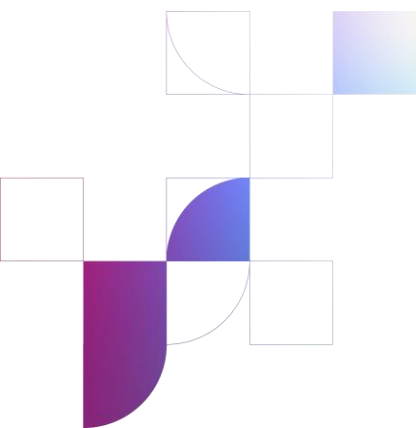# BEREC Report on the outcome of the Public consultation on the Draft BEREC Report on Interoperability of Number-Independent Interpersonal Communication Services (NI-ICS)

8 June, 2023

Contents

1. Introduction

This report summarises the responses provided by the stakeholders during BEREC's public consultation on the Draft BEREC Report on interoperability of Number-Independent Interpersonal Communication Services (NI-ICS) (BoR (22) 187[1]), further "the Draft Report", as well as BEREC's views on the issues raised by the respondents. The Draft Report was opened to public consultation from 13 December 2022 till 3 February 2023.

10 respondents contributed to the public consultation, namely:

1. Contributor 1 (confidential)

2. Contributor 2 (confidential)

3. Contributor 3 (confidential)

4. ECTA

5. ETNO

6. Google

7. International Center for Law & Economics (ICLE)

8. Meta

9. VZBV - Federation of German Consumer Organisations

10. Dr Anna Schneider

BEREC is grateful to receive the submissions and has carefully considered all of them. Accordingly, BEREC sets out its summary of assessments and responses in this report. Comments, observations and recommendations raised by the respondents are summarised here below, and BEREC's views are presented in separate boxes. All non-confidential contributions are publicly available and accessible on BEREC website[2]. This report is a summary and it does not explicitly elaborate on observations that are not directly related to the Draft Report subject to public consultation.

The Report on the outcome of the public consultation is organised following the sections of the main Report submitted to public consultation. This Report on the outcome of the public

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[1] BoR (22) 187, Draft BEREC Report on Interoperability of Number-Independent Interpersonal Communication Services (NI-ICS), 12-12-2022, see: https://berec.europa.eu/en/document-categories/berec/reports/draft-berec-report-on-interoperability-of-number-independent-interpersonal-communication-services-ni-ics

[2] The non-confidential contributions to the public consultation are accessible here: https://berec.europa.eu/en/public-consultations/closed-public-consultations-and-calls-for-inputs/public-consultation-on-the-draft-berec-report-on-interoperability-of-number-independent-interpersonal-communication-services-ni-ics

consultation complements the final BEREC Report on interoperability of Number-Independent Interpersonal Communication Services (NI-ICS)[3]. Both reports are being published simultaneously.

2. General view on feedback received

In this section, BEREC presents a short summary of the views shared by the stakeholders.

Contributor 1 discusses the importance of a clear definition of interoperability requirements and functionalities and proposes the possible establishment of different organizational structures for quicker decisions on disputes and certifications (e.g. certification body), monitoring of compliance with requirements for interfaces (e.g. multi-stakeholders process). It addresses the aspects of standardization of the functionalities, definition of corresponding interfaces, the need for high level protection and security of data, importance of monitoring and support, as well as indicates the advantages and disadvantages of various possibilities listed in the Report as the ways to ensure interoperability.

Contributor 2 stresses the relevance of the principle of interoperability and recognises a vital BEREC's role in helping to achieve the interoperability aims of the DMA. It agrees with BEREC's position and the assessment of the approach to the interoperability of NI-ICS under the DMA set out in the report, and highlights a need to achieve NI-ICS interoperability without delay and with easy implementation.

Contributor 3 makes an input on the topic of privacy and security that is noted as a required commitment for the development of interoperability, and shares its considerations and practical implementation solutions to ensure the highest level of data protection through the continuous product innovation processes in this area.

ECTA welcomes BEREC's pro-active approach in advising the European Commission in the implementation process of DMA provisions on interoperability of NI-ICS. ECTA makes structural considerations on report's substance in terms of interoperability approaches, challenges and categorisations, as well on the list of minimum requirements for an interoperability reference offer.

