

BEREC's position on end-users' rights of the DNA

Key messages in relation to the end-user rights

- The DNA proposal foresees sectoral end-user protection, acknowledging that the provisions on end-user rights are mostly still fit for purpose. Notwithstanding, updates and simplification are proposed.
- (On maximum harmonisation) BEREC is concerned that the DNA proposal, in its current form, may not sufficiently ensure effective national enforcement, legal certainty and continuity of established national well-functioning frameworks, potentially leading to regulatory gaps and inconsistencies in the level of end-user protection across Member States. BEREC therefore considers that supplementing the DNA text with further detail and/or maintaining a clearly defined degree of national flexibility where the DNA does not provide sufficiently detailed and operational rules at the EU level remains crucial to protecting European citizens.
- (Categories of end-user) BEREC is concerned that reducing mandatory protections for certain categories of end-users and expanding waivable rights could weaken legal certainty and protections for end-users with bargaining power comparable to consumers.
- (Contractual terms and transparency) BEREC considers that Member States should retain sufficient powers to specify information, transparency and contract-related requirements, including contract change notifications, in-contract price indexation clauses, if allowed, and commitment periods, in order to ensure informed consumer choice and legal certainty across the Single Market.
- (Switching and number portability) BEREC stresses that harmonisation should remain proportionate to the practical cross-border relevance of the services concerned. BEREC also underlines the importance of maintaining NRA competence and clearly distinguishing between switching and number portability procedures.
- (Fraudulent activities) BEREC recommends a more streamlined framework for combating fraudulent activities, ensuring that harmonisation measures do not limit NRAs' ability to take swift and proportionate action against emerging threats while reducing administrative complexity and improving the overall effectiveness of the framework.
- (Emergency communications) BEREC suggests that the DNA should be clarified to ensure legal certainty and a coherent Single Market approach to emergency communications by aligning terminology and provider responsibilities, preserving Member States' powers granting access to emergency communications and public warning systems, and ensuring clear rules on interoperability, transparency and device/network compatibility, also in the context of legacy network switch-off and cross-border functionality.
- (Privacy) BEREC recommends clarifying the division of enforcement responsibilities between NRAs (or competent authorities, where relevant) and data protection authorities, supported by cooperation mechanisms to avoid overlap and ensure legal certainty, and clarifying the link between privacy provisions and measures against fraudulent activities while considering codification of relevant best practices.
- (Dispute resolution) BEREC recommends clarifying Article explicitly preserving Member States' ability to extend dispute resolution mechanisms to all end-users and a broader (clearer) range of disputes, and extending clear, transparent and efficient complaint-handling obligations to all relevant electronic communications service providers.
- (NRAs and BEREC role) BEREC recommends clearer allocation of responsibilities for end-user protection under the DNA, ensuring that NRAs have effective supervisory and enforcement powers and that end-user rights continue to receive dedicated regulatory focus within the framework.

Detailed assessment and proposals for each aspect are in the sub-chapters of this paper.

**BEREC's position on end-users' rights
(Maximum harmonisation, national flexibility
and general authorisation) of the DNA**

Commission proposal - Maximum harmonisation, national flexibility and general authorisation

The DNA proposal states that the provisions on end-user rights are mostly still fit for purpose.¹ Notwithstanding, updates and simplification are cited as matters that “could” benefit both consumers and providers. The stated intention is to maintain protections and not to deregulate. The choice of a Regulation as the legal instrument for the proposed DNA is aimed at removing single market barriers, and it is said to be limited to only those areas covered by the proposal. The proposal to remove the ability to attach consumer protection conditions to the general authorisation is also relevant to the issue of end-user rights.

BEREC’s assessment:

BEREC welcomes keeping sector-specific end-user protection rules, as horizontal regulation cannot address all the sector-specific issues that may arise, especially for vulnerable consumers and end-users, particularly micro and small enterprises, not-for-profit organisations and, in some cases, small and medium enterprises. The **sector-specific rules have proven to be necessary and effective** in safeguarding end-users’ rights. This strengthens transparency and security and end-users’ trust in services.

In its impact assessment, the EC has identified the added value of EU sector-specific end-user protections in enabling consumers to “profit from competition”. It also references the impact of these protections “on the conditions to do business”. At times, these are presented as competing, rather than complementary, factors. How they are balanced is critical to ensuring the ongoing effectiveness of the rights of all end-users, including those with disabilities. The achievement of the single market cannot be at the expense of end-users.

The stated intentions to “simplify” and “streamline” regulation in this area by removing “fragmentation”² and “gold-plating” would likely involve a reduction in the level of end-user protection. It simply is not possible to “maintain” the level of protection, “simplify”, and “remove fragmentation” all at the same time. The loss of end-user protections at the national level (some of which may be very long-standing in nature) will give rise to the need to carry out an extensive analysis of national end-user protections with a view to revoking (whether in whole or in part) any measures that breach the maximum harmonisation requirements of the DNA Regulation.³ On this point, and in contrast, BEREC welcomes the retention of a specific provision in Article 111(1) for the specification of requirements at the national level to ensure equivalence of access and choice for end-users with disabilities. BEREC generally welcomes the specific accessibility requirements provided for in the DNA, including in respect of emergency communications. However, BEREC find it appropriate to elaborate Article 111 with alignment to the minimum requirements on consumer electronic communication services listed in Directive (EU) 2019/882.

The choice of a Regulation as the legal instrument for the proposed DNA is aimed at removing single market barriers. However, there is not sufficient substantiation of (i) the specific barriers, (ii) the specific protection required to be removed, (iii) how removing that protection will remove an identified barrier, or (iv) why removing the barrier is overall preferable to the loss of the protection. Further clarity is needed in respect to the rationale behind certain proposed provisions relating to end-user rights and the proposal to remove specific conditions on consumer protection from the list of general authorisation conditions. Article 9(4) of the DNA

¹ Page 9 of the proposal. The proposal in general speaks highly of the existing level of end-user protection in the electronic communications sector for choice, price and quality of service. The current framework is said to ensure consumer choice and competitive markets. The EECC end-user rights ensure “*solid consumer protection and empower consumers*”.

² The reasons for the fragmentation or any benefits it brings (or problems it addresses) aren’t addressed in detail in the proposal. EU action is justified based on the stated need to reduce fragmentation of end-user protection rules. This is said to give rise to administrative costs for cross-border service providers and to hinder the development of innovative services, resulting in an uneven and sub-optimal level of consumer protection across the EU.

