

BEREC Guidelines on Geographical surveys of network deployments Article 22 (2), 22 (3) and 22 (4)

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1 Introduction

1. According to Article 22(7) of the European Electronic Communications Code ('**EECC**'), by 21 June 2020, BEREC shall, after consulting stakeholders and in close cooperation with the EC and relevant national authorities, issue guidelines to assist National Regulatory Authorities (NRAs) and/or Other Competent Authorities (OCAs) on the consistent implementation of Article 22 **EECC**.
2. In March 2020 BEREC issued the core Guidelines (BEREC Guidelines on Geographical surveys of network deployments¹) which dealt with the consistent application of the obligation for NRAs/OCAs to provide for geographical surveys of the reach of electronic communications networks² capable of delivering broadband, and the forecasts of the reach of broadband networks, including very high capacity networks ('**VHCN**'), that the authorities may undertake.
3. BoR (20) 42 (hereafter "Core Guidelines") establishes the definitions for all the indicators that NRA/OCAs must provide for and as well the minimal granularity for the information. They also explain which operators are subject to provide information, deliver important classifications, namely on the kinds of technologies, speed tiers to consider and types of VHCN networks. The guidelines also recommend the frequency of data provision and stress the importance to NRAs/OCAs of using geographic information systems. Moreover, the Guidelines deliver on aggregation methods and on considerations to make in order to provide public information and safeguard business secrets.
4. In the current Guidelines, BEREC deals with the consistent implementation of Article 22, paragraphs 2, 3 and 4. These parts in the article describe some optional policies that NRAs/OCAs may undertake in order to inform private and public agents of the non-availability of existing or planned VHCN networks or networks offering at least 100 Mbps download speed in areas with precise boundaries ("designated areas"), and furthermore to invite agents to declare their intentions to deploy VHCNs in these areas.
5. These Guidelines aim at providing a common understanding of these provisions, guidance on how to designate areas and on the procedures to be followed in publishing information and inviting agents to declare their intentions to invest in order to ensure that such procedures are efficient, objective, transparent and non-discriminatory, whereby no undertaking is excluded a priori (as required by Art 22 (4) EECC).
6. In order to deliver these Guidelines, BEREC issued a questionnaire directed to NRAs/OCAs in order to obtain information about their current practices and views

¹ BoR (20) 42.

² ECN, as defined in Article 2.1 of the EECC.

regarding Art 22 (2-4) of the EECC and also questioning about NRA/OCA experience in defining areas in other contexts, such as within a state aid or a market analysis procedure. BEREC obtained information from 22 Member States (hereafter, MS), and found out that no authority was “designating areas” or engaging on the procedures to invite agents to declare their intentions to deploy VHCN networks as required by Article 22. A few authorities were planning for this, and many had relevant experience in the context of state aid proceedings, where different kinds of areas are defined (white, grey, white-NGA, grey-NGA) and public consultations are carried out to find out about private agent’s plans to deploy broadband networks.

7. Moreover, in July 2020 BEREC organized a workshop where NRAs, OCAs and the EC were invited to discuss the key elements in the Guidelines.

1.1 Legal background

8. BEREC has the exclusive EECC mandate to deliver on Article 22 Guidelines and the BEREC Guidelines (BoR (20) 42, BoR (21) 32 and the BEREC Guidelines on the verification of information³) constitute the unique basis for the consistent implementation of broadband mapping activities within the purposes of Article 22 EECC and other related Article 22 activities.
9. The ability to designate areas and to invite undertakings and public authorities⁴ to declare their intention to deploy very high capacity networks (VHCN) and/or to enhance the network capacities to at least 100 Mbps download speed are optional activities. They give NRAs and OCAs a new tool to provide information to potential investors and thus create a more transparent environment for investment in VHCNs. The procedures described in the following guidelines shall help to fulfil the goals of the Article 22, parts 2, 3 and 4, i.e. to give undertakings and public authorities sufficient time to thoroughly consider investments in VHCN in light of the likely competition they will face from other networks (cf. Recital 63 of the EECC).
10. In addition to the increased transparency for potential investments, the invitation process can also provide new information for NRAs and OCAs that could be relevant in different contexts. According to Article 22 paragraph 5 EECC, the results of the geographical survey and any designated areas pursuant to Article 22 paragraphs 1, 2 and 3 EECC shall be taken into account by NRAs and OCAs, and local, regional and national authorities with responsibility for the allocation of public funds, for the deployment of electronic