ETNO welcomes the initiative of BEREC to address the issue of interoperability of NI-ICS in the context of the DMA, and to consider the interplay between the DMA and the existing provisions under the EECC. It further welcomes the initiative of BEREC to apply its expertise in defining minimum criteria for a reference offer in fulfilment of transparency obligations (art. 69, EECC) to the NI-ICS context. **ETNO** provides comments on BEREC's approach to the definition of end user in terms of differences of messaging services for business and individual

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[3] BoR (23) 92, BEREC Report on Interoperability of Number-Independent Interpersonal Communication Services (NI-ICS), 08-06-2023, see: https://berec.europa.eu/en/document-categories/berec/reports/berec-report-on-interoperability-of-number-independent-interpersonal-communication-services-ni-ics

users, and discusses basic functionalities of messaging services, where advises to provide certain clarifications.

Google provides comments regarding the appropriate technical approach to the implementation of Article 7 of DMA, with the focus on improving contestability for messaging services via development of common standards. Google stresses that effective interoperability under Article 7 can only be achieved through the use of common standards and claims to be willing to work with other industry participants to develop such standards. According to Google, innovation and dynamism can be preserved with common standards. Google also discusses the proposed content of gatekeepers' reference offers.

ICLE focuses on the importance to implement the NI-ICS interoperability in a way that protects user privacy and security, and provides broader considerations on the implementation of certain DMA's provisions in this respect.

Meta agrees with the approach taken by BEREC in its Draft Report and recognises the important role played by BEREC in relation to the interoperability provisions set out in the DMA and discusses the various technical and practical challenges and the possible trade-offs that companies providing interoperability may face, e.g. undermining end-to-end encryption (E2EE) across messaging services and stifling innovation and competition through standardization.

VZBV focuses on the aspects of the BEREC report concerning the implementation of the DMA and represents consumer perspective. VZBV underlines that the interoperability obligation must ensure the highest level of protection and data security, suggests that a standard uniform encryption protocol becomes mandatory in order to guarantee the confidentiality of the communication. VZBV welcomes the establishment of a High-Level Group whose task entails to regularly assess the implementation of the interoperability obligation under the DMA and to identify upcoming needs to modify the interoperability obligation.

Dr Anna Schneider discusses the lack of a clear definition of NI-ICS in the DMA and the categorisation provided in the Draft Report. It also provides some insights on the role that Rich Communication Service (RCS) could play for NI-ICS interoperability.

3. Comments on Chapter 1 – Introduction

In terms of definition of end user in BEREC's analysis of interoperability, **ETNO** emphasizes, that from an application point of view, the interface between business users and individual users could present differences in terms of the greater facilities and features that could be offered to the former. Therefore, in order to ensure consistency between both types of users, **ETNO** advises BEREC to expressly mention in its report the consideration of business users, given that the messaging services for business users and individual users could present differences in terms of market share and functionalities.

With regards to the definition of business users and end users, **Meta** underlines that the distinction between the two may not always be entirely clear and some users might fall within both the definition of end user and business user, depending on context.

Dr Anna Schneider believes that BEREC's reference to the increase of NI-ICS use "in the last decade" does not reflect the role they played in the form of instant messaging services during the first decades of the World Wide Web and even as part of the first computer networks.

BEREC's response:

BEREC thanks stakeholders for their feedback and has carefully considered respondents' views.

Regarding the comment of **Meta** and **ETNO** on the definition of business and end users, BEREC highlights that in this report follows the definition of the DMA.

Following the comment by **Dr Anna Schneider,** BEREC clarifies the text in the introduction as well as in the executive summary and in the conclusions of the BEREC report.

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4. Comments on Chapter 2 – NI-ICS and scope of the report

Contributor 1 supports BEREC analysis on the definition of NI-ICS and the current focus on messaging services. **Contributor 1** finds reasonable that interoperability between other types of NI-ICS, such as videoconferencing, should be analysed in more detail in the future, mainly as these services are also provided by gatekeepers. However, **Contributor 1** does not share BEREC's view that no major further development of functionalities has occurred among e-mail providers so far, since e-mails are one of the three most important digital communication channels (alongside messenger services and social media) and have transformed into a B2C transactional backbone.

Contributor 2 agrees with the scope of the Draft Report which focuses on the interoperability of messaging services, which Contributor 2 considers as one of the most basic expectations consumers have when using their mobile device.

ECTA states that the obligation for gatekeepers introduced by the DMA is helpful for competition in NI-ICS services provision but stresses that the success of this measure might be limited as a result of the long timeframes within which the full set of basic functionalities of NI-ICS services should be made interoperable by the gatekeepers. **ECTA** recognizes that the DMA's provision is important to improve the competition in the market of messaging services and more generally for improving the contestability of the market by the current and/or potential new providers of NB-ICS that could potentially benefit from interoperability obligations to enter and/or grow in NI-ICS markets.

