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Joint position on BEREC's consultation on the Guidelines on geographic surveys for network roll-out (BoR (19) 182)

1. Introduction

The undersigned associations welcome the opportunity to comment on the guidelines for the geographical survey on the development of networks.

Gigabit is essential for progress and innovation within the European Union, helping to bring them closer together. Gigabit networks already connect many people across the different countries. However, there are areas where there is little or no such infra structure or access to high-speed networks cannot be guaranteed. It is understandable, therefore, that the European Commission and BEREC pursue the idea of a Europe-wide vision of Gigabit services, and that this has been the result of data collection on businesses. For the purposes set out in Article 22, which should be regarded as conclusive, the completeness of the survey with regard to the inclusion of data from all telecommunications network operators and in the perspective of public sector bodies is essential.

However, it should be noted that the guidelines to be issued by BEREC in accordance with Article 22 (7) EKEK are merely to contribute to a uniform implementation of the geographical surveys and to assist the national regulatory or other competent authorities in their task ("to act on national regulatory and/or other competent authorities"). However, the mandate set out in Article 22 (7) of the EKEK in order to issue guidelines by BEREC does not mean that the clear lines can go beyond this in the form and content or scope of the data collections. On the one hand, Article 22 EKEK first needs to be transposed by the Member States by the respective implementing legislator. On the other hand, the national regulatory or other competent authorities will, on the basis of their transposition

by Member States and on the basis of their transposition by Member States, be given some discretion and discretion as to the extent to which geographical surveys are necessary in the course of their tasks. This is, for example, relevant with regard to Article 22 (1) (a).3 et seq. EKEK, for which the code itself provides for optional implementation, or in view of the fact that, in accordance with Article 22 (1),1 EKEK entered the geographical survey for the first time at all until 21.12.2023.

In principle, each survey must have a specific purpose and cannot be separated from specific tasks entrusted to the authorities. The latter must apply only and not least in the light of Article 22 (6) in conjunction with Article 20 (3) EKEK regarding the possible making available of the results of the surveys to the public. Such a data collection is not a self-evidently purpose. Instead, the results of the surveys are passed on or made available to end-users in accordance with Article 22 (6) EKEK only under specific conditions and under staggered arrangements.

Finally, the relationship between, and the distinction made between, existing data collection or transparency instruments may not be disregarded when the guidelines to be issued by BEREC are drawn up. This shall apply in particular to centralised information points that collect infrastructure data in accordance with the provisions of Directive 2014/61/EU (the Cost Reduction Directive). Article 22 EKEK, on the other hand, provides for geographic surveys of the coverage of broadband networks in order to capture the particular supply situation and their evolution, for which the need to collect infrastructure data is not apparent in the first place.

With regard to the information requirements on physical infrastructure under Directive 2014/61/EU (the 'cost reduction' directive), national regulators have already held extensive consultations, with the result that very different interests need to be reconciled. A challenge that needs to be addressed.

We have already successfully completed the different needs and requirements for data collection in Germany. The Federal Network Agency, as the national regulatory authority, has managed adequately to balance the requirements for the supply and the conditions of access, so that the relevant atlas of the infrastructure, whose scope has been adapted by the Cost Reduction Directive, is also used on a wide scale. It is therefore, from the point of view of the

it is important to draw lessons from this experience and to avoid pre-empting the discussion on the implementation of Article 22 EKEK at Member State level through the guidelines to be issued by BEREC.

In the light of this experience, the undersigned associations wish to submit to the concrete Fra some general considerations:

i. Limit red tape

The member companies of the signatory associations have a large volume of data in their network inf. The compilation of these data for the respective requests is very burdensome and involves a high level of human and financial resources. Different new requirements compared to existing national data provision requirements lead to a significant cost increase that is not justifiable for the companies as the benefits for the companies themselves are rather low. Nevertheless, all companies are interested in making their important contribution to network development in Germany and across Europe. In the end, the undersigned associations are in favour of using common data formats that, as far as possible, coincide with data formats that have already been used, for example in support procedures, so that the additional costs are at best zero. Also the associated administrative burden should be kept as low as possible from the perspective of the signatory associations. This may also be done with the appropriate data format and useful exploitation of the data already provided to the NRA or other competent public authorities.

