

**BEREC Report on the Public Consultation on the Draft
BEREC Medium Term Strategy Outlook**

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1. INTRODUCTION

With a view to further enhancing BEREC's effectiveness, during its 9th plenary meeting (8-9 December 2011, Bucharest) the Board of Regulators held an extensive discussion and agreed on a draft BEREC's Medium Term Strategy Outlook for the coming 3-5 years, which was published for public consultation.

Since all the envisaged topics of the Strategy Paper have direct impact on the electronic communications industry, the EU citizens and the policy developments not only in the telecom field but in all other economic and social spheres, the Board of Regulators decided to consult the stakeholders on its draft Strategy Outlook through a dedicated public consultation.

The role of the public consultation was to increase transparency in the work of BEREC and at the same time to provide BEREC with valuable feedback from all parties concerned by the proposed Strategy. The consultation was held in the period 16 December 2011 - 16 January 2012 through the BEREC web page. Within the public consultation BEREC received a total of 7 contributions from 4 associations of providers of electronic communications, IT and/or content services and 3 operators providing electronic communications and content services, one of which defines itself as an alternative provider (the list of the contributors is annexed to the report). No contributions from physical persons or associations of consumer protection organisations were received. As BEREC has not received any request for non-publication of the contributions due to confidentiality reasons, the full text of all answers will be made available to all interested parties on the BEREC website.

The current report is aimed at providing a general overview of the main comments and views received around the key topics of the draft Strategy and to present BEREC's views as to how such comments could be reflected in the final document or in the future activities of BEREC. It does not intend to present a compilation of the gathered responses. As mentioned before all contributions can be obtained through the BEREC website.

2. SUMMARY OF STAKEHOLDERS' RESPONSES

2.1. General comments on the draft Strategy

In general all respondents welcome the initiative by BEREC both to define its medium term Strategy and to submit it for public consultations. One stakeholder welcomes BEREC's initiative to provide a mid-term strategic outlook on its priorities. Most of the contributions state that the proposed draft reflects BEREC's increasingly importance in ensuring a consistent and proportionate regulatory regime in the EU, thus contributing to the development of the single market.

All the contributors acknowledge the importance of the priority areas for BEREC's work as defined in the draft but they think that BEREC should also have the objective to provide continuity and regulatory certainty for the investors and removal of cross-border obstacles to trade by focusing on areas where the existing differences lead to barriers to completion and single market.

All contributors share BEREC's proposal for including in the strategy measures related to ensuring consistent and proportionate regulation, applying common approaches in those areas "where differences impede the internal market", strengthening transparency and consumer empowerment.

Most of the stakeholders welcome BEREC's recognition of the increasing convergence and support its ideas to have more evolving role in the Internet era.

2.2. Comments on the content of the draft Strategy

2.2.1. *Infrastructural developments: next generation networks (NGN)*

All contributors welcome BEREC's approach towards NGN, which in their opinions seems to be at the heart of its on-going work. Nevertheless, most of the stakeholders are of the opinion that a more forward-looking approach should be applied to infrastructure, which should enhance infrastructure competition and provision of more content services. Some of the proposals aim at using more technology neutral language and emphasising the open character of the networks. One of the contributions suggest replacing the phrase "NGN" with "high-speed Internet and digital services" with a view to taking into account the on-going convergence of services.

In that respect all contributors welcome the commitment by BEREC to update the common position on access remedies, in particular in respect of NGN. They point out the need to continue the work in the field of non-discrimination and, in particular, to try to streamline the approaches applied by the different NRAs to discriminatory practices. One of the stakeholders proposes BEREC to work on further elaborating on the implementation of the non-discrimination obligation.

Most of the stakeholders request BEREC to take into account in its strategy the promotion of investment and competition in NGN and ensuring open character of this infrastructure.

And last but not least, as part of the NGN promotion some of the contributions also put emphasis on the need for BEREC to further facilitate the access to spectrum by the introduction of more harmonised approach towards licence-exempt spectrum usage and spectrum trading.

