

The Consumer Voice in Europe

FAIR FOR CONSUMERS: THE FUTURE OF CONNECTIVITY AND THE OPEN INTERNET

BEUC's response to the exploratory consultation on the future of
the electronic communications sector and its infrastructure



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Why it matters to consumers

In an ever more interconnected world, consumers spend increasing amounts of time and money online, connecting with others and leading digital lives. Access to affordable, high-quality internet connections and communication technologies have become a prerequisite for all consumers to be able to participate in the digital society. This goal should not be pursued to the detriment of competition or the openness of the internet.

Summary

BEUC welcomes the opportunity to reply to the European Commission's exploratory consultation on the "future of the electronic communications sector and its infrastructure".

BEUC has particular concerns on the issue of a potential "fair contribution", following calls from some European telecommunications network operators for big content providers to pay a fee to telecom operators to support the costs of network infrastructure deployment.

In principle, BEUC supports the objective of bridging the digital divide by investing in the development of network infrastructure, underlining the need for competition and available, accessible, and affordable high quality bandwidth internet connection. However, pursuing such goals via a potential network fee payment scheme could amount to a "sending-party-network-pays" system (SPNP).

For consumers, potential disadvantages of establishing measures such as a SPNP system would range from a distortion of competition on electronic communication markets, negatively impacting consumer choice, the diversity of products, prices and performance; and potentially challenging net neutrality, which could undermine the open and free access to the internet.

Therefore, BEUC would like to make the following key recommendations:

- *Achieving the 2030 Digital Compass Targets should be primarily focused on removing barriers to infrastructure deployments while ensuring competition and consumer protection.*
- *Network fees or other types of 'direct contributions' by content providers to telecom operators that could amount to a "sending-party-pays" system should be rejected.*
- *Any measure to increase investment in deployment of high-quality broadband connectivity infrastructure should preserve a high level of competition, ensure net neutrality, and avoid deregulation.*
- *Any further EU regulatory actions should be based on an inclusive and comprehensive impact assessment and public consultation, with a clear focus on the potential impact for consumers.*
- *Completing the EU Single Market for electronic communications should be primarily focused on further protecting consumers, by bringing prices in line with real costs and put an end to unjustified price differences between domestic and intra-EU communications.*

1. General considerations

In September 2022, BEUC issued its preliminary position on a possible introduction of network infrastructure fees¹. In principle, we support the objective of bridging the digital divide by investing in development of network infrastructure and deliver to consumers available, accessible, affordable and high-quality connectivity, as long as competition is not undermined, and applicable laws and BEREC guidance are complied with. However, we warned that the introduction of a network fees scheme, which could amount to a “sending-party-network-pays” system (SPNP), brings a set of risks and challenges which must be carefully analysed and addressed to avoid counterproductive consequences. We thus called on the European Commission to undertake an inclusive and comprehensive public consultation and impact assessment with clear focus on the potential impact on consumers.

BEUC welcomes that the Commission opened a consultation² to hear views of stakeholders. Notwithstanding, we wish to express our concerns regarding the methodology adopted for this exercise, which we believe is not the most adequate to properly collect the greatest amount of feedback possible from all relevant stakeholders and consequently draw the best possible conclusions. In fact, the overall structure of the questionnaire does not seem to allow for all relevant stakeholders to contribute on an equal footing. This concern is broadly shared by a significant number of stakeholders from civil society and industry.³

On the one hand, we observe that the overall scope of the questionnaire is particularly directed to two specific parties already disproportionately represented in the current policy debate: telcos and digital service providers. On the other hand, its narrow scope and nature leaves civil society organisations, including consumer organisations, with more limited questions to offer their input. The methodology adopted thus raises genuine concerns that the overall design of the questionnaire could fail to collect important input from stakeholders and possibly result in misleading conclusions at the end of this exercise.

Following the conclusions of the present consultation, and regardless of the instruments or tools already employed, BEUC reiterates that any move towards a legislative proposal should be preceded of an inclusive and comprehensive public consultation and impact assessment following the Better Regulation principles, with a clear focus on the potential impact on consumers’ protection, experience, choice, and price implications. It is fundamental that the views from all relevant stakeholders are taken into account.

