

# Public Consultation BoR (21)129 Draft BEREC Report on the regulatory treatment for fixed and mobile backhaul

Fields marked with \* are mandatory.

## General information

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During the 48th BEREC plenary meeting (29 September 2021), the Board of Regulators has approved the [Draft BEREC Report on the regulatory treatment for fixed and mobile backhaul](#) for public consultation.

The objectives of this report are to present the legal provisions applicable to mobile and fixed backhaul, the regulation in force and use of different types of backhaul networks and services in Europe, as well as views expressed by operators on their current and future needs for backhaul.

## Your details

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\*Language of your contribution

English

\*First Name

Thorsten

\*Surname

Hochhuth

\*Email

Thorsten.Hochhuth@gasline.de

Organisation name (in case you are replying on behalf of your organisation)

GasLINE GmbH & Co. KG

\*Country of origin

Germany

\* I agree with the [personal data protection provisions](#).

## Practical details of the public consultation

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Stakeholders are invited to comment and provide their views on the different chapters of the draft report following its structure:

Chapter 1 - Executive summary

Chapter 2 - Introduction and objectives

Chapter 3 - EU legal framework for backhaul

Chapter 4 - Stakeholders input on backhaul

Chapter 5 - Regulatory treatment of fixed and mobile backhaul by NRAs

Chapter 6 - Conclusions

Chapter 7 - Future work

Annex I: Additional charts on mobile backhaul

Annex II: Additional charts on fixed backhaul

Annex III: NRAs and stakeholders responding to the questionnaires

Annex IV: Questionnaire sent to NRAs

Annex V: Questionnaire sent to operators

Stakeholders may also upload a document as a part of their contribution, see below.

In order to facilitate the processing of the responses, the comments provided should clearly refer to certain sections/subsections/paragraphs of the draft report.

Contributions should preferably be sent in English.

Stakeholder may submit their contributions **by 5 November 2021 close of business**.

In accordance with the BEREC policy on public consultations, BEREC will publish all contributions and a summary of the contributions, respecting confidentiality requests. Any such requests should clearly indicate which information is considered confidential.

## Public consultation

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Please indicate comments on Chapter 1- Executive summary and Chapter 2- Introduction and objectives

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The Draft BEREC Draft Report on the regulatory treatment for fixed and mobile backhaul sets out the current legislation and regulation of the different types of backhaul networks and backhaul services in Europe in a systematic and transparent way. The future work of BEREC will be made transparent to stakeholders through this report. Therefore, this Draft Report makes a welcome contribution to the predictability of regulation according to Art. 3 para. 4 a) of the EECC. In our opinion, this Draft Report does not need to be amended and should be finally adopted by BEREC.

As one of the major dark-fibre infrastructure providers in Germany, the company GasLINE GmbH & Co. KG ("GasLINE") has been working for more than 20 years to ensure that every interested national and international telecommunications company in Germany can use our dark fibre infrastructures. GasLINE makes its infrastructures available to all network operators, completely independent of regulatory obligations. At present GasLINE's dark fibre network consists of 28,000 km, which is to be extended to a further 3,000 km by 2022. In this respect, GasLINE can point out that, at least with regard to the dark fibre infrastructures it offers, there has been and will be no need for regulatory intervention.

The Draft Report's reference that NRAs should also avoid false negative (Type II) errors due to inadequate regulation can in principle be understood as an abstract description of the danger. However, with regard to the supply of dark fibre infrastructures in Germany, which is ensured by companies such as GasLINE but also by a variety of other infrastructure providers in Germany, we do not currently see any risks with regard to insufficient regulation according to Type II. This applies to the situation in Germany. We are unable to adequately assess the situation in other EU member states.

The Draft Report describes quite correctly that any regulatory intervention in a competitive environment can only be justified if there are demonstrable competition problems at the retail level. According to Articles 16 and 17 of the Charter of Fundamental Rights of the European Union, this principle applies generally. Thus, it is not decisive whether a regulatory intervention is based on the EECC and ex ante regulation on the grounds of significant market power or on the BCRD. All interventions require a demonstrable justification of existing competition problems at the retail level.

Please indicate comments on Chapter 3 - EU legal framework for backhaul

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Please indicate comments on Chapter 4 - Stakeholders input on backhaul

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Mobile backhaul: We explicitly agree with the European Commission and the responses of the majority of mobile network operators in Europe that the mobile retail markets are generally competitive and that there is no need for ex-ante regulation at the wholesale level. Mobile network operators in Germany have many alternative sources of mobile backhaul at their disposal. Obligations of mobile network operators to cooperate with other companies due to the use of scarce spectrum resources should, however, remain independent of SMP regulation. In this case, regulatory intervention is justified due to the high barriers to market entry resulting from the use of scarce spectrum resources.

Fixed network backhaul: With regard to the answers of the fixed network operators, we would like to confirm the situation in Germany that active and passive access products are offered on a commercial basis without regulatory obligations. As far as regulatory obligations already exist, we would warn against an extension of the existing obligations and remind that freedom of competition may not be interfered with without justification. It should be emphasised that non-existing infra-structures, such as FTTH networks in particular, will not be newly built by imposing ex ante regulatory interventions. The willingness to invest in the construction of new infrastructures is not increased by announcing regulatory interventions to companies willing to invest.

Please indicate comments on Chapter 5 - Regulatory treatment of fixed and mobile backhaul by NRAs

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Please indicate comments on Chapter 6 - Conclusions

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Please indicate comments on Chapter 7 - Future work

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Please indicate your comments on Annex I: Additional charts on mobile backhaul

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Please indicate your comments on Annex II: Additional charts on fixed backhaul

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Please indicate your comments on Annex III: NRAs and stakeholders responding to the questionnaires

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Please indicate your comments on Annex IV: Questionnaire sent to NRAs

*10000 character(s) maximum*

Please indicate your comments on Annex V: Questionnaire sent to operators

*10000 character(s) maximum*

Please upload your file (max file size is 1MB)

Please specify which part of your response should be treated as confidential, if any.

All parts are released for publication

THANK YOU FOR YOUR CONTRIBUTION

## Contact

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