



BEREC NEWSLETTER

11/2016

New members of the BEREC Board have been elected

On 8 December the BEREC Board of Regulators elected three new Vice-Chairs for 2017. **Johannes Gungl**, Managing Director of Austrian regulator RTR, was elected Chair for 2018, and will serve as a Vice Chair during 2017. Two additional Vice Chairs were elected for a one-year term, **Alejandra de Iturriaga** of Spanish regulator CNMC and **Steve Unger** of UK regulator OFCOM. They will join the current BEREC Chair **Wilhelm Eschweiler**, Vice-President of German regulator BNetzA, who will serve as a Vice Chair in 2017, and the 2017 Chair-elect, **Sébastien Soriano**, President of French regulator ARCEP.

**BEREC Chair 2018
elected
Johannes Gungl
RTR, Austria**

**BEREC adopts
Opinion on draft
Code**

**BEREC Work
Programme 2017**

**BEREC
contribution to
Mobile evolution**

**Termination rates
at European level
July 2016**

**Happy
holidays!!**



BEREC Opinion on the draft Code

BEREC held its final plenary meeting of 2016 in Berlin, Germany on 8-9 December, during which it adopted its [opinion on the European Commission's proposal for a draft Electronic Communications Code](#). This high level opinion focuses on three important aspects of the Commission's proposals: the scope of the framework, the access regulation and the institutional set-up. In it, BEREC welcomes the introduction of an explicit connectivity objective alongside the promotion of competition, the internal market and consumer interests, while explaining that, in practice, some of the new provisions on access regulation might not help the achievement of those objectives.

It reinforces the point (expressly acknowledged by the Commission) that there continue to be significant differences in market conditions, not only between Member States but even within individual Member States, and that flexibility to address the different conditions in those markets (against a backdrop of clear EU regulatory principles) will remain key. It also notes that sectoral regulation is only one of many levers – it cannot, on its own, incentivise investment in high-capacity networks or indeed demand.

BEREC welcomes the inclusion of a range of “over the top” (OTT) services in the scope of the legal framework, and the measured approach the Commission has taken towards levelling the regulatory playing field. But BEREC is concerned that the proposal to fully harmonise consumer protection regulation will prevent regulators and Member States from responding to emerging challenges in their respective markets, or indeed from deregulating where justified.

BEREC also welcomes the proposed harmonisation of minimum competences for independent regulators, and the strengthening of the independence obligations. However, the proposal to transform BEREC into an EU agency not only risks increasing the bureaucracy and cost of European telecoms regulation, but also undermines the benefits of the proposed strengthening of independence at the national level. While there is scope for BEREC to improve its efficiency, this does not require a change to the current institutional balance, under which BEREC has successfully delivered over the last 7 years.

During the course of next year BEREC will continue to assess the draft Electronic Communications Code and will seek to provide its expert views based on an in-depth analysis on a variety of topics, also including spectrum, to the European legislators.

BEREC Work Programme 2017

Following a public consultation and the discussion at the Stakeholder Forum, [BEREC adopted its Work Programme for 2017](#) .

Next year, the analysis of the Commission's proposal regarding the framework review and the provision of inputs to the European institutions will be a key priority for BEREC.

BEREC will also support NRAs' efforts towards fostering connectivity. For the fixed market, the work programme includes in particular a comprehensive assessment of the need to review common positions in the wholesale markets 3, 3a and 4 relevant to next generation access. Regarding mobile connectivity, BEREC plans to publish a Common Position on monitoring mobile network coverage, both for regulatory purposes and to empower consumers to choose their provider on the basis of their connectivity needs.

Another important area of work for BEREC will be the promotion of an open environment in the digital world. BEREC will in particular monitor the consistent and effective implementation of the newly adopted net neutrality rules. BEREC will also study the impact of content markets and devices on ECS markets.

Finally, BEREC will define its mid-term strategy for the years 2018-2020. The strategy will build upon BEREC's work to date, and takes into account the major developments that are taking place in the electronic communications field. On this topic as on others like net neutrality, stakeholders will be involved from an early stage of the process.