Meta agrees with BEREC's position of focussing on messaging services for the purpose of this early Draft Report. Meta believes that it remains unclear to what extent there will be material user demand for interoperability between NI-ICS, let alone between email services and messaging, or between video-conferencing and messaging. In case of future analyses to assess end-to-end connectivity, or competition and market dynamics on NI-ICS markets, **Meta** believes that BEREC should include the full category of NI-ICS in such a study or investigation.

Dr Anna Schneider agrees that the categories of NI-ICS covered in the DMA are not clear-cut, since for instance most videoconferencing services integrate messaging functionalities. On the table 1 of the BEREC report, Dr Anna Schneider states that any or all the mentioned features could be integrated into any of the three "types" of services implied in the table and the differentiation is not informative as regards the specific delineating features between the three. As BEREC uses the term "messaging services" throughout the Draft Report frequently and attach important implications to it as regards the implementation of interoperability obligations, a clear definition (or at least a specific delineation from the other two 'types' of NI-ICS) would be desirable. **Dr Anna Schneider** also calls for some additional clarification of Multimedia Messaging Services (MMS) and questions their categorization as NB-ICS in the footnote 13 of the Draft report. Although SMS play a role in the delivery of MMS, the actual message content is realised on HTTP and MMS does not only offer interoperability across operators, but also across NB- and NI-ICS.

BEREC's response:

BEREC thanks stakeholders for their feedback and has carefully considered respondents' views related to the scope of the report.

BEREC agrees with **Meta**, **Contributors 1** and **2** regarding the benefits of an early contribution by BEREC by focusing on messaging services first, while considering analysing videoconferencing services in the future. BEREC also thanks **Contributor 2** and **ECTA** for pointing out the role of BEREC in advising the European Commission in the implementation process of DMA provisions and regarding reference offers. BEREC stresses its willingness to further cooperate with the European Commission to ensure an effective implementation of the DMA.

Regarding the comment by **Contributor 1** on the relevance of e-mails, BEREC notes that the report does not dispute that e-mails are of great value to consumers and businesses. Nevertheless, regarding the development of functionalities which are integrated by default and widely used, e-mails functionalities seem to have evolved less (amongst others due to necessary coordination between different providers and standard setting organisations) than non-interoperable NI-ICS. As BEREC highlights in the Draft report, this could also be explained by the fact that e-mail services may have converged to the basic utility which is expected and needed by the users

Regarding the suggestion by **Dr Anna Schneider** to clarify the delineation of the categories (messaging services, video conference services and e-mail services), BEREC acknowledges

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that the functionalities are not exclusive of a certain category. Nevertheless, the features presented in the table do not intend to be exhaustive, nor exclusive of a category, having the only purpose of identifying some similarities and differences among services and their usage. For the general definition of NI-ICS, BEREC refers to Article 2(7) EECC. On the classification of MMS as NB-ICS, BEREC considers that MMS do connect with publicly assigned numbering resources, namely a number or numbers in national or international numbering plans, or enable communication with a number or numbers in national or international numbering plans and therefore are classified as NB-ICS. BEREC therefore sees no need to change the report.

5. Comments on Chapter 3 – Economic and behavioural features of messaging services

Contributor 1 expresses its concern that the success of the interoperability measure might be limited because of the long timeframes within which the full set of basic functionalities of NI-ICS services should be made interoperable by the gatekeepers.

ETNO recommends for BEREC in its report to delve deeper into those basic functionalities that are currently incorporated in rich messaging services and that clearly differentiate them from traditional ECS (SMS/MMS) messaging services. The objective is to be able to clearly delimit the leap that the use of this type of Apps represents compared to ECS services and that it would therefore be advisable to consider in their implementation. Otherwise, one could fall into the error of defining those minimum functionalities as those SMS provide and therefore interoperability at the service level would be seriously impaired.

Meta believes that the messaging services ecosystem is highly competitive, with low barriers to entry and regular multi-homing by users, and discusses different competitive solutions to respond to this consumer demand, e.g. multi-homing allows them to communicate with distinct social groups using distinct services – possibly also using different features that these services offer. By discussing the outcomes of recent researches **Meta** suggests that BEREC report could highlight further how EU consumers through multi-homing use different platforms to communicate with different social circles. According to **Meta**, although the BEREC report looks at the role played by additional features offered by messaging services when users choose a service, the report could better take into account the efforts and investment that service providers put into building these additional features and the importance of these features for users.

