

The Consumer Voice in Europe

BEREC 2021 WORK PROGRAMME CONSULTATION

BEUC's response



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Why it matters to consumers

Over the past years, the technical expertise and experience of telecom regulators 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 consumer organisations as well as other stakeholders.

Summary

In this document, you can find BEUC – The European Consumer Organisation's response to the Body of European Regulators for Electronic Communications (BEREC)'s consultation to its draft 2021 work programme¹. We welcome the opportunity to comment on it.

BEUC particularly welcomes BEREC's:

- *Recognition of consumer protection and universal service as essential horizontal principles.*
- *Commitment to further work on the internet value chain. In this sense, we particularly point out the need to promote device neutrality in the EU.*
- *Overall work on net neutrality.*
- *Excellent analysis and data-gathering on roaming and intra-EU communications.*
- *Current and future work on third-party payment charges on mobile phone bills.*
- *Planned out-of-silos interinstitutional cooperation.*
- *Planned workshop(s) with BEUC.*

BEUC recommends BEREC to:

- *Be more ambitious regarding its activities to foster consumer protection and empowering consumers.*
- *Carefully assess overall task prioritisation and not to lose focus on the highly important workstream related to consumer protection and empowerment, as well as competition.*
- *Work on 5G, putting more emphasis on how 5G can deliver benefits for all consumers.*
- *Extend its consultation timeframes.*

¹ Draft BEREC 2021 Work Programme, available at https://berec.europa.eu/eng/document_register/subject_matter/berec/annual_work_programmes/9446-draft-berec-work-programme-2021

We welcome that in addition to three strategic priorities, BEREC considers universal service and consumer protection as “important horizontal principles that form an essential part of the high-level priorities”². However, this needs to be reflected in ambitious work programme activities to ensure a balanced work programme.

As compared to previous work programmes, BEREC seems to be working on many more topics and deprioritising some tasks. We are concerned this might have an impact on workstreams related to consumer protection. Rather than spreading too thin, we urge BEREC not to invest too much attention in political priorities of the Commission that are not central to its mandate. This is particularly important as BEREC itself acknowledges that “given the number of workstreams for BEREC resulting from the implementation of the EECC, several important proposals could not be initiated”³.

Below, we provide more specific comments to BEREC’s draft work programme.

1. Comments on strategic priority 1 items: promoting full connectivity

Overall, we would like to see more **focus on ensuring that connectivity – including via new technologies like 5G – delivers for consumers**. We urge BEREC not to only focus on priorities of importance to industry but to ensure that consumer-relevant elements of 5G such as quality of service, coverage, information and marketing practices, are equally prioritised in BEREC’s work.

In particular regarding 5G, BEUC refers to its previous comments⁴. We welcome that the work programme reflects that in a workshop BEREC will foster discussions with national regulatory authorities (NRAs) and other competent authorities to monitor the roll-out of 5G, but we regret that when it comes to information to consumers, it is only mentioned “eventually to inform end-users about the availability of 5G networks and services”⁵. BEUC recommends monitoring developments, correct misleading practices and ensure the proper development of 5G for all consumers.

Several BEUC member organisations have raised concerns about how 5G is being deployed and marketed in their national countries. Just a few examples:

- Our German member vzbv has warned that regulators need to look at gaps in coverage⁶. Vzbv has raised concerns about the design of the 5G frequency allocation in Germany. The design did not include national roaming obligations or a service provider obligation where network operators must ensure access. Coverage is also defined by households, which means there can be areas that may seem covered, but they are not, because no one is living there. These regions can still be in need for coverage, e.g. tourist areas or infrastructure⁷.
- UFC-Que Choisir from France strongly recommends regulators and warns consumers⁸ to pay particular attention to the quality of service provided by

² Draft BEREC 2021 Work Programme, page 6.

³ Ibid, page 46.

⁴ https://www.beuc.eu/publications/beuc-x-2019-045_beuc_response_on_impact_of_5g.pdf
https://www.beuc.eu/publications/beuc-x-2019-067_berec_draft_work_programme_2020.pdf

⁵ Draft BEREC 2021 Work Programme, page 11.