BEREC Report on Transparency and Comparability of International Roaming Tariffs


Pursuant to Art. 19(4) of the 2012 Roaming Regulation, BEREC shall collect information on the transparency and comparability of the different retail roaming prices that are offered by the operators. This report is the fourth of such kind and will be annually repeated as set out in the Roaming Regulation.

This Report takes into account amendments of Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union by Regulation (EU) No. 2120/2015¹.

The report focuses on two possible key issues for consumers when selecting international roaming tariffs: transparency and comparability. Transparency refers to the availability of clear information on prices and conditions for each tariff provided by the operators and the availability of simple procedures to switch between tariffs. Comparability refers to the ability of customers to compare different tariffs, allowing them to select the one best suited to their needs and pattern of consumption.

In order to investigate whether consumers face transparent conditions and are able to compare different tariffs, BEREC prepared two questionnaires addressing the operators and NRAs respectively.

¹ <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32015R2120>



When BEREC asked whether NRAs had received transparency related customer complaints, 58% of the responding NRAs said that they had received complaints on transparency issues since July 2015, an increase compared to the previous period, when 50% of the responding NRAs reported receiving such complaints. In general, the number of complaints reported by each NRA was relatively low (less than 10). The complaints were mainly caused by problems with the cut-off limit for data roaming. They may reflect problems with the sending of, or understanding of, limit alerts, or the possibility that the limit was not activated. Moreover, consumers might have received an alert but failed to adjust their usage accordingly. A few NRAs received a relatively high number of complaints regarding these issues. Some NRAs reported complaints regarding the lack of a welcome SMS. In addition, there were some complaints regarding roaming on planes and ships, charges for usage outside of the EEA and inadvertent roaming. However, the first of these topics is outside of the scope of the Roaming Regulation while the second is relevant in relation to transparency and anti-bill shock provisions.

As in previous years, most of the operators reported that they provide extensive information on the conditions and prices for each tariff on their websites and inform customers about tariffs in a variety of ways. When customers conclude a contract including an alternative roaming bundle that consists of a limited number of minutes, SMS and/or limited amount of data services, 90% of operators inform the customers via SMS, the website etc. about the charges that apply for out-of-bundle consumption. A slightly smaller number of operators (around 82% of respondents) reported that they notify their customers when they reach the limit of the bundle.

Providing data on real-time consumption is more challenging for roaming services, as it is typically dependent on the collaboration between the domestic network and the visited network. The domestic network does not always provide information on real-time consumption of all services. The most common way for providers to supply data on real-time consumption is via call centre agents (64%). The second most common way is to publish information for customers on their websites (58%) and the third is by interaction via their mobile phone using short codes (57%).

Customized applications available on smartphones or tablets are getting more and more popular compared to last year. Applications for accessing historical and real-time information are offered by many providers (52% of all providers offer apps for historical data and 49% for real-time data).

BEREC has collected information on the roaming tariff structures of European roaming providers since July 2016, three months after the transitional period had entered into force. According to Article 6f (2), Article 6e of the Roaming Regulation also applies from 30 April 2016 until 14 June 2017 (the transitional period). This provision allows providers to add a surcharge for regulated roaming services in addition to the domestic price during the transitional period, which in total shall not exceed the price caps set out in Article 6e (1). 68% of roaming providers in the EEA offer such tariff structures i.e. domestic rates plus a surcharge. On the other hand, 54 % of the respondents only apply at maximum the surcharges set out in Articles 7(2), 9(1) and 12(1) with no additional domestic charge.

In advance to the envisaged end to intra-EU roaming surcharges from 15 June 2017 pursuant to article 6a, 37% of roaming providers in the EEA already offer roaming services at domestic rates. This means that there are already a significant number of roaming providers offering pure RLAH tariffs e.g. tariffs without a daily charge for their customers and without any limitation beyond the volume limits included in their domestic offers.

Concerning fixed periodic roaming tariffs according to Article 6e (1), subparagraph 4, monthly and daily packages are the most relevant roaming tariffs which are offered by 57% and 35% of roaming providers in the EEA, respectively.

Similar to the provisions set out in the III Roaming Regulation, roaming providers may offer alternative roaming tariffs to the RLAH+ and customers may deliberately choose those alternative tariffs. In this respect, monthly packages (48%) and daily packages (32%) are still the type of alternative tariffs offered most frequently by roaming providers.