³ While the EECC end-user provisions had a maximum harmonisation approach, their effectiveness is said to be reduced by reason of the possibility in certain articles for the making of national rules. “This can present a risk of reducing the EU added value and fragmenting the overall market” (citing Letta at page 125).

does not make the right to provide electronic communications networks and services subject to consumer protection rules specific to the sector in the same manner as was provided for in Article 13 (and Annex I) EECC. **Proposals should benefit consumers without unduly burdening providers**; if they do not, or there is doubt about their overall benefit, they should be reconsidered.

Harmonisation is stated to be “*limited to the areas the proposal covers*”.⁴ The precise meaning of this latter statement (including the “areas” the proposal covers) is unclear, particularly given that the proposal frequently uses specific and express maximum harmonisation provisions.⁵ BEREC would welcome clarity that the maximum harmonisation provisions of the DNA do not mean that Member States are prevented from legislating generally in respect of an issue addressed by the Article subject matter unless the issue is specifically and precisely regulated by the DNA.

While there is a clear move to centralised end-user rules, where existing national end-user protections stand to be lost, there is no proposed replacement, even in circumstances where the general obligation is retained by the DNA. In those cases, where the Commission may adopt implementing acts, there are no dates by which they must be adopted, creating the potential for significant periods of legal uncertainty following the entry into force of the DNA and until the time of their adoption. This is compounded by the absence of saving and transitional provisions.

The reliance on non-binding tools combined with reduced national flexibility may lead to a form of formal harmonisation without real convergence, ultimately affecting both the functioning of the Single Market and the end-user experience.

A common “EU-wide vision” may be the aim, but until it manifests, national issues will remain. If necessary measures can no longer be implemented at a national level, they must be addressed in an appropriate manner through the DNA itself. Unless the loss of protections that will result from the full harmonisation brought about by the DNA is fully addressed and a ‘cliff edge’ avoided, the net outcome may be a negative one for end-users. BEREC has also previously advocated for some flexibility at the Member State level to take account of national market circumstances and to enable prompt reaction to specific market developments⁶.

Alternative proposals:

First, BEREC considers that the proposal should be supported by detailed evidence clearly explaining how the move to a directly applicable and more prescriptive regulation would improve the functioning of the Single Market, without undermining effective national enforcement or established practices. BEREC is of the view that there is an absence of such justification; hence, there is a risk that the proposed changes may reduce regulatory effectiveness and legal certainty rather than delivering the intended simplification and harmonisation objectives.

The flexibility BEREC has advocated for could be addressed through the following actions (whether taken separately or together):

1. Considering to include putting greater detail into the DNA, which is particularly important given that, in its current draft form, it appears too indeterminate. In this regard, while many obligations previously placed on Member States are now

⁴ Page 7 of the proposal.

⁵ For example, Article 95(7), Article 96(2), Article 97(6), Article 98(4), Article 100(7), Article 112(4).

⁶ BoR (24) 180 BEREC Opinion on the market and technological developments and on their impact on the application of rights of end users in the EECC (Article 123), 5.12.2024, see: <https://www.berec.europa.eu/en/all-documents/berec/opinions/berec-opinion-on-the-market-and-technological-developments-and-on-their-impact-on-the-application-of-rights-of-end-users-in-the-eecc-article-123>.

addressed directly to providers, the level of national detail that, pursuant to Article 288, paragraph 3, of the Treaty on the functioning of the European Union, has enabled these general principles to function effectively would be missing.

2. By continuing to afford Member States the ability to legislate on specific matters. This would bring clarity, provide the flexibility to address national issues arising, while also addressing any 'fragmentation' issues by confining the flexibility afforded appropriately. The areas could usefully be identified, for example, in **an Annex for legal certainty**. In order to ensure a high level of consumer protection, BEREC considers it necessary to clarify that Member States may maintain existing national end-user protection measures which do not fall fully within the scope of the DNA. It should further be clarified that Member States may adopt or maintain additional national measures that are necessary to respond swiftly to evolving circumstances and market developments, provided that such measures are compatible with Union law. Moreover, Member States should be permitted to maintain or adopt implementing rules specifying in greater detail the technical implementation of certain requirements laid down in the DNA.
3. A 'cliff edge' for existing end-user protections could also be avoided through appropriate saving and/or transitional provisions. This proposal is made in a general way, however it has even greater force where the national measures to be retained and permitted relate to protections that feature in both the EECC and the draft DNA. Furthermore, when assessing impacts on end-user protection, the DNA should be compared not directly with the EECC, but with existing national implementing frameworks, which would be replaced by a directly applicable instrument.

In addition, BEREC considers that, where national flexibility is reduced, this should only occur to the extent that the DNA provides a sufficiently detailed and operational framework at EU level. Otherwise, preserving a clearly defined margin for Member States remains essential to avoid regulatory gaps, ensure effective enforcement and maintain a consistent level of end-user protection across Member States.

BEREC's position on end-users' right (categories of end-user) of the DNA

Commission proposal on categories of end-users

The proposal for the DNA introduces a more “consumer-centric” structure compared to the broader “end-user” approach of the EECC, notably narrowing the categories of beneficiaries for several key provisions. While the EECC generally extended protections to consumers, microenterprises⁷, small enterprises⁸ and not-for-profit organisations, and in some cases to all end-users, including large businesses, the DNA adopts a more selective approach, excluding certain categories (in particular small enterprises) from parts of the framework.

BEREC’s assessment:

Under Article 99 of the DNA, small and medium-sized enterprises (SMEs) are granted the right to contract termination without penalty (Article 97) but are notably excluded from the mandatory contract information requirements of Article 95 (1), Article 97(1), Article 98(1) and Article 98(3). Article 99 of the DNA narrows the scope of protection for SMEs and shifts in some cases from mandatory to opt-out provisions.

The dispositive solution risks increasing misleading sales practices in these areas, as there have been cases where SMEs opt out of their protection without knowing it. SMEs have a similar bargaining position as consumers and therefore need similar protection, especially since micro- and small enterprises are not covered by consumer protection horizontal legislation.

Given this, DNA narrows the scope of protection for categories of end-users who have protection under the EECC, potentially weakening safeguards for vulnerable business users.