ii. No additional costs

As indicated above, the obligation to provide data may entail the costs borne by companies, without necessarily benefiting from this information collection. It is therefore of particular importance that the information to be provided can be generated as easily as possible by the undertakings or actually have them. Would mean that only information that is actually available to businesses should be requested and should ideally be notified to the national regulatory authority or other competent public authorities. In particular, data on infrastructure constructed with the help of subsidies are available. The information provided is often available on the basis of the public procurement procedure and is due to:

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The open access arrangements imposed at the same time for network operators not selected by the tender procedure as well as for the subsequent non-execution of residential and business customers. On the other hand, information intended to reproduce the surface characterisation of the surface and the size of buildings (cf. point 74), which is intended to be used by Cha (see point), is an inaccurate instruction for the national regulatory authorities and may result in different definitions; at the same time, it is not clear why this information should be required per se for the performance of the authorities' tasks. In total, only information that

can really be of importance and convenience should be.

iii. Responsible data analysis and data use

The information on infrastructure or infrastructure elements normally contains the most stringent protected business and commercial secrets of the undertakings into which they can be consulted only in exceptional cases (e.g. due to a legal obligation) and even then in small areas only, for example in the context of planned civil engineering works. This applies in particular to custom service providers, where customers' business secrets are also concerned, as well as IT and information security concerns, as well as critical infrastructure security. This is why this idea must also be taken into account. For the organisations that sign up, it is so far unclear who is to gain insight into the data collected and at what point in time and under what conditions. This cannot be provided by the BEREC guidelines, but by the implementing authority and by the authority empowered by the national transposing law. In particular, in the event of a sound granularity of the data and an indication to be given by the user, it is often possible for other undertakings to provide an extension or other similar form.

The implementation must therefore respect principles of commercial confidentiality, confidentiality, data protection and IT and data security (cf. Article 22 (5) and (6)). As a general rule, all data collected for geographical surveys, therefore, may only be made available in a properly protected form (such as aggregated and anonymised), depending on the purpose and the form of re-use, and after consultation with the data supplied. There is a need for differentiated rules, which information is publicly available and which information must be made available only in the context of an interest calculated in the public interest. National regulators should consult the market data collected as part of their market analysis procedures.

Where, on the basis of these data, it is possible to simplify or make use of extensive market surveillance processes, such as promotion histories, or to enable such data to be used for this purpose, while safeguarding the interests of companies. It goes without saying that the geographical survey, which under the EKEC scheme will be carried out at longer intervals, should not be used to replace it altogether. It makes sense, however, to take into account in other public surveys the information provided by the geographical survey on grid expansion in other government surveys where more up-to-date information is provided. To this end, the data must be defined in the survey referred to in Article 22 EKEK and in support procedures. For example, in support procedures, only data that have not yet been collected in connection with the geographic surveys for the development of the network are to be consulted, since a double or multiple notification would — as already stated on several occasions — be an unreasonable burden. The data from the geographical surveys referred to in Article 22 EKEK must be used in the context of consultation of a state of development and planning in order to minimise the already considerable administrative burden on businesses and the existence of a reasonable level of errors. In any event, the implementation of the provisions of Article 22 EKEK must not give rise to a possibility for the managers to be able systematically to adapt their development behaviour to the information on the planned expansion of competitors.

iv. Special requirements for the forecast

Forecasts — which are only optional — should not be used to ensure that public authorities ultimately plan for private networks. Other targeted instruments exist (in particular in Germany) for extraction purposes (at least in Germany). Market research) designed to protect reported private placement plans from displacement effects. The EU state aid rules should continue to be possible and should be supported. As illustrated under (iii), however, synergies are to be provided in the form that data in the geographical surveys referred to in Article 22 EKEK and in support procedures are synchronised and that, in the case of non-declaration in the funding process, this data set is taken from the geographical survey in accordance with Article 22 EKEK.

