

# Public Consultation on the BEREC Draft Report on Sustainability: Assessing BEREC's contribution to limiting the impact of the digital sector on the environment

Fields marked with \* are mandatory.



During its 50th plenary meeting (10 March 2022), the BEREC Board of Regulators has approved the Draft BEREC Report on Sustainability: Assessing BEREC's contribution to limiting the impact of the digital sector on the environment for public consultation.

This Draft Report on Sustainability provides an overview of the results of BEREC's groundwork on ICT sustainability to assess and better understand the impact of the digital sector, including electronic communications networks and services, on the environment. It sets out an outline of BEREC's approach to environmental sustainability of the sector.

This Draft report constitutes the first step: BEREC will continue to build up its knowledge on the important topic of sustainability to be able to contribute with its expertise in shaping the green and digital twin transition. Collaboration with relevant stakeholders will be of importance in this process, notably to share analysis and experiences related to ICT sustainability.

For structured responses to this consultation, BEREC kindly asks you to submit your comments/remarks per each chapter of the draft report in the following questions below. You will have also the opportunity to upload a supporting document at the end of the survey (file size limit: 1 MB).

Responses should not be submitted later than **14 April 2022 (17:00 CET)**.

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### Feedback on each chapter of the Draft Report

#### 1) Please enter your comments on Chapter 1 (Introduction) here:

The Free Software Foundation Europe (FSFE) acknowledges the BEREC initiative to assess and better understand the impact of the digital sector, including electronic communications networks and services, on the environment and setting an outline for BEREC activities to environmental sustainability of the sector. We are pleased to collaborate with BEREC for the present report on the sustainability of the Information Communications Technology (ICT) sector and share our experience with digital sustainability, as well for future initiatives. This Our position paper offers recommendations that could be further used to improve environmental transparency and data accuracy on the ICT sector's environmental footprint, in particular:

- Considering software sustainability as a fundamental element of any regulatory approach to ICT sector. Free Software is key to achieve the ability to reuse and repurpose of scarce digital resources in an innovative and sustainable way.
- Considering hardware sustainability as a central element for saving natural resources by expanding the possibilities of hardware usage and extending the usage time of hardware, particularly end-user terminal equipment. Enabling device neutrality and right to repair on equipment market fosters not only fair competition but innovative and sustainable solutions for telecommunications.
- Considering regulatory practices that have positive impact on fair competition and sustainability of telecom markets. For instance, fostering cooperation with NRAs for implementing rules safeguarding freedom of terminal equipment.

#### 2) Please enter your comments on Chapter 2 (Case studies) here:

Since 2013, the FSFE has been working to protect end-users rights to use and deploy personal routers and modems for internet connection. “Router Freedom” has a close and direct connection with sustainability by mitigating e-waste and increasing the lifespan of terminal equipment. Router Freedom is an example we want to highlight in promoting this right in Europe and how the current telecom regulatory framework negatively impacts on restricting freedom of terminal equipment which directly impacts the sustainability of the whole telecom sector.

Freedom of terminal equipment is the principle that people are free to choose and use their private equipment (modems and routers) to connect to the Internet. Article 3(1) of Regulation 2015/2120 as well as Recital 3 of Directive 2008/63/EC unambiguously demand to give end-users the right to use their own terminal equipment. When accessing the Internet, end-users should be free to choose between various types of equipment. Internet Access Providers (IAPs) should not impose restrictions on the use of terminal equipment connecting to the network in addition to those imposed by manufacturers or distributors of terminal equipment.

The BEREC Guidelines on NTP (BoR (20) 46), which were designed in accordance with Article 61(7) of the EECC, provide guidance to NRAs when they specify the location of the NTP. The NRAs should take utmost account in defining the NTP in three pre-determined points (A, B and C). The FSFE collaborated with BEREC in submitting a position when the draft guidelines were proposed, highlighting the importance of having the NTP at point A as a standard to be implemented by NRAs.

However, after two years of implementation, the regulatory framework remains fragmented. At the time of elaboration of the BEREC Guidelines of the NTP, the FSFE warned that the listed “technological necessities” by which the NRAs could establish the NTP on locations diverse from point A, could limit freedom of terminal equipment and harm not only end-users’ rights but also the sustainability of the ICT sector.

When IAPs impose specific models on users - which are not best suited for their needs – it can mean unnecessary expense. For the environment, this is unfavourable due to the build-up of hardware waste even though other devices would still work.

During the last years, the FSFE experience has demonstrated that no objective technological necessity is observable to exclude the free choice of routers/modems. On the contrary: in countries where Router Freedom is established, a significant number of end-users decided to make use of this freedom, a vital market for terminal equipment is evolving, and there were no such breakdowns in neither the cable nor the DSL network.

