

**BEREC report on the public call for contributions on  
possible existing legal and administrative barriers with  
reference to the provision of electronic communications  
services for the business segment**

**December 2011**

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## 1. Introduction

During the public consultation on the draft 2011 Work Programme, stakeholders raised the issue of the significant and widely varying administrative burdens experienced by cross-border operators offering their business services in different EU MS. This issue was reflected in the 2011 BEREC WP and BEREC committed to look into the impact of national administrative requirements on the provision of transnational business electronic communications services.

A specific legal basis for this piece of work is represented by Article 3(1) m of the BEREC Regulation<sup>1</sup>.

BEREC launched therefore a public call for input to collect evidence from the stakeholders on any perceived area for improvement regarding the cross-border provision of business communication services, as arising from different approaches in national administrative regimes.

The call for contribution addressed to the stakeholders started on July the 4<sup>th</sup> and the original deadline of August the 5<sup>th</sup> was postponed to August the 19<sup>th</sup> 2011. The following 8 stakeholders provided their contributions:

- BT Global Services
- AT&T
- Joint response by: AT&T, BT Global Services, Cable & Wireless, Worldwide, Orange Business Services and Verizon Business
- Colt Technology Services Group Limited
- ECTA
- INTUG
- Telecom Italia
- Vodafone

This document provides a summary of these stakeholders' contributions to the questionnaire on potential administrative barriers to the cross-border provision of business communications services.

The full texts of the responses are published separately on the BEREC website, subject to confidentiality requests.

## 2. Consultation questions

Stakeholders were invited to present their views by responding to the following 4 questions concerning their overall experience with the functioning of the authorisation system:

1) Under the current authorisation regime laid down by the 2002 Authorisation Directive (and substantially confirmed by the 2009 review), the ECNS operators are entitled to start activities upon notification/declaration to the NRA.

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<sup>1</sup> "The tasks of BEREC shall be: (...)

(m) to deliver opinions aiming to ensure the development of common rules and requirements for providers of cross border business services".

- What is your overall experience of the practical implementation of such administrative regime in Member States?
- Did you encounter inconsistencies or operational constraints potentially affecting the provision of cross-border business services? If yes, please provide a description.

2) As far as the administrative regime is concerned, can you identify some national best practice across Europe which may help in supporting the provision of cross-border business services?

3) Besides the authorisation system, are there any other differences in administrative procedures in the area of telecommunications that may affect the provision of business services across Europe?

4) Do you believe that the provision of cross-border business services could be subject to a specific administrative regime?

- If so, for which reasons and under which legal basis?
- What should be the special features of such regime?

### 3. Stakeholders' responses

**1) Under the current authorisation regime laid down by the 2002 Authorisation Directive (and substantially confirmed by the 2009 review), the ECNS operators are entitled to start activities upon notification/declaration to the NRA.**

**- What is your overall experience of the practical implementation of such administrative regime in member States?**

**- Did you encounter inconsistencies or operational constraints potentially affecting the provision of cross-border business services? If yes, please provide a description.**

Half of the stakeholders participating in the call for contributions find the authorisation regime implemented in the EU as featured by smooth and simple procedures, streamlined when compared to the previous licensing system (Vodafone, Colt, BT and AT&T; this latter refers to the "light - touch EU approach").

On the other hand, the stakeholders also identify some inconsistencies among national schemes as well as areas for improvement of authorisation-related practices; they mostly relate to:

- The language used for notifications (generally only national) - *Vodafone, AT&T, BT, Telecom Italia, joint response*

- The different notification forms' features and the relevant diverging categories of networks and services envisaged and relevant information required - *Vodafone, AT&T, joint response*
- Legal documents to be provided and procedural requirements linked to the notification - *Vodafone, AT&T, ECTA*; obligations of notification's review and update envisaged in some Countries are also perceived as a problem - *AT&T, BT, joint response and Colt*
- The requirement in some Countries for a contact person in the Member State speaking the local language - *ECTA, Telecom Italia*
- The scarce availability of the online notification tool - *joint response, AT&T*

Furthermore, all the stakeholders providing a contribution to the BEREC call for input detect other inconsistencies impacting on the cross-border business operators' activity, stemming not from the authorisation process itself but rather from provisions as in the national legal orders, outside the ECNS regulatory framework. In other cases, areas for improvement identified derive from the national implementation formulas of the EU sector legislative framework; in both cases, the issues raised by some stakeholders fall outside the area of competencies of BEREC members.

With reference to such aspects - outlined under Question 3 - stakeholders report of diverging national requirements in several fields, ranging from the management of numbering resources to legal interception and data protection rules, consumer protection regulation and reporting obligations, just to mention but a few.

Amongst the issues raised, reference is also made to the unrecognized specificity of the business segment from a market analysis perspective, which was already looked into by ERG and BEREC in their works mentioned in the Introduction of the present report.

Concerning national implementation patterns of the notification scheme, the stakeholders report of varying national systems with sometimes burdensome requirements and operational constraints impacting over the time needed by pan-European business services provider to effectively provide networks/services to business customers, the relevant costs borne and ultimately innovation - *Vodafone, ECTA, INTUG, AT&T, joint response*.

**2) As far as the administrative regime is concerned, can you identify some national best practice across Europe which may help in supporting the provision of cross-border business services?**

The majority of the stakeholders report both the no-notification system implemented in the UK and Denmark and the most straightforward notification systems in force as reference models.

Regarding the latter regimes, Sweden (*AT&T*), Finland (*ECTA*) and the Netherlands (*BT*) are identified as best performers, together with Countries implementing the online notification tool.

