

**BEREC draft Opinion on the national implementation and functioning of the general authorisation, and on their impact on the functioning of the internal market, pursuant to Article 122, paragraph 3 EECC**

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## Introduction

Pursuant to Article 122, paragraph 3 of Directive 2018/1972 establishing the European Electronic Communications Code (hereinafter: EECC), BEREC shall adopt, by 21 December 2021 and every three years thereafter, an Opinion on the national implementation and functioning of the General Authorisation (hereinafter: GA), and on their impact on the functioning of the internal market.

Taking utmost account of such Opinion, the Commission may publish a report on the application of the GA-related provisions in the EECC and may also submit legislative proposals to amend them, should it consider it necessary in order to address any obstacles to the proper functioning of the single market.

According to the mentioned provision, on 9 December 2021, BEREC adopted its first Opinion on the GA regime in the Union<sup>1</sup>, also taking into account the views expressed by interested stakeholders within a dedicated call for input. In such Opinion, BEREC outlined the problems put forward by sector operators by distinguishing between issues rooted in the electronic communications legislative framework and problems stemming from outside it. The BEREC Opinion also covered very early considerations around the NRAs' adoption of the BEREC notification template<sup>2</sup> and on the functioning of the EU database of the notifications that providers of electronic communications networks and services are required to submit to national competent authorities and that these latter shall forward to the BEREC Office (the General Authorisation Database, hereinafter: GADB). Such database, envisaged - like the BEREC template - by Article 12, paragraph 4 of the EECC, was timely set up by BEREC in December 2020 and is maintained by the BEREC Office<sup>3</sup>.

In line with Article 122, paragraph 3 of the EECC, by December 2024, BEREC shall adopt its next Opinion on the functioning of the GA regime.

To this end, the present draft Opinion intends to provide an updated analysis of the current functioning of the GA regime in the Union, thus allowing a fully-fledged BEREC survey into the provisions implemented pursuant to Articles 12-19 EECC.

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<sup>1</sup> [BEREC Opinion on the national implementation and functioning of the general authorisation, and on their impact on the functioning of the internal market, pursuant to Article 122, paragraph 3 EECC, document BoR \(21\) 178 of December 2021.](#)

<sup>2</sup> The notification template was defined by BEREC in the context of its Guidelines for the notification template pursuant to Article 12, paragraph 4 of Directive 2018/1972 of the European Parliament and of the Council – document BoR (19) 259, adopted on December 2019.

<sup>3</sup> The General Authorisation Database is available at the link <https://gadb.berec.eu/#/view=Providers&sort=ProviderName|ASC>

The draft Opinion is structured as follows:

- Chapter 1 provides a short legal background to the exercise;
- Chapter 2 bears an overview of the EECC transposition status in the Union, with a focus on Article 12 EECC, and looks into the level of NRAs' adoption of the BEREC notification template;
- Chapter 3 develops an analysis of the functioning of the GADB so far, and
- Chapter 4 proposes an overall assessment of the GA regime and introduces some forward-looking considerations;
- Chapter 5 provides some conclusions.

At the moment of writing the present draft Opinion, out of the 23 NRAs contributing to the analysis, 3 informed that their Member States have not transposed into national legislation the GA-related provisions in the EECC neither completely nor partially, 1 out of them being an NRA from an EU candidate Member State (BA), and another one being a case of belated transposition (PL). The NRA from DK declared instead that the EECC transposition was completed on December 2020, but their Member State has not transposed into the national legal order the EECC provisions around GA as they do not implement such a regime.

## 1. The legal background

As outlined in the first BEREC Opinion on General Authorisation, the GA regime was first established by Directive 96/19/EC, eliminating all special and exclusive rights for accessing the electronic communications markets, and eventually consolidated with Directive 2002/20/EC, replacing Directive 97/13/EC (the so called "General Authorisation Directive").

For a recollection of the European path to GA, please refer to the "legislative background" chapter in the first BEREC Opinion on GA<sup>4</sup>.

