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Response to public consultation on 2021 BEREC Work Programme



Introduction

DIGITALEUROPE is pleased to provide its input to BEREC's draft 2021 Work Programme. We actively support many among BEREC's priorities for next year. In particular, as highlighted in our previous contributions,¹ we support BEREC's work on promoting full connectivity. Most notably:

- ▶▶ The upcoming review and guidance concerning various aspects of backhaul infrastructure, which is critical for 5G deployment;
- ▶▶ The intention to facilitate a science-based discussion on electromagnetic frequency (EMF) exposure, as disinformation around this issue is proving a key inhibitor to 5G;
- ▶▶ Work on the upcoming review of the Broadband Cost Reduction Directive (BCRD), as access to passive infrastructure can significantly lower deployment costs and facilitate competition;
- ▶▶ The new report on best practice and regulatory lessons to ensure future-proof connectivity in light of COVID-19; and
- ▶▶ The announced engagement on the sustainability of the ICT-related parts of the upcoming Green Deal and Agenda 2030 targets.

In our submission, we would also like to highlight two areas where we have previously provided detailed feedback and where we feel BEREC has not yet fully considered its upcoming work:

- ▶▶ The need to focus on ensuring more harmonisation of measures relating to OTT services in light of Member States' implementation of the European Electronic Communications Code (EECC); and

¹ We refer, in particular, to our recent submission on the draft BEREC Guide to the 5G Radar and 5G Radar

- ▶▶ Our continued reservations about BEREC's stated goals in pursuing work on digital platforms, an area where BEREC has no privileged expertise and where a broad debate is occurring in light of the European Commission's upcoming legislative proposals.

While both points have been made in previous contributions, we believe they have not been given significant attention by BEREC. We therefore urge more thorough consideration of our suggestions for the 2021 Work Programme or, alternatively, for future activities.



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Promoting full connectivity

DIGITALEUROPE has consistently outlined the importance of reaching 100% coverage for both fibre and 5G. In line with this, we believe that promoting full connectivity should remain the key priority for BEREC's future work. This involves timely implementation and monitoring of the impact and effectiveness of the EECC in order to accelerate investment in very high-capacity networks (VHCN).

Report on regulatory treatment for backhaul

We welcome BEREC's upcoming work on various aspects related to backhaul regulation. The widespread rollout of fibre to buildings and base stations for backhaul purposes is primordial for 5G deployment. With this in mind, measures that encourage fibre-to-the-home (FTTH) deployment can be an important factor in facilitating 5G network rollout, generating significant savings and faster market uptake.

Promoting science-based EMF exposure limits

DIGITALEUROPE is convinced that, together with operators and other governmental stakeholders, BEREC can play a key role in providing consistent, fact-based positions and fighting misinformation regarding EMF health effects in the context of 5G and mobile technologies in general.

It has recently become very apparent that misinformation on EMF is negatively impacting network roll-out in Europe. In order to promote efficient investment and innovation in new and enhanced infrastructure, we therefore believe that it is key for BEREC to feed and participate in a sound societal debate around this issue.

We welcome the proactive stance taken by both BEREC and the RSPG, which needs to be complemented by urgent governmental action to fight misinformation and overly strict EMF limits that are not based on scientific evidence.



Specific nature of OTT services in EECC implementation

As part of its mandatory tasks, more precisely section 5.2.3 of the WP, BEREC foresees a stock-taking exercise of the national experiences on the implementation of the EECC. As highlighted among others in our input to BEREC's 2021–2025 Strategy, we encourage more ambition in this area by working to ensure streamlining and harmonisation of the EECC rules across the EU, thus contributing to the development of the Digital Single Market.

Such harmonisation is also relevant to the enlarged scope of the EECC, which brings over-the-top (OTT) applications – particularly number-independent (NI-ICS) and network-independent number-based interpersonal communications services (NB-ICS) – under the scope of national telecommunications laws.

