

The Consumer Voice in Europe

BEREC'S PUBLIC CONSULTATION ON ITS DRAFT 2020 WORK PROGRAMME

BEUC's response



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Why it matters to consumers

Over the past years, the technical expertise and experience of the Body of European Regulators for Electronic Communications (BEREC) has been very important to promote competitive electronic communications markets and protect and empower consumers. Being able to comment on BEREC's draft programme shows regulators' openness and willingness to cooperate with BEUC and its 45 members, and other stakeholders.

Summary

BEUC - The European Consumer Organisation welcomes the opportunity to provide feedback to BEREC's consultation on its [draft 2020 Work Programme](#). Overall, BEUC would like to highlight that all strategic priority areas need strong, future-proof consumer protection and empowerment policies to succeed. The consumer perspective is sometimes not expelld out. This should be corrected in the final Work Programme. Particularly in relation to BEREC's strategic priority 5 related to consumer empowerment, more ambition is needed.

Below, BEUC provides comments on those strategic priority items that fall within BEUC's scope of work.

1. Strategic priority 1: Responding to connectivity challenges and to new conditions for access to high-capacity networks

- BEUC recommends BEREC and national regulatory authorities (NRAs) to be prudent when assessing **Very High Capacity Networks (VHCN) and co-investment**. Connectivity is an important objective, but the other three regulatory objectives (i.e. competition, internal market and end-user interests) must be fulfilled simultaneously and in no lesser degree than the fulfilment of the connectivity objective. In fact, connectivity should never happen to the detriment of end-user interests. That means, for example, that NRAs should be able to intervene in markets with *ex-ante* measures where necessary, even in cases of VHCN. We welcome the safeguards set forth in the European Electronic Communications Code (EECC). The implementation of relevant EECC provisions must be carefully monitored and enforced.
- BEUC also welcomes BEREC is having a separate consultation on **network termination points**. We strongly encourage BEREC to further develop its views on mobile termination points. The definition of termination points takes an additional important dimension in the context of the Internet of Things.

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

- **Intra-EU communications'** caps are a [step forward](#) to keep working towards a telecoms single market and better deals for consumers. For example, our member [Test Aankoop/Test Achats has calculated](#) that the average price reduction thanks to the cap on intra-EU calls (in Belgium) will be 332% for a mobile phone minute and 543% for SMS. According our Slovenian consumer organisation ZPS, operators currently charge up to €0.49 per minute for calls to other countries and up to €0.22 per SMS – substantially above the foreseen cap. In Germany, our member [vzbv reported](#) in 2018 that some operators were charging up to €1.49 for a mobile phone call to someone living in another EU country.

We welcome that BEREC will consult on the updated guidelines on intra-EU communications. BEUC recalls that exceptions to the intra-EU communications' caps are "highly unlikely to occur because the maximum prices are clearly above the costs for providing intra-EU communications", according to the [BEREC Regulation](#) itself (recital 48). Even if derogations are applied, BEUC [urges](#) additional charges to be based on actual, justifiable, objective and fair costs.

- When it comes to **BEREC's exploratory work on digital platforms**, we encourage BEREC to consider in its report several issues related to device neutrality, building up on ARCEP's and other NRAs' work. Furthermore, we encourage BEREC to conduct this work in cooperation with competition, data protection, market surveillance and consumer protection authorities. This should be done ahead of the public consultation, e.g. via the proposed workshop, to ensure other authorities' views are reflected in the draft report. If BEREC holds a workshop, we would encourage to invite consumer organisations.
- **Workshop on data collection from authorised undertakings and OTTs.** We expect BEREC to open this workshop to consumer organisations. In this sense, we recall BEUC's [comments](#) on the data economy.
- **BEUC urges BEREC to put its intended work on the "Internet Value Chain" back into its 2020 work programme**, in particular to address device neutrality. BEUC has identified device neutrality as one of our priorities for the new legislative term.¹ While BEREC had identified this area in this year's stakeholder 'call for input', it has now been postponed to 2021 without apparent specific justification. This should be corrected in the interest of consumers.

¹ For more information, see

ARCEP's 2019 State of the Internet Report, pp. 61-65.

https://en.arcep.fr/uploads/tx_gspublication/report-state-internet-2019-eng-270619.pdf

An EU that keeps working for consumers. BEUC proposals for the 2019-2024 European Commission, BEUC-X-2019-027

https://www.beuc.eu/publications/beuc-x-2019-027_proposals_for_strategic_agenda_incoming_commission.pdf

BEUC's Manifesto for the 2019 European elections, BEUC-X-2019-006

https://www.beuc.eu/publications/beuc-x-2019-006_manifesto_for_the_2019_eu_elections.pdf

3. Strategic priority 3: Enabling 5G and promoting innovation in network technologies

- BEUC welcomes BEREC's commitment to **work on 5G "in cooperation with other EU bodies"**. BEUC recommends 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. While BEREC only singles out the cooperation with the Radio Spectrum Policy Group (RSPG) and the NIS Cooperation Group, BEUC urges BEREC to explicitly mention systematic cooperation and consultation with the European Data Protection Board (EDPB), the EU Agency for Cybersecurity (ENISA), and consumer, competition and health authorities. If this is not done, several [considerations identified](#) by BEUC in relation to 5G (e.g. health and safety, competition, interoperability, security, privacy and data protection, consumer information and choice...) might not be addressed appropriately.

