

BEREC Opinion on the market and technological developments and on their impact on the application of rights of end- users in the EECC

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Executive summary and main findings

According to Article 123(1) of the Directive 2018/1972 establishing the European Electronic Communications Code (“EECC”), a BEREC Opinion on the market and technological developments and the impact on the application of rights of end-users in the EECC (Title III of Part III) is due to be published by 21 December 2021.¹ BEREC Opinion will be taken in utmost account by the European Commission, which shall publish a report on the application of Title III of Part III (“End-user rights”) and shall submit a legislative proposal to amend that Title where it considers this to be necessary to ensure that the objectives set out in Article 3 (“General objectives”) continue to be met.

BEREC carried out its task gathering useful evidence for the assessment required. As detailed in the respective sections of this Opinion, targeted request for information have been sent to national regulatory authorities (“NRAs”), as well as bodies and associations representing stakeholders’ interest at European level.

More in detail, in this Opinion BEREC provides several conclusions, and highlights the following items due to their specific relevance.

BEREC acknowledge that there will be no significant market and technological developments over a three-year time horizon that will impact on the application of end-user rights. Data usage in mobile communications and the increase of demand for connectivity and well-functioning high-capacity internet connections will, however, be the main drivers of market and technological developments.

BEREC considers that the provisions around transparency and contractual information of the EECC should have a positive impact for end-users and aid the development of the retail market. The contract summary and increasing use of comparison tools are expected to be of particular benefit.

As for the provisions concerning contract duration and termination and provider switching and number portability, BEREC suggests that NRAs follow closely issues regarding contract duration, eSIM, email forwarding and bundles and how the EECC, once transposed, is able to address any emerging or application issue that might arise regarding these matters.

Effective access to emergency services in the EECC have not been fully developed yet as the delegated act in this matter is due in December 2022. Thus, in this regard and taking into consideration the transposition status, BEREC considers that there is no need at the present time to introduce amendments in the provisions concerning effective access to emergency services.

On the application of the provisions regarding equivalent access and choice for end-users with disabilities, BEREC highlights that other accessibility legislation, like the Web Accessibility Directive and the European Accessibility Act, will also have an impact on future

¹ Thereafter, BEREC shall publish a new Opinion every three years thereafter, or upon a reasoned request from at least two of its members.

developments and may also affect the application of the EECC provisions concerning equivalent access and choice for end-users with disabilities in the coming years.

Finally, BEREC considers that given the limited experience of the application of Title III of Part III and the dynamic nature of some of the market and technological developments that have been identified, there is potential for significant change in the area of end-users' rights. Thus, BEREC considers the continued monitoring of market and technology trends to be important as it deems appropriate to analyse again the effect of full harmonisation on existing end-user protections the next time BEREC delivers an opinion based on Article 123 of the EECC.

1 Introduction and policy principles

Article 123 of the EECC introduces a specific revision procedure regarding end-user rights and protections as the effectiveness of the provisions of Title III of Part III might be affected by future technological and market developments, in particular by changes in the use of different electronic communications services ("ECS") and their ability to ensure effective access to emergency services, and by consumers' use of communication services which is evolving over time with the prevalence of number independent interpersonal communications services ("NI-ICS") as a potential substitute for traditional ECS.

Recognising this,² Article 123(1) tasks BEREC with monitoring those developments and initially publishing by 21 December 2021, and every three years thereafter, an opinion on their impact on the application of Title III of Part III.³ In its opinion, BEREC shall assess to what extent Title III of Part III meets the objectives set out in Article 3.

In this respect, BEREC's opinion plays a key role in the review procedure since Article 123(2) tasks the European Commission with producing a report on the application of Title III of Part III and with submitting a legislative proposal to amend it, where necessary, to achieve Article 3 objectives. In doing so, the European Commission takes utmost account of BEREC's opinion. A direct link between BEREC's monitoring and assessment and the consideration of the need for legislative reform by the European Commission is therefore established.

According to Article 123, BEREC is required to analyse:

- a) to what extent end-users of all ECS are able to make free and informed choices, including on the basis of complete contractual information, and are able to easily switch their provider of ECS;

² Especially by referring explicitly to the scope of Title III of Part III as regards the types of electronic communications services covered.

³ Article 123(1) also states that BEREC's opinion can be requested (reasonably) by at least two Member States.

- b) to what extent any lack of abilities referred to in point (a) has resulted in market distortions or end-user harm;
- c) to what extent effective access to emergency services is appreciably threatened, in particular due to an increased use of NI-ICS, by a lack of interoperability or technological developments;
- d) the likely cost of any potential readjustments of obligations in Title III of Part III or impact on innovation for providers of electronic communications services.

The structure of this document is organised as follows. Section 2 is dedicated to the methodology used by BEREC to draft the Opinion. Section 3 describes the main market and technological developments regarding the different types of ECS and their impact on the effectiveness and the proportionality of the measures to protect end-users, concerning, in particular, informed choice, completeness of contractual information and switching, effective access to emergency services and equivalent access and choice for end-users with disabilities. BEREC's conclusions are set out in Section 4.

2 Methodology

To gather useful evidence for the assessment required under Article 123 of the EECC, BEREC has sent targeted requests for information to NRAs, as well as bodies and associations representing stakeholders' interests at European level. Furthermore, it was considered relevant to gather information from recent studies and BEREC reports such as the study on EU consumer perceptions and behaviour on digital platforms for communication⁴ and the BEREC Report on the handling of third party payment charges on mobile phone bills⁵ as well as other sources of information such as the Eurobarometer survey on E-communications in the EU.⁶

At the end of March 2021 BEREC sent out 23 letters to bodies and associations representing stakeholder interests at the European level, in order to involve them informally, and at an early stage, and to understand their perspectives and concerns on the topics of the present Opinion, particularly on market and technological developments and on their impact on the application of the provisions concerning end-users contained in the EECC. The letter contained a questionnaire was drafted along the lines of the basic questions Article 123 of the EECC itself asks BEREC to analyse in its opinion.⁷

At the 9th BEREC Stakeholder Forum, held on the 1st of April 2021, a discussion on the present Opinion was led by the BEREC Chair, followed by short views expressed by different stakeholders.

⁴ https://berec.europa.eu/eng/document_register/subject_matter/berec/press_releases/9988-press-release-berec-publishes-a-study-on-eu-consumer-perceptions-and-behaviour-on-digital-platforms-for-communication

⁵ https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/10035-berec-report-on-the-handling-of-third-party-payment-charges-on-mobile-phone-bills

⁶ <https://europa.eu/eurobarometer/api/deliverable/download/file?deliverableId=75805>

⁷ Six organisations replied to the questionnaire (see Annex 2).

On the 11th of August BEREC invited NRAs to answer to an online questionnaire aimed at collecting relevant information on the market and technological developments and on their impact on the application of rights of end-users in the EECC from NRAs. In particular, the questionnaire addressed the following issues:

- the most important market and technological developments that impact the end-user rights established in Title III of Part III of the EECC since 2018 and those expected in the period up to 2024;
- the status of transposition of the EECC with regards to the provisions contained in Title III of Part III;
- the relevance - as measured by the number of complaints - of the different end-user rights issues addressed by the provisions of Title III of Part III;
- some specific issues singled out on the basis of Article 123 EECC or early stakeholder input.

BEREC received responses from 26 NRAs from EU-Member States and two Participants without voting rights. The answers provided have been analysed and reported in the different sections of this Opinion.

According to the data collected by BEREC, at the moment of data collection for this report, 7 NRAs reported that their national law was in line with the EECC and that the relevant EECC provisions were in force in their country. 11 NRAs responded on the basis that the EECC provisions were partially in-line with the EECC requirements and in force in their country. Of these respondents, partial implementation of the EECC was more prominent in respect of Articles 100, 102(1), 102(5) and 105(3).

It is worth noticing that as of September 2021 the EECC was not evenly transposed across Europe and, even in cases of full transposition on time, the monitoring of the application of Title III of Part III was limited to experience of less than one year. In many countries at that time however, full transposition of the EECC had not occurred yet and, consequently, the information collected by BEREC from NRAs⁸ is based on very limited experience in the application of the EECC. In light of the foregoing, this Opinion has been drafted from the perspective of relevant past and ongoing experiences, as well as possible future developments. Therefore, the methodology used should not be considered definitive (with regard to future opinions) as it is likely to be modified over the years. This Opinion will be a regular monitoring task for BEREC as the underlying analysis has to be carried out and a new Opinion shall be published every three years or more frequently if at least two Member States make a reasoned request, as explained in Section 1.