In the present context, it is worth recalling that the EECC, while confirming the General Authorisation Directive's approach as to the notification to the national competent authority being the maximum requirement that can be imposed on providers to enter the market, intervened on the list of information that may be included in national notification forms, turning it into an exhaustive one, hence further constraining Member States' room of manoeuvre when transposing the relevant *acquis* (Article 12 EECC), so to limit the range of data that national authorities can ask notifying operators to provide.

Furthermore, pursuant to the same provision, BEREC published the Guidelines for the notification template, i.e., guidelines regarding the main features and contents of each national notification form – within the constraints provided for by Article 12, paragraph 4 of the EECC – to be used by Member States opting for a notification requirement.

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<sup>4</sup> See footnote 1.

BEREC furthermore established the GADB, a Union database of the notifications transmitted to the competent authorities by providers falling under the GA regime and subject to the notification requirement.

These BEREC efforts worked in the direction of further streamlining and standardising GA-related fulfilments throughout the Union, with a view to facilitating market entry in all Member States and getting to as consistent and lean as possible notification duties bearing down on providers.

## 2. The implementation of the General Authorisation rules in the EECC

26 Member States have finalised the EECC transposition<sup>5</sup>. The wide majority of Member States has a notification system in place, with the NRA being entrusted to manage the whole GA regime, and has fully transposed Article 12 of the EECC confirming the NRAs' preexisting responsibility for receiving notifications from providers intending to start an activity and for managing the whole GA regime (i.e., implementing the relevant provisions in Title 2, Chapter 2 EECC concerning receiving notifications from relevant undertakings, forwarding them to BEREC, keeping a register of authorised undertakings, issuing declarations to facilitate the exercise of rights to install facilities and rights of interconnection, define administrative charges - if any – pursuant to Article 16 EECC and publish an overview of such charges and of the relevant administrative costs borne) (ACM, AK<sup>6</sup>, AKOS, ANACOM, BIPT, BNetzA, CNMC, ComReg, CRC, CTU<sup>7</sup>, EETT, HAKOM, MCA, NMHH, OCECPR, RRT, RTR, SPRK, TRAFICOM).

IT also fully transposed Article 12 of the EECC confirming the national allocation of GA-related tasks in place before the entry into force of the EECC, meaning that the competent authority responsible for the tasks as in Title 2, Chapter 2 EECC, hence to manage the GA regime in Italy, is the Ministry<sup>8</sup>: this latter is responsible for receiving notifications from undertakings wishing to enter the electronic communications markets, releasing declarations to facilitate the

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<sup>5</sup> All Member States except PL.

<sup>6</sup> Although the entry into force of the 2021 Joint Committee Decision – Decision of the EEA Joint Committee No the 275/2021 of 24 September 2021 amending Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement – which transposes the EECC into the EEA Agreement is still pending, Liechtenstein has completed the legislative process to review the national electronic communications Act. This latter will enter into force as soon as the EECC is implemented in the EEA Agreement. In such transitional phase, the GA-related provisions in the EECC have been fully transposed.

<sup>7</sup> CTU was confirmed in its responsibility to manage the GA regime and implemented all the novelties introduced by the EECC. However, it is not responsible for defining administrative charges pursuant to article 16, as these are defined by Act No. 634/2004.

<sup>8</sup> Ministry for undertakings and Made in Italy – Ministero delle Imprese e del Made in Italy.

exercise of rights to install facilities and interconnection rights, defining administrative charges relating to the activities under its competence pursuant to Article 16 EECC and publishing a relevant yearly overview. AGCOM, being the BEREC member NRA, is the lead Administration for communications with BEREC and therefore plays a pivotal role in ensuring the forwarding of national notifications to the GADB held by the BEREC Office.

DK and FR were confirmed as the only Member States that have not implemented a notification requirement for electronic communications providers wishing to enter the market. In particular, DK has confirmed its no-notification regime, as covered by Article 12 EECC, and has not consequently transposed the GA-related provisions in Title 2, Chapter 2 EECC: undertakings entering the market are considered as “automatically authorised”.

As concerns FR, on May the 26th 2021, with the decree transposing the EECC, this Member State removed the notification obligation, while still identifying ARCEP as the NRA responsible to manage the other GA-related duties<sup>9</sup>. No national register is therefore maintained and the monitoring on authorised undertakings is carried out in the context of regulatory interactions, e.g., for the allocation of scarce resources.