In addition, BEUC recommends BEREC to **approach 5G from a consumer-centric perspective** to ensure 5G benefits, not jeopardises, consumers. This goal should be explicitly expelled out in BEREC's 2020 work programme.

With regards to BEREC's second **workshop on 5G Cybersecurity toolbox progress** in 2020, we hope BEUC and consumer organisations are invited to participate.

- **Workshop on infrastructure sharing.** When considering network sharing agreements, it is important to consider that these "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".² NRAs should closely monitor and act within their powers so this worry does not materialise.

4. Strategic priority 4: Fostering a consistent approach of the open internet principles

- BEUC has been supportive of BEREC's work on the implementation of the Open Internet Regulation. BEUC considers that the (final) **updated guidelines** can be an opportunity to preserve good points included in the current guidelines and improve/clarify others, such as on zero rating, connectivity services with a limited reach and internet access services' speeds. BEUC will respond to the current consultation. In the meantime, we refer to previous comments.³
- BEUC is also looking forward to first results of the **Net Neutrality Measurement tool**, which we hope will improve the enforcement of EU's net neutrality rules.
- BEUC encourages BEREC to open its internal workshop on zero rating offers to civil society organisations, including consumer organisations.

² BEREC's early call for input on potential regulatory aspects of 5G - BEUC's response, BEUC-X-2019-045, https://www.beuc.eu/publications/beuc-x-2019-045_beuc_response_on_impact_of_5g.pdf, page 2.

³ BEREC consultation on the evaluation of Regulation 2015/2120 and the BEREC net neutrality Guidelines - BoR (18) 33 - BEUC response, BEUC-X-2018-035, https://www.beuc.eu/publications/beuc-x-2018-035_berec_consultation_on_net_neutrality_beuc_response.pdf; BEREC Draft Guidelines on European Net Neutrality Rules - BoR (16) 94 - BEUC position, BEUC-X-2016-075 https://www.beuc.eu/publications/beuc-x-2016-075_implementation_of_eu_net_neutrality_rules_berec_draft_guidelines_1.pdf

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

- **We very much welcome BEREC's commitment** to ensure that "[t]he focus on consumer empowerment will continue, and the welfare of end users will always be a key focus for BEREC". BEUC also welcomes that "BEREC will continue to play a **very active role** in assessing and promoting consumer empowerment and consumer protection".⁴ We expect this high-level goal and commitment to be reflected in the all work programme items.
- **Overall, more ambition is needed in this strategic priority:**
 - In the early call for input, BEUC recommended BEREC to **pursue its efforts in working together on a joint vision for Europe's telecom consumers**. In 2019, BEUC welcomed that in BEREC's 2019 work programme, it recognised the importance of launching a specific workstream on a vision for Europe's telecom consumers. It would be a pity not to continue this work in 2020 and subsequent years – especially if consumer protection is one of BEREC's strategic pillars and priorities. Consumers will undoubtedly benefit from an enhanced cooperation between both BEREC and BEUC members. After all, BEREC and NRAs are public authorities to defend and protect the public interest. BEUC and our members share this objective. For this, we encourage BEREC to **involve not only BEREC's end-user working group, but also other working groups** that work on consumer-related matters. If BEREC wanted to be more ambitious, it should consider setting up a **consumer working group**, which would coordinate this work. Tangible deliverables could include:
 - A common position/joint vision for Europe's telecoms consumers, which was already foreseen in BEREC's 2019 work programme, but not yet delivered;
 - A joint consultation process where all NRAs and BEUC members are asked questions aimed at evaluating and improving the involvement of consumer organisations in the national regulatory process;
 - A joint action plan;
 - At least one joint BEREC-BEUC annual workshop on areas of mutual interest.
 - **Four out of six items listed in the draft work programme have, are or will be subject to consultation already in 2019**. In addition, BEREC's report on how to handle third party payment charges on mobile phone bills is scheduled to be published only in 2021. In other words, there is no substantive work foreseen on this strategic priority for 2020. Finally, BEREC's important (and very welcomed) forthcoming report on penalties seems it will not be public or be subject to consultation. BEUC asks **to make BEREC's report on penalties public**. This can help improving the implementation and enforcement of applicable rules.
 - **Work that goes beyond BEREC's natural remit** (e.g. its planned work on the forthcoming Digital Services Act) **cannot be at the expense of its consumer protection's mission in the electronic communications**

⁴ Draft BEREC 2020 Work Programme, page 5, https://berec.europa.eu/eng/document_register/subject_matter/berec/annual_work_programmes/8825-draft-berec-2020-work-programme

markets. For example, during the early call for input, BEREC had identified “the need for further exchange on consumer protection issues”. However, this does not appear in the draft 2020 work programme. We urge BEREC to insert this item in the work programme.