In the absence of a complete transposition of the EECC across Europe, this Opinion will focus on the market and technological developments that may impact in the future the

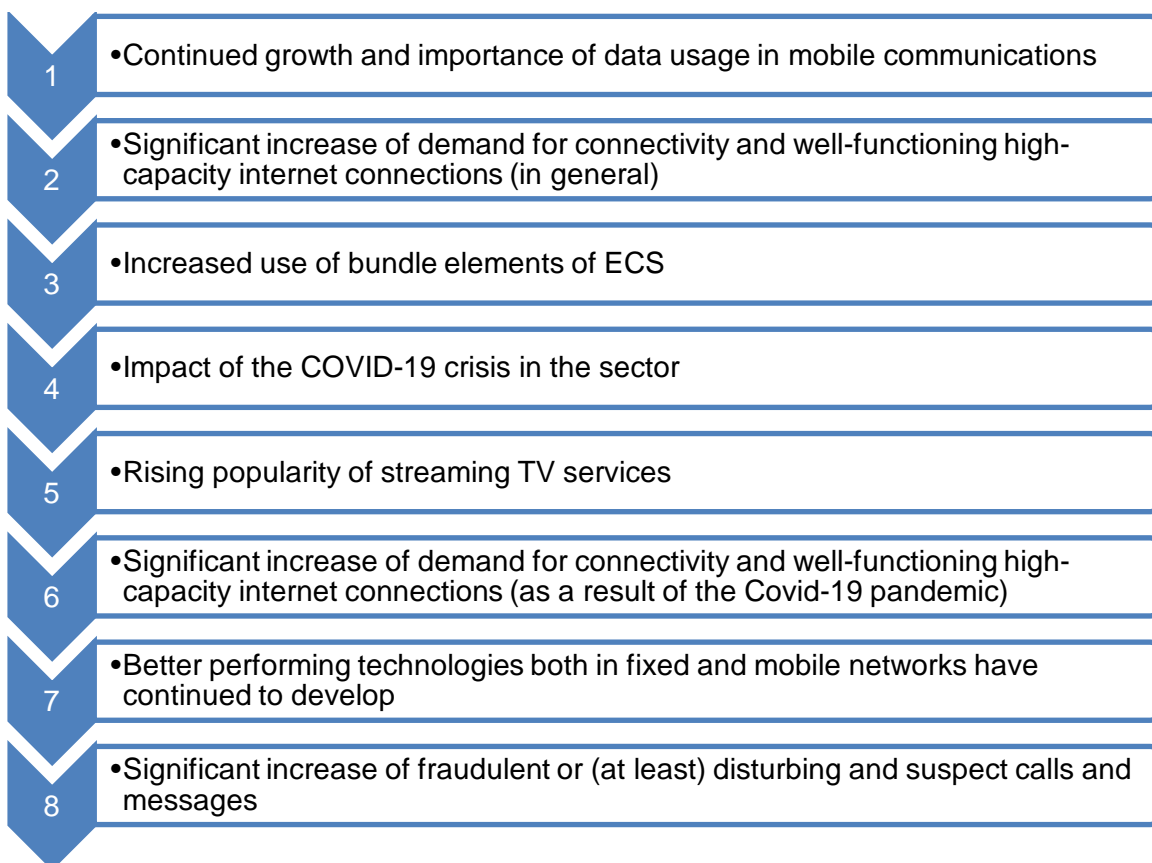
⁸ BEREC gathered evidence on the evolution of the markets and the functioning of sectoral end-users' rights by means of a targeted request for information to NRAs, who in turn may have collected information from other competent authorities, where necessary.

provisions concerning end-users, as well as the issues explicitly mentioned in the second paragraph of Article 123 (i.e., ease of switching, emergency services, informed choice and completeness of contractual information) and those identified as controversial by stakeholders and NRAs.

3 Market and technological development and their impact on end-user provisions

3.1 General trends

BEREC is of the opinion that the most important market and technological developments since 2018 in general are (in order of rank on the basis of the most mentioned developments by respondents):



BEREC based this opinion on the input of NRA's and this opinion aligns mostly with the input of other stakeholders.⁹

⁹ The hyper-digitalisation and growing importance of artificial intelligence solutions and systems and the expanding use of OTT services as a primary means of voice communications and messaging were also mentioned by some stakeholders.

BEREC doesn't expect there will be significant market and technological developments in the next few years (typically the next 3 years) that will likely have an impact on the application of end-user rights established in Articles 102 to 115 of the EECC or that may risk meeting the general objectives of Article 3.

Where some NRAs do expect there will be market and technological developments in the next few years (typically the next 3 years) that may affect the application of the provisions in Articles 102 to 115 of the EECC, those NRAs expect it to arise mostly in respect to the following provisions that may require adaptation of the EECC rules in the coming years (see Annex 1):

- notifications and or alerts to end-users as “additional facilities” (Article 115 – Annex VI);
- contractual information (Article 102);
- contract summary (Article 102);
- independent comparison tools (Article 103);
- “bill shock”, outside of roaming or international calling charges (Article 115 – Annex VI).

The Eurobarometer survey on E-communications in the EU, published in June 2021, also highlighted some of these trends. In particular, the Eurobarometer survey has identified the market trend that the use of bundles has further increased among the survey respondents compared to the previous round of the survey in 2017: the share of households that have subscribed to various services as part of a bundle has increased from 59% to 63%. While bundles may imply advantages for end-users in terms of price (lower prices than buying the products separately) and convenience (e.g., one-stop-shop; single billing), they may also bring some challenges. For instance, comparison of heterogeneous products in order to make informed choices becomes more complex. Also, the procedure for the switching of providers of bundles requires increased coordination to ensure that all services are smoothly transferred. Among the respondents to the Eurobarometer survey, 59% indicated that they have switched their bundle service provider in the last five years, while 40% indicated that they have never switched (this number has decreased by 9% since the last survey round in 2017). The majority of respondents did not experience any problems in the switching process, but 41% indicated at least one problem (this marks a significant decrease of 14% compared to the survey round in 2017). The most common problems during switching were the temporary loss of the service of one day or more and the need to wait for a number of days until all services worked properly.

BEREC notes that the EECC introduces new provisions regarding switching of providers and bundled offers. Nevertheless, due to the delayed transposition in most Member States, the effectiveness of these measures in practice to facilitate switching of bundled products and tackle transparency concerns in this regard has not been sufficiently tested yet. Therefore, ongoing monitoring of the market and the impact of the national implementation of the EECC remains important.

Responses to the Eurobarometer survey have also indicated that 13% of respondents have received fraudulent phone calls which have resulted in extra charges to them after answering them or calling them back. Similarly, 12% of respondents reported that they have received unsolicited messages on their mobile which has resulted in extra charges to them. These statistics support the conclusions drawn from the input of the NRA's and indicate that the issue of fraudulent and unsolicited calls and messages deserves further monitoring also from BEREC.

BEREC notes that the EECC contains new provisions aimed at increasing billing transparency, especially for premium rate services. Due to delayed national transposition, the effectiveness of these measures cannot be fully established at the present time, however identified problems concerning fraudulent calls and unsolicited messages should be closely monitored in order to assess whether specific action is warranted.

Preliminary conclusions

BEREC does not consider likely that market and technological developments over a three-year time horizon will impact on the application of end-user rights established by Title III of Part III or that such developments point to a significant risk of the objectives of Article 3 of the EECC not being met. Nonetheless, given the limited experience of the application of Title III of Part III and the dynamic nature of some of the market developments that have been identified, there is potential for significant change in this area within that time period. Therefore, BEREC considers the continued monitoring of market and technology trends to be important.

3.2 Informed choice, completeness of contractual information and switching

The review procedure on end-user rights established under Article 123 of the EECC tasks BEREC with analysing every three years how Title III of Part III of the EECC meets the general objectives of the regulatory framework set out in Article 3, taking into account the type of services covered within the scope of the current provisions.

In particular, Article 123 explicitly requires that this assessment includes an analysis of the ability of end-users of all ECS to make free and informed choices, including on the basis of complete contractual information; of whether end-users are able to easily switch their provider of ECS and the impact of any lack of such abilities in terms of market distortions or end-user harm.

The main provisions in the EECC aiming to ensure informed choices, the completeness of contractual information, and the ease of switching, for end-users, are contained in Articles 102 to 107 and include detailed rules regarding:

- transparency obligations before the consumer is bound by a contract (Article 102(1));
- information requirements for contracts with the end-users (Article 102(3));
- contract summary template (Article 102(3));

- facilities to allow consumers monitoring and control usage of services (Article 102(5)) as well as quality of service (Article 104);
- publication of information and comparison tools (Article 103);
- contract duration and termination (Article 105);
- switching of provider including number portability (Article 106);
- rules applicable to bundles (Article 107).

