

BEREC Report on the monitoring of the termination rates for mobile and fixed voice calls

9 June 2022

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1 Executive summary

Article 75 (3) of the European Electronic Communications Code ('EECC')¹ requires that NRAs annually report to the European Commission ('EC') and to BEREC with regard to the application of this article, in other words to report on the implementation of the Delegated Regulation (EU) 2021/654 ('DR') setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate² ('Eurorates').

The goal of this Report is to establish a common template for the NRAs annual reporting on the application of Article 75. This template is included in the Annex of this Report.

The template includes questions on the National Regulatory Authorities' ('NRAs') monitoring activities, the compliance with the DR for calls originated from Union-numbers and from third country-numbers and about disputes raised with the NRAs in the EU Members States ('MS'). It also includes questions about auxiliary services and the misuse and/or fraudulent use of the calling line identification ('CLI').

BEREC is of the view that NRAs should provide their yearly reports under a common calendar and recommends that the reporting of information for the year 2021 is concluded before 30th September 2022 and before 31st March of the following years thereafter.

BEREC also proposes that for transparency and accountability reasons, after the completion of the NRA yearly reporting to BEREC and the EC, BEREC publishes a new report with a summary of the main findings and conclusions at European level.

Finally, BEREC concludes to discontinue completely the series of "Termination Rates at European Level" BEREC Reports.

2 Introduction

Article 75 (3) of the EECC requires that NRAs annually report to the EC and to BEREC with regard to the implementation of the DR, based on the close monitoring of its application.

Being mindful of the goal of this Report, which is to establish a common template for the NRAs' annual reporting on the application of Article 75, BEREC notes that the proposed template should be meaningful and useful for all the parties involved, including the regulatory authorities seeking a wider-than-national view. The Report is delivered in close cooperation with the EC.

¹ Directive (EU) 2018/1972 of 11 December 2018. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972>

² For the full text, please see:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.137.01.0001.01.ENG&toc=OJ%3AL%3A2021%3A137%3ATOC

BEREC sees an opportunity to provide a wide agreement for the approach, contributing, among others, to the harmonization of the information reported by NRAs, which ultimately can aid in making regulatory practices across Europe more consistent.

BEREC considers that the proposed template (setting out the level of information to be reported upon) should enable NRAs to share experiences with the newly-established monitoring process, in particular with regard to the approach chosen towards the monitoring obligation, the identification of potential issues with the implementation of the DR and the measures taken by the NRAs in dealing with the identified problems.

BEREC expects that the structured approach on information to be provided by NRAs via the template will enable a more coherent understanding of the issues or problems raised in different MS, as well as the actions undertaken by NRAs in response. Moreover, BEREC considers that the use of a common template will also aid the EC in developing further clarifications in the form of frequently asked questions or other types of documents.

In order to inform this task, BEREC has collected relevant information from the NRAs by means of a dedicated questionnaire³. The questionnaire was addressing various areas of interest and targeted the NRAs of the EU MS, but, nevertheless, it was sent to all the BEREC members, providing the possibility for non-EU members to share their views and experiences, too⁴. In total, BEREC has received 29 responses, 27 from EU MS and 2 from other NRAs in Europe. This Report is based on the responses of the EU NRAs but also takes into account the information provided by the non-EU NRAs.

The questionnaire included questions revolving around three main issues (i) the monitoring activities of the NRAs, (ii) the identification of any non-compliance and any NRA-related activities or decisions, and (iii) issues regarding the auxiliary services for the provision of wholesale voice termination for which separate charges are levied by the operators.

Additionally, it queried about non-price remedies and the regulation of the markets for wholesale voice call termination and about potential issues generated by the exchange rates when the termination rates are denominated in another currency other than the Euro. As regards the former, BEREC has decided not to include those topics in the template. These are a matter of interest to NRAs and BEREC but BEREC concludes that: (i) an annual request for information on non-price remedies would be excessive since the market reviews typically take place every 5 years⁵; (ii) some information on remedies can be found in other BEREC

³ Hereafter, this Report will refer to the 'questionnaire' to indicate the survey that was prepared to inform its delivery and to the 'template' to refer to the set of questions which NRAs should respond to in their future reporting to BEREC and the EC.

⁴ Up to date, the provisions of the DR are obligatory only for the EU MS, since the DR is not yet incorporated in the EEA agreement.

⁵ Unless there is a review of the market definition or the remedies imposed in the markets for voice call termination out of the market analyses' cycle, the NRAs would simply report the same information year after year until a new full market review was conducted.