VZBV provides information on pro-competitive effects of interoperability based on its surveys' results. It shows that consumers would be willing to switch to another main messenger service if messengers became interoperable. Unlike Meta, **VZBV** states that the implementation and enforcement of an interoperability obligation should enable consumers to switch to more data protection friendly services more easily while competition on the messenger market would be strengthened. Messaging services have become an integral part of communication, both for individuals and businesses, due to their ease of use, affordability, and the ability to foster real-time conversations.
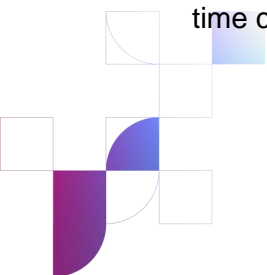
Dr Anna Schneider considers that services that can be subsumed under the concept of NI-ICS predate SMS by several decades, since consumers already had used instant messaging (as well as email) on their desktop and laptop computers for many years.

BEREC's response:

BEREC thanks stakeholders for their feedback and has carefully considered respondents' views related to economic and behavioural features of messaging services.

Regarding the suggestion by **Meta** on further highlighting how EU consumers through multi-homing use different platforms to communicate with different social circles, BEREC points out that the report already specifically refers to multi-homing, with a reference that different usage patterns of specific services are used to meet different needs and certain services are chosen to connect with particular groups of people to keep their communication circles separate. The report is not aiming to analyse this aspect further as there are already extensive analysis and data to support this notion and the report also includes information on relevant studies, for further reference (e.g. the PPMI report[4]).

On the proposal of **Meta** that the report should take into account the importance of the additional features for users that service providers are building and investing on, BEREC states that the report already points out the fact that messaging services have become particularly attractive to a large number of users due to its high user-friendliness services. In this context, BEREC already states that it is crucial to foresee appropriate updating mechanisms, to allow integration of new functions.

On **ETNO**'s recommendation to delve deeper into basic functionalities of rich messaging services which differentiate them from traditional SMS/MMS messaging services in order not to impair interoperability at a service level, BEREC refers to Chapter 5 of the final Report where these services are addressed.

On the remark made by **Dr Anna Schneider**, a footnote was added in the final Report to clarify what is meant by traditional communication services.

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6. Comments on Chapter 4 – The state of the market for messaging services

Contributor 1 acknowledges that the messenger services have transformed traditional telecommunications markets. By providing the results of recent surveys, **Contributor 1** highlights that the market is dominated by a few providers. It warns that market concentration could mean consolidation in the market and the dominance of a few players could lead to

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[4] BoR (21) 89, PPMI Report: Analysing EU consumer perceptions and behaviour on digital platforms for communication. Analysis report, 11-06-2021, see:
https://berec.europa.eu/en/document-categories/berec/reports/analysing-eu-consumer-perceptions-and-behaviour-on-digital-platforms-for-communication-analysis-report

changes in the way businesses communicate with customers and in the way people interact with each other, as well as draws attention to the aspect of data privacy, particularly regarding the collection and use of personal data.

Contributor 2 appreciates BEREC's assessment of the market for messaging services and recognises that while over-the-top players, such as WhatsApp and Facebook messenger, are widely used across Europe, the mobile market is today largely divided between two mobile ecosystems, iOS and Android. Moreover, according to **Contributor 2**, the move away from traditional SMS over recent decades to iMessage on iOS and RCS on Android has reinforced the lack of interoperability of messaging services between ecosystems and the loss of one of the key features that were enabled by mobile standards since the creation of GSM in Europe.

Google notes that messaging services provide enormous value to users, transforming the way they communicate with rich features and improved security. However, consumers are harmed by the lack of contestability and interoperability in this market. This is why Google considers the Article 7 DMA both timely and necessary. **Google** agrees with BEREC's consideration that the market for messaging services is concentrated and that, even where users multi-home, there is a tendency to rely on a small number of messaging platforms. This is due to the presence of strong proprietary network effects and to the limitation of messaging services to platform-specific ecosystems. These features lead to entry barriers for alternative providers of such services and increase the costs for users to switch.

According to **Meta**, when it comes to market concentration, BEREC report should also consider that the market for messaging services enjoys low barriers to entry, proven by the successful entry and rapid growth of platforms like TikTok and Snapchat.

BEREC's response:

BEREC thanks stakeholders for their feedback and has carefully considered all comments regarding the chapter on the state of the market for messaging services.

On the opinions provided by **Contributor 1**, **Contributor 2** and **Google**, BEREC takes note of their general agreement to the conclusions of the analysis of this chapter, namely regarding evidence of the messaging services market being highly concentrated.

Concerning **Meta**'s comment on the existence of low barriers to entry within the messaging services market, it should be noted that such matter is beyond the scope of the present report. BEREC has recently commented on applications such as Snapchat and TikTok in its PC report on the internet ecosystem[5].

