



Synopsis Report on the open consultation on the scope of the Delegated Act setting the Union-wide voice termination rates

1. INTRODUCTION

The European Electronic Communications Code¹ ('the Code') requires the Commission to adopt a delegated act setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate (together referred to as 'single Union-wide termination rates' or 'Eurorates') by 31 December 2020.

The Code sets out the principles, criteria and parameters that the Commission should use to set the Eurorates. These include the requirement that the maximum rates should be based on the recovery of costs of an efficient operator, thereby avoiding excessive wholesale prices and contributing to key policy objectives of the Code: to promote competition and the interests of the citizens and to contribute to the development of the internal market.

2. CONSULTATION SCOPE AND OBJECTIVES

Article 75 of the Code establishes that the Eurorates shall be imposed on 'any provider of mobile voice termination or fixed voice termination services' in the Union but leaves certain aspects of the implementation of the Eurorates to the Delegated Act. Such aspects are for example the specific scope of application, including the relevant definitions, or the use of a transitional period of up to 12 months to allow adjustments in Member States where this is necessary based on rates previously imposed.

The consultation has solicited the views of providers of electronic communication services, national regulatory authorities (NRAs), the Body of European Regulators for Electronic Communications (BEREC) and other stakeholders, such as government authorities and industry associations, consumer associations, think tanks, academics, law firms, consultancies and citizens.

The open consultation ran for 12 weeks, from 26 July to 8 November 2019, via a questionnaire available on the European Commission's public consultation portal.² The

¹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), OJ L 321, 17.12.2018, p. 36–214.

² A summary report and the full responses to the public consultation were published on 11 December 2019. They are available here: <https://ec.europa.eu/digital-single-market/en/news/summary-report-public-consultation-voice-call-termination-rates>

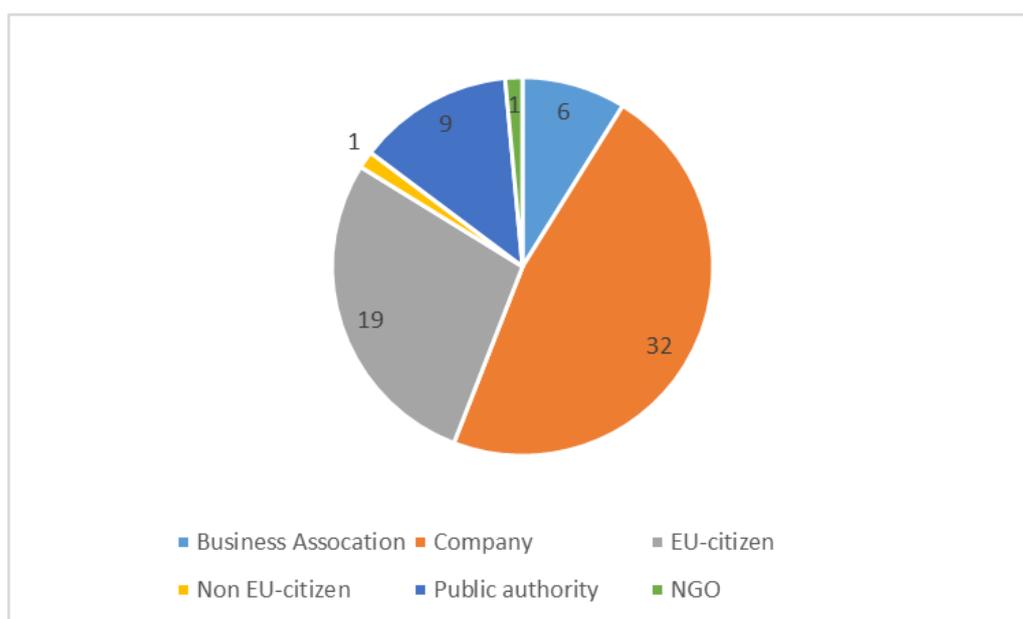
goal of the consultation was to collect feedback and views on the implementation aspects of the Eurorates, in order to ensure a consistent, predictable, efficient and transparent implementation.

