

Press Release

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BEREC recommends clarifying the scope of the Digital Markets Act in relation to number-independent interpersonal communication services (NI-ICS)

The European Commission (EC) includes number-independent interpersonal communication services (NI-ICS) in the scope of the Digital Markets Act (DMA) proposal, considering these services as one of the 'core platform services' (CPS), subject to regulation. In its ['Report on the interplay between the EECC and the EC's proposal for a DMA concerning NI-ICS'](#), the Body of European Regulators for Electronic Communications (BEREC) recommends avoiding the legal overlap of the DMA and the European Electronic Communications Code (EECC) to reduce the regulatory uncertainty for market players and consumers. Furthermore, it provides some proposals to ensure the interplay between the two legislations.

Identified issues and recommendations

In the Report, BEREC highlights that NI-ICS, regulated as a CPS in the DMA proposal, is also regulated among other legal instruments under the EECC to promote connectivity in the electronic communications sector, develop the internal market and promote the interest of European citizens.

National Regulatory Authorities (NRAs) powers under the EECC regarding NI-ICS include symmetric and asymmetric regulation. Regulatory enforcement also consists of market monitoring, information requests, (potentially cross-border) dispute resolution at the retail and wholesale level and protection of end-user rights (including non-discrimination, obligations for information in contracts, transparency obligations and information obligations related to quality of service).

After detailing the existing legal provisions already applying to NI-ICS in the EECC, BEREC considers that the DMA should especially focus on providers of digital services, including NI-ICS only in relation to issues that the EECC cannot tackle. To avoid any potential overlap, BEREC suggests setting up a cooperation mechanism among the EC (as future EU DMA regulator) and BEREC, the NRAs and/or the DMA Advisory Board proposed in the BEREC Opinion on the DMA.

BEREC also suggests amending Article 1 of the DMA proposal to clarify that the DMA is without prejudice to the powers and tasks granted to the NRAs by virtue of the EECC.

Digital Services Act

BEREC also raises some considerations derived from the Interpersonal Communication Services (ICS) definitions applicable to the Digital Services Act (DSA) regulation regarding NI-ICS. BEREC is of the opinion that ICS (including NI-ICS) fall outside the definition of online platforms. Typically, NI-ICS do not allow publishing information to an unlimited group of recipients; therefore, if NI-ICS offer other broadcasting functionalities, only such functionalities should be subject to the DSA regulation.

BEREC is ready to provide its knowledge and expertise to support the EC in addressing these emerging issues identified in the electronic communication sector.

Note to the Editor

Social media, instant messaging, videoconferencing and video-streaming are an integral part of the daily lives of many people in the European Union. These are some of the best-known examples of what are commonly called over-the-top (OTT) services.

With the adoption of the [European Electronic Communications Code](#) in 2018, in Article 2, a new, broader definition of electronic communication services is defined, including the terms of number-independent interpersonal communications services (NI-ICS) and number-based interpersonal communications services (NB-ICS).

The current BEREC Report is a follow-up analysis to the [BEREC Opinion on the DMA](#) and the [Draft BEREC Report on the ex-ante regulation of digital gatekeepers](#). BEREC recommends that all DMA obligations regarding NI-ICS be implemented in close cooperation with BEREC and/relevant national authorities to conduct a preliminary and joint analysis of their impacts in the relevant ECS markets.

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