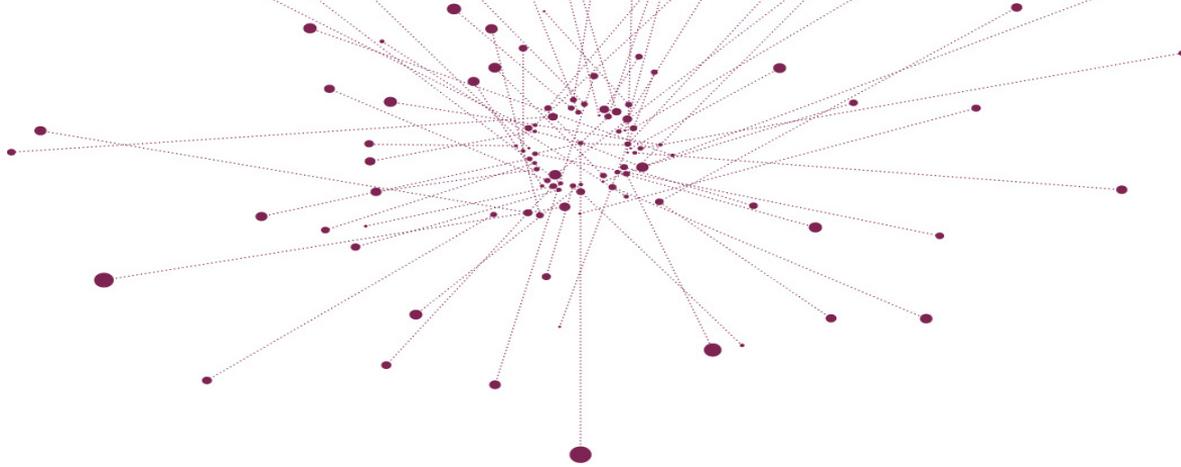
Structure of the report

- Measures adopted by MS
- Impact of the COVID-19 crisis
- Case studies
- Regulatory lessons

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- Well-established **relationships between NRAs, operators, national and European institutions** have also proven to be **very reliable** in a crisis situation.
- European **telecom networks** have proven to be remarkably **resilient**, withstanding increased network traffic even for extended periods during the strictest lockdowns.
- **Operators** were constantly **monitoring** their networks' ability to cope with the increased traffic so to **pre-empt capacity shortages**, finding solutions proactively in partnership with NRAs, governments, and digital platforms. Experience shows that **strong collaboration among stakeholder groups** is essential to cope with the crisis situation.
- The resilience of the Internet ecosystem made it possible to cope with the unprecedented increase of traffic on fixed and mobile networks in Europe during the COVID-19 crisis, and finally **no major congestion issue occurred**.
- **All stakeholders** (end-users, operators, content and application providers) contributed to the smooth functioning of the Internet
- The majority of NRAs, as well as the stakeholders, have found that the NRAs had **sufficient regulatory tools** (including soft measures and public policy tools).
- Current **sectoral institutional framework** has proven to be **fit to deal with the crises**.
- Overall the European electronic communication sector demonstrated its capability to **successfully deal with the pandemic** by supporting daily activities of citizens and businesses in the EU
- Attempts to deal with disinformation



Thank you!

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