

# ETNO response to BEREC Consultation on Work Programme 2019

## Introduction

The EECC and the revised BEREC regulation raise new challenges BEREC will have to consider. Increased powers and the new regulatory framework require BEREC to fundamentally rethink its *modus operandi*, in order to:

- Take into account the new objectives of the framework and align regulatory practices with the broader policy objectives, in particular to “promote *connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks*, by all Union citizens and businesses”; it is necessary to overcome the often perceived mismatch between the policy objectives defined by the legislator and the current regulatory practice.
- Address the new competitive dynamics in the digital ecosystem and customers’ usage patterns, recognizing that the traditional Telecom markets are increasingly diluted into a broader digital environment, where consistent principles/rules should be applied throughout the whole Internet value chain.
- The exercise of powers should observe the limits of BEREC’s discretion and be exerted with transparency and impartiality. This is particularly true in the context of the new quasi-legislative task that will be conferred on BEREC in the context of the Code. BEREC should be aware that these normative tasks come with a special responsibility which should invite it to observe more stringent rules in terms of transparency, impartiality and consultation of stakeholders, the latter irrespective of whether the Code prescribes this explicitly.
- BEREC guidance should strike the right balance between the necessary harmonisation and avoiding inflexible and overdetailed rules. This is a key challenge requiring a sophisticated knowledge of the markets and perception on the practicability of any measures: the industry should play a key role to inform the decision-making process.
- BEREC’s net neutrality guidelines are an example of a crucial piece of guidance that should be improved to promote innovation and transition into smarter and more efficient networks, and the industry is here to collaborate.
- BEREC will have even more responsibilities in its advisory role to the EU institutions, which, with the new regulation, can take place at its own initiative; therefore, reinforced transparency and timely publication of its opinions and technical expertise is critical. Also here, independence and impartiality are key: technical advice should be unbiased.
- BEREC is tasked to deliver a wide range of Guidelines and reports on fundamental issues required for the implementation of the European electronic Communications Code. In this context, BEREC should align its approach with the broad strategic objectives, in particular considering the investment needs to attain the connectivity goals, promote the internal

market and the interests of the citizens in the union, in parallel with the promotion of sustainable infrastructure based competition as formulated in the new EECC.

- There is substantial scope for progress in the engagement with Stakeholders, in the preparatory stages of the decisions, in particular at the level of the activities of BEREC Expert Working Groups (EWGs).
- BEREC should further increase transparency and more regularly engage with industry stakeholders, as it delivers very specific technical guidelines where operator's expertise and input are key.
- Enhanced technical exchanges and thorough discussion with all stakeholders should precede consultations of draft decisions. The views of the stakeholders should be taken into account before formal consultation procedures on "close to final" decisions.
- With the reinforcement of powers of BEREC in the new BEREC regulation, the need for enhanced engagement and debate with stakeholders becomes even more acute, both in the process leading up to a draft decision and based on a draft decision (e.g.: closer to the process followed regarding the guidelines on the roaming regulation, a good example but unfortunately an exception to the standard practices).
- Increasing the transparency of decision-making and developing a structured dialogue with all stakeholders relevant in the sector and in particular the addressees of the decisions of BEREC / NRAs and the main investors in the sector – the leading network services providers.
- **To optimize its stakeholder engagement in the future,** BEREC should complement the current brief public workshops and public consultations on draft decisions with enhanced engagement with the industry at the preparatory stages of the decision-making and implement new means of collaboration, to create fora with the industry to discuss relevant issues, provide channels to ease direct communication with operators and be receptive to specific meetings with players when requested. Possible initiatives could be:
  1. **Establish communication channels with the sector allowing the exchange of views with BEREC Expert Working Groups (EWG) on a more regular basis, prior to and after the launch of its consultations.** This way BEREC would further increase the level of professional discussion between the industry and BEREC experts on the substantive issues. In order to achieve a better outcome and increased transparency, EWG structure and way of functioning should be public with Chair and Vice-chairs contact details available for stakeholders to engage if necessary
  2. **Public workshops and exchanges between the EWGs and stakeholders,** at the earlier stages of the formulation of BEREC's reports and positions, would represent a substantial step forward. This also involves more transparency on the activities of the EWGs.

3. Develop more initiatives aimed at fostering the dialogue between BEREC and stakeholders, such as **Stakeholders' Forums ensuring the representation of all the relevant industry players**.
4. Envisage **public consultations for all the relevant items** included in the Work Programmes.
5. All **BEREC reports should be made public** and BEREC should also fully **justify the reasons for the preferred options**, including the reasoning for discarding alternatives, such as those proposed by the stakeholders.
6. Stakeholders should be provided with **sufficient time to respond** to the consultations.

