

**NATIONAL CHAMBER OF ETHERNET COMMUNICATIONS**

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Warszaw, 5 November 2022 r.

ID KIKE: 927-GRAP-22

Annemarie Sipkes

BEREC Chair

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Ref: Public consultation on the draft BEREC Work Programme 2023

Dear Ms. Sipkes,

Acting on behalf of the National Chamber of Ethernet Communications with its seat in Poland [PL: Krajowa Izba Komunikacji Ethernetowej] (<https://kike.pl>), I would like to contribute to the public consultations on the draft BEREC Work Programme 2023. KIKE members are Polish telecom operators, belonging to the SME category. There are ca. 2000 (two thousand) telecom operators in Poland, most of them are small and medium-size internet service providers (the 'ISPs'). Usually they provide fixed telecom services in small cities or rural areas.

I would like to propose to broaden the BEREC Work Programme 2023 and include analysis of the duration of proceedings, in every Member State, regarding access to existing infrastructure, to in-building infrastructure and to building in the absence of available high-speed-ready in-building infrastructure. Such analysis could constitute an important part of the assessment of the promotion of the VHCN roll-out in the EU.

Reasons for the contribution

According to the information included in the Introduction to the consultation document, the objectives of the Work Programme are based on the BEREC Strategy 2021-2025 with a close focus on three priorities: promoting full connectivity, supporting sustainable and open digital markets, empowering end-users. With regard to promoting full connectivity, BEREC will contribute by facilitating the roll-out of very high capacity networks (the 'VHCNs'). **Promoting connectivity and access to VHCNs as well as promoting competition and efficient investment** is also grounded in the Article 3(2) of Directive (EU) 2018/72 of the European Parliament and the Council establishing the European Electronic Communications Code (the 'EECC') remain the foundation for the work set out in BEREC's annual work programmes, and are the guiding force for the Work Programme 2023.

Razem możemy więcej!

In our view promoting connectivity as well as efficient investment requires proper implementation of the Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (the 'Directive 2014/61/EU'). **Acquiring prompt access to existing physical infrastructure or to the building (where high-speed-ready in-building infrastructure is not available) is vital for VHCN roll-out, especially on the eve of the commencement of the programmes financed with the EU funds, according with the Partnership Agreements concluded with every Member State.**

The Chamber would like to draw BEREC's attention to the fact that, at least in Poland, duration of proceedings regarding dispute resolution, regulated in the Article 3(5) of the Directive 2014/61/EU (access to existing physical infrastructure) and Article 9(3) (in relation with the Article 9(1) and (2)) of the Directive 2014/61/EU (access to the premises up to the access point and to the in-building infrastructure), significantly exceeds the time limit set in this Directive. The disputes regarding access to the physical infrastructure in line with the Article 3(5) of the Directive 2014/61/EU should be resolved within four months (ca. 122 days) and in line with the Article 9(3): within 2 months (ca. 61 days).

It is worth pointing out that Article 9(5) of the Directive 2014/61/EU provides that in the absence of available high-speed-ready in-building infrastructure, Member States shall ensure that every public communications network provider has the right to terminate its network at the premises of the subscriber. In practise this provision is very important in Poland as, even if in-building infrastructure exists, it is usually occupied and operator seeking access needs to build its own, new in-building infrastructure.

In Poland, disputes regarding access regulated by the Directive 2014/61/EU are resolved by the National Regulatory Authority i.e. the President of the Office of Electronic Communications (UKE). The duration of proceedings is as follows:

- 1) the proceedings regarding access to existing infrastructure (Article 3(5) of the Directive 2014/61/EU) **last on average 536 days instead of ca. 122 days,**
- 2) the proceedings regarding access to the in-building infrastructure (Article 9(3) in relation with the Article 9(2) of the Directive 2014/61/EU) **last on average 960 days instead of ca. 61 days** (it should be pointed out, however, that so far proceedings regarding access to in-building infrastructure were always conducted together with access to existing physical infrastructure outside of the buildings),
- 3) the proceedings regarding access to the premises up to the access point and/or to the building without in-building infrastructure (Article 9(3) in relation with the Article 9(1) of the Directive 2014/61/EU and Article 9(5) of the Directive 2014/61/EU) **last on average 518 days instead of ca. 61 days.**

Please find table listing decisions issued by UKE and duration of proceedings attached to this contribution¹.

The duration of the abovementioned proceedings is alarming. **Such situation is highly undesirable and could even lead to corruption in places where ISP is a beneficiary of the EU funds and needs access to infrastructure or to the building in order to meet strict requirements regarding timeframe of the investment.**

Therefore, In light of the above, **I would like to propose to broaden the BEREC Work Programme 2023 and include analysis of the duration of proceedings, in every Member State,**

¹Data included in the table comes from the publicly available data on the UKE webpage: <https://bip.uke.gov.pl/>

regarding access to existing infrastructure, to in-building infrastructure and to building in the absence of available high-speed-ready in-building infrastructure. Such analysis could constitute an important part of the assessment of the promotion of the VHCN roll-out in the EU.

Yours sincerely



Karol Skupień

/ KIKE Chair/

Attachment:

- list of decisions issued on the basis of the Art. 3 and 9 of the Directive 2014/61/UE and duration of proceedings