To sum up, although it was not mandatory to offer RLAH tariffs during the transitional period, 37% of roaming providers in the EEA are providing such tariffs and 24% of all roaming providers are offering RLAH tariffs with a self-defined Fair Use Policy. Monthly and daily roaming packages are the most widespread packages offered by roaming providers for both fixed periodic and alternative tariffs.

Contributions of BEREC towards the development and better functioning of the internal market for electronic communications and its role in the evolution of Mobile over the years

Next year, 2017, is a momentous year in Mobile. It is the 30th Anniversary of the Memorandum of Understanding on GSM, signed by 15 representatives from 13 European countries. EU rules were passed to make GSM a mandatory standard.

The Body of European Regulators for Electronic Communications (BEREC) has prepared a brief summary of how it has contributed to the development and better functioning of the internal market for electronic communications networks and services and how it has played a key role in the evolution of Mobile over the years.

BEREC was established as a part of the 2009 Telecom Reform package² and commenced its activities in January 2010. It replaced its predecessor - the European Regulators Group for electronic communications networks and services, which had been an advisory group to

² Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office

the Commission since 2002. It became fully operational to fulfil its purpose and functions under the Framework in the course of 2011.

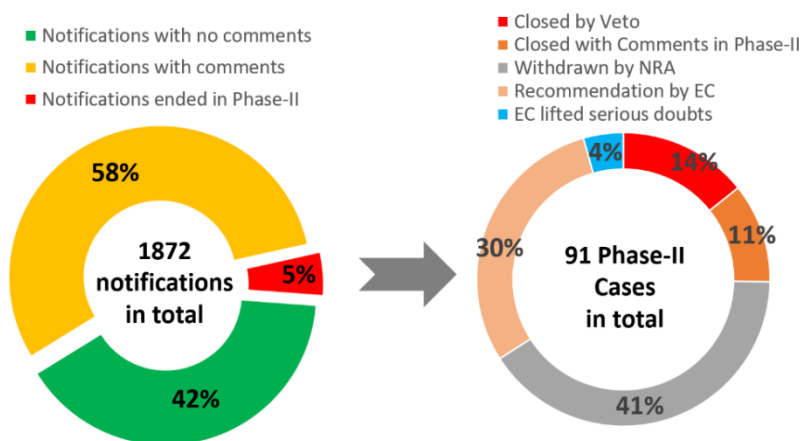
The purpose of BEREC, expressed by its mission statement, is to ensure *“the independent, consistent, and high-quality application of the European regulatory framework for electronic communications markets for the benefit of Europe and its citizens”*.

All of BEREC’s objectives are derived from the policy objectives and regulatory principles that its members – national regulatory authorities (NRAs) – are required to pursue according to the Framework Directive. They are embodied in the three pillars of BEREC’s Strategy:

- Promoting competition and investment;
- Promoting the internal market; and
- Empowering and protecting end-users.

There are several activities through which BEREC continuously contributes to consistent application of the regulatory framework. One of the most important is its participation in the so-called Article 7 and 7a procedures³. Throughout the years BEREC and his predecessor have been involved in various Article 7 and 7a cases, including cases on mobile markets. The statistics on the total number of NRAs’ notifications and Phase-II Cases during which BEREC and his predecessor drafted opinions may be seen below:

Statistics 2003 – Jul. 2016



³ Article 7 and 7a of Directive 2002/21/EC (Framework Directive), as amended by Directive 2009/140/EC, as well as to Regulation 1211/2009

The limited number of Phase-II cases (i.e. ~5%) among the notifications from the last 14 years proves the high level of harmonisation that exists in European telecoms markets.