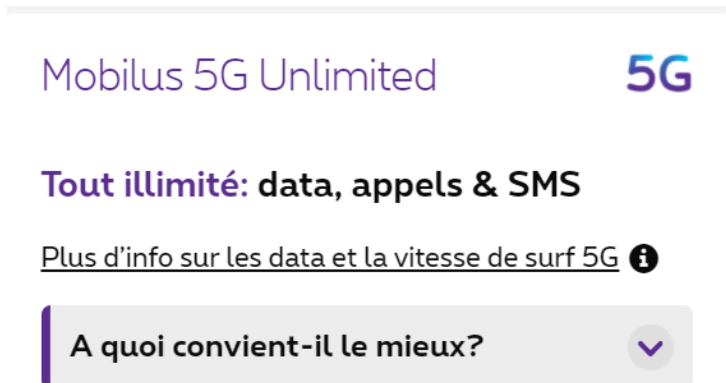
⁶ See for example <https://www.vzbv.de/pressemitteilung/mehr-wettbewerb-fuer-den-mobilfunkmarkt>

⁷ https://www.vzbv.de/sites/default/files/downloads/2018/10/22/18-10-12_vzbv_stellungnahme_5g_frequenzvergabe.pdf

⁸ See notably <https://www.quechoisir.org/billet-du-president-cartes-de-couverture-5g-le-contestable-laisser-faire-de-l-arcep-n83995/>

operators as strong differences exist depending on the frequency band resorted to. There are risks of mystifying 5G in operators' marketing campaigns and there is a risk to exclude some consumers. Competent authorities should monitor this and be very strict about marketing campaigns from operators, even to consider prohibiting to advertise a 5G offer if a superior quality of service to that of 4.5G is not guaranteed. If the quality of service of 5G is not assured, then operators must be clear about it. NRAs must ensure that operators differentiate 5G according to the quality of service. While in France there are no binding rules in this regard, the French NRA ARCEP has recently published (non-binding) best-practice recommendations for operators⁹.

- Our Belgian member Test-Achats/Test-Aankoop tested¹⁰ Proximus offer "Mobilus 5G Unlimited" launched in April 2020¹¹. The operator recognises (after several clicks on its website) that the speed improvement is only of 30%, depending on the coverage and mobile phone used¹². However, the way the offer is portrayed on its website is not clear



towards consumers, not even once consumers click to have more information about data and speed of 5G. Proximus however marketed it to the press that it was a "5G light" subscription. Test-Achats/Test-Aankoop's test showed the offer was way below the expected 5G quality. The test showed that the average download speed had an increase of 39.5% compared to that of 4G/4G+; the maximum download speed was close to 54% higher. However, they did not find much difference between this 5G light offer and 4G/4G+. In terms of latency, it only experienced a 12% improvement on average, but no difference for maximum values. In addition, Test-Achats/Test-Aankoop showed there were also issues with the high price of the offer¹³ and the coverage, which did not correspond to what Proximus conveyed to consumers in its 5G map¹⁴.

- BEUC Spanish member OCU also raised concerns about the price of compatible devices and about marketing campaigns regarding the sale of devices purportedly being compatible with 5G, when in reality they are only compatible with 5G-NSA¹⁵.

It is of utmost importance that BEREC supports NRAs and includes in its 2021 work programme on 5G a focus on these aspects so 5G delivers on its promises to also benefit consumers – not just industry. In any case, if BEREC is "considering measures to improve the ability of citizens to distinguish between scientific and non-scientific claims

⁹ <https://www.quechoisir.org/decryptage-telephonie-mobile-ce-qu-il-faut-savoir-sur-la-5g-n82595/>

⁹ <https://www.arcep.fr/actualites/les-communiqués-de-presse/detail/n/5g-221020.html>

¹⁰ <https://www.test-achats.be/hightech/telecom/news/proximus-5g-light>

¹¹ https://www.proximus.be/fr/id_cr_msub/particuliers/mobile/abonnements-gsm.html - the screenshot provided was taken from this website (last visited on 29 October 2020).

¹² https://www.proximus.be/support/fr/id_sfagr_5g_global/particuliers/support/telephonie/gsm-et-carte-sim/configurer-votre-gsm/questions-frequentes-sur-la-5g.html (last visited on 5 November 2020)

¹³ <https://www.test-achats.be/hightech/telecom/news/prix-eleve-premier-abonnement-light-5g-proximus>

¹⁴ <https://www.test-achats.be/hightech/telecom/news/proximus-5g-light>

¹⁵ <https://www.ocu.org/tecnologia/internet-telefonía/informe/tecnologia-5g>

on [exposure to electromagnetic frequencies (EMF)] and 5G¹⁶ it must involve and follow the advice of health authorities. As the draft work programme admits, "the task of coordinating useful and relevant information on EMF for this purpose is large scale. It could be very complex given that the NRAs are not health experts"¹⁷.

