

**BEREC Guidelines for the notification
template pursuant to article 12,
paragraph 4 of Directive 2018/1972 of
the European Parliament and of the
Council**

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1. Executive Summary

The newly introduced European Electronic Communications Code (hereinafter “EECC”) confirms the present EU legislator’s approach to the administrative regime for market entry in the electronic communications sector, as outlined in the Authorisation Directive (Directive 2002/20/EC). This means that the general authorisation system still constitutes the EU framework of reference regulating access to the market for undertakings wishing to provide electronic communications networks and services.

Within such framework, the EECC still acknowledges the notification of the beginning of activity to the NRA or other competent authority as the only requirement that Member States might legitimately envisage for ECN or ECS providers subject to the general authorisation framework.

Compared to Article 3 of the current Authorisation Directive, bearing an illustrative list of information potentially includable in a notification form, the EECC now introduces in Article 12, paragraph 4, an exhaustive list of such pieces of information.

In this context, BEREC is called to “publish guidelines for the notification template” and to set up, by December 2020, an EU database of the notifications transmitted to the competent authorities.

To this end, BEREC built on previous work carried out in 2013 with a view to simplifying notification fulfilments for cross-border operators and adapted those reflections to the new legal context of reference.

The present draft Guidelines are therefore meant to ensure the implementation of Article 12, paragraph 4 of the EECC, thereby contributing to achieving consistent notification-related requirements throughout the Union, to the benefit of the single market.

2. Introduction and legal basis

Directive 2018/1972 establishing the EECC provides that, with a view to stimulating the development of new communications services and pan-European communications networks and services, as well as to allowing service providers and consumers to benefit from the economies of scale stemming from the internal market, Member States should envisage the least onerous authorisation system in relation to the provision of electronic communications networks and services (hereinafter referred to as “ECN” and “ECS”) (recital 41).

Such a lean system is identified (in subsequent recital 42) in the general authorisation regime for electronic communications networks and services - other than number-independent interpersonal communications services - implying that no explicit market entry-related decision or administrative act can legitimately be required under EU Law by the national regulatory authority for the undertakings to begin their provision of ECN/ECS.

The general authorisation therefore is shaped as a legal framework of reference composed of a set of obligations – the widest array of which is exhaustively listed in Annex I to the EECC - that providers have to abide by in order to legitimately provide ECN/ECS and compliance with which shall be verified ex post; general authorisations should contain only conditions which are specific to the electronic communications sector (recital 46).

The EECC also provides that any procedural requirements connected to market entry in the electronic communications sector should be limited to a declaratory notification which, when envisaged by a Member State upon beginning the activities, should not entail administrative costs on the providers¹. The EECC adds that such notification could be made available via an entry point at the website of the competent authorities.

Article 12 of the EECC confirms the approach outlined in the mentioned recitals and provides that a Member State may legitimately envisage for all ECN or ECS providers subject to general authorisation the submission of a notification to the NRA or to other competent authority to keep a registry or list of providers of ECS and ECN; this whole approach is in full continuity with what envisaged by the current EU sectoral legislative framework (Article 3 of Directive 2002/20/EC – “Authorisation Directive”).

Pursuant to Article 12, paragraph 4 of the EECC, the notification – when envisaged by a Member State - shall not entail more than a declaration by the operator of the intention to start the provision of ECN or ECS, supplemented by relevant minimal information, whose components, newly introduced by the EECC, are indicated in the same provision: i) the name of the provider; ii) the provider’s legal status, form and registration number, where the provider is registered in a trade or other similar public register in the Union; iii) the geographical address of the provider’s main establishment in the Union, if any, and, where applicable, any secondary branch in a Member State; iv) the provider’s website address,

¹ NRAs and other competent authorities may impose administrative charges on undertakings providing electronic communications networks or services under the general authorisation framework, but not as a condition for market access.

where applicable, associated with the provision of electronic communications networks or services; v) a contact person and contact details; vi) a short description of the networks or services intended to be provided; vii) the Member States concerned; and viii) an estimated date for starting the activity.

Compared to the mentioned “Authorisation Directive”, the EECC now provides that Member States shall not impose any additional or separate notification requirements, therefore introducing a list bearing the widest range of information that NRAs or other competent authorities can legitimately require from ECN/ECS providers within a notification form.