DIGITALEUROPE has observed that non-uniform features of national telecommunications laws – for example in matters such as contract requirements, data collection and security notifications – are widely being applied to these newly governed services as Member States amend their frameworks in response to the EECC. DIGITALEUROPE believes strongly that it is in the interest of regulators, providers and ultimately end-users that BEREC assists the NRAs to take a close look at these issues as they implement the new national laws and to squarely acknowledge the need for maximum regulatory harmonisation and cross-border co-operation with regard to NI-ICS and network-independent NB-ICS.

It goes without saying that many of these providers operate at a European-wide or even global scale and that some elements of the current national telecoms frameworks are ill-suited to deal with these new services. It is in the interest of regulators, providers and ultimately end-users that BEREC assists NRAs to take a fresh look at these issues and to acknowledge the need for increased regulatory harmonisation and cross-border cooperation with regard to NI-ICS and network-independent NB-ICS.

Such approach is particularly required with respect to the requirements set out in Art. 40 and Recitals 94–97 EECC. Consistent with Recital 95 EECC, recognition should be given to the fact that NI-ICS and network independent NB-ICS tend not to control the networks over which their services are provided, and that consequently the appropriate security measures taken by providers of these services will be different and lighter than those for traditional telecoms providers.

As OTT operators generally operate in a cross-border mode, a traditional national approach to Art. 40 EECC risks confronting these providers with overlapping and possibly contradictory requirements, without increasing the overall security level, which they are materially unable to comply with.

These concerns apply in particular to the obligation to notify regarding security incidents of a significant impact. Service incidents or outages affecting global OTT communications apps and services will normally not be localised. Unlike outages generated by the failure of a particular network component affecting a specific area, outages of OTT services are likely to span numerous countries and regions. Rather than accepting a system that requires service providers to independently assess a single outage across up to 27 different sets of criteria and then report that same outage up to 27 different times – following up to 27 different timelines – we strongly encourage BEREC to work with ENISA and the

Member States to construct a pan-European outage reporting process that rationalises reporting while adequately protecting end-users across Europe.

The need for a specific security regime for OTT providers is also recognised by ENISA and the Article 13a Expert Group. Particularly, in the recent consultation carried out by the Article 13a Expert Group on the establishment of the Technical Guideline on Security Measures under the EECC (which is to replace the existing Technical Guideline),² the Expert Group observes in section 5.3 that:

“ *In practice this means that, depending on the setting, the type of network or services offered, the assets involved, etc., some of the security measures in this guideline may not be fully applicable to OTT providers. When assessing the compliance of providers with Article 40, Competent authorities should take into account the type of network or service offered, the assets involved, the threats and resulting risks for this network and service.*

ENISA has already earlier recognised, notably in its Report on Security Supervision under the EECC,³ that the existing security measures framework needs to be updated and that ideally a common threshold and reporting model should be developed to allow for harmonised and consistent EU-wide incident notification system while taking into account the specificity of OTT communications services.

We regret that this topic is overlooked in BEREC's 2021 Work Programme and is considered neither as strategic priority nor as an ad hoc work project (e.g. relating to network security and cybersecurity). We also regret that this important topic is not envisaged for the coming years. DIGITALEUROPE therefore urges BEREC to include this dimension after this consultation.



Thriving sustainable and open digital markets

In its 2021 Work Programme, BEREC states that it intends to continue to develop its expertise in digital platform regulation, including by developing a Report on digital and a BEREC study on consumer behaviour and attitudes towards digital platforms, both as carry-over actions.

Consistent with our previous feedback, and particularly in light of the extensive legislative process that will ensue from the European Commission's upcoming

² <https://resilience.enisa.europa.eu/article-13/guideline-for-minimum-security-measures>

³ <https://www.enisa.europa.eu/publications/supporting-the-implementation-of-the-european-electronic-communications-code-eecc/>

proposal for a Digital Services/Markets Act, we are of the view that such activities would represent a substantial misallocation of BEREC's valuable resources.

These issues touch on complex areas where BEREC has neither specific expertise nor any legislative mandate. By contrast, DIGITALEUROPE urges BEREC to use its current regulatory tools and authority to boost Europe's digital transformation through more rapid 5G and fibre deployment, complemented by enhanced Wi-Fi, and other initiatives that are both critical and within its core mission, rather than diluting its effectiveness and impact by directing its energy towards new digital platform measures which are outside of its remit and already extensively examined by more relevant authorities such as competition, consumer and data protection authorities.