The consultation included technical questions mainly addressed to stakeholders with significant experience in the market, such as NRAs, BEREC, industry and consumer associations and operators. It also included further implementation questions, such as the need for a transitional period in the different Member States or how to best achieve cost-efficient Eurorates over time.

There were 68 respondents, including 32 companies (mostly operators), six business associations, 19 EU citizens, one non-EU citizen, nine public authorities (NRAs, Ministries and BEREC) and one non-governmental organisation (Figure 1). The replies came from 22 Member States. Three companies from outside the European Economic Area (EEA) replied to the questionnaire. Some respondents registered in the EU are currently controlled by shareholders from non-EU countries. Some replies came from subsidiaries of the same economic group.

Finally, it is worth noting that 27 respondents (among the operators who replied) declared that their company has been designated as an operator with significant market power (SMP) in fixed or mobile call termination markets in at least one market in the EU, and five declared that they have not been designated as such.

Figure 1: Type of respondent



The synopsis report presents the main results of the public consultation. This analysis does not represent the official position of the Commission and its services, and it is only a summary of the answers to the public consultation. Therefore, no conclusions are drawn at this stage and the synopsis report does not bind the Commission in relation to future proposals in this respect.

3. ANALYSIS OF RESPONSES

3.1. Definition of termination service

The public consultation asked whether respondents agreed with the working definition of termination services included in the 2009 Commission Recommendation on Termination Rates, i.e. *‘Wholesale voice call termination is the service required in order to terminate calls to called locations (in fixed networks) or subscribers (in mobile networks)’*.

Most companies (operators) and business associations do not agree with the definition, while the views are mixed among public authorities. On the other hand, citizens broadly support the definition. Most NRAs and BEREC do not agree with the proposed definition and argue that the determinant characteristic of the termination service is the control of the number.

BEREC suggests the following alternative definition: *‘Wholesale fixed (mobile) voice call termination is the service required in order to terminate calls to end users’ fixed (mobile) telephony numbers’*. BEREC also asks to clarify whether ancillary access services are included under the definition. Most operators and all business associations (ECTA, ETNO, GSMA) do not agree with the proposed definition and suggest including additional aspects in the definition, such as the ability to route calls to numbering resources controlled by the terminating operators and incurring the costs of a fixed/mobile network provider in order to qualify as termination service provider.

Another question in the public consultation asked respondents to specify which operators would qualify as providers of termination services. The majority of respondents agree that mobile network operators (MNOs), mobile virtual network operators (MVNOs), fixed and convergent operators would qualify as termination service providers under the proposed definition.

