

Common Contribution to BEREC BoR (19) 189 – Draft Guidelines detailing Quality of Service Parameter

BEREC has opened a consultation about a draft Guidelines. They shall be taken in utmost account by Nation Regulatory Authorities by requiring information to quality of service of interpersonal communications service, if providers hold technically or legally some control of network elements. Internet access services are not main issue of this Guideline draft.

The signing associations are thankful for the opportunity to comment. We support harmonized requirements aiming to lower costs regarding information on Quality of Services.

I. In General

The kind of information chosen by BEREC to inform end-users is often very technical and therefore difficult to describe in a “comprehensive, comparable, ... user-friendly” manner. Furthermore, we are very sceptical, that a significant share of users will read this information. Bearing that in mind, according to Art. 16 with Art. 52 EU-Charta the NRA should assess substantially if it is essential to order more information for end-users, which is evidently not read by them. We see this also addressed in Recital (271) of the EECC: NRAs should be able “*to require publication of such information where it is demonstrated that such information is not effectively available to the public.*”

BEREC correctly acknowledges factors lying outside ISPs network, thus outside contractual obligations, 2.1, paragraph 8, but draws no or wrong conclusion from it.

NRA`s requirement to publish should not simply be triggered where information is not effectively available, it should further be assessed whether the information is relevant, 2.1, paragraph 14.

II. Scope of Guidelines

The Guidelines lay their scope on QoS as described in 2.3, paragraphs 20-29, in contrast to QoE and NP.

We doubt that this scope – at least as it is described in the mentioned paragraphs – is useful. It is the aim of the relevant articles of the EECC to enhance transparency with regard to what

the provider delivers and the end-user receives. It is therefore necessary to narrow down the scope of transparency to the services themselves as far as they are controlled by the respective operator. Transparency obligations have to end with the network and cannot include terminal equipment which is controlled by the end-user. Such terminal equipment is scarcely known to the provider in terms of its performance and configuration and any “transparency” on service parameters would not be more than a mere guess.

That’s why Art. 104(1) EEC which provides that transparency obligations may be imposed “*to the extent that they control at least some elements of the network either directly or by virtue of a service level agreement to that effect*” can only be interpreted as focusing on the network and its performance. The scope of the Guidelines should thus be on network performance, not on QoS.

Rather than requiring NRAs to take utmost account of other QoS-related BEREC workstreams, 2.3, paragraph 26, BEREC itself must ensure consistency across all BEREC GLs WGs.

We welcome the BEREC call to make techniques transparent and available for third-party verification, so announced in 2.3, paragraph 28. This kind of external verification is of vital importance for flawless, objective measures.

III. End-users with disabilities

For the signing associations and their members it is an important matter to provide services which can be used by end-users with disabilities and corresponding information is accessible. To that end in Germany there are many solutions offered and they have proven as good practice. Especially, but not exclusively, paragraphs 47. to 51. should be assessed by BEREC for the purpose not to conflict with good practices regarding services and information on that issue in the member states. We address the same request about Table 3 to BEREC.

IV. Parameters and Measurement Methods

We generally agree with the methodology laid out in section 4.1. However, when the Guidelines in paragraph 38 rightfully state that providers of NI-ICS and NB-ICS have no control over terminal equipment, it should be noted that it is in the nature of terminal equipment that no provider has control over it. Therefore, the conclusion that only estimates could be obtained has to be extended to any provider.

V. Table 1, Annex X, EECC

We think, that complaints about “bill correctness”, table 1 fifth line, are not directly linked to quality of services. That’s why we strongly doubt that this information can be required according to Art. 104 EECC. Just being entailed in a Table in an Annex does not provide conformity with the legal basis.

Further, we doubt that there is a value to the public – or users respectively– to know a number of complaints which includes the significant share of unjustified complaints. Bills in question do not only cover recurring charges and (simple) charges for e.g. national connections but those for various premium services and – a significantly growing number – mobile payments. It is in the mere nature of esp. the latter that they regularly provoke questions and complaints which in their vast majority turn out to be unjustified and counting them equally would give a false and distorted picture, esp. in comparison to providers who do not offer premium or mobile payment services.

VI. Table 2

In our opinion Art. 104 EECC provides no legal basis for NRAs or other competent authorities to require information in lines 1 to 3 in Table 2 of the draft Guidelines from providers of IAS and ICS. Art. 104 EECC deals with the quality of network services, otherwise the limitation to providers in some way controlling the network performance could not be explained. With the exception of the fourth and fifth line, Table 2 entails only parameters about the number and handling of complaints in this regard. Therefore, we see no legal basis to impose such information requirements.

VII. Publication of information

As to section 6 of the draft Guidelines we note that paragraph 61 lists 3 channels to distribute relevant information, including the possibility to oblige providers to publish through a third party. Such channel however, if imposed to use, must be available under fair and reasonable terms which can present difficulties in practice. The guidance therefore should be extended by fostering that it is the NRA’s (or other competent authority’s) responsibility to secure such channel, favourably in advance.

We agree with BEREC recommendations on “user-friendliness” (56), specifically that the information “should not include too detailed information”. It is important to be concise rather than to elaborate lengthy.

BEREC refers to Recital (271) according to which “NRAs should be able to require publication where demonstrated that such information is not effectively available to the public” (53). The demonstration that such information is not effectively available to the public should extend to an impact assessment whether the information is relevant at all for the customer in the given market.

BEREC recommends, “End-users should be able to check the information related to their current situation” (59). Given that published QoS parameters do not relate to single users but rather represent aggregate information as set out in (62), the reference to “current situation” should be deleted.

VIII. Quality Certification mechanisms

With regard to section 7, paragraph 66, we note that Art. 4(4) of Regulation (EU) 2015/2120 does in no way stipulate that measuring mechanisms provided by an NRA shall be reckoned as certified. Such interpretation, which to the contrary has no support in the wording of this article, can only be found in the cited BEREC guidelines where it also lacks any legal basis.

We welcome BEREC’s recommendation that monitoring mechanisms’ measurement methodology and implementation should be made publicly available, e.g. by publication of its source code. This is in line with BEREC’s requirements on BEREC’s Net Neutrality measurement tool.

Art. 104 EECC contains rules on the publication of quality of service information while Art. 102 EECC deals with quality of service information in contracts. The former relates to aggregate (network, operator) parameters vs. the latter to contractual parameters. Art. 104 (2) EECC measurement methods thus only relate to aggregate parameters whereas Art. 4 (4) TSM relate to measurement methods for consumers. Art. 104 (2) EECC and Art. 4 (4) TSM measurement methods must not be mixed up because they address completely different quality of service areas. QoS parameters published do not necessarily form part of contracts. The reference to contracts in (71, 2.) should therefore be deleted.

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