Finally, BA and PL have not transposed the EECC; while in PL the legislative work is ongoing in view of its implementation, in BA no transposition is envisaged at present, and an individual licensing system is in place.

Regarding the level of Member States' alignment to the BEREC notification template, the wide majority of responding NRAs declared that their national notification form fully takes into account the BEREC template; in very few cases the national notification form was not adapted or partially adapted to the BEREC template.

RTR reported that adjustments to the notification form are still in progress and need to be finalised, while 4 other NRAs do not have a notification form in place, either because they have not transposed yet the EECC (AK<sup>10</sup>, RAK) or because they adopted a no-notification system (ARCEP and SDFI). UKE has indeed the old notification form in place, pending the EECC transposition.

Considering the forms provided by contributing NRAs, some flexibility in the national adaptations to the BEREC template arises, e.g., in the field of contact details that notifying providers are asked to provide. In some cases, due to applicable national legislation falling outside the electronic communications sector, some data is requested, including on the postal address of an authorised representative in the country. ComReg mentioned they do not capture information on certain fields, e.g., whether a provider is a wholesale or a retail one, hence the BEREC template is implemented, setting aside certain fields, by further simplifying notification information requirements.

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<sup>9</sup> Article 50 of decree n. 2021-650

<sup>10</sup> See footnote 6: the EECC has actually been transposed in Liechtenstein, but it has not been incorporated into the EEA Agreement yet, hence it is not implemented in the national legal order either.

Some forms also continue relying on an open description of the networks or services that are meant to be provided, which seems to suggest that an adaptation activity regularly takes place within the NRA in order to upload national notifications to the GADB, which features standardised categories of networks and services relying on those identified in the BEREC template.

In terms of its effectiveness, the BEREC template was found to be effective with a view to promoting market transparency and/or consistency in notification-related requirements across Europe.

The BEREC template could be further improved by providing some additional clarifications on important terms, for example by means of definitions or examples concerning certain categories of services and networks put forward in the BEREC template and not always clearly understandable by the notifying party (e.g., the scope of M2M services, Satellite Internet Access, TETRA services, leased lines and data transmission services, as well as of roaming services provided on vessels and airplanes), for the sake of the consistent interpretation of the BEREC categories across Member States.

### **3. The GADB**

Pursuant to Article 12, paragraph 4 EECC, BEREC was due to set up and maintain the GADB, a database of the notifications that providers submit to national competent authorities. In line with the EECC, the GADB was up and running by December 2020, deadline after which the majority of the responding NRAs have started uploading newly received notifications: 18 out of the 23 responding authorities (from AT, BE, BG, CZ, DE, EL, ES, FI, HR, HU, IE, IT, LV, LT, MT, NL, PT, SI) have started indeed forwarding to the GADB all subsequent notifications<sup>11</sup>. Notifications sent by operators before 21 December 2020 to the competent authorities listed above have also been uploaded to the EU database<sup>12</sup>.

In 5 cases (BA, DK, FR, LI and PL), no upload to the EU database is taking place, neither for notifications subsequent to the deadline for EECC transposition, nor for the backlog of previous notifications; in 3 cases, this is due to the pending transposition of the EECC (BA, LI and PL), while in 2 cases this is due to the adoption of a no-notification approach (DK and FR).

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<sup>11</sup> 19 out of the 23 responding NRAs adopted a notification system. Nevertheless, only 18 have started uploading national notifications to the GADB; that is because in LI the national law has been updated but the EECC has not been implemented in the EEA Agreement yet, hence notifications are not sent out to the BEREC Office.

<sup>12</sup> In SI, the new Electronic Communications Act was adopted at the end of 2022, hence AKOS could define the relevant necessary implementing acts by May 2023 only, including aligning the notification form as sketched out in the BEREC Guidelines with the electronic communications market data collection system, which is on the verge of being finalised.

