

Public Consultation on the Draft BEREC Report on the regulation of Physical Infrastructure Access (PIA)

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General information

During the 61st BEREC plenary meeting (5 December 2024), the Board of Regulators has approved for public consultation the draft BEREC Report on the regulation of physical infrastructure access.

This draft BEREC report provides insights on the topic of regulation of physical infrastructure access for the deployment of fixed very high-capacity networks and is based on the analysis of data collected from 29 countries in Europe through an extensive questionnaire, during July 2024.

BEREC's research into the regulation of access to physical infrastructure elements is structured along the following themes: an overview of regulation concerning PIA (chapter 2), the approach the NRAs took when reviewing their nationally relevant markets as regards the treatment of PI elements (chapter 3), details on the data collected from non-telecommunications operators (chapter 4), provision of the remedies related to physical infrastructure imposed when SMP was found (chapter 5), measures undertaken meant to incentivize the rollout of VHCNs, including the interplay between asymmetric and symmetric regulation (chapter 6), as well as challenges related to PIA foreseen in the future (chapter 7). The preliminary conclusions of the work are presented in the last section of the draft report (chapter 8).

You are hereby invited to participate in the below public consultation on the draft report.

Your details

* Please select the language of your contribution:

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech
- ☐ Danish
- ☐ Dutch

- ☒ English
- ☐ Estonian
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- ☐ Slovenian
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* First name

* Surname

* Email

Organization name *(in case you are replying on behalf of your organization)*

Date

☒ I agree with the personal data protection provisions

Practical details of the public consultation

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

- Chapter1 Executive summary
- Chapter2 Overview of access to physical infrastructure in Europe
- Chapter3 Physical infrastructure access under ex ante market assessments
- Chapter4 Data collection for the market assessments
- Chapter5 Remedies
- Chapter6 Regulatory measures relating to physical infrastructure access for incentivizing VHCNs rollout
- Chapter7 Expectations for the future
- Chapter8 Conclusions

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 Wednesday, 19 February 2025, close of business**.

In accordance with the BEREC policy on public consultations, BEREC will publish all contributions and a summary of these contributions, respecting confidentiality requests. Any such request should clearly indicate which information is considered confidential. In case the contribution is partially deemed as confidential, a non-confidential version of the submission needs to be delivered as well.

Public consultation

Please indicate comments on the **Executive summary** :

5000 character(s) maximum

On the conclusions, especially on the statement within the report, that regarding the heterogeneity of prices and pricing practices as regards PIA, BEREC considers this as a topic where further harmonization can be envisaged, we would like to point out that further price harmonisation will be very difficult, as in some countries, especially in Germany, deployment costs are high, and if average costs for harmonisation will be taken into consideration, infrastructure investments in Germany could seriously suffer, which we want to avoid by all means.

Please indicate comments on the **Chapter2 "Overview of access to physical infrastructure in Europe"**:

5000 character(s) maximum

Please indicate comments on the **Chapter3 "Physical infrastructure access under ex ante market assessments"**:

5000 character(s) maximum

On point 3.1. Market assessment feedback

It is not clear which issues have been highlighted by BnetzA regarding the wholesale market for dedicated capacity on page 6 of the report.

Please indicate comments on the **Chapter4 "Data collection for the market assessments"**:

5000 character(s) maximum

Please indicate comments on the **Chapter5 "Remedies"**:

5000 character(s) maximum

Regarding the general overview of the SMP remedies, we believe that the collected data by 2 to maximum 3 NRA's is too low to obtain objectively representative findings.

On article 5.1. General overview of SMP remedies

We do not favor regulation of the entire physical network (e.g. including the backbone segment) within the scope of the ex ante regulation, because we do not want backhaul infrastructure to be included into ex-ante regulation, as we do not want additional regulation beyond empty duct access in this context. More specifically, we do not want regulation for the provision of fiber deployment for mobile 5&6G stations. However, BREKO strongly advocates for a service provider obligation for fixed network operators to being able to provide mobile offerings alongside fixed network services.

