

BEREC Opinion on the General Authorisation regime pursuant to Article 122.3 EEC

Questionnaire addressed to interested stakeholders

The European General Authorisation (GA) system: main features

The General Authorization (hereinafter “GA”) constitutes a landmark feature of the European legislative framework for electronic communications since 2002.

The GA regime implies that undertakings shall not wait for any explicit decision by the public authority in order to start their activity. GA is not indeed an administrative measure but a legal sectoral framework laying down rights and obligations for all networks and services and not applying to individual cases – contrary to licenses - thus ensuring an equal treatment as to market access. Operators abiding by GA conditions can start their activity of provision of networks or services upon notification of their intention to start to the competent authority (subject to any application for rights of use, in case of need for scarce resources). A notification constitutes the maximum requirement that competent authorities can legitimately envisage on undertakings. Member States can also opt for a no-notification system.

Such an approach is confirmed by the EEC which adds on it by, inter alia, harmonizing the set of information that NRAs or other competent authorities can require from operators in the context of notification.

Background

The BEREC Work Programme 2021 envisages the adoption of a “*BEREC opinion on the national implementation and functioning of the general authorisation, and on their impact on the functioning of the internal market*”¹ by 21 December 2021, according to Article 122 (3) of the Directive (UE) 2018/1972 establishing the European Electronic Communications Code (hereinafter “the EEC”).

Building on BEREC’s Opinion, the Commission may “*publish a report on the application of Chapter II of Title II of Part I and of Annex I, and may submit a legislative proposal to amend those provisions where it considers this to be necessary for the purpose of addressing obstacles to the proper functioning of the internal market*”.

BEREC is therefore called to carry out a comprehensive analysis of the functioning of the general authorisation regime as last updated by the EU legislator (Title 2, Section 2, Articles 12-19 of EEC), in a forward- looking manner, considering the evolution of electronic communications markets and the emerging role of new players, in order to suggest any adjustments to the current regime aiming at the pursuit of the sectoral regulatory objectives.

To this end, BEREC would welcome any input from interested stakeholders that might contribute to identify strengths and weaknesses of the current EU General Authorisation scheme, both in terms

¹ Item 5.2.1.2 “review on General Authorisation”

of possible areas for improvement in the EU discipline and relevant conceptual operation of the system, as well as of nationally rooted issues.

We would be glad to receive any contribution concerning the stakeholders' view on the implementation and functioning of the relevant *acquis*, of the BEREC template as in the *Guidelines for the notification template pursuant to article 12, paragraph 4 of Directive 2018/1972 of the European Parliament and of the Council*², as well as on the EU notifications database held by BEREC since December 2020.

BEREC understands that the national transposition of the EECC is still ongoing in most Member States and that little experience can therefore be shared on the implementation of the brand-new GA-related provisions. Accordingly, the BEREC GA Database has recently been launched and is yet to be supplied with several Member States' data; its fully-fledged operation can be foreseen in 2022 when, according to the EECC, all GA notifications are to be uploaded to the BEREC Database. Nevertheless, BEREC would very much appreciate input on the stakeholders' experience and criticalities so far with respect to the EU GA regime (whose landmark features remain unchanged since 1997) and its different national implementations, as well as on the expectations stemming from the novelties introduced by the EECC.

Please complete the respondent details below.

Stakeholder name	
Contact person	
Contact person's email address:	
Contact person's phone number:	

The EU GA legislative framework

1. What is your experience so far with the EU General Authorisation regime stemming from the **Authorisation Directive**³ and its implementation into national legislation for the functioning of the internal market - including market entry - in Member States where you are operational?
 - a. Did you consider this regime effective for reducing requirements for market entry?
 - b. Did you face any obstacles stemming from this regime while entering a market? Which ones?
 - c. Did you experience the GA scheme in more than one Member State? If so, which ones? What is your experience in each Member State, especially regarding the following aspects?
 - i. Did the obligations that you have been subject to differ from a Member State to another, in terms of scope of information to provide in the context of the notification?
 - ii. Did the scope of the activities to be notified differ among Member States? If so, what activities have been exempted from the notification fulfilment in some Member States which have not in other Member States?

² Document BoR 19 (113)

³ Directive 2002/20/EC of the European Parliament and of the Council of 7 march 2002 on the authorisation of electronic communications networks and services (Authorisation Directive).

- iii. What was the sanctioning regime envisaged in Member States where you are active for non-compliance with the GA obligations?
 - d. Please share your views on the overall effectiveness of the EU GA system as designed so far by the EU legislator, best practices you might want to point to, as well as views on the advantages and areas for improvement of the current register of operators' regime.
2. In light of the experience with the EU GA regime so far that you have outlined under question 1, considering the legislative changes introduced in 2018, could you please elaborate on the above matters by pointing to any changes detected on the background of the adoption of the EECC?
3. Do you consider the changes of the GA regime introduced by the EECC to be helpful in order to improve the functioning of the internal market, including making market entry easier and less burdensome? Please, explain.

The notification template as in the *BEREC Guidelines for the notification template and the EU GA database held by BEREC*⁴

1. What are your views regarding the new standardised set of information that NRAs/other competent authorities may ask operators to provide in the context of the notification (art. 12.4 EECC) and the relevant BEREC template?
 - a. Have you got already some experience in this respect?
 - b. Do you expect your market entry-related fulfilments might benefit from these novelties introduced by the EECC in 2018?
2. Although the BEREC GA database⁵ is yet to be supplied with data from several Member States, what are your preliminary views on its functioning so far?
3. According to your experience, to what extent might the procedure designed by the EECC (articles 12-19) effectively help develop the Single Market?
 - a. Is the current design for market entry (notification as the maximum requirement, fixed amount of information that can legitimately be asked from operators, collection of national notifications at EU level in the BEREC GA database) fit for the pursuit of the sectoral regulatory goals?
 - b. Do you have any proposal to make it more efficient and fit for the new challenges posed by the new digital world?

Further issues

1. Could you please share any additional consideration on the whole GA-related system as designed in articles 12-19 EECC?

⁴ The template is available within the BEREC Guidelines at the link https://bereg.europa.eu/eng/document_register/subject_matter/bereg/regulatory_best_practices/guidelines/8911-bereg-guidelines-for-the-notification-template-pursuant-to-article-12-paragraph-4-of-directive-20181972-of-the-european-parliament-and-of-the-council

⁵ <https://gadp.bereg.europa.eu>

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2. Please share any further ideas you wish on the GA regime as well as on the BEREC notification Template and relevant GA database and their potential improvement in the future.