## 1.1 Very High Capacity Networks

**Deliverable:** BEREC guidelines on very high capacity networks

Call for initial stakeholder input: Yes, adoption at Plenary 1 2019

Public consultation: Yes; adoption at Plenary 2 2020

Adoption of final guidelines at Plenary 4 2020 for publication

*Q1.1 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided*

**ETNO welcomes the call for initial stakeholder input. This call should comprise, to the extent possible, sufficient detail on BEREC's initial plans/ direction, so that stakeholders can comment and give meaningful input.**

## 1.2 BEREC Study on the determinants of investment in very high capacity networks

**Deliverable:** BEREC Study on the determinants of investment in very high capacity networks

Public consultation: No

Adoption of Phase 1 report at Plenary 3 2019 for publication

Phase 2 deliverable and timing to be decided

*Q1.2 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**The Concept of "very high capacity network" is pivotal to the application of the Code. The criteria to be defined in this context require a high level of technical expertise. In addition, the determinants of investment are closely related with the business plans and investment incentives of the concrete companies in given markets. As BEREC did not consult the stakeholders for the Terms of Reference of the study, it is even more important to have stakeholders' views at the remaining phases of the study, even more so because there are not only material but also methodological issues involved.**

**Relevant factors do not only relate to the regulatory framework applied by the NRA but also to the competitive situation of the national market (e.g. existence of alternative networks such as cable) which can be very different across the EU, therefore the conceptual model developed by BEREC should be calibrated and checked against several EU Member States.**

**The development of the proposed model would result in a nonlinear system modelling, which appears to be very complex and goes beyond current scientific frontier in the academic literature in respect to market modeling.**

Furthermore, this type of modeling is known to be chaotic, i.e., its global evolution is strongly dependent on infinitesimal variations of initial parameters giving rise to random fluctuations. Therefore, discretionary outcome can be obtained by appropriate selection of input parameters.

ETNO therefore does not recommend the adoption of this model.

BEREC should focus on the regulatory bottlenecks and cost reduction policies, with clear impacts on investment incentives, addressed in several studies released in recent years, e.g.: BCG for ETNO “Building the gigabit society: an inclusive path toward its realisation” and “Five priorities for achieving Europe’s Digital Single Market” .

In any event, the modelling should be submitted to an independent group of economists to validate the reliability and robustness of the model.

### 1.3. Identification of the network termination point

**Deliverable:** BEREC guidelines on common approaches to the identification of the network termination point in different network topologies

Public consultation: Yes; adoption at Plenary 3 2019

Adoption of final guidelines at Plenary 1 2020 for publication

*Q1.3 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**ETNO urges BEREC to engage with network owners prior to the Consultation on the draft guidelines, e.g., through the organisation of hearings or workshops.**

### 1.4. Determination of the first concentration point

**Deliverable:** BEREC Guidelines on the criteria for a consistent application of Article 61(3) (Concentration point etc.)

Public consultation: Yes; adoption at Plenary 2 2020

Adoption of final guidelines at Plenary 4 2020 for publication

*Q1.4 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**BEREC should engage with stakeholders prior to the Consultation on the draft guidelines, e.g., through the organisation of hearings or workshops.**

## 1.5. Evaluation of the roaming market

**Deliverable:** BEREC Opinion on the functioning of the roaming market, as input to the Commission's evaluation on the functioning of that market

Public consultation: No

Timing to be decided, upon request from the European Commission

**Q1.5** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**BEREC mentions “the ability of the visited network to recover the efficiently incurred costs”. According to the provisions of the TSM and of the Roaming Regulation on wholesale costs, operators should be allowed to recover “all costs of providing regulated wholesale roaming services”; BEREC should therefore also refer to this wording in its assessment.**

**Moreover, we believe that the opinion issued by BEREC has a potential significant impact on stakeholders and should therefore be subject to consultation.**

## 1.6. Application of the co-investment criteria

**Deliverable:** BEREC Guidelines to foster the consistent application of the criteria for assessing co-investments in very high capacity network elements

Public consultation: Yes; adoption at Plenary 1 2020

Adoption of final guidelines at Plenary 4 2020 for publication

**Q1.6** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**Engagement with stakeholders prior to the Consultation on the draft guidelines should also take place in this case, e.g., through the organisation of hearings or workshops.**

**The applicable provisions of the code are already very complex. BEREC should avoid overdetailed specifications that may add further bureaucracy or complexity or lead to a restrictive interpretation of the provisions which at the end risks not reaching the goal of fostering co-investment and risk sharing practices. This is indicative for the paramount importance of early engagement with stakeholders/investors.**

## 1.7. Recommendation on Relevant Markets

**Deliverable:** BEREC Opinion on the review of EC Recommendation on relevant markets

Public consultation: No

Timing to be decided, dependent on when the European Commission will publish the draft Recommendation

**Q1.7** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**Engagement with stakeholders is also of the utmost importance in this case e.g., through the organisation of hearings or workshops. BEREC should also foresee a consultation with stakeholders at a later stage of the process (e.g. first draft of the opinion).**

## 1.8. Migration from legacy to fibre-based networks

**Deliverable:** Internal workshop and summary report on the migration from legacy infrastructures to fibre-based networks

Workshop to be held in September/October 2019; summary report adoption at Plenary 4 2019 for publication

