

The Consumer Voice in Europe

BEREC 2023 WORK PROGRAMME

BEUC response



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Why it matters to consumers

The technical expertise and experience of the Body of European Regulators for Electronic Communications (BEREC) is very important to promote competitive electronic communications markets and protect and empower consumers. Being able to comment on BEREC's draft programme shows regulators' openness and willingness to cooperate with consumer organisations as well as other stakeholders.

Summary

BEUC welcomes the opportunity to comment on the Body of European Regulators for Electronic Communications (BEREC)'s draft 2023 work programme¹.

BEUC particularly welcomes the following elements in the work programme:

- *Settled recognition of consumer protection and universal service as essential horizontal principles.*
- *Commitment to further work on 5G, and discussions on alternative connectivity solutions.*
- *Overall work on net neutrality and focus on enforcement following the review of the Guidelines on the implementation of the Open Internet Regulation.*
- *Commitment to further analysis on sustainability policies.*
- *Overall work on ensuring the consistent implementation of the EECC.*
- *Assessment work on the impact of potential introduction of "sending party network pays" (SPNP) principle in IP interconnection ecosystem and end-users.*
- *Planned out-of-silos interinstitutional cooperation.*

BEUC recommends BEREC to:

- *Extend further its activities to foster consumer protection and empowering consumers.*
- *Ensure focus on its mandate priorities, especially highly important workstreams related to protection and empowerment of consumers, as well as competition.*
- *Continue the experience of the joint workshop with BEUC on application of rights of end-users in the EECC*
- *Enlarge the scope of its work on 5G, by putting more emphasis on how affordable and accessible connectivity can deliver benefits for all consumers.*
- *Enlarge the scope of its work on net neutrality, by assessing how the possible introduction of a "sending party network pays" (SPNP) principle stands to affect consumers.*
- *Clarify its preliminary assessment on the possible introduction of network fees payments from large CAPs to ISPs via a full report on the necessity of legislative market intervention.*
- *Improve consultation procedures by extending timeframes and avoiding simultaneous consultations.*

¹ Draft BEREC 2023 Work Programme, available at <https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20143%20Draft%20BEREC%20Work%20Programme%202023.pdf>

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1. General comments

Following the express mention in the BEREC Work Programme for 2022, we welcome that BEREC considers yet again, in addition to three strategic priorities, “universal service and consumer protection” as “important horizontal principles that form an essential part of the high-level priorities”². However, we must point out that this commitment remains to be fully reflected in more ambitious work programme activities on these issues.

Moreover, we would like to raise attention to that fact that BEREC again admits that, for another consecutive year, “[g]iven the number of workstreams selected for the Work Programme 2023 and BEREC priorities, it was not possible to include several proposals”³. As already pointed out in our response in 2021⁴, BEUC would voice its concerns with the increasing amount of workstreams foreseen. Our reservations concerning this aspect come from the perception that BEREC risks the reprioritisation of some of its key tasks, in particular those related to consumer protection. Therefore, we call on BEREC to redouble its focus on the priorities which are central to its mandate.

This paper sets out our more specific comments to BEREC’s draft work programme below.

2. Promoting full connectivity: comments on strategic priority 1 items

BEUC welcomes the continuation of BEREC’s commitment to full connectivity for consumers and businesses alike as a strategic priority for 2023. We particularly welcome the commitment to facilitate the roll-out of very high-capacity networks (VHCNs) as a contribution to help addressing the digital divide⁵.

However, we regret the absence of any references to the issue of access and information to consumers. The objective of **full connectivity must also work for consumers, not only operators**, especially when the improvement of network infrastructures with the rollout of new technologies such as 5G stands out as a unique opportunity to improve accessibility and better quality of service. Consumers, including those most vulnerable, should be allowed to take full advantage of the digital opportunities. Thus, we would like to call on BEREC to also prioritise consumer-relevant elements of 5G such as quality of service, coverage, information, and marketing practices.

In this context, BEUC **welcomes the planned report on BEREC’s activities to support initiatives for secure 5G networks**, and we recommend that BEREC continues monitoring developments, correct misleading practices and ensure the proper development of 5G for all consumers⁶. In this regard, we would once again recall the experience **and concerns raised by several BEUC member organisations regarding 5G, in particular concerning its deployment and marketing** at the level of Member States, with several examples of gaps in coverage in Germany⁷, lack of transparency by operators

² Draft BEREC 2023 Work Programme, page 7.

