DIGITALEUROPE

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Response to BEREC public consultation on 2020 Work Programme and call for input to 2021-2023 Medium-Term Strategy

Executive summary

DIGITALEUROPE supports BEREC's Work Programme for the year 2020, which follows the 2018-2020 Strategy and BEREC's mandatory tasks under the European Electronic Communications Code (EECC). In our response, we'd like to highlight areas for possible further work, either for next year or in 2021-2023.

In particular, we invite BEREC to consider further work to:

- Develop Guidelines to ensure consistency across Member States concerning the definitions of number-based interpersonal communications services (NB-ICS) and number-independent interpersonal communications services (NI-ICS); and
- Provide NRAs with Guidelines on the technical feasibility assessments that the EECC requires for access to emergency services from network-independent NB-ICS.

In addition, we provide comments on the work currently included in the draft Work Programme relating to 5G and digital platforms.

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Areas for further work

Guidelines for the consistent application of the definition of NB-ICS and NI-ICS

BEREC could develop Guidelines to ensure a consistent application of the EECC's new scope.

Whilst the EECC's intention has been to create certainty in view of increasingly diverging interpretations of the existing definition by different NRAs, the new definitions still leave some scope for interpretation.

Considering many of the services that may in the future fall in scope, as either NB-ICS or NI-ICS, are pan-European services by nature, it is imperative for industry to have a clear and consistent view across Member States to avoid the same service being regulated differently in different Member States. This will also ensure consumers are protected the same way in all European markets.

The Guidelines should take technology into consideration, particularly whether services are provided with or without the underlying connectivity. There remain significant differences with regard to the obligations that may make sense from both a technical and consumer protection perspective.

Technical feasibility assessments for emergency calling obligations

BEREC notes in its consultation that its 'focus on consumer empowerment will continue, and the welfare of end users will always be a key focus for BEREC.'[1] Working to ensure that new emergency calling legal obligations as adopted in the

[1] Ibid., p. 5

EECC are backed up by an operational emergency calling system throughout Europe is at the heart of users' welfare.

DIGITALEUROPE is therefore pleased to see that BEREC has included next-generation emergency calling (NG112) among the topics to be addressed in 2021 and thereafter,[2] and looks forward to working with stakeholders to find an effective solution. Concretely, we think that further work will have to be done around the implementation of the EECC's Art. 109.

Among the end-user rights guaranteed by the EECC is an obligation that 'providers of publicly available number-based interpersonal communications services, where those services allow end-users to originate calls to a number in a national or international numbering plan, provide access to emergency services through emergency communications to the most appropriate PSAP.'[3] This means that in principle new types of services will be subject to an obligation to locate a caller, match that caller's location to the appropriate PSAP and route the emergency call to that PSAP with the caller's telephone number (call-back number) and the caller's location information.

These principles are somewhat mitigated by the EECC Recitals 284 and 286, which recognise that especially for network-independent service providers issues of technical feasibility may arise both to locate the user and to rout the calls. We are pleased to see that BEREC now also appears to acknowledge that the emergency calling system in Europe is not set up to accommodate these new types of services.

Particularly, VoIP based outbound-only NB-ICS do not fit neatly into the traditional emergency calling systems in operation in most Member States. First, such outbound-only NB-ICS have no telephone number to which the system can tie a location (or to which a return call can be made, should the emergency call be dropped for any reason). Second, outbound-only NB-ICS are typically provided untethered from any particular telecoms network, thus making it infeasible to associate every possible network access point over which an untethered NB-ICS call might be made to a particular PSAP to ensure localised routing to the appropriate PSAP in that area. Both issues create challenges for VoIP-based outbound-only NB-ICS apps attempting to route to the 'appropriate' PSAP, especially where a Member State has multiple PSAPs.

In light of the legal and technical challenges created by the EECC described above, we see a crucial role for BEREC to consider structural, operational and technical changes to emergency calling systems in order to enable fully functional end-to-end emergency calls that are delivered to the appropriate PSAP

[2] Draft Work Programme, p. 43

[3] Art. 109(2)

along with location information that guides first responders to the caller in need of assistance.