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[5] BoR (22) 166, BEREC Report on the outcome of the Public consultation on the BEREC Report on the Internet Ecosystem, 12-12-2022, see: https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-on-the-outcome-of-the-public-consultation-on-the-berec-report-on-the-internet-ecosystem

7. Comments on Chapter 5 – Interoperability measures

Contributor 1 welcomes the discussions in on interoperability measures as the most important issues of the report. By discussing the purposes, types of interoperability and DMA obligations in this field, **Contributor 1** notes that the successful implementation of the interoperability requirements of the DMA must be based on coordinated or uniform specifications and common standards for various applications, systems, and processes that can be supported and implemented by all providers. Moreover, according to **Contributor 1**, a sufficient flexibility to promote innovation is necessary, and the protection and security of data must be ensured at a very high level.

Additionally, **Contributor 1** notes that the reference offers of the gatekeepers should be certified and declares a need for the establishment of corresponding certification body that accepts the offers for connecting the gatekeepers and declares them as compliant, also makes quick decisions on disputes between gatekeepers and API users regarding functional and non-functional issues. Moreover, an infringement notification and monitoring procedure should be included. With regards to the implementation challenges identified by BEREC, **Contributor 1** underlines the importance of the definitions and therefore provides a set of functional and non-functional criteria to be met by the interfaces to the gatekeepers' chat services.

According to **Contributor 2**, it is right that BEREC explores both APIs and standardised solutions when seeking to address messaging interoperability between platforms. While APIs would help achieving NI-ICS interoperability more quickly, care is needed to ensure they are easy to implement. Standardised solutions are usually the best approach to address interoperability but should not delay implementation and will require engagement from all players in the mobile ecosystem. Contributor 2 thinks that much of this will depend on the initial reference offers published by the designated gatekeepers and welcomes BEREC's proposal for a first list of minimum requirements that should be included in those offers.

Contributor 2 supports the interoperability measures laid out by BEREC in its report, and agrees with the asymmetric approach to regulation under the DMA and EECC. Focusing on the technical solutions explored by BEREC as part of its report, **Contributor 2** considers that using an API would lead to a quicker solution, while a standards-based solution would require time and engagement from all parties but could be more effective. According to **Contributor 2**, regardless of the solution, interoperability should be implemented promptly.

Contributor 3 supports the notion of interoperability for messaging services as long as it does not compromise the commitment to security and privacy, namely connected with, e.g. handling of encryption keys and of messages processed and stored on the device, strict limitations on the use personal data only for the provision of the service, and identity theft, fraud and spam prevention. However, **Contributor 3** also points out that interoperability solutions should be designed in such a way as to allow for continued product innovation. Referring to EU regulations on GDPR, **Contributor 3** notes a need to ensure consistent data privacy standards. It argues with BEREC's view in Report's section 5.3.3 that "[*w*]*ith the introduction of interoperability, the data collection would not increase per se, but it leads to the sharing of*

(communications, personal and meta) data among the different service providers or providers of bridge services in any case" and states that this does not stand in the case of privacy friendly messaging services that do not monetize data and/or follow strict on-device-processing. In these cases, interoperability would lead to an increase of data collection and, therefore conflict with the principle of data minimization as well as the original service provider's commitment to ensure a particularly high level of privacy and security. According to **Contributor 3**, interoperability can therefore only work and comply with the principles under the GDPR and the e-Privacy Directive if the third-party messaging services requesting interoperability commit to using personal data they receive consistently in line with the policies of the access granting messaging service. By discussing the interoperability solutions provided in the Draft Report, **Contributor 3** states, that API and bridge models do not adequately address security and privacy concerns. **Contributor 3** would welcome BEREC to include additional criteria in the Report to explicitly clarify that a harmonised standard should not be based on the lowest common denominator, but have the ambition to guarantee the highest possible privacy and security standard for end users. Finally, **Contributor 3** acknowledges, that the only plausible conclusion of the Report is that no solution exists today to enable interoperability without decreasing privacy and security standards.

ECTA welcomes that BEREC will support the European Commission paving the way on technical details and general terms and conditions of the reference offers to be presented by gatekeepers and indicates a need for close attention and monitoring of the process in order to ensure a non-discriminatory (equal) access to interfaces, as well as full transparency about the access conditions and specifications of the interfaces.

According to **Google**, the appropriate technical approach to the implementation of Article 7 of DMA, should i) Build upon common, accessible, industry-wide standards that enable all providers of messaging services to obtain effective interoperability with gatekeepers' services, while providing the necessary levels of encryption and security; ii) Provide for interoperability with the full range of functions needed to make non-gatekeeper messaging services attractive to consumers, and overcome barriers that entrench established network effects. Additionally, **Google** expresses its willingness to work with other industry participants to develop common standards to achieve effective interoperability under Article 7 DMA.