3. Scope of the BEREC Guidelines: the BEREC duty

Pursuant to Article 12, paragraph 4 of the EECC, “in order to approximate notification requirements”, and harmonise accordingly the notification forms currently in use at national level, BEREC is called to “publish guidelines for the notification template”, i.e. guidelines outlining the main features and contents of the notification form – within the constraints provided for by Article 12, paragraph 4 – to be used by Member States that will decide to envisage a notification requirement.

Furthermore, Article 12 of the EECC provides that, by December 2020, BEREC shall maintain a Union database of the notifications transmitted to the competent authorities by providers falling under the general authorisation regime and subject to the notification requirement.

As a Body statutorily committed to contribute to the internal market for electronic communications networks and services, BEREC shall accomplish the duties entrusted to it by Article 12, paragraph 4, with a view to facilitating market entry for ECN/ECS providers consistently throughout the Union, thus minimizing their procedural requirements and relevant administrative costs, in line with what mandated by the EECC, and ultimately streamlining the fulfilments bearing on providers with a EU-wide scale of operation.

The present BEREC Guidelines are therefore meant to accompany the implementation process for Article 12 EECC by defining a template, applying to future notifications of the beginning of activity by providers of ECN and ECS (as they are newly defined in Article 2 of the EECC) that Member States might wish to envisage.

Such notification template aims to materialize the spirit of Article 12, which bears an exhaustive list of information that can be required from operators when beginning their provision of ECN/ECS, and to facilitate at the same time the accomplishment of the database that BEREC is called to implement, as a homogenous template is likely to significantly facilitate the BEREC task to collect undertakings’ notifications.

The present BEREC Guidelines are therefore intended to cover the definition of a notification template within the boundaries drawn by the EECC itself; NRAs/other competent authorities might still adapt the structure and contents of such template but would need to remain within the boundaries of Article 12 EECC. In the spirit of this provision,

NRAs/competent authorities might legitimately decide to limit the information requested to undertakings further, compared to what mentioned in Article 12.

4. Previous activities conducted by BEREC

In 2011, BEREC has carried out a reflection on the potential legal and administrative factors hindering the development of the internal market for business connectivity services by means of a Report concerning “the impact of administrative requirements on the provision of transnational business communication services” (BoR (11) 56); in the document, a snapshot was provided of the NRAs’ competences in the general authorisation field and of the Member States’ different administrative schemes in place back then, implementing the relevant provisions in the Authorisation Directive. Furthermore, problems in terms of different national administrative requirements, also stemming from outside the electronic communication discipline, as well as possible best practices were sketched out.

BEREC kept on working on the subject in 2013 and reflected upon a draft notification template, drawing on common features in national notification forms, with a view to drafting a simplified template for the notification of the beginning of the activities by cross-border operators only, bearing the requirements as in the Authorisation Directive, and putting in relevant annexes any further information required at a national level.

This working line ended with the publication, in June 2013, of an outline of national notification-related requirements (BoR (13) 03).

The present Guidelines build on the reflections carried out in 2013 and get to define a template to be implemented at national level with a view to the notification of the beginning of the activities by ECN/ECS providers, on the background of the newly introduced provisions in the Code and, in particular, of the list of items in Article 12, para 4 of the Code.

5. The notification template

To be filled in in national language and, if possible, also in English language.²

Table 1 – Purpose of the notification

This notification is for

² The English version is intended to facilitate the collection of notifications in the BEREC register; the national language version of the notification is the valid text.

1.1 Commencement of new activity	Yes/No
1.2 Change of the activity already notified in notification n. ³	Yes/No
1.3 Variation of identification data as in notification n. ⁴	Yes/No
1.4 Termination of the activity based on notification n. ⁵	Yes/No

Table 2 - Details of the undertaking

Details of the undertaking	
2.1 Name of the provider	
2.2 Provider's legal status, form and registration number ⁶ , where the provider is registered in a trade or other similar public register in the Union	
2.3 Geographic address of the undertaking's main establishment in the EU, if any, and, where applicable,	

³ Please fill in this line in case your notification is about changes concerning the networks or the services provided and/or the relevant commencement date; In such case, please proceed herewith to fill in the whole form (Tables 1 to 4) and to notify again of your activity. Please indicate all currently applicable (set of) networks and/or services you intend to provide (including in this updated picture any changes in terms of switch, increase or decrease of activities).

⁴ Please use this line in the event that you wish to communicate any changes concerning your contact/identification data relating to a previous notification made; in such case, fill in only Tables 1 to 3.

