



28 AUGUST 2019

Response to draft BEREC Guidelines on the notification template pursuant to the EECC

Executive summary

DIGITALEUROPE welcomes the opportunity to respond to the draft BEREC Guidelines for the notification template pursuant to Art. 12(4) of the EECC.

As DIGITALEUROPE's members include pan-European players, we highly appreciate that BEREC sees these Guidelines as a means to facilitate market entry for providers of electronic communications networks and services (ECN/ECS) consistently throughout the Union, thus minimising their procedural requirements and relevant administrative costs, in line with what is mandated by the EECC, and ultimately streamlining the fulfilments bearing on providers with an EU-wide scale of operation. A homogeneous template alleviates administrative burden on pan-European providers.

We therefore urge BEREC to strongly encourage Member States choosing to impose a notification requirement to require their NRA or other competent authorities to use BEREC's harmonised template. The full intended benefits of harmonisation can only be achieved if all authorities concerned follow the structure and contents of the BEREC template.

In the same vein, DIGITALEUROPE wishes to emphasize that Art. 12(4) introduces an exhaustive list of requirements, based on the philosophy that Member States should envisage the least onerous authorisation system in relation to the provision of ECN/ECS (Recital 41).

In this respect, DIGITALEUROPE is of the opinion that the draft BEREC Guidelines do not always allow for the least onerous authorisation system and that further simplicity is desirable. More particularly, we consider that the draft Guidelines do not entirely reflect BEREC's earlier findings in its report on the impact of administrative requirements on the provision of transnational business

electronic communication services.¹ Examples hereof are described below and relate, for instance, to the language of the notification, certification documents and the indication of the location of the network.

Finally, DIGITALEUROPE wishes to underline that in view of the limitative wording of Art. 12(4), read together with Recitals 42 and 43, Member States may not impose additional or separate notification requirements going beyond what is provided for ECS/ECN that are not number-independent. It follows that Member States should not introduce notification obligations for ECS that are number-independent. DIGITALEUROPE would welcome explicit guidance from BEREC in this regard.

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¹ BoR (11) 56 of December 2011.

Notification language

In its draft Guidelines, BEREC proposes that the notification template should be filled out in the national language and, if possible, in English. DIGITALEUROPE regrets that BEREC does not propose a logical follow-up of its own recommendations in Report BoR (11) 56, namely to allow for English-only notifications. As BEREC explained in the earlier Report, ‘avoiding translations into several EU official languages would represent an advantage for cross-border operators, having to file more than one notification.’

DIGITALEUROPE encourages BEREC to reconsider its draft proposals, while allowing for English-only notifications or notifications in the national language (at the option of the notifying entity), in alignment with its earlier findings.

Consultation questions 1, 2 and 3

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?*

DIGITALEUROPE finds that item 1.1 is perfectly clear.

As regards items 1.2, 1.3 and 1.4, they are strictly speaking not foreseen in the limitative list in Art. 12(4) of the EECC. While DIGITALEUROPE acknowledges that this sort of information may be relevant for NRAs, notification requirements of this type should be the least onerous possible and thus should not go beyond the EECC’s strict wording.

Consequently, we think that the requirement set out in footnotes 3-4 – to fill out all or several of the tables for each change of activity or of the contact/identification data – is disproportionate. We encourage BEREC to reconsider this and to provide that only the change as such should be notified.

In addition, and merely for the sake of clarity, we propose changing the reference to ‘variation of identification data’ into ‘change of identification data.’

DIGITALEUROPE is of the view that no other purposes should be covered.

Consultation question 4

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?

DIGITALEUROPE considers that the level of detail of the information requested is appropriate.

We do nonetheless have questions regarding the interpretation of footnote 6, which appears to request ‘certification from the competent chamber of commerce or equivalent, depending on national requirements in compliance with applicable EU law.’ To the extent that this would oblige providers to register with relevant national bodies and/or to submit proof of certification, this appears disproportionate and contrary to the letter and certainly the spirit of the EECC. We urge BEREC to clarify in the Guidelines that such indication is not mandatory.

We therefore propose completing footnote 6 with the mention ‘if available’ and to clarify that the competent chamber of commerce or equivalent can be from the ECN/ECS provider’s country of origin and does not need to be from the country in which networks or services are to be provided.

