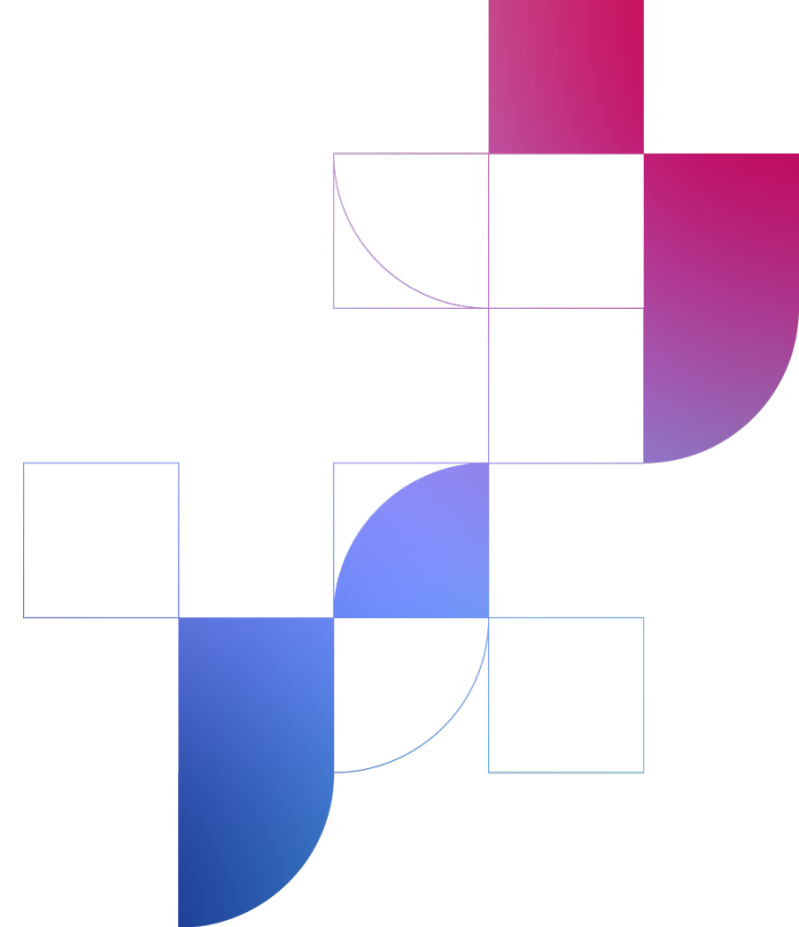# Public debriefing

Outcomes of the 59th BEREC ordinary meetings
6-7 June 2024

12 June 2024

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Public debriefing

First part

- Draft BEREC Report on the IP Interconnection (IP-IC) ecosystem

- Draft BEREC Report on M2M and permanent roaming

- Draft BEREC Opinion on the national implementation and functioning of the general authorisation regime
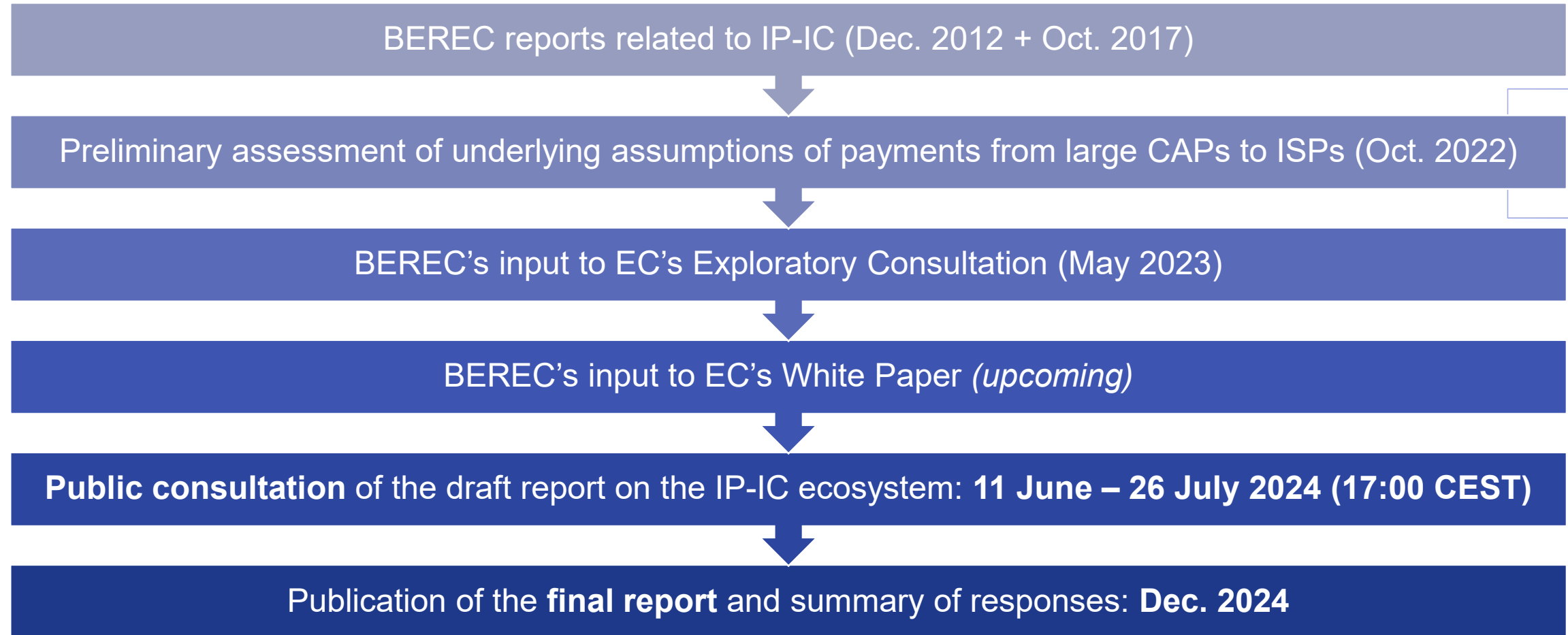
Q&A session