⁵ Please use this line in case the change you intend to notify concerns the switch off of your previously notified activities of provision of networks and/or services

⁶ Certification from the competent chamber of commerce or equivalent, depending on national requirements in compliance with applicable EU law.

any secondary branch in the Member State ⁷	
2.4 Provider's website address, where applicable, associated with the provision of electronic communications networks or services	

Table 3 - Contact person

Contact person	
3.1 Full name of the Contact Person, to be someone holding the legal rights to submit any kind of notifications or documents on behalf of the company	
3.2 Telephone No. of the Contact Person	
3.3 Email Address of the Contact Person	
3.4 Geographic address	
Alternate Contact person	
3.5 Full name of the Alternate Contact Person	
3.6 Role of the alternate contact person in the notifying undertaking	
3.7 Telephone No. of the Alternate Contact Person	
3.8 Email Address of the Alternate Contact Person	

⁷ Please indicate both your company's main establishment's address in the EU and the address of your local branch in the Member State where the notification is made.

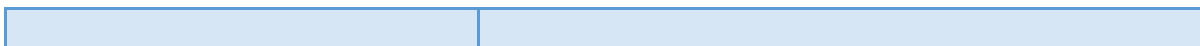


Table 4 - Short description of the network(s) or service(s) ⁸

(1) Network	(2) Service	(3) Short description of the Network	(4) Short description of the Service	(5) Member States where the network is available and/or the service is provided	(6) Geographic area of the Member State where the network is available and/or the service is provided (in case of players active at sub-national level)	(7) Publicly Available ? Yes/No	(8) Wholesale-only service Yes/No	(9) Resale service only Yes/No	(10) Estimated commencement date	(11) Termination date
Metal Line (DSL)	Fixed IAS									
Coax (cable TV)	Mobile IAS									
Fibre	Fixed NB-ICS									

⁸ Please indicate the activities to be carried out by the notifying entity only (e.g., in case of multinational groups, do not indicate activities carried out by different subjects)

	(including nomadic)									
Electricity cable system	Mobile NB-ICS									
Wireless-licensed spectrum	Data transmission									
Wireless-unlicensed spectrum	Leased lines									
Standard mobile network (2G, 3G, 4G, 5G)	TV broadcasting									
Other mobile solutions (TETRA POL emergency networks)	Radio broadcasting									
Submarine cables	Roaming services (MCA and MCV),									
Satellite	Transport of telephone traffic among operators									

Other	M2M services.									
	Other									

6. Declaration⁹

On behalf of the notifying person or company, I declare that the information provided by me is accurate and complete in all respects.

Full name of Signatory:

Signed:

⁹ The notification must be signed: a) in the case of a natural person, by that person, duly identified, or by their representative, if any, duly identified; or b) in the case of a legal person, by that person, duly identified in accordance with the law, or on its behalf, by (a) person(s) duly identified, having the capacity and the powers to perform such act.

Position held (if the notifying undertaking is a company):

Date: _____

Annexes

In compliance with Article 12, Member States may use Annexes to ask for additional information needed to comply with national legislation.

Consultation questions

1. Do you think that the items covered by Table 1 on the purpose of the notification are sufficiently clear and exhaustive?
2. Item 1.2 intends to capture only changes occurred in terms of networks and services to be provided and relevant commencement dates; other changes concerning a previous notification would fall under item 1.3. Do you think this is sufficiently clear?
3. Do you think that other purposes of a notification should be covered in the template?
4. Table 2 bears a set of information necessary to identify undertakings in the market. Please elaborate your views on the nature and level of detail of information in Table 2.
5. Table 3 bears the notifying undertaking's contact person details. Please elaborate your views on the nature and level of detail of information in Table 3.
6. Does the taxonomy proposed in columns 1 and 2 of Table 4 is sufficiently general, covering at the same time all market situations? Would you suggest a different macro-categorization of electronic communications networks and services, with a view to facilitating market entry, at the same time allowing undertakings to provide enough information on the activity to be launched? Have you got any other suggestions concerning Table 4?
7. The EECC requires BEREC to maintain a database of the notifications transmitted by undertakings to national competent authorities; since notifications, at least for national operators, will have to be submitted in national language, have you got any suggestions on how an EU database could be set up and automatic translations of national notifications into English ensured?
8. What would you suggest in order to ensure that the EU database be as useful as possible? Should it be public? What key features should it have?