The Consumer Voice in Europe

BEREC's 2022 WORK PROGRAMME CONSULTATION

BEUC 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 to protect and empower consumers. Being able to comment on BEREC's draft programme shows regulators' openness and willingness to cooperate with consumer organisations and other stakeholders.

Summary

In this document, you can find BEUC's response to the Body of European Regulators for Electronic Communications (BEREC)'s consultation to its draft 2022 work programme[1]. We welcome the opportunity to comment on it.

BEUC particularly welcomes BEREC's:
- Settled recognition of consumer protection and universal service as essential horizontal principles.
- Commitment to further work on 5G and internet value chain. In this sense, we particularly point out the need to promote device neutrality in the EU.
- Overall work on net neutrality and the review of the Guidelines on the implementation of the Open Internet Regulation in light of the latest CJEU rulings on net neutrality.
- Analysis and data-gathering on roaming and intra-EU communications.
- Announced update of BEREC retail and wholesale Guidelines on the Roaming Regulation.
- Planned out-of-silos interinstitutional cooperation.
- Planned workshop with BEUC on application of rights of end-users in the EECC.

BEUC recommends BEREC to:
- Extend its activities to foster consumer protection and empowering consumers further.
- Ensure focus on its mandate priorities, especially highly important workstreams related to protection and empowerment of consumers and competition.
- Enlarge the scope of its work on 5G, by putting more emphasis on how 5G can deliver benefits for all consumers.
- Clarify the Open Internet Guidelines to establish "zero-rating" offers as a forbidden practice.
- Improve consultation procedures by extending timeframes and avoiding simultaneous consultations.

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[1] Draft BEREC 2022 Work Programme, available at
https://berec.europa.eu/eng/document_register/subject_matter/berec/annual_work_programmes/10046-draft-berec-work-programme-2022

We welcome that BEREC considers yet again "universal service and consumer protection" as "important horizontal principles that form an essential part of the high-level priorities"[2] in 2022, following an express mention in the BEREC Work Programme for 2021. However, we must point out that this commitment should still be fully reflected through more ambitious work programme activities on these issues.

We note that, for another year, "[g]iven the number of workstreams for BEREC, several important proposals could not be initiated"[3]. As in our response in 2021[4], BEUC would like to share its concerns with the increasing amount of workstreams foreseen, which may force BEREC to deprioritise some of its key tasks, such as those related to consumer protection. Therefore, we call on BEREC to redouble its focus on the priorities which are central to its mandate.

Please find more specific comments to BEREC's draft work programme below.

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

BEUC welcomes BEREC's commitment to full connectivity as a strategic priority. However, we regret the absence of any mention of access and information to consumers. The objective of **full connectivity must also work for consumers, not only operators,** especially when the improvement of network infrastructures, with the rollout of new technologies such as 5G, stands out as an ideal opportunity to improve accessibility and better quality of service. Consumers, including those who are most vulnerable, should be allowed to take full advantage of digital opportunities. Thus, we would like to call on BEREC to also prioritise consumer-relevant elements of 5G such as quality of service, coverage, information, and marketing practices.

BEUC **welcomes the planned report on the 5G value chain and BEREC's intention to consult with key stakeholders** to further explore the expectations on the transformations of the 5G value chain. We recommend that BEREC continues monitoring developments, corrects misleading practices and ensures the proper development of 5G for all consumers.[5]

We would also like to recall that several **BEUC member organisations have raised concerns about how 5G is being deployed and marketed** in their countries: these include examples of gaps in coverage in Germany[6], lack of transparency by operators regarding the quality of service offered in France[7] and Belgium[8], or a lack of compatibility of devices marketed as 5G-compatible in Spain.[9]

In this regard, we recall our previous suggestion[10] for a **workshop on 5G for consumers,** bringing together regulatory bodies and civil society organisations, including consumer organisations **to discuss** all aspects that can affect consumers. Such a workshop would fit

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[2] Draft BEREC 2022 Work Programme, page 7.

[3] Ibid, page 46.

[4] BEUC response to BEREC 2021 Work Programme, page 2. https://www.beuc.eu/publications/berec-2021-work-programme-consultation-beucs-response/html

[5] 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

[6] See, for example: https://www.vzbv.de/pressemitteilung/mehr-wettbewerb-fuer-den-mobilfunkmarkt

[7] See, notably: https://www.quechoisir.org/billet-du-president-cartes-de-couverture-5g-le-contestable-laisser-faire-de-l-arcep-n83995/
https://www.quechoisir.org/decryptage-telephonie-mobile-ce-qu-il-faut-savoir-sur-la-5g-n82595/

[8] https://www.test-achats.be/hightech/telecom/news/proximus-5g-light

[9] https://www.ocu.org/tecnologia/internet-telefonia/informe/tecnologia-5g

[10] BEUC response to BEREC 2022 Work Programme, page 4.