Article 97(2), Article 97(3) and Article 97(5) will also apply to end-users that are microenterprises, small and medium-sized enterprises or not-for-profit organisations, unless they have explicitly agreed to waive all or parts of the rights laid down in those provisions. So, additional provisions set out a new category of medium-sized enterprises, which adds more complexity to the provisions and runs contrary to the stated aim of simplification. In addition, this opportunity should be used to clarify that any waiver of rights must be genuine. In practice, some providers have been known to have made the conclusion of a contract contingent upon such a waiver.

Alternative proposal:

In BEREC’s view, it should be clearly assessed whether the reduction of mandatory protections for certain categories of business end-users, together with the introduction of additional user categories and waivable rights, is consistent with the objectives of legal certainty and a high level of end-user protection. BEREC advocates that end-user categories with similar bargaining power should benefit from a level of protection equivalent to the protection that is provided to consumers, as the need for protection among these end-users is still considered comparable, given their generally limited ability to effectively assess or negotiate contractual terms. Where the proposed approach risks regulatory fragmentation or weakens safeguards for vulnerable end-user types, policymakers are invited to reconsider these elements in light of the internal market objectives.

⁷ Under EU Law, microenterprises count less than 10 employees and an annual turnover below €2 million.

⁸ Small enterprises have fewer than 50 employees and an annual turnover below €10m.

**BEREC's position on end-users' rights
(contractual terms and transparency) of the
DNA**

Commission proposal on contractual terms and transparency:

In the Commission's view, the provisions on end-user rights, stemming from EECC, are mostly still fit for purpose, and there must be continued focus on their enforcement and implementation. At the same time, some updates and simplification could benefit both consumers and providers, for example, the streamlining of contractual information (Article 102 EECC) and the harmonisation at EU level of some aspects, such as parameters for the quality of services (Article 104 EECC). Articles 95 to 98 of the proposed DNA establish harmonised transparency and consumer protection obligations for providers of electronic communications services.

Article 95 sets out pre-contractual information requirements, including the obligation to provide clear and accessible information in accordance with Annex III and a free contract summary outlining the essential elements of the service. These elements form an integral part of the contract and may not be unilaterally amended. The Article also introduces measures enabling consumers to monitor and control usage and costs, and provides for full harmonisation in this field. There is a limitation of the material scope of Article 95 when compared to Article 102 of the EECC⁹: This also results in a reduced protection of end-users.

Article 96 indicates that, where services are offered subject to terms and conditions, providers are expected to publish the relevant information in a clear, comprehensive and machine-readable manner, in accessible formats for end-users with disabilities, and to keep such information up to date.

Article 97 addresses contract duration and termination, noting that contractual conditions should not discourage switching providers. It limits commitment periods, outlines consumer rights in cases of automatic renewal and contractual changes, and refers to termination rights in the event of non-conformity of service performance, as well as principles on compensation in specific cases.

Article 98 lays down consumer protection rules for bundled offers, ensuring that protections apply to all bundled elements. It provides that the right to terminate one element due to non-conformity or failure to supply extends to the entire bundle and establishes full harmonisation by preventing divergent national rules.

BEREC's assessment:

While BEREC welcomes the maintenance of sectoral legislation, the increased level of harmonisation for contractual terms and transparency raises concerns.

As regards contractual arrangements, BEREC notes that the regulation does not sufficiently specify the rights of end-users in situations where the provider fails to activate the service within the agreed or expected timeframe. In the absence of clearly defined activation deadlines, end-users may be required to wait for a prolonged period before the service becomes operational, without having an effective possibility to withdraw from the contract because they formally consented to it.

Moreover, with respect to contract termination, and as is currently the case under the EECC, the DNA provides explicit rules only in relation to contracts that are automatically prolonged, while the applicable termination deadlines or other contractual modifications for other types of contracts lead to legal uncertainty.

Regarding the maximum commitment period, Article 97(1) of the draft DNA states that the maximum commitment period for contracts is 24 months. Member States that, before the DNA enters into force, have legislated for shorter commitment periods than 24 months may retain such national legislation. For Member States that have not adopted such legislation, the possibility of subsequently introducing shorter commitment periods is excluded. Commitment periods as long as 24 months give rise to undesirable consequences. Misleading sales

⁹ the EECC applies to providers of publicly available electronic communications services other than transmission services used for the provision of machine-to-machine services, while Article 95 of the draft DNA applies only to providers of internet access services or of publicly available interpersonal communications services.

practises are often combined with long commitment periods, which leads to lock-in effects for end-users. Since Member States that already have adopted shorter commitment periods may retain such provisions, it should not be considered as opposed to the idea of harmonisation to allow other Member States to legislate to that effect as well.

BEREC notes that the DNA does not address the issue of early termination fees. In particular, the Regulation does not establish rules to ensure that such fees are reasonable, proportionate and linked to the actual costs incurred by providers, nor does it foresee the development of EU-level guidelines to facilitate consistent application across Member States.

Regarding the notification of the contractual change, BEREC observes that while Article 97(3) mandates that providers notify consumers (a narrowing of the prior application to all end-users) of changes in a "clear and comprehensible manner on a durable medium," the Regulation lacks specific provisions regarding the format of such notices¹⁰. Under the EECC, while the standard window for exercising the right to terminate was one month, Member States have the discretion to extend that period by up to three months. The proposal for the DNA mandates that the right to terminate must be exercisable "within one month after notification". By removing the possibility to extend that period up to three months, it restricts Member States from providing a longer decision window, and this creates a short timeframe that may be insufficient for consumers who do not immediately see or process a notice sent via a durable medium. It also leaves open the possibility that the termination period and the notification period may not be coterminous.

BEREC considers that additional protection could be warranted in situations where contractual modifications introduced by providers have a negative impact on end-users, particularly those who are tied to a minimum contractual period¹¹.

Regarding transparency, NRAs are no longer granted the ability to specify additional requirements regarding the form in which information is to be published under Article 96. Also, Member States are no longer required to ensure the existence of the independent comparison tool; in those Member States, where it has been established, the challenges with information provision to that tool could emerge.

Furthermore, the scope of Article 94 in the DNA is limited to IAS, while a solid basis for the publication of the observance of quality of service parameters for all relevant ECS Services, including ICS Services, is omitted. BEREC also notes that Article 105 EECC obligation to annually inform consumers about best tariffs is removed in the DNA.

