

TAKEAWAYS FROM THE CERRE EXECUTIVE SEMINAR - 22 JANUARY 2019

INTERPRETING AND IMPLEMENTING THE NEW EU ELECTRONIC COMMUNICATIONS CODE

BACKGROUND

On 22 January 2019, the Centre on Regulation in Europe ([CERRE](#)) organised a high-level executive seminar designed to shed light on how to interpret and implement the new [European Electronic Communications Code \(EECC\)](#).

This meeting gathered close to 60 representatives from CERRE member organisations (including telecom operators, internet platforms, regulators).

Key stakeholders also joined the discussions, including **Jeremy Godfrey**, the 2019 BEREC¹ Chair, **Anthony Whelan** (Head of the 'Electronic Communications Networks and Services' directorate at the European Commission's DG CNECT) and **Herbert Ungerer** (former Deputy Director General and head of Telecoms Unit at DG Competition).

¹ The Body of European Regulators for Electronic Communications

Three questions where at the heart of the debates

- ▶ Are the new consumer protection provisions of the Code fit for the app economy?
- ▶ Will the new rules stimulate investment in very high capacity networks?
- ▶ Is BEREC fit for its new tasks?



NEW EECC: FIT FOR THE APP ECONOMY?

CERRE Research Fellow Richard Feasey's [issue paper](#) prepared for the seminar states that "*the EECC includes a number of significant changes which are intended to address concerns about the regulation of digital platforms*". There appears to be consensus that the Code is going in the right direction on this matter.

Many stakeholders stressed that we are in a **transitory period**: digital services such as WhatsApp and Telegram are increasingly substituting traditional telecommunications services such as voice telephony or SMS – we are approaching 'the end of voice telephony' in the same way as we are approaching the end of copper networks.

The new Code's provisions should ensure that the next generation of communications services are subject to the same regulatory obligations as today's voice services, and that both compete on a level playing field.

Representatives from traditional telecommunication operators and digital platforms broadly welcomed this approach and thought they could be enforced by regulators.

The provisions on interoperability, in particular [article 61](#), were thought to be justified but viewed as a 'last resort' option. Panellists were not yet clear when or whether regulators would apply the obligations to the new app economy.

It was also mentioned that customers are more concerned with **privacy** than with many of the traditional consumer protection concerns. The [GDPR](#) and the [ePrivacy Directive](#) may be more important for consumers in the long run.

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WILL THE NEW RULES STIMULATE INVESTMENT IN VERY HIGH CAPACITY NETWORKS?

Some key changes in the EECC are aimed at unlocking private investment in Very High Capacity (VHC) networks.

Key stakeholders in the debate, including representatives from telecom operators, recognised that the Code will be critical in achieving the European Commission's [Gigabit Society targets](#),² although it is not the only tool available.

State Aid might also become increasingly significant. Co-investment provisions included in the EECC might stimulate private sector investment in VHC networks, but alongside strong competition.

When competition is weak, existing operators will want to remain the main owners of the network, which reduces the willingness to enter co-investment agreements with others.

Some voiced surprise at the emphasis put on co-investment in the Code. Provisions to promote wholesale-only networks will be the main incentive, not co-investment, they argued, citing Italy and the UK.

In the months to come, it is understood that BEREC intends to study and model the dynamic of investing in Very High Capacity networks.

IS BEREC FIT FOR ITS NEW TASKS?

BEREC is expected to assume significant new responsibilities in relation to the implementation of the EECC. Article 2 of the new [BEREC Regulation](#)³ identifies eight topics on which BEREC is required to issue opinions and fourteen on which it is expected to issue guidelines.

An important observation that came out of the discussions is that BEREC, per se, cannot do much. Its fitness and legitimacy rest on that of the National Regulatory Authorities (NRAs) who make up its membership, and on its structure.

An NRA representative insisted that maintaining BEREC's existing features (a two-tier structure, rotating presidency and vice presidency, working groups) will be key in ensuring its legitimacy and efficiency. All the guidelines and opinions that BEREC will have to issue will need technical input from NRAs who are close to the market.

Past experience on guidelines on roaming has shown that this works, and that BEREC is fit for its tasks in that sense. Plus, NRAs are aware they will need to provide this input and are doing so already. The new tasks assigned to BEREC as a result of the EECC are currently being discussed within working groups.