Due to the specific sensitivity of foresight data, it should be clarified that as far as possible national regulatory authorities are competent and the data should not be passed on to service providers or other institutions. It should be borne in mind that a forecast is not only for telecommunications network operators.

under Article 22, the network must be developed by 'undertakings and public bodies' (e.g. municipalities).

The specific design of such a foresight exercise needs to be differentiated in order to address those who are in charge of, and practice in, Design plans and actual outputs shall be taken into account. A recommendation on the implementation of Article 22 must take account of the fact that, according to the wording of paragraph 1, only data which are actually available and which can be made available can be collected. In the practice of companies, they generally set out in advance specific development plans up to a maximum of six months in advance. This period should be limited to the mandatory forecast period. Network expansion — in particular the resource intensive FTTH/B — is often only carried out in the event of a successful application of a pre-commercialisation rate. Whether, and if so, when it will be achieved, varies greatly from one practice to another and is only influential by the panel builder. In addition, the development of an enabling environment on the ground, such as transport, is dependent on cadastral data, rapid consent procedures and consent to alternative modes of use. The same applies to the expansion plans for mobile communications networks. These plans are also dependent on a variety of factors, some of which are very limited to the influence of telecommunications companies, such as, in some cases, very lengthy location searches, site approval procedures or citizens' initiatives. In this respect, it is in principle the case that any expansion plans can only be declared if they are secured by appropriate municipal consents. In total: The longer a forecast period will be set, the more unreliable will be the information and the lower the information base for political decisions. Against this background, we are very critical of the option of combining sanction mechanisms with the possible foresight instrument. Depending on the specific design of the foresight exercise, this could create a significant barrier to the development of enterprises. For this reason, there must also be the possibility of updating reported excavation areas from the geographical survey in accordance with Article 22 EKEK in support procedures.

2. Specific criticisms and responses to the consultation questions

i. Definition of “available speed normally”

Where existing definitions and concepts are used in this draft or new ones are created, they should be consistent with the EKEK and in other BEREC guidelines. In particular, it must be avoided that any definitions which are dangerous and unnecessary are used, as is the case with the concept of ‘speed normally available’:

According to point 2.1 of the draft, the ‘speed normally available’ is the speed that an end-user receives at an address or in a grid at 95 % of the full time of the day when the access service is used.

The undersigned associations point out that this definition goes against the applicable guidelines on net neutrality (BoR (16) 127) and goes beyond the remit of Article 22 (7) of the EKEK. Point 148 of the BEREC Guidelines on net neutrality explicitly provides only examples of the criteria to be laid down by national regulatory authorities for the definition of the normally available speed after the SRM Regulation. In addition to the 95 % threshold as regards availability throughout the day, another example is proposed as an appropriate proportion of the maximum speed. In Germany, this permissible representation of the normal available speed is used. The present draft does not limit this possibility or even eliminates any of the foregoing. The undersigned associations therefore propose the following wording:

“Normally available speed: The Standard available speed is the end user in the address/grid could claim to receive most of the day when day when processing the service or (2) a reasonable portion to the maximum speed. The parameters should describe the capability of work.”

ii. minimum values to the theoretical calculation of needs

Point 74 of the draft guidelines refers to the need to call a ‘minimum level of resolution’ for the calculation of speed at a height of 1,5 metres. Such an exact, mandatory requirement should be rejected as this would be different from the previous regulatory practice (in Germany).

iii. Responses to the consultation questions

1BEREC's current Public Consultation on the implementation of the Open Data Regulation (paragraph 140), BEREC is requested that the revised values required by Article 4 (1) (d) of the Regulation EU 2015/202011 should be specified on the transport layer. Is there any reason for any reason why this layer should not be used in moving into information about modes in the context of a geographic survey of broadband?

2BEREC has considered practical methods to calculate specific information access to the relevant fixed network. The development of these methods information on the position of network infrastructure (for example, keeping the distance to the street cabinet). Do you consider information on location of infrastructures required for the purpose of type 22? If, is the minimum information level related to network infrastructure that the Geographic Survey should contain?