Second part

- BEREC Opinion on Meta's reference offer published in March 2024 to facilitate WhatsApp interoperability under Article 7 of the Digital Markets Act

- BEREC Report on ICT Sustainability for end-users

- BEREC updates

Q&A session

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Draft BEREC Report on the IP Interconnection (IP-IC) ecosystem

Open Internet Working Group
Véronique Ney (ILR) and Christoph Mertens (BNetzA)

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Roadmap

BEREC reports related to IP-IC (Dec. 2012 + Oct. 2017)

Preliminary assessment of underlying assumptions of payments from large CAPs to ISPs (Oct. 2022)

BEREC's input to EC's Exploratory Consultation (May 2023)

BEREC's input to EC's White Paper *(upcoming)*

Public consultation of the draft report on the IP-IC ecosystem: **11 June – 26 July 2024 (17:00 CEST)**

Publication of the **final report** and summary of responses: **Dec. 2024**

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Objectives and scope

- Update of the 2017 BEREC report on IP-IC practices
    - Re-evaluate conclusions from 2017
    - Assess current status and market developments since 2017

- Scope limited to the IP-IC ecosystem
    - Not replicate the debate on payments from large content and application providers (CAPs) to internet service providers (ISPs)

Data collection exercises (stakeholder engagement)

Sept. – Oct. 2023	May 2024

• 12 internal **workshops** with various selected stakeholders
 	
• **Questionnaire** distributed via
  • NRAs to national internet access service providers
  • RIPE NCC
	• **Ad hoc questionnaire** disseminated to a broad range of stakeholders
	  • Results will feed into an internal annex of the final report

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Main take-aways – Overarching conclusions (1/2)

- **traffic** growth rates remain stable

- **competition** and technological progress exert downward **pressure** on costs and prices

- the IP-IC ecosystem continues to evolve

  - usage of on-net content delivery networks (**CDNs**) and bilateral peering **accelerated**

  - **competitive pressure** on "traditional" transit providers still ongoing

  - for quality reasons, peering may serve as a substitute for transit

  - large **CAPs** increasingly invest in **own infrastructure**

Main take-aways – Overarching conclusions (2/2)

- IP-IC ecosystem still largely driven by **functioning market dynamics and cooperative behaviour** of market players, without regulatory intervention

- BEREC is aware that there are a **few IP-IC disputes** that have occurred since 2017
  - stakeholder workshops revealed similar insights

- several factors impact on the **relative bargaining power** between providers

- the **Open Internet Regulation** (OIR) provides rules for the part of the internet value chain for which the ISP is responsible

- **developments** in the IP-IC ecosystem → *"evolution rather than revolution"*

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Background

- According to Recital 21 of RR and BEREC GLs, M2M communications are included in the scope of the Regulation and are therefore subject to the limitations of permanent roaming and reasonable requests for regulated wholesale roaming access. If M2M services are used on a permanent basis in a visited network, wholesale roaming access should be subject to commercial negotiations

- BEREC collects data on M2M services and roaming

- Call for input Nov '23 – Jan '24

- This report will be used for the BEREC Opinion on the review of the RR

- EC cost model includes calculation of M2M roaming costs

Main findings about wholesale access and pricing

- Increase in the number of <u>dedicated M2M wholesale agreements</u> between access providers and access seekers

