Body of European Regulators for Electronic Communications

BEREC

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BEREC REPORT ON THE IMPACT OF ADMINISTRATIVE REQUIREMENTS ON THE PROVISION OF TRANSNATIONAL BUSINESS ELECTRONIC COMMUNICATION SERVICES

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Overview: structure of the report

The present “BEREC Report on the impact of administrative requirements on the provision of transnational business electronic communication services” provides the main results of the investigation carried out on the subject by BEREC.

The analysis is centered on the administrative requirements for the provision of electronic communications networks and services in the European Union that competent NRAs are called to apply based on the provisions as in the respective legal orders.

In the introductory section, a description is provided of the work already carried out by both ERG and BEREC on the subject of business communication services, together with some background information on the main focus of the present report as well as on BEREC institutional remit in the specific subject of concern.

In the second section, a legal framework is provided to the present work and the reference provisions regarding the current authorisation requirements as in article 3.2 of the Authorisation Directive are recalled. A snapshot of BEREC Members’ competencies in this field is also set out.

In the third section, based on a survey on national authorisation practices, the MS experiences are set out in the context of the main features of national administrative schemes; the variance of such MS practices on the background of the EU legislative framework is also discussed.

In the fourth section, the most relevant issues identified by BEREC – also based on the outcome of a specific call for input by the stakeholders - are described. A particular attention is given to the problems of administrative nature related to the national requirements for the provision of business connectivity services.

In the fifth section, some best practices - in terms of maximum streamlining of the authorisation process, in compliance with the spirit of the EU provisions - are outlined so as to suggest to BEREC members (where they are the competent Authorities) some areas with potential to improve their respective administrative schemes; any intervention suggested is clearly subject to the legal provisions bearing down on sector Regulators at national level. Such provisions might concern indeed the performance of commercial activities and hence lie outside the scope of electronic communications law; furthermore Regulators are subject to the national implementation measures of the general authorisation regime, as discretionarily defined by their Member States.

1. Introduction

BEREC's institutional role includes the development of regulatory best practice, such as common approaches, methodologies or guidelines on the implementation of the EU regulatory framework, to the ends of promoting competition, the development of the internal market for electronic communications networks and services and the interests of the citizens of the European Union.

Within the scope of such task, laid down by the establishing Regulation, BEREC has focused on the business segment and has prepared the present report which concerns the legal and administrative requirements which impact on the provision of electronic communications networks and services including the impact on the cross-border provision of business communication services.

A specific provision serves as legal basis to the present BEREC work: pursuant to art. 3.1 m) of the BEREC Regulation, BEREC shall - among the other tasks - also "*… deliver opinions aiming to ensure the development of common rules and requirements for providers of cross-border business services*".

Issues affecting the business services market have been the subject of examination by BEREC and its predecessor, the European Regulators Group, in recent years. During 2009 and 2010, ERG and then BEREC have worked on the business services markets: they first looked into the availability of wholesale access remedies necessary for the provision of retail services to "high end" business users.

Later on, BEREC conducted further work on the issue of the business markets definition, investigating the feasibility of identifying a separate relevant market for the wholesale provision of upstream input to large scale multi-site communication providers serving the high end business segment.

The results of the activities carried out at that time are summarized in the BEREC documents BoR (10) 11[1] and BoR (10) 46 Rev1[2] respectively.

During the public consultation on the BEREC Work Programme 2011, some stakeholders raised the issue of the allegedly inconsistent administrative regimes implemented in the EU for the commencement of operators' activity (market entry) and the subsequent varying burdens (in terms of administrative requirements) bearing down on cross-border providers of business connectivity services.

As a result, BEREC committed to investigate this issue, related to the difficulties of administrative nature encountered by business communication providers in supplying their connectivity services to business customers located across EU MS borders. The investigation was aimed at:

[1] BEREC report of the consultation on the ERG Report on the regulation of access products necessary to deliver business connectivity services - ERG (09) 51.

2 BEREC report on relevant market definition for business services.

1. analyzing any existing legal and administrative requirements established under the European regulatory framework with reference to the cross-border provision of electronic communications services for the business segment;
2. on the background of this analysis, BEREC also aimed at identifying any current national best practice in terms of implementation patterns of the general authorisation scheme, to the benefit of business connectivity providers and, finally, of business customers.

