

November 26, 2019

# Proposal for Improving BEREC Work on Regulatory Guidelines

Theme: BEREC should set up an **independent technical advisory body** for improving the technical soundness of the EU regulation on Electronic Communications

## Executive Summary

Europe faces significant challenges during the new Commission that is being formed and will start working soon. Issues of digital sovereignty or self-determination under pressure coming from global near monopoly cloud services providers, issues of managing the physical world/digital world boundary built with 5G and other technologies, issues of digital common market, improving Internet security, trust and privacy, finetuning of the relations of cloud services providers and Internet access providers under network virtualization as well as issues of using radio frequencies for communications and other related purposes will raise new regulatory needs that need to be addressed in a timely manner. Commercial pressure against people's privacy is growing and the means to chip away, what privacy is left, one step at a time are becoming ever more elaborate. The more someone knows about more people, the easier it is to use the collected data to manipulate people like we have learned in the case of Cambridge Analytica and past elections. This is putting European values of democracy under threat. Elections are dominated by owners or data rather than people's self-determination.

At the same time, the technical soundness of the regulatory guidelines adopted by BEREC over the past few years has been on a clearly lower level than, for example, the corresponding US regulation where an independent technical advisory group assists in the process of preparing new regulatory guidelines.

***So, the proposal is that BEREC should set up an independent Technical Advisory Board made up of experts from the industry and academia who, however, accept the role as individuals rather than representatives of their daily working organization. To make this feasible, the work of the body should be financed by the EU. To facilitate well organized work, BEREC should approve a process that explains the sequence of preparing new regulatory guidelines in a manner that allows to take into consideration the modifications proposed by the Board. The Board should also be allowed to influence the overall list of work items and raise new work items based on its own process of reviewing the existing regulatory guidelines.***

BEREC should naturally adopt rules for appointing members and renewing and rotation of the membership of the Advisory board. Experts from different fields of technology should be included so that the whole field of prospective regulation is covered.

## Examples technically unsound regulatory guidelines in the past

(1) An example of technically unsound regulation, are the earlier versions of BEREC Guidelines on Open Internet on which there is the current public hearing. The original version from 2016 was

clearly technology dependent while the law on open Internet access sets the requirement that the regulation should be technology neutral. The wording set the requirement clearly on the law itself but why should the lower level regulation be allowed to resort to wording that is technology dependent?

(2) Even the latest version published by BEREC as a baseline for comments in the hearing ending on Nov 28 is technically unsound e.g. in how it uses the Network Termination Point of a Mobile Network (which is defined elsewhere as the air interface) in order to create regulation for “open internet” when clearly that NTP is not even close to the Internet. As a result, the draft that hopefully will be corrected before adoption, inadvertently implies that the “open internet” includes most of the mobile network which probably was not the purpose nor is it technically feasible.

(3) Until today, the BEREC Guidelines on Net Neutrality have been clearly biased against European operators and favored the interests of the cloud services providers. This has followed and adhered to the famous “end to end” principle which has been accepted as an ideology in the sense that it gives leave from rational thinking. At the same time over the past 10 or 15 years the cloud services have fallen to the hands of a very short list of mainly US companies in the whole western world (Google, Facebook, Amazon, MS and Apple). These companies are active lobbyists in Brussel and of course are in favor of end-to-end in the classical and narrow interpretation. Adoption of the first BEREC guidelines so late as 2016 in the form they were adopted shows that the Google-Facebook etc. lobby has been very successful in Europe. A European idea behind the regulation has been missing. A technical advisory body would have helped to carry out a more informed discussion on the development and come up with regulation that would at least be technically sound and at best take into account other relevant considerations like who is making money, how much and with what methods. An argument in favor of “NN is not about packets but about money” was nicely put forward by a US Columbia professor, Henning Schulzrinne in his paper “Network Neutrality is about Money, Not Packets”.

(4) The regulation on open internet consistently spells internet with a small first letter. This spelling is adopted into many European languages. However, the Internet that connects the consumers and Internet information service providers is a well-defined concept that clearly deserves a proper name. “Internet” with a capital letter would work as the proper name as it has been traditional in the technical Internet community. In this tradition, “internet” with a small “i” means just any IP network that can be a possibly small subset of Internet or even isolated from it. Therefore, internet does not need any regulation while Internet does need some regulation.

## Conclusion

In order not to keep writing regulation that is technically unsound and thus ineffective or has undesired side-effects, it is paramount that BEREC improves its process of preparing regulatory guidelines by introducing an independent body of technical experts that will assist the current groups established by BEREC.