

# **BEREC Report on the outcomes of the public consultation on the Report on measures for ensuring equivalence of access and choice for disabled end-users**

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## Executive Summary

This report summarises the responses received to the public consultation on the draft BEREC Report on measures for ensuring equivalence of access and choice for disabled end-users.

During its 51<sup>st</sup> plenary meeting (9-10 June 2022) the Board of Regulators approved for public consultation the [BEREC draft Report on measures for ensuring equivalence of access and choice for disabled end-users](#).

The report follows on from three previous reports published in 2011, 2015 and 2018 broadly on the same subject and is aimed at collating information from National Regulatory Authorities (NRAs) for the purposes of compiling an inventory of measures and initiatives in place throughout Member States (MSs) to meet the needs of users with disabilities that NRAs might consider when evaluating actions to be pursued to ensure equivalence of access and choice for these end-users.

The public consultation took place from the 15<sup>th</sup> of June until the 15<sup>th</sup> of August 2022 with the objective of gathering stakeholders' views on the material presented in the draft Report, as well as gathering any feedback on any other relevant considerations and/or emerging issues. The final Report intends to give interested parties information on the way MSs are implementing the measures of the EECC on the availability and affordability of specific equipment and specific services that enhance equivalent access, including total conversation services and relay services.

In response to the consultation on the draft report, BEREC received 3 contributions from the following stakeholders:

1. EENA (European Emergency Number Association)
2. ECTA (European Competitive Telecommunications Association)
3. GSMA (Global System for Mobile Communications Association)

In general, stakeholders welcomed the opportunity to comment on the draft BEREC Report on measures for ensuring equivalence of access and choice for disabled end-users. The following sections contain further comments, observations and recommendations expressed by stakeholders in their contributions during the public consultation.



## 1. General comments/observations

**EENA** welcomed the opportunity to respond to the public consultation. EENA noted that the draft report follows on from three previous reports published in 2011, 2015 and 2018 and considers it a timely publication given the entry into force, and ongoing transposition, of two key pieces of legislation, namely, [Directive \(EU\) 2018/1972](#) (European Electronic Communications Code) and [Directive \(EU\) 2019/882](#) (European Accessibility Act). According to the European Commission's [Strategy for the Rights of Persons with Disabilities \(2021-2030\)](#), 87 million people, or the equivalent of 1 in 4 adults, have some form of disability. Having a disability introduces challenges in everyday life and having accessible products and services levels the playing field for disabled citizens to participate fully in economic and social activity. Importantly, and as stated in the report, the updated legislation recognises that accessibility is a “general” rather than a “specific” objective. Equivalence of access should therefore be taken into account at the outset when designing products and services including electronic communications services. **EENA** wholeheartedly supports this objective.

**ECTA** considers that the draft report contains a worthwhile factual overview of the legislation and regulatory measures introduced in EU Member States, and the state of their implementation. **ECTA** does not put forward any specific proposed amendment, however **ECTA** would like to briefly underline that the BEREC Report would be more valuable if it would not only consist of a factual overview, but also identified relevant best practices, systematically taking into account at least three dimensions:

- a) The effectiveness of measures in terms of successfully delivering equivalence of access to disabled end-users. In practical terms: what works very well, what works satisfactorily, and what does not work so well.
- b) The ways of delivering choice to those end-users. In practical terms: an assessment of placing obligations on all operators, on a subset of operators, or on one operator, or selecting a specialist (third party) provider, and the role of wholesaling solutions, etc.
- c) And in both those contexts, the need to minimize financial and implementation burdens on operators, having regard to the different types (e.g. those focusing on consumer markets vs. those addressing business customers, those providing services on retail markets vs. operators that do not) and the different sizes of operators.

In addition, **ECTA** wishes to suggest that BEREC could usefully augment the Report with:

- a) Details of results of national consultations (if any) that preceded the introduction of a measure, in particular an indication on whether the concerns expressed by operators were addressed, and how.
- b) Details on the results of implementation monitoring (by NRAs or by other competent authorities or bodies), where available.
- c) Details on the technological availability and state of development of total conversation services.
- d) Information on international roaming, i.e. the state of the art on ensuring equivalence and choice while travelling, while focusing as well on the technological availability and feasibility of the measures required by the new EU Roaming Regulation.