³ Ibid, page 46.

⁴ BEUC response to BEREC 2022 Work Programme, page 2. <https://www.beuc.eu/position-papers/berecs-2022-work-programme-consultation-beuc-response>

⁵ Draft BEREC 2023 Work Programme, page 4.

⁶ https://www.beuc.eu/publications/beuc-x-2019-045_beuc_response_on_impact_of_5g.pdf ; https://www.beuc.eu/publications/beuc-x-2019-067_berec_draft_work_programme_2020.pdf

⁷ See, for example: <https://www.vzbv.de/pressemitteilung/mehr-wettbewerb-fuer-den-mobilfunkmarkt>

regarding the quality of service offered in France⁸ and Belgium⁹ or even the lack of compatibility of devices which are marketed as '5G-compatible' in Spain.¹⁰

BEUC would therefore like to recall its previous suggestion¹¹ for holding a **workshop on 5G for consumers**. This could be a unique opportunity to bring together regulatory bodies and civil society organisations, including consumer organisations, to discuss all aspects that can potentially impact European consumers. A workshop of such nature would be fitting for BEREC's strategic priorities to promote full connectivity and empower end-users, as well as fostering a higher level of consumer protection.

We welcome the planned **report on practices and challenges of the phasing out of 2G and 3G**.¹² Relevant stakeholders, such as the European Emergency Number Association (EENA),¹³ have already expressed concerns over the consequences for European consumers from the switch-off of these technologies (e.g. roaming difficulties in Europe and beyond; the continuity of service of voice calls or text messages for end-users using 2G/3G based services in Europe). We call on BEREC to engage with all relevant stakeholders, including consumer organisations, in order to fully determine and anticipate any impacts of this technological shift, and how this stands to impact European consumers, especially those most vulnerable (in particular, those living in more remote areas and/or still relying on older generation mobile devices).

We would also like to **welcome BEREC's intention to hold an external workshop on secure and reliable connectivity in Europe from low earth orbit satellite fleets**. This provides an opportunity to discuss how this new technology can become an integral part of providing affordable, high-quality connectivity to remote locations where terrestrial networks are unable to reach, improving accessibility for consumers, especially those most vulnerable.¹⁴

Finally, we welcome BEREC's intention to issue a **report on national regulatory authorities' annual reporting on the implementation of Article 75 of the European Electronic Communications Code (EECC)**. Increased transparency and additional means for stakeholders to assess the implementation of this Delegated Regulation is much welcomed. Also, given the experience of Member States struggling to transpose this important legislation, it is critical that the consistent implementation of the EECC continues to be at the forefront of BEREC's work.

3. Thriving sustainable and open digital markets: comments on strategic priority 2 items

BEUC welcomes the work of BEREC on net neutrality and supports its efforts to ensure an **open and non-discriminatory internet for all consumers**. As BEREC rightly states, the open internet is "an important building block in the current EU telecom rules."¹⁵

⁸ See, notably: <https://www.quechoisir.org/billet-du-president-cartes-de-couverture-5g-le-contestable-laisser-faire-de-l-arcep-n83995/>

<https://www.quechoisir.org/decryptage-telephonie-mobile-ce-qu-il-faut-savoir-sur-la-5g-n82595/>

⁹ <https://www.test-achats.be/hightech/telecom/news/proximus-5g-light>

¹⁰ <https://www.ocu.org/tecnologia/internet-telefonía/informe/tecnología-5g>

¹¹ BEUC response to BEREC 2022 Work Programme, page 4.

¹² Draft BEREC 2023 Work Programme, pages 9-10.

¹³ <https://eena.org/blog/webinars/volte-standardisation-problem/>

¹⁴ Draft BEREC 2023 Work Programme, pages 12-13.

¹⁵ Ibid, page 18.