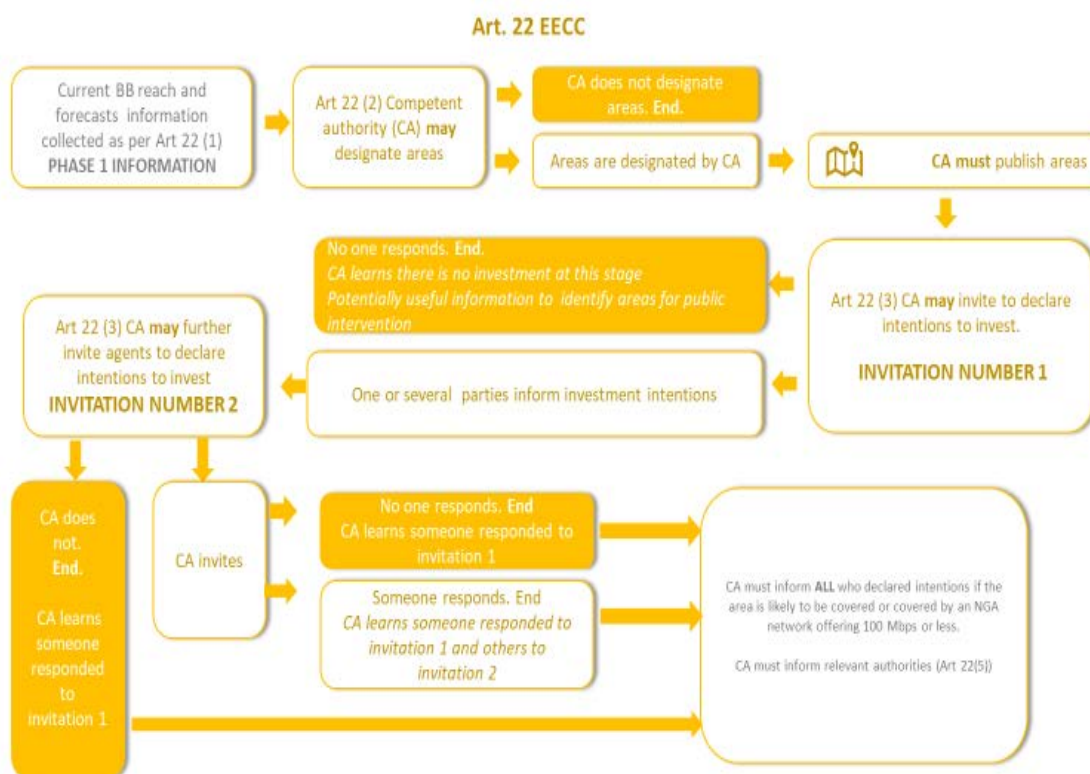
³ BoR (20) 230, the BEREC Guidelines on the verification of information were on public consultation until the 27th of January 2021. The final approval is expected by June 2021.

⁴ Within these Guidelines the term “public authorities” refers to both public authorities and public bodies.

communications networks, for the design of national broadband plans, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligations in their territory.

11. The procedures according to Article 22 paragraphs 2 - 4 EECC must not be confused with state aid procedures, as Article 22 and state aid proceedings are instruments with different objectives. However, the information gained as a result of the invitation procedure according to Article 22 paragraph 3 EECC could be useful within a state aid context, especially if no interest in investments is expressed (see Figure 1).
12. While the provisions of the EECC would anticipate and foster also state aid compliance, it is not their main objective to ensure compliance with state aid rules. NRAs/OCAs can use information collected under Article 22 to assist the state aid process but may also need to collect complementary information in line with the State Aid guidelines rules.
13. The procedure to designate areas and to invite declarations of intent to invest are broken down into a step-by-step flux diagram below (figure 1). The diagram contains the process of designating and publishing areas, the possible one or two rounds of invitations to declare interest to invest in VHCNs and concludes with the final information on the outcome of the process.

Figure 1



Source: BEREC

14. The transparency which the measures of Article 22 paragraph 2 – 4 EECC aim for can only be achieved if market participants respond truthfully and in good faith. While market participants can change their deployment plans for unforeseen, objective and justifiable reasons, competent authorities should intervene, including if public funding is affected (cf. Recital 63 and 64 of the EECC) and where appropriate according to Article 29 (2) EECC, impose penalties if, in the context of the procedures referred to in Art. 22 (3), an undertaking or public authority knowingly or grossly negligently provides misleading, erroneous or incomplete information.

2 Designation of areas

15. A designated area is an area with clear boundaries, where no undertaking or public authority has deployed or is planning to deploy a very high capacity network or significantly upgrade or extend its network to a performance of at least 100 Mbps download speeds (here after, this document refers to VHCNs and networks offering more than 100 Mbps download speed as: VHCNs&100Mbps).
16. The designation and publication of these areas are an important optional tool by which competent authorities can inform public and private agents of the non-availability of these networks in different areas of the national territory.
17. The detailed disclosure of designated areas may enable potential public and private investors to better plan where and how to deploy broadband networks, in particular VHCNs&100Mbps networks. This information could promote new deployment plans or allow for an informed reconsideration of existing ones.
18. The disclosure of information will enable for all kinds of agents, regardless of their size or their knowledge of the market to have common basic information that may enable investment. This release of information can be quite relevant for agents with lesser knowledge of market conditions.
19. The publication of designated areas has an important role, especially if the relevant authority does not provide information on VHCNs&100Mbps coverage by other means, for example by releasing public maps of good granularity of VHCNs&100Mbps coverage.
20. The Core Guidelines provide the information gathering of conducting geographical surveys of broadband reach in detail and therefore, by 2023, NRAs/OCAs should have substantive information in order to allow for the designation of areas.
21. The delineation of designated areas is also instrumental to competent authorities that wish to invite agents to declare their intentions to deploy VHCN networks as described in Article 22 (3) EECC.