**ECTA** reiterates a request made in response to previous BEREC consultations, regarding the methodological and presentational point. BEREC's Report combines legislation (incl. transposition of the EECC), regulation, and NRA decisions from EU Member States that are fully subject to the EU regulatory framework, from the EEA countries, and from non-EU Member States, in this case Bosnia and Herzegovina and Montenegro. It is difficult for the reader to understand whether diagrams and summaries contain information from countries that are not EU Member States, and whether conclusions are drawn that may be influenced, potentially disproportionately, by the situation countries that are not EU Member States. **ECTA** asks BEREC to systematically (in all documents) report separately on EU, EEA and non-EU countries.

The **GSMA** welcomed the consultation from BEREC on the “Report on measures for ensuring equivalence for access and choice for disabled end-users”. The **GSMA** understands that the aim of the report is to primarily collect information from NRAs for the purpose of compiling an inventory of measures and initiatives that NRAs might consider when evaluating any action to be pursued under the terms of relevant legislative provisions. In this regard, it should be noted that several Member States has yet to transpose the Code into national legislation.

As providers of electronic communication networks and services in the EU and beyond, many of the **GSMA**'s members are already involved in providing products and services to customers with disabilities. **GSMA** understands that the European Accessibility Act (EAA), Directive (EU) 2019/882, will be applicable by June 2025 and in some cases even later subject to the relevant decision at Member State level. In view hereof, **GSMA** appreciates that the report states that *“In the current context, “equivalence” means that equivalent access to and choice of electronic communications services should be available for end-users with disabilities. Notwithstanding, this may be accomplished by implementing specific solutions for end-users with disabilities which are not necessarily coincident with the ones available to other end-users. “*

## 2. Specific comments and feedbacks

### Emergency communications

**EENA** notes from the draft Report that 15 countries have reported implementation of the relevant provisions of EECC Article 109 and that, without any specific link to Article 109, 20 countries have implemented specific measures to ensure access to emergency services for end-users with disabilities. **EENA** considers progress in this regard as disappointing and would encourage all Member States to prioritise the full implementation of these provisions as soon as possible while taking due account of measures set out in [Directive \(EU\) 2019/882](#) (European Accessibility Act) which must be effectively applied by 28 June 2027<sup>1</sup>.

When implementing the provisions of EECC Article 109, **EENA** would like to draw attention to the requirement of equivalent access as referred to in paragraph 5. **EENA** considers that currently there is a lack of a common understanding of the meaning of equivalence. For **EENA**, the term equivalence in this regard means to be able to access emergency services in a way “functionally equivalent” to the access enjoyed by other end-users through electronic communication services by way of calling the ‘112’ number. Consequently, in terms of national transposition and implementation, the legal and functional requirements for voice calls to ‘112’ have to be met in order for a means of emergency communications to be considered equivalent with regards a specific type of disability. Therefore the means of access must be free-of-charge, ensure two-way interactive communication, have no requirement for pre-registration and must be answered and handled appropriately and effectively. It must also guarantee the provision of caller location information and have a high level of awareness amongst those end-users’ communities who may need to use it.

**EENA** highlights that it is available to BEREC, and other key stakeholders, to discuss and collaborate on improving understanding of the equivalence requirement in the context of access to emergency services through emergency communications.

In relation to ensuring equivalence of access to emergency communication services, **GSMA** would like to bring to BEREC’s attention that the European Commission has tasked the consortium EMERCURY to carry out a study ahead of the EC’s obligation to issue delegated

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<sup>1</sup> According to the European Accessibility Act, real time text and, where video is available, total conversation shall be deployed by ECS providers by 28 June 2025 . Member States will have to ensure that by 28 June 2027 at the latest, the PSAP systems handle emergency communications based on real time text and, where video is available, total conversation to the single European emergency number ‘112’.

acts related to the Code's Article 109(8) at the latest December 21, 2022. This article contains an obligation, amongst others, to ensure the equivalence of access to emergency services for persons with disabilities. The **GSMA** wishes to underline this fact to avoid potential duplication of work or proposal of initiatives that run counter to the content in the EC's Delegated Acts to be published later this year.

