



Brussels, 5 November 2020

### **ETNO Response to the Public Consultation on the BEREC Draft Guidelines on Geographic Surveys (Article 22.2, 22.3, 22.4).**

After a first contribution about the draft guidelines on geographical surveys of network deployments (Art. 22(1) EECC), ETNO welcomes the opportunity to extent its comments to the new draft guidelines on the following part of this article. These guidelines are interlinked with the guidelines on very high capacity networks (VHCN) and potentially with other topics such as state aid.

Consequently, we would like first to reiterate previous comments on the draft guidelines on geographical surveys of network deployments (Art. 22(1) EECC) that we consider to be still valid for this consultation.

In the previous comment on Art 22(1) “ETNO welcomes BEREC’s position in paragraph 8 that the workload for operators for the geographical surveys should be kept proportional and reasonable, as also requested, in general, in Article 20(2) EECC. This principle, accompanied by a cost-benefit analysis, should apply a fortiori in case an NRA/OCA decides to require additional information beyond the draft guidelines”.

ETNO is concerned with the workload that the draft guidelines foresee for operators. First, the implementation of the geographical survey itself will already lead to a considerable workload. Second, in the part related to the area designation (2.2.2) BEREC mentions many criteria to be taken into account by NRAs to help define the zone. While ETNO does not question the relevance of the mentioned data, we insist that the collection of such data should not rely on the operators. The same applies to the identification of specific locations as mentioned in point 67. Finally, ETNO welcomes that BEREC foresees a process with two invitations to declare intention, but BEREC should ensure that the workload of such process remains reasonable and proportional. BEREC should avoid that this process results in requests of potentially a large amount of details and yield undue efforts for operators.

In the previous contribution, ETNO made a comment about the notion of home passed: The last paragraph of p. 10 (paragraph 22) explains that a premise may only be counted as passed if the house will be connected within normal connection fees without any additional or exceptional cost within 4 weeks from the date of the request. ETNO suggests changing the rule as follows:



“An operator may report a premise as passed only if it has deployed the broadband network up to the borderline of the private domain of the premise.” ETNO appreciates that this has been taken into account in the final guidelines BoR (20) 42 (*“BEREC notes that generally, for a premise to be passed, the broadband network must be deployed up to the boundaries of the private domain of the address (i.e. the borderline between the public and private domain)”*).

ETNO believes that defining a reach in function of premises passed gives a much more accurate picture of the effective reach of a fixed network, especially in the context of VHCN developments, which are typically deployed earlier in urban settings characterized by the presence of a many multi-dwelling buildings (i.e. 1 address containing many premises).

BEREC must take into account that this definition and others, including what is in the VHCN guidelines, will impact the implementation of the article 22(2), (3), and (4). Consequently, our previous comments should be taken into account in order to ease and make efficient the full implementation of this article.

On top of that, ETNO considers that NRAs, before conducting the geographical survey, should define the database and should clearly specify the criteria and information to be included in the submissions. In that sense, the definition of the coordinates and the premises passed are extremely relevant. This will guarantee the quality and the comparability of the data. NRAs should also maintain the database and guarantee that the information available is updated.

Without prejudice to commercial confidentiality requirements, competent authorities should make data directly accessible in an open format in accordance with Directive 2003/98/EC and make available tools for that purpose. This data base should become the reference for the market so that inconsistencies between the regulators and operators’ information will be avoided. This consistency is particularly crucial for the application of the state aid rules.

We welcome the point 32 in the current draft saying “The core guidelines recognize that operators’ roll-out plans may change over time, due to unforeseen events, or as a result of changes in the strategies of investors. Because of this, longer term forecasts are more uncertain in nature than forecasts over a shorter period of time”.

Consequently, instead of “NRAs and OCAs who carry out surveys of forecasts of broadband reach would benefit from establishing verification mechanisms so that the forecast information is as reliable as possible”, ETNO again recommends adopting a reasonable, workable period for the forecast, and at the very least reducing the granularity of the data for the forecast after the first year.

ETNO welcomes the importance that BEREC gives to the duty of NRAs/OCAs to not disclose business secrets (par 69, 91 and 107). However, as in our initial contribution regarding



geographical surveys, ETNO asks for a reference in the draft guidelines to the definition of 'business secrets' of the European Commission. ETNO moreover disagrees with the fact that the assessment of whether a piece of information constitutes confidential information is made on a case-by-case basis by the relevant authority (cf. paragraph 69). ETNO insists that it is the operator's prerogative to assess the confidentiality of the information provided to the NRA/OCA, and that in case the NRA/OCA would disagree the latter has to demonstrate by law that the concerned piece of information is not confidential.

Then, ETNO would like to mention other points of attention.

Delimitation of designated areas: In respect to the point 43 related to the duty of the competent authority to define the territorial boundaries, we wonder what the link could be between these boundaries and the ones used in a case where geographic segmentation applies for remedies. What would be the logic between both if any?

As for point 51, BEREC should clarify that the addresses/grids already covered, or with plans to be covered, by VHCNs and 100 Mbps shall not be in any case object of the call for interest, even if the coverage proportion of the area is relatively small.

Point 77: says "... all undertakings which are directly or indirectly involved in the expansion of broadband networks, including operators, should be seen as addressees for an invitation to declare their intention to deploy VHCNs and 100Mbps. In particular, operators, civil engineering companies and utility network operators should have access to the procedures according to Article 22 (3) EECC." We appreciate the fact that operators are involved in the expansion of broadband networks and are concerned by this process. The fact that other stakeholders are also concerned is equally understandable, under the clear assumption that they will be under the same rules as the operators.

Point 81: ETNO does not agree that 30-day period is sufficient for declaring intention. We believe that this period should be prolonged to at least 60 days. Of course, the time period in question will also be linked to the information level requested by the NRAs and should be proportionate in this respect (see point 82).

The process of designated areas of Articles 22(2), (3) and (4) EECC asks undertakings their intentions to deploy VHCN and 100 Mbps in designated areas, and Article 29(2) EECC foresees a possibility to impose penalties to undertakings not respecting their deployment intentions. Neither the Articles of the EECC nor the guidelines explain what should happen if multiple operators independently declare their intention to deploy VHCN in a given area with a positive business case for only one VHCN, capable of aggregating the entire market demand.



It remains unclear how the process would work in such a situation. Consider the following scenarios:

1. In the first invitation, two operators, independently of each other, declare their intention to invest in VHCN because they each have a positive business case, each assuming that they are the only ones who will roll out VHCN.
2. In the first invitation, an operator declares their intention to deploy VHCN (in an area with a positive business case for one VHCN), and in the second invitation, a second operator also declares their intention to deploy VHCN (because being able to deploy cheaper than the first operator).

We believe that, in such situations, operators should be able to withdraw their declarations on VHCN deployment without being fined according to Art. 29. We ask BEREC to clarify this situation in the final guidelines.