- Clauses that prevent permanent roaming reported, however number of agreements allowing <u>permanent roaming</u> increased since 2021

- <u>Mix of charging mechanisms</u>: mostly volume-based charges, charging mechanisms based on the number of devices (IMSI fee), or a combination of both charging mechanisms

- Minimum financial commitments

Evolution of wholesale revenues per GB for roaming objects within the EEA, inbound roaming – lower than the average for traditional services

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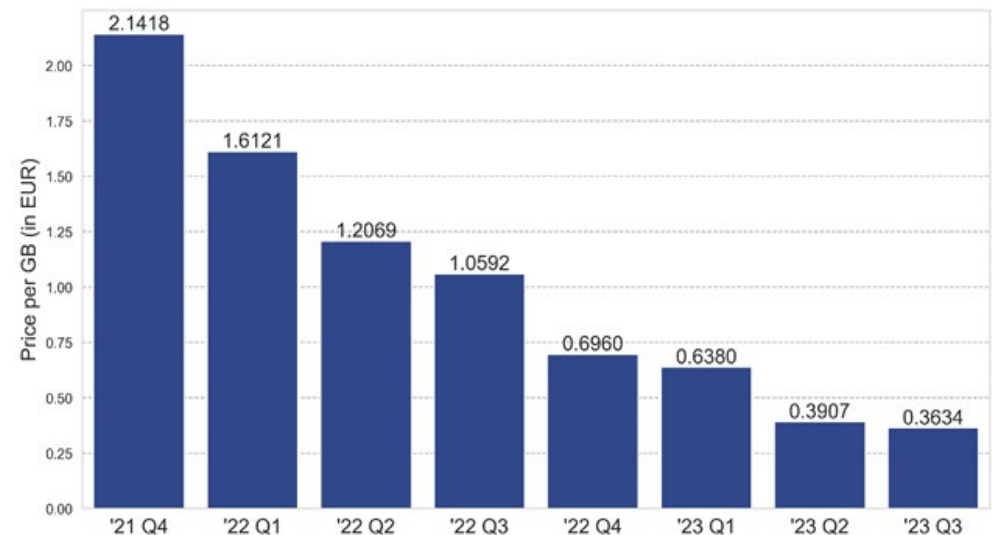
Main findings about potential competition issues

- Topics reported as obstacles by access seekers:

    ✓ high financial commitments

    ✓ high prices per IMSI

    ✓ restrictions for specific M2M technologies such as NB-IoT and LTE-M

    ✓ clauses to prevent the sale of services to domestic customers in the home Member state of an MNO

    They ask for regulatory intervention

- Topics reported as challenges by access providers:

    ✓ domestic competition from low-cost MVNOs having pan-European footprint

    ✓ increased signalling costs, low levels of revenue, and potentially hampering network integrity

    They ask for flexibility

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Other issues about M2M service

- Pan-European footprint

- Numbering

- Signalling

- eCall

- Permanent use abroad

Background

- Art. 122 (3) EECC: by 21 December 2021 and every three years thereafter, BEREC is to publish an pinion on the national implementation and functioning of the general authorisation, and on their impact on the functioning of the internal market

- BEREC has adopted its first Opinion in 2021 - > BEREC is now carrying out another stock-taking exercise on the current GA situation

- BEREC collected information from NRAs/CAs on the national EECC implementation status, on the features of the national notification form (where envisaged), on the NRAs' experience with the GADB and on the NRAs' overall experience with the GA regime

- Draft BEREC Opinion takes stock of the situation and also provides overall assessment of the GA scheme and possible future adjustments

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Areas for potential further reflection

- Possibility to further clarify certain aspects of notification template

- Chance to clarify legal framework on applicability to extra-EU providers of the limits on info that can be requested by NRAs in the context of notification

- Need to reflect on possible widening of the scope of GA regime considering technology and market trends

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Next steps

- Public consultation open from today

- Stakeholders' inputs and answers to open questions **until 26 July**

- Collection of inputs and adoption of final BEREC Opinion at P4 2024

Context (1/3)

- Following the entry into application of the Digital Markets Act (DMA), on 6 September 2023, the Commission has designated six undertakings as gatekeepers under the DMA for a number of core platform services;

- Meta has been designated in relation to, among others, its number-independent interpersonal communication services (NI-ICS) WhatsApp and Messenger;

- Under Article 7 of the DMA, Meta has to make these services interoperable with those of competing NI-ICS who request it;

Context (2/3)

- According to Recital 64 of the DMA, the designated gatekeeper should publish "a reference offer laying down the technical details and general terms and conditions of interoperability" with its NI-ICS, and the EC can consult BEREC "in order to determine whether the technical details and the general terms and conditions published in the reference offer that the gatekeeper intends to implement or has implemented ensures compliance with this obligation";

- On 29 January 2024 the European Commission formally requested BEREC to produce an opinion on Meta's draft reference offer (RO) for WhatsApp interoperability under Article 7 DMA;

- On 15 February 2024 BEREC Opinion was submitted to the EC and was made public on 19 March 2024.