**Q1.8** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**The issue of migration from legacy to fibre-based networks is very technical and requires profound and comprehensive insight in the technical, operational and commercial parameters of it. Effective interaction with industry is crucial.**

**A simple internal workshop before the issuing of a report seems to us inadequate to address in detail all the technical, operational, regulatory and commercial challenges at stake. It is therefore necessary to establish a closer relationship with the stakeholders before the issuing of the report, e.g., by sharing the background information BEREC is considering as reference, ahead of the workshop and allow further discussion on the draft conclusions before the adoption and publication of the report.**

**There are moreover important policy issues that merit discussion in this context. Given the very different levels of fibre deployment and coverage across the EU, the level of preparation and planning differs significantly. The reporting should reckon for this.**

**Further it appears as crucial to us that the approach should rather be to facilitate the migration when operators are ready, e.g., by:**

- Promoting Investment friendly regulatory approach:
- Policies to foster fibre demand / government as first adopter / e-skills,
- Flexibility from the NRA to provide authorization,
- Flexibility on authorisations to switch-off, considering the costs of keeping the legacy network,

- Future oriented access solutions defining proportionate pre-conditions for decommissioning, avoiding rigid unqualified rules.

## 1.9. Geographical surveys of network deployments

**Deliverable:** BEREC Guidelines to assist NRAs on the consistent application of Geographical surveys of network deployments

Public Consultation: Yes; adoption at Plenary 3 2019

Adoption of final guidelines at Plenary 1 2020 for publication

*Q1.9 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**ETNO reiterates the importance the engagement with stakeholders in this context, ahead of the publication of the draft for discussion.**

**This survey and the further requests for information (cf art 20 EECC) are rather sensitive in term of visibility, confidentiality, possible penalties, etc. Existing national experiences should be taken into account and could inspire BEREC guidelines in order to recommend smooth and efficient processes to foster investment and not rendering it more risky.**

**BEREC Guidelines to assist NRAs on the consistent application of Geographical surveys of network deployments should be aimed at supporting an effective geographical market segmentation.**

**Moreover, BEREC should also note that the possibility to designate areas where no undertaking or public authority has deployed or is planning to deploy a very high capacity network, might overlap with the segmentation of areas (white, grey, black) for State aid purposes, with the risk of creating different definitions for the same concepts, therefore reducing legal certainty.**

## 1.10. Minimum criteria for a reference offer (obligation of transparency)

**Deliverable:** BEREC Guidelines on the minimum criteria for a reference offer relating to obligations of transparency

Public consultation: Yes; adoption at Plenary 2 2019

Adoption of final Guidelines at Plenary 4 2019 for publication

*Q1.10 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**ETNO recommends the engagement with stakeholders ahead of the publication of the draft for discussion. The market has already a long experience of reference offers that should be taken into account.**

## 1.11. Carry-over work on pricing for access to infrastructure & civil works

**Deliverables:** BEREC Report on pricing for access to infrastructure and civil works

Public consultation: carried out in 2018

Adoption of final report at Plenary 1 2019 for publication

*Q1.11 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**No additional comments.**

## 1.12. Carry-over work on access to physical infrastructure in market analyses

**Deliverable** BEREC Report on access to physical infrastructure in market analyses

Public consultation: carried out in 2018

Adoption of final Report at Plenary 2 2019 for publication

*Q1.12 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**No additional comments.**

## 2. Strategic priority 2: Monitoring potential bottlenecks in the distribution of digital services

### 2.1. Intra-EU calls and SM

**Deliverable:** BEREC Guidelines to assess the parameters to ensure the sustainability of the domestic pricing model

Public consultation: No

Adoption of guidelines in Q2 2019 for publication

*Q2.1 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**BEREC should provide guidelines to the definition of the criteria and requirements to entitle an operator to benefit from derogation. ETNO regrets that no consultation is planned for this exercise.**

We believe that such approach does not match the principles of good law making and the application of the law (cf. introductory remarks on the present consultation).

## 2.2. Harmonised data collection: Authorised Undertakings & OTTs

**Deliverable:** BEREC Report on the harmonised collection of data from both Authorised Undertakings and OTT operators

Public consultation: No

Adoption of final report at Plenary 4 2019 for publication

**Q2.2** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

ETNO is convinced that OTTs hold valuable data that are useful in informing both regulators and consumers. This particularly refers to ECS provided by OTTs and which are fully in the scope of the EECC. The lack of such information would lead to incorrect assessments of the competitive landscape in the electronic communications market. A case in point was the lack of information on OTT voice and messaging services highlighted by the recent BEREC analysis of the intra-EU communications market in the EU. It appears highly valuable if BEREC facilitates the development of data gathering through NRAs with regard ICS provided by OTTs, supporting a consistent approach across Member States. The starting point should be to gather the same data as collected from telecom operators. BEREC should also consider the collection of additional data specifically relevant for Number-Independent ICS, particularly with regard to data-based business models and possible lock-in effects through.

ETNO recommends that this work stream is open to public consultation.