2. Considerations on a “Fair contribution by all digital players”

2.1. Considerations on the questionnaire methodology

BEUC would like to share its concerns regarding the methodology followed in Section 4 of the questionnaire titled “Fair contribution by all digital players”. Throughout this section, the questions are almost exclusively directed to both telcos and digital service providers. Both the specificity of the data requested, and the considerations asked from these specific stakeholders are very detailed and concern a vast amount of business information. The limited input allowed for most of the relevant stakeholders who are neither telcos or digital players, thus raises significant issues regarding the collection of input and the ultimate conclusions that could be drawn from the contributions to this section.

¹ For more information on our preliminary position: https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-096_Connectivity_Infrastructure-and-the_open_internet.pdf

² <https://digital-strategy.ec.europa.eu/en/consultations/future-electronic-communications-sector-and-its-infrastructure>

³ Joint Statement on network fees, May 2022:

https://epicenter.works/sites/default/files/statement_against_nf_020523_-_final_0_0.pdf

Moreover, the questionnaire has a disproportionate reliance on a single party to provide key policy details: telcos are being directly requested to inform the Commission which market actors should be targeted by the obligation of direct payments of network fees, which raises questions of conflict of interests. While a more neutral question for data collection purposes could be expected, Question 49 goes beyond that by directly asking telcos to “specify the threshold above which [they] would consider a company to constitute a so-called large traffic generator (LTG) based on the percentage level of traffic loaded on [their] network during peak time traffic”.

The proposed “LTG” definition, although inspired by the methodology of the EU’s Digital Markets Act⁴, fully replicates the language proposed by telcos, singling out “big tech” as the major “generators” of data. In April 2022, a report commissioned by ‘European Telecommunications Network Operators’ (ETNO)⁵ called for online content providers of a “certain size, based on a targeted approach” to pay a “direct compensation” to telcos, for “generating the vast majority of data traffic”⁶.

This language is problematic and questionable as a potential legal definition, given that the “attribution of bandwidth allocation to individual businesses is almost impossible”⁷. The concept of “data generators” is an outdated legacy concept, belonging to a past era of broadcasting telecommunications. BEUC recommends this concept not to be used for future policy options. As BEREC recently stated⁸, the demand for content also comes from consumers, who are the drivers of the demand for broadband access: the Internet traffic is not “generated” by online platforms, it is requested and thus “caused” by consumers.

Moreover, the questionnaire displays a very limitative approach for an ‘exploratory consultation’, as it enquires stakeholders about only two policy options for a potential regulatory intervention on network fees. Stakeholders are limited in their input to either agree or disagree with two possibilities: either a mechanism of “direct payments to contribute to finance network deployment”, or a “EU/national digital levy or fund”. There is no satisfactory justification of why these are the only options being considered, which stakeholders proposed them, and why these but no other options are being considered.

2.2. The absence of a regulatory problem

Already in September 2022, BEUC reiterated the importance of relying on the independent expertise of the Body of European Regulators for Electronic Communications (BEREC), allowing it “sufficient time to produce fresh analysis reporting on this issue” to determine if there was indeed a market failure that needed regulatory intervention.

On 12 October 2022, BEREC issued its preliminary assessment on a possible introduction of payments from large online platforms to Internet Service Providers (ISPs), having found “no evidence” that an actual problem or market failure exists in the electronic communications sector.⁹ BEREC found that “direct compensation” mechanisms as proposed by ETNO “could present various risks for the internet” and “found no evidence that such

⁴ Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (Digital Markets Act): <http://data.europa.eu/eli/reg/2022/1925/oj>

⁵ Axon Partners Group, “Europe’s internet ecosystem: socio-economic benefits of a fairer balance between tech giants and telecom operators”, May 2022: <https://etno.eu/downloads/reports/europes%20internet%20ecosystem.%20socio-economic%20benefits%20of%20a%20fairer%20balance%20between%20tech%20giants%20and%20telecom%20operators%20by%20axon%20for%20etno.pdf>

⁶ *Ibid*, pp. 11, 24.