Context (3/3)

- On 7 March 2024 Meta published the reference offer to allow for WhatsApp interoperability

- The current BEREC Opinion is based on the following elements:

  - WhatsApp Reference Offer;
  - WhatsApp Developer Documentation Overview;
  - The Interoperability Stakeholder Workshop, organised by the EC on 1 February 2024;
  - The Meta DMA compliance workshop, organised by the EC on 19 March 2024.

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Content (1/3)

- **General remarks**: the **RO should be assessed as regards its potential to reach the objective of reducing barriers to entry and expansion for alternative NI-ICS providers and allow for market contestability**. The dialogue with the potential interoperability seekers of the RO is very important. It would be useful to have a structured monitoring exercise taking stock of the interoperability refusals or (temporary) malfunctions the gatekeeper would formally declare to the EC.

- **Description of the service and specification of the relevant basic functionalities and their features/facilities**: Meta's RO lacks some technical definition and documentation of the relevant interfaces and standards to be used. A multi-device support is a very desirable feature for market contestability.

- Some further technical definition and documentation of relevant interfaces and standards should be added.

- **Reachability/discoverability and rules concerning opt-in/opt-out**: Third-parties must take the responsibility to ensure authentication and authorization of their users. The provisions of the RO are unclear on how the discoverability and reachability of users are ensured. **BEREC recommends that user consent to be discoverable should be explicitly given.**

- **User experience and design**: Meta is currently planning to display chats from users of third-party NI-ICS in a separate inbox for its WhatsApp users – this may make more difficult for WhatsApp users to find messages from users of third-party NI-ICS providers and might reduce the use of the function. **Choice architecture steers users' behaviour**.

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Content (2/3)

- **User location**: it is not clear how the **distinction between EEA-users and non-EEA-users will be made**. The cases of roaming should be clarified

- **Service level agreements and service level objectives**: i) Meta's draft RO should ensure that end-users of third-party NI-ICS providers are entitled to the same quality of service as WhatsApp's users; and ii) **Meta's draft RO should set accurate SLAs** based on the internal SLOs

- **Key performance indicators**: KPIs would set **a quantifiable and transparent measure of performance** for specific objectives. They should be included in the RO, as well as in the compliance report of the gatekeeper

- **Data security and data protection rules**: details concerning e.g. contracted data processing should be detailed and clarified

- **Security requirements**: BEREC welcomes Meta's proposal to provide licenses for the encryption software. However, the use of one obligatory encryption protocol might be seen as restrictive especially with regard to future developments of NI-ICS

- **Rules on dynamic adjustments**: **partners should be notified by WhatsApp with reasonable advance notice** and by one-to-one communication about upcoming changes

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Content (3/3)

- **Suspension and termination**: the possibility for the gatekeeper to suspend interoperability should be exclusively limited to statutory exceptions allowed for in Article 7 DMA.

- **Compliance monitoring:** The scope of the right of auditing the access seeker seems to have a very broad remit, which allows Meta to closely monitor potential competitors.

- **Rules on dispute resolution between providers**: Meta engages to find a solution with the third-party NI-ICS providers to restore/ensure effective interoperability, no further solution is provided for in case an agreement between the parties cannot be found. In this case, a referral to an independent body for dispute settlement could be foreseen.

- **Updating mechanism for the RO**: updating mechanism for the RO should be introduced and aligned with other updates.

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Objectives of the workstream

✓ Raising the level of knowledge on existing initiatives to provide reliable information to end-users and promote their empowerment in the green transition;

✓ Exploring the means to reach out to end-users on the environmental footprint of digital products (i.e., goods and services), as well as the potential role of BEREC and NRA;

✓ Preparing BEREC communication campaign materials that regulatory authorities can use on a voluntary basis with special attention to circular economy and life cycle approach of end-user devices.