A representative of an online platform underlined that, as we move forward, it is important that BEREC coordinates more and more with other European bodies (on issues like competition, privacy, etc.).

But BEREC will also have to prioritise: some guidelines will be more important than others, and holding public discussions on how and what to prioritise might be a good way forward.



Other participants regretted that firms are not able to collaborate more with BEREC, for instance within working groups.

A certain lack of transparency was highlighted, which makes BEREC especially focused on its relationship with NRAs, and not so much with external stakeholders. Some proposed that BEREC should indicate when working groups meet and what are the topics being debated, so that firms could provide input more easily.

BEREC are understood to be currently working on creating a transparency policy which will give access to BEREC's documents and working groups have begun to meet with external stakeholders.

It was pointed out that to remain trustworthy BEREC will have to provide precise (technical) and useful guidelines, in a timely manner. At the beginning of each project, working groups will be asked what degree of harmonisation they think would be appropriate. This will be decided on a case by case basis, as harmonisation can have both costs and benefits.

Ultimately, BEREC has come out of the Code largely unchanged, and there was no intention to radically reform it and make it something similar to the US FCC.

² By 2025, every major social and economic institution in Europe should be connected to a VHC network which delivers gigabit capacity. All European households should have access to a downlink of at least 100 Mb/s, which is capable of being upgraded to gigabit capacity. In addition, all urban areas and transport routes are expected to have 5G mobile coverage.

³ Regulation (EU) 2018/1971, 11 December 2018.

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WHAT'S NEXT?

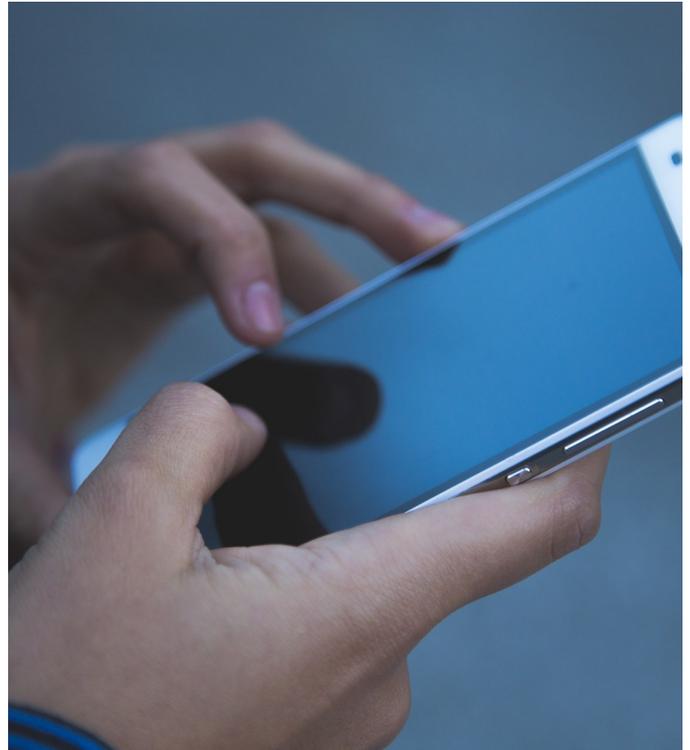
In the coming months, Member States will focus on implementing the provisions of the Code under BEREC's guidance.

- ▶ Is this not a transitional set of arrangement?
- ▶ Is the current regime really future proof or will a new regulatory framework be needed to cope with future development of digital services?

Many participants thought that this might be the last review of the 2002 Framework, which involved only incremental changes. Something more fundamental might be required next time.

As a neutral forum for exchanging thoughts and developing new ideas, CERRE intends to play a crucial role in these discussions. Those are key questions for the future. Thinking ahead and providing policy recommendations is what we do.

As part of this process, CERRE intends to foster debates and exchanges between the main actors involved in the digital sector and its regulation, including the various bodies active at the EU level.



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CERRE ISSUE PAPER
'NEW EUROPEAN ELECTRONIC COMMUNICATIONS CODE: INTERPRETATION & IMPLEMENTATION'



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