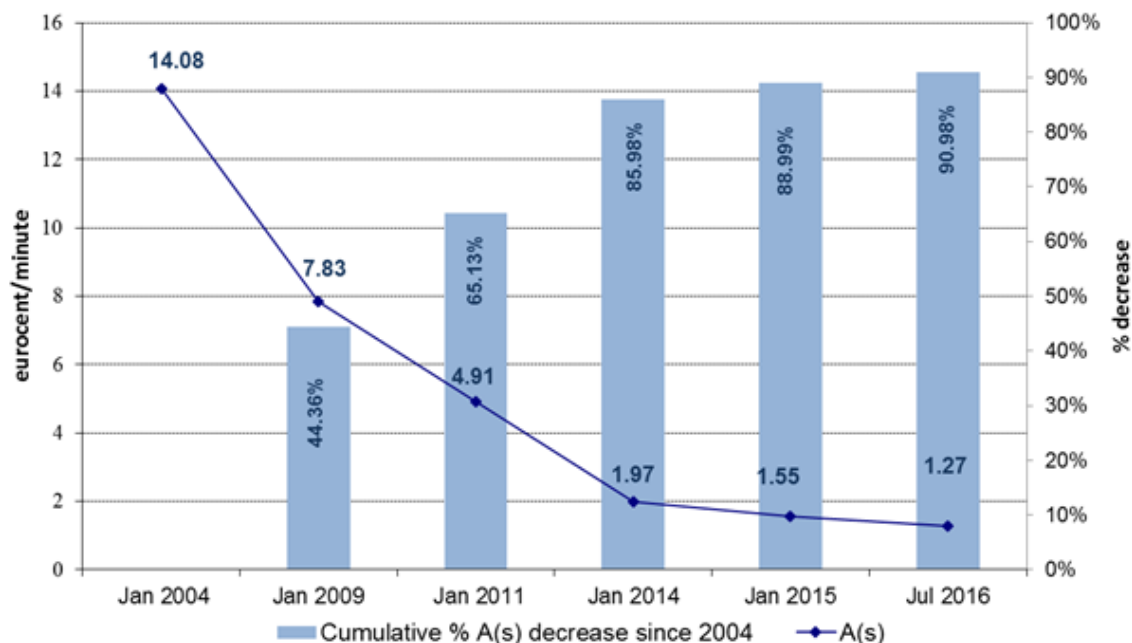
The most important role of BEREC, which cannot be overstated, is to develop and disseminate regulatory best practice among NRAs. This is done by various activities, most commonly by the development and subsequent publication of Guidelines and Common Positions. According to the Framework Directive and the BEREC Regulation, NRAs must take utmost account of BEREC best practices. One example in this domain is the recently published BEREC Guidelines on Net Neutrality.

These BEREC Guidelines encompass various tasks for NRAs with respect to supervision and enforcement as well as reporting on the practices of ISPs across Europe. NRAs are also required to provide to the European Commission and BEREC an annual report of their findings regarding the implementation of these rules. On top of this, BEREC's ongoing Net Neutrality study will contribute to an informed public debate and constitute a valuable source of information for NRAs and BEREC in the course of the implementation of the EU regulation 2015/2120.

Recently BEREC has also approved the Common Positions (CPs) on Layer-2 (L2) Wholesale Access Products (WAP). In order to get a deeper insight into these products and to foster the exchange of experiences and contribute to the harmonisation of regulatory instruments used in the European Union, BEREC defines CPs for L2 WAP imposed on both the wholesale local access market and on the wholesale central access market. CPs are defined for the conditions regarding the implementation of L2 WAP, prices and technical characteristics, contributing to the regulatory objective of enabling the provision of a variety of competitive services for residential and business customers (incl. voice, internet, IPTV, data, etc.).

BEREC's activities are aimed at promoting competition in the European market, leading to better services and lower prices to end-users. One of the examples showing that this European policy, in which BEREC takes its part, fulfils its goals is the continuous decline of mobile termination rates in Europe.

European MTRs simple average cumulative decline



Also in the domain of roaming, BEREC is playing a very important role. BEREC has recently approved its input to the European Commission Implementing Act on fair use policy (FUP) and sustainability of the abolition of retail roaming surcharges. BEREC pointed out that the challenge is finding a balance between wholesale charges that are sufficiently low to support “Roam like at home” (RLAH) without requiring increases in retail prices in domestic countries, and sufficiently high to allow wholesale cost recovery and avoid an increase in retail prices in the visited countries. In this sense, it is necessary to consider in greater detail the scale and scope of the various risks to competition and consumers, and the potential for mitigating negative effects through other measures (e.g. FUP), as well as the developments of competition in the retail roaming markets and any observable risks relating to distortions of competition and investment incentives in domestic and visited markets. Meanwhile, BEREC continues to work together with the EU legislators on the implementation of the IV Roaming Regulation.