⁷ See exploratory consultation reply by epicenter.works: https://en.epicenter.works/sites/default/files/epicenter.works_-_response_network_fee_consultation_2023.pdf

⁸ BEREC preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs, pp 6-7: https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC_preliminary-assessment-payments-CAPs-to-ISPs_0.pdf

⁹ *Ibid*, p. 14.

mechanism is justified given the current state of the market". In addition, it considered that an SPNP model would allow telcos "to exploit the termination monopoly", a "significant change which could be of significant harm to the internet ecosystem". BEREC reaffirmed that the costs for internet connectivity are typically covered and paid for by consumers.¹⁰

Moreover, NRAs also established that the network infrastructure can withstand more traffic, while the cost of network upgrades necessary to handle an increased IP traffic volume were found to be very low when compared to the total network costs, having stated that there seems to be no traffic asymmetry as "telcos tend to build networks to receive more traffic than they send"¹¹. With this position, BEREC confirmed the conclusions of previous assessments on the internet ecosystem and IP-interconnection markets¹², that the internet ecosystem was still able to cope with increasing traffic. Most recently, BEREC showed that during the Covid-19 pandemic, "no major congestion issues have ever been reported"¹³, having concluded that operators were "able to cope well with this additional traffic load."¹⁴

BEUC shares the views of BEREC's preliminary assessment that direct compensation mechanisms could present various risks for the internet and stresses that BEREC "found no evidence that such mechanism is justified given the current state of the market".¹⁵ BEREC is currently preparing its final report, which is expected for public consultation in June 2023¹⁶. We would therefore reiterate our previous calls for the Commission to follow BEREC's expert opinion and ensure BEREC is given sufficient time to complete its final analysis before the Commission undertakes any further actions.

2.3. Risks for net neutrality

2.3.1. Undermining the principle of net neutrality

As mentioned before, the consultation enquires stakeholders on two policy options, the first one being a mechanism of "direct payments to contribute to finance network deployment" (Section 4). The proposal for a direct payments system features on a report commissioned by ETNO¹⁷ which calls for introducing direct payment solutions by online platforms to telcos responsible for the deployment of network infrastructure. This proposal would introduce such payments for a few content providers, which are to be identified and singled-out on the basis of their responsibility for the largest volume shares of internet traffic. The potential introduction of such regime raises concerns of potential incompatibility with the principle of net neutrality embedded under the Open Internet Regulation¹⁸.

According to Article 3(3), first subparagraph, "providers of internet access services should treat all traffic equally, without discrimination, restriction, or interference, independently of its sender or receiver, content, application or service, or terminal equipment". **Article 3(3) of the Open Internet Regulation thus establishes a clear prohibition of**

¹⁰ *Ibid.* p. 14

¹¹ *Ibid.* p. 7.

¹² <https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-on-ip-interconnection-practices-in-the-context-of-net-neutrality>

¹³ BEREC Summary Report on the status of internet capacity, regulatory and other measures in light of the Covid-19 crisis, p. 1.

https://www.berec.europa.eu/sites/default/files/files/document_register_store/2021/11/BoR-21-184_20211123_Covid-19_Summary-report.pdf

¹⁴ BEREC Report on the implementation of the Open Internet Regulation 2022, page 8,

<https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20128%20OI%20Implementation%20Report%202022.pdf>

¹⁵ BEREC preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs, page 14.

¹⁶ https://www.berec.europa.eu/system/files/2022-12/Public_debriefing_presentation_Dec2022.pdf

¹⁷ Axon report, page 43. <https://etno.eu/downloads/reports/europes%20internet%20ecosystem.%20socio-economic%20benefits%20of%20a%20fairer%20balance%20between%20tech%20giants%20and%20telecom%20operators%20by%20axon%20for%20etno.pdf>

¹⁸ Regulation (EU) 2015/2120 laying down measures concerning open internet access (Open Internet Regulation): <http://data.europa.eu/eli/reg/2015/2120/oj>.

“general, unconditional and objective nature” in so far as it “proscribes any traffic management measure which is not reasonable (within the meaning of paragraph 3) and does not contribute towards the fair and non-discriminatory treatment of that traffic”.¹⁹

The BEREC Guidelines on the Implementation of the Open Internet Regulation²⁰ also provide orientation on the application of the Regulation. The main argument of some telcos at the moment²¹ is that EU rules on net neutrality will not be revised and that the IP interconnection (the market where telecom operators and online platforms engage) is already excluded from the scope of this Regulation by the BEREC Guidelines.²² However, the Guidelines also state that a breach of net neutrality may arise as regards the interconnection policies and practices of Internet service providers, in so far as they have the effect of limiting the exercise of end-user rights under Article 3(1)” of the Regulation.²³

From a consumer perspective, the recent history of practices which have been found to ultimately violate the principle of net neutrality (see section below) shows that such indirect consequences from the introduction of a direct payments scheme are not only plausible, but also probable. Such a system would provide the wrong incentives for telcos, which could potentially translate into measures that effectively discriminate between different types of traffic and ultimately infringe the rights of end-users.