BEREC's strategic priorities to promote full connectivity and empower end users, as well as fostering consumer protection.

Finally, we **welcome BEREC's intention to hold a workshop on the implementation of Article 22 of the European Electronic Communications Code (EECC)**, which tasks national regulatory authorities (NRAs) and/or other competent authorities to conduct a geographical survey of the reach of broadband networks, to foster knowledge and experience sharing with NRAs and other competent authorities and understand the stage of development on this subject. It is important that the focus on consistent implementation of the EECC continues to be at the forefront of BEREC's work, at a time when EU Member States are still struggling to transpose the legislation.

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

We strongly welcome BEREC's continued work on the internet value chain. BEUC fully agrees that electronic communication services and telecom networks are not the only elements of the internet value chain that BEREC should look at: 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."[11] We also commend BEREC's intention to "interact with various stakeholders, by organising workshops and in-depth meetings with relevant actors" in 2021 and 2022[12], and look forward to participating in these activities. Consumer organisations remain at BEREC's disposal on this important topic.

BEREC's views on the Digital Services Act (DSA)[13][14] and the **Digital Markets Act (DMA)**[15] are also welcome. On the DSA, BEREC rightly stresses the need to further impose ex-ante rules on digital platforms – not only online platforms – to include other elements of the value chain such as operating systems.[16] We reiterate our availability to engage with BEREC in further discussions on these matters.

BEUC welcomes BEREC's work on net neutrality and supports its efforts to ensure 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."[17]

In particular, we welcome the planned review and update of the Guidelines on the Implementation of the Open Internet Regulation[18], in light of recent rulings the Court of Justice of the EU[19] that clearly stated that zero rating offers are a **violation of this regulation**. We expect that the updated guidelines fully reflect the Court's rulings and clearly indicate that **zero rating is a prohibited practice**. We thank BEREC for having

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[11] BEREC Draft 2022 Work Programme, page 16.
[12] Ibid, page 17.
[13] https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/9880-draft-berec-report-on-the-ex-ante-regulation-of-digital-gatekeepers
[14] 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
[15] https://berec.europa.eu/files/document_register_store/2021/3/BoR%20(21)%2035%20BEREC%20Opinion%20on%20the%20DMA%20-%20final.pdf
[16] 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
[17] Ibid, page 14.
[18] https://berec.europa.eu/eng/document_register/subject_matter/berec/press_releases/10047-press-release-berec-will-update-guidelines-following-the-court-of-justice-rulings-on-zero-rating-publishes-recently-adopted-reports-and-calls-for-stakeholders-input
[19] https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-09/cp210145en.pdf

already launched a call for input to contribute to the review of the guidelines, to which BEUC contributed.[20]

In addition, we applaud BEREC for the emphasis placed on supporting "NRAs' obligation to 'closely monitor and ensure compliance' with the Open Internet Regulation"[21], including on cases related to zero-rating. We had highlighted this problem in the past and welcome BEREC's efforts to step up enforcement, offering support to NRAs whenever needed.[22] BEREC's internet monitoring reports during the COVID-19 pandemic have shown that the Open Internet Regulation is very relevant, including in moments of crisis.

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

In general terms, BEUC **welcomes BEREC's aim to strengthen end-user empowerment as a strategic priority.** Given the growing number of workstreams in the work programme, we underline the importance of focusing on the most relevant workstreams for end-users. Looking ahead, BEUC would reiterate the importance for **BEREC to develop a coherent vision and strategy,** so that the electronic communications sector works for consumers.

We strongly welcome that the work programme foresees a **workshop between BEUC and BEREC on the application of the rights of end-users of the EECC in 2022.** We thank BEREC for this opportunity and we look forward to closely engaging with its team on the organisation of the workshop. We fully appreciate the engagement of BEREC and NRAs' with BEUC and its member organisations.

We would also highlight the proposed **workshop on the digital divide.** We fully agree with BEREC that the "Covid-19 pandemic has illustrated that the digital divide continues to be a key factor of social exclusion, widening pre-existing inequalities"[23]. More than that, the pandemic showed that connectivity and electronic communication services have become essential to consumers and exposed "digital poverty", proving beyond any doubt that without reliable, affordable, non-discriminatory, and high-quality connectivity, it is impossible for citizens to fully exercise their rights to engage in society and the digital economy. It is precisely because "bridging the digital gaps has now become one of the top political priorities to achieve a fair economic recovery for all"[24] that we regret that this has been foreseen as an internal workshop. We **encourage BEREC to involve relevant stakeholders,** such as consumer organisations and other civil society NGOs, and allow them to engage with NRAs on such an important topic.