BEREC serves not only as a platform for cooperation among NRAs (within the BEREC community), but also between NRAs and the European Commission, the European Parliament, the Council and other stakeholders. Of overall importance is its role as a body of reflection, debate and advice, providing input during the preparation of legislative proposals⁴ and its advisory role during the legislative process. BEREC’s inputs in this regard are valued, since it provides the legislators with a practical, expert point of view from the field, together with an in-depth knowledge of the local markets.

⁴ E.g. for the Commission Implementing Regulation (EU) 2015/2352

However, further to what has been achieved so far, BEREC is aware of the fast-paced development of the telecoms sector and the various challenges lying ahead, including future changes in technology and in the market structure.

In recent years we have experienced in Europe a tendency towards increased consolidation in communications markets and the emergence of oligopolistic markets defined by a limited number of operators. BEREC is currently thoroughly analysing this trend in order to provide assistance to NRAs to properly understand the consequences of this M&A activity.⁵

Strongly believing that a competitive telecoms sector will contribute to a vibrant European economy, which in turn can provide the conditions for investments and innovation, BEREC will continue promoting effective competition as an enabler to satisfy the interests of EU industry and citizens, including the protection of end-users and vulnerable groups.

BEREC report on Termination Rates at the European Level (July 2016)

The aim of this report is to offer a picture of the interconnection and termination rates as well as the methodology used to set those rates in the cases of mobile, fixed and SMS communications in Europe, thus continuing the work started by ERG (European Regulators Group). Overview reports on FTRs, MTRs and SMS TRs are carried out twice a year.

The BEREC Report on Termination rates at the European Level (July 2016) provides an overview of Fixed Termination Rates (FTR), Mobile Termination Rates (MTR) and SMS Termination Rates (SMS TR) per country, based on the results of a request for information sent to all National Regulatory Authorities (NRAs). The data reflects the situation as of 1 July 2016 and it includes rates from 37 NRAs that provided responses.

As of July 2016, the situation regarding Termination Rates in Europe is as follows:

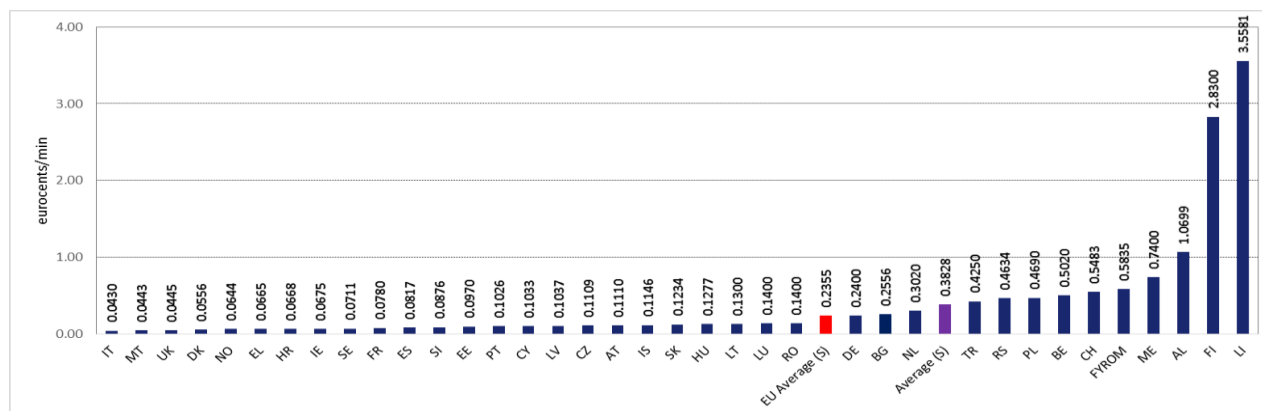
Fixed Termination Rates

Fixed termination services in Europe are subject to price regulation. The regulation of Fixed Termination Rates has been harmonized by the Recommendation of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (C (2009) 3359 final). However, some differences can be found across the national regulatory regimes:

⁵ BEREC considers that not all oligopolies raise competition issues and therefore oligopolies are not necessarily always problematic, however, BEREC also acknowledges that a market characterised by two or more large firms may not necessarily qualify as being competitive. For more details see: BEREC BoR (15) 195, Report on oligopoly analysis and regulation. http://berec.europa.eu/eng/document_register/subject_matter/berec/reports/5581-berec-report-on-oligopoly-analysis-and-regulation

- 1) In some cases the termination rate is a two-part tariff, i.e. composed of a variable part (to be paid for each minute of a call) plus a set-up or fixed part (to be paid for each call). In other cases, termination prices consist only of the variable part.
- 2) Interconnection services in fixed networks are provided at different levels in the hierarchy of the incumbents' networks, called layers. Even though some peculiarities in specific countries are present, in general three main layers for interconnection are defined: i) layer 1⁶, or local level service provision, ii) layer 2, or regional level service provision (single transit), and iii) layer 3, national level service provision (or double transit).
The "lowest regulated rate" refers to the lowest of the rates of an operator. For operators that have more than one regulated rate, these are ranked in ascending order (first lowest, second lowest, etc.) If there is a single regulated rate, it is considered as "the lowest regulated rate".

Overview of incumbents' lowest regulated fixed termination rates per country – July 2016 (Euro cents per minute of service)



As of July 2016, this is the situation regarding TRs in Europe:

- The simple average of the lowest regulated FTR of incumbents at the European level (all 37 countries) stands at 0.3828 eurocents per minute.
- The simple average of the lowest FTR of European Union incumbents stands at 0.2355 eurocents per minute.

Additional information concerning the regulatory models used, wholesale revenues, short-term evolution of termination rates as well as information on numbers of lines and symmetry applicable across operators of the respondent countries is available in more detail in the report.

⁶ Layer 1 is defined as the closest possible interconnection level to the network termination point.