BEREC is concerned about potential overlaps between the DNA and the Consumer Rights Directive regarding transparency obligations, which may create legal uncertainty and implementation challenges¹².

BEREC further observes that the DNA lacks sufficiently detailed provisions on transparency with regard to price changes during the contractual period, such as those resulting from the application of price indexation mechanisms. The issue of in-contract price increase (ICPI) clauses is not addressed in the DNA articles. BEREC has previously noted problems arising from use of ICPI clauses.¹³ The proposal misses an opportunity to correct imbalances associated with the use of these clauses. The sole reference to these clauses is simply to note

¹⁰ The risk is that communication of changes is not clear and/or comprehensible (e.g. where the proposed contract change is contained in an invoice, or buried deep within marketing information or other non-relevant information, making it difficult to notice or find, and meaning it is never actually considered by the end-user), where Member States have prescribed the form of notifications.

¹¹ For example, in the case of bundled contracts, a provider may introduce a price increase during the minimum contractual period. While the end-user formally retains the right to terminate the contract without penalty, this right may be undermined in practice where the terminal equipment has already been used and cannot be returned. In such cases, the end-user may still be required to pay the remaining *pro rata temporis* value of the terminal equipment, resulting in negative financial consequences and effectively limiting the ability to choose provider or services.

¹² Ibid footnote 6.

¹³ Ibid footnote 6.

the established CJEU position and the reference is potentially unhelpful given that it does not engage with any of the negative end-user aspects of these clauses.

However, if indexation is to be allowed, the conditions for its use should be clearly specified, including the applicable period, the permitted level of indexation, and where this information must be included in the contractual documentation.

Furthermore, Article 95(5) requires that end-users are informed about the consumption of their contracted service packages. However, BEREC notes that it does not establish corresponding obligations for providers to implement preventive measures aimed at avoiding excessive expenditure or so-called “bill shock”. In contrast, the Roaming Regulation includes specific safeguards to protect consumers from excessive charges when using roaming services. Comparable mechanisms to address unintentional or excessive consumption of domestic services are not expressly provided or are missing in the DNA.

In addition, this provision does not foresee the possibility for end-users to set financial limits or volume limits of calls to specific categories of numbers, such as international numbers or for data used on the home network¹⁴, which could represent an effective and proportionate consumer protection measure.

Finally, while the contractual provisions of the DNA address obligations relating to the bundles coupled with terminal equipment and the possibility of its continued use after contract termination, BEREC considers that these rules could usefully be extended to cover other types of equipment purchased by end-users in a bundle for the use of electronic communications services in order to ensure a more comprehensive and coherent level of consumer protection.

Alternative proposals:

BEREC proposes:

1. to ensure that **NRAs should not lose the ability to specify transparency and quality of service requirements**, as they are in a particularly qualified position to identify such a need, in the first place, but also the specific issues faced by end-users in their respective Member States that would need to be addressed. If NRAs are to lose these powers, additional specifications seem necessary in order to prevent, for example, providers from publishing only generic information on terms and conditions applicable across all offers while directing consumers to other media/documents in order to understand the specifics of a particular offer they are interested in (such as price, duration of commitment period, communications volumes, etc.), as is the practice of some providers.
2. **Contract change notifications are a key engagement** between providers and their customers – it is critical that they serve their intended purpose and that Member States can specifically prescribe their format and content. Alternatively, this must be specified in the DNA itself. This should include the possibility to require enhanced safeguards where contractual modifications negatively affect end-users, particularly those bound by an ongoing minimum contractual period, including clear information on termination rights and any associated charges.
3. Correct imbalances associated with the use of **in-contract price increase** clauses.
4. Ensure the clear possibility to establish shorter contract commitment periods.
5. Clarify Member States rights to specify information requirements for contracts. These clarifications are necessary to ensure that the objective of the effective functioning of the Single Market is achieved in practice and does not result in a reduction of effective end-user protection or legal certainty, nor in practices that undermine informed consumer choice across Member States.

¹⁴ Similarly to Roaming Regulation (EU) 2022/612.

BEREC's position on end-users' rights (switching and number portability) of the DNA

Commission proposal on switching and number portability

Article 100 DNA introduces no major changes to the core switching and porting rights, largely preserving the user protection framework set out in Article 106 EECC, including key safeguards such as the limitation of service interruption to one working day and the right to retain numbers after contract termination. The main development lies in the governance framework, as BEREC is mandated to adopt, within 12 months, guidelines specifying the details of the switching and porting processes, which should account for technical feasibility, maintain continuity and include compensation mechanisms for end-users in cases of delays or abuse. At the same time, NRAs are still mandated to establish the details of the switching and porting process, taking into account the aforementioned BEREC guidelines, and implementation remains primarily at the national level, with NRAs retaining responsibility for the organisation and enforcement of these processes. Member States may also still adopt or maintain national rules on compensation.

BEREC's assessment:

BEREC welcomes the objective of maintaining a high level of end-user protection in switching and number portability, building on the EECC framework. The maintenance of key safeguards ensures legal certainty and a seamless user experience, supported by the receiving provider-led process and automatic contract termination.

Regarding the governance aspect, Article 115(1)(k) and (l) of the draft DNA formally assign the tasks of "ensuring number portability" and "managing numbering plans" to NRAs. However, the DNA recitals frequently refer to "other competent authorities" when discussing the management of these resources. This discrepancy creates legal uncertainty regarding whether an NRA or a different national body (e.g., a consumer protection authority) has the ultimate authority to impose penalties for porting and switching failures. BEREC notes that simplification of legislative text does not inherently lead to a simplified regulatory environment. Also, BEREC notes that Article 115(1)(k) of the draft DNA lacks a reference to switching, solely stating „ensuring number portability”, which appears in contrast to the fact that Article 100 focuses on both switching and number portability in tandem.

In this context, BEREC is mandated to adopt guidelines specifying the details of the switching and porting processes. While these guidelines may support greater coordination, their non-binding nature, combined with the presence of functional and long-standing, (albeit diverse) national and often industry-led implementation models which exists for some for more than 20 years and are now well-known by end users, means that achieving real convergence will remain challenging. Moreover, the need for further convergence is in itself unclear, given that switching and porting processes reflect national market realities and mature, well-functioning domestic arrangements. NRAs retain competence for the detailed design and implementation of these processes, resulting in significant diversity of operational models, technical solutions and procedures.

