



The Consumer Voice in Europe

PUBLIC CONSULTATION ON BEREC'S 2021-2025 STRATEGY AND EARLY CALL FOR INPUT ON BEREC'S 2021 WORK PROGRAMME

BEUC's response



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Why it matters to consumers

Over the past years, the technical expertise and experience of the Body of European Regulators for Electronic Communications (BEREC) has been very important to promote competitive electronic communications markets and protect and empower consumers. Being able to comment on BEREC's draft programme shows regulators' openness and willingness to cooperate with BEUC and its 45 members as well as other stakeholders.

Summary

BEUC – The European Consumer Organisation welcomes the opportunity to respond to BEREC's consultation on its future work. We generally welcome the draft documents, but ask for caution and provide recommendations in certain areas which are fundamental for consumers.

1. BEUC recommendations to BEREC's draft 2021-2025 strategy

Overall, BEUC commends BEREC for its draft 2021-2025 strategy, as it shows its commitment and willingness to protect and empower consumers in all of its strategic priorities.

Below, we suggest some recommendations to improve the draft:

Market, technological and policy developments

- BEREC's **mission statement** should be changed to "BEREC aims at fostering the independent, consistent and high-quality regulation of **electronic communications** digital markets for the benefit of Europe and its citizens **and consumers.**"

This (slight) modification is important to match BEREC's regulatory tasks enshrined in Article 4 of the [BEREC Regulation](#). This comment is also relevant for other parts of the strategy where BEREC aims at regulating digital markets more broadly. In line with Article 35 of the BEREC Regulation, we commend BEREC for strengthening its cooperation and engagement with other regulatory authorities with competences in other fields. However, BEREC should focus on the tasks assigned to it in EU law.

- The increasing **availability of data and analytical tools** has not always brought "better-informed decisions by consumers" (p. 5). In fact, consumers are often being misled (e.g. via dark patterns) or discriminated (e.g. via discriminatory personalised pricing). BEREC should reflect this reality in its strategy.

We welcome BEREC's acknowledgment that AI technologies in the electronic communications sector can affect "end user rights, data protection, competition (in

terms of data economy) or security". Similarly, BEREC should highlight that data-centric business models are raising many **challenges** for consumers as well.

Data access remedies need to be defined always putting the interest of consumers first. This means that:

- consumers must be allowed to object to the sharing of their personal data;
- the rights, obligations and principles of the General Data Protection Regulation (GDPR) – including data minimisation, purpose limitation, data protection by design and by default, legal grounds for processing – must be observed;
- consumers must be offered technical solutions to help them to control and manage flows of their personal information and have means of redress if their rights are not respected; and,
- operators handling personal data must be obliged to establish a high-level of data security.



For more information, see BEUC's position papers on:

- [Access to Consumers' data in the digital economy.](#)
- [AI rights for consumers](#)
- [Automated decision making and artificial intelligence - A consumer perspective](#)

- BEUC welcomes BEREC's attention given to **sustainability** and considerations around the **European Green Deal**. A successful Green Deal should go beyond mere awareness as we are facing a climate crisis. For greater details, please check [BEUC's view on the European Green Deal - Consumers at the centre of the drive to sustainability.](#)

Strategic priority 1: Promoting full connectivity

We would like to highlight that the purpose of BEREC's work on the deployment of **Very High Capacity Networks** (VHCN) should ensure markets work efficiently, transparently, and fairly for all participants, and in particular for consumers, delivering the increase of consumer welfare. The variety of products on the market could suffer under this regime. BEUC supports connectivity and is favourable to a fast one, but we are concerned about market consolidation being the result of VHCN endeavours.

We urge caution regarding **infrastructure sharing** so it does not lead to a reduction of competition. This is particularly important when network agreements take place between undertakings with significant market power since such agreements can reduce the incentives to invest and diversify infrastructure, and ultimately lower the quality of services for consumers.

Strategic priority 2: Supporting sustainable and open digital markets

We welcome BEREC's commitment to net neutrality, "contributing to continued, predictable and consistent application of the open internet regulation" during the 5G roll-out.

Concerning the digital economy, BEREC must draw a balance between the benefits and risks of AI and other new technologies. Right now, this section refers to digitalisation as only providing opportunities. Unfortunately, there is vast evidence showing the challenges that must be tackled.

In addition, we would like BEREC to expand on the "sustainability" part of this strategic priority.

Strategic priority 3: Empowering end-users

- We strongly recommend BEREC to change the second sentence of the first paragraph of this section as follows: "While digital innovation and competition among digital service providers has improved consumer empowerment, there is still an important role for regulators to play in ensuring ~~a certain level of~~ **the respect of consumer rights**, transparency and digital skills."
- Empowering consumers cannot be achieved by transparency and digital skills alone, as BEREC itself infers in the rest of this section and its 2021 work programme (page 5). Putting too much burden on information and therefore on consumers will not trigger market changes. BEUC proposes BEREC to work on the negative effects of information overload and how to mitigate that.
- We recommend BEREC **not to put too much emphasis on consumer demand on VHCN** as consumers should have the choice to use/buy high capacity tariffs. BEREC should rather focus on ensuring markets work efficiently, transparently, and fairly for all participants, and in particular for consumers.
- The **two pillars** highlighted for this strategic priority (i.e. 1. Monitoring of the sector and 2. Appropriate level of transparency) should be strengthened. Consumer protection and empowerment cannot solely be achieved by monitoring the sector or by transparency measures. We need BEREC to keep working to ensure a coherent application and consistent enforcement of the rules, which include ensuring undertakings abide by their obligations towards consumers. We recall the telecoms sector is one of the sectors which receive most complaints from consumers. More ambition from BEREC is needed to change the markets. We would like to [refer to our extensive comments](#) to BEREC's 2020 work programme and 2021 initial input.