Reports, such as the Regulatory Accounting in Practice Reports⁶ and (iii) in case of need, BEREC could establish an ad-hoc questionnaire to inform on the matter.

Overall, the responses to the questionnaire show that so far there have been no substantive issues about the application of the DR. However, in delivering the template, BEREC is aware that questions or matters that may not seem relevant now may become relevant in the future. Moreover, the standard template proposed by BEREC at this stage may be adapted in the future as necessary.

This Report also delivers on the continuation of the benchmarking of termination rates in Europe. These benchmarking reports⁷ have been published by BEREC for many years now in order to provide the necessary information about whether the termination rates in the EU and in Europe have been converging over time. In the light of the application of the DR in all the EU MS and considering the forthcoming application of the DR in the EEA countries, BEREC concludes that the “Termination rates at European level” Reports are no longer needed, so that they should be discontinued.

3 Assessment of the information to be reported by NRAs

This section describes and justifies the template included in the Annex to this report.

3.1 Monitoring activities

On 1 July 2021, the DR⁸ setting out the single maximum Union-wide mobile voice termination and the single maximum Union-wide fixed voice termination entered into force. As highlighted in paragraph 3 of Article 75 EEC, NRAs need to monitor the national fixed and mobile termination rates and ensure compliance by the operators with the DR.

To gather information about such monitoring activities, BEREC queried the NRAs whether they are already monitoring or plan to monitor the application of the EU-wide termination rates by using specific monitoring mechanisms and how they are doing so. Based on the feedback obtained, the NRAs are split into three categories: (i) NRAs that are already monitoring the DR by specific mechanisms; (ii) NRAs that are planning a monitoring process; and (iii) NRAs

⁶ For the most recent BEREC Report, please see https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/10134-berec-report-regulatory-accounting-in-practice-2021

⁷ The links to the reports published last year are: for the January 2021 Report: https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/9981-termination-rates-at-european-level-january-2021 and for the June 2021 Report: https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/10129-report-on-termination-rates-at-the-european-level-30-june-2021

⁸ To date, the provisions of the DR are obligatory only for the EU operators, since the DR is not yet incorporated in the EEA agreement.

that plan to rely on the complaints raised by operators to detect problems in the implementation and compliance with the DR.

(i) 13 NRAs reported that they already monitor the Eurorates' application specifically. One approach was for the NRAs to communicate with the operators regarding the DR and the Eurorates and to ensure that the reference interconnection offers and agreements were updated. Other methods were verifying the tariffs provided by the incumbent operator or those published on the operator's website or via surveys. Another NRA indicated that the operators must provide written notice of any amendments related to the termination rate thirty days in advance. Finally, some NRAs collect and check all the necessary information, such as interconnection agreements, associated price lists and price adjustment agreements related to the termination rates.

(ii) 6 NRAs plan to set up a specific monitoring process. Various approaches, such as regularly collecting information on fixed and mobile termination revenue and minutes, were considered. Other methods mentioned were checking the agreements between the operators, launching a specific request for information, or incorporating such data requests as part of an official inspection procedure.

(iii) 7 NRAs monitor the DR by relying on the complaints and inquiries raised by the relevant market players.

The BEREC questionnaire was also seeking views about the approach regarding the monitoring of the termination rates for incoming calls from third-country numbers. The majority of the NRAs indicated their involvement is only in case of a complaint or dispute, while several mentioned that they do not monitor whether the DR is rightly applied to such calls or that they have not taken a decision on the approach yet. However, one NRA highlighted that they perform some form of monitoring, such as reviewing the websites to see the tariffs implemented, another was communicating with the operator(s), while yet another NRA plans to include specific questions related to the calls from third-country numbers in the interconnection questionnaire targeted at operators.

Therefore, to allow NRAs to share their experiences on these activities and have examples of the different monitoring schemes, BEREC proposes to include questions 1 and 2 about the monitoring activities and methods in the template.

3.2 Compliance with the Delegated Regulation for calls originated from Union-numbers

NRAs must ensure compliance with the application of the Union-wide voice termination rates by providers of voice termination services. The main activity in this respect is to ensure that the rates of termination services for calls originated from Union-numbers⁹ abide by the DR.

⁹ Union-number means a number from national numbering plans corresponding to E.164 country codes for geographic areas belonging to the territory of the Union.

Therefore, a key element of the NRAs' reporting to BEREC and the EC must include references to such compliance (questions 3 and 4 in the template).