Alternative proposals:

To address these challenges, a more outcome-oriented approach could be considered, focusing on ensuring equivalent end-user experiences across Member States rather than full procedural harmonisation. This could involve defining minimum common principles or standards for key elements such as switching timelines, validation processes and compensation mechanisms, while preserving flexibility in national implementation.

In this respect, BEREC acknowledges that persistent divergences in switching and porting processes may have a constraining effect on the functioning of the Single Market, particularly for providers that operate across multiple jurisdictions, and it is recognised that this could lead to unequal user experiences and in turn discourage such cross-border provision of services and competition. Nevertheless, it is important to stress the fact that where switching and porting can only take place within the boundaries of the Member States' territory, then it would be of

limited value to pursue harmonisation, given different realities and specificities across Member States.

BEREC also suggests that:

1. Article 115(1)(k) should not only include ensuring **number portability, but switching** as well;
2. The term "competent authority" should be replaced with NRA throughout Article 100 to align with Article 115(1)(k), as the technical expertise is required for managing numbering and switching resources.
3. Since the two different procedures (IAS and NP) in Article 100 in practice are two different types of services and the switching and porting processes work in different ways, these **two procedures** would probably benefit from being placed in two separate articles.

BEREC's position on end-users' rights (fraudulent activities) of the DNA

Commission proposal on fraudulent activities

The chapter 'Facilities and functionalities for end-users' of Part VI of the proposal for the DNA includes measures against fraudulent activities reflecting the technology evolution and new challenges to end-user protection in this regard (Article 103). As stated in recital 284, end-users are increasingly vulnerable to evolving fraudulent activities carried out through interpersonal communications services; hence, several Member States have introduced national measures to combat evolving fraud schemes. It was underlined that those measures remain uncoordinated and reflect primarily national perspectives, enabling fraudsters to shift their activities to jurisdictions where such practices are not effectively addressed.

BEREC's assessment:

Provisions addressing numbering misuse, fraud and fraudulent activities are very much welcomed.

Proactive and preventive measures for end-user protection. BEREC welcomes the inclusion of measures dedicated to combating fraud and numbering misuse in the DNA proposal, particularly under Articles 103 and 52(2). While the provisions in Article 52 maintain the core objectives of Article 97 of the EECC, it represents a significant advancement by incorporating proactive and **preventive measures** by blocking access to numbers or services. This shift is essential because fraudsters adapt their schemes rapidly across borders.

Also, by explicitly empowering NRAs to mandate preventive blocking of numbers or services, the DNA addresses long-standing concerns from stakeholders who previously felt legally restricted from taking timely action to halt ongoing abuses. However, the mandate referred to is dependent upon a valid number (from a numbering plan) and so where the number is itself a spoofed number, difficulties may arise. Clarification on this issue and what can be done in these scenarios would be welcome.

A critical improvement in the proposal for the DNA is the clearer allocation of enforcement powers. Under the EECC, the use of the broader term "competent authorities" often led to fragmented national implementations, where responsibilities have been frequently split between various bodies, including the police, who may lack the sector-specific technical expertise required for real-time network interventions. The DNA explicitly assigns these tasks to NRAs (Article 115(1)(l) and Article 52(2) of the DNA proposal), ensuring that those with the technical capacity to monitor network traffic and numbering resources are also empowered to enforce safeguards against misuse of numbers and networks.

BEREC welcomes the proposal to issue technical and legal guidelines regarding the prevention of fraudulent activities. BEREC, as a technical body composed of representatives from NRAs, is well-placed to ensure the effective implementation of these provisions.

While BEREC welcomes this role, there is a significant concern regarding the timing of the measures. Given that fraudsters are known to adapt their schemes rapidly across borders, a delay in issuing harmonised guidelines creates a prolonged window of opportunity for malicious actors to exploit uncoordinated national defences. This "late reaction" risk is exacerbated by the fact that the Regulation itself only applies six months after its entry into force, potentially leaving a gap where neither the legacy EECC rules nor the new DNA safeguards are fully streamlined.

The complexity of the new coordination mechanism, where the ODN, NRAs, EUROPOL, and ENISA are involved in the task, risks creating administrative burden (and even possibly bottlenecks) that could further delay the actual enforcement of these safeguards at the national level.

A key concern for NRAs is that the obligation under Article 103(4) to „take into account" the BEREC guidelines may affect the timely adoption of preventive measures at the national level. In particular, there is a risk that NRAs may be reluctant to exercise their powers before the

formal BEREC guidelines are adopted, in order to avoid potential legal challenges related to proportionality or insufficient technical alignment.

Furthermore, the wording proposed in Article 103(4) may lead NRAs, in practice, to rely only on the measures explicitly reflected in the existing guidelines, even where those guidelines do not yet address emerging fraud patterns or new fraud vectors arising between the two-year review cycles. As a result, NRAs' ability to respond with the necessary speed and flexibility to localised incidents or sudden spikes in fraudulent activity within their national jurisdictions could be affected negatively.

In addition to that, concerns remain regarding the extent to which the proposed framework may restrict national flexibility. BEREC is of the opinion that the proposed delegated acts (Article 103(5)) could limit the ability of NRAs to maintain or introduce preventive measures tailored to domestic threat patterns, including in smaller jurisdictions where proportionality is critical. Ensuring that NRAs retain discretion to deploy additional or more stringent preventive tools is essential for effective and responsive approaches to combating fraudulent communications.

To address these concerns, it should be emphasised that while **BEREC's guidelines are essential for long-term streamlining**, they must not serve as a ceiling for NRA action. The legislation should clarify that **NRAs and providers of public electronic communications or publicly available electronic communications services retain the discretion to implement immediate, interim preventive measures against new threats** before they are formally integrated into BEREC's biennial updates. Alternatively, the Commission could consider a mechanism for urgently emerging cases from BEREC to ensure that the threat can be responded to rapidly without waiting for the full 12-month creation or 24-month revision cycles.

Additionally, since Article 52(2) only mentions blocking access, this limits the measures available to combat fraud solely to the option of blocking. Also, the interplay with other e-privacy rules, anti-fraud and security provisions in other laws and acts (e.g. PSR, NIS2) warrants consideration and extrapolation on the role of ENISA and the European Data Protection Board when being consulted on suggested guidelines in the recitals.