Following the review and update of the Guidelines on the Implementation of the Open Internet Regulation¹⁶ to reflect the recent rulings the Court of Justice of the EU¹⁷ that **zero rating is a prohibited practice**, we now welcome BEREC's emphasis on supporting "NRAs' obligation to 'closely monitor and ensure compliance' with the Open Internet Regulation"¹⁸, including on cases related to zero-rating. The establishment of a discussion forum and the possibility for continued activities such as workshops, surveys, and questionnaires is a positive development. BEUC would like to recall that this problem was previously highlighted in the past and welcomes BEREC's efforts to step up enforcement, offering support to NRAs whenever needed¹⁹.

We would especially highlight the importance that BEREC continues its assessment work **of the IP interconnection ecosystem and impact of the potential "sending party network pays" (SPNP) principle on the Internet ecosystem and on end-users**. Following the ongoing debate on the possible introduction of a mechanism for "direct compensation", also referred to as "fair share" proposed by the telecoms industry, the European Commission is now expected to proceed with a public consultation in the first half of 2023.

BEUC therefore welcomes BEREC's urgent and important contribution to this debate. It is **fundamental that BEREC provides a clear and independent analysis** on the necessity of such a compensation scheme and its potential impacts, with a special focus on end-users/consumers.

BEUC has recently expressed its preliminary position on this issue, expressing its serious concerns regarding net neutrality and competition in the Telecoms market²⁰. **We welcome BEREC's preliminary assessment** on the possible introduction of network fees payments from large CAPs to ISPs and **support BEREC's intention to further clarify this position via a full report in 2023** which can thoroughly analyse the necessity of a legislative market intervention. BEUC remains at BEREC's disposal to engage in a constructive dialogue on this important issue for consumers.

BEREC's contribution within the High-Level Group for the enforcement of the Digital Markets Act (DMA)²¹ to ensure coherence and effective complementarity in the implementation of the DMA is also welcomed. We reiterate our availability to engage with BEREC in further discussions on these matters.

BEUC welcomes that BEREC will be further exploring its role in promoting **sustainability policies in the frame of the European Green Deal implementation**, engaging more actively on the issues of circular economy, especially in relation to life cycle of devices and electronic equipment and their impact on energy consumption and electronic waste. Consumer organisations also remain at BEREC's disposal on this important topic.

¹⁶ https://berec.europa.eu/eng/document_register/subject_matter/berec/press_releases/10047-press-release-berec-will-update-guidelines-following-the-court-of-justice-rulings-on-zero-rating-publishes-recently-adopted-reports-and-calls-for-stakeholders-input

¹⁷ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-09/cp210145en.pdf>

¹⁸ BEREC Draft 2023 Work Programme, page 27.

¹⁹ https://www.beuc.eu/publications/beuc-x-2019-075_berecs_public_consultation_on_its_draft_updated_net_neutrality_guidelines.pdf, pages 9 and 10.

²⁰ https://www.beuc.eu/sites/default/files/2022-09/BEUC-X-2022-096_Connectivity_Infrastructure-and-the_open_internet.pdf

²¹ Draft BEREC 2023 Work Programme, page 19-20.

4. Empowering end-users: comments on strategic priority 3 items

BEUC welcomes BEREC's aim to strengthen end-user empowerment as a strategic priority. Given the overall growing number of workstreams in the work programme, we underline the importance of keeping focus on the most relevant workstreams for end-users. Looking ahead, BEUC would reiterate the importance for BEREC to develop a coherent vision and strategy, so that the electronic communications sector works for consumers.

We welcome the recognition that regulators have an "important role to play" for consumers, but this should not be limited to simply ensuring "transparency, increasing and maintaining consumer awareness and further improving digital skills"²² which is manifestly insufficient. Empowering consumers cannot be achieved with more transparency and digital skills alone.

BEUC encourages BEREC to strongly support NRAs in their role to ensure the respect of all consumer rights and related provider obligations in the electronic communications sector and to continue its work on how to bridge the digital divide. We encourage BEREC to involve relevant stakeholders, such as consumer organisations and other civil society NGOs, and allow them to engage more actively with NRAs on key topics for consumers.

We strongly support that the work programme foresees a report and a dedicated workshop on empowering end-users through environmental transparency on digital products and services. We fully appreciate the engagement and cooperation of BEREC and NRAs' with BEUC and its member organisations on this topic.