Focusing on longer-term solutions that acknowledge and accommodate the significant changes in communications and embrace technological advancements has the potential to provide significant benefits to end-users throughout Europe. A multi-stakeholder approach, involving the public safety community, regulators, service providers and end-users, is necessary in order to find effective solutions to NG112.

Moreover, finding a solution that is workable within and outside Europe will also be important. Thus, we are pleased to see that BEREC includes NG112 on its list of important longer-term issues, as well as its continued commitment to work with regulators from across the globe.

Current strategic priorities

Enabling 5G and promoting innovation in network technologies

DIGITALEUROPE acknowledge the role that BEREC can play in enabling enhanced connectivity by helping clarify specific aspects related to 5G deployment through stakeholder engagement and studies. However, as underlined in our response to the recent BEREC call for input on the impact of 5G on regulation,[4] we are of view that existing horizontal regulation already addresses any 5G-related aspects.

We agree that the highlighted topics – the peer review process and infrastructure sharing – are of great relevance in enhancing a transparent and investment-friendly environment that supports the rollout of 5G networks in Europe, in line with the ambitions of the 5G Action Plan. Both topics are of high relevance for industry and we welcome a more proactive involvement of the stakeholders in exchanges with BEREC such as interactive workshops.

We see benefits in the peer review process (section 3.2) as a basis for improved collaboration and harmonisation of practices in Europe in the spectrum auctions domain; stakeholder workshops and the annual report will also increase transparency and provide more information to the overall mobile industry.

Regarding network sharing (section 3.3), in addition to the previous work done by BEREC in collecting information on existing options and in the light on future 5G deployments, a newer approach should be considered. There is an increased need for cooperation in the 5G environment and several elements – including but not restricted to densified networks and EMF – should be taken into

[4] https://www.digitaleurope.org/wp/wp-content/uploads/2019/09/DIGITALEUROPE-response-to-BEREC-call-for-input-on-regulation-and-5G-ecosystem.pdf

consideration. Such identified barriers to fast and efficient 5G rollout should be evaluated and eliminated, or at least lowered, to allow for Europe's connectivity objectives to be achieved.

As previously stated in our response to BEREC's call for input on the impact of 5G on regulation, we support a BEREC-coordinated campaign on EMF-related issues aiming at a better understanding of the compliance of general public exposure to radiofrequency limit values and removing artificial barriers in the rollout of 5G networks.

On the topic of 5G security (section 3.4), we support a harmonised European approach that should ensure resilience of networks across Europe and trust in digital services enabled by 5G. Sharing of existing practices between Member States can contribute to a better common understanding of and approach to 5G risks and to identifying ways to address them effectively. However, this needs to be part of a more general approach for a secured digital environment.

Report on market and economic issues of digital platforms

In the draft Work Programme (point 2.3), BEREC proposes issuing a report to 'provide definitions, clarify concepts, provide an analysis of digital platforms, and describe the potentially positive and negative competition issues currently under discussion.'

As we have argued in our response to last year's public consultation on the data economy,[5] DIGITALEUROPE considers that issues around the market and economic dynamics of digital platforms should remain the purview of the responsible competition authorities. The European Commission's Directorate-General for Competition (DG COMP), as well as a significant number of national competition authorities across the EU, has already published detailed reports on the issues BEREC proposes examining. Some of these authorities have even proceeded to propose legislative measures to implement their findings.

In order to avoid regulatory overlap and ensure that any competition issues digital platforms may give rise to are addressed by competent authorities in a coherent manner, DIGITALEUROPE urges BEREC to modify the proposed workstream. As BEREC suggests in point 6.19 of its Work Programme for the year 2020, a more appropriate contribution would be for BEREC to remain at the European institutions' disposal to share its experience on electronic communications regulation, to the extent that is relevant for and transposable to digital platforms issues.

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5 https://www.digitaleurope.org/wp/wp-content/uploads/2018/12/DIGITALEUROPE-response-to-BEREC-data-economy-consultation.pdf

This approach would be in line with the division of competences between BEREC and other regulatory authorities. It would also allow BEREC to use the resources it would otherwise devote to this proposed workstream to issue additional guidance ensuring the EECC's consistent implementation across the EU (see above).

FOR MORE INFORMATION, PLEASE CONTACT:

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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.

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