

**BEREC Report on the outcome of the public consultation on the draft 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**



5 December 2024

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## Introduction

During the 59th BEREC plenary meeting (6 June 2024), the Board of Regulators approved the [draft 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](#) (the “draft Opinion”) for public consultation.

The draft Opinion is structured as follows:

Chapter 1 provides a short legal background;

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.

BEREC has collected the stakeholders’ view on the questions below:

- 1) Do you agree with the assessment provided by BEREC of the state of play concerning the implementation of the GA regime?
- 2) Are there further issues than those mentioned in the draft Opinion hindering the smooth functioning of the GA regime in the Union?
- 3) Would you suggest any future adaptation to the GA regime in the future (e.g., in terms of scope, operational functioning...)?

From 12 June 2024 until 26 July 2024, stakeholders were invited to comment on any of the material presented in the draft Opinion.

BEREC received eight contributions from the following stakeholders (listed in the order in which they were received):

1. Lepida;
2. Confidential contributor;
3. European Competitive Telecommunications Association (ECTA);
4. 4iG Plc (4iG);
5. GSMA;



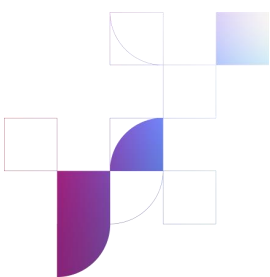
6. Eutelsat Group;
7. MVNO Europe;
8. Transatel.

BEREC appreciates the willingness of the stakeholders to engage in this project and would like to thank all respondents that offered their valuable insights on the draft Opinion.

This report summarises and assesses their contributions.

The following sections describe the comments, observations and recommendations received during the public consultation and summarise the relevant BEREC's brief assessment:

- **Section 1** refers to the stakeholders' general take on the draft Opinion;
- **Section 2** refers to the stakeholders' answers to the individual questions;
- **Section 3** refers to the comments received on the national implementation and functioning of the general authorisation.



# 1. General views of the stakeholders on the draft BEREC Opinion

The majority of the contributing stakeholders are overall supportive of the assessment of the General Authorisation regime provided in the draft BEREC Opinion, except **MVNO Europe** and **Transatel** who do not share the BEREC opinion whereby the GA regime, as it was implemented, has facilitated market entry through consistent and lean notification duties, and **Eutelsat Group**, which only partially shares the BEREC assessment of the state of play.

**GSMA, 4iG, ECTA and the confidential contributor** agree that the general authorisation has worked well, contributing to lowering obstacles to market entry, promoting market transparency and/or consistency in notification requirements for ECNS and boosted competition in the electronic communications market.

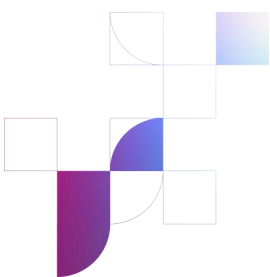
**ECTA** substantially agrees with the draft Opinion and believes that the two issues raised in its conclusions are particularly worthy of a more detailed reflection, i.e., the assessment of the NI-ICS services 'inclusion in the notification scope, and the reflection about the boundaries between NB-ICS and NI-ICS.

The **confidential contributor** mainly focuses on the national context and notes that it does not show any problems.

## **BEREC's assessment and response**

BEREC acknowledges the positive feedback from stakeholders on its draft Opinion. Regarding the general concerns expressed, BEREC is aware of some divergences that stakeholders experience in the national implementation solutions linked to notification fulfilments; such requirements often stem from outside the electronic communications legislative framework and the sectoral regulation cannot therefore play any role in their respect. Despite falling outside its remit, BEREC nonetheless clearly refers to such stakeholders' difficulties in its final Opinion, insofar as they impact on the operators' experience of the notification process, especially for cross-border actors.

As to the proposal (MVNO Europe and Eutelsat Group) to intervene by means of identifying a set of BEREC voluntary commitments to harmonise some regulatory obligations attached to the GA (e.g., in the field of recurring information collection exercises, assigning numbering resources and number portability rules...), BEREC will look into this in the context of its future Work Programmes.