2.1 Information required to designate areas

22. This section details the main information to consider when designating areas. The definition of their territorial boundaries is dealt with in section 2.2.

23. The Core Guidelines describe the information gathering of conducting geographical surveys in more detail. Considering the data collected in the geographical survey, the following information should be used to designate an area:

- Availability to fixed broadband service that delivers at least 100 Mbps download speed;
- Availability to mobile broadband that delivers at least 100 Mbps download speed;
- Availability to a VHCN fixed broadband service;
- Availability to a VHCN mobile broadband service.

24. The speed tiers informed in table 7 of the Core Guidelines allow the identification of broadband connections of at least 100 Mbps. In the Core Guidelines, BEREC required that for fixed broadband services NRAs/OCAs provide speed information in the MS territory for two different speed definitions: maximum achievable speed and expected peak time speed either at address level or for small grids⁵. For mobile broadband, BEREC recommended as optional the use of maximum achievable speed to qualify the service small grids for the whole of the MS territory.

25. While designating areas, the competent authority (hereafter, the authority in charge of designating areas and issuing invitations to declare investment intentions) can consider to use maximum or expected peak-time speed depending on the availability of information and in consideration of national specificities (for example, the existing coverage of VHCNs in their territory)⁶. However, it is required that when publishing designated areas, the type of speed definition is published so that agents can understand the characteristics of the designated area.

⁵ Hereafter, small grids are used to define grids of 100 x 100 meters or smaller grids.

⁶ For example, it should be noted that according to the EC's Digital Economy and Society Index (DESI) 2020, Connectivity report, in July 2019 there were substantial differences in the coverage of fixed VHCN networks in European countries. Malta was leading with 100% coverage, followed by Denmark and Luxembourg with above 90% coverage. Germany stood at 33%, and Italy at 30%, whilst Austria, Ireland and Czechia were below 30%. The lowest figures were for Greece (7%) and Cyprus (10%). In this report, fixed VHCN coverage was approximated as the combined footprint of Fiber to the Premises and DOCSIS 3.1 (Data Over Cable Service Interface Specification 3.1) cable networks.

26. Article 2(2) of the EEC Directive defines the term 'very high capacity network' and the BEREC Guidelines on Very High Capacity Networks⁷ (hereafter "VHCN Guidelines") define the characteristics that electronic communication networks have to satisfy in order to qualify as VHCNs. Based on the specification in the VHCN Guidelines, Table 1 (fixed broadband) and Table 2 (mobile broadband) in the Core Guidelines specify different VHCNs classes which need to be identified at address or small grid level, respectively for fixed broadband and mobile broadband.
27. The data used by competent authority to define designated areas should be in line with the definitions and granularity levels⁸ included in the Core Guidelines. The information should also be up to date⁹. Note that this applies to the information needed to designate areas, not to the designation of areas themselves (i.e. their geographical definition or publication).
28. In addition to current broadband reach and quality of service information, competent authorities may use forecast information to define designated areas. Article 22(1) paragraph 4 defines the forecast information as follows: "*...forecast shall include all relevant information, including information on planned deployments by any undertaking or public authority, of very high capacity networks and significant upgrades or extensions of networks to at least 100 Mbps download speeds. For this purpose, national regulatory and/or other competent authorities shall request undertakings and public authorities to provide such information to the extent that it is available and can be provided with reasonable effort.*"
29. Whilst forecast information gathered as per Art 22(1) is not mandatory, reliable information about forecasts allows a more accurate and prospective definition of designated areas and can serve a better planning of agents' deployments.
30. The Core Guidelines detail the information to be included in forecasts, and if available and assessed as reliable by the competent authority¹⁰, this information must be used to designate areas.

⁷ BoR (20) 165.

⁸ According to the Core Guidelines: **For fixed networks**, the level of resolution should be **the address**. **For mobile networks**, the level of resolution should be **a 100m x 100m or smaller grid** (or equivalent polygon). For **fixed wireless access (FWA)**, data should be collected at least at an address level or at a level of a 100m x 100m or smaller grid (or polygons of an equivalent resolution), as one wireless access point deals with a group of addresses in a certain area.

⁹ According to the Core Guidelines the databases should be updated at least annually.

¹⁰ Section 2.6.2 in BoR (20) 42 deals with the verification of the main survey forecast data. Paragraph 104 states that "*NRAs/OCAs should aim to verify the information on forecasts of broadband reach, as far as this is reasonable and legally available*".

