

# **BEREC's position on the General Authorisation regime in the DNA**

2 June 2026

**Key messages**

- The Single Passport implications in terms of jurisdiction raise serious doubts regarding its complexity, increased regulatory and bureaucratic burden, barriers for the effective enforcement of regulatory tasks, uneven distribution of administrative duties among NRAs, forum shopping, legal uncertainty and impact on NRA's financing and independence.
- Therefore, the Single Passport mechanism should not be taken forward in the current formulation, and a clear-cut disentanglement between notification processes and enforcement responsibilities should be ensured.
- The proposed streamlining of authorisation conditions, combined with a binding notification template, would together be sufficient to facilitate market entry.
- Additionally, a single-entry point (possibly an online notification platform on BEREC's website managed by the ODN) to notify the commencement of activity could be explored, as long as the current attribution of enforcement powers is preserved.

**Commission proposal:**

The DNA proposes the following significant changes to the current General Authorisation (GA) regime:

- Introducing, by default, a notification duty on providers willing to enter electronic communications markets.
- Turning the existing BEREC notification template into a binding instrument.
- Reducing and further harmonising at the EU level the conditions that can lawfully be attached to the authorisation (cf. Article 9(4), compared to Annex I of the EECC). In addition, the DNA entrusts BEREC to adopt Guidelines to foster the consistent implementation of such conditions<sup>1</sup>. Based on the BEREC Guidelines, subsequent intervention could follow by the EC or other Union bodies.
- Introducing a "Single Passport" regime, whereby providers would be required to notify their activities only to the NRA of one of the Member States where they intend to provide their networks or services ("Member State of notification"). Under the proposed Single Passport, a provider planning to operate in, for instance, five different Member States would only have to notify the NRA in one Member State, though the player would still be subject to five separate GA regimes and jurisdictions (with GA conditions as far as possible standardised by Article 9). The GA conditions, as implemented in the Member States of ECNS provision ("Member State of destination"), would be enforced by the NRA of notification, except "*Where the national regulatory authority of the Member State where the electronic communications networks or services are provided concludes that the breach of the authorisation conditions may have a serious negative impact in its territory on the grounds of national security or public interest*", in which case "*it shall have the right to impose penalties within its jurisdiction, and where*

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<sup>1</sup> As mentioned in recital 59, BEREC should identify areas where further harmonisation is required, including those falling outside the sectoral framework (e.g., rules on access to data by law enforcement and judicial authorities or rules on the ICT supply chain security requirements under the Cybersecurity Act 2).

*appropriate, after consultation with relevant authorities of the Member State of notification”.*

- Envisaging that the requirement for general authorisation and notification is to apply to providers of public electronic communications services and providers of electronic communications networks used, wholly or mainly, for the provision of electronic communications services or information society services available to the public (Article 9(2)). Such a category is not defined in the DNA, and Article 10 only refers to providers intending to provide electronic communications networks or services in one or several Member States.
- Introducing a mandatory exemption from administrative charges for undertakings with a turnover below a certain threshold or whose activities do not reach a minimum market share or have a very limited territorial scope.

### **BEREC’s assessment:**

BEREC acknowledges the European Commission’s efforts to streamline the GA conditions by reducing their number and harmonising as far as possible the related rights and obligations across the Union. BEREC also welcomes the proposed further standardisation of notification requirements through a binding BEREC notification template, and it is ready to contribute in this area. At the same time, BEREC considers that certain elements of the proposal raise significant concerns that require careful consideration.

Indeed, BEREC is seriously concerned that the proposed Single Passport mechanism would introduce an almost exclusive responsibility of the NRA of the Member State of notification for the enforcement of the GA conditions in all Member States where undertakings provide networks and/or services, which would amount to a *de facto* introduction of a principle somewhat similar to the Country of Origin rule<sup>2</sup>. It should be recalled that, currently, the enforcement of the GA conditions is ensured by the NRA of the Member State where the electronic communications networks and services are effectively provided.

The kind of arrangement proposed would inevitably lead to significant implementation challenges and enforcement difficulties. These include complex interactions between institutions, difficulties in ensuring the effective and timely application of the GA conditions in the relevant markets and a lack of legal certainty. Ultimately, this would be detrimental to the single market.

The notification would require a complex transmission process (from the NRA to the ODN and then to all other NRAs of the Member States of destination), adding time-consuming bureaucratic procedures to the system. Moreover, the current notification in the Member States where undertakings operate has never been considered by the undertakings as an administrative burden or as an obstacle to the establishment of a single market.