## 2.3. Ex-ante margin squeeze tests

**Deliverable:** Internal workshop and summary report on margin squeeze tests applied by NRAs

Workshop to be held in Q3 2019; summary report adoption at Plenary 4 2019 for publication

**Q2.3** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

ETNO recommends the engagement with stakeholders before the issue of the report.

It is important that the report addresses:

- how NRAs take account of divergent geographical competitive conditions in margin squeeze tests on UBB offers;
- whether the test on retail NGA offers replaces the cost orientation on wholesale access services, as envisaged by the Recommendation on non-discrimination measures and cost methodologies.

## 2.4. Carry-over work on the data economy

**Deliverable:** BEREC Report on the Data Economy

Public consultation: carried out in 2018

Adoption of final Report at Plenary 2 2019 for publication

**Q2.4** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**No additional comments.**

## 2.5. Carry-over work on Internet of Things indicators

**Deliverable:** BEREC Report on Internet of Things Indicators

Public consultation: carried out in 2018

Adoption of final Report at Plenary 1 2019 for publication

**Q2.5** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**IoT services are offered in an international context and we see a growing need for harmonised and coherent market conditions to deploy services across borders. However, IoT is a nascent phenomenon with value chains, business models, markets and services in continuous motion finding their place to most efficiently meet and seize the technological opportunities and respond to market demand.**

## 3. Strategic priority 3: Enabling 5G and promoting

### 3.1. The impact of 5G on regulation

**Deliverable:** BEREC Report on the impact of 5G on regulation and the role of regulation in enabling the 5G ecosystem

Public consultation: Yes; adoption at Plenary 4 2019

Adoption of final report at Plenary 2 2020 for publication

**Q3.1** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

A very complex issue requires further stakeholder engagement ahead of the publication of the draft report. The description of the work stream shows a great focus on the possible additional obligations to impose on operators. ETNO believes that the focus should rather be on the regulatory incentives for the fast roll out of 5G, considering the mobile/fixed convergence and the possible impact on the outlook on the ECS markets, identifying the costs and administrative hurdles and recommendations to public authorities to facilitate deployment. ETNO welcomes the reference to the impacts of 5G on market definition and the analysis of the impacts of the approach to net neutrality in the development in the new 5G technologies.

### 3.2. Peer review process

**Deliverable:** As required, BEREC participation in peer review forums to discuss and exchange views on draft national measures related to internal market procedures for radio spectrum.

Public Consultation: No

**Q3.2** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**No additional comments.**

### 3.3. Carry-over work on infrastructure sharing

**Deliverable:** BEREC Common Position on infrastructure sharing

Public consultation: carried out in 2018

Adoption of final Common Position at Plenary 2 2019 for publication

**Q3.3** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**ETNO recommends the engagement with stakeholders prior to the Consultation on the common position, e.g., through the organisation of hearings or workshops, to discuss preliminary findings and possible conclusions.**

## 4. Strategic priority 4: Fostering a consistent approach of the net neutrality principles

### 4.1. Update to the Guidelines on Net Neutrality

**Deliverable:** Update to the BEREC Guidelines on Net Neutrality

Public consultation: Yes; adoption at Plenary 3 2019

**Q4.1** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**ETNO welcomes the initiative of BEREC to update the guidelines on net neutrality. As for other activities in the present WP, we reiterate the importance of the engagement with stakeholders at the level of experts ahead of the publication of the draft for consultation. This is particularly relevant this time round given the concern, acknowledged by BEREC, with the absolute necessity to take into account the technological developments and to ensure that the interpretation of the regulation does not create obstacles to innovation.**

**Due to the inherent nature of 5G the BEREC Guidelines should evolve to ensure a future proofed framework which better supports innovation and future network roll out, by:**

**1. Enabling more choice for consumers. New services are constantly emerging. From a world where consumers could only buy small amounts of data at a fixed price, we are now seeing an explosion in choice to meet different needs enabled by the evolution in network capabilities, unlimited video offers, two-sided market business models, data rollover, different speeds, different quality for specific services and even unlimited data offers with different qualities. This consumer choice is enabled by developments in the network, which allow different quality and speeds to be offered, more personalised offers to be created and new services to emerge as a result. The Open Internet Regulation expressly allows for end users to select different offers that meet their personalised needs, at different price levels while at the same time ensuring these services are transparent. However, there is still confusion in the BEREC Guidelines between Article 3(2) which allows these offers and Article 3(3) which restricts differential treatment of traffic.**

**The BEREC Guidelines should therefore clearly acknowledge that:**

- One end user can have multiple IASs with different traffic management settings, e.g. one for general purpose internet access and one for autonomous driving applications with optimisations for IoT.**
- Different end users can have different IASs with different traffic management settings, e.g. a consumer and a business service**
- Reasonable traffic management includes management of traffic which is needed to deliver on end users' choices e.g. different data caps, different speeds and other commercial offers.**

**Work should be done on the Guidelines to improve the interplay of articles 3(2) and 3(3) and to develop a holistic approach on the interpretation of these articles in the context of the Regulation.**

**2. Traffic management. Cisco predicts that global mobile data traffic will grow twice as fast as fixed IP traffic from 2016 to 2021 and that video traffic will be 82 percent of all consumer Internet traffic by 2021. This calls for investments in networks, which operators are constantly ensuring, and requires new traffic management techniques, which would ensure that network quality continues to improve and support this growth.**

The BEREC Guidelines should therefore clearly acknowledge that new traffic management methods contribute to better quality and a more efficient use of network resources and that these have both commercial and technical benefits for operators and consumers.