The type of services in the scope of these provisions varies. The same goes for the end-users concerned (i.e., some apply only to consumers, others to consumers, microenterprises and small enterprises as well as not-for-profit organisations, and others to all end-users).

End-users' complaints

As mentioned under section 2, BEREC gathered evidence on the evolution of the markets and the functioning of sectoral end-users' rights by means of a targeted request for information to NRAs. Where necessary, the NRAs in turn collected information from other competent authorities ("OCAs").¹⁰

In this request for information NRAs were asked to indicate the issues that raised most recurring complaints from end-users. Consumer complaints can be a useful input to measuring consumer detriment. However, evidence would suggest that complaints to consumer bodies, including NRAs, may account only for a small proportion of those who have encountered a particular problem¹¹ and therefore problems identified from this source may be more prevalent than the data indicates. Complaints were most common in the following categories: contract duration and termination, quality of service, unwanted premium rate services billing, switching and number portability.

BEREC discusses these matters in other sections of this report as well as in other ad hoc documents such as the BEREC report on the handling of third party payment charges on mobile phone bills - BoR (21) 118. This report provides a useful benchmark and insight into how Member States currently handle third party payment charges on mobile phone bills and what protections are available to end-users. The same exercise will be considered for inclusion in the BEREC Work Programme in 2023.

Developments regarding transparency and contractual information

BEREC inquired of NRAs about the impact of market and technological developments on the specific provisions of the EEC regarding transparency and contractual information. The

¹⁰ See Article 13 of Regulation (EU) 2018/1971:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1971&from=EN>

¹¹ See: Measuring Consumer Detriment And the Impact of Consumer Policy, Feasibility Study, OECD Digital Economy Papers, April 2020, No. 293, at page 12.
<https://www.oecd.org/digital/measuring-consumer-detriment-and-the-impact-of-consumer-policy-0c2e643b-en.htm>

results show that, in general, most respondents shared the view that there have been very few technological developments since 2018 which have had an impact on the effectiveness and proportionality of EECC provisions aiming to ensure end-users can make informed choices (see Annex 1).

Nevertheless, such results are to be considered in light of the lack of transposition of the EECC in the majority of Member States and the limited experience in the application of the new provisions in those countries where it has been transposed.

BEREC has taken into consideration the limited experience in the application of the EECC and the three years periodicity of the review procedure on end-user rights established under Article 123 of the EECC and asked, with a forward-looking approach, about the expected market and technological developments in the period 2021-2024 that may affect the application of the provisions regarding transparency and contractual information in the EECC.

Those who expect changes in the coming years listed the main developments that will likely impact on retail services in their countries.

Several respondents expect that the new provisions regarding publication of information, comparison tools,¹² the contract summary template and quality of service, will increase the transparency and scope of information for end-users in a positive manner. However, one NRA also indicated that the new obligation in the EECC of email forwarding or access to emails after termination of an internet access service (“IAS”) contract may raise issues as it observed that some IAS providers had stopped providing email services before the EECC had been fully transposed.

Several respondents shared their concerns regarding fraud, unwanted premium rate services¹³ and third party billing and suggest different solutions to cope with these issues, such as obliging operators to pay the damage back to end-users where there is abuse proven regarding unwanted premium rate services, or deactivating third party billing by default instead of just allowing the possibility of deactivation as foreseen in the EECC (Annex VI (h)).

Another issue identified, which is also related to premium rated content, was the increase in use of NI-ICS for the provision of such content based on Direct Carrier Billing and possibly other models, thus being an evolution of the provision of premium rate services from premium numbers and SMS. It is suggested that evaluation is carried out in 2023 and beyond as to whether Member States have the adequate tools at their disposal to address this matter.

¹² This is something that has also been identified as having a consumer benefit elsewhere: <https://www.oecd.org/digital/measuring-consumer-detriment-and-the-impact-of-consumer-policy-0c2e643b-en.htm> (at page 28).

¹³ This was an issue identified also by one stakeholder as part of the informal stakeholder engagement by BEREC. The stakeholder noted continued consumer harm and confusion around premium rate services (“PRS”), submitting that there should be clearer procedures on how consumers are to deal with charges imposed on them without request and that the burden of proof should be on the operator or PRS provider to establish such charges were properly imposed.

An increasing trend of fraud traffic based on installation of malicious software and applications from application stores was identified by one respondent. It called for an effective solution and provisions to address this matter considering also international fraud traffic.

One respondent expressed the view that over the next three years offers that provide for unlimited voice or data volumes will grow considerably and specific transparency measures regarding the fair use policies linked to those offers should be developed. Another development identified was the more widespread use of apps and in-app notifications.

With regard to the European Commission Implementing Decision on the Contract Summary,¹⁴ one NRA suggested adapting it to SME users to better take account of the reality of value added tax for such users.

Finally, one respondent raised a number of concerns regarding the potential for different approaches to be taken by countries or NRAs with regard to aspects of the EECC that were considered insufficiently prescriptive. It recommended further consideration and possible development of BEREC guidelines to ensure the consistent application of the EECC regarding the following matters:

- best tariff advice and information, and the approach to be taken to its content, timing and format;
- pre-pay credit refunds – individual contractual terms had the potential to greatly affect the implementation of this provision in practice;
- contract summary – the timing, formatting and accessibility requirements were insufficiently precise and left potential for unhelpful variations of approach;¹⁵
- bundles – the definition of bundle, the potential for ‘regulatory clash’ across sectors, and potential confusion for end-users (through issues such as linked contracts and differing contractual terms and time periods being applicable to different bundle elements);
- contract change notifications (Article 105(4)) – it is not mandated that in all cases notification periods and termination periods must run in parallel and be coterminous;
- the right to port a number after cessation of the contract – an extended period, beyond the one month minimum (Article 106(3)), could be necessary and appropriate in the interests of end-user protection.

¹⁴ Regulation (EU) 2019/2243

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2243&from=EN>

¹⁵ The limitations of the contract summary were identified by one stakeholder in the context of the informal stakeholder engagement by BEREC. The ability to go beyond a single page where “duly justified”, to reduce the font size “in duly justified circumstances” and the ability for providers to choose their own font type and colour were all identified as shortcomings problems with the ability for consumers to compare bundles through their use of contract summaries were also foreseen.

Conclusions regarding transparency and contractual information

BEREC is of the view that the provisions around transparency and contractual information should have a positive impact for end-users and aid the development of the retail market. The contract summary and increasing use of comparison tools are expected to be of particular benefit. As stated, there is limited experience of the application of these provisions to date; however, the responses received to the questionnaire identify a number of issues that will require careful monitoring based on reported trends and concerns already identified by NRAs and in particular, issues related to premium rate services, direct carrier billing, fraud traffic, email forwarding and the implementation of the contract summary requirements. It was also underlined that some implementation concerns may be addressed by means of BEREC guidelines which would not require a legislative update.

Developments regarding contract duration and termination and provider switching***Past and future developments that may impact contract duration and termination and provider switching***

As in the case of the provisions regarding transparency and contractual information, BEREC inquired of NRAs regarding the impact of market and technological developments on the specific provisions of the EECC on contract duration and termination and provider switching.

Developments since 2018

Most respondents did not identify any market or technological developments since 2018 that may have an impact on the effectiveness or proportionality of the provisions concerning contract duration and termination and provider switching and number portability. The small number of developments that were identified concerned the issues of contract duration, eSIM and bundles.

Different views were expressed on the changes to the provisions around the maximum contract duration made by the EECC. While 24 months remains the upper limit, there is no longer the possibility to have more than one upper limit for different scenarios. This issue was raised as a concern by two respondents, whereas a third identified a move away from contractual commitment periods in general in that Member State.

The potential for eSIM to impact switching was raised by two respondents. One expressed a concern that manufacturers of equipment such as smartphones, tablets and other devices could restrict their usage to profiles associated with a specific mobile communications provider or a limited set of such providers. This had the potential to adversely affect the ability of an end-user to switch provider, the respondent said.

Future developments

When asked about future developments, one respondent identified market and technological developments that may impact in this context as including bundles¹⁶ (in particular linked contracts), and developments in the market (offering eSIMs, over-the-air provisioning as well as new terminal equipment/applications¹⁷ and any associated locking practices). Consumer behavioural biases were also identified as having the potential to impact the degree to which information is sufficient and understood. The impact of these trends on end-user rights (positively and negatively) was not yet possible to determine, however. The introduction of the eSIM was referenced by another NRA who stated that this may have the potential to hinder the switching of providers, as manufacturers of smartphones, tablets, wearables (e.g., smartwatches), and M2M/IoT devices (e.g., including those in cars) have the possibility of only allowing profiles from a specific mobile communications provider or a limited set of mobile communications providers.