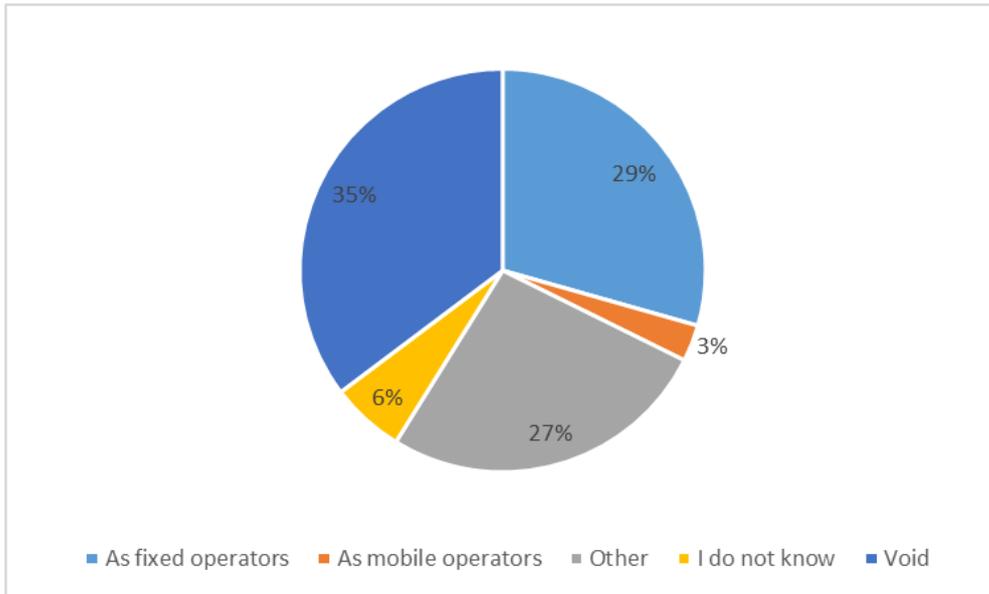
3.2. Hybrid services

An important aspect related to the product scope is the treatment of the so-called hybrid services in the Delegated Act. The public consultation gathered views in relation to such services, which are neither only fixed nor only mobile. An example of such services are ‘home zone’ plans, which typically entail voice services delivered to fixed numbers over a mobile network.

A first question asked about awareness of such services: 71% of the respondents are aware of the presence of these operators in their countries, while 20% are not aware.

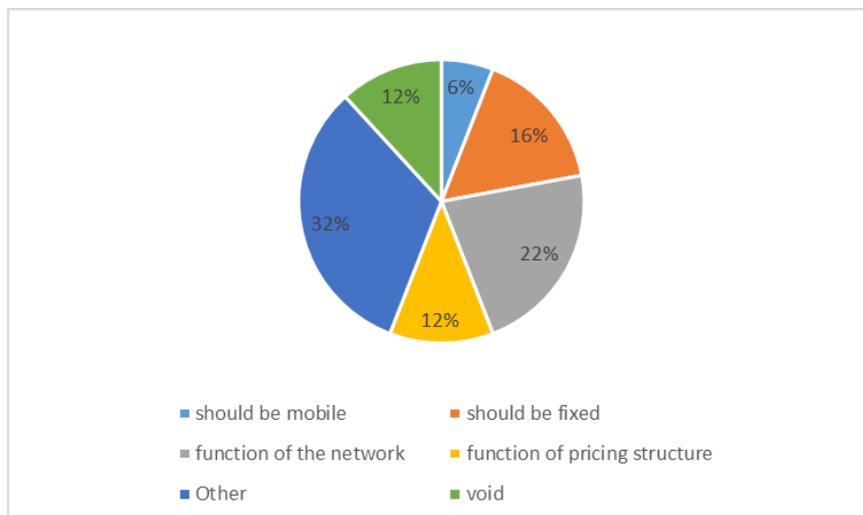
Respondents were also asked to explain how these services are currently regulated in their Member States. 29% say that these operators are currently regulated as fixed operators in their countries while 3% submit that they are regulated as mobile operators (Figure 2). 35% of respondents do not express a view and, 27% say that these services are regulated in a different way (i.e. “other”). Most of the latter group, including BEREC, explain that they are regulated according to the number on which the call is terminated. This means that in these cases fixed termination rates apply to calls to fixed numbers and mobile termination rates apply to calls to mobile numbers.

Figure 2: How are hybrid services regulated as regards termination rates?



A further question on hybrid services asked how these services should be classified under the Delegated Act. 22% of the respondents are in favour of classifying hybrid services either as fixed or mobile termination services according to the underlying network and 12% according to the price charged for the underlying retail service (Figure 3). 16% consider that these services should be treated as only fixed services, and 6% as only mobile services. The largest share of respondents (32%) supports a different form of classification (such as a function of the number on which the call is terminated). Among the public authorities, 22% are in favour of treating the services as only fixed services, and 78% prefer a different form of classification, such as by the number - fixed or mobile - used by the service. Some operators and associations (ETNO, ECTA) express concerns in the case that the termination rates would be higher than the costs incurred, which could likely happen if a mobile termination rate is applied to calls terminated on a fixed network. Other operators agree with the principle of using the called number to decide which termination rate (fixed or mobile) should be charged.

Figure 3: How should these hybrid services in your view be classified under the delegated act?