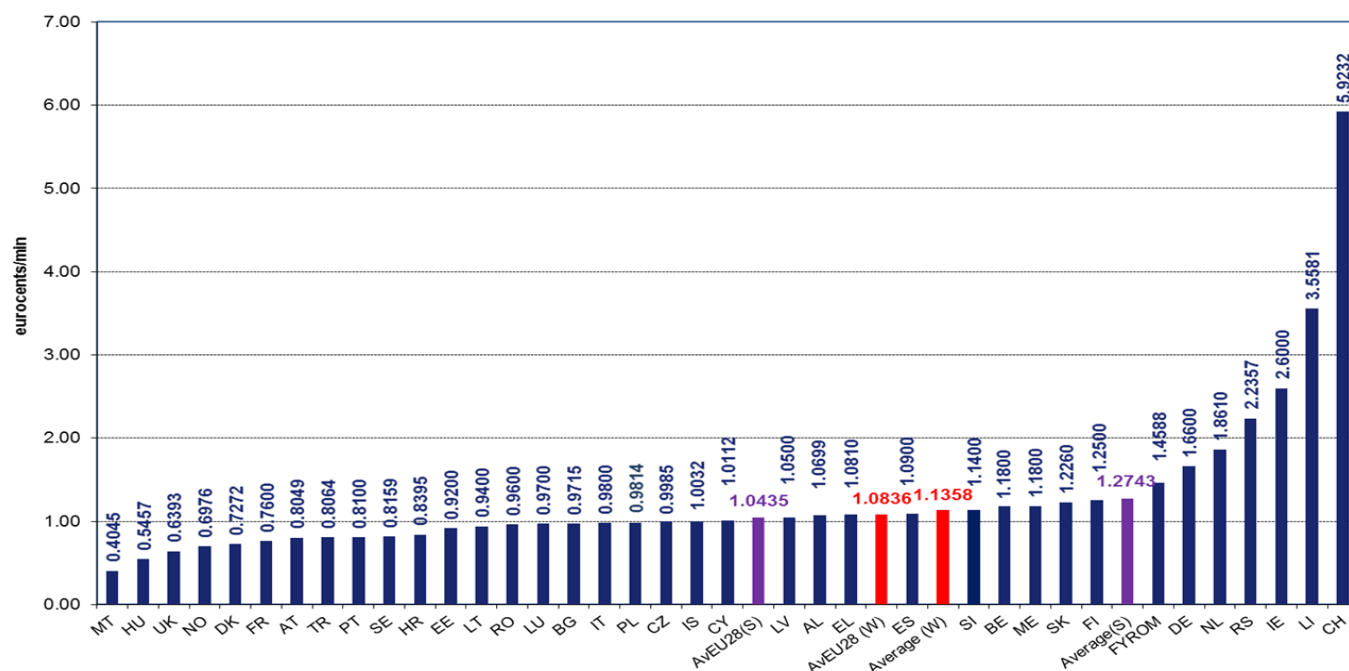
Mobile Termination Rates

Mobile termination rates (MTRs) are regulated in all countries of the EU(28) and in the additional members of BEREC. The highest Mobile Termination Rates are in Switzerland with 5.9232 eurocents per minute, though the lowest rates for mobile termination services, at 0.4045 eurocents per minute, can be found in Malta.

MTR averages:

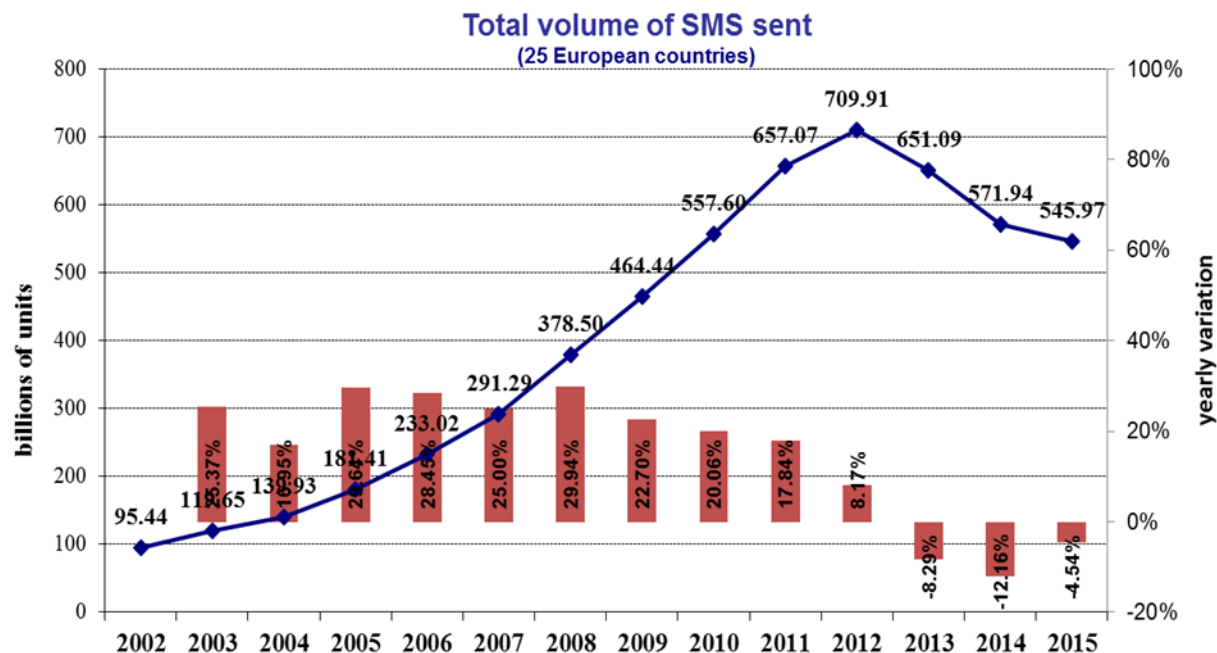
- The MTR simple average (A(s)) at the European level (all 37 countries) stands at 1.27 eurocents per minute, whereas the weighted average (A(w)) at the European level is estimated at 1.14 eurocents per minute.
- The MTR A(s) at the EU level (only EU member states) stands at 1.04 eurocents per minute, whereas the A(w) at the EU level is estimated at 1.08 eurocents per minute.