Suggestions for improvement for contract duration and termination and provider switching

Some respondents made suggestions for improvement with respect to the rules regarding provider switching.

One respondent recommended the introduction of the portability validation code (“PVC”) to speed up the process of switching operator while keeping the same phone number and enabling a reduction in rejected portability requests. Another suggestion was for greater flexibility regarding the recipient led switching process in case of large enterprises who were said to be capable of managing their IAS switch by themselves. This was linked to the necessity to give end-users that are enterprises or not-for-profit organisations more flexibility to waive all or part of the switching provisions when the IAS is offered on a stand-alone basis.

The benefit of providing annual best tariff information to all end-users, and in particular to business customers with bespoke contracts, was also queried.

One respondent suggested that it should be possible for bundles to be able to be divided into single services in order to switch partially or terminate one service. There was a further expressed concern regarding the need to align the notification period required under the contract change provisions and the period in which the separate end-user right of exit applies.

¹⁶ As part of the informal stakeholder engagement, one stakeholder identified a general trend of switching and porting difficulties in the case of bundled offers, particularly in respect of IAS. It stated that there can be a lack of clarity among end-users regarding the switching process and as to which operator is responsible. Long commitment periods, switching costs/penalties and ‘lock-in’ effects were all identified as barriers to changing provider.

¹⁷ One stakeholder, in its submission as part of informal stakeholder engagement, identified dependency by end-users on IAS providers’ own terminal equipment could disincentivise switching of provider (particularly in the case of bundled contracts), or hinder legitimate termination of contracts.

As it was one of the issues pointed out by stakeholders, BEREC asked about possible additional rules regarding the communication channels with the end-user for switching. In this regard, most respondents stated that the EECC will adequately address this issue and no other communication channel is needed regarding switching procedures, including number portability, for the provisions of information and cancellation of the procedure.

Only four respondents thought that the EECC should include additional rules about the communications channels with the end-user regarding switching procedures, including number portability, for the provisions of information and cancellation of the procedure. Two of the four responses were to the effect that the EECC allowed NRAs to specify channels of communication in the context of establishing the details of the switching and porting processes in accordance with Article 106(6). Another respondent said that it should be possible for end-users to communicate with providers in person, and not simply by phone and electronic means.

With regard to switching of bundled products, most respondents did not see a need for switching rules to be developed and adapted to the switching of bundles. Among those who did see such a need however, a common theme was expected difficulties for end-users seeking to switch only part of their bundle. One respondent suggested that specific “opt-out” procedures should be put in place to deal with this. Another suggested that bundles should be able to be divided into single services in order to effect a partial switch or termination (out of a bundle). Another respondent cited “commercial or market complexities” in the form of linked or dependent contracts, as well as the possibility for regulatory clash given the absence of a definition in the EECC of what a bundle is.

Only two respondents considered a need for switching rules in relation to business users to be further developed or adapted. One referenced the need to adapt rules to the specific case of bulk switching. Another highlighted the fact that there is no obligation in the EECC for offers without “loyalty periods” to be available in the market.

Most respondents did not think that specific rules or guidelines were needed for over-the-air (“OTA”) provisioning. Of those who did, one referenced Article 93(6) as the source of ambiguity regarding OTA provisioning and another found the use of OTA provisioning to be a misleading description, as OTA did not transfer the phone number, which had to be moved to the new provider later on in the porting process. One NRA said that the introduction of eSIM has the potential to hinder the switching of provider, as manufacturers of smartphones, tablets, wearables (e.g., smartwatches), and M2M/IoT devices (e.g., including those in cars) have the possibility of only allowing profiles from a specific mobile communications provider or a limited set of mobile communications providers.

Compensation rules regarding contract duration and termination and provider switching

BEREC notes that there seem to be significant differences in the approach of Member States to the implementation of the compensation scheme foreseen in Article 106(8) of the EECC. The full assessment of these divergences will only be possible after transposition is completed in all Member States.

With regard to the level of end-user compensation, almost one third of responses were to the effect that national rules specify the level in some cases, while the same amount stated that their rules specify the level of compensation in all cases. A similar number of respondents said that this provision had not yet been transposed in their country. A small number of respondents said that the level of compensation was not specified in any case. In the majority of countries where the compensation requirements have been implemented, an application is required before compensation is paid to an end-user. In most cases there is no time period established in the law within which compensation is to be paid nor are the means by which compensation is to be paid specified.

Request for further guidance regarding contract duration and termination and provider switching

Regarding whether NRAs require further specification or guidance on the enforcement of certain areas, three respondents signalled that further guidance would be required on retaining the right to port a number for a minimum period of one month. Five respondents cited the need for further guidelines on email forwarding or access to email after termination of their contract. Thirteen respondents sought specification on penalties and compensation while eight stated that there was no need for further guidance on these topics. Four respondents considered that further specification would be necessary on other areas.

Issues requiring further specification or guidance for its enforcement

Two respondents considered that provisions in the EECC regarding contract duration and termination and provider switching seem sufficient, although some respondents referred to the fact that it has not been implemented yet. One respondent also considered that the above provisions should be regulated by NRAs based on national specificities. Another respondent observed that email forwarding or access to email after termination of the contract is not yet implemented in the recipient led switching processes, but that this issue requires enforcement. One respondent also noted that as compensation was not paid frequently, a recommendation had been made to the relevant Telecoms Minister to change the regulation in such a way that compensation is paid automatically by operators.

Conclusions regarding contract duration and termination and provider switching

BEREC considers that there is no need at the present time to introduce amendments in the provisions concerning contract duration and termination and provider switching and number portability. Nevertheless, BEREC suggests that NRAs follow closely issues regarding contract duration, eSIM, email forwarding and bundles and how the EECC, once transposed, is able to address any emerging or application issue that might arise regarding these matters. BEREC will also analyse the possibility of exchanging knowledge and best practices regarding compensation and penalty rules.

3.3 Effective access to emergency services

Article 123 of the EECC also requires BEREC to analyse to what extent effective access to emergency services is appreciably threatened, in particular due to an increased use of

number-independent interpersonal communications services, by a lack of interoperability or technological developments.

The EECC refers to emergency services in its Article 109. This provision requires the European Commission to issue a report every two years on the effectiveness of the implementation of the single European emergency number '112'. The first of these reports¹⁸ was published in December 2020 and signals as areas for improvement the implementation of handset-based location, access to emergency services when roaming within the EU and access by end-users living with disabilities.

In addition, Article 109(8) foresees the adoption of delegated acts on the measures necessary to ensure the compatibility, interoperability, quality, reliability and continuity of emergency communications in the Union with regard to caller location information solutions, access for end-users with disabilities and routing to the most appropriate Public Safety Answering Point (PSAP). The first such delegated act shall be adopted by 21 December 2022, after consulting BEREC. In this context, BEREC will deliver an Opinion focused on these matters in the coming months.

In view of the outcomes of the questionnaire circulated to NRAs, BEREC notes that NRAs (more than 85%) in general reported that end-users have free access to emergency services via the single European emergency number and their emergency traffic is routed to the most appropriate PSAP together with their location information.

It was mentioned by some NRAs that some IP-based services are not fully compliant with the obligation to provide free access to emergency services. Other IP-based voice services which are number-independent (i.e., not number-based) do not even provide access to emergency services. Furthermore, the EECC does not require NI-ICS to provide access to emergency services.

Where some NRAs mentioned less effective access to emergency services due to not routing it to the most appropriate PSAP, it was mentioned that in the case of Voice over IP (VoIP) services using Session Initiation Protocol (SIP)-servers, there are technical issues to reach the most appropriate PSAP. Some examples were mentioned:

- A user of a VoIP service is located in Country A while the SIP-server is located in Country B. 112 traffic then gets first routed to a PSAP in country A. The provider of the SIP-server in Country A does not have access to the PSAP in Country B. The PSAP in Country A must route the traffic to a PSAP in Country B.
- IP-based number-based service providers state they are not able to route correctly due to insufficient knowledge of the network topology of the underlying networks transporting the emergency communication service. Service providers argue the reason is technological.

¹⁸ https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=72412

- Nomadic services are the main source of concern. The nomadic VoIP may have difficulties identifying the most appropriate PSAP (the home, or next to the caller's current location).

Where technical reasons are mentioned, BEREC thinks it possible that these could also arise from a lack of collaboration / information sharing amongst all the parties involved in the setting up and routing of the electronic communication.