To gather some information about this matter and prepare the template, BEREC requested NRAs to report whether they had observed non-compliance and what were the circumstances of such cases¹⁰.

Based on the feedback obtained, most of the NRAs indicated that they are not aware of any operators not complying with the DR. Yet, there were a few instances where the NRAs had intervened to clarify matters or to request the operators to change the termination rates. In one case, the termination rates were not complied with for certain national emergency numbers by one operator and in another MS this happened for emergency and nomadic services, and it was the case of several operators. In another case, an NRA called on a satellite-based communications company to apply the Eurorates to the calls placed to the mobile numbers from the national numbering plan reaching its end-users. Another NRA requested some operators to stop charging for interconnection ports and another identified an operator who had separate charges for internal transit¹¹. Finally, another NRA had concerns regarding the tariff structure of calls terminated for the provision of paging services.

In conclusion, despite the recent entry into force of the DR, there are only a few instances in which the termination rates for certain services were deemed not compliant with the DR. In most of these cases, the NRAs already communicated with the operators the need to review their termination rates so as to comply with the DR and the operators did this. In a few cases, the matter is still pending a decision at the time of the development of this Report.

3.3 Compliance with the Delegated Regulation regarding calls originated from third country-numbers

Article 1 (4) of the DR establishes that Articles 4 and 5 also apply to calls originated from third country-numbers and terminated to Union-numbers where either:

- (a) a provider of voice termination services in a third country applies to calls originated from Union-numbers, termination rates equal or lower than the maximum termination rates set out in Articles 4 or 5 (respectively for mobile or fixed termination), for each year and each Member State, on the basis of rates applied or proposed by providers of voice termination services in third countries to providers of voice termination services in the Union; or

¹⁰ Incidences of non-compliance can happen if the structure of the termination charges are not aligned with the DR provisions, the termination rates applied by some operator to some relevant calls exceed the relevant maximum thresholds, for example an operator does not satisfy the restriction for some numbering ranges, and for other reasons.

¹¹ The inherent transit from a regional to a local interconnection point within the same operator's multi-layered network.

- (b) the third country from whose numbers the calls are originated from is included by the EC in the unique Annex to the DR, after concluding that in such country voice termination services for calls originated from Union-numbers are regulated in accordance with principles equivalent to those set out in Article 75 and Annex III of the EECC¹². To date, no country has been listed in this Annex.

Therefore, the providers of voice termination services in the Union are subject as well to obligations concerning calls originated from third country-numbers, which form part of the application of Article 75 EECC and should, therefore, be reported on. Since, to date, no country has applied to be listed in DR Annex, the template suggested by BEREC for submitting information will only provide for information regarding Article 1 (4) (a) of the DR¹³.

In particular, BEREC is of the view that NRAs and the EC will benefit from sharing experience concerning issues and NRA decisions about the applicability of Article 1 (4) (a), since, in practice, this may be a difficult matter¹⁴ and thus, providing information on such instances may enable a consistent approach to similar matters. The complexity arises because of: (i) the lack of transparency of wholesale prices to operators and NRAs (there are complex pricing structures, for example, transit services may be bundled with termination services, making it difficult to identify the charge for termination services); (ii) quite generally, there is no direct interconnection of the originating (access) network of a third country call with the terminating network in the EU, and this may hinder the identification of the provider of termination services (international calls are routed through international carriers and may transit over several different networks); (iii) the different ownership structures of telecommunications companies and in particular whether it matters for the application of Article 1.4 (a) that the “transit operator” is owned by the “terminating operator” or not; and (iv) the use of the calling party number prefix cannot be used to identify the originating operator from a third country where number portability is implemented.

BEREC is therefore including questions 5 and 6 about calls originated from third country-numbers in the template.

3.4 Auxiliary services

It should be recalled that the “BEREC Opinion on the Draft Delegated Act setting single maximum Union-wide voice fixed and mobile termination rates”¹⁵ explained that associated facilities “*are needed to physically exchange traffic between the interconnected networks and*

¹² Directive (EU) 2018/1972

¹³ Once the EC includes a/some country/ies in the Annex, the template should be adapted to incorporate questions regarding the application of Article 1.4 (b) of the DR.

¹⁴ In responding to the BEREC questionnaire, out of 27 EU NRAs’ responses, 23 confirmed that they were not aware of any issues regarding the application of Art. 1.4 (a), but 4 expressed having been contacted by national or third-country operators posing questions about its application. In several of those cases, the main problem was the lack of transparency of tariffs.