The project was launched through a public call for input - which ran from July the 4th to August the 19th 2011[3] - so as to collect the stakeholders' views concerning the current inefficiencies regarding the EU-wide provision of electronic communications services dedicated to the business segment.

8[4] contributions were provided by the stakeholders as to their experiences of the administrative regimes implemented in MS for the provision of business connectivity services; this input was used by BEREC to identify the main types of problems raised and particularly to look into those of an administrative nature.

In parallel, a comprehensive survey was conducted with a view to collecting information from NRAs on the general authorisation principle national implementation modalities and to accordingly assess divergence in the EU concerning the administrative systems in force for the beginning of operation by electronic communication networks and services providers.

Overall, the analysis conducted[5] indicated that the administrative requirements applied in Member States are in conformity with the provisions of the EU framework which provides for a degree of national discretion on how the provisions are implemented.

In line with the BEREC Regulation and the Work Programme 2011, BEREC has focused the present analysis on the factors hindering the cross-border activities of business operators; however, it is worth to consider that problems and ideas identified within this report could be interpreted in a broader sense and could therefore be referred to any cross-border operator - not necessarily those targeting business clients only - thus facilitating their activities.

[3] The former deadline of August the 5th was indeed postponed to the 19th according to the note published on BEREC website on July the 14th.

[4] BT, Telecom Italia, ECTA, INTUG, AT&T, Colt, Vodafone, joint response by: AT&T, BT, C&W, Orange business and VERIZON.

[5] 25 NRAs from the following Countries participated in the survey: Liechtenstein, Portugal, Romania, France, Switzerland, Germany, Spain, Ireland, Greece, Estonia, Malta, Denmark, Hungary, UK, the Netherlands, Lithuania, Austria, Slovakia, Poland, Croatia, Finland, Norway, Slovenia, Czech Republic, Italy.

2. Legal background

In 2002, the European co-legislators introduced in the sector *acquis communautaire* the general authorisation principle, according to which ECN and ECS providers' activity cannot be subject to a regime of individual licensing. This implies that no discretionary administrative power can be exercised by relevant authorities with regard to the entry into the market of such undertakings. However, this prohibition does not preclude NRAs from requiring undertakings to submit a prior notification of their intentions to commence the provision of networks or services before they begin activities. This regime is also without prejudice to NRAs' powers to impose specific obligations referred to in Article 6(2) of the Authorisation Directive as well as the provisions concerning the granting of individual rights of use for frequencies and numbers.

The new legal regime set out by the 2002 Authorisation Directive - aimed at ensuring the freedom to provide electronic communications networks and services and consequently facilitating market entry - has been confirmed by the 2009 Directive 2009/140/EC.

Article 3.2 of the Authorisation Directive provides that MS may subject the provision of electronic communications networks and services to a general authorisation framework only, which may include a requirement on the undertaking concerned to submit a notification before commencing activity.

In particular, that article states "…*the undertaking concerned may be required to submit a notification but may not be required to obtain an explicit decision or any other administrative act by the national regulatory authority before exercising the rights stemming from the authorisation. Upon notification, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use in Articles 5, 6 and 7*".

Therefore, the provision allows MS to arrange a national legal framework authorising the beginning of the operators' activities both upon simple notification to the competent NRA and without a prior notification. The notification requirement represents the maximum level of constraint that can be imposed on operators wishing to start their activities.

According to Article 3.2, both approaches (prior notification or no prior notification) have been operationally implemented in the EU.

The majority of NRAs reported that their national legal framework provides for the obligation on undertakings to notify the relevant NRA before beginning their activities; only two NRAs reported a no-notification regime (Denmark and the UK - see section 3).

In order to thoroughly illustrate the legal framework regarding the European authorisation systems, it is also worth to make reference to the competent bodies responsible for the management of the general authorisation framework at national level.

In fact, not all EU NRAs have competencies in this domain and consequently not all of them are entrusted with receiving notifications on the planned beginning of the operators' activities nor dealing with subsequent supervision and monitoring duties; in some cases, these tasks have been assigned to the relevant Ministries or other national Authorities.

This is also in full compliance with the EU framework since such a circumstance is clearly envisaged by Article 3.6 of the Framework Directive, according to which MS are required to notify the European Commission of all national regulatory authorities entrusted with the duties as in the Directives. This grants Member States discretion in deciding to designate different national regulatory authorities to perform the full range of tasks under the regulatory framework, including the duties related to the general authorisation regime.

