

The Consumer Voice in Europe

BEREC PUBLIC CONSULTATION ON DRAFT REPORT ON TERMINATING CONTRACTS AND SWITCHING PROVIDER

BEUC response



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EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2019-003 - 18/01/2019

Why it matters to consumers

Consumers should be able to terminate contracts and switch providers in the telecoms markets easily, without undue charge, abuse or barriers. Seamless switching is good for both consumers and businesses as it can boost competition in the telecommunication sector. This in turn may lead to more choice, lower prices and companies to compete on the basis of offering better services.

General Remarks

BEUC, The European Consumer Organisation, thanks the Body of European Regulators for Electronic Communications (BEREC) for the opportunity to comment on its draft report¹ on termination of contracts and switching the providers.

Contract termination and switching are a priority of BEUC and our members when it comes to the electronic communications sector and we highlighted its importance for consumers during the negotiations on the Telecoms Single Market Regulation and the European Electronic Communications Code. In addition, our German member Verbraucherzentrale Bundesverband. (vzbv), together with several Verbraucherzentralen,² are working on a report on switching that will be released soon after the consultation's deadline.

We appreciate BEREC's role in and commitment on consumer empowerment and welcome BEREC's efforts to draft a report mapping national rules and seeking input from stakeholders.

While the deadline for transposition of the Directive (EU) 2018/1972 establishing the European Electronic Communications Code (EECC)³ will expire on 21 December 2020, the final BEREC report should take into consideration the relevant EECC provisions and Member States' complementary actions.

We hope the final report will be used to identify issues to be addressed in each Member State, understand national differences, extract best practices, recommend guiding principles to help Member States transpose the EECC putting consumers at the centre and allow in the long term to assess whether there is a need for additional legal measures to facilitate contract termination and switching. As recital 273 of the EECC states "[i]t is essential to ensure that [consumers are able to make informed choices and change providers] without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures and charges."

¹ [Draft BEREC Report on termination of contracts and switching the providers](#)

² [The German Watch Dog](#)

³ [Electronic Communications Code](#)

Feedback to the questionnaire

1. Do you have any comments or observations regarding the processes set out in Section 2 above, related to the switching of provider for different categories of ECS and the safeguards that are provided to consumers?

BEUC would like to make three comments.

First, section 2 of the draft report could include a mapping and analysis of the information provided to consumers to terminate their contract(s) and their ability to switch providers.

Secondly, our German member vzbv reminds the switching process may involve at least three providers (not just the receiving and transferring provider). In Germany Deutsche Telekom controls the subscriber line. Therefore, it may be involved as well. In this sense, it is essential that all providers are involved in the switching process and cooperate in good faith as the EEC requires.

Thirdly, BEUC favours the winning-provider-led-switch principle and would have preferred the EEC explicitly establish this principle for all electronic communications services except for number-independent interpersonal communications service (ICS). This is necessary because, as the European Commission's 2018 Consumer Scoreboard shows, only 9.9% of consumers switch providers in the telecoms sector.⁴ In fact, consumers find it "particularly difficult to switch provider in 'telecoms' markets."⁵ If consumer experiences and perceptions about the telecoms market are to be improved, relevant Member State authorities should not miss this new opportunity. We urge BEREC to consider and highlight the benefits of winner-led switching in its report. It would be interesting if the report provided data about and explained the impact of winner-led switching on consumer switching rates. BEREC's final report could identify gaps, suggest best practices and guiding principles.

2. Do you have any comments or observations regarding the rules (practices, decisions or legal requirements) that have been put in place in the Member State to facilitate termination of service and switching between communications provider as set out in Section 3 above?

The EEC provisions and Member States' possibilities to complement certain rules to protect consumers should be spelled out in the final report. EEC provisions on contract termination and switching provider can have a positive impact on consumers in combination with complementary national rules, a good implementation and strong enforcement.

Thanks to the EEC, consumers will now have stronger rights when terminating a contract. For instance, consumers will be able to end their contract early without incurring in additional costs (cf. recital 275 and Article 105(4)). Automatic contract extension is possible, but consumers can terminate the contract after the expiry of the contract term

⁴ [European Commission's Consumer Markets Scoreboard - 2018 Edition](#), page 67.

⁵ Ibid, page 69.