¹⁵ BoR (20) 190: https://bereg.europa.eu/eng/document_register/subject_matter/bereg/opinions/9504-bereg-opinion-on-the-draft-delegated-act-setting-single-maximum-union-wide-voice-fixed-and-mobile-termination-rates

are necessary services, i.e. the operator buying termination is obliged to buy associated facilities as well. The exact type and amount of associated facilities depend on the characteristics of the involved networks. For example, collocation is necessary in TDM networks, while in IP networks it could be virtualized and/or not required; other services, like interconnection ports, are needed in IP networks as well, although the migration implies technology changes". According to recital 6 in the DR, *"The termination service should exclude the associated facilities that may be required by certain operators or in certain Member States for the provision of termination services. However, interconnection ports, (...) should be included in the definition of the termination service. A provider of voice termination services should not levy any cost other than the relevant rates set by this Regulation for the full service of terminating a call to a user on its network."*

In general, the DR prescribes that only traffic-related costs which could be avoided in the absence of the provision of wholesale voice termination should be covered by the regulated termination rates. While the DR is clear about the inclusion of interconnection ports in the voice termination service, so that their costs should be already covered by the Eurorates¹⁶ and not separately, NRAs have nevertheless identified several auxiliary services¹⁷ for which the conclusion would be less clear and informed BEREC that in several MS operators have queried about these. For instance, there can be auxiliary services which are used for the provision of a wider array of services (for example, collocation which is not solely used for terminating calls, but also shared with origination and transit), or for which the location of network elements - in particular the interconnection point - would matter for the types of costs to be recovered through the Eurorates. Therefore, BEREC notes that it may not always be straightforward to include certain auxiliary services in the termination service and this may potentially lead to a variety of practices by operators and NRAs. Because of this, BEREC believes that the NRAs' reporting to BEREC and the EC on auxiliary services should enable a fair indication of whether there are important and systematic differences in the services included as part of the termination service, which may eventually have an impact on the functioning of the internal market.

Taking the above into context, **for the purpose of this report and the template included in the Annex, 'auxiliary services' are to be understood as associated facilities and services that are necessary for the provision of wholesale voice call termination services and that are remunerated with "termination charges"**. BEREC considers that the

¹⁶ As detailed by the EC in the frequently asked document accompanying the DR, these are: the remuneration of dedicated interconnection ports and the internal transit in a multi-layered network (the inherent transit from a regional to a local interconnection point within the same operator's network).

¹⁷ In this Report and its Annex, BEREC uses the term "auxiliary services" rather than the term "associated facilities". The reason for this is to distinguish those services from the "associated facilities" as defined in Article 2 of the EECC: "'associated facilities' means associated services, physical infrastructures and other facilities or elements associated with an electronic communications network or an electronic communications service which enable or support the provision of services via that network or service, or have the potential to do so, and include buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets".

difficulties in deciding whether certain auxiliary services should be part of the termination service or not and, particularly, whether there are additional charges on top of the Eurorates levied through those services are an important aspect for NRAs to report on, for several reasons, as presented in what follows.

First, the “BEREC Opinion on the Draft Delegated Act setting single maximum Union-wide voice fixed and mobile termination rates” warned about the effects of the DR on the charges of unregulated associated facilities: *“In these cases, and despite these markets are disciplined by competition, the risk linked to the inclusion under the DA of associated facilities may be an increase of prices in the unregulated markets, to the detriment especially of the smaller operators like MVNOs”*. Then, the NRAs’ reporting on such auxiliary services would be able to monitor whether new charges for auxiliary services appeared, whether some charges increased, or whether new auxiliary services for which operators charge separately appeared following the application of the DR, to the extent that the NRAs are aware of these issues.

Second, the experience sharing element is seen as a very good means for a potential convergence of practices as far as termination rates treatment across the EU is concerned. BEREC considers that, by applying the reporting obligation, NRAs could learn from each other and harmonize their approaches on the treatment of auxiliary services. For instance, if an NRA in a MS has established that the charges of such a service should be covered by the Eurorates, then this may represent a good starting point for the assessment to be done by another NRA in the EU in a similar position.

As regards the main findings of BEREC, the information collected shows that, overall, NRAs are not aware that operators have charged for auxiliary services which would fall under the scope of the DR so far. Only two NRAs have identified issues, in one case with an operator charging separately for internal transit, while, in another, operators were charging separately for interconnection ports in the initial stages of the application of the DR.

