ecta RESPONSE

TO THE PUBLIC CONSULTATION BY BEREC ON THE

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

BoR (19) 113

28 AUGUST 2019

Introduction

1. ecta, the european competitive telecommunications association,[1] welcomes the opportunity to provide its input to BEREC on this consultation.
2. The consultation presents BEREC's draft response to the obligation incumbent on it under the third subparagraph of Article 12(4) of the European Electronic Communications Code (hereinafter: 'EECC', or 'Code'),[2] to issue guidelines on a template for notifications by undertakings subject to a general authorisation.
3. ecta observes that the Code leaves the nature of this template essentially undefined, while article 12(4) does clarify that it is to contribute to the approximation of notification requirements.
4. In the consultation document, BEREC sets out its interpretation of that wording as having as its purpose to 'harmonise … the notification forms currently in use at national level' and goes on to specify the subject matter of the guidelines for the notification template as 'outlining the main features and contents of the notification form – within the constraints provided for by Article 12, paragraph 4'.[3]
5. In introductory statement, ecta wishes to clarify its appreciation of the mandate set out by the Code, including by comment on the consultation document. This is done in section 1 and includes identification of a number of points where the consultation document introduces considerations not covered by any appropriate legal basis that threaten the smooth functioning as well as the legality of notification regimes that might be based on them.
6. Hereafter, ecta addresses in a second section the specific consultation questions, building on the reasoning in section 1, after a number of transversal remarks.
7. A final section concludes, drawing together the main lines of reasoning developed across the previous sections.[4]

1. Notification requirements under general authorisation

8. The general authorisation regime set up by the Authorisation Directive has been one of the landmark innovations of the current regulatory framework for electronic communications. Contrary to prior Member State administrative practice as well as to prevailing market access regimes in other major jurisdictions around the world, the general authorisation under EU law provides a service- and network-agnostic approach that allows provisioning of electronic communications with only a minimum of administrative requirements.

[1] https://www.ectaportal.com/about-ecta

[2] Directive 2018/1972/EU, (2018) OJ L321/36.

[3] BoR (19) 113, at 4.

[4] At paragraph 149, ecta provides a summary statement of the key policy tenets that in its view should guide revision of the draft guidelines consulted upon.

9. ecta members active outside the European Union experience the authorisation regimes in those third countries as substantially onerous and delaying the time to market for the provisioning of new infrastructures and service propositions. Third country authorisation regimes constitute, together with trade rules, the most important barrier to market access for competitive EU operators.

10. It is therefore decisive, in ecta's view, that the development of a notification template occur in accordance with the objective of ensuring the least onerous authorisation system that underpinned the introduction of a general authorisation in EU law, and that the Code continues to acknowledge.[5]

11. With the adoption of the Code, two novel considerations have been incorporated into EU electronic communications law, which are of immediate relevance to this specific objective of the authorisation regime, namely the broadened scope of what constitutes an electronic communications service and the concomitant increased specificity as regards the imposable information requirements for purposes of a general authorisation. Both of these considerations bear on the application of the general authorisation rules, and it is important that this happens in a manner conducive to both reducing unnecessary administrative requirements and facilitating market entry and service innovation that are essential to promoting competition.

1.1. Key legislative changes bearing on BEREC's mandate pursuant to Article 12(4)(3) EECC

1.1.1. Widened scope of electronic communications

12. One significant development over the past decade has been the introduction of over-the-top services catering to end-users' communications needs. The Code marks an important step in this regard by integrating these services within the scope of application of the new European legislative framework for electronic communications, notably through the concept of interpersonal communications service, as laid down in Article 2(4)(b) EECC.

13. Therefore, ecta believes that BEREC's final guidelines should go beyond the consultation document, to openly acknowledge the implications of this extension of the legislative framework for domestic notification regimes. Without detailing these implications, the guidelines would risk ignoring a fundamental change in rule applicability at a time where the continued arrival of new forms of service provisioning impact market development and the competitive equilibrium among operators.

14. The legislator has explicitly opted to exempt certain providers of interpersonal communications services from the application of any notification requirement. Thus, where such services are provided without recourse to numbering resources, Member States cannot demand that the intention to do so be subjected to a notification requirement.

15. ecta therefore encourages BEREC to assure that this point is clearly stated in the final guidelines and its implications sufficiently developed to ensure that competitive decision-making can take place on a well-informed basis, relying on accessible, transparent and encompassing guidance. The pivotal importance of achieving such clarity becomes

[5] Recital 41 EECC.

obvious when it is acknowledged that calls may constitute interpersonal communications with or without use of numbering resources.

16. To ensure that the benefits of minimal administrative overhead remain equally available to established providers of electronic communications ready to pursue innovation that does not require access to numbering resources, national regulatory authorities must avoid applying established notification practices irrespective of who the innovator is. Particularly, there can be no presumption of continued regulation solely because an undertaking does already use numbers for one or several of its services. Providers of electronic communications that provide number-dependent interpersonal communications must be able to have confidence that they can evolve their business without unnecessary administrative burdens. This is of particular relevance where such development envisages replacement or phasing out of numbering resources.