The figure below illustrates the total number of records uploaded by NRAs into the GADB. Presently, 24<sup>13</sup> NRAs regularly upload notifications into it:

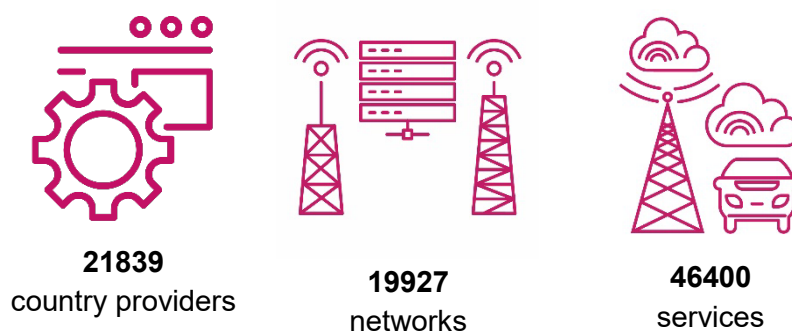


Figure 1: the Database records (23.05.2024)

The top 10 countries with the highest notification records are listed below:

Country (NRA)	Services&Networks
Spain (CNMC)	14026
Czechia (CTU)	8900
Germany (BNETZA)	8297
Italy (AGCOM)	6165
Greece (EETT)	3575
Bulgaria (CRC)	3521
Romania (ANCOM)	3481
Slovakia (RU)	3277
Austria (RTR)	2911
Netherlands (ACM)	2837

Most NRAs proceed to monthly uploads (ACM, AGCOM, BIPT, BNETZA, CRC, CTU, TRAFICOM), while others upload notifications upon receipt (AKOS, MCA, NMHH, RRT), weekly (CNMC), every 3-4 months (EETT, HAKOM, SPRK), or even once a year (RTR). ANACOM and ComReg upload national notifications as data is ready<sup>14</sup>.

Summary information available at the GADB website:

<sup>13</sup> AT, BE, BG, CY, CZ, DE, EE, EL,ES, FI, HR, HU, IE, IT, LV, LT, LU, MT, NL, PT, RO, SK, SI, and SE.

<sup>14</sup> ComReg made one full upload to the EU database on 21st December 2021, comprised of 1772 individual notifications (covering multiple notifications of different services from the same provider).



Country	Services	Networks	Total number of services and networks notified	How often they upload notifications to the GADB
Austria	2122	789	<b>2911</b>	Once per year
Belgium	966	239	<b>1205</b>	Per week
Bulgaria	2191	1330	<b>3521</b>	Upload notifications as necessary, typically within 14 days from the date of receipt of the notification.
Croatia	412	49	<b>461</b>	Every three months
Cyprus	179	36	<b>215</b>	
Czechia	4994	3906	<b>8900</b>	Monthly
Estonia	428	26	<b>454</b>	
Finland	557	245	<b>802</b>	Once per month
Germany	5684	2613	<b>8297</b>	Monthly
Greece	2453	1122	<b>3575</b>	Every four-five months
Hungary	1289		<b>1289</b>	Upon receipt of the notification
Ireland	854	854	<b>1708</b>	
Italy	6165		<b>6165</b>	Monthly
Latvia	305	278	<b>583</b>	As required (once in three month)
Lithuania	121	43	<b>164</b>	Upon receipt of the notification
Luxembourg	369	55	<b>424</b>	
Malta	49	16	<b>65</b>	Upon receipt of the notification
Netherlands	1721	1116	<b>2837</b>	Once per month
Portugal	208	86	<b>294</b>	Upon treatment of the notification and as the data is ready
Romania	1737	1744	<b>3481</b>	
Slovakia	1795	1482	<b>3277</b>	
Slovenia	52	28	<b>80</b>	Upon receipt of the notification
Spain	10510	3516	<b>14026</b>	
Sweden	1239	354	<b>1593</b>	
Grand Total	<b>46400</b>	<b>19927</b>	<b>66327</b>	

16 NRAs identified no major difficulties with uploading national notifications to the GADB and consider it very easy to work with.

Among the challenges identified so far, the key one seems to relate to ensuring the compatibility of the previously existing national databases and notification forms with the categorisation put forward by BEREC (both in its template and, accordingly, in the GADB), therefore adapting the national systems in use - also due to sometimes incomplete descriptions of the networks and services in the BEREC template– which led to the need to cooperate with operators for a better common understanding and aligned interpretation of the categories therein, at least in a transitional period and as regard the backlog notifications submitted by operators before the entry into force of the EECC (and the consequential implementation of the new notification patterns, i.e., the limited set of information in notification forms, as in Article 12 EECC, and the BEREC notification template).