Finally, BEREC is of the opinion that direct provisions might be incorporated in the text, which could create a harmonised European legal tool in order to effectively step up against CLI-spoofing and trace back fraudulent calls. The provisions could in particular reflect the need for sharing of data, which today is a necessary prerequisite for combating fraud.

Alternative proposals:

BEREC recommends that policymakers further align the proposed framework for the measures combating fraudulent activities with the objectives of simplification and the effective functioning of the Single Market by:

1. **streamlining the coordination mechanism** to reduce administrative burden and avoid delays in enforcement;
2. clarifying that harmonisation tools, including guidelines and delegated acts, **do not limit NRA discretion to adopt swift and proportionate interim measures** against emerging threats;
3. considering the provisions proposed in this area are split into different Articles (103 and 52(2)), to combine into a **separate part of the DNA**. This would probably provide increased focus on the problem.

BEREC's position on end-users' rights (emergency communications) of the DNA

Commission proposal on emergency communications

The proposal for DNA introduces several measures aimed at strengthening the framework for access to emergency communications, taking into account the context of evolving technologies.

The proposal further provides that, within 24 months following the adoption of the relevant technical specifications, end-users shall be able to originate emergency communications through mobile applications linked to the European Digital Identity Wallet. It also includes requirements related to the transmission, without delay, of handset-derived caller location information to the most appropriate Public Safety Answering Point (PSAP), as well as the possibility for PSAPs to call back end-users.

In addition, the proposal in the DNA introduces resilience-related obligations requiring providers to take preparatory measures, including testing and validation, to ensure the availability of emergency communications during network migrations and large-scale disruptions. To support cross-border coordination, the ODN is envisaged to maintain a secure Union-wide database of PSAP contact numbers.

Also, under Article 107 of the DNA, the Commission proposes a dual-layered approach to public warning systems (PWS). First, providers of mobile NB-ICS are mandated to transmit public warnings to end-users in affected geographic areas using technologies mandated by Member States. Second, the proposal introduces a modernised delivery mechanism: the transmission of warnings via mobile applications „coupled with the European Digital Identity Wallet“.

BEREC's assessment:

BEREC is of the positive view of the proposal on access to emergency communications, as it maintains and sometimes even strengthens the framework for emergency communications, ensuring that access to such services evolves alongside modern digital networks. However, some concerns need to be expressed.

First of all, a primary concern on Article 106 is the inconsistent terminology used to define the entities (subjects) responsible for various obligations. This creates significant legal uncertainty compared to the more streamlined Article 109 of the EECC.

Throughout Article 106, the DNA switches between different subjects:

- Paragraph 1 refers to „*providers of publicly available NB-ICS*“ and „*providers of emergency communication*“.
- Paragraph 3 refers to „*providers of interpersonal electronic communications services*“.
- Paragraph 4 refers to „*ICS providers*“ generally.
- Paragraph 6 refers specifically to „*providers of emergency communication*“.

Given the list above, it is not always clear why these subjects differ, and sometimes might result in inconsistent use of particular rights and enforcement of obligations. For instance, using "ICS providers" in paragraph 4 implies that NI-ICS providers might be responsible for routing and location information alongside PSAPs systems, because paragraph 1 suggests their inclusion is optional/mandated by Member States. BEREC is of the view that a Regulation must define "provider" and „undertaking“ and use them consistently to avoid jurisdictional disputes and „forum shopping“.

BEREC is concerned that while under the EECC, Member States could introduce more stringent national protections for emergency communications whereas this is not possible anymore under the DNA. Article 106 of the DNA is in Part VI, which falls under „calibrated full harmonisation“. That means that this regime prevents such flexibility. This risks to result in existing high-standard emergency communications in some Member States being invalidated if they diverge from the Regulation.

Moreover, there is an absence of a safeguard clause in Article 106 to maintain existing emergency obligations already implemented under the EECC. BEREC has signalled in its previous positions that "simplification" must not lead to the inadvertent weakening of protections.

BEREC stresses the importance of mandating access to universal and standardised emergency services, but observes that in the proposal on 112, access is still limited to number-based services over terrestrial mobile and fixed access networks.

The DNA introduces emergency communication via apps, „coupled with the European Digital Identity Wallet“. It remains unclear what „coupled“ means technically and whether it requires full integration or merely authentication. This inconsistency complicates the readiness of PSAPs systems, as their technological capabilities may not yet support wallet-based origination. The requirement to support emergency communication via an app, 'coupled with the European Digital Identity Wallet', would suggest that anonymous emergency communications, via the Identity Wallet, might no longer be achievable, and this may result in an increased reluctance on the part of callers, e.g. bystanders to an incident.

It is important that Article 106 should be read together with Article 5(4) when switching off legacy technologies is considered. However, while Article 5(4) requires a 2-year notice for technology migrations (e.g., 2G/3G shutdowns), it does not explicitly mandate that providers inform users *how* this affects their specific access to emergency services on existing devices. Also, stronger collaboration would be welcome between network equipment vendors and end user equipment vendors, and even legislators (including the EC) to maximise backwards and forward compatibility and enforce transparency and predictability when a disruption and incompatibility is inevitable. It might become a significant obstacle in a thorough shift to advanced technologies and even result in limited access to emergency communications when the older devices no longer work appropriately with newer network types.

BEREC also notes that there are improvements in **setting requirements for geolocation data**. BEREC considers that Article 106(6) would benefit from clearer delineation of responsibilities regarding the provision of caller location information. In particular, network operators should be responsible for data under their control, whether network-based or terminal-based data. Clearer allocation of responsibilities would help avoid legal uncertainty, particularly in relation to data originating from end-user devices and functionalities outside the provider's control.

Regarding public warning systems, according to the proposal, the technical solution is also suggested to be coupled with the European Digital Identity Wallet, which is intended to serve as a "digital hub for essential services," and is meant to ensure high data security and verifiable information during crises. BEREC notes that it remains unclear whether this implies a deep integration into the wallet's core architecture or merely using the wallet for user authentication. This lack of clarity complicates the readiness of PSAPs systems, which must be technically capable of originating these warnings.