3. Services other than IAS and network evolutions. Possibly the most exciting feature of 5G is that it will enable the development of new industries and services, connected cars, e-health services, drones, smart cities and many more. Therefore, 5G will contribute to the wider economy and society as a whole. Many of the applications are expected to demand tailored connectivity, for example extremely short delays, high reliability and low power consumption. 5G networks hold the promise that capabilities and features will be allocated to specific network slices which can then be combined in new and innovative ways.

The BEREC Guidelines should clearly recognise:

- What is “necessary” as a quality requirement for services should be defined by the needs of the end user of the service.
- When assessing the quality of networks, today’s measurement systems and performance indicators should be avoided in relation to future networks. In addition, boundaries between network slices are more elastic, allowing them to adapt in real time to changes in end-user / application and traffic demand.
- A co-regulatory European expert working group should be established to monitor developments and encourage innovation in relation to 5G and quality differentiation for services other than IAS within the framework of the Open Internet Regulation.

Finally, transparency is key for this purpose. As long as customers know what they are choosing, differentiation of offerings (also in quality) will foster competition among networks and on the service layer. The Guidelines should ensure that end users benefit from meaningful transparency on performance quality and should refrain from overly prescriptive information that unreasonably limit providers’ flexibility.

For further detail, please refer to the Cable Europe-ETNO-GSMA response to the consultation in April 2018, available [here](#).

Given the complexity of these issues and their important impact on the development of and investment in the European electronic communications sector, it is of crucial importance that BEREC deploys its work on the Open Internet Guidelines in a transparent and open way, ensuring dialogue and collaboration with industry to come to the most adequate as possible articulations of these guidelines in the interest of the wellbeing and choice for both end-users and the industry. This implies not only consultation of the proposed amendments to the guidelines, but also a dialogue and open interaction on the most important issues in an earlier stage.

## 4.2. Implementation of Net Neutrality regulation

**Deliverable:** BEREC Report on the implementation of the Net Neutrality Regulation

Public consultation: No

Adoption of final report at Plenary 3 2019 for publication

**Q4.2** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**The report should be subject to public consultation, before adoption.**

### 4.3. Carry-over work on BEREC Net Neutrality measurement tool

**Deliverable:** BEREC Net Neutrality measurement tool

Adoption of measurement tool at Plenary 3 2019 for launch

**Q4.3** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**At this point stakeholders have no insights in this tools development, and can thus not assess whether the tool is accurate and compatible with the technical operational realities of the networks.**

**It is essential to open this stream to the views of stakeholders, considering that there is extensive experience on behalf of operators on national levels. Cooperation between NRAs and operators on national levels with regard to the development of measurement tools for IAS speed parameters have proven to be very fruitful. This practice should thus be adopted also by BEREC, as this ensures adequacy and efficiency, and is also part of a good administration of such development. The establishment of and robust measurement tools, that provide reliable information for end-users, is a highly technical matter and the methods used on measurement and related assumptions can significantly influence the application of the regulation. In any case, it is of utmost importance that such tools support trust rather than lead to misleading conclusions with regard to operators' services. In this context, it is imperative that the stakeholders are consulted in this work stream.**

**The tool must be also tailored in a way that fraud is not possible, and compatible with the operators' internal control of information systems.**

## 5. Strategic priority 5: Exploring new ways to boost consumer empowerment

### 5.1. General authorisation notifications transmitted to competent authorities

**Deliverable:** BEREC Guidelines on the general authorisation notifications transmitted to competent authorities

Public consultation: Yes; adoption at Plenary 2 2019

Adoption of final Guidelines at Plenary 4 2019 for publication

**Q5.1** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**In general, CircaBC's databank on Art. 7 / Art. 7a proceedings proved to be of value for the interested parties. BEREC should copy the way the EU-Commission deploys the official correspondence clearly arranged of those proceedings on CircaBC's website.**

## **5.2. Common criteria for undertakings other than ECN/ECS to manage numbering resources**

**Deliverable:** BEREC Guidelines on common criteria for the assessment of the ability of undertakings other than ECN or ECS to manage numbering resources and the risk of exhaustion of numbering resources

Public consultation: Yes; adoption at Plenary 2 2019

Adoption of final Guidelines at Plenary 1 2020 for publication

**Q5.2** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**BEREC guidelines on common criteria for the assessment of the ability to manage numbering resources and the risk of exhaustion of numbering resources, should not only be based on benchmarking of NRA best practices. But also on the most important criterion that entities who are assigned numbering resources should be able to exhibit a relationship with a public network and/or service operator, since the numbering resources will have to be implemented inside the public networks and publicly available services in order to be useable.**