In this latter specific respect, an effort to match the previously notified categories with the new ones also via reviewing the terminology used was reported by some NRAs.

At an operational level, a not very user-friendly environment, some initial glitches and minor login problems were experienced by few NRAs. In this respect, it was suggested implementing an Application Programming Interface for NRAs to communicate directly with the database and upload new/changed notifications to be able to synchronize and automate the data uploading process and make it more efficient; while some put forward the functionality to update records online without importing/exporting Excel files, others suggested implementing a Single-Sign-On system with BERECnet, therefore unifying the login credentials for BERECnet and the GADB website. It was also suggested working at a File Export Report functionality allowing to obtain files via a local download system, rather than via an email transmission service sometimes failing to properly function. It was also proposed expanding the GADB scope to the date of actual beginning of service provision and implementing the chance of filtering data by terminated service providers, and not only terminated services. Another area for possible improvement relates to the identification of providers and treatment of duplicates, as the same undertaking is not unified when providing networks and services in more than one country.

In terms of the database effectiveness, despite some doubts on its actual usage by operators, the majority of NRAs expressed in favour of its usefulness with a view to market transparency.

#### **4. Overall assessment of the GA scheme and possible adjustments in the future**

According to the NRAs' experience, the GA regime has been properly working so far in regulating market entry and facilitating NRAs' monitoring activities, without creating barriers or providers in entering individual markets.

An issue emerged though on the clarity of the current GA scheme as defined by the EECC, and particularly on the identification data that can be requested from extra-EU notifying undertakings. A clarification is suggested in this respect to make sure that the national identification number of the place of notification or other information could be required when the notifying undertakings are from outside the EU and they are not registered in an EU Member State.

As to any positive impact of the GA regime, as last reviewed by the EECC, on the pan-European scale of operation of sector undertakings, few NRAs pointed to the very limited impact of GA-related dimensions on the providers' scale, which is reported to depend instead rather on the different features of national markets.

## 5. Conclusions

On the background of the above assessment of the current state of the GA regime, the following conclusions could be drawn, and suggestions proposed for the overall better functioning and effectiveness in practice of the system to continue contributing to the single market goal:

26 EU Member States have finalised the EECC transposition. The wide majority has a notification system in place, with the NRA being entrusted to manage the whole GA scheme.

The harmonized maximum requirements for the notifications under the GA have contributed to lowering obstacles to market entry, promoting market transparency and/or consistency in notification-related requirements across Europe. More than half of the responding NRAs stated that their national notification forms fully took into account the BEREC template. Few NRAs have encountered challenges to align features of their national legal orders with the maximum notification requirements for ECNS.

There is still room for further adjustments that BEREC intends to pursue. Some clarifications on minor aspects of the GA notification requirements could be welcome at legislative level.

In this respect, for a better common understanding and consistent interpretation of the scope of certain categories of networks and services in the BEREC template, also with a view to any market developments, the following activities could be briefly described, even by means of examples:

- M2M services
- Roaming services provided on vessels and airplanes
- Leased lines and data transmission services
- TETRA services
- Satellite Internet Access
- 4G/5G networks for fixed access

Last, most surveyed NRAs regularly upload to the GADB the notifications received under the GA. The database shows, to a great extent, the number of undertakings operating in the EU

markets providing ECNS. The more MS upload on a regular basis all notifications received, the more accurate and useful the data will be. It is suggested that the GADB include automated features to improve the effectiveness of its operational functioning.

Any reflections around expanding the scope of the GA framework to NIICS providers, other digital players, virtualized networks or software-defined networks and some virtualized communication services or activities shall be carried out in the light of the recent European Commission's initiative of a White Paper on "How to master Europe's digital infrastructure needs", published on 21 February 2024.

A close debate and reflection about the boundaries between NBICS and NIICS and their market evolvement should be held, taking particularly into account the perception of these services by end-users and the need to guarantee their rights.