We also suggest a **workshop on 5G for consumers**, not only with other regulatory bodies but also with civil society organisations, including consumer organisations. The workshop should not only address possible disinformation on health impacts but all aspects that can affect consumers. This would better fit BEREC's strategic priorities to promote full connectivity and empower end-users, as well as fostering consumer protection.

2. Comments on strategic priority 2 items: thriving sustainable and open digital markets

BEREC's feedback on the Digital Services Act (DSA)¹⁸ is welcomed, as well as the opportunity for BEUC to present our recommendations at the 2020 BEREC Stakeholder Forum¹⁹. We welcome that BEREC is seeking "user protection perspectives" to be "integrated in the design and practice of regulation"²⁰. We take the opportunity to share in writing BEUC's views on the DSA²¹ and on the Digital Markets Act (DMA)²². We would be pleased to engage in further discussions with BEREC on this matter.

Having said that, we would like to provide a word of caution that the increased focus on the DSA or other political priorities of the European Commission should not cause undue delay in other important BEREC's and NRAs' tasks.

The European Electronic Communications Code (EECC) expanded the scope of previous rules to also **cover over-the-top services (OTTs)**. We encourage BEREC to focus on these aspects on top of creating data collection indicators.

We strongly welcome BEREC's work item on the internet value chain. BEUC has been asking BEREC to work further on device neutrality in the past and we continue to support this workstream. BEREC rightly points out that electronic communication services and telecom networks are not the only elements of the internet value chain that BEREC should look at. BEREC notes that the "internet experience for users is affected by many other elements, such as terminals, operating systems, applications, app stores, or content that condition in many different ways user experience when accessing the internet"²³. We could not agree more. We also thank BEREC for stressing in its opinion on the DSA the need to further impose ex-ante rules on digital platforms – not only online platforms – so as to include other elements of the value chain such as operating systems. Finally, on this point, we also commend BEREC's intention to, on top of a public consultation, "interact with various stakeholders, gather input via questionnaires [and] organise workshops"²⁴. We look forward to participating in such stakeholder activities.

¹⁶ Draft BEREC 2021 Work Programme, page 11.

¹⁷ Ibid, page 12.

¹⁸ https://berec.europa.eu/eng/document_register/subject_matter/berec/others/9411-berec-response-to-the-public-consultations-on-the-digital-services-act-package-and-the-new-competition-tool

¹⁹ https://berec.europa.eu/eng/events/berec_events_2020/235-8th-berec-stakeholder-forum

²⁰ Draft BEREC 2021 Work Programme, page 14.

²¹ https://www.beuc.eu/publications/beuc-x-2020-031_making_the_digital_services_act_work_for_consumers_-_beucs_recommendations.pdf

²² https://www.beuc.eu/publications/beuc-x-2020-079_digital_services_act_and_new_competition_tool.pdf

²³ BEREC Draft 2021 Work Programme, page 16.

²⁴ Ibid, page 17.

Consumer organisations remain at BEREC's disposal. This is an important topic for BEUC and hope it is for BEREC as well.

BEUC broadly welcomes BEREC's work on net neutrality. BEUC joins BEREC's efforts for an open and non-discriminatory internet for all consumers. As BEREC rightly states, the open internet is "an important building block in the current EU telecom rules."²⁵ While we were expecting more ambition on some points of BEREC's updated open internet guidelines – notably on zero rating – BEREC took on board several of our recommendations²⁶ and we thank BEREC for it. We expect BEREC to update the guidelines in case CJEU case law further sheds light on Regulation (EU) 2015/2120, notably on zero-rating.

We also applaud BEREC for the emphasis in this work programme on supporting "NRAs' obligation to 'closely monitor and ensure compliance' with the Regulation"²⁷, including on cases related to zero-rating. We had highlighted this problem in the last net neutrality consultation and welcome BEREC's efforts to step up enforcement, offering support to NRAs whenever needed²⁸. BEREC's internet monitoring reports during the COVID-19 pandemic have shown that the Open Internet Regulation is very relevant, also in moments of crisis. However, we noted our concern that in some countries zero-rating offers had increased and BEREC considered this development as "customer-friendly measures"²⁹. Zero-rating leads to increased prices, lock-in of consumers, makes it harder to switch and harder to compare offers. Zero-rating negatively affects competition, innovation, media diversity and freedom of expression.

Finally, on this point, any review of BEREC's net neutrality regulatory assessment methodology must preserve the balance approach achieved in the current methodology, which took on board several civil society recommendations.

