

Draft 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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All stakeholders are invited to submit their inputs **by 28 August 2019 17:00 CET to Notification_Guidelines@berec.europa.eu**.

Consultation input by Deutsche Telekom Group (no confidential information included)

Question 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?*

In the current formulation item 1.4 could simply be seen as a subcase of item 1.2, because a termination of business is also a change. We assume that item 1.4 shall represent the case where the undertaking stops its existence, so that all its networks and services are no longer provided by it. In such a sense the additional item 1.4 would make sense, but this case should also be clearly stated.

Question 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.*

According to Table 3, row 3.1, the definition of the named contact person is overly narrow, considering that some companies may wish their named contact person to be someone with the legal right to submit notifications or documents on behalf of the company. We also doubt whether it is reasonable to require from companies to provide information on the role of any alternative contact person (cf Table 3, row 3.6), which is too far reaching.

Question 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?*

For the convenience of the undertakings there should be some introductory text in the form that reiterates those services exclusively exempted from a notification duty in the EECC, i. e.

1. Services which are not "*normally provided for remuneration*", i. e. services that are not part of an economic activity (see definition of ECS in EECC art. 2). As case law supports and also recital 16 in the EECC confirms, this exemption does not apply to situations where revenues are generated indirectly (e.g. remuneration through provisioning personal data and other data). There is also no exemption for situations where these services are supplied at no additional cost for users but in the context of another economic activity (with the exemption under number 3 below).

2. Number-independent interpersonal communication services (see EECC art. 12(2)), which does not exempt these services from NRAs' right to request relevant data/ information, based on Art. 20 and from many further obligations of the EECC
3. The provision of local access via RLAN (especially wifi) to electronic communications networks within or around a private property or a limited public area which is only ancillary to another economic activity or public service which is not dependent on the conveyance of signals on those networks. Public authorities or public service providers, who use RLANs in their premises for their personnel, visitors or clients, for example to facilitate access to e-Government services or for information on public transport or road traffic management, could also provide access to such access points for general use by citizens as an ancillary service to services they offer to the public on such premises, to the extent allowed by competition and public procurement rules. (see EECC art. 56 and recital 137)
4. The supply of only associated services or associated facilities in the sense of EECC Art. 2.

Due to the principle of technological neutrality and in light of *the least onerous authorisation system*, it is inadequate to ask for the applied combinations of networks and services, i. e. when there is an entry in column 1 then column 2 should be empty and vice versa. So Table 4 should be splitted into two tables, one for networks (where current columns 2, 4 and 9 are deleted) and one for services (where current columns 1, 3 and 8 are deleted).

In the same sense it is also inadequate to differentiate services according to the type of underlying network within the services column. E. g. the current entries "fixed IAS" and "mobile IAS" should be replaced by simply "IAS", as there could also be wifi or hybrid offers or satellite. To list all possible combination of services and underlying networks would make notifications complicated and changing quickly over time. The services list should instead just contain the categories mentioned in the new ECS definition of the EECC, i. e. internet access service (IAS), number-based interpersonal communications services (NB-ICS) and other connectivity services (broadcasting, connectivity for m2m, other data transmissions) and restate their definitions derived from art. 2 of the EECC and the corresponding recitals in footnotes.

The list of network types provide in column 1 of Table 4 has a view only on the technology for the "last mile" to the customer. This should be explained and to avoid a gap another category should be added, which reflects networks that just serve to connect other networks no matter which technology is used.

Furthermore definitions are needed for columns 7 (publicly available), 8 (wholesale-only service) and 9 (resale service only) to enable undertakings to correctly assess these classifications:

- a) The term "**publicly available**" is not further specified in the EECC, but is elaborated by BEREC in its guideline for netneutrality regulation as follows and should be taken up by BEREC in the scope of Art. 12:

10. Electronic communication services or networks that are offered not only to a predetermined group of end-users but in principle to any customer who wants to subscribe to the service or network should be considered to be publicly available.

Electronic communication services or networks that are offered only to a predetermined group of end-users could be considered to be not publicly available.