31. In addition, the competent authority should use information from state aid registry of funded very high capacity network investments when it is considered appropriate.
32. The information gathered via forecasts includes uncertainties. According to EEC Article 22(1) subparagraph 5: "*The national regulatory authority shall decide, with respect to tasks specifically attributed to it under this Directive, the extent to which it is appropriate to rely on all or part of the information gathered in the context of such forecast.*"
33. The reliability of forecast information is important in many respects. For designated areas, this could mean that the roll-out plans which were planned will not be carried out and the areas are left without VHCNs or networks offering at least 100 Mbps speed deployments. If private investors do not declare their future roll-out plans, they run the risk of further network overlaps. Therefore, the competent authority should make reasonable efforts to verify forecasts of broadband reach.
34. The Core Guidelines recognize that operators' roll-out plans may change over time, due to unforeseen events, or as a result of changes in the strategies of investors. Because of this, longer term forecasts are more uncertain in nature than forecasts over a shorter period of time. NRAs and OCAs who carry out surveys of forecasts of broadband reach would benefit from establishing verification mechanisms so that the forecast information is as reliable as possible.
35. Two types of verification can be thought of: *ex ante* verification (that is, at the time the information is requested) and *ex post* verification. Section 2.6.2 in the Core Guidelines gives guidance to the verification of forecasts.
36. Additionally, the Core Guidelines (paragraphs 27 and 101) recommend that the frequency of collection of current broadband reach data and forecast or planned deployment data of areas of interest to be annual. Annual collection of data (for relevant areas) is suggested because it allows some monitoring of the forecast data.

2.2 Definition of area boundaries and sizes

37. Following article 22(1) EEC, the competent authority should be in possession of a certain local detail on quality of service parameters through the survey of networks and any relevant forecasts by network providers.
38. According to article 22(2) EEC, the competent authority may designate an area thereafter with clear territorial boundaries, which will be highlighting places where there is no immediate known prospect of service by VHCNs or networks offering more than 100 Mbps download speed. Yet, the size and characteristics of the defined area are not specified in the article.

39. Depending on the local specificities, the appropriate size, boundaries and defining elements of the area, but also the accompanying information, may vary.
40. Actually, answers to the questionnaire issued by BEREC reveal that generally the purpose of the relevant policies is strongly influencing the practical definition of the areas: for a call for interest in future deployments, competent authorities might only need to display addresses with no relevant service, but when more complex territorial planning and development is involved the definition of relevant areas is likely to consider multiple parameters.
41. The two following sections respectively present BEREC's recommendations on the definition of the borders of a designated area, and display further criteria that may be considered in order to define these areas in accordance with the objectives with the process.

2.2.1 Delimitation of designated areas

42. Designated areas should meet the definition of Article 22(2) EECC. This means that they should:
- i. include addresses/grids which are not covered, (and in case this information is known and reliable, also not planned to be covered) by a VHCN or by a network offering more than 100 Mbps download speed;
 - ii. have clear territorial boundaries.
43. Article 22(2) also establishes that the designated areas' list shall be published. Recommendations related to publishing modalities are specified in section 2.4 of the present guidelines.
44. In order to comply with Article 22(2) EECC and achieve transparency when publishing the designated areas, BEREC recommends that the competent authority designates areas based on geographic units with clear and stable geographical boundaries.
45. The competent authority may choose their way of defining a type of territorial boundaries depending on their interests, local specificities and on the purpose of the designation of areas' process. Clear boundaries can be defined based on geographic units inducing no ambiguity, and can, for example, refer to administrative units, postal code sectors or statistical units.
46. The present guidelines thus recommend that the competent authority make sure that the size or geographic level of designated areas is appropriate, i.e.:
- i. small enough to avoid significant differences in the level of broadband services provided within the considered areas;

- ii. large enough to avoid changes of area boundaries in time and to prevent providing the market with very fragmented information.
- iii. moreover, if the competent authority wants to consider sociodemographic information or information related to the availability of physical infrastructures when designating areas, this would imply that areas cannot be too small, since these kinds of information are not available at a very granular level.

2.2.2 Further criteria for the definition of a designated area

47. The competent authority might be interested in grouping addresses/grids, according to the expected profitability of the network. Note though that the main objective of the designation of areas is to provide information to potential investors, so that this promotes investment in VHCNs. In this sense, the competent authority may wish to consider grouping “contiguous or related” addresses/grids with similar expected profitability levels in the same designated areas.
48. In designating areas, the competent authority may consider that zones with a larger expected profitability may compensate for zones with a lower profitability, so that overall the whole of a designated area is attractive to investors.
49. Hence, in addition to performance of existing and planned networks, competent authorities may take into account, if available, further criteria to delineate designated areas. These criteria may include structural socio-economic and demographic characteristics, such as population density, as well as urban or morphological characteristics, such as the typology of buildings (single dwelling or multi-dwelling buildings) and thus of neighborhoods, or whether an area is a residential or business one. They can also include economic and investment conditions, such as number of operators with networks in the area, passive infrastructures’ availability or existing wholesale offers.
50. These parameters can be useful to competent authorities, for example to adjust zones’ contours to have contiguous areas of buildings, which operationally can be more relevant for network roll-outs.
51. Competent authorities should be, in their chosen approach of the designation of areas, aware of the considerations of the deployments’ process. In particular, it is recommended to consider the potential coverage of the existing or planned VHCNs&100Mbps, and/or to consider the potential coverage of their underlying infrastructure.
52. In order to realize this assessment and the designation of each area, and given the high number of resulting areas’ units to be analyzed in order to obtain designated areas, competent authorities can rely on indicators based on the further criteria suggested at the beginning of this section.
53. A competent authority may know that within an area there is a small number of addresses/grids that are already covered or with plans to be covered by VHCNs or