ICLE draws an attention to the importance of the "privacy-by-design" approach in any implementations of interoperability mandates. **ICLE** suggests that any third-party service must offer at least the same level of user security as the original service and invites BEREC to further study what exactly is demanded by DMA's Art 7(3), especially in the light of Articles 7-8 of the EU Charter of Fundamental Rights.

Meta welcomes BEREC's thinking on the different approaches and technical solutions for horizontal interoperability. This area is particularly important given the obligation in the DMA for gatekeepers to facilitate interoperability while preserving the level of security, including E2EE, across the interoperable services. By **Meta**, while the analysis of pros and cons for each of the possible solutions (APIs, bridges and standardisation) is useful with regard to gatekeepers' preserving innovation, it misses a key point: that a fundamental inability to control

all endpoints in a messaging chain necessarily breaks users' expectations of security in a fully E2EE messaging service. For example, bridging solutions must necessarily decrypt and re-encrypt messages in transit, and do not allow gatekeepers to control and account for the security of all endpoints. Bridging solutions also present unique security risks, entrusting message security to a protocol managed by a third party, over which gatekeepers would not have control, nor would EU organisations have regulatory/legal oversight under the current text of the DMA.

Meta acknowledges that BEREC has identified pros and cons of the different approaches and technical solutions for horizontal interoperability. However, **Meta** believes that the report should further highlight that standardisation risks potential sclerosis and a reduction in innovation by cementing the state of technical innovation at a given point in time. As a result, external longer-term developments in technology cannot easily be added/integrated when complying with a pre-existing standard that may not be future-proof.

From a consumer's point of view, **VZBV** indicates three relevant aspects regarding the design of the interoperability obligation – the identification and consideration of users' interests as well as possible effects on competition and data protection. By **VZBV**, the interoperability obligation must not lead to a weakening of the level of data protection and data security for users who consciously choose a privacy-friendly service. Legislators must ensure that a standard uniform encryption protocol becomes mandatory in order to guarantee the confidentiality of the communication. Otherwise, it would be necessary for providers or a bridge to decrypt the message at one of the various transmission steps in order to forward it to the recipient either in plain text, or encrypt it with another protocol. With such a decryption a provider could no longer guarantee the confidentiality of the transmitted content. Many messenger services already use the open "Signal protocol" or implementations based on it, which is recognised as secure and state-of-the art by IT security experts. However, it is crucial that interoperability does not lower existing protection standards, especially in end-to-end encryption.

Dr Anna Schneider regrets that "Rich Communications Services (RCS) are not mentioned in the Report, since BEREC could have shed light on issues that could hold important lessons for the coming implementation of the DMA and EECC rules concerning interoperability of NI-ICS.

BEREC's response:

BEREC thanks stakeholders for their views on the chapter on interoperability measures that have been carefully considered.

On the remark made by **Contributor 3** and **Meta** highlighting that standardisation may reduce technical innovation, it should be noted that BEREC has already pointed out in the report that standards and standardisation processes must be flexible enough to allow for future innovations (a view that is also shared by **Contributor 1**). In BEREC's view it is generally

technically possible to foresee extensions in a standard, so that new functionalities can be introduced.

With regard to the references of numerous stakeholders (**Contributor 2**, **ETNO** and **Dr Anna Schneider**) to RCS and their standardisation, BEREC had included a brief description of such services in its final Report.

Regarding the suggestions by several stakeholders (**Contributor 3, Google, ICLE, Meta, VZBV**) addressing security and privacy concerns, BEREC shares the view that interoperability obligations must ensure the highest possible level of data protection and data security. As it has been highlighted by many stakeholders, in particular, interoperability obligations must not lead to a weakening of existing end-to-end encryption. In this regard, BEREC sticks to its view that, in general, interoperability does not interfere with or prohibit encryption. But implementing end-to-end encryption in interoperable environments comes with many challenges which may lead to an increased complexity. Therefore, BEREC will discuss this topic in greater depth with encryption experts and may analyse it in detail in the future.

8. Comments on Chapter 6 – Interoperability of NI-ICS under the DMA

For interoperability to be effective, **Contributor 1** considers that some additional features would be needed, such as the establishment of a separate body that can quickly decide on relevant disputes between gatekeepers and companies that connect to them. A close support and monitoring of this reference offer process is also fundamental. According to **Contributor 1**, legislators should proactively oversee the development of technical details and the general terms and conditions of a reference offer, also involving European standardization bodies. The establishment of a multi-stakeholder process could also help to define minimum requirements for interfaces and subsequently monitor compliance to enable competition at different levels, e.g., on prices or quality of service.