In relation to accessibility solutions to emergency services for domestic and travelling end-users with disabilities, **GSMA** would like to emphasize that today there are several challenges which have also been raised towards the EMERCURY Consortium. In this regard, **GSMA** would like to highlight that routing of calls from an OTT mobile app should not be ruled out. **GSMA** recommends that BEREC awaits the output from this work.

## Public Warning System (PWS)

**EENA** notes that the report does not cover the implementation of EECC Article 110 in the Member States. This article requires that, by 21 June 2022, Member States shall ensure that, when PWS regarding imminent or developing major emergencies and disasters are in place, public warnings are transmitted by providers of mobile number-based interpersonal communications services to the end-users concerned. BEREC's guidelines on how to assess the effectiveness of PWS transmitted by different means ([BoR \(20\) 115](#)) considers that competent authorities should take into account the user experience for end-users with disabilities when considering PWS provided by mobile number-based interpersonal communications service providers. It would be beneficial for relevant stakeholders to have information on how the Member States took this guideline into account when implementing PWS. **EENA** respectfully requests BEREC to keep this in mind for any future reports on equivalence of access and choice for disabled end-users.

## Providers of NB-ICS and NI-ICS to be equally considered

**GSMA** emphasizes that the provisions of Art. 111 of the EECC are applicable on providers of publicly available electronic communication services equivalent to those enjoyed by the majority of end-users. This means that the general application of the EAA falls on providers of number based interpersonal communication services (NB-ICS) as well as number independent interpersonal communication services (NI-ICS). As such, there is a requirement to not only look at the services enjoyed by the majority of users provided by traditional telecommunication companies of NB-ICS, but equally communication services provided by providers of NI-ICS. The report appears to predominantly lock itself into a view of investigating mainly the potential requirements for NB-ICS. Since, there are many options for solutions when app-based functionalities are considered, this should be further investigated.

## Relay services to be standardised at EU level

In line with the ongoing consultation between the industry and the E-MERCURY consortium, **GSMA's** recommendation in relation to relay services is that an application should be standardised at EU level, which could be integrated into operating systems in terminal equipment, to be used in all EU countries on generic broadband internet transport facilities. This is the most viable solution and could respond to the aim for relay services to accommodating the needs of persons with different types of impairments. It should be noted that operators will only be able to support the use of Real-time text and Total Conversation services for the provision of emergency services when such services are already supported by the operator and made available to its customers. If such solutions are not already available and used for users without disability, it cannot be developed ad-hoc for disabled users due to

high costs. Therefore, the **GSMA** recommends the development of a special application on the Internet. Further to note, is that the 112 number may not be able to receive SMS given its technical nature. When a specific organisation is already in place in the Member State through other means than 112, it should be preferred. For instances, this service in France is complemented by another relay service accessible via SMS to the 114 number, or via a dedicated app that also provides sign-based translation and live captioning.

## Costs

**GSMA** highlights that costs for the new measures to be implemented should not be only and fully covered by operators.

## 3. BEREC response

### 3.1 General comments/observations

With regards to **ECTA's** comment on the opportunity of identifying some best practices on the effectiveness of measures, the way of delivering choice to end-users with disabilities and the need to minimize burdens on operators, BEREC acknowledges that the inclusion of best practices would have enriched the Report. Nevertheless, BEREC thinks that the responses received from NRAs to the questionnaire show that, at the moment – considering that the new EECC has been nationally transposed only recently and its provisions have been implemented only partially by NRAs –, there is no single way to ensure equivalence of access for end-users with disabilities across all MSs. Furthermore, NRAs have different competences and, considering the differences in national circumstances, it is not advisable at this stage to recommend a single approach, methodology or set of measures for NRAs to employ in order to ensure equivalence of access to electronic communications services for disabled end-users. In light of that, the initial title proposed for the Report “*Report on best practices for ensuring equivalence of access and choice for disabled end-users*” has been changed to “*Report on measures for ensuring equivalence of access and choice for disabled end-users*” before the public consultation. To better clarify this, in the executive summary of the final Report a relevant statement has been explicitly included to explain the reasons behind the amendment.

With regards to **ECTA's** comment on the possibility of enriching the Report with details on the results of national consultations, with the implementation monitoring, with the availability and development of total conversation services, BEREC agrees that the Report would be improved by the addition of more details about national experiences, and it will take into account this consideration in the future versions of the Report.