networks offering more than 100 Mbps download speed (for example, specific business sites). Depending on the geographical distribution of the covered addresses/grids within the area and if the coverage proportion of the area is sufficiently small, the competent authority should assess whether it is proportionate to include those addresses/grids in the designated areas or not. In the case in which those addresses/grids are included, the competent authority should provide information on the covered addresses or grids within the designated areas. BEREC recommendations on the publication of designated areas, which is mandatory, are detailed in section 2.4.

2.3 Frequency of area designation

54. The periodicity of designating areas depends on the competent authority's needs and circumstances. Competent authorities may decide on whether and how often they want to define designated areas.
55. If a MS is planning some policy measure to boost VHCNs&100Mbps deployments the area designation can be carried out on an ad hoc basis.
56. In case a MS has an active policy measure already in force, the area designation may be done more frequently, for example, annually, to check the progress of the measures and to ensure they target the right areas.
57. By designating areas, the competent authority strives to provide incentives for investments in and increase transparency of VHCNs&100Mbps deployments. If areas' designation is implemented too infrequently, it might give misleading information to investors and even turn against its goals. Therefore, the frequency of designating areas should be considered by the competent authority carefully.
58. The geographical survey of broadband reach is recommended to be carried out at least once a year according to the Core Guidelines. Hence, the regularly conducted for geographical surveys allow for the designation of areas to be carried out with up to date information.

2.4 Publication of designated areas

59. The publication of designated areas is obligatory if they have been defined by the competent authority. One of the key objectives of publishing designated areas is to create transparency for investors with respect to VHCNs&100Mbps deployments. Transparency is an important means to motivate improvement of the quality of internet access products and to decrease investment risks. In addition, it supports better-informed decision-making by network investors.

60. In order to achieve such transparency, when designated areas include some addresses or grids that are already covered or with plans to be covered by VHCNs or networks offering more than 100 Mbps download speed, the competent authority should provide sufficient information to allow agents to find out the localization of these covered addresses or grids within the designated area (see paragraph 53).
61. As mentioned in paragraph 19, the publication of designated areas is not the only means by which NRAs/OCAs can provide information to the market. In addition to designated areas, NRAs/OCAs may find it useful to provide other information to market players, for example information on areas covered by the different VHCN classes for fixed and mobile broadband¹¹.
62. The published information related to designated areas must enable interested parties to detect their exact boundaries. Competent authorities have several options for publication, for example:
- Interactive maps published in a dynamic web application;
 - Interactive address search published in a dynamic web application;
 - Application programming interfaces ('API') providing access to the data;
 - If boundaries are administrative ones, and can be easily understood by all agents, by publishing reports.
63. The competent authority may consider the best system and format of publication by taking into consideration the type of boundaries of designated areas, the efforts of releasing this information and considering data openness, ease of access and the cost-effectiveness of the public exercise.
64. In order to be easily available to all relevant undertakings and public organisations, the information describing the designated areas must be made accessible on the competent authority's website or its related web portals.
65. In addition to the relevant competent authority website, competent authorities can decide to make information available also via local municipalities' or regional councils' websites, official journals, or any relevant ministry's website, etc.
66. The competent authority might also inform undertakings and public bodies of the publication of designated areas by press release or newsletter.
67. BEREC recommends to provide relevant metadata, regarding the characteristics of the basic information used in defining the designated areas. This would include: the date of the base information, whether forecasts have been used or not to designate areas, and

¹¹ See paragraphs 49 and 79 in the Core Guidelines for a classification and a description of these VHCN classes.

the kind of speed information considered (maximum achievable or expected peak time). Also, the validity period of designated areas, i.e. for how long the definition of designated area is valid, should be mentioned.

68. Moreover, competent authorities may optionally find it useful to provide other information on top of the area designation when they publish the designated areas so that potential investors can better assess the suitability of their investments. In this case, competent authorities can provide information on the area characteristics that might be relevant for investors to estimate the expected profitability of the deployment, for example, area classification (urban/sub-urban/rural), population density information, the existence of new residential or industrial developments in the area, the existence of protected sites within an area, for example because of heritage or environmental reasons, which have more restrictions with regards to the network deployment.
69. The Core Guidelines recommended that, if possible, NRAs/OCAs identified the locations of hospitals, schools, major transport hubs, public administration premises and highly digitalized businesses when publishing designated areas. This information may also be very useful for investors planning VHCNs&100Mbps deployments.
70. BEREC strongly recommends that, when publishing designated areas, competent authorities also provide information regarding the possibility that the designated area is covered or likely to be covered by a next-generation access network offering download speeds below 100 Mbps on the basis of the information of the broadband survey of current broadband reach as per Article 22(1) and any forecast information that the competent authority may hold. Note that Article 22 (5) requires that NGA network information be disclosed to any agents responding to invitations to declare intentions to invest as per Art 22 (3)¹². An earlier and public disclosure of the availability of NGA networks will allow all potential investors to equally consider this availability in making investment decisions. Moreover, those responding to any invitations to declare intentions to invest will have been able to factor this information into their decision making, which will prevent a situation where, after responding to invitations, these agents find out the respective information and may reconsider their plans.
71. Finally, when publishing the designated areas, NRAs/OCAs have a duty not to disclose business secrets¹³. Therefore, the competent authority needs to assess whether the publication of designated areas reveals any commercially sensitive information or provides