For instance, what will happen if content providers refuse to pay a fee? In 2020, a dispute between *Deutsches Forschungsnetz* (German Research Network) and Deutsche Telekom offers some insight. Confronted with increasing data traffic during the Covid-19 pandemic, German universities turned to Deutsche Telekom to handle congestion via direct peering. However, Deutsche Telekom initially refused to handle the increased traffic without compensation, with the network having to turn to other ISPs for fee-free interconnection²⁴.

BEUC’s views on net neutrality are also shared by a substantial number of civil society organisations. In May 2023, over 50 organisations expressed their concerns that a regulatory push for network fees could ultimately incentivise new discriminatory practices by Telcos which, although not explicitly prohibited by the Open Internet Regulation, would hardly meet the threshold of the general prohibition under article 3(3).²⁵ Indeed, since the inception of the debate on a possible introduction of a so-called “fair contribution”, the prospect has been openly criticised by a vast range of stakeholders, from Member States²⁶, Members of European Parliament²⁷, to industry and civil society organisations²⁸.

2.3.2. Violating the principle of net neutrality – the case of ‘zero rating’

Although we welcome the reassurances from the Commission²⁹ that the Open Internet Regulation would remain unaffected, the risks for violations of the principle of net neutrality are still present. It should be recalled that the most common net neutrality violation in

¹⁹ Advocate General Campos Sánchez-Bordona Opinion, Joined Cases C807/18 and C39/19 Telenor Magyarország, para. 66 - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CC0807>

²⁰ BEREC Guidelines on the Implementation of the Open Internet Regulation, 2022: https://www.berec.europa.eu/sites/default/files/files/document_register_store/2022/3/BoR%20%2822%29%2030%20Draft%20Update%20to%20the%20BEREC%20Guidelines%20on%20the%20Implementation%20of%20the%20OIR_final.pdf

²¹ Axon Partners Group report, pp. 42-43.

²² BEREC Guidelines, paragraph 50.

²³ BEREC Guidelines, paragraph 6.

²⁴ Reported in: <https://www.heise.de/hintergrund/Missing-Link-Regulierer-vs-Monopolisten-Streit-im-Markt-der-Peering-Anbieter-4886694.html?seite=all>

²⁵ Joint Statement on network fees: https://epicenter.works/sites/default/files/statement_against_nf_020523_-_final_0_0.pdf

²⁶ Reported first on: <https://www.euractiv.com/section/digital/news/tech-brief-back-to-school-edition/>

²⁷ Letter available at: https://www.patrick-breyer.de/wp-content/uploads/2022/07/20220712_COM_Access-Fees-MEP-Letter_final3.pdf

²⁸ Open Letter on Net Neutrality: https://epicenter.works/sites/default/files/2022_06-nn-open_letter_cso_0.pdf

²⁹ https://www.youtube.com/watch?v=XmH_wNT7VoU

Europe was an especially encouraged commercial practice by some telcos: 'zero-rating' offers. In 2021, the Court of Justice of the European Union (CJEU)'s rulings on 'zero-rating' offers³⁰ set an authoritative interpretation of the principle of net neutrality, clarifying it as a prohibition of "general, unconditional and objective nature" which applies to discriminatory practices - even those not expressly referred by EU law.

BEUC members and other civil society stakeholders actively argued for years that "zero-rating" offers – the commercial practice of price discrimination when providing access to specific application providers - are a violation of the principle of net neutrality and the Open Internet Regulation but had to wait until the CJEU ruled them illegal for BEREC Guidelines to change. Telcos were active contributors to Internet traffic growth from "big tech", actively incentivising data consumption by offering their customers access to more (and even unlimited) data consumption from selective online platforms and applications, by not counting the data traffic of these services in their subscribers' overall data consumption³¹. The arguments then presented by telcos to defend the legality of "zero-rating" practices offer a stark contradiction of those now presented in favour of network fees³².

2.4. Risks of harming competition

The introduction of a so-called "fair contribution" also raises serious competition concerns in potentially multiple markets, from telecoms to digital services markets. Already back in 2012, when ETNO proposed similar measures to those now being discussed, BEREC warned that such charging mechanisms "run a real risk shifting the balance of negotiating leverage between market participants and inducing an abuse of market power by telecoms carriers in relation to terminating traffic (much as occurred historically in traditional telephony)".³³ The substance of this concern has not changed.