Under the current requirements in Article 110 of the EECC, Member States have the discretion to use alternative systems (of their choice and technical readiness, for instance, cell-broadcast, Number-Independent ICS or specific mobile apps) if they are „equivalent“ in terms of coverage and capacity. The DNA's shift toward a directly applicable Regulation and „calibrated full harmonisation“ may inadvertently prevent Member States from mandating warnings through NI-ICS (e.g., messaging apps) or other technical solutions. This creates a risk that existing, **effective national app-based warning systems could become legally non-compliant** if they diverge from the standard under Article 107(3).

Finally, it is worth highlighting that under the EECC, a currently functioning PSAP Directory was set up under CEPT ECC. BEREC's position is that this PSAP directory is important for the cooperation between PSAPs throughout Europe and beyond, and highlights that creating a **parallel directory would only be duplication, not simplification in this case**. Furthermore, BEREC would like to note that the CEPT ECC database also contains neighbouring countries of the EU/EEA. Countries where the DNA would not apply would be out of the scope of the new directory. Also, it has to be highlighted that some countries in the EEA still have not joined the PSAP directory of CEPT ECC due to national legal and technical circumstances. These national situations shall be taken into consideration during the DNA elaboration process.

Alternative proposals:

In order to ensure legal clarity, regulatory simplification and a Single Market approach, BEREC suggests that policymakers:

1. Align the terminology in Articles 106 and 107 by consistently using clearly **defined category of responsible providers throughout the provisions**, and relevant references to paragraphs (subjects) should be carefully reassessed;
2. consider safeguard clause not restricting Member States to maintain **equivalent or more stringent national access to emergency communications and public warning systems**, including existing app-based solutions;
3. Clarify the technical meaning of services „coupled with the European Digital Identity Wallet“ and the respective responsibilities for device-based and network-based location data;
4. Are able to require operators/providers, to inform end-users directly of any impact on access to 112, including device compatibility with network switch-offs.
5. Where possible, include measures for BEREC and NRAs to maximise backwards and forward compatibility and enforce transparency and predictability when a disruption and incompatibility is inevitable.
6. The DNA may be a good opportunity to consider universal access to 112 for every device that is capable of supporting voice communications.
7. BEREC also considers that further **clarification is needed on interoperability and cross-border functionality** of public warning systems and emergency communications. Without common technical and operational standards, there is a risk of inconsistent user experience across Member States, undermining the objective of a seamless Single Market.
8. Avoid **duplication related to the PSAP directory** database.

BEREC's position on end-users' rights (privacy) of the DNA

Commission proposal on privacy

The proposal for DNA modernises and integrates specific privacy provisions now (previously) found in the ePrivacy Directive (2002/58/EC) to reflect the technological transition to IP-based networks. Articles 108–110 establish a framework for managing identification and blocking unwanted communications while balancing individual privacy with public safety.

BEREC's assessment:

BEREC observes that some provisions stem from the ePrivacy Directive. BEREC's assessment of the shift from the ePrivacy Directive (2002/58/EC) to Part VI of the DNA, in particular Article 108, focuses on two concrete elements: (1) the move from a Directive-based instrument to a directly applicable Regulation, and (2) the resulting implications for the allocation of supervisory competences.

First, BEREC notes that under the current framework, Member States implement the confidentiality of communications requirements through national legislation, which has led to differences in scope, enforcement mechanisms and the designation of competent authorities. By contrast, the DNA appears to pursue a more harmonised approach, with directly applicable rules intended to ensure a uniform level of protection across the Union. While this may reduce fragmentation, it may also limit the ability of Member States to preserve established national legal arrangements and supervisory models, which are typically required to address national specificities vis-à-vis privacy, such as aspects rooted in national experiences, culture and norms.

Second, BEREC underlines that the provisions currently contained in the ePrivacy Directive have traditionally been embedded within the broader data protection and privacy framework. BEREC notes that this directive is a *lex specialis* to the GDPR. As a matter of fact, oversight of confidentiality-related obligations is commonly entrusted to data protection authorities, reflecting the close link between communications secrecy, privacy rights and personal data protection. The transfer of these provisions into the DNA, therefore, raises a concrete institutional question as to whether the relevant competences would remain with data protection authorities, be shifted to NRAs, or require a shared supervisory model.

This is not merely an institutional issue, but may also **affect the substantive application of the rules, including enforcement powers, investigative procedures, sanctions, and cross-border cooperation mechanisms**. For this reason, the proposal would benefit from clearer provisions on the designation of competent authorities and the delineation of responsibilities between NRAs and data protection authorities.

Third, BEREC suggests considering introducing a clear “trusted CLI” principle, aligned with Article 103, to ensure a **coherent approach to fraudulent communications across the DNA**. In addition, the lack of clear definitions of “malicious” and “nuisance” calls, particularly in relation to the notion of “fraudulent activities” in Article 103, may create legal uncertainty; defining these concepts in the DNA would support more consistent implementation and enforcement.

Alternative proposals:

In order to ensure legal clarity, regulatory simplification and a Single Market approach, BEREC suggests:

1. **clarifying whether enforcement** is intended to fall with NRAs, data protection authorities, or a coordinated/shared model and consider cooperation mechanisms if necessary;
2. considering the possibility of **specifying provisions in the DNA**, stemming from best practices, in order to avoid institutional overlap and preserve legal certainty during the transition to a directly applicable Regulation.
3. clarifying whether these privacy Articles are also **linked to mitigating fraudulent activities** (Art. 103) and if so, what are the specific links involved.

BEREC's position on end-users' rights (dispute resolution) of the DNA

Commission proposal on dispute resolution

Article 188 of the proposal for the DNA sets out the framework for out-of-court dispute resolution between end-users and providers of electronic communications services. The proposal requires Member States to ensure the availability of efficient alternative dispute resolution procedures. It preserves national discretion as regards the institutional design of such mechanisms, including the listing of the NRA, other competent authority or an independent body with proven expertise in the application of Articles 95, 96, 97, 98 and 100 of the proposed regulation as an alternative dispute resolution entity in accordance with Article 20(2) of Directive 2013/11/EU.

BEREC's assessment:

BEREC acknowledges the importance of dispute resolution (Article 188 of the DNA). The discretion granted to the Member States to decide how dispute resolution procedures are shaped and whether the NRAs are the competent authorities has proven to be a good approach.

However, BEREC notes that Article 188 of the **DNA appears to narrow the scope and the nature of alternative dispute resolution (ADR)** compared to Article 25 of the EECC, by limiting eligibility primarily to consumers and micro and small enterprises.