## 2. Stakeholders' answers to the individual consultation questions

During the public consultation only two respondents provided their answers to the individual specific BEREC questions.

### ***1. Do you agree with the assessment provided by BEREC of the state of play concerning the implementation of the GA regime?***

**Eutelsat Group** replied that it partially agrees since there is no clear distinction between the procedure depending on the nature of the service. For example, the procedure applying to ECNs (especially for those ECNs that operate in several countries without any direct contact with the market players) is still very similar to the registration/notification procedure in place for the ECS. Nevertheless, the equal treatment of ECNs and ECSs (in terms of notification duty, in Member States where this is applied) is envisaged by the current framework, as the legislator does not differentiate between provision of networks and provision of services, which shall both be subject to a general authorisation scheme insofar as the relevant players enter the market and provide ECNs and/or ECSs. Reporting obligations apply where an electronic communications network is present and/or an electronic communications service is supplied.

The **confidential contributor** replied that it fully agrees with the statement by indicating the relevant Member State as one of those with a very advanced level of GA implementation.

### ***2. Are there further issues that those mentioned in the draft Opinion hindering the smooth functioning of the GA regime in the Union?***

**Eutelsat Group** reported difficulties as to the reporting obligations envisaged, the usage of notification portals and the relevant necessary documentation and identifiers to access them; in particular, they replied that it would be beneficial to restrict the reporting obligations to entities actively operating in the market, waiving them for ECNs that merely declare service availability, e.g. satellite operators in a specific country. Additionally, for **Eutelsat Group** it would be helpful to simplify the rules for accessing, registering, and using the various NRAs' web portals. Each country has a specific procedure for registered operators to declare data and information. However, such portals are often only available in the local language, and the English version is not always fully complete. Some portals are only accessible through a certified account that is available to national citizens. Entities operating in various countries (e.g. Satellite operators) must navigate various procedures, apply different ratios and technologies, and become familiar with diverse platforms and reporting processes. This often necessitates help from local regulatory consultancies or attorneys, creating a barrier to market entry.



The **confidential contributor** did not detect any issues other than those mentioned in the paper.

**3. Would you suggest any future adaptation to the GA regime in the future (e.g., in terms of scope, operational functioning...)?**

**Eutelsat Group** replied that it would be advisable to reduce and standardise reporting obligations (including via a standard template and timetable) with a view to reducing market entry barriers, unifying the single market, and supporting scaling for all European players.

The **confidential contributor** reported no need for changes at present.

**BEREC's assessment and response**

BEREC welcomes the feedback received.

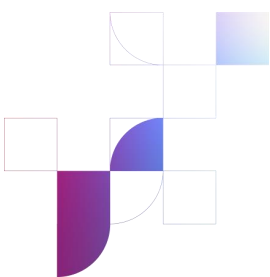
As to the comment by Eutelsat Group, most of the difficulties identified relate to issues falling outside the electronic communications sector, e.g., the functioning of web portals for notifications, especially with reference to the necessary requirements for identification and access, which often refer to national administrative/criminal law-related fulfilments. BEREC nevertheless mentioned the reported difficulty in its final Opinion.

As to the proposal to reduce and standardise statistic information reporting duties, (also mentioned by MVNO Europe), BEREC will consider the chance of looking into the matter in the context of its future Work Programmes.

### **3. Stakeholders' comments on the national implementation and functioning of the general authorisation**

#### **3.1. The implementation of the General Authorisation rules in the EECC**

Most of the contributing stakeholders (**confidential contributor**, **ECTA**, **GSMA** and **4iG**) overall agreed with the BEREC assessment whereby the General Authorisation system has been working well to date. Three contributors (**Transatel**, **MVNO Europe** and **Eutelsat Group**) expressed the view that the General Authorisation regime did not translate into lean and consistent notification requirements across the continent, and that nationally inconsistent and sometimes restrictive notification practices arise, often regarding issues falling outside the BEREC remit, that hinder market entry and ultimately the internal market, with particular reference to the treatment of foreign/cross-border operators.