Consultation question 5

5. Table 3 bears the notifying undertaking’s contact person details. Please elaborate your views on the nature and level of information in Table 3.

The information required appears appropriate.

Consultation question 6

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?

As regards Table 4, DIGITALEUROPE is of the view that the data requested under column 5 is not relevant or appropriate. The notification is always done to national regulators and thus will logically concern a national network or service. This information would have made sense in case of pan-European notifications, which unfortunately are not yet a reality.

Therefore, DIGITALEUROPE requests BEREC to delete column 5 from Table 4, as the information proposedly requested is superfluous to national notifications and not proportionate.

Regarding column 7 of Table 4, DIGITALEUROPE would like further clarification on the ‘publicly available’ question. The term ‘publicly available’ normally applies to services and not networks, which are either ‘public’ or ‘non-public.’

In this context, we believe the Guidelines should clarify that non-public ECNs should not normally be subject to notification, or at least include guidance on what criteria NRAs should apply in case they require non-public ECNs to notify. Uncertainty on this point could lead to excessive measures, for instance requiring the notification of company intranets.

Consultation questions 7 and 8

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?*

As regards the question about the languages and the need for translation, DIGITALEUROPE repeats its request to allow for English-only notifications, as set out in our observations on the notification language. Allowing for English-only notifications would obviously also alleviate administrative burden for BEREC, not only for pan-European providers.

We believe the Union database of the notifications transmitted to the competent authorities should be public and searchable, containing high-level information available in case of any concerns.

Harmonisation objective and homogeneous template

As DIGITALEUROPE's members include pan-European players, we highly appreciate that BEREC sees these Guidelines as a means to facilitate market entry for ECN/ECS providers consistently throughout the Union, thus minimising procedural requirements and relevant administrative costs, in line with what is mandated by the EECC, and ultimately streamlining the fulfilments bearing on providers with an EU-wide scale of operation. A homogeneous template alleviates administrative burden on pan-European providers.

In this respect, we urge BEREC to strongly encourage Member States opting to impose a notification requirement to require their NRA or other competent authorities to use BEREC's harmonised template or a shortened version thereof.

Concretely, we ask BEREC to reformulate its statement that NRAs or other competent authorities 'might still adapt the structure and contents of such template.'² It would be highly regrettable if authorities started changing the template's structure. Deleting some of the template's elements by making available in a shortened template, however, does not pose problems for operators. We therefore ask BEREC to provide further clarity in this respect to avoid any doubts as to the purposes of harmonisation.

We also ask BEREC to delete the proposed annex stating that NRAs can ask for additional information as part of the notification process in accordance with national law. As mentioned, Art. 12(4) provides an exhaustive list of information that can be required. Any national requirements that go beyond the exhaustive list would need to be repealed as part of the transposition – it should therefore not be possible for NRAs to request information that is not included in the scope of Art. 12(4).

² P. 4 of the draft Guidelines.

Exhaustive scope of Art. 12(4)

Finally, DIGITALEUROPE wishes to underline that in view of the limitative wording of Art. 12(4), read together with Recitals 42 and 43, Member States may not impose additional or separate notification requirements going beyond what is provided for ECS/ECN that are not number-independent. It follows that Member States should not introduce notification obligations for ECS that are number-independent. DIGITALEUROPE would welcome a clear statement from BEREC in this regard.

FOR MORE INFORMATION, PLEASE CONTACT:



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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

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National Trade Associations

Austria: IOÖ

Belarus: INFOPARK

Belgium: AGORIA

Bulgaria: BAIT

Croatia: Croatian

Chamber of Economy

Cyprus: CITEA

Denmark: DI Digital, IT
BRANCHEN

Estonia: ITL

Finland: TIF

France: AFNUM, Syntec
Numérique, Tech in France

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: INFOBALT

Luxembourg: APSI

Netherlands: Nederland ICT,
FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS, APDETIC

Slovakia: ITAS

Slovenia: GZS

Spain: AMETIC

Sweden: Foreningen

Teknikföretagen i Sverige,

IT&Telekomföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform,
ECID

Ukraine: IT UKRAINE

United Kingdom: techUK