MTR per country – July 2016 (Euro cents per minute of service)



SMS Termination Rates

Even though short message services (SMS) offered by operators have become less important in the last two years, they are still used every day by millions of people all over the world.

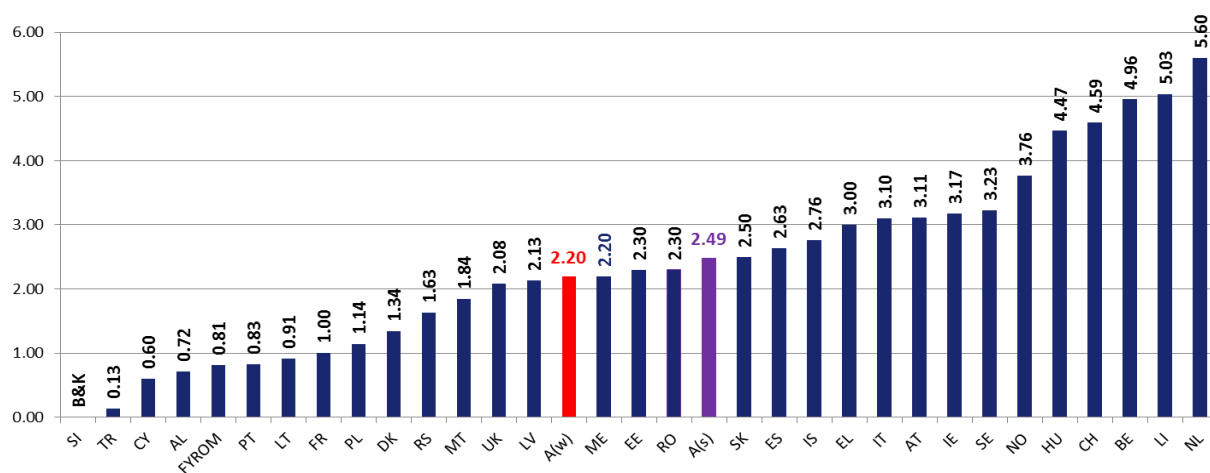


This figure is based on the time series of the countries from which information was available from 2002 to 2015. These countries are: Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Malta, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland and UK.

This service is not regulated in most EU countries, but the evolution of wholesale SMS termination rates is monitored in most cases by NRAs. Comparing the SMS termination rates, the highest rates are still in the Netherlands, where the originating operators have to pay 5.60 Eurocents per short message. The cheapest SMS termination rates can be found Turkey, where originating operators are paying 0.15 eurocents per SMS. Since Serbia introduced bilateral SMS TRs in June 2015, Slovenia is now the only country where “Bill & Keep” agreements are in place for traffic between all domestic operators.

The simple average is 2.49 eurocents per SMS, whereas the weighted average is reported to be 2.20 eurocents per SMS.

SMS TR per country – July 2016 (Euro cent per message)



BEREC Future events

On 2-3 February 2017 the first BEREC Contact Network meeting will take place in Malmö (Sweden), kindly hosted by the Swedish Post and Telecom Authority (PTS). The main objective of the meeting is to prepare the 30th ordinary plenary meetings of the BEREC Board of Regulators and the BEREC Office Management Committee to take place on 23 and 24 February 2017 in Paris (France). The event is open for participation only to Contact Network Members. To increase the transparency of the work of the Contact Network the BEREC Office will publish the meeting agenda and meeting conclusions.

On 23 and 24 February 2017 the 30th BEREC plenary meetings will take place in Paris (France), kindly hosted by the French Autorité de Régulation des Communications Electroniques et des Postes (ARCEP). This will be the first meeting chaired by the BEREC Chair 2017 Sebastien Soriano (ARCEP).

In order to inform the public on the outcomes of the plenary meeting, as well as to answer questions - a public debriefing will be organised on 1st March 2017. It is a public event, but will be subject to prior registration. The public debriefing will be web-streamed, allowing a wider audience to interact with the speakers remotely – by asking (sending and posting) their questions via Twitter (#BERECpublic) or by email (press@berec.europa.eu)