For instance, the introduction of additional fees for 'Over The Top' (OTT) service providers would stand to increase the profitability gap between traditional operators and mobile virtual network operators (MVNOs), making it harder for these operators to innovate and compete. Moreover, such additional fees would prove a wrong incentive for telcos, discouraging innovation by dominant operators, while actively dissuading market entry by potential challengers, further weakening the structure of already uncompetitive markets.³⁴ MVNOs have expressed their concerns that any kind of financial contribution would "distort the telecom market and harm competition in the single market well beyond the tech and telecom sectors"³⁵. MVNOs currently pay substantial fees to telcos for using their network infrastructure and urge caution about asking other market players to do the same: should online services providers also be required to pay for the use of network infrastructure, such measures would risk stifling competition in the already concentrated telecoms markets.

Indirect consequences can also be expected in digital services markets, in particular the EU audiovisual market, where consumers stand to lose out from more expensive services and poorer quality of service. This is confirmed by stakeholders such as the European VoD Coalition³⁶ and the European Association of Commercial Television and VoD Services (ACT),³⁷ which consider that network fees or other types of direct contributions based on taxing volumes of dataflow would disproportionately target high bandwidth service

³⁰ CJEU judgements C-854/19 Vodafone (roaming), C-5/20 Vodafone (tethering) and C-34/20 Telekom Deutschland (throttling) of 2 September 2021, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-09/cp210145en.pdf>

³¹ Report "Net Neutrality Situation in the EU", epicenter.works, 2019: <https://en.epicenter.works/document/1522>

³² Letter available at: https://epicenter.works/sites/default/files/2022-06-nn-open_letter_cso_0.pdf

³³ https://www.berec.europa.eu/sites/default/files/files/document_register_store/2012/11/BoR%2812%29120re_v.1_BEREC_Statement_on_ITR_2012.11.14.pdf

³⁴ *Ibid.*

³⁵ Position Paper: <http://mvnoeurope.eu/mvno-europe-position-paper-on-network-investment-contributions/>

³⁶ Position Paper: <https://www.europeanvodcoalition.com/positions/position-paper-on-net-neutrality/>

³⁷ Position Paper: <https://www.acte.be/publication/tv-vod-statement-on-network-fees/>

providers from the audio-visual sector, with unintended consequences for consumers of higher prices and/or less investment in quantity and quality of content production.

More important than what happens to those who pay a network fee, is what occurs to those who do not. There is a risk that EU net neutrality rules may not prove sufficient to prevent telecom operators from favouring paying big tech companies over other content providers (for example, in the case of capacity or quality constraints). Such measures would have the potential to further strengthen existing dominance of “big tech” over content markets and weaken the ability of other providers to compete effectively for consumers’ business, with potential spill-over effects into other markets by enhancing the ability of big tech to leverage market power from one market to another to expand big tech ecosystems.

The introduction of a network fee scheme of direct payments could turn markets designed to serve end-users from a single-sided market into two-sided markets. Direct payments from selected companies to even more selected telcos would create perverse incentives: telcos would no longer have the incentive to focus on customers only, as they would have to balance end-users’ interests with the interests of their “paying customers” on the content provision side. Consumers can only lose out from such a dilution and would most likely “receive poor performance on any content or service not directly connected to the ISP, despite paying for access to the entire internet”.³⁸ Therefore, the potential risks for competition should directly reflect in substantially negative consequences for consumers, with a direct impact on consumer choice and pricing, as well as negative reflexions on the diversity and quality of products and their overall performance.

Moreover, the imposition of a network fees scheme could potentially lead to unfair increased profitability for telcos, by switching monopoly/oligopoly rents from one sector to another, without any guaranteed benefit pass-through to consumers by way of lower prices or improved infrastructure. At the very least, any measures to incentivise investment would require independent oversight and project-based funding. Regardless of the policy option, there should be a clear obligation for telcos to reinvest any possible financial gains into actual deployment of network infrastructure, as well as to provide binding assurances that it would effectively lead to increased connectivity and better services for consumers.