Taking into consideration that the implementation of the EU sector legislative provisions falls within the Members States' remit and that it is up to them to define the implementation tools of the general authorisation scheme - within the limits set out by Article 3.2 of the Authorisation Directive - a complete adherence in the EU with the general authorisation model can definitely be confirmed.

Finally, recent amendments introduced in article 3.2 of the Authorisation Directive have to be recalled.

The 2009 review of the EU legal framework introduced a new paragraph, according to which *"…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*"; the actual scope of the newly introduced provision and its possible implementation patterns could be further investigated.

3. The national authorisation schemes in place

In this chapter, an outline of the current situation in the different MS is drawn, based on the main aspects characterizing the national administrative regimes for the commencement of activities in the electronic communications sector.

A few issues that might deserve further consideration in view of any possible improvement are also outlined.

It should be preliminarily underlined that only a few of the legal obligations outlined below stem from specific implementation features as designed by NRAs; most of these legal obligations stem instead from national transposition measures of the EU ECNS legislative framework as well as from national cross-sectoral legislation; hence, they both fall outside the remit of NRAs.

In particular, some requirements also fall outside the scope of electronic communications law, as it is the case of the conditions for the exercise of commercial activities, defined by national commercial law.

The areas of the following analysis refer to:

1) article 3.2 of the Authorisation Directive implementation modalities in MS (as to the implementation of the general authorisation principle through a notification or no-notification system and the relevant features of both regimes);
2) surveyed NRAs responsibility in receiving notifications, where a notification system is used;
3) existence of notification requirements specific to the cross border provision of business connectivity services;
4) possibility to file notifications online;
5) features of the notification as to the number and type of categories of networks and services envisaged;
6) possibility to use English language for notifications to the NRA;
7) information to be provided with the notification;
8) implementation of article 9 of the Authorisation Directive;

Other requirements not directly stemming from national authorisation processes have been analyzed; they are namely referring to reporting obligations; administrative fees and application of consumer protection-related obligations to business operators.

1) All the national administrative schemes surveyed by the 25 contributing NRAs exclude the exercise of any administrative power for the control over market entry and are therefore fully compliant with the general authorisation principle; particularly in comparison with the previous systems based on licenses, the present situation in Europe as to the conditions attached to market entry, have significantly improved also in the stakeholders' opinion.

As discussed in the Legal Background section, providing for the operator's notification to the NRA of the beginning of activities is an option explicitly envisioned by article 3.2 of the Authorisation Directive; this is practically applied in 23 out of 25 responding Countries.

Still in compliance with the EU legislative framework, Denmark and the UK have adopted instead a no-notification regime, where operators can start their activity without a previous notification to the NRA.

Both implementation modalities of the general authorisation system are considered by NRAs themselves to represent an effective way to identify subjects operating ECN and ECS in the market without representing an excessive burden on market players.

Ofcom case:

In the UK, the Communications Act 2003 has implemented the general authorisation principle by empowering Ofcom to introduce an advance notification system - like in the majority of EU MS – if Ofcom considers it appropriate to receive notifications from providers wishing to start supplying networks and services.

However, so far, Ofcom has chosen not to trigger such a notification system, something which would first require Ofcom to designate a description of networks, services and facilities to be covered by the notification obligation. In the UK, therefore, providers begin their activities without any advance notification to Ofcom.

However, for the purposes of identifying undertakings liable to pay administrative charges to Ofcom, a description of networks, services and facilities have been designated under separate powers under the Act. Such designated providers are then required to notify prescribed information needed by Ofcom to calculate these charges, but this system of notification relies on, in effect, a compulsory self-certification process.

Although the absence of an advance notification regime in the UK presents advantages in reducing regulatory costs (e.g. no costs to maintain a register, etc.), the self-certification process for administrative charging means that Ofcom spends time monitoring whether all persons liable to pay administrative charges are actually complying with their obligations to notify Ofcom for this purpose. For example, Ofcom takes proactive measures to identify providers through various means, including through market research, consultation of the Companies House Register, monitoring of market developments through a number of partners, regular contacts with the major communications providers in the context of consultation on Ofcom's proposals and making available through the Ofcom website a listing of all known operators who are subject to the administrative charge.