In accordance with the second subparagraph of Article 22 (1) EKEK consists of the geographical survey covering a survey of the current geographic reach of broadband networks, as required for the tasks of the national regulatory authorities and/or other competent authorities established in the EKEK and for the application of State aid rules.

Therefore, information on the location of infrastructure, as recorded on the basis of the Cost Reduction Directive, for example in the German infrastructure atlas, is not needed for the purposes of Article 22 EKEK. For this reason too, it would not be advisable to have a version of the two instruments. The objective of establishing the geographic coverage of broadband networks, as it is the case here, is essentially about the level of actual supply to households and businesses, but not the situation and history of passive upstream infrastructures.

In addition, the undersigned associations point out that, at most, subneh with its own infrastructure and network elements can document their situation. Only service providers are regularly unable to do so.

Moreover, as already pointed out in (iii) above, this information should also often affect the business and business secrets of the companies and, in some cases, their customers, which is why a survey should be foreseen.

3. As explained that the characteristics of the mobile network is Reliant on technology (subsection 2.4.2.1), and that NRAS/OCAS make collection information, such as QoS-1 speed Infor.

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(subsection 2.4.2.2.) as they see fit for their own needs. That is, each MS make decide on the performance information subable for its own national circumstances.

However, BEREC would like to share views on the following issues:

- A) Does the purpose of the purposes of Article 22, or should be BE recommendatory make making some past performance information optional? If, why, and which information should be mandatory?**

From the point of view of the undersigned associations, for general purposes of comparison, the provision of general information on speed is sufficient. In the view of the undersigned associations, this can only lead to comparability, since Member States have different rules regarding: They can have network coverage, etc., which then lead to different bandwidths. In view of the above, it is important to note that too detailed information can lead to a situation where comparability between Member States is no longer possible. Moreover, it is not clear that the required transposition of Article 22 of the EKEK by the Member States or, in particular, the required discretion of the authorities carrying out the geographical surveys can or should be curtailed by further mandatory requirements in the BEREC guidelines.

- B) Which kind of performance information may be boards be better to avoid? (note that in all parts of the information on mobile coverage given to the public, NRAS made to consider the specimaturing at levels of mobile coverage. Generally, the levels of mobile coverage could be able to reflect the different probabilistic capabilities of redress which can be used. As an example, service could be given by the following flexible approach: Capability to the end user to: (1) browse traditional web pages and consult emails, 2) to view content and to stream standard quality video, 3.) to stream high definition videos.**

From the point of view of the signatory associations, the information that they already receive from their provider is particularly useful for end-users and in terms of comparability. This is the standard basic information that is entirely sufficient for the average end-user. In so far as the customers are large corporate customers, they already provide the information they wish to receive from their provider. Ultimately, for a major part of the users, the individual user experience is likely to be decisive, but it is determined by many factors, which vary and cannot be predicted or reported in detail or influenced by the user. The question referred to in question 3.(b) exemplary division into different application layers is not an objective for the question of the reach of a mobile network, as applications are not subject to uniform, but highly dynamic, demands. Rather, the penetration rate should be defined on the basis of clearly defined speed (Mbit/s).

- 4. Should BEREC to harmonise the movements made by operators and NRAS throughout Europe? Should the BEREC AND THE CAS to be harmonised at a national level? What would be taken to be harmonised and how? (for example, should BEREC consider data service monitored coverage rates without cab, consideration that the network is**

available for specific location at a specific time? Or should BEREC consider network load and, if so, based on which parameters?)

Art. 22 EKEK does not pursue full harmonisation, unlike for example in the field of end-user rights. In this respect, any harmonisation efforts should be carried out in a proportionate manner and take due account of the Member States' room for manoeuvre in terms of implementation. At this point, the undersigned associations would like to point out that ultimately a common understanding and a uniform presentation of the different technologies (such as the FTTB/H network extension in an address base) will contribute to the reduction of inefficient and additional legislations of the Member States.

If you have any questions or discuss further the points set out in the opinion, please do not hesitate to contact the associations at any time.

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