Regarding the notification fulfilment, which is currently envisaged in most Member States, one stakeholder (**ECTA**) expressed itself in favour of introducing a "zero notification obligation policy" and suggested that the BEREC Opinion should adopt such an approach. As a second-best solution, considering that it might be difficult for Member States not to avail of a notification requirement with a view to market monitoring, the same stakeholder proposed that the BEREC Opinion should recommend the adoption in full of the BEREC template in all Member States, so to standardise notification requirements throughout the Union.

**ECTA** also recommended simplifying and standardising the sub-categories of services in the notification form and to abolish the practices of requiring an address in the Member State for notification, requiring digital identities for companies incorporated in other Member States and requiring additional documents.

These latter challenges (requiring an address within the Member State, requiring companies incorporated out of the Member State to have digital identities to submit the notification form, requiring translated and legalised corporate documents, requiring to submit criminal records of the company and legal representatives), mostly falling outside the scope of electronic communications legislation, were by and large identified also by **Transatel, Eutelsat Group and MVNO Europe**, that qualified such differentiated extra fulfilments as an undue burden on pan-European players or players incorporated outside the Member State concerned. **Transatel** also requested BEREC to create a scorecard showcasing the disparities in the GA regime among each Member State within the EEA.

**Transatel and MVNO Europe** suggested BEREC to cover in its final Opinion such issues and qualify them as potential infringements of EU Law.

In addition, **MVNO Europe** flagged divergences in the regulatory conditions associated to the status as a notified ECNS operator in each Member State, e.g., in relation to the use of scarce resources and regular statistical/financial data reporting as well as security incident reporting obligations and called BEREC to commit to fostering further harmonisation in such areas. Different national regulatory conditions, also stemming from outside the electronic communications legislative framework, were mentioned also by **GSMA**, while the issue of statistical reporting obligations was mentioned as a problematic one also by **Eutelsat Group**, that suggested limiting them to entities actively operating in a given Member State, thus waiving any reporting obligations for ECNSs providers only declaring the availability of a service in a market (e.g., satellite operators) and limiting them to providers generating revenues in the market above a given threshold. Like **MVNO Europe**, also **Eutelsat Group** suggested harmonising reporting processes via a common template and timetable.

Regarding the BEREC template, **4iG** agreed with the BEREC view whereby some categories could be briefly described even by means of examples, with a view to a common interpretation of each category; in particular, **4iG** suggested defining activities and services in a technology-neutral manner, e.g., "mobile radio service for fixed location access" instead of "4G/5G networks for fixed access".





Finally, the importance of ensuring the possibility to notify in English the beginning of the activity as an ECNS provider was also mentioned (**ECTA and Eutelsat Group**).

### **BEREC's assessment and response**

BEREC acknowledges the feedback from stakeholders.

Regarding the idea to recommend a no-notification regime, BEREC notes that such a solution constitutes a national arrangement compatible with the EECC; this is therefore something which is up to Member States in the context of adopting national transposition measures and therefore exceeds the BEREC remit and the scope of the present BEREC Opinion.

Regarding proposing the full adoption of the BEREC template, BEREC believes that further alignment to it could help improve the consistency in notification requirements throughout the EU and mentioned the idea in its final Opinion. However, BEREC is not in a position to recommend the standardisation of notification-related conditions falling beyond electronic communications legislation. The final BEREC Opinion reports the difficulties that were flagged by some stakeholders and refers to the Commissions' responsibility to look into any potential infringement of EU Law in this respect. Concerning the idea of working on harmonising some statistical reporting obligations, BEREC will consider the chance of envisaging a reflection on this among NRAs in the context of its future Work Programmes.