6. BEREC obligatory work and stakeholder engagement

- **BEUC regrets that BEREC has not foreseen public consultation or events on certain topics**, such as roaming.
- **BEREC's 2020 Stakeholder Forum** should ensure gender, geographic and stakeholder balance in its sessions. Stakeholder engagement should never jeopardise BEREC's independence.
- **BEUC acknowledges BEREC's increased reach out to consumer organisations**, especially in 2019. We hope that this process will continue and be steadily intensified. **Overall, BEREC can improve stakeholder engagement and collaboration by, *inter alia*:**
 - Providing more time for public consultations;
 - Trying to integrate BEUC's feedback into BEREC's work – as BEUC is the EU umbrella organisation that represents consumer interests.
 - Providing more transparency about who BEREC meets and on what subject matter;
 - Creating a balanced permanent stakeholder group like ENISA does, for example. This can ensure constant, regular, interaction between BEREC and key stakeholders in a structured, transparent and accountable manner.
 - Keep trying to be inclusive. For example, we noted that BEREC states that it “*will continue to actively engage with stakeholders in public consultations and **industry forums** and by making information more accessible to the public and to its stakeholders*”⁵ (emphasis added). BEREC should promote its dialogue and cooperation with BEUC and civil society organisations at large.
- **Review of BEREC Medium Term Strategy 2021-23.** As preliminary feedback, BEUC recommends BEREC to:
 - Strengthen consumer protection and empowerment as a strategic pillar and a priority reflected not only into a particular workstream, but in all BEREC's activities. BEREC should propose specific activities to protect consumers and have a change in industry's mindset towards consumers.
 - Strengthen collaboration and cooperation with other authorities not to step into the competences of other EU regulators/bodies/agencies.
 - Keep improving its stakeholder engagement and collaboration, as per our recommendations above.
- **Cooperation with EU institutions and institutional groups.** BEUC warmly welcomes the inclusion of this point. We encourage BEREC to systematically cooperate with other relevant authorities. We miss explicit references to collaboration with the European Data Protection Board (EDPB) and the European

⁵ Draft BEREC's 2020 Work Programme, page 7.

Data Protection Supervisor (EDPS), the Consumer Protection Cooperation Network (CPC), the European Competition Authorities Network or the Council of European Energy Regulators (CEER). For example, we very much welcome BEREC's participation in the cross-sector and cross-regulatory [roundtable](#) "Bundled Products: Dispute Resolution & Consumer Rights Enforcement" held on 6 November 2019. BEREC's endorsement of the Guide for companies and regulators on Bundled Products coordinated by CEER shows the usefulness of cross-cooperation. BEUC welcomes more initiatives like this.

- **Possible work for 2021 and beyond:**

- BEUC encourages BEREC to include in its 2020, 2021 and subsequent work programmes a workstream on a **joint vision** for Europe's telecoms consumers. This must be a continuous exercise. 2019's joint workshop was the first step towards a joint vision. As recommended before, this work should ideally be conducted not only by BEREC's end-user working group, but by other working groups as well. This is because there are several aspects that affect consumers that are dealt with in other BEREC working groups (WG), such as the Open Internet WG (e.g. net neutrality), planning and future trends WG (e.g. 5G), market and economic analysis WG (e.g. data economy), statistics and indicators WG (e.g. methodology on the pricing of bundles), Roaming WG, etc. **We propose to either include other working groups when dealing with this point or, even better, to propose a new working group, a consumers' working group.**
- BEREC lists important items for consumers in this section, such as compensation in case of early termination of contracts, key elements of the functioning of the EECC, and an analysis of the Internet Value Chain. These **items should be more ambitious to sincerely aim at improving consumer protection:**
 - For example, BEREC could consider looking at compensation not only in case of early contract termination, but also in case of infringing other consumer rights obligations. It could also map where automatic compensation exists, extract best practices and identify gaps. BEUC is ready to support BEREC in this exercise.
 - In addition, when evaluating the functioning of the EECC, BEREC should not only focus on information requirements, but on the other consumer-related provisions of the Code that will be subject of review, as per Article 123 EECC.
- Finally, as previously recommended, BEUC strongly encourages BEREC to start working on some of the elements listed already in 2020 – in particular those that were already included in the outline of BEREC's 2020 work programme, i.e. Internet Value Chain and "further exchange on consumer protection issues". BEUC does not consider these items can be postponed because consumer protection and empowerment are a BEREC priority.

BEUC remains at BEREC's disposal for any question, comment or suggestion it may have. We hope we can continue a very fruitful working relationship for the benefit of consumers. We thank you for the work already conducted.

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