A series of NRAs have informed about several auxiliary services for which the operators charge additional tariffs, but these are overseen by the NRAs and they would not be considered as a breach of the DR. For many of these services, there is price regulation in place, whether based on the pricing requirement being reasonable or a cost orientation obligation. Moreover, as noted by several regulators, there are some auxiliary services which are put to use for other electronic communications services beyond the wholesale voice termination, the corresponding charges being seen as a normal remuneration for the services’ provision. At the same time, BEREC learnt that the vast majority of the NRAs are unaware of new or increasing charges for auxiliary services not in the scope of the DR.

Another point of relevance for BEREC was the potential need of operators to clarify with the NRAs which charges would fall under the scrutiny of the DR and those which would not. Yet, most NRAs mentioned that they had not been approached by stakeholders. Still, a handful of NRAs were approached by the operators with the request for clarification concerning the application/non-application of the DR regarding the tariffs for some auxiliary services.

BEREC identified some situations in which the NRAs had already intervened. For instance, the NRA in the MS in which operators were charging separately for interconnection ports

asked them to cease the practice and they did. Another NRA has put forward the issue of “one-way traffic” – a situation in which operator A terminates traffic in the network of operator B, but operator B does not send any traffic to the network of operator A and operator B charges the full interconnection port to operator A. This case is pending a resolution.

Despite the positive results of the BEREC investigation on the matter of auxiliary services, BEREC considers that care needs to be exercised when making inferences based on the current information, as the application of the DR is recent and NRAs and the EC are now adapting and supporting the adaptation to the new Regulation by specific means (publishing FAQ, providing guidance etc.). Without precluding what the future will bring, BEREC considers that, for now, the information regarding the treatment of auxiliary services is relevant in the new context and this is why questions 7 to 11 are proposed for inclusion in the template.

3.5 Misuse and/or fraudulent use of CLI

As the call origin defines whether the Eurorates would apply or not, it is of outmost importance for the EU operators to be able to identify the country of origin of the caller. For this to happen correctly, the EU operators need to receive a valid calling line identification (‘CLI’) assigned to every incoming call. CLI is the commonly used method to identify the origin of an inbound call via the signalling associated to that respective call. In particular, the country of origin of the caller is identifiable through the country code in the CLI.

Despite the fact that the misuse and/or fraudulent use of CLI is, as such, out of the scope of the DR, BEREC considers it important for NRAs to inform on the experiences that MS have with this phenomenon following the application of the DR (questions 12 and 13 in the template). The reasoning lies with the fact that the DR creates an inherent incentive for the manipulation of the CLI so as to disguise third-country numbers into Union-numbers with the evident intent of the involved operator(s) to pay the Eurorates for the voice termination services acquired from the EU operators, instead of any higher termination rates applicable for calls originated from third-country numbers.

BEREC would like to look into a possible relationship between the entering into force of the DR and the increase in misuse and/or fraudulent use of CLI, to see whether a surge in the phenomenon can be identified. The annual collection of information concerning NRAs’ observations in that regard would enable the sharing of experiences and to check whether there is a trend regarding misuse and/or fraudulent use of CLI which can be observed throughout the EU, as well as to establish whether there are aspects in the DR, or otherwise overlooked by the DR, which could make harmful CLI practices more attractive to certain operators.

Having been asked about the awareness of such issues, several NRAs provided affirmative feedback, with three of them confirming that they have been contacted by the operators claiming a significant increase in CLI spoofing after the entry into force of the DR. Among the NRAs’ activities which were undertaken to correct the practice, BEREC notes that one NRA issued a recommendation to be followed by a binding regulation, while another NRA initiated a direct communication with the (non-EU) NRA in the country where the allegedly fraudulent traffic was coming from.

3.6 Disputes related to other matters than the ones listed previously

This section includes all other disputes (and related dispute settlements/resolutions) or queries relating to the DR or arising from the application of the DR **that have not yet been listed in previous sections**. Such a section is deemed necessary as it would allow to keep a good record of the situations with which NRAs are faced in practice, with their proceedings, and enable a reflection on whether they had the necessary means to intervene in an efficient manner.

The number and types of disputes (and queries/requests for clarification) are expected to show the importance of such situations for the market. Moreover, such information would enhance transparency and coordination at the EU-level, to the benefit of the internal market. It is worthwhile noting that a vast majority of the NRAs¹⁸ showed support for the monitoring of dispute settlement resolutions, at least in the early stages of the DR implementation.