3.3. Geographic scope of application

The public consultation targeted specifically operators active outside the EEA, and asked whether they are of the view that operators outside the EEA should apply termination rates equivalent to the Eurorates outside the EEA, if they were to benefit from the Eurorates, when terminating calls from non-EEA countries into the EEA. Responses however include views from operators, business associations, citizens and a NGO regardless of whether they are active outside the EEA.

31% of all respondents (within and outside the EEA) are of the view that the Eurorates should only apply to termination of calls originated within the EEA and, if they are extended to calls originated outside the EEA, it should be done on a reciprocity basis (terminates rates equivalent to the Eurorates are also applied outside the EEA). 10% of respondents do not share this view. 37% of respondents reply that the question is not applicable to them and 19% do not provide a view.

One NRA (ANCOM, Romania) remarks that the scope of the Delegated Act should be defined in a way that complies with the Union's international commitments under the GATS (General Agreement in Trade in Services). A number of operators and business associations such as ECTA, ETNO and GSMA state that the termination rates charged to non-EEA operators terminating a call in Europe should be left to commercial discussions between the concerned operators, as otherwise EEA operators would lose bargaining power in their negotiations for termination rates in non-EEA countries.

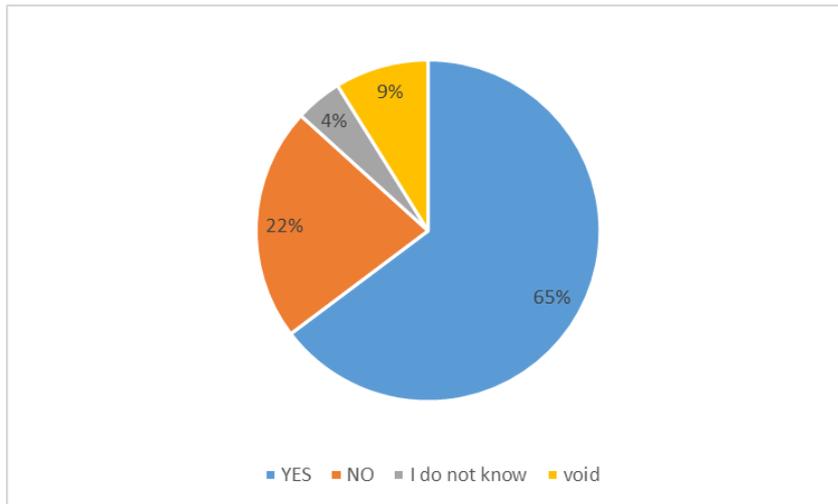
3.4. National circumstances and transitional period

The public consultation asked whether there are national circumstances that would justify a necessary adjustment of the Eurorates pursuant to Article 75.1(b) and (c) of the Code. Articles 75.1(b) and (c) mention, respectively '*any necessary adjustment for exceptional national circumstances*' in relation to the weighted average of efficient costs in fixed and mobile networks, and '*national circumstances which result in significant differences between Member States when determining the maximum termination rates in the Union*' in relation to the number of users in each Member State.

The majority of public authorities consider that national circumstances would justify a necessary adjustment of the Eurorates (44% versus 22%). The opinion is divided among companies/operators whereas 45% of EU citizens consider that there are not such circumstances.