As BREKO, in the context of access regulation to physical infrastructure, we would like to highlight that fibre rollout is still in a relatively early developing status in Germany. This means, to close the gap to the states with more developed fibre network roll-out, a lot of investments in fiber infrastructure are still necessary. For this reason, any additional passive access to ducts for wholesale access seekers reduces investment incentives as first movers. Indeed, fibre network operators bear the deployment costs, whereas any access seeker can benefit from getting simple access. Accordingly, BEREK should consider possible remedies more flexibly. The result should be that virtual remedies should be also considered, as they are essential as well. On the other hand, we observe a strong market position of the incumbent, which has considerable SMP compared to other EU Member States. Therefore, it must be observed that the incumbent does not use his physical infrastructure in a manner to migrate the market power from the copper to fiber infrastructure. In this regard, the report figures out a variability in how PIA obligations are imposed, the manner of imposition, and the types of obligations applied to different entities. This variability highlights the complexities and challenges in establishing a uniform regulatory framework across different jurisdictions and raises the question of whether a "one size fits all" approach does justice to the diversity of the European telecommunications landscape.

Regarding 5.3.1. Access to ducts, we believe that in Germany the access prices regarding the incumbent are relatively low compared to other EU Member States, which we would like to highlight as we often face criticism on a national basis from resale operators believing those prices to be too high. However, it is

paramount for those prices to be fixed in a way to generate sufficient return on investment and enable network operators to reinvest into further fibre optic deployment.

Please indicate comments on the **Chapter6 "Regulatory measures relating to physical infrastructure access for incentivizing VHCNs rollout"**:

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6.1. Asymmetric regulation

On figure 3 within point 6.1., we want to highlight that the number of operators does not say anything about how many lines they build and how many customers they have.

Within the same section, when asked if the NRAs had made any significant changes to the PI access regime in the last 3 years due to the changing market circumstances or to a potential need to adapt because of changes in the competitive scenery, the report states that out of the 8 NRAs that responded to this question only 2 (AGCOM and ANACOM) stated that there were significant changes, which related to pricing.

As BREKO, we wonder why BNetzA given the circumstances on the German market did not answer this question.

On the point whether to clearly determine if symmetric regulation on PI elements and/or in wiring and cables could be sufficient to resolve the identified competition problems, the report states that it is not possible to argue that the need for asymmetric obligations on PI has been made redundant, as several countries find the SMP regime appropriate for establishing pricing obligations, for instance. We favor this analysis as BREKO and refer again to the necessity to take into consideration the national market situations, especially regarding the position of a strong SMP operator which necessitates asymmetrical regulation. However, by supporting deployment of fibre infrastructure, we recommend a stronger view on virtual remedies instead of enabling further physical infrastructure access.

On point 6.3. Interplay between symmetrical and asymmetrical regulation, the report states that, concerning what would be missing from the regulatory scenery if ex ante regulation was lifted, some of the main issues highlighted by NRAs include: - A decreased level of transparency in comparison to the availability of the online tool provided by the incumbent. In the current status, in Germany, the incumbent is not obliged to open his own data platform. Instead, all network operators have to deliver infrastructure data as a symmetrical obligation. We currently experience that the incumbent does not properly deliver the data as it is obliged. Therefore, we are concerned that even less data will be provided by the incumbent, in case the guidelines are lifted in this case. Here, we can underline the relevance of this finding as we face the same difficulties of accessing information from the incumbent in this context.

Please indicate comments on the **Chapter7 "Expectations for the future"**:

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On Chapter 7, expectations for the future, the report states that as regards an overview of the broad challenges identified by the NRAs in their answers, most of NRAs highlighted difficulties that they had with properly defining a PIA that would be regulated adequately. From BREKO's point of view, definition of a PIA for an adequate regulation should only include empty duct access and not dark fibre, which is not passive infrastructure in Germany.

Beyond, we would like to strengthen ARCEP's recommendation made in this chapter, to establish a more detailed monitoring of the nondiscrimination obligations. This is in Germany particularly relevant with regard to the copper to fibre migration and ultimately to avoid transferring SMP from the legacy copper onto the fibre market.

On point 7.2. Operational and legal challenges, we fully support ANACOM view in considering that the GIA is

expected not to be sufficient to address the business protection of the alternative VHCN operators that need to have access to SMP PI to host their networks.

Please indicate comments on the Chapter8 "Conclusions":

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On the conclusions, especially on the statement within the report, that regarding the heterogeneity of prices and pricing practices as regards PIA, BEREC considers this as a topic where further harmonization can be envisaged, we would like to point out that further price harmonisation will be very difficult, as in some countries, especially in Germany, deployment costs are high, and if average costs for harmonisation will be taken into consideration, infrastructure investments in Germany could seriously suffer, which we want to avoid by all means.

Please upload your file(s), if any:

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

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Thank you for your participation in this public consultation!

Contact