"without incurring any costs" (cf. recital 274 and article 105 (3)). Consumers will also be protected when switching providers. For example, if refunding of prepaid credit is possible, providers should refund consumers upon their request (cf. Article 106 (6) of the EEC)."

While the EEC establishes maximum harmonisation as the default for consumer rights, there are some opening clauses where Member States can establish certain protections nationally. For example, consumers can exercise their termination right within one month after being notified of contractual changes. Here, Member States have margin of manoeuvre to extend the termination period up to three months (cf. Article 105(4)). Under Article 106(6), NRAs can "establish the details of the switching and porting processes", including that "end-users are adequately informed and protected...and are not switched to another provider without their consent".

We recommend BEREC to promote best practices and guiding principles. For example, our German member vzbv recalls that if the switch fails and the switching process needs to be attempted again, German law stipulates that "the service may be interrupted again for a calendar day. In order not to prolong the change process even further and to avoid supply gaps for consumers, the interruption of services during the entire switch of provider must be limited to a maximum of one working day, as the EEC also stipulates. A repeated interruption of the service in the event of repeated switching attempts should not be permitted." This would go in line with Recital 277 of the EEC, where service providers are required to "ensure continuity of service so that end-users are able to switch providers without being hindered by the risk of a loss of service and, where technically possible, allow for switching on the date requested by end-users."

3. Do you have any comments or observations regarding the key factors and obstacles to switching different categories of ECS, set out in Section 4 above? In particular what, in your view, are the possible solutions that could be applied to solve these issues?

Overall, we agree with the identified obstacles of the draft report, the four biggest obstacles per electronic communication service and welcome the acknowledgment of national differences.

Among possible solutions, the EEC is clear in Article 106 that Member States can outline specific processes to improve contracts, technical matters and service continuity. Furthermore, National Regulatory Authorities (NRAs) must adopt measures for end-users to be adequately informed and protected and are not switched without their consent. Also, Member States have margin of manoeuvre to set up strong rules on penalties and compensation, including measures for consumers to know about their compensation rights.

On the other hand, the EEC states that Member States must promote over-the-air provisioning (cf. Article 93(6) and recital 249) and require that porting is done "over-the-air" "where technically feasible" (cf. Article 106(6)). BEUC emphasises that over-the-air switching should become the norm wherever possible. In fact, over-the-air switching achieves a triple objective. It facilitates the switching process, it brings more competition to the market because switching becomes easier and it is eco-friendlier because less plastic is used as a new physical SIM card is not needed.

4. Several NRAs identify obstacles for switching in case of bundles, do you consider that specific processes and rules for bundles may be of help to address these issues?

As Recital 283 of the EECC says, “[w]hile bundles often bring about benefits for consumers, they can make switching more difficult or costly and raise risks of contractual ‘lock-in’”. For instance, consumers often find themselves in a bundled contract while only wanting to switch operators for the Internet access service, but not having the possibility or the willingness to do so due to existing obstacles.

There are statistics⁶ that show that in general, the more services are bundled, the lower the switching rate is. Consequently, specific processes and rules for bundles can indeed help address obstacles for switching in bundled services. According to Article 106(1) of the EECC, NRAs have a duty to ensure the efficiency and simplicity of the switching process.

With the transposition and implementation of the EECC, regulations can be introduced. Without prejudice to Article 101, Article 107(2) and recital 283 EECC give Member States margin of manoeuvre to ensure that consumers have rights to terminate any or all elements of a bundle before the end of the contract. Furthermore, as our German member vzbv states in their consultation response, Member States have “the regulatory competence via Article 107 (5) EECC to make the provisions on information and transparency requirements of Articles 102 and 103 EECC as well as the entire Article 106 on switching provider and number portability fully applicable to bundled offers.”

The implementation of Article 107 EECC shall not lead to lowering competition, consumer safeguards and consumers' ability and willingness to switching. We reiterate that consumers should be able to cancel part of a bundled contract without any penalties. Similarly, consumers should be able to modify or renew part of a bundled contract without impacting the rest of the services that are being bundled, unless they provide their explicit consent for the provider to do so.⁷ In BEREC's final report best practices could be promoted as a model to follow.