Finally, some NRAs mentioned that the location information is not delivered correctly to the emergency services.¹⁹

Conclusions regarding effective access to emergency services

BEREC notes that the provisions regarding emergency services in the EECC have not been fully developed yet as the delegated act in this matter is due in December 2022. In this regard and taking into consideration the transposition status, BEREC considers that there is no need at the present time to introduce amendments in the provisions concerning effective access to emergency services. Nevertheless, BEREC suggests that the European Commission (which is currently working on the delegated act for accessibility to emergency services), takes into account the aforementioned problems concerning VoIP-based services which use international SIP-servers or are nomadic in nature. BEREC highlights the importance of continued monitoring of the accessibility of emergency services. These preliminary conclusions do not pre-empt the analysis to be delivered in the 2022 BEREC Opinion in the context of the elaboration of the delegated act.

3.4 Equivalent access and choice for end-users with disabilities

The main provisions in the EECC under the Title III on end-user rights aiming at ensuring equivalent access and choice for end-users with disabilities are:

- Article 111(1)(a) on equivalent access to electronic communications services;
- Article 111(1)(a) on equivalent access to contractual information pursuant to Article 102(1);
- Article 111(1)(a) on equivalent access to contract summary templates pursuant to Article 102(3);
- Article 111(1)(a) on equivalent access to a facility to monitor and control the usage of services pursuant to Article 102(5);

¹⁹ Report from the Commission to the European Parliament and the Council on the effectiveness of the implementation of the single European emergency number '112'
[https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2020/0808/COM_COM\(2020\)0808_EN.pdf](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2020/0808/COM_COM(2020)0808_EN.pdf)

- Article 102(1) on accessible format of contract information;
- Article 103(1) on equivalent access to information, which has to be published by service providers for transparency reasons;
- Article 104(1) on equivalent access to quality of service information in case it has to be published by service providers;
- Article 109(5) on equivalent access to emergency-services;
- Article 111(1)(b) on the choice of undertakings and services available for end-users with disabilities;
- Article 111(2) on encouraging compliance with the relevant standards or specifications laid down in accordance with Article 39.

Past and future developments that may have an impact on equivalent access and choice of end-users with disabilities

Developments since 2018

Most NRAs consider that there have not been any market and technological developments since 2018 that may have had an impact on the effectiveness or proportionality of the provisions concerning equivalent access and choice for end-users with disabilities, or they are not in a position to assess this question at this stage, or they are not the competent authority for this in their country and have not been able to obtain an assessment from the competent authority.

Of those NRAs who responded that there had been developments in the past, one NRA replied that COVID-19 developments and market trends increased reliance on electronic communications as well as reliance on electronic communications as an enabler to access social services (e.g., telehealth).²⁰ Another NRA noted that video calling and conferencing have become much more widely used. One NRA mentioned a governmental initiative creating an app for deaf citizens in their country. Another NRA reported that in recent years there had been a joint initiative from the NRA and providers in their country to ensure the availability of emergency calls for users with hearing impairments and that now that specific emergency call services is available from all networks. One NRA mentioned the use of zero-rated apps and access via SMS 113 emergency services for hearing and speaking impaired persons in their country, and another NRA mentioned the access to 112 by SMS.

Future developments

²⁰ This aspect was also raised during the informal early stakeholder engagement. Two stakeholders pointed out that the most significant technological development since 2018 has been hyper-digitalisation of all aspects of life (work, education, public, private engagement, consumption, health, etc.) due to COVID-19 since the beginning of 2020. This had highlighted the importance of accessibility of digital technologies, including electronic communications services and the necessity of effective transposition and implementation of EU accessibility laws and standards, such as the EECC, European Accessibility Act, or EN301549.

Most NRAs do not expect any market and technological developments in the next few years that may affect the application of the EECC provisions regarding equivalent access and choice for end-users with disabilities and that may require an adjustment of the respective articles in the coming years, or they are not in a position to assess this question at this stage, or they are not the competent authority for this in their country and have not been able to obtain an assessment from the competent authority.

Among the developments that two NRAs expect in the next years are the already mentioned increased reliance on electronic communications as well as reliance on electronic communications as an enabler to access social services (e.g. telehealth that is also considered to be a major future trend), the demographic changes resulting in an ageing population, advances in technology such as screen readers, specific applications like sign language applications and advances in terminal equipment and devices, voice command interfaces and voice to text to voice translation becoming both more widespread and more powerful, thus opening further opportunities. Another NRA reported that it is planned to integrate NG112 (Next Generation Emergency Calling) in all police PSAPs in their country starting with the integration of the emergency service for users with hearing impairments.

One NRA also pointed to other accessibility legislation, like the Web Accessibility Directive²¹ and the European Accessibility Act²² which they expect to have an impact on future developments as well.²³

Suggestions for improvement regarding equivalent access and choice for end-users with disabilities

Only two NRAs had suggestions for improvement with respect to equivalent access and choice for end-users with disabilities. One NRA is of the opinion that Article 111 should be addressed only to consumers – not to end-users – with disabilities. Furthermore, it should be specified which groups of disabilities should be considered (i.e., blindness, motor or cognitive disabilities, deafness) in order to identify those consumers who can benefit from the measures. Another NRA suggested that provisions on end-users with disability should be correlated in such a way as to ensure the same standards, requirements and guidelines regardless of the entity that provides the service or makes the product available.

Forms of communication that are in scope

Among the forms of communication included in the provisions concerning equivalent access and choice for end-users with disabilities, some NRAs mentioned SMS, real time text, total conversation and/or (text) relay services, video calls, apps, telephony, voice mail, voice

²¹ Directive (EU) 2016/2102, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L2102&from=EN>

²² Directive (EU) 2019/882, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0882&from=EN>

²³ Two stakeholders also pointed to the fact that legislation supporting accessibility of digital services and products, namely the European Accessibility Act, will apply from 2025 and some aspects, such as in relation to accessibility requirements for answering to the single European emergency number '112' by PSAPs, from 2027. They call for strong consistency between relevant EU accessibility legislation.

recognition and one responded that contracts and bills have to be available in Braille or electronic format appropriate to the reasonable needs of the customer.

Other NRAs did not indicate any of the mentioned services, either because there is none in scope at the moment, the EECC is not yet transposed or because only a general obligation of equal access is in place, but it is not specified by which service this is to be achieved.

The transposition of the EECC requires the immediate provision of such services for some NRAs, whereas for the majority of NRAs the transposition will result in an initial consultative process.

Conclusions regarding equivalent access and choice for end-users with disabilities

The very recent and therefore limited experience with the new regulatory framework makes it difficult to provide an answer to the question of what impact market and technological developments might have on the application of the provisions regarding equivalent access and choice for end-users with disabilities in Title III of Part III of the EECC.

It should be kept in mind that other accessibility legislation, like the Web Accessibility Directive²⁴ and the European Accessibility Act²⁵ will also have an impact on future developments and may also affect the application of the EECC provisions concerning equivalent access and choice for end-users with disabilities in the coming years.

3.5 The effect of full harmonisation on existing end-user protections

A new feature in the EECC is the introduction of a clause imposing (as a principle) the full harmonisation of national end-user protection provisions in the electronic communications sector (Article 101(1) of the EECC²⁶). This approach follows the one adopted by the Directive 2011/83/EU on consumer rights.²⁷

In response to a question designed for this purpose,²⁸ the majority of NRAs stated there are no end-user protection provisions adopted under the former regulatory framework that are not compatible with those laid down in Articles 102 to 115 of the EECC. In countries where

²⁴ Directive (EU) 2016/2102, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L2102&from=EN>

²⁵ Directive (EU) 2019/882, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0882&from=EN>

²⁶ Article 101(1) EECC states: ““Member States shall not maintain or introduce in their national law end-user protection provisions diverging from Articles 102 to 115, including more, or less, stringent provisions to ensure a different level of protection, unless otherwise provided for in this Title.”

²⁷ See article 4 of Directive 2011/83/EU.

²⁸ That question was designed because (in its response to the early call for input) a stakeholder suggested BEREC should analyse when and how consumer rights may have been diminished as a result of the transposition of the EECC and whether Member States are using those provisions of Title III that permit Member States to introduce or maintain further end-user protections.

there are more stringent regulations, these mainly concern information requirements for contracts and contract duration and termination.

As is the case for the answer to other questions referenced above, the absence of full transposition of the EECC in all Member States makes it difficult to provide a definitive answer to the question of what effect the harmonisation principle has had on end-user protection as compared to the former regulatory framework.

It could be appropriate to analyse this topic again the next time BEREC delivers an opinion based on Article 123 of the EECC.

