



# Public Consultation BoR (22) 187 Draft BEREC Report on Interoperability of Number- Independent Interpersonal Communication Services (NI-ICS)

Fields marked with \* are mandatory.

## General information

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During the 53rd BEREC plenary meeting (8 December 2022), the Board of Regulators approved the [Draft BEREC Report on interoperability of NI-ICS for public consultation](#).

The objectives of this report are to present the main economic features and the state of the market for some NI-ICS and to analyse i) the objectives, the scope and the “triggers” of interoperability obligations under both the DMA and the EECC, ii) the potential technical approaches and the implementation challenges to be taken into account when applying these measures, as well as iii) the interplay between the two regulatory frameworks. The current work focuses on messaging services, but other NI-ICS may be further analysed by BEREC in the future.

## Your details

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\* First Name and Surname

Mikolaj Barczentewicz

\* Email

[REDACTED]

Organisation name (in case you are replying on behalf of your organisation)

International Center for Law & Economics

\* Country of origin

Poland

Language of your contribution

English

I agree with the [personal data protection provisions](#).

## Practical details of the public consultation

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Stakeholders are invited to comment and provide their views on the different chapters of the draft report following its structure:

Executive summary

Chapter 1 - Introduction

Chapter 2 - NI-ICS and scope of the report

Chapter 3 - Economic and behavioral features of messaging services

Chapter 4 - The state of the market for messaging services

Chapter 5 - Interoperability measures

Chapter 6 - Interoperability of NI-ICS under the DMA

Chapter 7 - Interoperability of NI-ICS under the EECC

Chapter 8 - Interplay between the DMA and the EECC

Chapter 9 - Conclusions

Chapter 10 - Future work

Stakeholders may also upload a document as a part of their contribution, see below.

In order to facilitate the processing of the responses, the comments provided should clearly refer to certain sections/subsections/paragraphs of the draft report.

Contributions should preferably be sent in English.

Stakeholders may submit their contributions **by 03 February 2023 close of business**.

In accordance with the BEREC policy on public consultations, BEREC will publish all contributions and a summary of the contributions, respecting confidentiality requests. Any such requests should clearly indicate which information is considered confidential and be accompanied by a non-confidential version.

## Public consultation

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Please indicate comments on Executive summary and Chapter 1- Introduction

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Please indicate comments on Chapter 2 - NI-ICS and scope of the report

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Please indicate comments on Chapter 3 - Economic and behavioral features of messaging services

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Please indicate comments on Chapter 4 - The state of the market for messaging services

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Please indicate comments on Chapter 5 - Interoperability measures

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I am a Senior Lecturer (Associate Professor) in Law at the University of Surrey, Research Associate of the University of Oxford Centre for Technology and Global Affairs, Fellow of the Stanford Law School and University of Vienna Transatlantic Technology Law Forum, and Senior Scholar at the International Center for Law & Economics. I make this submission on behalf of the International Center for Law & Economics.

My remarks refer chiefly to the Draft Report's part 5.3.3. "Ensuring a high level of data protection and security" and its part 6.2. "Interoperability of NI-ICS under the DMA".

The Draft Report is to be commended for recognising the importance of the "privacy-by-design" approach in any implementations of interoperability mandates. The Report shows keen awareness of the technical difficulties in implementing NI-ICS interoperability in a way that protects user privacy and security.

In response to this issue, I would like to direct BEREC's attention to my short paper "Minimizing Privacy Risks in Regulating Digital Platforms: Interoperability in the EU DMA" published by Competition Policy International (2022), which I attach to this submission.

In this paper, I analyse some of the DMA's provision for interoperability mandates which may, if not implemented properly, have significant negative consequences for information privacy and security. I conclude that only one of those obligations — on the interoperability of messaging services — is accompanied by a potentially adequate safeguard: a requirement that any third-party service must offer at least the same level of user security as the original service. This is a very demanding standard, which may render the interoperability provision a dead letter for the foreseeable future, but which nonetheless offers welcome benefits from the consumer perspective. In this context,

I invite 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, which take precedence over the DMA and must inform its interpretation. There may be a temptation to water down the level of protection required under this provision, and under the EU Charter, but that would be both a policy mistake, and very likely a violation of EU law.

Please indicate comments on Chapter 6 - Interoperability of NI-ICS under the DMA

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In respect to the Report's part 6.2. "Interoperability of NI-ICS under the DMA", please refer to my comments to Chapter 5.

Please indicate comments on Chapter 7 - Interoperability of NI-ICS under the EECC

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Please indicate comments on Chapter 8 - Interplay between the DMA and the EECC

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Please indicate comments on Chapter 9 - Conclusions

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Please indicate comments on Chapter 10 - Future work

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Please specify which part of your response should be treated as confidential, if any.

THANK YOU FOR YOUR CONTRIBUTION

## Contact

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