Nita case:

In Denmark, the legislator has translated the general authorisation principle into the national legal order without introducing at all the notification obligation; as a result, neither NITA nor any other Danish authority (except the Danish National Police, which shall be notified but not under the Authorisation Directive) is responsible for receiving notifications. Like Ofcom, also Nita praised the advantages of this system, while acknowledging the challenges related to the no notification scheme, especially with regard to the collection of the information needed in view of market reviews or official statistics.

Pros and cons associated to both systems can be identified.

While satisfaction was expressed on the functioning of the notification system, some NRAs consider keeping the register of operators updated as a challenge. In order to have a more detailed picture of the specific requirements attached to national notification regimes, a specific analysis should be performed on the actual functioning of national

operators' registers, the costs borne to run the notification regime and any sanctions imposed by NRAs in the event of a missed notification by a sector operator.

NRAs with a no-notification regime in place report this system as having advantages in terms of savings in administrative costs and duties for both stakeholders and Regulators; nevertheless, they acknowledge some market transparency-related problems due to the difficulties in identifying market players (for information gathering, administrative charges' payment and market analysis purposes).

Relevant disadvantages also refer to the difficulties for the NRA in verifying compliance by all market operators with any existing obligations.

2) In terms of responsibility to receive notifications from undertakings, where a notification system has been introduced by MS, the surveyed NRAs hold competencies in this field in 21 Countries out of the 25 that have taken part in the present research.

While the Danish and UK NRAs are not responsible to receive notifications because a notification system is not in place in these Countries[6], the Italian and the Estonian NRAs are not competent[7] as they were not identified as such within the scope of the national transposition processes.

Based on the considerations as in the Legal Background section, this last solution of identifying different NRAs for carrying out different tasks envisaged in the sector legislative framework is fully compatible with the relevant EU law, based on the formulation of the above discussed article 3.6 of the Framework Directive.

3) In all 23 responding Countries using notifications, no differences are envisaged in notification requirements based on the type of end-users addressed, i.e. whether operators intend to provide either consumer or business services; information concerning the envisaged end-users categories does not seem to be collected by NRAs nor it implies a different treatment as to the notification requirements.

As a result, it can be asserted that there is no specific notification regime dedicated to operators addressing the business segment.

6 Although in the UK Ofcom is formally empowered as the NRA competent to receive notifications, a notification system has not yet been implemented.

7 The Ministry for the Economic Development-Communications Department and the Technical Surveillance Authority are responsible in Italy and Estonia respectively.

4) In 12 out of the 23 analyzed Countries using notifications, submitting online notifications is possible; in 5 of such cases, notifications can be submitted via email; in this case, an electronic signature is often required.

Among the 11 Countries not providing for the online notification tool, 2 are about to deploy the online notification system[8].

5) As for the number and type of categories of networks and services envisaged in national notification forms, a certain variety can be noticed and a different level of detail in identifying and accordingly listing them can be observed.

The variety in the level of detail in identifying services, based on the underlying platforms through which they are delivered, runs from the maximum flexibility of Countries where operators can autonomously describe in the notification form the networks and services that they intend to provide, to Countries that envisage, by way of example, more than 40 specific types of services.

This might result in an administrative burden for cross-border business services providers, having to notify the beginning of their activity in Countries subject to different systems.

However, the main categories of networks envisaged in national forms can be considered to be overall aligned: almost all responding NRAs have the fixed, mobile and satellite networks in their forms; some also include broadcasting, wireless and electric networks.

A higher level of non-homogeneity regards groupings of service categories, where public telephone services, data services and internet access services are the generally always included typologies.

It has to be highlighted that this unevenness shall be ascribed to Member States' discretionary power in implementing the authorisation regime within the scope of the limitations set out by article 3.2 of the Authorisation Directive.

The described variance in notification requirements *per se* is therefore not in contrast with the EU regulatory framework, the only limitation set by the Authorisation Directive being that the notification does not entail more that the submission of the minimal information required to allow the NRA to keep a register of providers of ECN-ECS.

6) As for the possibility to use English language for filling in notification forms, this is the case in 5 Countries[9], where English is usable in addition to the national language.

[8] France and Hungary.

9 Finland, the Netherlands, Greece, Switzerland, Norway.

Furthermore in other Countries, English materials are accepted by the NRAs, often on an informal basis.