11. Virtual private network (VPN) services are typically offered by PECs to anyone that wishes to enter a contract about the provision of such a service. These would therefore typically be considered to be publicly available, although the operation of a specific VPN would be a private network. The term 'private' describes the use of such a service which is usually limited to endpoints of the business entering the contract and is secured for internal communications. VPNs are further discussed in paragraph 115.

12. The following examples could be considered as services or networks not being made publicly available, subject to a case-by-case assessment by NRAs taking into account national practices:

- *access to the internet provided by cafés and restaurants;*
- *internal corporate networks.* [DT comment: communication solutions which are provided only within the customer premises based on the customers own wiring do not qualify as “publicly available” as they neither use a public network nor leave the private property borders. Examples would be a local PBx or a managed LAN solution. Services connecting those private solutions to the public network could qualify as ECS though, but need to be distinguished and treated separately. This is also reflected in Art. 109(1) sentence 2 EEC “electronic communications networks which are not publicly available but which enable calls to public networks” which clarifies that connection of an internal corporate networks to the public network does not automatically classify the corporate network as “publicly available”].

Examples of criteria which could be used to make assessments include the contractual relationship under which the service is provided, the range of users and whether the range is predetermined.

In any case only the “public” residing in the member state is relevant here – an offer to anyone established outside the considered member state is out of scope and a matter of consideration for that other member state.

- b) The term “**wholesale-only service**” seems to refer to EEC art. 80 where it is described as “*an undertaking which is absent from any retail markets for electronic communications services*”, while the retail market is formed by end-users, which are defined as *users not providing public electronic communications networks or publicly available electronic communications services* (EEC art. 2).
- c) As “**resale service only**” we understand that the provider is selling ECS which are entirely produced on the ECN of (an)other undertaking(s).

Concerning column 5 “*Member States where the network is available and/or the service is provided*” it is essential that with respect to services it is made clear that only the member states of customer residence have to be included. Constellations where a deal is made between providers and customers each residing outside the considered member state and this deal includes ECS used in this member state, this member state is not to be listed and no parallel notification in this member state is necessary. A typical example are offers to multinational customers to connect their business locations distributed across several member states. In some countries where the provider has no sufficient own presence he will have to buy wholesale inputs from local players. So if that provider only contracts a customer with business location outside the considered country the provider is himself more a customer in this country than in the role of a service provider, though his offer includes the service usage in this country. In the mobile roaming context this is an established practice. No mobile service provider has to notify business in countries where he is not marketing services but where its customers may make use of the offer by roaming on foreign mobile networks. But also in the above described case of providing fixed international services to customers with local residence it would be a disproportionate burden to have to notify in all countries indirectly touched by the offer. This also results in no disadvantage for the customer as customer protection is given for the whole offer by the law of the country where the provider is notified. If to the contrary the provider would have to notify in all markets which are indirectly touched by the service availability then this would not only mean a disproportionate administrative burden for the provider but could also mean a monetary disadvantage if recurring fees have to be paid by providers in more than one of these markets. This could mean a multiplication of fees supported by difficulties to split the revenues verifiably between the countries. We would welcome if BEREC improves legal certainty by confirming this view and does not leave this to courts.

Question 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?*

The NRA should translate national notifications into English, ensuring proper and consistent language. This could also serve as a sanity check of the inputs. Providers should be invited though to add their own translation in a second document. This is only relevant for columns 3 to 6 in table 4. The other inputs are either only dates, contact data or could be handled with drop down menus. BEREC could provide insight into table 4 with giving the user a choice to select a language of any of the 28 member states concerning the entries of the drop down menus.

Question 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?*

The contents of Tables 2 and 4 should be available to the public at least in English. This may serve as a sanity check for customers to indicate that the notified undertakings are identifiably committed to comply with the authorization regime. This would also serve fair competition between the providers as it supports the control within the industry that no relevant provider works in the dark and without caring about provider obligations.

Irrespectively of national templates, the EU database should only contain key information, particularly including company names, addresses, countries of incorporation and (national) registration numbers. The data base should not reveal personal data such as the contact details of the nominated contact person.