In the same context, although suggested only by one contributing stakeholder, BEREC will further look into the set of sub-categories of services in the notification template with a view to potentially simplify and harmonise them. BEREC will also check that the definitions in the template are technology neutral and will ensure that they are consistently interpreted by NRAs by means of some examples.

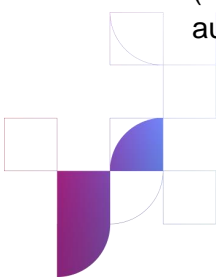
As regards requirements to be abolished, BEREC notes that some of the contributing stakeholders consider some of the national fulfilments as an undue burden on the background of the EECC provisions and calls the Commission, as the EU Institution responsible for the implementation of the Directives, to look into this matter.

Regarding the suggestion to allow the use of English language for notifications, the issue is covered in the final BEREC Opinion; BEREC considers it as a useful proposal, subject to national administrative rules.

## **3.2. The GADB**

No key criticalities were put forward within the public consultation regarding the GADB functioning.

An increase in the database reliability via shorter update intervals was suggested by **4iG** (which proposed a maximum update interval of 2 months for national regulators) and **Lepida** (which proposed a monthly update). **Lepida** also suggested to combine the general authorisation and communication operator recognition into a single, accessible European



registry, which would enable immediate visibility of the correspondent's authorisation level and effectiveness. However, if the idea is to move to a single EU registry, BEREC is of the view that the current system functions in an effective manner via ensuring an overall view of the ECNS being provided at EU level, as well as the monitoring of national markets by NRAs and other competent authorities by means of national registries.

#### **BEREC's assessment and response**

BEREC acknowledges the feedback from stakeholders and incorporated the proposal regarding the periodicity of the GADB update in its final Opinion.

### **3.3 Other issues**

Some of the contributing stakeholders mentioned matters not directly linked to the specific General Authorisation requirements for market entry, but relating to them in a wider regulatory perspective.

The first subject, that was raised by **ECTA** and the **confidential contributor**, concerns the appropriate scope of the General Authorisation regime, with specific reference to the suitability of expanding it to digital players providing services that are substitutes to ECNS and especially NIICS providers. The mentioned stakeholders expressed themselves in favour of ensuring the same regulatory treatment in relation to the provision of the same services with a view to eliminating any competitive market distortion. **ECTA** invited BEREC to cover the issue of the inclusion of NIICS within the notification obligation in its final Opinion.

The second subject, raised by the **confidential contributor** and by **MVNO Europe**, regards the possible introduction of a "Country of Origin" approach to authorising market entry for specific categories of services, that was mentioned in the European Commission's White paper on "*How to master Europe's digital infrastructure needs?*". Both contributing stakeholders expressed concerns about the chance of introducing such new paradigm as it was held likely to result into forum shopping practices to the detriment of providers already complying with diverse national legislations (MVNO Europe) and to the main benefit of extra-EU global players (confidential contributor, which also mentioned the need to previously adopt uniform national fiscal regimes across Europe).

#### **BEREC's assessment and response**

BEREC evaluated these stakeholders' inputs in its final Opinion.

Nevertheless, the possible introduction of the Country-of-Origin approach, although relevant in the GA context, is not the subject of the present Opinion, whereby the EECC calls BEREC to assess the effectiveness of the GA system.

As to the scope of the framework and of the GA requirements, BEREC has collected the intervening stakeholders' views on the topic, which will be further explored ahead of the upcoming sectoral legislative review.

## Annex List of Acronyms

Acronym	Definition
BEREC	The Body of European Regulators for Electronic Communications
ECN	Electronic Communications Network
ECNS	Electronic Communications Network and Services
ECS	Electronic Communications Services
EEA	European Economic Area
EECC	European Electronic Communications Code
EORI	Economic Operators Registration and Identification Number
GADB	General Authorisation Database
NB-ICS	Number - Based Interpersonal Communications Services
NI-ICS	Number-Independent Interpersonal Communication Services
NRA	National Regulatory Authority
OTT	Over- The -Top