In the information BEREC has gathered regarding dispute settlements so far, only one NRA has mentioned having handled a couple of disputes related to IP interconnection.

Other NRAs have mentioned instances of “unreasonable requests” as a matter for discussion¹⁹. Those cases are a good example of the information to be provided by NRAs under this section, as in such cases operators may refuse access to their networks or to set up new facilities like interconnection ports, which may lead to a dispute settlement procedure. It would be important for BEREC and the EC to detect those cases and understand how those disputes are settled so as to prevent situations where some operators are unfairly disadvantaged and/or where end-users have difficulties in being reached by others.

4 Further considerations

Calendar for submission of the NRA annual reports

The Annex includes the template suggested by BEREC for NRAs to report to BEREC and the EC on an annual basis. BEREC is of the view that the reporting by filling in the proposed template would be necessary for each calendar year (1st of January to 31st of December), since Article 4 (and Article 5) of the DR provide for tariff changes that take place at the end of each calendar year. To fulfil the obligation to report on the application of the DR in 2021, NRAs would need to consider the period between 1st July 2021 (date of application of the Eurorates) and 31st December 2021.

¹⁸ Out of the 29 answers received by BEREC, 24 NRAs were in favour of reporting on disputes or disagreements relating to the application of the DR.

¹⁹ For example, in one MS, there was a request from an operator A to set up interconnection ports with operator B, where the traffic would only flow out of B’s network and thus would create no termination revenue for B. In another MS, despite the NRA not being aware of such a request *per se*, there was awareness of the intention of some operators to set up additional fees/minimum volume commitments in order to discourage such conducts.

Moreover, BEREC is of the view that NRAs should provide their reports under a common calendar, so that all the national information is available in the same period and for the same reference period/cut-off date, for the consultation and use of BEREC and the EC.

To fulfil the obligation for the year 2021, BEREC recommends that the information is delivered to BEREC and the EC before 30th September 2022.

To fulfil the obligation in subsequent years, BEREC recommends that such annual reporting is delivered to BEREC and the EC before 31st March of the following year. For example, the 2022 reporting should be submitted before 31st March 2023.

Publication of a yearly BEREC Report summarising the main findings in the annual NRAs' reporting on the monitoring of the provisions of the DR

Article 75 of the EEC Directive does not require BEREC or the EC to provide the public with any information resulting from the annual NRAs' reporting. However, such publication would be appropriate to enhance transparency with stakeholders and to enable them to make an informed judgement on the application of the DR across EU MS. Because of this, BEREC proposes that, starting in 2023, the BoR will approve an annual BEREC report summarising the key findings of the related NRAs' reporting. The timing of this publication will be discussed within BEREC in the context of elaborating the 2023 BEREC Work Programme.

5 Considerations concerning the “Termination Rates at European Level” BEREC Reports

These reports have been issued by BEREC twice a year, with a slightly different structure, as follows:

- (1) The report published at the middle of the year, with a cut-off date referring to the turn of the year (31st December/1st January), presented relevant information on fixed and mobile voice call termination rates, their time evolution, averages and the cost models underlying their settlement²⁰.
- (2) The report published at the end of the year, with a cut-off date corresponding to the middle of the year (30th June/1st July), contained the same information provided above, plus additional data on the average revenues generated by the provision of wholesale voice call termination, as well as SMS termination fees, which are not regulated in Europe²¹.

²⁰ https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/9981-termination-rates-at-european-level-january-2021

²¹ https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/10129-report-on-termination-rates-at-the-european-level-30-june-2021

There is yet another category of statistical data which was typically presented in the considered BEREC Reports which comprises of the number of active fixed telephony lines (and market shares), number of mobile subscribers (and market shares), traffic metrics and the number of SMS messages sent. This quantitative information is collected to enable the averaging of national voice termination rates across Europe and the EU. Keeping in mind that such metrics are available through other sources as well, BEREC focuses on the data mentioned in points (1) and (2) above.

Considering the shift in the regulatory view from a national focus towards an EU-based approach, BEREC sees no value added in continuing the benchmarking of fixed and mobile voice call termination rates for the EU countries. In that regard, the BEREC Reports benchmarking the termination rates at European level have proved a very useful tool to track the price regulation for termination services across the EU (and Europe as a whole for that matter), show the developments over time (i.e. the significant decreases which have occurred including with the application of the Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC)²²), as well as illustrate the converging trends and harmonised approaches. However, in the context of the Eurorates, BEREC notes that the comparison across countries in the EU has become obsolete.