Additional bureaucratic and institutional uncertainty derives from the EC empowerment to define, by Implementing Acts, the exchange of information arrangements between the ODN

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<sup>2</sup> In fact, the enforcement provisions would go beyond a pure country of origin rule, as the Member State of notification would be in charge of applying the whole set of general authorization conditions prevailing in all of the Member States where the operator would be providing networks or services, and the other obligations (not linked to general authorization) would still be enforced by each of the Member States where the operator is providing its networks/services.

and the NRAs. NRAs have proven to be able to effectively coordinate and have well-established cooperation procedures. Such intervention would therefore not provide any added value and would distort the workflows and implemented practices developed during decades, furthermore endangering both BEREC and the NRAs independence.

BEREC would further like to draw attention to the implications of proposed Articles 9 –10 for **the financing of NRAs** under the Code. While the Commission has indicated an intention to maintain the current structure for administrative charges, questions remain regarding how enforcement and collection would operate under the DNA.

For example, where a provider is contesting fees - or their calculation, such as turnover levels - this is currently handled by the NRA imposing charges. However, as administrative charges are included among the general authorisation conditions under Article 9, it is unclear how this aligns with the model under which the NRA of the Member State of notification is designated to act against breaches of those conditions (Article 11(4)).

More importantly, a “Country of Origin”- like approach would create significant incentives for forum shopping and would not lend itself to electronic communications markets, where the provision of electronic communications networks and services is tightly linked to local infrastructures and the way availability and interoperability of the networks are ensured in each country.

BEREC therefore strongly opposes any weakening or limitation of the enforcement and sanctioning powers of NRAs in all the Member States where ECNS are provided, as this would introduce procedural complexities and administrative burden, reduce the capacity of NRAs to ensure timely compliance with GA conditions, and ultimately run counter to the DNA’s objectives of simplification and the single market.

Regarding the envisaged BEREC guidelines to ensure that all the conditions listed in Article 9(4) are applied in a coherent, non-discriminatory and proportionate manner, cf. Article 11(1), BEREC, while ready to contribute within its own remit, reiterates, as it has underlined on other occasions<sup>3</sup>, that most of these conditions stem from requirements deriving from legislation outside the DNA and, in some cases, also outside the electronic communications sector, over which NRAs may, in certain circumstances, have limited or no possibility to act. In this respect, the approach outlined in the DNA – insofar as it entrusts BEREC to foster, furthermore via non-binding Guidelines, the harmonisation of GA conditions in areas where it holds no responsibilities – appears to represent more of an aspirational objective than a clearly defined pathway, postponing the solution of the problem to a future date (recitals 44 and 59).

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<sup>3</sup> E.g., in its Opinions 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 – documents BoR (24) 190 BEREC Opinion on the national implementation and functioning of the general authorisation, 5.12.2024, see: <https://www.berec.europa.eu/en/all-documents/berec/opinions/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> , and on their impact on the functioning of the internal market, pursuant to Article 122, paragraph 3 EECC and BoR (21) 178 BoR (21) 178, 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, 9.12.2021, see: <https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-the-nationalimplementation-and-functioning-of-the-general-authorisation-and-on-their-impact-on-the-functioning-of-theinternal-market-pursuant-to-article-122-paragraph-3-eecc> - and, more recently, in its mentioned BoR (24) 100\_1 and 100\_2 BEREC’s input to the EC public consultation on the White Paper “How to master Europe’s digital infrastructure needs?”, 24.06.2024, see: [https://www.berec.europa.eu/en/all-documents/berec/opinions/berecs-input-to-the-ec-public-consultation-on-the-white-paper-how-to-master-europes-digital-infrastructure-needs?language\\_content\\_entity=en](https://www.berec.europa.eu/en/all-documents/berec/opinions/berecs-input-to-the-ec-public-consultation-on-the-white-paper-how-to-master-europes-digital-infrastructure-needs?language_content_entity=en).

Moreover, some of the GA conditions in Article 9 relate not only to legislation beyond electronic communications, but also to Member States' prerogatives under EU legislation, and hence fall outside the Commission's remit, e.g., cybersecurity rules.