ECTA believes that the requirements proposed by BEREC for the interoperability reference offers will be useful to the Commission in its task of implementing and enforcing the DMA. However, **ECTA** underlines that the digital platform market, while being an adjacent one and while enjoying similar characteristics with the ECN and ECS markets, presents its own technical complexity and peculiarities. Therefore, **ECTA** calls on BEREC to exercise caution with respect to the detailed elaboration and implementation of each of those minimum requirements identified by BEREC.

ETNO agrees with the proposed list of minimum requirements set in BEREC's report for an interoperability reference offer and considers them appropriate and complete. According to ETNO, such minimum requirements will ensure that all parties involved are aligned on the functionalities, standards, and the quality and security of the service, as well as on the procedures for billing, dispute resolution, etc.

With regards to gatekeeper reference offers, **Google** welcomes BEREC's clear recommendations in this regard. According to Google, in addition to the requirements outlined in the report, gatekeepers should also be required to include the following to ensure the effective implementation of Article 7 DMA: i) disclosure of the necessary intellectual property rights (IPRs) for interoperability; ii) spam and abuse protections; iii) support for implementers (who should have the possibility of seeking support from gatekeepers to resolve technical issues).

In **Google**'s view, the adoption of a common standard would greatly simplify a common understanding of the technical implementation for interoperability, harmonizing many of the requirements for reference offers. This would include elements such as the description of the service and specification of the relevant basic functionalities, the technical definition and documentation of relevant interfaces and standards, and data protection and security rules.

Meta welcomes BEREC's efforts to provide a degree of clarity on the reference offers that gatekeepers are to publish. Meta notes that the list of minimum criteria provided by BEREC is a useful starting point. However, according to **Meta**, not all items that might typically appear in a reference offer for telecoms services will be relevant for interoperability of NI-ICS as it is framed under the DMA, such as for instance SLAs or payment provisions. Likewise, it will be important to include provisions to maximise integrity and user safety given the unique properties of NI-ICS, including enforcement against persistent bad actors, as well as blocking both at the account level and at the app/integrator level for recurrent violations.

VZBV considers that, before designating undertakings as gatekeepers, the European Commission should draft an implementing act with regards to the technical design of the interoperability obligation under article 7 DMA. The technical design should not solely be conceived by the gatekeepers themselves, but together with an independent body or the legislator itself. **VZBV** believes that the implementing act should at least specify some fundamental characteristics of the interoperability framework, e.g., whether an open protocol must be used. Moreover, **VZBV** welcomes the establishment of a High-Level Group. According to **VZBV**, it will be a means to assess the implementation of the interoperability obligation under the DMA and identify upcoming needs to modify the interoperability obligation in the future.

BEREC's response:

BEREC notes that, in general, stakeholders consider that the set of minimum criteria referred to in the Report constitute a useful starting point in view of the requirement that gatekeepers publish a reference offer laying down the technical details and general terms and conditions of interoperability with its NI-ICS.

As noted by **Contributor 1** and as experience in the telecommunications field shows - the successful implementation of the terms and conditions set in the reference offers will be dependent upon close monitoring of the process, in particular with regards to ensuring equal access and non-discrimination. In this regard, it is recalled that on the basis of recital (64) of the DMA, BEREC may be called upon by the European Commission to determine whether the

specific content of the reference offer that the gatekeeper intends to implement or has implemented ensures interoperability for third-party providers of NI-ICS. Further details about BEREC's views on the reference offer have been added to the final Report.

In line with **Meta**'s comments, BEREC acknowledges that not all items that typically appear in a reference offer for number-based telecommunications service providers may be relevant for the fulfilment of the obligations set under the DMA. This has already been taken into account by BEREC when proposing the specific minimum requirements that could be part of the reference offer, and that are detailed in section 6.3 of the final Report. Regarding SLAs in particular, the introduction of this kind of arrangements has proven essential to ensure that regulated services are effectively provided with a specified level of quality.

BEREC also agrees with **Meta, Google** and **ECTA** that digital platforms present its own technical complexity and specific features, which may require that some provisions are crafted differently from the terms and conditions that generally apply to electronic communications operators. In this regard, the minimum requirements for an interoperability reference offer may also need to address elements such as spam and abuse protections, and enhanced support for implementers. These aspects are highlighted in BEREC's final Report.

Regarding **Google's** contribution concerning IPRs, this is a complex topic that needs to be assessed in the light of the specific circumstances of each case. In any event, it cannot be excluded that disclosure of (some) IPRs may be required, if this proves necessary to achieve interoperability.