For the other ten BEREC members that are not part of the EU²³, the benchmarking of the past data has shown that the regulatory approach undertaken followed closely the one in the EU, with price regulation based on the costs incurred by an efficient operator. The corresponding rates have also been steadily declining with time, being broadly comparable to the ones levied in the EU countries. Moreover, BEREC expects that the Eurorates will soon be applicable to the three EEA countries and, in the light of this, concludes that there would be no end towards continuing the data collection on fixed and mobile termination rates from a few countries in Europe, whereby the trends and assigned paths are clear²⁴.

Concerning the benchmarking for SMS termination rates, quite generally, in BEREC's view, it is deemed less valuable than for voice services for the following reasons: (i) SMS termination rates are not regulated in Europe and, therefore, not all the NRAs have information on the rates, (ii) many countries consider these data confidential and, thus, the rates are not published and (iii) the volume of SMS messages sent/received is steadily decreasing in Europe and is expected to further shrink because of the use of alternative messaging services/applications. In the latest published "Termination Rates at European level" BEREC Report, only 26 BEREC members submitted the information on SMS charges out of 37 participants in the sample and, out of these 26 inputs, only the values for 16 countries could

²² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009H0396&from=EN>

²³ Namely, Albania, Iceland, Liechtenstein, Montenegro, The Republic of North Macedonia, Norway, Serbia, Switzerland, Turkey and Kosovo (designation is without prejudice to positions on status, and it is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence).

²⁴ If some particular data on the termination rates charged in a BEREC member would be of interest, there are less onerous ways to obtain this rather than a periodical reporting towards BEREC.

be published. If solely the EU countries are considered, then the figures are even smaller. In this context, BEREC proposes to discontinue the data collection regarding the SMS termination rates.

To conclude, overall, BEREC is proposing to completely discontinue the “Termination Rates at European level” Reports and underlying data collections.

6 Annex – BEREC Template

This Annex includes the template proposed by BEREC to be used by NRAs when reporting annually on the monitoring of the application of the DR according to the provisions of Article 75 (3) EECC.

Section 0. Identification details

NRA:

Country:

Contact person:

Email:

Section 1. Monitoring activities

Q1: Please explain briefly how the NRA monitors the implementation of the fixed and mobile termination rates prescribed in the DR. Provide separate answers concerning the monitoring of: (i) incoming calls from Union-numbers and (ii) incoming calls from third-country numbers.

Q2: Did the NRA change the monitoring methodology compared to the previous year(s)? If yes, why? Provide separate answers concerning the monitoring of: (i) incoming calls from Union-numbers and (ii) incoming calls from third-country numbers.

Section 2. Compliance with the Delegated Regulation for calls originated from Union-numbers

Q3: Is the NRA aware of any cases where termination rates for calls originated from Union-numbers have not complied with the DR? If yes, please relate these cases to the categories mentioned in the table below or indicate under “others”. Please provide all the relevant details. *Note that this is not meant to be an exhaustive list of non-compliance, but more an illustration of the most common aspects of existing cases.*

Non-compliance category	Reference number (*)	Details of the case and its impact on the market (**)	How was the case handled by the NRA?	Number of operators concerned
Eurorates were not applied to specific services/numbering ranges				
Additional termination-related charges which should have not been charged were identified (for example, internal transit)				
A different charging approach was implemented				

(different from or additional to the per minute charge)				
Others				

(*) Identification to be used to link the case to the table in the following question.

(**) Please briefly provide your assessment on the impact of the case on the market.

Q4: If from the cases mentioned above there was a dispute to be settled by the NRA, please provide further details in the table below.

Reference number (*)	Short description, relevant details	Was the dispute resolved or is the process still ongoing? If finalised, what was the resolution?	Number of calendar days required for a resolution

Section 3. Compliance with the Delegated Regulation regarding calls originated from third country-numbers

Q5: Is the NRA aware of any non-compliance with Article 1.4 (a)? If yes, please (i) briefly describe the non-compliance and (ii) explain any actions that the NRA or the operator(s) have undertaken to address the issue.

Q6: Has any dispute to be settled by the NRA related to non-compliance with Article 1.4 (a) occurred? If yes, please briefly explain the case, the actions or decision of the NRA and how long it took to resolve the matter.

Section 4. Auxiliary services

For the purpose of this template, ‘auxiliary services’²⁵ are to be understood as those associated facilities and services that are necessary for the provision of wholesale voice call termination and that are remunerated with “termination charges”.