For instance, in Portugal, forms must be filled in Portuguese, but further documents of technical nature can be provided in other languages; in Austria, in exceptional cases, the notification form can be completed in English; in Liechtenstein the official language is German but English notifications are accepted also; in Malta, Maltese and English are both official languages, as it occurs in Ireland for English and Irish, so both languages can be used; in Estonia the form is in Estonian, but in practice can be filled out also in Russian and English.

In most Member States the notification form must be filled in by undertakings in the national official language only, thus constituting an operational burden for cross-border operators.

Although introducing the possibility to submit notifications to the competent NRAs in English would be beneficial to cross-border business operators - currently having to file several notifications so as to legitimately operate in different Countries - it has to be said that there is no reference to this within the sector legislative framework.

Moreover, any existing legal restrictions in force at national level with respect to the language to be used in any relationship with the public administration have to be taken into consideration.

7) Regarding information to be provided with the notification, in 7 cases, NRAs referred to the obligation for undertakings to notify any change in their identification and activity-related data, which could be simply considered as an extension of the notification obligation, when this latter is in place[10].

On the other hand, in 3 cases, it turned out that operators are required to submit either a certificate of incorporation or to register in the national commercial register[11].

In The Netherlands undertakings shall notify the net turnover in order for the NRA to define the administrative fees due and the relevant support documentation to be submitted by operators.

Furthermore, reference to the administrative fees is made by 2 NRAs, while in one Country operators shall notify the NRA of their intention to continue their activity every 3 years.

The information requested may refer to the company's turnover but also to the network or service to be provided and the relevant technical details such as the

10 Hungary, Poland, Finland, Slovenia, Spain, Portugal, Germany.
11 As France, Estonia and Romania.

geographic coverage of the network/service, the number of network nodes and the roll-out calendar.

All in all, the additional notification-related requirements that have emerged from the present investigation affect only a few Countries and seem to relate to administrative fees and the submission of further documentation; the provision of updated information within the notification forms cannot be considered as an administrative burden on top of the notification procedure.

8) Concerning the implementation of article 9 of the Authorisation Directive and therefore how declarations to facilitate the exercise of rights to install facilities and rights of interconnection are provided by the competent NRA, all respondent NRAs with a notification system issue acknowledgments of notification.

12 Countries[12] send such acknowledgments automatically, within a specific timeframe from the receipt of a complete notification; some also publish a list of all undertakings active in the market (ARCEP, ANACOM, To SR, NPT).

9 Countries[13] comply instead with article 9 by providing the mentioned declaration upon request of the undertaking[14].

Furthermore, there are aspects somehow connected to the authorisation process but falling outside the scope of the specific authorisation - related regulation.

For instance, as for the reporting obligations, there is a wide range of information collected by NRAs from undertakings with a different periodicity: there are both periodic data gathering exercises - yearly, half-yearly or quarterly - and ad hoc ones, ranging from NRAs requiring providers to complete financial, statistical and market analysis reports with different format and data categories to NRAs only requiring the compilation of an annual report.

12 Croatia (8 days after notification Hakom issues a certificate), Poland (the certificate has to be issued within 7 days), Estonia, Romania, Slovenia, Czech Republic, Ireland (one week), France, Portugal (5 days), Austria, Norway.
13 Italy, Finland, UK, Slovak Republic, Greece, Malta, Germany and Hungary and Denmark.
14 In the UK, when OFCOM receives a request from a person, it shall notify that person whether a notification is required to be submitted, whether a notification submitted by that person satisfies the requirements of the Act and to provide information as may be necessary to facilitate the right of that person to negotiate network access or to apply for a direction in relation to facilities access; in Denmark, as there is no notification requirement, there is also no standardised declaration; the information as in article 9 is available upon request from the NRA to the extent that the information exists and is relevant for the Danish market but not in a standardised format.

Nevertheless, information requested to operators appears to be related to the performance of NRAs' institutional tasks concerning the monitoring and regulation of the markets as in the Framework Directive and the specific Directives; reporting obligations do not strictly relate to the administrative regimes and the authorisation process in itself, but rather to the operators' activity in the electronic communications market.

As a result, the variance identified should be assessed also in the light of article 5 of the Framework Directive, according to which NRAs are allowed to make motivated and proportionate requests for information to operators, in order to ensure their conformity with the legal provisions in force; such requests will therefore necessarily reflect national practical and legal circumstances.