3. Comments on strategic priority 3 items: empowering end-users

Overall, we would like to emphasise that **more focus should be put on this strategic priority**. While this strategic priority is mentioned in other parts of the work programme, in this section we only find two (carry-over) work items. **BEREC should develop a vision and a strategy so the electronic communications sector works for consumers**. This is particularly important in a so-interconnected world.

The important role of NRAs to empower consumers is not just to ensure "consumer transparency and digital skills"³⁰. Empowering consumers cannot be achieved by transparency and digital skills alone. BEUC strongly suggests BEREC supports NRAs in their role to **ensure the respect of consumer rights and related provider obligations** in the electronic communications sector.

We strongly recommend BEREC to be more ambitious to deliver on such an important strategic priority and to strengthen its approach and goals on this section. Putting too much burden on information and therefore on consumers will not

²⁵ Ibid, page 14.

²⁶ https://www.beuc.eu/publications/beuc-x-2019-075_berecs_public_consultation_on_its_draft_updated_net_neutrality_guidelines.pdf

²⁷ BEREC Draft 2021 Work Programme, page 18.

²⁸ https://www.beuc.eu/publications/beuc-x-2019-075_berecs_public_consultation_on_its_draft_updated_net_neutrality_guidelines.pdf, pages 9 and 10.

²⁹ See https://www.beuc.eu/publications/beuc-x-2020-028_letter_to_commissioner_thierry_breton.pdf

³⁰ BEREC Draft 2021 Work Programme, page 21.

trigger market changes. We encourage BEREC to work on the negative effects of unclear information, dark patterns in the way information and choice are presented to consumers and how to mitigate that.

In the same vein, for the development of very high capacity networks to be successful, we should not only look at its deployment, but at the competitiveness of the market, consumer affordability, the impact on consumer choice and ensuring full coverage across the EU, not discriminating between consumers – particularly those in rural areas.

In principle, we welcome that BEREC requested a **study on consumer behaviour and attitudes towards digital platforms**. We would strongly suggest BEREC and/or NRAs to also reach out to consumer organisations for the purposes of this study, given that they are in direct contact with consumers and can provide valuable input.

BEUC strongly recommends BEREC to carry out a **study about the situation for consumers in electronic communications markets** beyond digital platforms. This can include the number of complaints not only received by NRAs but also consumer organisations per country, the topics subject to most concerns, enforcement actions taken as well as potential legislative gaps that should be filled.

We welcome that BEREC will conduct a **report on how to handle third-party payment charges on mobile phone bills**. BEUC members have raised the issue of third-party payment charges over the years³¹. Some countries have regulated this to a certain extent and, as BEREC rightly points out, the EECC also proposes to go a step further. We encourage the report to consider lessons learnt from financial services and energy legislation as well.

4. Comments on interinstitutional cooperation

BEUC welcomes the emphasis on increasing and structuring institutional cooperation, breaking the silos.

5. Comments on BEREC obligatory work

BEUC highlights the need to stress BEREC's role in ensuring the electronic communications sector improves in terms of **competition** both in mobile and fixed networks. This includes the uptake of very high capacity networks. A lot of the work described seems to be too focused on investment.

We are looking forward to working closely with BEREC regarding the **review on end-user rights following Article 123 of the EECC**. BEUC's suggestion to conduct a study

³¹ See some examples from OCU, Test-Achats/Test-Aankoop, vzbv, Stiftung Warentest, Altroconsumo and Fédération Romande des Consommateurs:

<https://www.ocu.org/tecnologia/internet-telefonía/consejos/servicios-pagos-a-terceros-telefonía>

<https://www.test-aankoop.be/hightech/telecom/nieuws/betalende-sms-diensten>

<https://www.vzbv.de/dokument/schutz-vor-missbraeuchlichen-drittanbieterleistungen-im-mobilfunkmarkt>

https://www.vzbv.de/sites/default/files/downloads/2018/03/02/18-02-27_bnetza_vzbv-stellungnahme_redirect_verfahren.pdf

<https://www.test.de/Handy-Abofallen-Falsche-Rechnungen-fuer-41000-Kunden-5505132-0/>

<https://www.test.de/Gewusst-wie-Drittanbieter-sperren-5217717-0/>

<https://www.altroconsumo.it/hi-tech/smartphone/news/servizi-non-richiesti-come-difendersi>

<https://www.frc.ch/dossiers/evitez-le-piege-des-sms-et-des-mms-surtaxes/>

on the situation of consumer rights and related providers' legal obligations (see our comments to the third strategic priority above) would be the right fit here. Despite not opening up for public consultation, we welcome BEREC opens up for the possibility to conduct studies, workshops and bilateral exchanges³². This should include the study we mentioned in section 3.