2.5. The cautionary precedent and single example of South Korea

From a consumer perspective, it is important to take into consideration previous experiences and current examples of similar measures in place and their results. In 2016, South Korea was the first (and so far, the only) country which introduced a Sending-Party-Network-Pays (SPNP) system in its legislation. In 2020, new legislation required selected content platforms to pay traffic termination fees to ISPs, a move which other civil society organisations already criticised as “dangerous developments” which are “contrary to the principle of net neutrality”, noting that “South Korea is creating a dangerous precedent which risks undermining the global nature of the internet”³⁹. According to Consumers Korea, net neutrality since then has practically been abolished.⁴⁰

A study commissioned by the German Federal Network Agency (*BNetzA*) concluded that the overall result of the obligation for online service providers to pay network fees to ISPs was “a decline in quality and diversity of online content and expect rising prices for end users for content, as well as lower network infrastructure investments”.⁴¹ The OECD 2022 report “Broadband networks of the future”⁴² confirms that the network latency (time delay that occurs when data travel from one point in a network to another) is the highest in

³⁸ Position Paper: <https://www.europeanvodcoalition.com/positions/position-paper-on-net-neutrality/>

³⁹ Press release: <https://www.accessnow.org/press-release/open-letter-south-korea-net-neutrality/>

⁴⁰ Start Talking Webinar on Network Fees, November 2022: <https://www.youtube.com/watch?v=TqcF5CDgAcA>

⁴¹ https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/Digitisation/Peering/download.pdf;jsessionid=6CA2C5499A8AFADB9D71CBC4601B663E?_blob=publicationFile&v=1

⁴² OECD: https://www.oecd-ilibrary.org/science-and-technology/broadband-networks-of-the-future_755e2d0c-en

OECD countries⁴³, steadily increasing from 2018 to 2020. The network latency increases can especially be attributed to the new distances from where content is being distributed. Following the imposition of a SPNP system, content providers started relocating abroad, serving a substantial number of websites and platforms from neighbouring countries⁴⁴.

Consumers stand to lose out not only from slower network performance, but also from lower quality of content. When content providers do not relocate, they are pushed to self-censor their own use of bandwidth by reducing the quality of their content. For example, in 2022, Twitch (a live streaming platform mostly used for video games streaming), announced it would be reducing its streaming video quality “due to the unique and associated rising costs of operating in Korea”⁴⁵.

3. Possible and preferred alternatives

3.1. First things first: deliver on the full implementation of the EECC

The recent implementation of the Universal Service Obligations (USO) under articles 84-92 of the European Electronic Communications Code (EECC) shows how regulation can drive investment and prioritise solutions for the most vulnerable consumers, by actively incentivising telcos to prioritise accessible connectivity and deployment of broadband to consumers in more regions which are less profitable. Given the recent and still ongoing full transposition efforts of the EECC, the Commission should focus on its implementation and identify any shortcomings (e.g. limited scope, unequal access) before considering alternative, more complex regulatory instruments which are beyond the scope of the EECC. Additional measures could be envisaged, and more funding could be made available to ensure consumers have both affordable (e.g. public subsidies for broadband services to households) and accessible high-quality connectivity in remote areas and encourage further competition to decrease prices and increase consumer choice.

3.2. Gigabit Infrastructure Act proposal: removing barriers and lowering costs

As already stated in September 2022, BEUC welcomes the Commission was planning to review the Broadband Cost Reduction Directive (BCRD), a Directive which primarily focused on removing barriers to infrastructure deployments. This has the potential to be a more efficient and effective instrument to achieve the 2030 Digital Compass Targets. BEUC therefore welcomes the opportunity presented by the Gigabit Infrastructure Act proposal and encourages co-legislators to improve it, with a particular focus on empowering consumers, especially those most vulnerable and in more remote areas. Proposing additional new legislation would therefore be premature at this stage.

This is also the preferred option of the EU’s co-legislators. The main proposals from the European Parliament to meet the EU connectivity targets for 2030 have focused precisely on the need to review the BCRD with the aim of removing barriers to infrastructure deployments and lowering costs, not to create direct contributions from online digital services to some telecom operators. Member States have also issued clear calls on the Commission to accelerate its revision of the BCRD while stressing that this revision should not be confused with any kind of measures introducing network fees. In December 2022, Austria, Estonia, Finland, Germany, Ireland and the Netherlands wrote to the Commission,

⁴³ *Ibid*, fig 16.

