

Body of European Regulators for Electronic Communications
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via the EU survey

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Subject: Contribution to the public consultation on the draft BEREC Report on Switching and Termination of contracts (BoR (25) 183)

Dear Sir or Madam,

spusu thanks you for the opportunity to take part in the public consultation on the draft BEREC Report on Switching and Termination of contracts (BoR (25) 183).

For more than ten years now, with more than 700,000 SIM cards in circulation and a customer growth rate of about five percent per month, the mobile phone brand spusu of Mass Response Service GmbH has been a fixed factor on the Austrian market with its simple, human, and fair mobile phone offer. Regional value creation is firmly rooted at spusu: As a sustainably growing mobile phone provider, spusu is always creating new and highly qualified jobs, and no service or development work is outsourced, but everything is developed in-house and in Austria - a unique selling point among mobile phone providers on the Austrian market, just like the ownership structure, which has no foreign holdings but is entirely in Austrian hands. spusu will also enter the mobile communications market in Germany in 2026.

Our statement specifically addresses the disincentives to provider switching or number portability in Germany and Austria:

1. Germany: Absence of Automatic Contract Termination on the Porting Date

Article 106(6) EEC requires that the end-users' contracts with the transferring provider shall be terminated automatically upon conclusion of the switching process. This automatism is fundamental for preventing contractual disputes and ensuring a seamless one-stop-shop experience.

In Germany, however, this obligation has not been transposed into national law. Instead, the termination of the existing contract continues to rely on a second action by the customer. The porting process does not automatically trigger the end of the previous contractual relationship. This situation directly contradicts the EEC switching model and creates repeated practical issues, including:

- protracted dual obligations of the customer,
- reduced confidence in switching procedures,

- higher switching barriers,
- hindering number portability as a central factor for competition

— all of which are explicitly addressed in BEREC's own findings.

This divergence is inconsistent with the EECC's core principles, notably Recital (277), which emphasises that end-users must be able to switch providers without service interruption and without administrative burdens that discourage competition. Furthermore, number portability is considered one of the key factors for consumers and effective competition in competitive electronic communications markets (recitals 278 and 281).

Given that the draft report already highlights Germany as a Member State relying on self-regulatory arrangements, we strongly encourage BEREC to explicitly note that Germany has not implemented the automatic contract termination requirement and that this gap materially undermines the functioning of the EU switching framework.

2. Austria: Contract Ends on Porting Date, but Notice Periods Are Charged Retroactively

Austria has formally implemented the EECC requirement that contracts must end automatically on the switching/porting date. In practice, however, providers regularly apply the following mechanism:

- The contract is deemed to end on the porting date,
- but the porting date is also interpreted as the date on which the customer gave termination notice,
- resulting in charging of the contractual notice period, and thus
- generating additional charges after the contract has already ended.

This means that, ex lege the intention to terminate is postponed to a much later date, even though the customer had already made this decision to terminate his contract much earlier, namely when they decided to port their number.

This practice effectively nullifies the substantive intent of Article 106(6) EECC. Although the contract formally terminates at porting, customers remain financially liable for a notice period that should no longer apply in the context of switching.

This practice is reflected in the implementation of the porting process at regulatory level by the Austrian NRA, which in § 4 (1) 4. Nummernübertragungsverordnung 2022 interprets the successful completion of the number transfer as the date customer first gave notice regarding the mobile voice communication service provided on the number to be transferred.

This model is incompatible with the EECC for the following reasons:

- **Contradiction with Recital (277):**
Consumers must be able to change providers without facing legal or practical obstacles.
- **Contradiction with Recital (281):**
The switching process must ensure a seamless, one-stop-shop transition without contractual impediments that reduce its attractiveness.
- **Conflict with the prohibition of switching deterrents:**
Article 105(1) EECC explicitly requires that contract termination procedures must not act as a disincentive to switching. A model that generates "residual charges" after the switching date is a clear economic disincentive.
- **Misalignment with the EECC switching logic:**

If the contract terminates on the porting date, the notice period can no longer be invoked. Notice periods are relevant only when a customer actively gives notice — not when the EECC mandates automatic termination.

This Austrian regulatory practice generates consumer confusion, undermines trust in switching procedures, and contradicts the competitive objectives of the EECC framework. In fact, this makes the situation more disadvantageous for consumers in Austria than before the EECC was implemented, as consumers are now being charged for an additional month.

We therefore recommend that BEREC more explicitly address this type of implementation gap as an example of formal compliance but material divergence from EECC intent, which results in tangible consumer harm.

3. Request for Clarification in the Final Report


In light of the above, we respectfully ask BEREC to:

- Recognise that deviations from the EECC's automatic-termination principle continue to exist (e.g., Germany), with measurable negative impact on consumers.
- Clarify that application of notice periods after the porting date (e.g., Austria) constitutes a prohibited switching disincentive under Articles 105 and 106 EECC.
- Strengthen the recommendation that Member States must ensure that automatic termination is truly automatic — both legally and financially — without residual obligations for consumers.

Such clarifications would significantly support harmonised, consumer-centric switching processes across Member States and reduce the risk of national interpretations that undermine the effectiveness of the EECC switching regime.

spusu asks for consideration of the above comments, concerns and suggestions.

Kind regards


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