4 Conclusions

In general, BEREC does not consider likely that market and technological developments over a three-year time horizon will impact on the application of end-user rights established by Title III of Part III or that such developments point to a significant risk of the objectives of Article 3 of the EECC not being met. Nonetheless, given the limited experience of the application of Title III of Part III and the dynamic nature of some of the market developments that have been identified, there is potential for significant change in this area within that time period. Therefore, BEREC considers the continued monitoring of market and technology trends to be important. Furthermore, BEREC deems it appropriate to analyse again the effect of full harmonisation on existing end-user protections the next time BEREC delivers an opinion based on Article 123 of the EECC.

Transparency and contractual information

BEREC is of the view that the provisions around transparency and contractual information should have a positive impact for end-users and aid the development of the retail market. The contract summary and increasing use of comparison tools are expected to be of particular benefit. As stated, there is limited experience of the application of these provisions to date however the responses received to the questionnaire identify a number of issues that will require careful monitoring based on reported trends and concerns already identified by NRAs and in particular, issues related to premium rate services, direct carrier billing, fraud traffic, email forwarding and the implementation of the contract summary requirements. It was also underlined that some implementation concerns may be addressed by means of BEREC guidelines which would not require a legislative update.

Contract duration and termination and provider switching

BEREC considers that there is no need at the present time to introduce amendments in the provisions concerning contract duration and termination and provider switching and number portability. Nevertheless, BEREC suggests that NRAs follow closely issues regarding contract duration, eSIM, email forwarding and bundles and how the EECC, once transposed, is able to address any emerging or application issue that might arise regarding these matters. BEREC will also analyse the possibility of exchanging knowledge and best practices regarding compensation and penalty rules.

Effective access to emergency services

BEREC notes that the provisions regarding emergency services in the EECC have not been fully developed yet as the delegated act in this matter is due in December 2022. In this regard and taking into consideration the transposition status, BEREC considers that there is no need at the present time to introduce amendments in the provisions concerning effective access to emergency services. Nevertheless, BEREC suggests that the European Commission (which is currently working on the delegated act for accessibility to emergency services), takes into account the aforementioned problems concerning VoIP-based services which use international SIP-servers or are nomadic in nature. BEREC considers the continued monitoring of the accessibility of emergency services to be important. These preliminary conclusions do not pre-empt the analysis to be delivered in the 2022 BEREC Opinion in the context of the elaboration of the delegated act.

Equivalent access and choice for end-users with disabilities

The very recent and therefore limited experience with the new regulatory framework makes it difficult to provide an answer to the question of what impact market and technological developments might have on the application of the provisions regarding equivalent access and choice for end-users with disabilities in Title III of Part III of the EECC.

It should be kept in mind that other accessibility legislation, like the Web Accessibility Directive²⁹ and the European Accessibility Act³⁰ will also have an impact on future developments and may also affect the application of the EECC provisions concerning equivalent access and choice for end-users with disabilities in the coming years.

²⁹ Directive (EU) 2016/2102,
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L2102&from=EN>

³⁰ Directive (EU) 2019/882,
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0882&from=EN>

Annex 1: Questionnaire on the review of end-users' rights – main findings

On 11th of August BEREC sent through BEREC NET an on-line questionnaire aimed at collecting relevant information on the market and technological developments and on their impact on the application of rights of end-users in the EECC.³¹ The questionnaire addressed the following issues:

- the most important past (since 2018) and future (up to 2024) market and technological developments that impact the end-user rights established in Title III of Part III of the EECC;
- the status of transposition of the EECC with regards to the provisions contained in Title III of Part III;
- the relevance - as measured by the number of complaints - of the different consumer protection issues addressed by the provisions of Title III of Part III;
- some specific issues that according to Article 123 of the EECC should form the basis of the Opinion and others emerged from stakeholders' input.

The questionnaire includes a set of general questions which aims at gathering general information on the impact of market and technological development on end-users rights and a set of specific questions which are meant to gather specific information on NRAs experiences with regard to the application/implementation of each article of the end-user provisions contained in Title III of Part III of the EECC.

The following section summarize the main findings derived from the answers to the general set of questions and to the set of specific questions.

General questions - results

Almost all NRAs have singled out as the most important market and technological developments since 2018, 1) the continued growth and importance of data-usage in mobile communications and 2) the significant increase of demand for connectivity and well-functioning high-capacity internet connections.

Most important market and technological developments relating to the end-user rights established in Articles 102 to 115 of the EECC	NRA
Continued growth and importance of data-usage in mobile	21

³¹ BEREC received responses from 28 NRAs (ACM, AEC, AGCOM, AKOS, ANACOM, ANCOM, ARCEP, BIPT, BNetzA, CNMC, COMREG, CRC, CTU, DBA, EETT, HAKOM, ILR, MCA, Nkom, NMHH, OCECPR, PTS, RRT, RTR, RÚ, SPRK, TRAFICOM, UKE).

communications	
Significant increase of demand for connectivity and well-functioning high-capacity internet connections (in general)	19
Electronic Communication Services are more and more provided in the form of bundles	14
Impact of the COVID-19 crisis in the sector	14
Rising popularity of streaming TV services	13
Significant increase of demand for connectivity and well-functioning high-capacity internet connections (as a result of the Covid-19 pandemic)	13
Better performing technologies both on fixed and mobile networks have continued to develop	12
Significant increase of fraudulent or (at least) disturbing and suspect calls	11
Significant increase of fraudulent or (at least) disturbing and suspect messages	11
Growth of usage of services previously defined by BEREC as OTT-2 services	8
Significant increase of the usage of Number Independent-ICS services	6
Roll-out of e-sim	6
The awareness of carbon footprint has significantly increased	2
None of the above	2
Hyper-digitalisation and growing importance of artificial intelligence solutions and systems	2
Other	1

Furthermore, most NRAs (79%) do not expect that in the next few years there will be market and technological developments that will likely impact the application of end-user rights or that may put at risk the achievement of the general objectives of Article 3 on end-user rights.

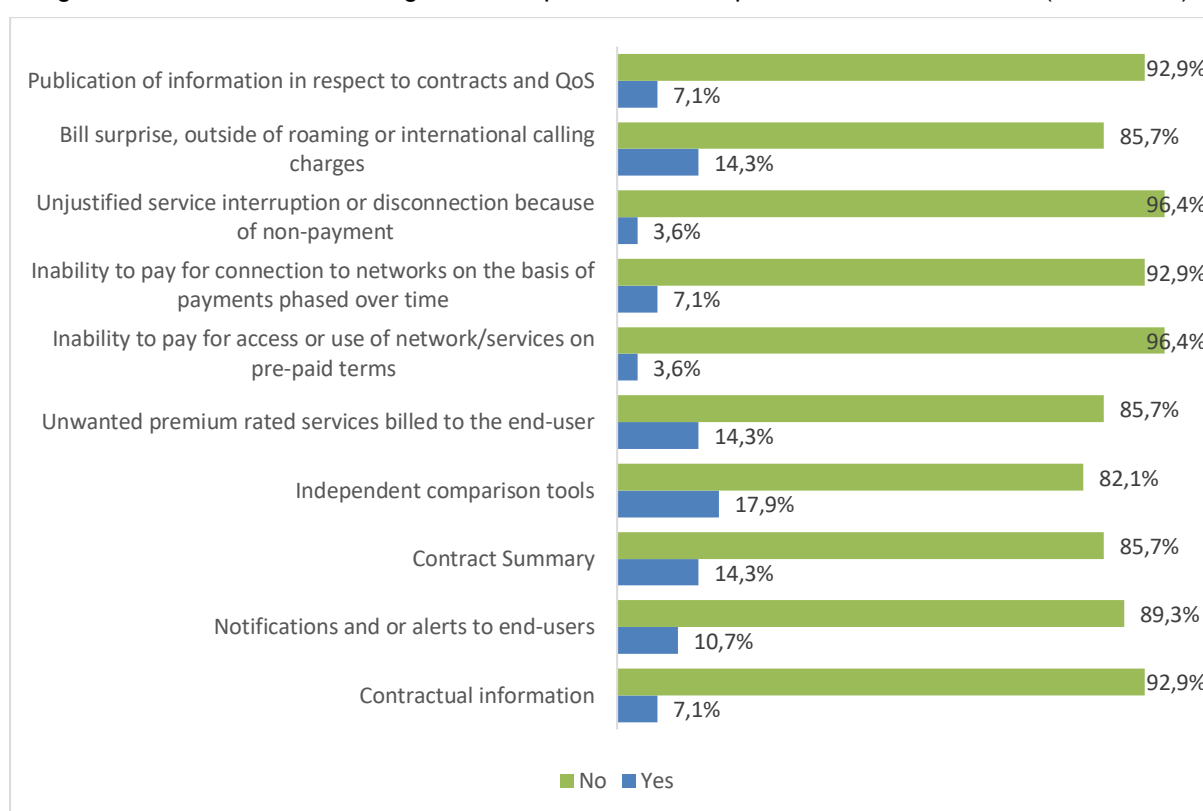
As for the national provisions and their degree of compliance with end-user rights, it is worth noting that 18 countries have in place national provisions that are partially or fully in line with Title III of Part III of the ECCC. The measures that are fully in line with end-users provisions mainly concern (pre)contractual information (Article 102(1)), notifications and or alerts to end-users (Article 102(5)), notice period to terminate the contract (Article 105(3)), free

access to emergency services through emergency communications and the single European emergency number (Article 109(1)), equivalent access to electronic communications services (Article 111(1)).