The same considerations as above could be made on the administrative fees; it should be clarified that the scope of the current analysis refers exclusively to costs actually borne by the administrations to carry out their tasks related to the management of the authorisation regime in place (article 12 Authorisation Directive).

In order for the fees to be collected, operators in the market should be identified; for NRAs implementing a notification system, this occurs through the register.

In case of Countries with a no notification regime, identifying market players, especially new ones, may represent a challenge. When collecting data for half year statistics, the Danish Regulator screens which companies have acquired individual number series and also relies on information released in the press regarding new market players; in effect, NITA does not collect administrative fees, but only charges related to spectrum and numbering resources usage; it therefore identifies subjects due to pay charges when the provider requests the resources.

OFCOM engages instead in market research and monitors market developments; it is also in regular contact with all the major communications providers by virtue of their participation in consultations[15].

As far as administrative fees linked to the authorisation are concerned, fixed amounts are provided in Switzerland, while they are not levied at all in Estonia, Germany and Denmark.

Also, consumer protection obligations are extremely articulated - they range from the requirements regarding publication of prices, terms and conditions, as well as consumer codes of practice or service charters to the availability of consumer complaint-handling procedures, alternative dispute resolution schemes and compensation arrangements.

[15]On 18th August 2011, Ofcom published a General Demand for information as required under section 135 of the Communications Act 2003 and published in accordance with section 137(6) of that Act for the purposes of calculating the administrative charge for each Charging Year. This general demand for information addressed to each and every person liable to pay administrative charges under section 38 of the Act for the purpose of ascertaining or verifying the charges payable by a person under section 38 of the Act, which information must be provided annually.

Regarding their application to business operators, national settings are rather diverse in the EU.

In 9 Countries[16], consumer protection measures apply to consumer users only and not to business ones; to these latter, contract law would apply.

On the other hand, in 13 Countries, such provisions or some of them apply to the whole sector and therefore also to business services.[17]

However, the business sector is featured by heavily negotiated contracts following competitive tenders, that seem to imply the applicability of general contract law to any complaint that might rise, and exclude the relevance of consumer protection - related measures to corporate clients, subject to national law provisions in force.

4. Main issues raised by the stakeholders

Based on the analysis made and on input provided by the stakeholders, the problems currently experienced by operators providing services to the business segment seem mostly related to the allegedly varying and burdensome national administrative regimes concerning the provision of electronic communication services.

Differences in the administrative requirements and procedures envisioned at national level may result into barriers to entry for providers supplying business services at a cross-border level (as they have to approach different national administrative systems), thus negatively affecting the promotion of cross-border services and ultimately the achievement of the relevant single market.

This area of problems represents the main focus of the present Report, aiming at asserting to what extent a certain inconsistency among national administrative regimes can actually be detected and whether any national variance would comply with the provisions as in the Authorisation Directive.

The stakeholders recognize that the national implementation of the EU's current authorisation regime is complete across the EU Member States with, in principle, no major barriers to enter the national telecommunications markets; at the same time, they would be in favor of the lightest administrative systems such as those adopted in the UK and Denmark and the less burdensome of those envisaging a notification.

[16] Denmark, Ireland (consumer protection rules apply only to consumer users; the application of general contract law is envisaged for corporate users), Hungary (it differentiates consumers-businesses), Croatia, Poland, Finland (consumer-related rules apply to businesses only if not otherwise agreed), Slovenia, France (Civil Code applying), Liechtenstein.

[17] In the German case though, not all consumer protection rules apply also to the business sector, but only those provisions explicitly referring to end-users in the relevant Directives.

As far as the notification regime is concerned, a need for a more harmonised consistent approach is pointed out. The following operational constraints are reported by the stakeholders to be encountered in some countries:

- Requirement of some MS to establish a legal entity (which can be a branch or equivalent) on the national territory where the service is provided, which is reported by some stakeholders as making the obligations on cross-border operators heavier and resulting into higher costs;

- A de-facto “application for a general authorisation” or “emission of declaration”, which amounts to withholding the right to provide networks/services until the NRA has delivered a certificate of authorisation combined with a long assessment period before the confirmation of the notification is being granted;

-Huge number of legal documents to be provided (incorporation certificates, criminal records of the Directors, copies of the ID documents of the Directors/CEO, certified translations etc.);

- Requirement for a contact person/address in a given country. The contact person should speak the local language. In some cases more than one contact person is required (e.g. for notifications, for interception/data retention, for emergency situations, etc.);