¹² Recital 65 EECC points out the need for information sharing: *"In the interests of predictable investment conditions, competent authorities should be able to share information with undertakings and public authorities expressing interest in deploying very high capacity networks on whether other types of network upgrades, including those below 100 Mbps download speed, are present or foreseen in the area in question."*

¹³ For further reference, please check Section 2.7.2 in the Core Guidelines, which deals with confidentiality and business secrets.

information on an operators' strategy by eliciting that certain addresses/grids are covered or known as likely to be covered. The competent authority can avoid this revelation by carefully drafting the designated areas borders or by exceptionally including the covered address/grid in the designated area¹⁴. In this case, a possibility is to inform about the percentage of addresses covered with VHCNs&100Mbps without revealing the precise location of addresses in the designated area.

3 Invitations to declare investment intentions

72. Article 22(3) describes optional and staged processes by which the competent authority may invite undertakings and public authorities to declare their intention to deploy VHCNs in a designated area. First, within a designated area, the competent authorities may invite agents to declare their intention to deploy VHCNs over the duration of the relevant forecast period. Second, where this invitation results in a declaration of an agent to have intentions to invest, the relevant authority may invite other undertakings and public authorities to declare any intention to deploy VHCNs, or significantly upgrade or extend their network to a performance of at least 100 Mbps download speeds in the designated area.
73. Issuing invitations to declare investment intentions within an area, may further incentivize investment possibility, but at the same time will help the competent authority to improve its information about VHCNs forecasts, which in turn may enable identification of potential areas for state aid intervention.
74. BEREC recommends that if a public authority responds to a first invitation, the competent authority issues a second invitation to have a better safeguard that such public intervention does not overrun any planned private VHCN developments (or developments of networks capable of supporting 100 Mbps download speed or more).
75. The invitations must be released for public authorities and private entities. If an authority engages in the invitations' activity, it must ensure that procedures are efficient, objective, transparent and non-discriminatory, whereby no undertaking is excluded a priori.
76. The procedures to invite agents to declare intentions to deploy VHCN&100Mbps should follow existing national administrative law.
77. Finally, BEREC considers that in issuing the second invitation, the competent authority shall require information on intentions to invest in VHCN or in networks that are capable

¹⁴ Note that the Core Guidelines established that "*For a grid to be declared as served by a VHCN of a given class, the conditions associated with this class must be satisfied in at least 95% of the addresses in the grid*".

of offering 100 Mbps download speed, where the speed is defined as the competent authority considers: maximum achievable speed or expected peak time speed. In any case when issuing the invitation, the competent authority should clearly inform the public of the speed definition.

3.1 Procedures for the first invitation

78. According to Article 22 (3) EEC, competent authorities may, after the designation of areas, invite undertakings and/or public authorities to declare their intention to deploy VHCN. The following subsections deal with the separate steps in the invitation process and their contents in more detail. In addition, BEREC would like to give guidance with regard to the addressees of the first invitation process.

3.1.1 Subjects of the invitation and procedures to publish the invitations

79. In general, article 22 (3) EEC states that the competent authority may invite undertakings and public authorities to declare their intentions to deploy VHCNs&100Mbps. The EEC does not define “undertakings” but “operators”. According to Art. 2 (29) EEC, “operator” means an undertaking providing or authorized to provide a public electronic communications network or an associated facility. Due to the omission of the reference to electronic communications network, BEREC is of the view that “undertakings” in Article 22 EEC addresses a broad range of entities. This means that all undertakings which are directly or indirectly involved in the expansion of broadband networks, including operators, should be seen as addressees for an invitation to declare their intention to deploy VHCNs&100Mbps. In particular, operators, civil engineering companies and utility network operators should have access to the procedures according to Article 22 (3) EEC.

80. The same applies to public authorities: all should be considered for the invitation. The targeted group for an invitation to declare an intention can be seen as wide and should not only include public authorities responsible directly for promoting broadband, but also all other public authorities, for example municipalities and public broadband offices.