2.2.2. Consumer empowerment: boosting consumer choice and protection

All stakeholders in general support a broader focus on more empowerment of end users. Some of them believe that well informed consumers with a choice of suppliers will enable a more dynamic and responsive market to the benefit of consumers and industry. In that aspect all contributors pay great attention to the transparency especially in the context of bundled offers and net neutrality measures. In that respect several of the stakeholders think that BEREC should further work on avoiding the unjustified traffic management practices, stressing that measures taken out of commercial motivations might lead to discriminatory practices with a direct negative effect towards the consumers.

Despite the general support for strengthening the consumer protection, some of the stakeholders point out that consumer protection measures should complement and not supersede the legal framework for competition. One of the stakeholders is of the opinion that BEREC should not adopt decisions in the field of privacy and data protection in order not to cause confusion and legal uncertainty.

Others stress the importance of systematic network performance measurements, noting that where such measurements have taken place they have indicated a consistent failure of DSL networks to achieve advertised speeds.

2.2.3. Service related developments

In its draft Strategy BEREC has envisaged undertaking additional work in the field of international roaming, net neutrality, special rate and/or cross-border services, mainly through developing common concepts, gathering and analysing data and will focus on the elaboration of better methodologies to ensure comparability of data with a view to ensuring better and monitoring.

In addition the stakeholders propose BEREC to undertake additional measures, as follows:

- In the field of international roaming - to work more in order to guarantee development and growing of competitive alternatives to mobile international roaming;
- In the fields of net neutrality and transparency, including quality of service - to envisage Pan-European transparency measures related to network performance (including disclose traffic management information and the quality of Internet access);
- In the field of cross-border services – dedicating more efforts to facilitating their provision, including through dissemination of the best practices existing in that field.

One contributor has questioned the need for including the special rate services in the Strategy.

One stakeholder has proposed replacing the heading of the section, namely: “Service related developments” with the heading “Fostering development of the single market”.

One stakeholder suggests that BEREC should put equal emphasis on the content and applications running on the networks and particularly the Internet, stating their role in stimulating broadband network demand.

2.3. Other comments and suggestions received

One of the stakeholders suggests to BEREC to consider the small and medium sized enterprises as end-users. As this might be a valid point for discussion it can not be easily

reflected in the mid term strategy paper but may be taken into account within the work of BEREC.

Several stakeholders are of the opinion that for ensuring effective interaction with the stakeholders BEREC has to consider its presence in Brussels. This is something BEREC is actually looking into.

3. Conclusions

The opinions presented during the public consultations in general support the priorities defined in the draft BEREC Midterm Strategy Outlook. Some of the stakeholders propose further detailing one or another specific area of work, depending on their main field of interest. Therefore it has to be stress again that BEREC keeps the Strategy as high-level principle document and prefers to reflect the specific details for achieving the Strategy objectives in its Work Programme(s).

Therefore, taking into account all contributions received and the legal obligation that BEREC has to elaborate on an annual basis a Programme for its work, it can be concluded that the current paper represents the right balance between the different priorities. Changes were made according to the input given by the stakeholders.

BEREC would like to confirm its commitment to undertaking all necessary measure for enhancing the development of the single market, strengthening competition, boosting investment and empowering the consumers of electronic communications services. In that respect BEREC expresses its readiness to further detail the measures to be undertaken in each of the priority areas in its multiannual work programmes, which are the right instrument for further elaborating the strategic principled included in the Strategy Outlook.

Furthermore, we would like to stress that all activities and interventions of BEREC fall within the powers bestowed upon it and are aimed towards enhancing regulatory certainty.

Finally BEREC takes this opportunity to thank all contributors to the public consultation and would like to communicate that their detailed comments will be duly taken into account not only with regard to BEREC strategy but also in the process of drafting the BEREC Work Programmes.

Annex

LIST
of the contributors to the public consultation on the draft
BEREC Medium Term Strategy Outlook
(listed in alphabetical order)

1. ECTA
2. ETNO
3. FTTH Council Europe
4. Telefonica
5. Vodafone
6. Voice on the Net Coalition Europe ('VON')
7. WIND