## **5.3. Contract summary template**

**Deliverable:** BEREC input to Commission Implementing Act on Contract summary template

Public consultation: carried out in 2018

Adoption of final input to Commission at Plenary 2 2019 for publication

**Q5.3** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**No additional comments.**

## 5.4. Quality of service parameters

**Deliverable:** BEREC Guidelines detailing QoS parameters of IAS and publicly available ICS and the publication of information

Public consultation: Yes; adoption at Plenary 3 2019

Adoption of final guidelines at Plenary 1 2020 for publication

**Q5.4** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**ETNO believes that monitoring QoS can be a positive and fruitful exercise both for European citizens and for European market players operating along the broadband value chain.**

**In order to ensure legal clarity, guidance on QoS parameters regarding IAS should be fully consistent with Art. 4 of Regulation (EU) 2015/2120 and not duplicate or even contradict with BEREC's previous or ongoing work in this regard.**

**BEREC needs to keep in mind that in IP-based networks the offering of ensured quality of ICS is a commercial decision of the undertaking. Accordingly, quality can be ensured – or not – irrespectively whether the ICS provider runs in parallel an ECN or is an OTT. Also, the usage of phone numbers is not per se a characteristic that indicates that ICS quality is ensured.**

**BEREC should provide clear guidance concerning the transposition of the EECC in national law. Far reaching or overly prescriptive guidance should be avoided to not provide disincentives for operators to offer ICS with ensured quality. Instead, BEREC should ensure that ICS-providers have an incentive to offer services with ensured quality.**

**When identifying the parameters for quality, BEREC should consider the view of the majority of end-users and concentrate only on key information. Parameters that are hardly relevant for consumers and possibly only of interest with regard to a small minority, should not become part of a regulatory information requirement.**

## 5.5. The definition of adequate broadband internet access service

**Deliverable:** BEREC report on Member States' best practices in respect of defining the adequate broadband IAS, which all consumers can access at an affordable price

Public consultation: Yes; adoption at Plenary 4 2019

Adoption of final report at Plenary 1 2020 for publication

**Q5.5** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

The obligation for MS to define adequate broadband IAS based on “the minimum bandwidth enjoyed by the majority of consumers” risks leading to very high quality requirements, far beyond any safeguard provision based on the primary criteria to define the speed that is based on a list of indispensable services. ETNO cautions against setting the bar in a way that might distort competition in the market of commercially available IAS offerings.

Accordingly, when specifying the criteria “minimum bandwidth enjoyed”, BEREC needs to refer to the speed actually used by most consumers. Overall, BEREC should strive for a consistent approach, not providing a guidance to Member States that conflicts with the safeguard criteria of “indispensable services”.

ETNO urges BEREC to engage with stakeholders prior to the Consultation on the draft report, e.g., through the organisation of hearings or workshops.

## 5.6. A vision for Europe’s telecoms consumers

**Deliverable:** Workshop to move towards a vision for Europe’s telecoms consumers

Workshop to be held in Q2 2019

*Q5.6 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

BEUC cannot singlehandedly provide BEREC with a full understanding of telecoms consumer needs. Operators are the ones in daily contact with their customers and have profound experience and knowledge with regard to customer satisfaction. Beyond daily business, operators would like to share their visions and suggestions to increase consumers’ trust and satisfaction in a digital world. Therefore, we strongly suggest that BEREC involves a broader range of stakeholders, including service providers, in the planned workshop. In addition, enhanced cooperation between NRAs and consumer organisations – including national agencies- should take place in full transparency towards other interested parties.

## 5.7. The effectiveness of public warning systems transmitted by alternative means to mobile NB-ICS

**Deliverable:** BEREC Guidelines on how to assess the effectiveness of public warning systems transmitted by different means

Public consultation: Yes; adoption at Plenary 4 2019

Adoption of final Guidelines at Plenary 2 2020 for publication

*Q5.7 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

The purpose of the Guidelines should not only to ensure a common approach across Member States to the assessment of the effectiveness of alternative public warning systems (those using mobile NB-ICS; and those using ECS, other than mobile NB-ICS and broadcasting, or through a mobile app) but also on the costs incurred by industry to develop such systems.

When assessing effectiveness of PWS, BEREC should take into account end-users actual usage habits, particularly with regard to messaging. Moreover, proportionality concerning costs and benefit needs to be taken into account when assessing effectiveness. This also requires to consider the reimbursement of costs incurred by ECN and ECS providers particular in case of network-based solutions.