BEREC has mentioned in the sustainability report some regulatory actions under the EECC and sectorial directives seem to have had positive effects on the environment (e.g. Article 44 of the EECC). We encourage the regulator to consider other regulatory ways directed to software and hardware re-use on telecom markets that would enable sustainable approaches and safeguard end-users rights. Collaboration with NRAs in achieving a favourable regulatory landscape for terminal equipment would positively affect the more efficient use of internet devices and equitable use of the public network.

3) Please enter your comments on Chapter 3 (Outcomes on BEREC's previous work on sustainability) here:

4) Please enter your comments on Chapter 4 (Inputs from stakeholders) here:

5) Please enter your comments on Chapter 5 (Key findings of the external study) here:

The FSFE welcomes BEREC recognizing the importance of environmental issues considering the ICT and the coordinated efforts with National Regulatory Agencies (NRAs) to identify sustainable development goals for the telecommunications sector. Particularly positive is the elaboration on possible regulatory frameworks as proposed by art. 44 of the European Electronic Communications Code (EECC) and sectorial directives for developing more sustainable digital environments. Complementarity to BEREC's report the FSFE recommends including in the agenda of the telecom sector sustainability the impact assessment of open technologies, particularly Free Software (also known as Open Source) for the industry, public sector and end-users. We encourage BEREC to consider the following propositions for a fair and sustainable regulatory approach in cooperation with NRAs in Europe.

Key Principle 1 - Software design and Free Software licensing are key to enable repairability and extend usage lifetimes of electronic devices

"Software obsolescence" is a major problem regarding the usage lifetime of many devices, including those used for internet connection as smartphones, routers and modems. Software obsolescence comes into effect when hardware manufacturers stop supporting the software of their devices. Instead of updating the software on their previously sold devices, the same manufacturer often publishes a new device with a successive version of the software. In addition, the ability to install the new version on a previous device is artificially restricted.

The practice of software obsolescence also often comes with interoperability problems. If manufacturers do not mind backwards compatibility of electronic devices, newer software versions are not able to communicate with previous ones. Meaning that even if users decide to keep their old device running instead of buying new ones they very soon become incompatible with newer devices - although their devices work technically pretty well.

Besides, an obligation of devices having to use Open Standards would be key to solve the problem of non-interoperability of devices. It would further allow to let devices from different manufacturers communicate with each other. To enable interoperability, manufacturers must ensure that any data necessary to run a device's primary function is compatible with and possible to import/export in open standards.

Key Principle 2 - The universal right to install any software on any device and the publication of source code of drivers, tools and interfaces are fundamental for extending devices' lifespan

Key Principle 3 - Device Neutrality is necessary for non-discriminatory environment for digital services and software applications in devices

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(Please refer to the attached document for a full overview on each principle)

6) Please enter your comments on Chapter 6 (Conclusions and outline for BEREC's future work on sustainability) here:

Overall, the FSFE acknowledges the BEREC initiative to develop approaches for the sustainability of ICT sector. The FSFE also supports and welcomes the involvement of stakeholders on this process. The FSFE position offers recommendations that could be further used to improve environmental transparency and data accuracy on the ICT sector's environmental footprint, in particular:

- Considering software sustainability as a fundamental element of any regulatory approach to ICT sector. Free Software is key to achieve the ability to reuse and repurpose of scarce digital resources in an innovative and sustainable way.

- Considering hardware sustainability as a central element for saving natural resources by expanding the possibilities of hardware usage and extending the usage time of hardware, particularly end-user terminal equipment. Enabling device neutrality and right to repair on equipment market fosters not only fair competition but innovative and sustainable solutions for telecommunications.

- Considering regulatory practices that have positive impact on fair competition and sustainability of telecom markets. For instance, fostering cooperation with NRAs for implementing rules safeguarding freedom of terminal equipment.

7) Please enter any other comments you may have:

Since 2001, the FSFE has been working to protect and enhance freedoms of technology users in Europe and deeply involved on defending the rights of end-users to choose and use terminal equipment for internet connection. In the last years, the FSFE has developed and conducted several initiatives oriented to the sustainability of software and hardware, including technologies with direct impact on the telecommunications sector. Among them:

- The comprehensive study "On the Sustainability of Free Software", focused on the analysis of how Free Software (also known as Open Source) impacts the sustainability of IT infrastructures, including policy recommendations for a more sustainable digital society.

- The Router Freedom activity, aimed to protect end-users rights in regards to terminal equipment, the sustainability and competition on router markets.

- The Radio Lockdown Directive activity, aimed to safeguard Free Software on radio equipment, which have positive consequences for the environment.

- The Upcycling Android initiative to overcome software obsolescence and to extend the lifespan of hardware - mainly smartphones - with the help of Free Software.

Please upload here any supporting document that you deem relevant:

**b8d7f28e-13d7-4975-8c86-a1d2ca7e79c7/fsfe-telecom-sustainability.pdf**

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.

Confidential contribution:

Yes

No

If yes, please specify the information which should be treated as confidential:

**Background Documents**

Draft BEREC Report on Sustainability

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