Outputs :

- **Workshop** with EEB, BEUC and consultants working with the European Commission (recording and internal summary report). Replay available here https://www.youtube.com/watch?v=diKPfw9MLgE

- BEREC **report** including the review of existing initiatives, analysis of means to reach out to the end-users on the topic, and learnings from the workshop

- A **communication campaign** on digital devices sustainability, targeting particularly end-users

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Key messages of the report (1/2)

✓ Providing reliable, comparable and clear environmental data enables end-users to integrate environmental aspects in their purchasing decisions and promotes the most sustainable products within digital markets (data-driven regulation).

✓ Environmental transparency plays a pivotal role to inform end-users about their environmental rights as consumers. Information is also key to raising awareness on end-users' digital services and devices' environmental footprint.

✓ Important steps have been taken on environmental transparency and end-users' empowerment during the EU Green Deal, and challenges remain ahead.
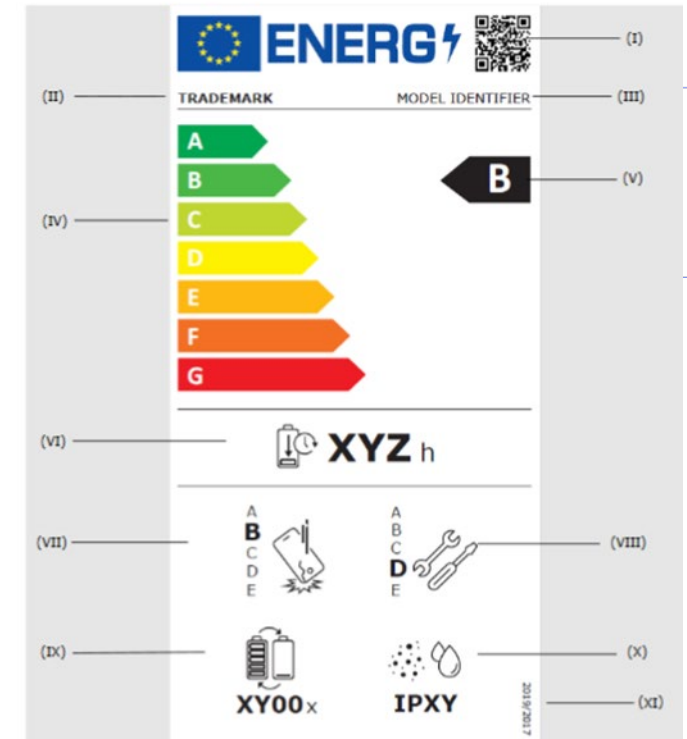
Example: Label for smartphones introduced by the Energy labelling of smartphones and tablets Regulation (2023)

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Key messages of the report (2/2)

✓ The efforts of the ICT industry are essential for end-users empowerment and environmental transparency on digital products.

✓ Associating consumer and environmental organisations as well as the scientific community in the design and execution of environmental and consumer regulation appears crucial.

✓ Telecom regulators have a role to play to support end-users' awareness on the environmental footprint of ICT products, in collaboration with other competent bodies.

Publications (including data, surveys & reports)	Public Campaigns	Best Practices/ Info on Website
Arcep, BIPT, NKOM, NMHH, PTS, RAK, RTR, SPRK, Traficom	ACM, NKOM, RTR	Arcep, NMHH, RTR, Traficom

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BEREC communications campaign

Main topics:

1. The environmental footprint of the digital devices

2. New rights stemming from the EU Green Deal's implementation and support of environmentally sustainable digital devices

3. Set of the best practices to decrease the environmental footprint of the digital devices

Sustainable is the New Smart

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Other recent BEREC documents

During the 59th BEREC Plenary meeting the following documents were also approved and published on our website:

✓ Report on the authorisation and related framework for international submarine connectivity infrastructures;

✓ Report on WACC parameters 2024;

✓ Summary of the BEREC external workshop on the ex-ante regulatory experience concerning commitments, wholesale-only undertakings and commercial agreements' review;

✓ Report on EU/UA JS monitoring exercise;

✓ Report from the Mini Board Study trip 2024;

✓ BEREC Annual Report 2023.

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BEREC updates

- BEREC input to the EC White paper "How to master Europe's digital infrastructure needs?"

- BoR decision concerning the application of the NRA of Republic of Moldova (ANRCETI)

- Next BEREC Chair (2026) elections in October

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Upcoming public events

- **9 October 2024** public debriefing (hybrid, in Brussels)

- **November 2024** workshop "Security Opportunities and Challenges for Network Resilience"

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Public consultations

Document title	Deadline
Draft BEREC Report on the IP Interconnection (IP-IC) ecosystem	26 July 2024
Draft BEREC Opinion on the national implementation and functioning of the general authorisation regime	26 July 2024
Draft BEREC Report on M2M and permanent roaming	23 August 2024

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