Q7: Have operators contacted the NRA to clarify the inclusion/exclusion of certain termination charges for auxiliary services under the provisions of the DR? If yes, please provide all relevant details.

Q8: Has the NRA concluded that the charges of certain auxiliary services should be included in the Eurozones and are thus not to be charged for separately? If yes, which services and

²⁵ In this template, BEREC uses the term “auxiliary services” rather than the term “associated facilities”. The reason for this is to distinguish those services from the “associated facilities” as defined in Article 2 of the EEC: “‘associated facilities’ means associated services, physical infrastructures and other facilities or elements associated with an electronic communications network or an electronic communications service which enable or support the provision of services via that network or service, or have the potential to do so, and include buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets”.

why? What was the NRA's action (please describe)? *Do not list the clear-cut situations, such as the dedicated interconnection ports for termination.*

Q9: For auxiliary services for which the price is unregulated, is the NRA aware of any price increase following the application of the DR? If yes, which services are concerned? *Please provide a brief description.* Did the NRA take any action (please describe)?

Q10: Has any dispute to be settled by the NRA concerning the inclusion of charges for certain auxiliary services in the voice termination rates occurred? If yes, please briefly explain the case, the actions or decision of the NRA and how long it took to resolve the matter.

Q11: From the high-level list of the categories of auxiliary services provided below, please choose which services (if any) are charged separately by operators in your country. Please distinguish between fixed and mobile voice termination services, keeping in mind that such charges must be related to the voice termination service. *Fill in a row for any relevant auxiliary service and complete the corresponding requested fields in the table. Any service not covered by the high-level categories in the list should be included in the last category of "others".*

Main categories of auxiliary services to termination	Subcategories of auxiliary services	Name of the auxiliary service	Definition of the auxiliary service	Are the charges for these services regulated? Yes/No	Link to the RIO section or highlight of relevant text	
1. Interconnection	Establishment (project, testing, configuration)	Service 1				
		Service 2				
					
	Operation (activation, implementation, changes of settings, additional modules for voice traffic management, reconnection of suspended links, setting up of interconnection at another point of choice, dedicated links)	Service 1				
		Service 2				
					
	Termination	Service 1				
		Service 2				
					
	Others related to interconnection	Service 1				
		Service 2				
					
	2. Colocation	Establishment (project, testing, configuration)	Service 1			
			Service 2			
					
Operation (infrastructure installation, transfer)		Service 1				
		Service 2				
					

	Termination	Service 1			
		Service 2			
				
	Others related to colocation	Service 1			
		Service 2			
				
3. Others than the ones mentioned above	Service 1				
	Service 2				
				

Section 5. Misuse and/or fraudulent use of CLI

Q12: Is the NRA aware of increasing misuse and/or fraudulent use of CLI, such as for the specific purpose of disguising third country-numbers in order to avail of Eurorates, since the entry into force of the DR? If so, please describe briefly the type(s) of misuse and/or fraudulent use of CLI.

Q13: Has the NRA intervened to address the claims of such misuse and/or fraudulent use of CLI, formally (dispute resolution) or informally (clarifying matters, for example)? If yes, please describe how. If not, please explain why.

Section 6. Disputes related to other matters than the ones listed previously

Questions 14 to 18 refer to all disputes or queries/requests for clarification that have not yet been listed in previous questions. Note that only the matters related to the provisions of the DR or generated by the application of the DR should be referred to.

Q14: Has the NRA been involved in dispute resolution relating to the DR or arising from the application of the DR during the reporting period? If yes, please briefly describe each dispute and how it relates to the DR.

Q15: For each dispute to be settled, in what way was the NRA involved in the resolution (i.e. it was involved as mediator, in its quality of Dispute Settlement Body etc.)?

Q16: Was/were the dispute(s) resolved (yes, no, not yet/still ongoing) and if so, what was the NRA decision? *Please provide a separate indication for each dispute.*

Q17: For each dispute to be settled by the NRA, how long did it take to resolve the issue?

Q18: Has the NRA been contacted by operators with queries or matters of clarification relating to the DR or arising from the application of the DR not covered elsewhere in the template? Please describe briefly and explain any actions the NRA has undertaken.

Section 7. Other comments or matters

Q19: Are there any other issues relating to the DR or arising from the application of the DR that are not covered elsewhere in the template? If yes, please briefly describe the issue and how it relates to the DR.