Having said that, we very much welcome BEREC's commitment to keep closely **engaging with consumer organisations** to empower and protect consumers, including when consumers face AI-based applications and services.

Institutional and international cooperation priorities

We welcome that interinstitutional cooperation now has a more prominent role in BEREC's strategy. Breaking the silos of regulators is essential in a digitalised society and economy. We would only urge caution about focusing on "connectivity/5G and platform regulation". As BEREC stated in [this consultation](#), "[w]hile the objectives of the EECC will still be at the centre of BEREC work in the coming years, BEREC will need to prioritise its work and resources to realise these objectives".

Stakeholder engagement

We thank BEREC for acknowledging that sufficient time to respond to a consultation is needed. We encourage granting longer consultation periods. As a way of example, the Outline BEREC Work Programme 2021 was approved on 30 January 2020, but was only put to consultation on 10 March. Even if a more elaborated work programme will be subject to consultation again, it would have been better to put it into consultation already on 31 January so we would have one month and a half extra to get input from our 45 member organisations.

In addition, we encourage BEREC not to publish several consultations at the same time as this means organisations like BEUC need to prioritise which consultations to respond to due to lack of resources.

2. BEUC comments to BEREC's early call for input to its 2021 work programme

High-level strategic priorities and cooperation with EU institutions and institutional groups

Considering the wording of these two sections mirror that of BEREC's draft 2021-2025 strategy, the same comments BEUC made for the corresponding part of the draft strategy apply to BEREC's 2021 work programme outline. We would be grateful if you could change the work programme accordingly.

BEREC tasks in line with EU legislation

We generally welcome the tasks set in this section in line with EU law. BEUC would like to invite BEREC to co-organise a workshop with consumer organisations to exchange experiences as to how the EECC's Title III (end-user rights) has been implemented and enforced in practice. This can help BEREC gather feedback for its opinion requested by Article 123 of the EECC.

Additional items

- **BEREC study on consumer behaviour and attitudes towards digital platforms.** BEUC would recommend assessing both the benefits and challenges of the platform economy in cooperation with other relevant authorities, including data protection and consumer protection authorities and respective networks (the European Data Protection Board and the Consumer Protection Cooperation Network respectively). Since this study concerns consumers interests, we would encourage BEREC to take into account BEUC's position papers on [the platform economy](#) and on the [collaborative economy](#).

This study can also cover the aspects related to the openness of devices also called "device neutrality".

- **Work on the impact of 5G on regulation.** BEUC recalls [its previous contribution on 5G](#) and recommends BEREC to take into account that considerations related to 5G must include competition, interoperability, security, privacy and data protection, consumer information and choice, amongst others.
- **Report on how to handle third-party payment charges on mobile phone bills.** We welcome BEREC's commitment to conduct this report. For example, in

Portugal our member DECO reports that although one of the Portuguese operators has taken the initiative to prevent users to subscribe to this type of service, they still consider it essential that this issue be monitored, with comprehensive decisions at European level. Any charges for extra services on top of what is contracted should only be made with the express authorisation of the user. BEUC considers that rather than focusing on "how to deactivate/manage third party charges on mobile service invoices", there should be clear guidance on how to ensure that the user has made an express and conscious activation of these services.

Possible work for 2021 and beyond

- **Ensuring non-discrimination on quality of service (QoS)** is something BEUC very much supports, not only as an interesting topic, but as a requirement to render markets more dynamic and with more just outcomes.
- **Compensation in the case of early termination of contracts.** We would like this point to be treated with urgency as some practices are damaging consumers¹.
- **Internet value chain and economic analysis of digital markets.** BEUC very much welcomes this item. BEUC has been asking BEREC to continue its work on device neutrality and BEREC has been postponing this work item in past work programmes. We urge BEREC to initiate this work, following on the excellent work conducted by the French national regulatory authority (NRA) ARCEP² and other NRAs that followed suit. It is important that BEREC steps up its work on "over the top services".
- **"Further exchange on consumer protection issues"** was already an item in BEREC's 2020 work programme outline and we would like BEREC to conduct more activities in this regard. For example, BEUC recommends BEREC to:
 - **create a workstream to set up a vision towards protecting and empowering consumers**, following the joint BEUC-BEREC workshop held in 2019.
 - involve not only BEREC's end-user working group in the work related to end-user rights, but also other working groups that work on consumer-related matters. If BEREC wanted to be more ambitious, it should consider setting up a **cross-cutting consumer working group**.
 - **further consider new ways in which contracts are being modified for consumers.** For example, our Portuguese member DECO is concerned the lack of appropriate guidance for service activation done directly via set-top boxes. BEREC guidance on how to better empower consumers in this area would be welcomed.

¹ See, for example, in Portugal: <https://www.deco.proteste.pt/casa-energia/tarifarios-tv-net-telefone/noticias/quanto-custa-rescindir-o-contrato-de-telecomunicacoes>

² See, for example, BEUC's collaboration with ARCEP with regards to device neutrality: https://en.arcep.fr/uploads/tx_gspublication/report-state-internet-2019-eng-270619.pdf

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