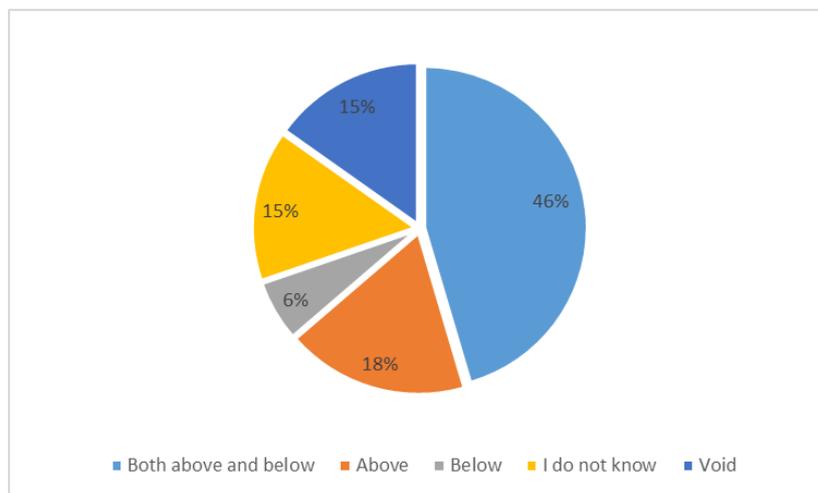
Article 75.1(e) of the Code considers '*the need to allow for a transitional period of no longer than 12 months in order to allow adjustments in Member States where this is necessary on the basis of rates previously imposed*'. 65% of the respondents are in favour of a transitional period to allow adjustments in the Member States where this is necessary to ensure a smooth transition and 22% of respondents disagree with this (Figure 4). Respondents explain that such period would be needed, among other reasons, in order to (i) give enough time for operators to undertake the necessary adjustments, including in contracts and billing systems, in particular in the case of a strong decrease in termination rates, and (ii) avoid temporary rises in termination rates in Member States with relatively low current levels.

Figure 4: Would you be in favour of such transitional period in respect of your country(ies)/country(ies) of operation?



Another question asked whether such transitional period would be warranted for existing rates above and/or below the Eurorates. Almost half of all respondents (46%) consider that it would be justified for Member States where current termination rates are both above and below the Eurorates (including the majority of operators and of public authorities). On the other hand, 18% of respondents consider that it would be justified only for countries where current rates are above, and 6% only for countries where current rates are below the Eurorates (Figure 5).

Figure 5: In your view, would this transitional period be justified for countries where current termination rates are:



3.5. Glide path

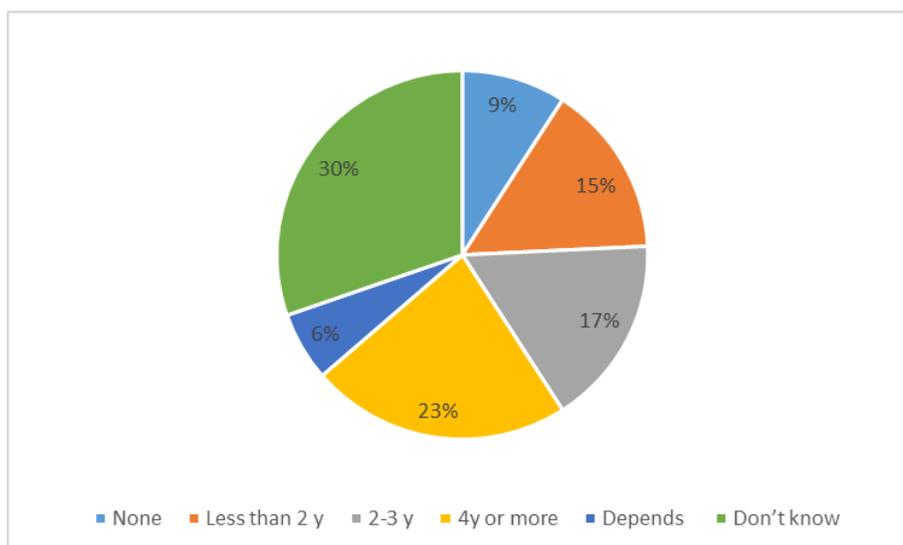
In relation to a possible glide path, a first question asked respondents what circumstances would justify the use of such glide path to get from the current termination rates to the final cost efficient Eurorate. The reasons highlighted by respondents are the following: (i) provide time for operators to adjust their offerings and prices, and (ii) avoid large revenue drops by operators in order to maintain their ability to invest.

BEREC and some NRAs submit that only if significant differences exist between current and future rates a glide path would be justified. Among operators, there is general support for the use of a glide path based on the same arguments.