81. Approaching (some) undertakings and public authorities directly does not meet the requirements of objective, transparent and non-discriminatory procedures of Article 22 (4) EEC. It could be thought that, with a view to increased commitment and therefore potentially faster deployments of VHCNs, a direct approach to the group of addressees would be suitable. Nevertheless, this would increase the necessary effort to carry out procedures according to Article 22 (3) EEC, as all relevant undertakings and public authorities to potentially invest in the designated area must be identified and contacted directly by the competent body. The likelihood of overlooking investors increases all the more. Therefore, the invitations need to take the form of a public consultation.

82. To address the broad target group mentioned before, BEREC is of the view that any invitation to declare the intention to invest in VHCN networks should be made accessible on the competent authority's website or its related web portals. Moreover, BEREC also recommends that the area boundaries are published by the means described in paragraph 62. If possible, it is useful to include the designated areas in the GIS containing the data collected according to Article 22 (1) EECC. Designated areas can be illustrated in the maps of the GIS and e.g. after clicking on a designated area the relevant meta data about the invitation procedure can be seen by the user.
83. Lastly, it should be clear when and over which period the invitation to declare an intention to invest in VHCNs should be published. The first and most important requirement to invite is to designate areas. After having designated areas, the competent authority may start the invitation procedure. There should be a minimal two-week period between the publication of designated areas and the first invitation public consultation so that investors can evaluate the information and draw investment plans.
84. After having started the procedure in accordance to recital 63 EECC, the parties who may declare their intention should have sufficient time to provide a thoroughly considered response. BEREC is of the view that a period of at least 60 days should be considered for potential investors to declare their intention.

3.1.2 Information to require in the first invitation

85. According to Article 22(3) EECC, the competent authority shall specify, when inviting to declare intentions to invest in designated areas, the information to be included in the responding submissions, in order to ensure at least a similar level of details as that taken into consideration in any forecast pursuant to paragraph 1 of Article 22 EECC. Since competent authorities will have a responsibility with respect to the information they provide in the invitations' procedure, and in order to ensure the accuracy and precision of the information, competent authorities should include in their requirement elements enabling them to verify the credibility of the statements made by the respondents.
86. Article 29 (2) of the EECC establishes penalties in case an undertaking or public authority knowingly or grossly negligently provides misleading, erroneous or incomplete information during these invitation procedures.

Forecast period

87. The required information should give a description of the investment intention and the planned deployments within one or a group of designated areas. Hence, this information should cover a forecast period defined by the competent authority launching the call for declaring investment intentions.

88. The forecast period depends mainly on the competent authority's objectives from the invitations' procedure and on the frequency of issuing the invitations. Thus, the definition of the appropriate forecast period is to be determined by the competent authorities and should be compliant with the pursued objective.

89. Although, in order to ensure a good quality level of transmitted information and deployments' planning, it is recommended to define a forecast period covering the submitted information for which the duration is comparable to the duration of any forecast period defined pursuant to Article 22(1) EECC.

Required information

90. In order to address the objectives cited in the introduction of this subsection, and in order to obtain sufficient knowledge on the planned deployments, it is recommended to require at least the following elements:

- respondent identity and contact;
- the exhaustive list of targeted designated areas where the investor plans to deploy;
- a project plan, as detailed as possible, on both geographical and technical levels (i.e. planned coverage by the responding undertaking of addresses/small grids and network topology);
- a timeline of networks' construction, including specific milestones of deployment, covering at least the fixed forecast period;
- technological suitability, with respect to VHCN service level;
- an indication of whether funds have already been committed to undertake the investment.

91. Primarily, the information on planned deployment should be provided at the address level or small grid level (grids of at most 100 m x 100 m or equivalent polygons). If the agent is not able to specify its plans at this level, it can be allowed to declare it on a lower level of granularity (e.g. street, part of the municipality, etc.). Such approach should be allowed also if the primary mapping is done on the lower level of granularity than the address points. Eventually, agents should specify in their answers to the invitation the number of addresses they consider they are able to cover.

92. Additionally, in order to ensure the credibility of the declared intention of the submitted deployment plan, and for any other objective considered as appropriate by the competent authorities, further information can be required, if available and when it can be provided with reasonable effort, such as:

- financial feasibility of the project (projected budget, financial liabilities, bank guarantees);
- commitment to accomplish the investment and to follow a timetable of deployment;
- marketing information on offers to retail customers;
- conditions available for competitive supply of electronic communications services (specifications of wholesale services, including technical information such as

- supported access interfaces, or legal and financial conditions of the offers, e.g. non-discrimination agreements);
- description of backhaul network technology and specification of backhaul equipment, design of backhaul network and traffic assumptions.