In this latter respect, a further issue arises in terms of the relationship between the NRA responsible for enforcing the GA conditions under the DNA and the competent authority under the CSA 2. As a matter of fact, ECNS providers, to be authorised to enter the market under Article 9 DNA, shall also comply with the CSA 2 supply chain requirements, which are under the responsibility of the relevant national cybersecurity authorities. BEREC points to the possibility of the cybersecurity authority instructing the NRA to withdraw the right to provide networks and services under the GA upon breaching the ICT supply chain security requirements of CSA2. In that regard, it is essential to specify the nature and the elements of such institutional interaction, as it would appear that any GA-related decision by the NRA should be predetermined by an earlier decision by the CSA 2 authority, with no or limited margin of discretion. For an analysis of this matter, please refer to the specific BEREC views on Part II of the DNA.

Lastly, taken together, Articles 9 and 10 of the DNA proposal raise concerns regarding the clarity and consistency of the scope of the general authorisation regime. On the one hand, the references in Article 9 to "public electronic communications services" and to networks or services "available to the public" risk unintentionally narrowing the regime by creating uncertainty for categories of networks and services that do not neatly fall within those terms, including non-public services, wholesale services, or other services which are promoted to different market segments as part of commercial strategies adopted by the providers. On the other hand, the absence of equivalent qualifiers in Article 10 could be interpreted as meaning that the Single Passport regime would also apply to private networks (such as corporate/enterprise networks), which would not appear to be a reasonable or intended outcome. Clarification and alignment of scope across these provisions would therefore be important to ensure legal certainty and avoid both regulatory gaps and overreach.

### **Alternative proposals:**

To achieve the goal of simplifying GA-related obligations for undertakings operating across borders while, at the same time, avoiding disruptive effects on the markets, BEREC considers that:

- The proposed streamlining of GA conditions, combined with a binding notification template, would together be sufficient to facilitate market entry.
- The Single Passport mechanism introduced in the DNA proposal should not be taken forward. Instead, approaches could be explored to address the issues the Commission sought to resolve through the Single Passport mechanism, while responding to the concerns identified in BEREC's assessment. Solutions should preserve the current role of NRAs in the Member States where networks and services are provided. BEREC would be ready to participate in such exploratory work and contribute its technical expertise.
- An option could be to establish a single-entry point for undertakings to notify the commencement of their activity to facilitate their cross-border operation and leave the enforcement with the NRAs of the Member States where the undertakings are providing

their networks and services. BEREC would therefore suggest further examining the suitability of different possible approaches, including whether undertakings could notify of the beginning of their activity either the NRA(s) of the Member State(s) concerned – e.g., in case they intend to operate in a single Member State - or alternatively, in particular for operators having cross-border activities, via the ODN, possibly through a dedicated interface.

This latter might be an online notification platform, which would be accessible via BEREC's website and integrated in each NRA's website and where any given provider would fill in one single notification form; the platform might automatically and immediately forward that notification to the NRAs of all the Member States of destination. This platform could be developed and managed by the ODN, but notifications would be exclusively addressed to and handled by the NRAs of the Member States of destination.

Overall, such an approach could help allow cross-border operators to proceed to a simplified notification process, while preserving the implementation responsibilities of the NRAs in the Member States where networks and services are provided. Furthermore, as said, should an undertaking wish to operate in a single Member State only, it could submit a notification directly to the NRA of the Member State concerned.

Additionally, this could also allow Member States which have removed the notification obligations to consult the database managed by the ODN only when they deem it necessary, and to avoid duplicating any notification process.

All in all, whatever the decision as to the entry point for notifications, the enforcement of the GA conditions should remain with the NRAs where ECNS are provided. BEREC therefore suggests adjusting the Single Passport mechanism by dropping the proposed changes to the enforcement and sanctioning powers of the NRAs in the Member States where ECNS are provided. In particular, the enforcement of the GA conditions should lie exclusively with the NRA in the Member State of destination, where ECNS are provided. A change in this respect would be unsuitable to ensure the necessary market monitoring and robust enforcement interventions by responsible NRAs in the Member States of destination.

BEREC also notes that Article 12 of the DNA proposal introduces a mandatory exemption from administrative charges without clarifying whether the competence to set administrative charges and exemption thresholds would remain at the national level, where the ECNS are provided. Such uncertainty risks affecting NRAs' ability to recover the costs associated with supervision and enforcement, and may limit the flexibility required to reflect differing national market structures. Administrative charges constitute an essential tool for safeguarding NRA independence, as they ensure predictable and sustainable funding for supervisory and enforcement functions. Their setting and any decisions on exemptions should therefore remain with the NRAs in the markets where electronic communications networks and services are provided.