- Requirement for detailed information on the company making the notification (e.g. company articles of association, certified as being up-to-date, extract from trade register, certified as being up-to-date, up-to-date proof from tax and other authorities that the company is not in arrears of payment of all outstanding taxes and social security contributions, statement of financial capability, etc.). Certified translations of these documents can be required;

- Requirement for extremely detailed identification data on the person signing the notification on behalf of the company (proof that this person can legitimately represent the company, certified as being up-to-date, proof that this person has not been convicted of certain offences and/or filing a certified criminal record, certificate of good standing, identification data which does not exist for citizens of some MS, etc.). Certified translations can be required on these documents;

- Requirement for detailed network/service information (including network diagrams, addresses of equipment location, copies of commercial agreements with underlying providers, etc.) to be filed as part of the notification;

- Off-line filing of notification - few NRAs enable the on-line filling of notifications. Offline notification processes can be cumbersome, sometimes requiring the (re-)submission of company registration documentation and corporate information each time a new product service is launched that falls within a notification category that has not been previously declared;

- Different number of notification categories across countries. The result of this variation in notification approaches is that the provision of identical services across the MS will be registered in quite different categories in each Member State.

- In most countries the notification form is provided and should be filled out in the official language of a given member state.

In addition, further problems have emerged from the consultation.

From a market analysis perspective, as already pointed out in past ERG and BEREC consultations, the majority of the stakeholders highlighted again the specificity of the business market and consequently identified the lack of harmonized, transparent and non-discriminatory access products in the EU as severely impacting on the actual conditions for the cross-border provision of business connectivity services.

Therefore, the fragmented availability in Europe of the same underlying wholesale services/products for the provision of cross-border communication services to large scale multi-site corporate users is still considered to be an issue.

Investigations into such problems affecting the achievement of a single competitive business market were already performed by ERG and BEREC in 2009 and 2010; they had led to the conclusion that neither specific wholesale remedies nor a separate relevant market could be identified for the provision of access products to business connectivity services providers; these aspects are hence out of the scope of the current analysis.

According to 2011 BEREC WP, within the present Report a different perspective is adopted indeed, focusing rather on the legal and administrative barriers to the cross-border provision of the mentioned services.

Other alleged barriers have been identified by the stakeholders, not directly linked to the national authorisation processes implemented but still relevant to the measures defined at national level. Such barriers are considered to have a potential impact (with different degrees of intensity) on the service delivered to business users at different locations and the costs operators have to incur; this third group of issues refers to:

- Numbering resources management modalities: they may result, for instance, in a different level of strictness in the allowed use of geographic numbers in a determined area by corporate users, thus impacting on the final service delivered;
- National requirements for the management of emergency calls, affecting operators' costs and the relevant prices charged to business users;
- Number portability requirements and procedures that, defined at national level, result in different national systems for different numbers, thus implying significant costs;

- Legal interception and data retention - related requirements, featured by different obligations mostly determined at national level - at least for the detailed implementation - implying complex procedures and relevant high costs for the business providers;
- Customer data protection - related provisions, set at EU level but implemented nationally, result in varying customer data management systems, with relevant consequences on the costs incurred;
- Transparency and customer protection rules - developed by NRAs based on the EU legislative framework and being therefore differentiated from Country to Country - bring about costly systems to cross-border operators having to deal with different national regimes; some Countries' approach of not applying consumer protection - related obligations to large corporate users - already protected by means of negotiated contracts - could be a formula to be further analyzed, so as to ascertain whether it could be actually implemented throughout the EU, subject to the provisions as in the sector Directives.

  As a matter of fact, these large enterprise customers have sufficient buying power to negotiate and demand service levels to meet their needs.

  Nevertheless, it should again be underlined that it is up to EU MS to translate into national legislation the EU provisions referring to "end-users" or, more specifically, to "consumers"; as a result, MS themselves decide on the strictness of the relevant provisions and their applicability also to business users, within the limits set by the EU legislative framework.

  The idea put forward by the stakeholders might therefore be not currently applicable in practice, in case NRAs are bound to the application of national implementation provisions not allowing for it.
- In general terms, stakeholders would also consider suitable to envisage a specific regime for cross-border business operators. On the other hand, it has to be considered that the conditions relevant to the performance of cross-border business operators' activities would not depend on the type of notification form they are due to fill in, but on the provisions applicable to them according to the national legal framework.
- Lack of regulation for Over The Top services; they are not subject to the above mentioned obligations, which causes a competitive disadvantage for infrastructured business connectivity providers.