We would also like to underline that empowering consumers cannot be achieved by transparency and improving digital skills alone. The important role of NRAs to empower consumers is not just to ensure "consumer transparency and digital skills"[25]. In this regard, BEUC encourages BEREC to strongly support NRAs in their role to **ensure the respect of all consumer rights and related provider obligations** in the electronic communications sector. With regards to information, we encourage BEREC to investigate the use of 'dark patterns' in the electronic communications sector, analysing issues with

[20] https://berec.europa.eu/eng/document_register/subject_matter/berec/public_consultations/10086-contribution-of-beuc-to-the-call-for-input-to-feed-into-the-incorporation-of-the-ecj-judgments-on-the-open-internet-regulation-in-the-berec-guidelines
[21] BEREC Draft 2022 Work Programme, page 21.
[22] https://www.beuc.eu/publications/beuc-x-2019-075_berecs_public_consultation_on_its_draft_updated_net_neutrality_guidelines.pdf, pages 9 and 10.
[23] BEREC Draft 2022 Work Programme, page 24.
[24] Ibid.
[25] BEREC Draft 2022 Work Programme, page 22.

the way information and choices are presented to the consumers and how to address such issues.

Lastly, we welcome BEREC's announcement of the report on Member States' **best practices to support the defining of adequate broadband internet access service (IAS)** and the report on **best practices for ensuring equivalence of access and choice for disabled end-users**.

4. Comments on interinstitutional cooperation

BEUC welcomes the emphasis on breaking down silos, and on improving and structuring institutional cooperation by "increasing forces on certain topics in which synergies can be obtained".[26]

5. Comments on BEREC's other tasks

BEUC wishes to stress BEREC's role in ensuring the improvement of **competition** both in mobile and fixed networks. This includes the uptake of very high-capacity networks. The work programme seems too focused on investment.

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 benefits consumers. BEUC supports the continuation of BEREC's essential work on this issue.

Following the ongoing review of the roaming rules, BEUC **welcomes the upcoming review of both the wholesale and retail Guidelines on the Roaming Regulation**. Given the number of open questions expected on the implementation of the revised rules, which are expected to come into force in July 2022, the update of both of these guidelines will be important to provide a harmonised implementation of the new provisions. In this regard, we welcome BEREC's intention to proceed with a public consultation which should take place as soon as possible. We also **support the establishment and maintenance by BEREC** of a single public EU-wide **database of value-added services numbering ranges** used in each Member State, to be made accessible to NRAs and operators, as well as a **database of means for accessing emergency services**.

BEUC appreciates that BEREC has been mandated to assist the NIS Cooperation Group and ENISA in their work to produce a **toolbox for 5G Cybersecurity**, setting up a Working Group on 5G Cybersecurity. We encourage BEREC to engage with relevant stakeholders on this matter, including consumer organisations.

BEUC also welcomes that BEREC will be further exploring its role in promoting **sustainability policies**. We particularly welcome BEREC's commitment to engage at inter-institutional and stakeholder levels more actively on the issues of circular economy, especially in relation to the life cycle of devices and electronic equipment and their impact on energy consumption and electronic waste. However, we would like to add a notion of caution with regards to voluntary, non-enforceable pledges from the telecom sector, as experience shows that pledges or self-regulation are frequently insufficient or inefficient.

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[26] Ibid, page 27.

6. Comments on BEREC's stakeholder engagement

Overall, BEUC recommends BEREC to retain and assert its independence and encourages it to consult the greatest variety of stakeholder views as possible. In this sense, we strongly welcome the aim of ensuring a more **balanced representation of stakeholders** in the BEREC Stakeholder Forum and encourage BEREC to continue pursuing this objective.

7. Comments on potential BEREC work in 2023 and beyond

BEUC welcomes the special attention given to **monitoring the implementation of the EECC** through a workshop with NRAs. Governments were supposed to have implemented the EECC by the end of 2020. However, EU Member States are still struggling to transpose the legislation. It is important that the focus on consistent implementation of the EECC continues to be at the forefront of BEREC's work, that it promotes knowledge- and experience-sharing between NRAs to ensure better monitoring of the key elements of the functioning of the EECC.

We also welcome that BEREC proposes a project building on its **previous report on best practices for termination of contracts and switching providers.** The report contained valuable information from NRAs on the approaches to switching across different communications services, focusing on the national implementation of the measures provided by Article 106 at both wholesale and retail level. We expect that the upcoming project addresses the complexities of switching processes across the EU Member States and how these affect consumers.

Finally, BEUC would like to reiterate our recommendation that **public consultations should take place over longer periods of time. Moreover, we ask BEREC to avoid overlapping public consultation as much as possible.** Unfortunately, four weeks are simply not enough for an umbrella organisation with limited resources, working simultaneously on a variety of topics, to properly and fully address all issues raised and produce added-value. Overlapping consultations with short deadlines risk excluding smaller stakeholders with more limited resources from participating in a meaningful way, therefore jeopardizing the objective of any consultation - balanced, representative feedback from all stakeholders. This is particularly important in the case of 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.

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