In addition, we would like to suggest the organisation of another joint workshop between BEUC and BEREC on the application of rights of end-users of the EEC. We consider that one of the main takeaways from the preparatory work for this workshop, which will take place in November 2022, is that further discussions will be needed to fully assess all issues related to the implementation and enforcement of the EEC on this important area of the regulation. Concurring to this outcome are two essential factors: the very short period of application and the transposition delays of the EEC at the level of Member States. Therefore, BEUC would consider useful to continue this discussion, by repeating this experience in 2023. We encourage BEREC to continue its positive engagement with consumer organisations and consumer interests in this way.

Lastly, we welcome BEREC's announcement of the updated report on the Member States' best practices to support the defining of adequate broadband internet access service (IAS).

5. Comments on cooperation with EU institutions and institutional groups

BEUC welcomes the emphasis on breaking the silos, improving and structuring institutional cooperation by "joining forces on certain topics in which synergies can be obtained".²³ We particularly appreciate the efforts to further engage with external bodies under its Medium-Term Strategy, and the establishment of a team to support the Chair and incoming Chair in maintaining an active relationship with external bodies.

²² Ibid, page 30.

²³ Ibid, page 34.

6. Comments on BEREC's other tasks

BEUC welcomes the special attention given to **monitoring the implementation of the EECC** and its manifested interest in organising a meeting with end-users' representatives. Although the implementation of the EECC was due to be finalised by the end of 2020, EU Member States have struggled to timely transpose the legislation. The focus of BEREC's work must therefore continue to be the consistent implementation of the EECC, by providing knowledge and sharing of experience and best practices between the NRAs, in order to ensure a better monitoring of the key elements of the functioning of the EECC.

In this context, following on our previous suggestion for a new **workshop between BEUC and BEREC on the application of rights of end-users of the EECC**, we would like to recall the possibility that, should requests be made, another opinion on Article 123 EECC could be drafted in 2023.²⁴ Should this take place, we would greatly appreciate BEREC's and NRAs' continued engagement with BEUC and its member organisations.

BEUC also thanks BEREC for its excellent work on **roaming and intra-EU communications**, providing evidence and analysis for a real and more competitive single market that benefits consumers. BEUC supports the continuation of BEREC's essential work on this issue.

Following BEREC's assistance of the NIS Cooperation Group and ENISA in their work towards producing a **toolbox for 5G Cybersecurity**, we now welcome BEREC's support in **reinforcing EU's Cybersecurity Capabilities**. We encourage BEREC to engage with relevant stakeholders on this matter, including consumer organisations.

7. Comments on BEREC's stakeholder engagement

In a year of challenging developments in the Telecoms policy landscape, BEUC strongly recommends BEREC to place all its efforts in retaining and asserting its independence vis-à-vis policy makers and private stakeholders and encourages it to proceed with wide, inclusive consultations, listening to the greatest possible variety of stakeholder views.

In this regard, we strongly welcome the aim of BEREC to ensure a more **balanced representation of stakeholders** in the BEREC Stakeholder Forum and we strongly encourage BEREC to continue pursuing this objective.

8. Comments on potential BEREC work in 2024 and beyond

We also welcome that BEREC proposes a **report on best practices for termination of contracts and switching providers**.²⁵ We expect that the upcoming report builds on the valuable work done by BEREC in 2018, analysing in detail the different aspects and specific complexities of switching processes across the EU Member States and how these directly affect consumers.

Finally, BEUC would like to reiterate our recommendation that **public consultations should take place over longer periods of time**. Unfortunately, a four-week period is not enough for an umbrella organisation with limited resources, simultaneously working

²⁴ Ibid, page 37.

²⁵ Ibid, page 46.

over a variety of topics, to properly and fully address all issues raised towards producing an added-value contribution. Short deadlines for public consultations on documents of such complexity risk excluding smaller stakeholders with more limited resources from adequately participating, therefore jeopardizing the objective of any consultation: balanced, representative feedback from all stakeholders. This is particularly important in the case of consultations that are particularly relevant for consumer protection.

BEUC once again congratulates BEREC for its overall work and hopes these comments can help it further strengthen its work programme.

ENDS