Other major issues pointed out by respondents include quality of service, contract duration and termination, unrequired premium rate services billed to end-users, incomplete (pre) contractual information and receipt of anonymous, suspect or nuisance calls.

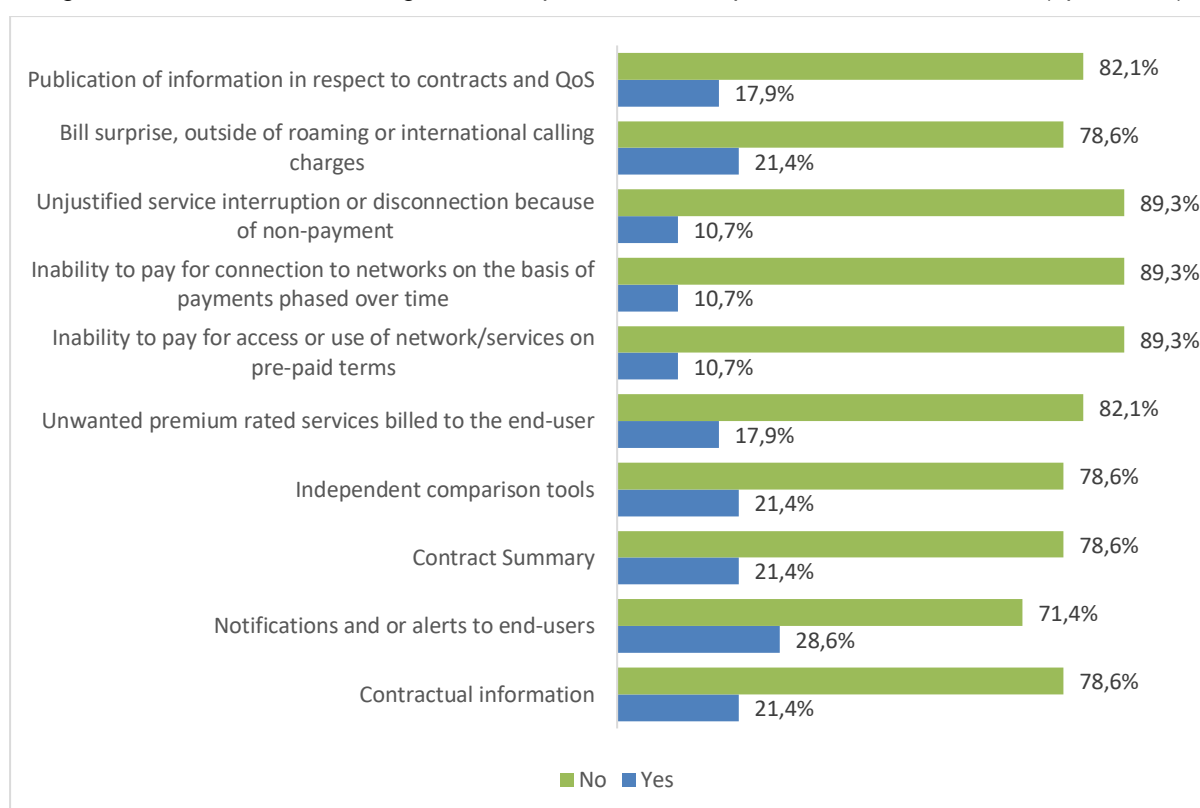
Most NRAs declared that, in recent past, there were no market and technological developments that impacted on the effectiveness or proportionality of the provisions in relation to most of the issues set out in Figure 1 on the possibility for end-users to make informed choices.

Figure 1 – Market and technological developments and adaptation of the EECC rules (since 2018)



Again, most NRAs consider that for the next three years there will be no technological and market developments able to affect the application of the provisions in respect to the issues reported in Figure 2 and that may require revision of EECC rules.

Figure 2 - Market and technological developments and adaptation of the EECC rules (up to 2024)



Specific questions - results

Contract duration and termination and provider switching (Art. 105-106 EECC)

Most NRAs (79%) consider that there haven't been any market and technological developments since 2018 that may have an impact on the effectiveness or proportionality of the provisions concerning contract duration and termination, provider switching and number portability. Similarly, almost 90% of NRAs do not expect any market and technological developments that may affect the application of the above provisions and that may require an adjustment of the EECC rules in the coming years.

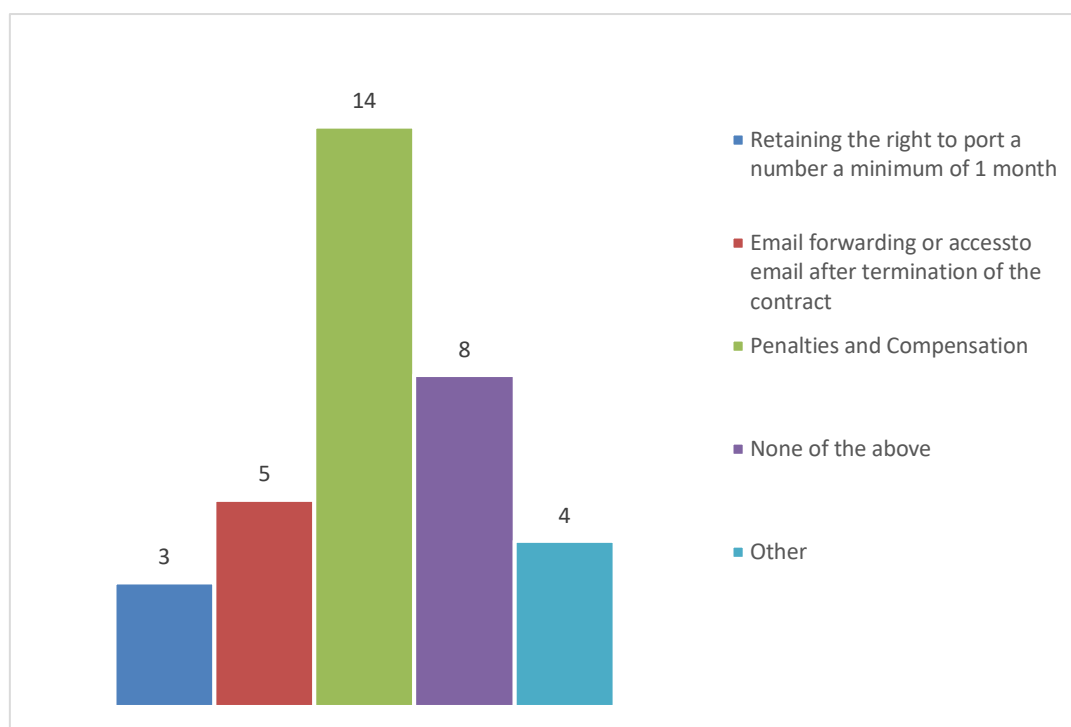
Furthermore, 85% of NRAs consider that the EECC should not include additional rules about communication channels with end-users, in particular concerning switching procedures, number portability, provision of information. Most NRAs consider that the provisions concerning switching procedures reported in the EECC should not be further developed and adapted to the switching of bundles. NRAs are of the view that the provisions included in Articles 106 and 107(1) of the EECC are sufficient to address switching barriers also for bundles, as well as switching barriers for business users.

Most NRAs (85%) also consider that specific rules or guidelines on Over-The-Air (OTA) portability are not needed.

With regards to the application of Article 106(8), 14 NRAs state that in their countries the rules on end-users compensation specify the level of compensation to be given by providers.

For 7 of these countries, the level of compensation is specified for each of the cases identified by Article 106(8), while for the other 7 countries, the level of compensation is specified only for some of them. In case of failure or delays in the switching and number portability processes, 14 NRAs dispose for compensation only if a request is made by the end-user, 16 NRAs do not set neither a minimum time period for compensation nor methods to calculate the compensation rate. Furthermore, 14 NRAs have not faced and do not envisage to face any issue concerning penalties and compensation with regards to contract duration and termination, as well as provider switching, that may require further specification or guidance in the future.