On the other hand, bundles also take place across different markets, which creates complications. We recommend BEREC to address complex bundles in greater detail (e.g. bundling telecom and energy services) in the final report. Last year, BEUC responded to a consultation of the Council of European Energy Regulators (CEER) on its draft Guide on bundled products. We will send it to you separately for information. Many of the principles on bundled products in energy markets can be replicated in the electronic communications services sector. These principles include the principle of simplicity, clear liability principles with a single point of contact per bundle, transparency, the right to information) or, as advocated for in the past,⁸ we recommend BEREC to work closely with other authorities. Bundling of products and services from different markets requires more coordination and collaboration amongst authorities, including the CEER, the European Data Protection board (EDPB), the Consumer Protection Co-operation Network, the European Competition Authorities Network, among others.

5. Which barrier(s) to switching should NRAs focus on in the future, in order to reduce or remove?

⁶ [BEUC position paper on Consumer protection in the communications sector](#), 2017, page 16.

⁷ *Ibid.*

⁸ [BEUC comments to BEREC draft Work Programme 2018](#), 2017.

a. For which category of ECS is this relevant?

b. What should be the aim for the regulatory measure intended to reduce each of the barriers?

In 2010, BEREC had already identified that contractual terms are the number one issue irrespective of the telecommunications sector.⁹ Almost one decade later, it is unacceptable that contractual matters still remain the number one issue. Therefore, it seems obvious that the first priority should be to address these. In addition, as BEREC's draft report identifies, dealing with barriers to switching in bundles should be prioritised due to the increasing number of bundles in the market. Furthermore, over-the-air switching should be encouraged as much as possible.

It makes sense to prioritise and ask NRAs to identify the most common barriers to switching provider as BEREC did to produce its report. Nevertheless, less prominent obstacles should not be disregarded and national divergences should be kept in mind. Additionally, it is important to bear in mind that some obstacles reinforce each other (e.g. contractual barriers and lack of information).

Regulatory measures should aim at providing a high level of protection for consumers to deliver seamless switching. As the EECC says in recital 273, consumers should be able to make informed choices and to change providers "without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures and charges." Unless improvements are made and strong enforcement is carried out, telecoms markets will remain one of the most complained sectors. According to the European Commission's Consumer Markets Scoreboard 2018, "[o]ut of all market clusters, 'telecoms' continues to have the highest proportion of consumers expecting problems (16.9%). It also has the highest proportion of consumers complaining about these problems (85.3%)." ¹⁰ In addition, within the telecoms markets, 'internet provision' "stands out as the worst market, whereas 'mobile telephone services' is the only 'telecoms' market whose performance has improved since 2015."¹¹

We trust BEREC will thoroughly comply with its review obligations under Article 123 of the EECC and encourage it to continue engaging in close cooperation with consumer organisations.

6. Do you have any suggestions to improve the switching process, including any measures that providers of ECS could initiate to reduce or remove barriers to switching?

We recommend that over-the-air switching is prioritised. This facilitates changing providers, brings more competition to the market because switching is easier, and is eco-friendlier because less plastic would be used. In addition, it is important that NRAs maintain and regularly update a price comparison calculator in every country, monitor that adequate information is being offered in a timely and user-friendly manner and encourage that termination fees) are as limited as possible.

⁹ [BEUC's answer to BEREC's public consultation on its report on best practices to facilitate switching, 2010.](#)

¹⁰ [Consumer Markets Scoreboard - 2018 Edition](#), page 9.

¹¹ *Ibid*, page 61

Ultimately, we recommend an ambitious transposition, implementation and interpretation of the EECC rules in favour of consumers, using the opening clauses in Title III of the EECC where appropriate. In this sense, we expect BEREC to monitor and proactively engage in promoting best market practices, and regulators to enforce applicable rules.

7. Are there other barriers to switching that are not mentioned in the report? If so, please provide relevant details.

The final report could put emphasis on complex bundles, i.e. bundles of services from different sectors (e.g. energy and telecoms services). In addition, we recommend for the final report to put more emphasis on the impact of competition in the market. The report mentions the availability of offers and availability of technology as some barriers to switching, but it would be advisable to expel out the impact lack of competition has on prices, consumer choice, quality of service and on the process to change providers as a whole. Competition in the telecoms sector is essential for consumers. Likewise, the report should underline the importance of effective enforcement of the EECC rules on switching, in case of non-compliance.

END



This publication is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

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