BEREC ad hoc work

Review of the Broadband Cost Reduction Directive

We welcome BEREC's upcoming Opinion on the European Commission's BCRD review.⁴

Simplified regulations around site access and planning permissions are essential. 80% of deployment costs comes from civil engineering work including planning and permission work with cumbersome and drawn-out processes adding significant unnecessary cost to deployment.

Ensuring appropriate access to passive infrastructure such as in-building wiring could significantly lower deployment costs and facilitate market entry, particularly in potentially competitive urban areas. The Commission's review and BEREC's Opinion should lead to a consistent EU-wide approach that builds on best practice to date.

Report on COVID-19 crisis

We welcome BEREC's initiative to compile a report collecting best practice and drawing regulatory lessons to ensure future-proof connectivity.

The coronavirus pandemic has revealed that not all children can study online, nor can all household members watch streaming video services on TV, communicate with video through messaging applications, or reliably conduct business from their home offices. VCHN rollout constitutes a crucial element of ensuring such ubiquitous connectivity, not just to ensure high-speed broadband and improved connectivity to consumers and the general public but to meet enterprises' connectivity needs as they are accelerating their digital transformation strategies

⁴ Directive 2014/61/EU.

and transitioning to more circular and sustainable economic models. These next-generation networks will form the basis for new digitisation capabilities, the creation of new markets and economic growth.



Sustainability

5G networks and improved connectivity will have a two-fold role when addressing Europe's sustainability targets. Beyond the importance of 5G networks' energy efficiency for the telecommunications industry, the connectivity enabled uptake of innovative digital solutions can significantly contribute to making our society greener.

Benefits can be direct, such as remote diagnostics reducing the need for repair recalls of machinery or trucks, or advanced teleworking solutions reducing the need for business travel. Other benefits will be indirect, such as sensor-based farming minimising pesticide overuse and managing water more efficiently. Smart cities, meanwhile, could enable connected and autonomous driving systems and seamless multimodal public transport that could eliminate road congestion. 5G networks will play a key role in the uptake of all these innovative use cases.

DIGITALEUROPE strongly believes in the need to deploy sustainable VHCNs to contribute to reaching the new EU climate objectives. Making more efficient use of IT and ensuring that data centres are powered with clean energy will be cornerstones in the effort of industries across the board to improve their environmental footprint. DIGITALEUROPE will therefore be happy to participate in BEREC's reflections around this topic.

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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

Accenture, Airbus, Amazon, AMD, Apple, Arçelik, Bayer, Bidao, Bosch, Bose, Bristol-Myers Squibb, Brother, Canon, Cisco, DATEV, Dell, Dropbox, Eli Lilly and Company, Epson, Ericsson, Facebook, Fujitsu, Google, Graphcore, Hewlett Packard Enterprise, Hitachi, HP Inc., HSBC, Huawei, Intel, Johnson & Johnson, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Mastercard, METRO, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, MSD Europe Inc., NEC, Nokia, Nvidia Ltd., Oki, OPPO, Oracle, Palo Alto Networks, Panasonic Europe, Philips, Qualcomm, Red Hat, Ricoh, Roche, Rockwell Automation, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Siemens Healthineers, Sony, Swatch Group, Tata Consultancy Services, Technicolor, Texas Instruments, Toshiba, TP Vision, UnitedHealth Group, Visa, VMware, Workday, Xerox.

National Trade Associations

Austria: IOÖ

Belarus: INFOPARK

Belgium: AGORIA

Croatia: Croatian

Chamber of Economy

Cyprus: CITEA

Denmark: DI Digital, IT

BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, Syntec

Numérique, Tech in France

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: INFOBALT

Luxembourg: APSI

Netherlands: NLdigital, FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS, APDETIC

Slovakia: ITAS

Slovenia: GZS

Spain: AMETIC

Sweden: Teknikföretagen,

IT&Telekomföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform,

ECID

Ukraine: IT UKRAINE

United Kingdom: techUK