BEUC thanks BEREC for its excellent work on **roaming and intra-EU communications**, providing evidence and analysis for a real and more competitive single market that consumers can benefit from. BEUC supports the continuation of this independent, outstanding work.

We very much welcome that "BEREC plans to compile a **report** on the measures that NRAs implemented **during the COVID-19 pandemic**, and assess the impact of the crisis on the sector and on end-users (e.g. consumer rights)." Because of the pandemic, internet traffic and data consumption have generally increased. Considering telecom operators are profiting from this situation, they should adapt their subscriptions by for example lowering the price, extending unlimited offers, changing fair use policies. This call has been led successfully by consumer organisations like Test-Achats/Test-Aankoop.³³ BEREC should consider best practices. In addition, as BEREC itself pointed out in its internet monitoring report from 30 September 2020 during the COVID-19 pandemic³⁴, NRAs like the Portuguese authority have experienced an increase of consumer complaints. The Portuguese authority saw an increase of 69% compared to the same period last year³⁵. This raises the need to look at the market more closely. There were way too many complaints reaching NRAs, consumer organisations and service providers before the pandemic and it still is the case now. BEREC should look at the situation not only during the pandemic, **but also before the pandemic** – as suggested in our comments to strategic priority 3 work items. BEUC and its members stand ready to provide input.

BEUC also welcomes the special attention given to **monitoring the implementation of the EECC** with a workshop with NRAs.

BEUC also notes with interest that BEREC will be further exploring its role in promoting **sustainability policies**. We would like to add a notion of caution with regards to voluntary, non-enforceable pledges from the telecom sector. NRAs have enough experience to understand that pledges or self-regulation are most of the time not sufficient or efficient. We suggest that BEREC rather fosters cooperation with environmental authorities on this foreseen activity.

6. Comments on BEREC's stakeholder engagement

Overall, BEUC recommends BEREC to keep its independence and consult a variety of stakeholder views. BEUC strongly welcomes that in the 2020 BEREC Stakeholder forum had a more **balanced representation** than the 2019 stakeholder forum. We encourage BEREC to pursue the same objective in 2021.

³² BEREC Draft 2021 Work Programme, page 31.

³³ <https://www.test-achats.be/hightech/telecom/news/meilleures-conditions-internet>

³⁴ https://bereg.europa.eu/eng/document_register/subject_matter/bereg/reports/9435-bereg-summary-report-on-the-status-of-internet-capacity-regulatory-and-other-measures-in-light-of-the-covid-19-crisis

³⁵ <https://www.anacom-consumidor.pt/-/reclamacoes-no-sector-das-comunicacoes-agosto-de-2020>

7. Comments on potential BEREC work in 2022 and beyond

Connectivity and electronic communication services are more relevant than ever to consumers and so are the core tasks of BEREC's work. We thus hope that despite the increased interdisciplinary policy challenges, BEREC will not weaken its focus on the most relevant workstreams for end-users. These include a workshop foreseen between BEUC and BEREC on the implementation of end-user provisions of the EECC or the need to work to ensure non-discrimination on quality of service.

Particularly with regard to the BEUC-BEREC workshop, we very much welcome that BEREC foresees to organise one in 2022 and thank BEREC for this. We fully agree that the legal obligation that BEREC has to deliver an opinion by the end of 2021 does not leave a lot of time to assess the implementation and enforcement of the EECC due to the very short period of application and possible transposition delays. Therefore, we welcome to have such a workshop in 2022 and look forward to closely engaging for its preparation. However, there is no reason not to organise a workshop in 2021 as well. This would allow for continued engagement with consumer organisations and consumer interests. This would be supported by BEREC's openness earlier in the work programme. "In order to complete this BEREC Opinion, studies, **workshops** and bilateral exchanges with other European bodies and relevant stakeholders could be envisaged where relevant"³⁶, BEREC stated earlier in its work programme (emphasis added). We appreciate BEREC's and NRAs' engagement with BEUC and its member organisations.

Finally, BEUC would like to reiterate our recommendation to have **longer consultation periods and not to publish several consultations at the same time**. Four weeks are not enough for an umbrella organisation that has limited resources, working on many topics at the time. If BEREC does not change this practice, it will exclude smaller stakeholders and therefore not get balanced or representative feedback from all stakeholders. This is particularly important for those consultations that are particularly relevant for consumer protection.

BEUC once again congratulates BEREC for its overall work and hopes these comments can help it further strengthen its work programme.

³⁶ BEREC Draft 2021 Work Programme, page 31.

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