Figure 3 – Contract duration and termination and provider switching requiring further specification or guidance for its enforcement



Effective access to emergency services (Art. 109 EEC)

According to almost 90% of the NRAs, all services, technologies and networks are able to provide free access to emergency services by means of emergency communications and the single European emergency number.

Most NRAs (82%) do not identify services, technologies or networks that are not compliant with the provisions regarding the routing of emergency communications to the most appropriate PSAP, the provision of location data to emergency services for emergency communications, and the single European emergency number.

Equivalent access and choice for end-users with disabilities (Art. 111 EEC)

Almost 80% of NRAs considers that there have not been any market and technological developments since 2018 that may have had an impact on the effectiveness or

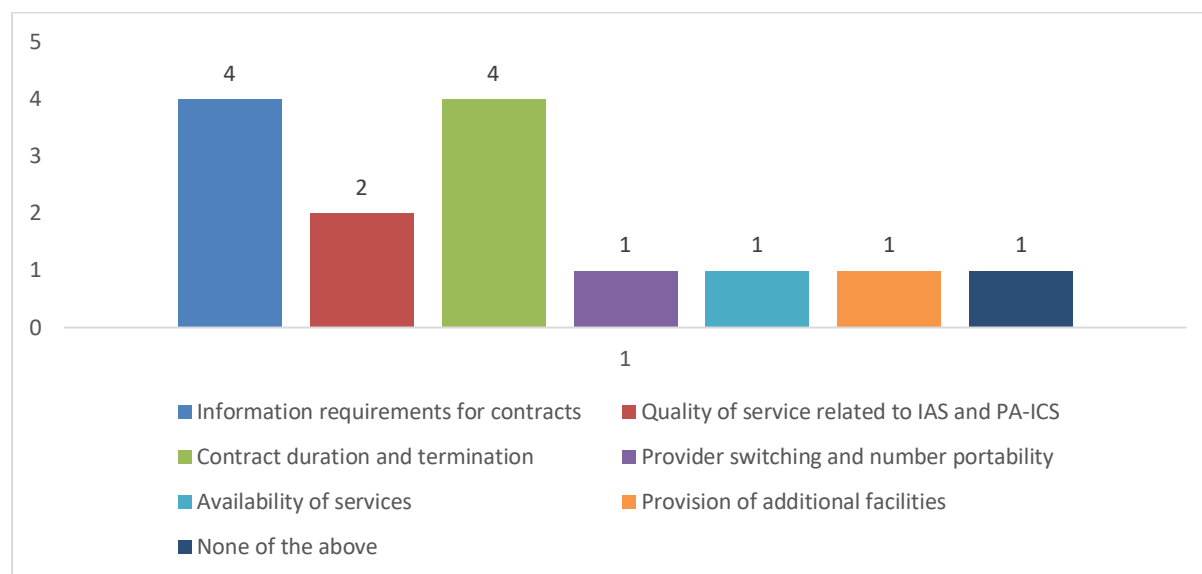
proportionality of the provisions concerning equivalent access and choice for end-users with disabilities. At the same time, almost 90% of the NRAs does not expect any market and technological development in the next few years that may affect the application of Article 111 of the EECC and that may require an adjustment of the EECC provisions in the coming years.

Among the forms of communication included in the provisions concerning equivalent access and choice for end-users with disabilities, real time text (40% of NRAs), SMS (40% of NRAs), relay services (28% of NRAs) and video calls (28% of the NRAs) are the most prevalent. The transposition of the EECC requires the immediate provision of such services for 7 NRAs (30%), whereas for 16 NRAs (70%) the transposition will result in an initial consultative process.

The effect of full harmonisation (Art. 101 EECC)

For 19 NRAs (70%), there are not any end-user protection provisions adopted under the former regulatory framework that are not compatible with those laid down in Articles 102 to 115 of the EECC. In countries where there are more stringent regulations, these mainly concern information requirements for contracts and contract duration and termination.

Figure 4 - More stringent measures



Annex 2: Summary of the responses of stakeholders to the early involvement questionnaire

Background

At the end of March 2021 BEREC sent out 23 letters to bodies and associations representing a stakeholder interest at the European level in the field of electronic communications, in order to be involved informally and at an early stage in the process leading up to the BEREC opinion on the market and technological developments and on their impact on the application of rights of end-users in the EECC.

The letter contained a questionnaire designed to collect the stakeholder's informal early input into the workstream.

The questionnaire was drafted in essence along the lines of the basic questions that Article 123 of the EECC itself asks BEREC to analyse in its opinion.

The upcoming opinion was also presented at the 9th BEREC Stakeholder Forum on 1 April 2021 by the BEREC Chair, followed by short views expressed by BEUC and Digital Europe.

Six organisations replied to the questionnaire:

- BEUC
- ECTA
- EENA (the European Emergency Number Association)
- EDF (the European Disability Forum)
- EBU (European Blind Union)
- FSFE (organisation promoting end-users' freedom to choose and use their own terminal equipment)

Most significant developments in the market since December 2018

Some stakeholders outlined a number of general trends. In summary they highlight *inter alia*:

- the continued growth and importance of data-usage in mobile communications;
- the COVID-19 pandemic has resulted in a significant increase of demand for connectivity and well-functioning high-capacity internet connections;
- the pandemic has further stimulated the growth of OTT and NI-ICSs;
- ECSs are frequently provided in the form of bundles;
- rising popularity of streaming TV services;

- better performing technologies both on fixed and mobile networks have continued to develop (fibre, FWA and 5G);
- roll-out of e-SIM;
- the awareness of carbon footprint has significantly increased.

Other stakeholders point, *inter alia*, to the following additional trends, which are important from their point of view:

- hyper-digitalisation and growing importance of artificial intelligence solutions and systems;
- certain cohorts of society prefer to use OTT services as a primary means of communications (voice and messages).

Impact on the application of end-user rights and meeting the general objectives of the EECC

A few stakeholders observe the EECC has not been transposed on time in most EU countries and therefore consider (next to the issues they raise) it is early and difficult to measure the impact of the market and technological developments on end-users' rights.

A stakeholder considers that, for the interest they represent, the legislation is appropriate in terms of meeting the general objectives of the EECC in the period up until 2024. The additional delegated acts planned by the end of 2022 (in accordance with Article 109(8) of the EECC) should provide an additional basis for the achievement of these objectives.

Some stakeholders observe Title III of Part III of the EECC will have limitations, as legislation supporting accessibility of digital services and products, namely the European Accessibility Act will not apply until 2025 and on some aspects, such as in relation to accessibility requirements for answering to the single European emergency number '112' by PSAPs, not until 2027.

Issues stakeholders suggest to look at

A few stakeholders approach the questionnaire from the angle of the respective subcategories of electronic communication services covered by the Articles 98 to 115.

- A stakeholder does this briefly by asking BEREC to look at the switching situation in all electronic communication services.
- Another stakeholder submits OTT and NI-ICSs are only partially regulated by the EECC, despite becoming more and more rivals to NB-ICSs.

The following issues BEREC could discuss or look into in the scope of this workstream³² transpire through the responses:

- when and how consumer rights may have been diminished as a result of the transposition of the EECC (e.g., impact of intro contract summary in Germany);
- whether Member States are using those provisions of Title III that permit Member States to introduce or maintain further end-user protections;
- the EECC does not fully address premium rate services;
- contract summaries: e.g., flexibility in design leads to less comparability? There is no requirement to publish;
- problems when switching, including long commitment periods diminishing ability to switch;
- excessive porting fees;
- B2B in need of regulatory attention, also because 5G is expected to be the most relevant for companies and administrations, to assist with their digitalisation and hence it will impact the services they will offer to consumers/citizens;
- concrete types of measures to ameliorate the use of ECS by persons with a disability suggested by some stakeholders are:
 - information about the service should be accessible by default in accordance with the European Standard on Accessibility requirements for ICT products and services (EN 301 549 v3);
 - all information and modes of cancellation and switching of services should be provided in accessible formats via more than one channel (electronic, phone but also in person);
 - use easy to understand language without exceeding a level of complexity superior to level B1 (intermediate) of the Council of Europe Common European Framework of Reference for Languages.

³² E.g., issues involving wholesale pricing, roaming or application Open Internet principles are not in this list. In general, a stakeholder calls for a strict enforcement of the end-user's right (in the Open Internet Regulation) to use their own terminal equipment.