3.1.3 Information to disclose after the first invitation when the competent authority is issuing a second invitation

93. This section deals with the information to disclose to the public after the first invitation, and only concerns the case in which the competent authority is planning to issue a second invitation¹⁵. Note that if a second invitation regarding a particular designated area is issued by the competent authority, this will be easily traceable by all public and private agents. Thus, the issuing of a second invitation is already informing any potential second-invitation respondents that at least one agent has intention to deploy a VHCN network in the designated area.
94. However, the competent authority may consider publishing additional information. This may be important when the information is relevant in allowing agents to better consider their investment intentions and to respond to the second invitation. Yet, at the same time, the competent authority must carefully consider their duty to safeguard business secrets of parties responding to the first (and second) invitation and because of this, such information can only be published in an aggregated or anonymous form.
95. In case that the competent authority considers making additional information available after the first invitation responses, some examples that BEREC would recommend are: number of parties who declared intentions to invest in the first invitation, status of the investments (announced, planned, financed, in progress), percentage of area (or addresses) to be covered within the designated area, or alternatively, qualitative information of the area coverage (for example: low coverage- less than a predetermined threshold coverage, medium- for coverages in between pre-determined thresholds, high- larger than a threshold coverage), announced presence of a wholesale operator, announced presence of a public undertaking, type of network (technology or medium used).
96. It should be noted that in order for procedures to be transparent and non-discriminatory, if any information is released or made available after the first invitation, the same level of public disclosure or availability should be ensured if there is an expression of interest to invest as a result of the second invitation.

¹⁵ The information to be released after any invitation is accepted, either following the first invitation or the second invitation, is described in section 3.3.

97. Moreover, note that any information releases need to be public, or if the information is provided under request, no agent can be excluded from making such requests and the processes to require the information should also be public. This will ensure equal treatment of all potential investors. Therefore, in order to be easily available to all relevant undertakings and public organisations, the information (or the process to require information) must be made accessible on the competent authority's website or related portals.
98. In addition, the competent authority can decide to make information available also via local municipalities' or regional councils' websites, official journals, or any relevant ministry's website, etc., and to inform undertakings and public bodies of the publication of designated areas by press release, newsletter or targeted messages.

3.2 Procedures for the second invitation

3.2.1 Subjects of the invitation and procedures to publish the invitations

99. Depending on the outcome of the first invitation procedure, the competent authority may start an optional second invitation process. As already described above in sub-section 3.1.1, this second invitation should also aim at a broad target group.
100. BEREC, with view to fast broadband deployments, planning security and reliability of the declaration of intent to invest in VHCN&100 Mbps, is of the opinion that the relevant authority should start the second invitation round immediately after the end of the first round. The period of this second invitation procedure should also be at least 60 days.
101. From BEREC's point of view, in cases where after the first invitation round no party has declared its intention to deploy VHCNs in the designated area, the procedure according to Article 22 (3) EECC ends. The competent authority should then assess whether a new procedure according to Article 22 (3) EECC would make sense to provide the designated area with broadband. In view of efficiency, a new procedure should not start before six months after the termination of the previous procedure to declare an intention to deploy VHCN in the relevant area.

3.2.2 Information to require in the second invitation

102. In order to treat equally all agents, it is necessary that the same information is required in the first invitation and in the second invitation.
103. For general reference on this topic, see paragraphs 85 and 86 in section 3.1.2.

104. Paragraphs 90, 91 and 92 in section 3.1.2, describe the information to require in the second invitation.

3.3 Information to be disclosed ex post, after the invitation process (regardless of whether it includes only one invitation or two)

105. This section describes the information to be released after the invitations' processes. This release takes place either after the second invitation when there is one, or after the first invitation when there is no second one.

106. First, as required by Art 22(3) EECC, some information should be provided to the agents that participated in the process (which expressed their interest to invest). Such parties should be informed whether the designated area is covered or likely to be covered by a next-generation access network offering download speeds below 100 Mbps. Note that in paragraph 70 BEREC exposes the reasons why this information may be better released to the public at the time of publishing designated areas.

107. Second, as per Article 22 (5), some information about the invitation procedure responses (as well as the designated areas and the results of the geographical survey defined in Article 22 (1)) should be accessible to other authorities with specific responsibilities so that they can take this information into account when performing their duties. These are: local, regional and national authorities with responsibility for the allocation of public funds for the deployment of electronic communications networks, for the design of national broadband plans, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligations in their territory.

108. Detailed information (results of the process in the detailed form) should be also provided to BEREC and the EC, but only upon a properly substantiated request.

109. Section 2.7.1 of the Core Guidelines deals with the provision of information to such relevant public authorities. Its contents are relevant as well to the provision of information regarding responses to the invitation procedures. Article 22(5) EECC requires that NRAs/OCAs facilitating information to other public authorities inform operators when doing so.

110. When relevant public authorities need detailed data, the receiving competent authority must be aware of any confidentiality concerns of the parties responding to the invitations, and shall in all cases ensure the same level of confidentiality and protection of business secrets as for the originating authority. However, confidentiality concerns shall not prevent

the sharing of information between the competent authority and the other authority in a timely manner for the purposes of reviewing, monitoring and supervising the application of the EECC.

111. The competent authority shall, on a case-by-case basis, make sure to obtain a good understanding of the expectations of the authority and its requirements. The competent authority shall always analyse the disclosure risk of information and consider reasonable aggregations.
112. Finally, if the process consists of two invitations and if some information (possibly aggregates) regarding the first respondents' deployment plans has been published when issuing the first invitation (or made available by request), then the same information should be published (or made available under request) with respect to the deployment plans of the second set of respondents. See section 3.1.3.