

The Consumer Voice in Europe

BEREC'S EARLY CALL FOR INPUT ON POTENTIAL REGULATORY ASPECTS OF 5G

BEUC's response



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Why it matters to consumers

The deployment of 5G promises benefits to consumers. More speed, capacity and connected devices, are amongst them. At the same time, several challenges surround the roll-out of 5G. Concerns around consumer choice and information, health, safety, security, privacy, net neutrality already exist. It is important that the European electronic communications regulators provide independent research and advice what regulation is needed and how to shape 5G to maximise its advantages and minimise its dangers.

General comments

BEUC – The European Consumer Organisation welcomes the opportunity to contribute to the [early call for input](#) on the impact of 5G on regulation and the role of regulation to shape 5G.

In the cover letter presenting the consultation BEREC emphasises the relationship between innovation and regulation. BEUC recommends BEREC not to concentrate on the “5G hype” that parts of the industry are pushing. Instead, we recommend conducting a thorough assessment and pursue socially valuable innovation.

With the deployment of 5G, it is important to anticipate what gaps exist in legislation and how 5G should adapt to technologically neutral legislation such as the Open Internet Regulation or the General Data Protection Regulation (GDPR). New challenges like the increased need for strong and encompassing cybersecurity measures must be addressed as a matter of urgency. It is also of utmost importance that strong protections for consumers are not weakened because of emerging technologies.

Several of the items outlined in the annex to the consultation are interesting. However, we recommend BEREC to focus at this stage on those areas that strictly fall within its remit.

5G's roll-out should be considered and carefully studied from different angles, including health, security, consumer choice, net neutrality and privacy. Nevertheless, this laudable task should not be necessarily undertaken by BEREC alone. Close cooperation with data protection, consumer protection, competition, health and cybersecurity authorities in this regard is essential and should be promoted by BEREC. We recommend BEREC to clearly identify aspects that fall within its competence, refer to the work done by other authorities and to undertake a bigger cross-sector cooperation with other authorities.

Completeness of the proposed list and missing elements

BEUC generally welcomes the suggested exploratory items and related questions, with a few exceptions. Several aspects, such as privacy and data protection, are better dealt with by other bodies. At the same time, we suggest considering new elements from a consumer perspective. Specifically, we would like to provide comments regarding:

Competition

It is important to assess the impact of 5G in competition both at retail and wholesale level. We support BEREC to further research on this in close cooperation with competition authorities, including on possible interoperability implications. Further to this, the deployment of 5G technologies requires substantive investments in infrastructure. While network sharing agreements may contribute to a faster development of 5G, they can raise competition concerns when they take place between undertakings with significant market power since such agreements can also reduce the incentives to invest and diversify infrastructure, and ultimately lower the quality of services for consumers.

Quality of service

We encourage BEREC to also consider how different quality of service levels can be provided without discrimination and how the optimisation of some services will not harm the quality of the internet access.¹

Consumer information

Electronic Communication providers are currently experimenting and creating consumer expectations on 5G. Promises around 5G include offering consumers more speed, capacity and low latency. It is important that providers and regulators are clear to consumers that promises around 5G may only materialise when 5G networks are established. Even then, there are risks for consumers to perceive 5G as not being very different from 4G, lack of coverage in certain areas and mislabelling and misleading practices. For example, our French member UFC-Que Choisir estimates that, depending on the frequency, the maximum theoretical data rates may range from 30 Mbit/s (less than 4G) to more than 1 Gbit/s. Therefore, it would not be acceptable that coverage maps do not differentiate between the different types of 5G.

We agree with BEREC to include consumer information in its forthcoming BEREC report, going beyond the two elements identified in the annex of the consultation (i.e. coverage maps and labelling). BEREC could also consider how regulation and enforcement can avoid and sanction practices that have the potential to mislead consumers. In addition, awareness-raising is equally important. For example, as our Spanish member OCU points out, there is currently some confusion amongst consumers between 5G WIFI signal and 5G networks.²

Privacy and data protection

BEUC recommends not to include an analysis of the impact of the General Data Protection Regulation (GDPR) on 5G (and vice versa). Instead, BEREC could enter into a dialogue with the European Data Protection Board and data protection authorities for them to adopt an opinion in this regard.

Similarly, BEUC is of the opinion that BEREC should not “analyse the consequences of the ePrivacy Regulation”, as it is in draft form and there is a risk of sending wrong signals and triggering conflicting views from other authorities.