Finally, the points raised by **VZBV** regarding the content and scope of the operational and technical arrangements that the European Commission may adopt for the purposes of ensuring interoperability of NI-ICS (article 46.1.c) of the DMA), or the potential setting of a specific body that would adjudicate on disputes between gatekeepers and providers requesting interoperability of NI-ICS, are beyond the scope of this report, which aims to provide some initial reflections of the way the provisions set in the DMA and in the EECC regarding interoperability could be applied.

9. Comments on Chapter 8 – Interplay between the DMA and the EECC

Contributor 1 agrees that the coherence between the DMA and the EECC should be ensured through the governance structures that are set in both instruments, with the European Commission playing a key role.

Contributor 2 welcomes BEREC's views on the governance structure, notably regarding the working mechanisms of the High-Level Group and its responsibilities in supporting the European Commission enforcement efforts under the DMA.

Meta agrees with BEREC that any further action on the basis of Article 61(2) EECC should be held off until the impact and evolution of the interoperability obligation in the DMA becomes clearer, and until there is a better understanding of how this obligation will play out in practice. Meta also welcomes BEREC's statements emphasising the need to closely work together with the European Commission on the subject of interoperability of NI-ICS and compliance with the DMA and EECC. Moreover, **Meta** welcomes BEREC's clarifications of the key differences between the interoperability obligation under the DMA and the EECC. However, Meta stresses that the interoperability provision in the DMA does not apply automatically, as a designated gatekeeper only needs to facilitate interoperability upon receiving a reasonable third party request.

BEREC's response:

BEREC takes note of the views of some of the respondents to the public consultation, highlighting the important role that BEREC may play in the implementation of article 7 of the DMA, in particular via its participation in the High-Level Group.

Concerning **Meta**'s contribution, BEREC agrees that Article 7(1) of the DMA indicates that a gatekeeper providing a NI-ICS shall provide the necessary technical interfaces or similar solutions that facilitate interoperability, *upon request* of another provider offering or intending to offer such services. This aspect is also mentioned in the report, at the beginning of section 6.2. BEREC also adapts the sentence under chapter 8 of the main report to delete the term "automatically".

10. Comments on Chapter 9 – Conclusions

Contributor 2 agrees that focusing on the interoperability of NI-ICS is the right first step in helping deliver the aims of the DMA, particularly when looking at the nature of the mobile market, which is divided into two large mobile ecosystems, namely iOS and Android. It believes that interoperability between the two ecosystems, particularly when it comes to NI-ICS, is a basic requirement. **Contributor 2** stands ready to support BEREC and the other members of the High-Level Group in its role in helping the European Commission to realise interoperability of NI-ICS under the DMA.

BEREC's response:

BEREC notes the opinion of **Contributor 2** on how important interoperability of NI-ICS is to reduce or even eliminate lock-in effects. BEREC furthermore notes that for several contributors this relates not only directly to competition among providers of NI-ICS, but also (upstream) competition, for example competition between providers of operating systems.

BEREC emphasizes the role of these interaction of layers in the internet value chain and the conclusions achieved on the BEREC report on the internet Ecosystem[6] on this topic.

11. Comments on Chapter 10 – Future work

Contributor 2 stands ready to support BEREC and the other members of the High-Level Group in its role in helping the European Commission to realise interoperability of NI-ICS under the DMA.

ECTA welcomes that BEREC will support the European Commission paving the way on technical details and general terms and conditions of the reference offers.

Meta welcomes BEREC's future work in areas such as the DMA and content application providers' interaction with the markets for ECNs and ECS. **Meta** particularly appreciates BEREC's technical input on the DMA given the immense challenges that designated gatekeepers will face in order to meet the DMA obligations, including having to provide interoperability to third parties on reasonable request while preserving the same level of security provided to users of the gatekeeper's service. **Meta** provides information about its investments to sustainably build and improve network infrastructure, as well as to the content delivery network, and encourages BEREC in the future to take into account the significant investments made by many CAPs.

BEREC's response:

BEREC welcomes the comments received on its future work, namely supporting: i) BEREC's input on the DMA within the High-Level Group and when needed to assist the European Commission on technical issues within its competences, like the NI-ICS providers' reference offer under Article 7 of the DMA, and ii) BEREC in-depth analysis on large CAPs increasingly investment in services and infrastructures. This work will be carried out in BEREC Report on the entry of large content and application providers into the markets for electronic communications networks and services, as included in BEREC work programme 2023.

BEREC thanks the information sent by **Meta** on its investments.

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[6] BoR (22) 167, BEREC Report on the Internet Ecosystem, 12-12-2022, see:
https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-on-the-internet-ecosystem