In this regard, BEREC expresses concern that the exclusion of other end-users from ADR mechanisms may constitute a reduction of existing dispute resolution rights under the EECC, where Member States may extend ADR competence to all end-users. This raises the question of **whether such national extensions would remain possible** under the DNA framework. Therefore, BEREC considers that they should need to be explicitly preserved in Article 188.

In practice, many disputes faced by end-users relate to operational or technical issues rather than strictly contractual matters; excluding such cases from ADR may significantly reduce the effectiveness and practical relevance of these mechanisms. Furthermore, a narrower ADR scope may result in an increased recourse to judicial proceedings, thereby raising costs and reducing ease of redress, in particular for vulnerable users and small businesses. BEREC also considers that the interaction between Article 188 of the DNA and the horizontal ADR framework (Directive 2013/11/EU) should be clarified, in order to avoid overlaps, inconsistencies or potential gaps in the protection of end-users. In addition, divergent national interpretations of the scope of ADR may give rise to legal uncertainty for both providers and end-users operating across borders.

This could reduce the effectiveness of out-of-court dispute resolution mechanisms in the electronic communications sector.

BEREC considers that further clarification is needed to ensure that the proposed framework does not inadvertently weaken existing ADR coverage or limit Member States' ability to maintain broader dispute resolution systems where already established and well-functioning.

In addition, BEREC notes that the article on dispute resolution in the DNA also includes a sub-clause (Article 188(3) of the DNA), which requires providers of internet access services to put in place transparent, simple and efficient procedures for handling end-user complaints relating to the rights and obligations laid down in Article 93. BEREC notes that this provision appears to stem from Article 4(2) of the Open Internet Regulation. However, within the context of Article 188 of the DNA, its scope appears inconsistent, as it is limited solely to providers of internet access services and to matters related to the open internet.

BEREC considers that limiting such obligations to internet access service providers introduces an unjustified asymmetry within the sector, which may distort competitive conditions and create an uneven level of protection for end-users depending on the type of service provider involved.

BEREC considers that the **requirement to establish transparent, simple and efficient complaint-handling procedures should be clearly extended to all providers of publicly available electronic communications services** falling within the scope of the framework.

Moreover, the proposal does not sufficiently clarify the binding nature, enforceability and oversight of ADR outcomes, which may affect the overall effectiveness of the dispute resolution framework. Ensuring the mere availability of ADR mechanisms may not be sufficient if their outcomes are not effectively implemented or supervised.

Alternative proposals:

BEREC is of the view that any reduction in the scope of ADR or increased divergence in its application across Member States may hinder the development of a truly integrated Single Market by creating regulatory asymmetries and uneven levels of end-user protection.

BEREC recommends that policymakers further clarify Article 188 of the DNA to ensure that the **dispute resolution framework does not lead to a reduction of existing rights** and remains consistent with the EECC approach.

BEREC considers that Article 188 should explicitly preserve Member States' ability to extend ADR mechanisms to all end-users and to a broader range of disputes, in line with the EECC framework.

BEREC also advises that the requirement to establish **transparent, simple and efficient complaint-handling procedures should be clearly extended** to all providers of electronic communications services falling within the scope of the framework.

BEREC's position on end-users' rights (NRAs and BEREC's role) of the DNA

Commission proposal on NRAs and BEREC's role in the end-user protection

The DNA proposal seems to strengthen the role of BEREC to ensure a high and common level of end-user protection through "calibrated full harmonisation" (recital 257). Under the proposal, BEREC is reaffirmed to its role, already established in the EECC, also to play a role as a central coordinator of technical standards and procedural guidelines that Member States and National Regulatory Authorities (NRAs) must take into "utmost account" (Article 122 (9)).

BEREC's assessment:

BEREC expresses general concern regarding the extent (and possible lack) of national competence to supervise and enforce (ensure) end-user protection, given the particular wording of Article 115(1)(h) (where NRAs are said to be responsible for "**contributing to** the protection of end-user rights in the electronic communications sector, in coordination, where relevant, with other competent authorities"). Although the wording is close to the wording in EECC (5(1) d), uncertainty appears due to the choice of a Regulation as the legal instrument, and this may create ambiguity regarding the actual powers of NRAs. In particular, the reference to "contributing" could be understood as limiting NRAs' direct enforcement role, potentially leading to uncertainty in the allocation of responsibilities between NRAs and other competent authorities, questioning if NRAs powers should be reduced in the Member States where NRAs were fully mandated to supervise end-user protection. This may affect the effectiveness and consistency of end-user protection across Member States.

The EECC introduced procedures for BEREC's involvement in certain provisions (Articles 122(3) and 123). Continued monitoring and analysis of these trends are therefore essential to ensure that the regulatory framework remains effective in addressing emerging challenges and safeguarding end-users. Recent BEREC assessment under Article 123 of the EECC¹⁵ has proven to be a valuable approach, as it evaluated in detail trends and developments that have affected or might have an impact on end-user rights. Many of BEREC's findings remain relevant, as ongoing technological and market developments continue to highlight the significance of the issues previously identified. In the proposal for the DNA, the review is proposed under Article 204. BEREC is of the view that the review of the assessment on the trends and developments and their impact on end-user rights should be conducted separately, as inclusion solely in the overall review of the functioning of the DNA in Article 204 might risk losing focus on the end-user perspective.

Alternative proposals:

BEREC recommends that policymakers further clarify the governance framework for end-user protection under the DNA, to ensure support for a more predictable, simplified and enforceable framework, strengthening end-user protection while contributing to the effective functioning of the Single Market:

1. **clarify the mandate** of NRAs in Article 115(1)(h) by (1) replacing or complementing the notion of "contributing" with an explicit reference to supervisory and enforcement powers, thereby ensuring that NRAs remain fully empowered to protect end-user rights where such competence already exists at the national level or (2) clearly allocate responsibilities between NRAs and other competent authorities, in order to avoid overlaps or gaps in enforcement and to support a coherent institutional framework across Member States;
2. maintain a **dedicated provision for monitoring trends and developments affecting end-user rights**, building on the approach of Article 123 EECC, rather than integrating this function solely within the general review clause of Article 204, so as to preserve a clear focus on end-user protection.

¹⁵ Ibid footnote 6.