¹ ARCEP, 5G and net neutrality, friends or foes?, November 2018
https://www.arcep.fr/uploads/tx_gspublication/ARCEP_BD_5G_nov2018.pdf

² OCU, Llega el 5G: ¿sabes qué es y qué te ofrece?, 26 June 2019
<https://www.ocu.org/tecnologia/internet-telefonía/informe/tecnología-5g>

For other matters related to the data economy, we refer to our comments³ to a recent BEREC consultation on the data economy.

Interoperability

Interoperability can be a mechanism to achieve greater competition and public interest objectives like traffic safety. We support BEREC to assess this aspect. In this regard, data hungry models (e.g. on connected vehicles), come with several risks from a privacy, data protection and security perspective.

Security

5G can be a game changer, as smart cities, smart vehicles and smart houses can become a reality to most consumers.

Before 5G is rolled-out BEUC is of the opinion we need an appropriate regulatory framework in place (e.g. security by design and by default rules). The IoT environment is already fundamentally insecure with 4G.⁴ With the development of 5G, we can expect even more insecure connected products reaching the EU market. This will translate in higher risks related to individual consumers' privacy, safety, health and finances, but also to higher risk for our entire society. As ENISA pointed out, "[e]arly releases from some manufacturers are available but the standards are still in their infancy. Nevertheless, there is a certain risk of repeating history. Given the improvements that 5G will bring (more users, more bandwidth etc.) having the same security risks can be extremely dangerous. Further actions are needed!"⁵

BEREC could support ENISA's recommendations in this regard and strongly collaborate with ENISA on the measures that Member States are taking to ensure 5G security following the European Commission's Recommendation.⁶

Net neutrality

As BEREC noted in the past, the Open internet Regulation does not need to be changed to adapt to 5G. The Regulation is technologically neutral, so emerging technologies should adapt to the law.

Because of network slicing, there is a danger for providers to try to have internet access services qualified into specialised services, contrary to the Open Internet Regulation. In the forthcoming report, this aspect should be reiterated.

Health and safety

There are concerns about the potential negative effects of being exposed to radiofrequency electromagnetic fields. For example, over 240 scientists and doctors from more than 40

³ BEUC's response to BEREC's public consultation on the data economy, 21 November 2018 https://www.beuc.eu/publications/beuc-x-2018-104_berec_public_consultation_on_the_data_economy.pdf

⁴ BEUC, Cybersecurity for connected products, March 2018. https://www.beuc.eu/publications/beuc-x-2018-017_cybersecurity_for_connected_products.pdf

⁵ ENISA, Signalling Security in Telecom SS7/Diameter/5G, 28 March 2018, p. 23 <https://www.enisa.europa.eu/publications/signalling-security-in-telecom-ss7-diameter-5g>

⁶ Commission Recommendation C(2019) 2335 final, 26 March 2019 <https://ec.europa.eu/digital-single-market/en/news/cybersecurity-5g-networks>

countries have signed a declaration⁷, calling on the European Union to suspend the introduction of 5G until potential hazards for human health and the environment have been fully investigated by scientists independent from industry.⁸

Already in 2011, the International Agency for Cancer Research (IARC) of the WHO classified radio frequency electromagnetic fields as a possible carcinogen to humans because of increased risk of glioma linked to mobile phone use.⁹ Also, the EU Scientific Committee on Health, Environmental and Emerging Risks (SCHEER) recently published a statement on emerging health and environmental issues¹⁰, including the “potential effects on wildlife of increases in electromagnetic radiation”, among other emerging concerns.

As SCHEER observed, “[h]ow exposure to electromagnetic fields could affect humans remains a controversial area, and studies have not yielded clear evidence of the impact on mammals, birds or insects. The lack of clear evidence to inform the development of exposure guidelines to 5G technology leaves open the possibility of unintended biological consequences.”

Since the impact of 5G on health and safety has not been sufficiently studied and not enough is known regarding long-term effects, BEUC supports further independent research in this regard. Rather than trying to prevent negative communication about it or to be overly alarming, we encourage BEREC to collaborate with competent health and public safety authorities to further assess the potential negative effects of 5G and how to counter them.

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⁷ <http://www.5gappeal.eu/>

⁸ See also concerns from our Romanian member APC, <http://www.apc-romania.ro/ro/i-fond-national-de-subscriptie-publica-stop-5g-/NjE4LTE.html>

⁹ WHO International Agency for Research on Cancer, IARC classifies radiofrequency electromagnetic fields as possibly carcinogenic, 31 May 2011 https://www.iarc.fr/wp-content/uploads/2018/07/pr208_E.pdf

¹⁰ SCHEER, Statement on emerging health and environmental issues, 20 December 2018 https://ec.europa.eu/health/sites/health/files/scientific_committees/scheer/docs/scheer_s_002.pdf