Within the context of best practices, the stakeholders also mention the following ideas for consideration:

- Implementation of a one-stop-shop system facilitating the cross-border provision of business connectivity services
- Development of a common, harmonized and simplified notification format with a minimal number of categories
- Introduction of a specific cross-border business provider category in national notification forms
- generalized implementation of the no-notification formula; although envisaged by the legislative framework, this solution clearly falls within the remit of the competent authorities responsible for the adoption of national transposition measures.

These ideas are delineated under Question 4.

**3) Besides the authorization system, are there any other differences in administrative procedures in the area of telecommunications that may affect the provision of business services across Europe?**

Some stakeholders recognize that not all the areas of improvement identified fall within the remit of BEREC NRAs (collective response).

As a matter of fact, many of the issues outlined below stem from the national transposition provisions of the ECNS framework and from other provisions as in the national legal orders:

- Administrative Fees. Stakeholders report that, where revenue-based fees are applied, the basis for calculation of such charges and the relevant documents to be provided (audited accounts or statements) vary significantly, thus implying relevant costs for cross-border operators - *AT&T, ECTA, joint response, BT*
- Reporting Obligations. According to some stakeholders, there are significant divergences in the EU among NRAs' reporting requirements, ranging from extensive data collection exercises to simple annual reports; an harmonizing action in this respect would be considered useful - *AT&T, BT, Telecom Italia, ECTA, joint response*
- Consumer Protection Obligations. The stakeholders note that in many EU MS, NRAs impose Country-specific consumer protection obligations (such as the adoption of service charters, publication of prices, set up of alternative dispute resolution schemes and compensation arrangements), some of which apply also to business operators; this is held not to be relevant in the business context, featured by heavily negotiated contracts following competitive tendering processes. The same would occur according to some stakeholders with reference to national Net Neutrality - related provisions, hence impacting on the costs incurred by cross-border business operators to comply with the various provisions in force - *AT&T, joint response, BT, Vodafone*
- Legal Interception. Stakeholders refer to varying requirements in place in each Country for national security reasons, implying significant operators' investments to implement different technical solutions; the same would occur as for data retention obligations - *AT&T, joint response, BT, Vodafone, ECTA*
- Data Protection. Different approaches to data protection issues in EU Countries are highlighted by some stakeholders - *AT&T, joint response, BT, Vodafone*

- Numbering issues and management of emergency calls. According to some stakeholders, the approach to numbering varies considerably between Member States in terms of the information to be provided when applying for numbering resources and restrictions applicable to the use of geographic numbers - *Vodafone, ECTA, Colt*; the same occurs regarding national requirements related to emergency calls
- Legal Establishment. Stakeholders report to be frequently obliged to establish local legal entities or local branches in the Member State of operation, therefore incurring the relevant costs - *joint response, BT, ECTA, AT&T, Telecom Italia*
- In addition, in continuity with what underlined within past ERG and BEREC works on the subject, some stakeholders - *Vodafone, ECTA, Coalition* - stress how the problems affecting business operators mostly refer to the business market's specificity, while *Colt, ECTA, INTUG and BT* refer to an inadequate regulation in the EU of the wholesale input necessary to serve the business segment.

**4) Do you believe that the provision of cross-border business services could be subject to a specific administrative regime?**

**- If so, for which reasons and under which legal basis?**

**- What should be the special features of such regime?**

The majority of the stakeholders participating in the call for contributions holds that the business services market should deserve a specific administrative treatment.

Some of the contributing stakeholders - *AT&T, joint response, Vodafone* - interpret the new addition in Article 3(2) of the Authorisation Directive ("*Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall not be required to submit more than one notification per Member State concerned.*") as a legal basis providing the possibility to improve and simplify national authorisation regimes in the EU. Also *Telecom Italia and BT* suggest the introduction of a simplified regime allowing cross-border operators to notify only one Country's NRA and operate in the EU based on the mutual recognition of national authorisation frameworks.

This would materialize a one-stop-shop mechanism based on which, where a provider is already authorised to operate in one of the EU countries, it could be so also in other MS under the principle of mutual recognition of general authorisation frameworks - *Vodafone, BT, AT&T, joint response*.

Other ideas for consideration are put forward by the stakeholders, with a view to improve the operational conditions for cross-border business operators:

Some stakeholders suggest the introduction of a specific cross-border business provider category in national notification forms; others propose to develop a common, harmonized and simplified notification format for cross-border business services, with a minimal number of categories and possibility for notifying providers to submit "free hand" descriptions of services which do not fall within any standard categories - *AT&T, joint response, ECTA and INTUG*.

Some stakeholders also refer to the generalized implementation of the no-notification formula, as allowed under the Authorisation Directive (AT&T, Coalition, ECTA).

Lastly, other stakeholders believe instead that no specific regime should be introduced for cross-border business operators, but that a streamlining of national practices, including a reduction of the reporting obligations, could be performed (*BT*).

Some stakeholders also see BEREC playing a role in this field, either as a facilitator for the filing of notifications by cross-border business operators (*Vodafone*) or as an advisor to the EC in view of legislative reforms (*INTUG*).

Further ideas put forward by the stakeholders in order to facilitate the operation of cross-border business operators are:

- Indicate a “contact point” person speaking English on NRAs’ websites for possible requests for clarification regarding the notification procedures and relevant administrative obligations - *Telecom Italia*
- Introduce an on-line filing system in all countries operating a notification requirement - *AT&T*
- Publish detailed English guidelines on NRAs’ websites, containing a clear description of notification procedures - *Telecom Italia*
- Provide for the possibility to fill in the notification form - if any - in English language or in languages additional to the official ones of the Member State - *AT&T, BT, Telecom Italia*