As for **ECTA's** comment concerning the opportunity of reporting separately on EU, EEA and non-EU countries, BEREC will take into account this consideration in the future iterations of the Report.



## 3.2 Specific comments and feedbacks

### Access to emergency services

With regards to the benchmark-numbers on the implementation of article 109 highlighted by **EENA**, BEREC notes that this alleged inconsistency may be due to the different timing of the transposition of the EECC in national legislation or a different interpretation of the questionnaire. BEREC points out that in future iteration of the report, when all MSs will have transposed the EECC, any kind of inconsistency in this regard will be resolved. Nevertheless, BEREC anticipates that in the years to come, and especially due to the entry into force of two legal instruments, namely the EC delegated act on ensuring effective access to 112 and the Accessibility Act, MSs will need to increase their focus on emergency communications. BEREC will, in cooperation with technical expertise in CEPT NaN3, which is also attended by EENA, remain focused on raising awareness and promoting harmonisation of regulatory measures.

With regards to **EENA's** comment on the lack of a common understanding of the term "equivalence", BEREC recognizes that the term needs some clarifications. However, BEREC notes that the draft delegated act of the Commission tackles this issue to some degree at article 4, where the concept of "functional equivalence" is reflected and elaborated.

BEREC concludes that the input of EENA does not mandate the need for a change in the report.

With regards to the input of **GSMA**, BEREC acknowledges the importance of the draft delegated act on ensuring effective access to 112 and the work carried out by the E-MERCURY Consortium. BEREC concludes that the input of GSMA does not mandate a change in the report.

### Public Warning Systems

As regards the input of **EENA** on Public Warning Systems BEREC agrees that the experience of end users with disability should be taken into account when introducing PWS-solutions. New solutions for PWS are being introduced in several MSs. BEREC will consider this element, and will make a reference to BEREC's guidelines on PWS (BoR (20)115) in future iterations of the report.

### Providers of NB-ICS and NI-ICS to be equally considered

BEREC agrees with **GSMA's** view that both the requirements specifically related to Article 111, access to electronic communications services and contractual information (Article 102) equivalent to that enjoyed by the majority of end-users and benefit from the choice of undertakings and services available to the majority of end-users, may apply also to NI-ICS. BEREC would like to point out that other articles of the Code related to equivalent access for disabled users may also apply to NI-ICS, and has not excluded such information from the relevant analysis.

In this light, the questionnaire used by BEREC to gain insights into how the issues of access and choice for disabled end-users are addressed across Europe, foresaw the possibility for





responding NRAs to specify if their current implementation (either through the implementation of the EECC, through other legal frameworks or through other competencies) includes also implementation for NI-ICS. In fact, in the analysis of the NRAs responses where such implementation is present in the country, BEREC's Report included such responses and their relevant presentation for each Article (in pages 9 and 10).

## 2.4 Relay services to be standardised at EU level

With regards to **GSMA's** recommendation to agree on a standardized and integrated application for the use of relay services at the EU level, BEREC would like to point out that the Code is specific on the possibility of adopting provisions concerning relay services where necessary, but is not specific on the way of the implementation. Therefore, although a standardized and unified way to implement such a provision through a common application could be preferable, the actual implementation adopted at each country may indeed be diverse.

In the same perspective, with regards to **GSMA's** view that the 112 number may not be able to receive SMS given its technical nature and other solutions may be adopted at each country, BEREC would like to note that this report presents the various implementations as indicated by each country; BEREC also thinks that the information presented in this report could be valuable to NRAs engaged in the implementation of the related provisions of the Code.

In the same context, BEREC would also like to point out, that the delegated act that will be issued by the Commission on effective access to emergency services, could provide some guidance on the issues raised by the respondents on relay services.

## Costs

With regards to **GSMA's** position on who is bearing the costs for the new measures to be implemented, BEREC would like to note that each MS has the obligation to transpose the provisions of the Code and through its implementation, that will take into account current circumstances and existing context, cost related details will be also specified (i.e. a relay service may already be operable at a national level or other provisions can already be in place that affect costs related issues).

BEREC's findings, set forth in the report, present NRA's feedback on this issue.