## 5.8. Access to numbers and services (fraud and misuse)

**Deliverable:** Internal workshop and summary report on fraud and misuse cases

Workshop to be held in September/October 2019; summary report adoption at Plenary 4 2019 for publication

*Q5.8 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**This workshop should not only discuss and examine the cross-border aspect of purposely fraudulent connection fees, but also issues related to spoofing (e.g. Calling Line Identity modification or removal) and possibility the direct support by EC towards extra-UE countries practices.**

## 5.9. Carry-over work on termination of contracts and switching providers

**Deliverable:** BEREC Report on termination of contract and switch of provider

Public consultation: carried out in 2018

Adoption in Plenary 1 2019 for publication

*Q5.9 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**The EECC includes numerous updates and new provisions that are supposed to further facilitate termination and switching of contracts. An assessment of switching and termination just before Member States transpose all of these rules will therefore only provide an outdated retrospective picture. To truly add value to the discussion BEREC should postpone this assessment. Also, such an assessment needs to anticipate the broader digital market, since potential barriers for switching and termination are not at all a sector-specific challenge. This particularly refers to developments such as data-portability, which are much more relevant with regard to data-based business models that are mostly found with regard to other services than IAS or NB ICS. The GDPR has only recently**

introduced new obligations that are meant to tackle also issues with regard to lock-in effects caused by personal data.

Concerning switching and portability of ECS customers, BEREC's report should have a balanced approach that takes into account the complexity of switching and portability processes and that possible mistakes may from any party involved: by the transferring and receiving providers as well as by the end-user.

## 5.10. Input to European Commission methodology on pricing of bundles

**Deliverable:** BEREC input to the European Commission's methodology on the pricing of bundles

Public consultation: No

Timing to be decided, dependent on when the European Commission will organise its workshop on the methodology for the pricing of bundles

*Q5.10 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

The offering of bundles is not a sector-specific phenomenon and, across the digital market, undertakings offer partly large ecosystems consistent of services and devices. Compared to these ecosystems, the bundles offered by telecom operators appear rather limited in scope. Therefore, we urge BEREC to take a broader perspective and consider bundles offered by telecom operators in a larger context. Also, BEREC should take neutral perspective, equally assessing the significant benefits linked to bundled offerings, e.g. convenient and seamless customer experience.

BEREC's input should take into account the new obligations on bundles introduced by the EECC, which are likely to affect the factors involved in the calculation of bundle pricing (e.g., predictability of customer retention) and, beyond, the offering of bundles in general.

We understand that the definition of bundles is a major element of this exercise. Given that bundles are by no means sector-specific, BEREC should base its consideration on the specification of bundles included in horizontal consumer law and strive for consistency. The draft directive on digital content, which is at a final stage of legislation and also covers NI ICS, defines bundles as "different elements of the bundle are offered by the same trader to the same consumer under a single contract".

## 6. BEREC obligatory work and stakeholder engagement

### European Electronic Communications Code

#### 6.1. Ad hoc input to the European Commission

**Deliverable:** BEREC Opinions, Reports, position and input papers, technical background analyses, depending on specific requests by the EU Institutions and on needs emerging during the implementation process.

**Q6.1** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**All the requests and outcomes thereof should be public and open to consultation and stakeholder feedback.**

## 6.2. Implementation of the BEREC Regulation

**Deliverable:** Update to the BEREC Rules of Procedure and the Internal Guidelines for the operation of BEREC Expert Working Groups

Adoption in Plenary 1 2019

**Deliverable:** Rules on the application of Regulation 1049/2001 and Measures regarding personal data for Regulation 45/2001

Adoption in Plenary 2 2019

**Q6.2** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**The revised rules applicable to Expert Working Groups should account for the need for enhanced transparency. Publication of minutes, interim reports, establishment of structured channels of stakeholder engagement and consultation procedures are paramount to increase the transparency and quality of work of the EWG.**

## 6.3. Database of E.164 numbers

**Deliverable:** Database of E.164 numbers, pending communication with CEPT/ECO

Database to be finalised and functioning by Plenary 3 2020

**Q6.3** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**This database of E.164 numbers of European emergency services aimed at ensuring that they are able to contact each other from one Member State to another may be very useful in order to speed the emergency procedures. It is essential that this DB be internal among PSAPs, supplied and updated directly by competent national Administrations and strictly not publicly accessible.**

## 6.4. Database on numbering resources with a right of extraterritorial use within the European Union

**Deliverable:** Database of numbering resources with a right of extraterritorial use within the European Union

Database to be finalised and functioning by Plenary 4 2020

**Q6.4** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**This central registry database on the numbering resources with a right of extraterritorial use within the Union, would be very useful provided that the NRA of country A (donating the block of national numbers to be used extraterritorially in Country B) and the NRA of country B (receiving the block of national numbers of country A, to be used extraterritorially in country B) are both involved in the registration process in the central registry database. That would help minimize risks of frauds and misuse of numbers, and ease legal intercept procedures.**

**This central Registry should be populated and updated by all NRAs and accessible also by authorized operators since it is essential for awareness of different numbering origin and handling and of applicability to not interpersonal services as defined by EECC.**