All such matters are of great interest to BEREC, to the ends of identifying all the existing barriers to the achievement of a single market for the provision of business connectivity services.

5. Best practices and ideas for further evaluation

Bearing in mind that it lies with the EU to act on the relevant EU law and to MS to intervene on the national implementation patterns of the general authorisation regime, BEREC can accordingly act in the context of national authorisation regimes as an advisor to NRAs.

Within such institutional remit, BEREC is therefore isolating below some ideas for a possible implementation by Regulators in view of the improvement of the national administrative systems for the cross-border provision of business communication services.

The compatibility of such ideas with the current national legal orders shall be evaluated at national level, taking into account the provisions in force, particularly within the scope of national civil law, as well as the legal provisions setting out NRAs' powers.

In the event that the alignment to the following ideas be in the remit of NRAs, BEREC suggests to pursue it, with a view to promoting the internal market of cross-border business connectivity services.

It shall however be considered that the notification scheme, implemented by the majority of the NRAs surveyed, although susceptible to operational improvements (some of which are sketched out below), carries the benefit of allowing a good general overview of the companies operating in the market.

- Possibility to file online notifications/declarations

  The extension of the online notification tool would significantly reduce the administrative burden bearing down on cross-border as well as national operators.
  In this respect, Finland, Spain, Greece, Liechtenstein, Austria, Romania, Switzerland, Lithuania, Croatia, Estonia, Czech Republic and Norway represent all best practice examples, as in these Countries notifications can be submitted online; in France and Hungary there is a plan to implement the online notifications tool soon.

- Possibility to simplify the regime of the documents to be submitted to NRAs, especially concerning certified translations

- Possibility to submit notifications in English language.
  Avoiding translations into several EU official languages would represent an advantage for cross-border operators, having to file more than one notification.
  As concerns MS, best practices in this respect are identified in Finland, the Netherlands and Greece; English notifications are allowed also in Switzerland and Norway.

- Establishing a "contact point".

An English speaking person could be indicated on NRAs websites for possible requests of clarification on the notification procedure and administrative obligations.

- Guidelines.
  NRAs could publish on their websites guidelines (in English) with a clear description of notification procedures, kind of information requested from different kinds of operators subject to notification (reseller, wholesaler, network operator, etc.).

- Harmonization of national notification forms.
  Development of a harmonized format for notifications that would be used by NRAs in all EU countries, with standardized categories of networks and services and possibility to submit a description of the services which do not fall within any standard category.

Finally, the stakeholders have put forward the "one stop shop" mechanism as a possible option to improve the operational conditions of cross-border business operators. It would be based on the principle according to which if a provider complies with an EU MS general authorisation framework and accordingly operates in its market, it could do so also in other EU countries' markets.

In this respect, the stakeholders hold that the new formulation of article 3.2. of Authorisation Directive, according to which *"…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*" may provide a legal basis for such a system. Stakeholders also go so far as to devise a potential implementation model of the newly introduced provision, according to which cross-border operators might notify of the beginning of their activities only the NRA of the Country where the client Company's headquarters are located; the NRA concerned may then automatically proceed to communicate the submitted notification to other NRAs specified by the provider (where the multinational company operates), thus significantly simplifying the activity of cross-border operators.

Actually, it is not clear whether and how, even when extensively interpreted, the norm might open the door to new solutions as regards the implementation patterns of the notification system, to the benefit of cross-border operators; in this respect, the scope of the newly introduced provision and its possible implementation patterns could benefit from further investigation.

Furthermore, any implementation formula related to such a provision should make sure that the evasion of authorisation-related obligations by cross-border operators be avoided; a one-stop-shop system could indeed have the drawback of leading cross-border operators to choose the lightest national administrative regime, thus eluding national provisions in force. In this respect, in case a one-stop-shop system be implemented, a single notification form in the EU for cross-border providers might represent an option to

consider. This would imply a previous harmonization of the categories of networks and services included in such form.

Also, limitations to the applicability of the above model as related to national legislations concerning notification modalities should be taken into account.

In any event, interventions on EU and national legislations may be necessary in view of any implementation of a system of this sort, that certainly fall outside the remit of BEREC members.

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