⁴⁴ Analysis Mason report, IP interconnection on the internet: a white paper, 2020: <https://www.analysismason.com/contentassets/f0a00cc9ba3946bdb5e0be2f46396f04/analysys-mason---ip-interconnection-white-paper-210520.pdf>

⁴⁵ Reported at: <https://www.sportskeeda.com/esports/news-twitch-testing-peer-to-peer-technology-korea-despite-potential-privacy-concerns>

noting it should “refrain from any plans of integrating ideas or proposals on the “fair share” debate into the proposal of the BCRD” as both topics “should be treated separately”.⁴⁶

3.3. Review of the Intra-EU communications rules

The most pressing issue to complete the EU Single Market for electronic communications should be primarily focused on further protecting consumers, by bringing prices in line with real costs and put an end to unjustified price differences between domestic and intra-EU communications. From a consumer perspective, the current price differentiation is disproportionate and unjustified since the end of EU roaming charges⁴⁷. BEREC recently confirmed that the current price caps are significantly higher than the actual costs for operators⁴⁸. As a review of the Intra-EU communications rules is due by 14 May 2024, we welcome the Commission’s assessment⁴⁹ on the importance of these rules to protect consumers from excessive retail prices, and we call for an ambitious revision the intra-EU communications rules⁵⁰ towards not merely extending and lowering the current price caps but abolishing these surcharges altogether.

3.4. Additional measures of support for consumers

Additional means of support for consumers, including more vulnerable consumers, could also be considered, either at EU or national level. For instance, additional measures or programmes could be envisaged to provide subsidies for broadband services to households⁵¹. Additional regulatory measures could also be devised, such as imposing caps on broadband prices, requiring service providers to offer affordable basic service packages, and strengthening transparency requirements for pricing and contract terms. Partnerships with private sector companies could also be considered with the aim to provide affordable broadband services to most vulnerable consumers of low income or in underserved areas.

3.5. Considerations on the proposed option for a potential EU fund

The consultation enquires on the possibility to establish a fund, yet ultimately falls short from specifying its framework. Although it remains unclear how a potential fund would work, who would contribute, what would it finance and how, the underlying assumption of the questionnaire seems to indicate nonetheless that it should only cover the rollout of network infrastructure. Under the EECC, public funding for network deployment is already to be made available at the level of Member States, especially for more remote rural areas.

In this sense, the Commission should adopt an evidence-based approach. As BEUC German member vzbv notes, the German telecoms industry has no lack of funding but of rather the right framework conditions, such as “sufficient construction capacities, a reformed funding landscape and the use of new installation techniques”, having noted that the industry, “at a certain point, was suffocating in subsidies”.⁵² Public funding mechanisms, such as those under the EECC to fund infrastructure rollout in remote rural areas, have

⁴⁶ Letter signed by governments of Austria, Estonia, Finland, Germany, Ireland and the Netherlands, available at: https://www.permanentrepresentations.nl/binaries/nlatio/documenten/publications/2022/12/05/call-for-release-of-bcrd-revision---refusal-of-merge-with-fair-share-debate/Call+for+release+of+Bcrd+revision+-+Refusal+of+merge+with+fair+share+debate_def.pdf

⁴⁷ For more information on our position, please see: https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-123_BEREC_Opinion_on_the_review_of_the_Intra-EU_Communication%20Regulation.pdf

⁴⁸ BEREC Opinion, Intra-EU communications regulation, p 37. [https://www.berec.europa.eu/system/files/2023-03/BoR%20\(23\)%2044%20%20BEREC%20Opinion%20on%20the%20Review%20of%20the%20Intra-EU%20Communications%20Regulation.pdf](https://www.berec.europa.eu/system/files/2023-03/BoR%20(23)%2044%20%20BEREC%20Opinion%20on%20the%20Review%20of%20the%20Intra-EU%20Communications%20Regulation.pdf)

⁴⁹ Commission Staff Document, assessment on Intra-EU communications rules: <https://digital-strategy.ec.europa.eu/en/library/eu-rules-intra-eu-calls-staff-working-document>

⁵⁰ Regulation (EU) 2018/1971 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120. <http://data.europa.eu/eli/reg/2018/1971/oj>

⁵¹ As further detailed in BEUC’s response to the questionnaire of the present exploratory consultation.

⁵² https://www.vzbv.de/sites/default/files/2022-08/22-08-01_vzbv_position_sending-party-pays-system.pdf

better chances of delivering better, more immediate solutions for both businesses and consumers alike, and are in a better position to provide the necessary binding assurances that contributions do effectively translate into actual infrastructure investment.

END



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