## 6.5. BEREC input to the setting of single EU-wide maximum fixed/mobile voice termination rates

**Deliverable:** BEREC input to the Commission's delegated act setting single EU-wide maximum MTR and FTR

Public consultation: No

Adoption of final Opinion at Plenary 3 2020 for publication

**Q6.5** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**ETNO recommends BEREC to engage with stakeholders in the development of such input.**

## Roaming

## 6.6. Weighted average of maximum mobile termination rates across the EU

**Deliverable:** BEREC Input to the European Commission regarding the implementing acts setting out the weighted average of maximum mobile termination rates across the Union

Public consultation: No

Adoption of final input at Plenary 3 2019 for submission to the European Commission

**Q6.6** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**ETNO recommends BEREC to engage with stakeholders in the development of such input.**

## 6.7. International Roaming benchmark

**Deliverable:** 22<sup>nd</sup> BEREC International Roaming Benchmark Data Report

Public consultation: No

Adoption of final report at Plenary 1 2019 for publication

**Deliverable:** 23<sup>rd</sup> BEREC International Roaming Benchmark Data Report

Public consultation: No

Adoption of final report at Plenary 3 2019 for publication

**Q6.7** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**No additional comments.**

## 6.8. Transparency and comparability of international roaming tariffs

**Deliverable:** 7<sup>th</sup> BEREC Report on transparency and comparability of international roaming tariffs

Public consultation: No

Adoption of final report at Plenary 4 2019 for publication

**Q6.8** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**No additional comments.**

## Quality and efficiency

## 6.9. Termination Rates at the European level

**Deliverable:** BEREC Report on Termination Rates at European level

Public consultation: No

Adoption of final reports at Plenary 2 and Plenary 4 2019 for publication

**Q6.9** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**No additional comments.**

## 6.10. Article 7/7a Phase II process

**Deliverable:** Internal workshop and summary report on whether there is a requirement to update the Article 7/7A Phase II process in the context of the EECC.

Workshop to be held in April 2019; summary report adoption at Plenary 3 2019 for publication

**Q6.10** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**ETNO deems useful the publication of the database on Article 7/7a Phase II cases.**

## 6.11. Regulatory accounting in practice

**Deliverable:** BEREC Report on Regulatory Accounting in Practice

Public consultation: No

Adoption of final report at Plenary 4 2019 for publication

**Q6.11** *Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**No additional comments.**

## Communication and cooperation

### 6.12. BEREC Annual reports

**Deliverable:** BEREC Annual Reports (Annual Activity Report)

Public consultation: No

Adoption of final reports at Plenary 2 2019 for publication

**Q6.12** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**No additional comments.**

### 6.13. Stakeholder Forum

**Deliverable:** BEREC Stakeholder Forum in October 2019

**Q6.13** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

Debates during the Stakeholder Forums have particular visibility in the sector. The stakeholder Forum became one of the important events of the year for the industry.

On the substance, it is important that the choice of topics continues to reflect the most important issues for the market in a given period, as it did in 2018, addressing the relation with stakeholders and the incentives for investment in better connectivity in Europe.

Equally important is to ensure that the views of all relevant players, in particular the key interlocutors of BEREC and main addressees of its decisions are heard and have the opportunity to participate in the discussions and debates. The stakeholder forum should in that respect evolve to more effective interaction with industry stakeholders vs. interventions by observers of the industry (be it academic or other).

### 6.14. BEREC Communications Plan 2019 (including 10<sup>th</sup> anniversary programme of activities)

**Deliverable:** Multiple deliverables set out within the BEREC Communications Plan 2019 to be delivered as required in 2019

Adoption of BEREC Communications Plan 2019 at Plenary 4 2018 for internal use

**Q6.14** Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.

**No additional comments.**

### 6.15. BEREC Work Programme 2020

**Deliverable:** Outline of BEREC Work Programme 2020

Public consultation: No

Adoption of Outline of BEREC Work Programme 2020 by electronic clearance by 31 January 2019

*Q6.15 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**Although the outline is not subject to public consultation, stakeholders could be given the opportunity to make suggestions to be taken into account, ahead of the preparation of the draft programme for consultation.**

## **6.16.Cooperation with EU institutions and institutional groups**

*Q6.16 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**With the strengthening of powers of BEREC this work stream is essential. BEREC also has a key advisory role to other regulators exerting their powers over telecom operators and in the broader digital economy. In this context, publication of initiatives, documents, interim reports, establishment of structured channels of stakeholder engagement and consultation procedures are paramount to increase the transparency and enable stakeholders to provide their views.**

## **6.17.International cooperation**

*Q6.17 Does the stakeholder have any comment on this workstream? If so, please provide it in the space provided.*

**No additional comments.**

*Q6.18 Other than the information already provided on the specific workstreams above, and noting the outline of the timing of deliverables below, does the stakeholder have any additional comments to make, which would further benefit the development of BEREC's Work Programme 2019? If so, please provide such comments in the space provided.*

**International cooperation should focus on deepening the knowledge on digital markets and on the exchange of best practices that have demonstrated to deliver results in other markets with comparable characteristics and also to draw conclusion from experiences that were not successful.**