In line with the previous question, the public consultation asked about the appropriate period for a glide path (Figure 6). The most frequent response (23%) was four years, although a large share of respondents found shorter durations more appropriate, such as two-three years (17%), less than two years (15%), or no glide path (9%). BEREC considers that the duration of the glide path should be at most three years. A number of operators were in favour of the longest possible period (five years) while other operators and associations (ECTA, MVNO Europe) are against any glide path.

Some other respondents, including NRAs and operators, highlight that only if the required rate changes drastically a glide path would be needed, the length of which would depend on the final level of the Eurorates relative to current rates. Citizens provide different durations ranging from two months to five years.

Figure 6: In your view, what would be the appropriate period (within five years) before the Eurorates achieve the level based on efficient costs?



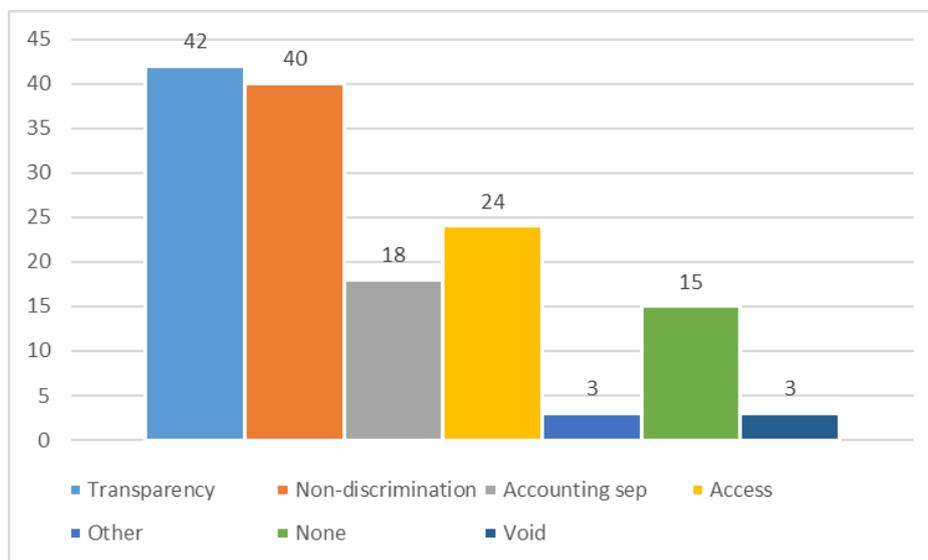
3.6. Non price-related obligations

The public consultation asked which other obligations would be considered necessary to be imposed on providers of call termination services, in addition to the price obligation (also given the current review of the Commission Recommendation on Relevant Markets). Such non-price obligations (currently typically imposed by NRAs in the context of their market analyses in addition to the price obligation) may consist of, among others, an access obligation, non-discrimination and transparency.

Most NRAs, operators, associations and citizens support the need for the transparency (62%) and non-discrimination (59%) obligations (Figure 7). Other obligations (accounting separation, access) are less supported. A number of operators and associations (e.g. GSMA) explicitly argue that the accounting separation should not be imposed as it is a burdensome obligation. Some operators also pointed to the uncertainty regarding the regulatory regime under which these obligations could be imposed in the future, mentioning for instance the market analysis procedure (SMP regime), symmetric

obligations under Article 61 of the Code, resolution of interconnection disputes between operators by NRAs or ex-post competition law.

Figure 7: Which other obligations would you consider necessary to be imposed on providers of call termination services (e.g. on the basis of their significant market power), in addition to the Eurorates (pricing) obligation? (number of respondents)



3.7. Other aspects

Finally, the public consultation asked about other market and/or technological evolutions expected in the period running up to 2025 that could have an impact on the regulation of termination markets.

Respondents mention 5G rollout, the migration to VoLTE, the potential need to model a converged (fixed and mobile) network, and the increased use of over-the-top services (OTT), all of which could have an impact on the cost model. BEREC highlights (i) technological developments that could impact the cost model, such as 5G and convergence, (ii) the increased use of over-the-top voice services, and (iii) technological convergence that could imply a change in the interconnection regime. In relation to the increased use of OTT services, some operators mention a possible disappearance of termination monopolies in the foreseeable future.