17. In parallel, it appears appropriate to include in the guidelines explicit mention for providers of interpersonal communications without number use that the exemption applicable to them will be strictly construed. Thus, any other provisioning of electronic communications in which they engage will by default be subject to the same notification requirements applicable in the context of general authorisations. This clarification should also highlight that the (non-)existence of an obligation to notify an activity is generally without prejudice to the duty to comply with the obligations and conditions applicable to that activity.

18. ecta would further welcome if BEREC used the opportunity of the guidelines to clarify, in the interest of legal certainty, a special point deriving from the legislative reform enacted with the Code relating to numbering issues. To the extent that providers of over-the-top communications services have hitherto been exceptionally granted access to numbering resources outside of the regulatory framework,[6] such use will prospectively become fully subject to the requirements of the Code, including notification. ecta considers that this awareness should also govern BEREC members' approach to the management of numbering resources during the interim period until the becoming applicable of the new rules, so as to avoid unfair discrimination between electronic communications providers and their competitors not yet within the scope of regulation.[7]

19. By circumscribing the scope of the notification regime along these lines, ecta believes that BEREC can bring much needed clarity to the functioning of general authorisation at an important juncture, while ensuring that competitive opportunity remains accessible and regulatory differences are not unduly exploited or otherwise exacerbated during the transition to the Code.[8]

[6] According to BEREC, such assignment of numbering usage rights has taken place or is being considered in 12 Member States; cf. BoR (19) 114, 14.6.2019, at 5.

[7] See ecta's response to BoR (19) 114, 28.8.2019.

[8] ecta notably believes that instances of strategic capture of numbering resources in the transition period by currently unregulated undertakings need to be avoided where it is patently clear that these resources will be subject to notification and associated obligations upon applicability of the Code.

1.1.2. Increased specificity as regards informational requirements

20. A second significant development that adoption of the Code has brought about is greater specificity as regards the information that can validly be demanded of electronic communications providers in the context of a general authorisation.

21. In part, this has been achieved by explicitly defining in law the 'minimal information' that electronic communications providers may be required to furnish. The list of substantive information items to be provided amounts to an update and extension of the list previously set out in the Authorisation Directive.[9]

22. At least equally relevant is the fact that the Code sets this list as definitive when it directs Member States to impose neither additional, nor separate notification requirements. This unequivocally signals that the information requirements must remain strictly limited and that no derogations from the list are possible for national regulatory authorities or for other authorities that with the Code may become competent for the administration of notification requirements under general authorisation (hereinafter also referred to jointly as: 'the competent authorities').

23. Importantly, and critical in ecta's view, this limitation on the scope and contents of the notification does not translate into a brief for complete harmonisation or into a requirement for a uniform template, as the call on BEREC to publish 'guidelines on *the* notification template'[10] might suggest.

24. Also the requirement for BEREC to establish and maintain a Union database of notifications would not seem to justify a different conclusion.

25. Elaboration of shared guidelines for a template by which to notify the information that the Code exhaustively specifies cannot entail a single format when the purpose is to approximate notification requirements. The establishment of a European register serving the same objective that integrates the information that providers have notified cannot entail a more extensive interpretation.

26. Indeed, in practical terms, the primary purpose of the template is likely going to be to specify the information, including the categorisation(s), around which the BEREC database will be construed.

27. Yet the establishment of a database should not entail additional administrative burdens for electronic communications providers. In this regard, ecta agrees with BEREC's focus on 'minimizing procedural requirements and relevant administrative costs [for electronic communications providers]'[11]. This implies that especially operators who have already notified their operations in conformity with applicable law should not face additional compliance burdens as a result of the creation of such a register or of the guidelines.

[9] Article 3(3) of Directive 2002/20/EC, (2002) OJ L108/21, at 25.

[10] Article 12(4)(3) EECC; emphasis added.

[11] BoR (19) 113, at 4.

In particular, the adoption by BEREC of guidelines on a notification template must not trigger any renotification obligations for already operational networks and services.

28. It is important to bear in mind, and ecta wishes to emphasize, that the outcome of the approximation of notification requirements has to benefit all providers of electronic communications equally under the law. The purpose is specifically not to obtain uniform notification practices and associated requirements, 'ultimately streamlining the fulfilments bearing on providers with a EU-wide scale of operation', as BEREC suggests.[12] While the establishment of a common understanding of notification requirements should give all operators legal certainty as to what the competent authorities may require of them, it should not favour a particular business model or create lopsided advantages to the benefit of a small range of undertakings.

29. The process of elaborating a notification template should, in ecta's view, trigger a pruning of existing requirements, notably to remove informational obligations that are no longer compatible with the list that the Code has established. To realise the full benefits of this process, the BEREC guidelines should explicitly call on the competent authorities to delete henceforth unneeded information from existing databases and insist that Member States administer no changes to existing notification schemes that would run counter to the letter or the spirit of the new rules, especially by introducing new information requirements. In this spirit, ecta would encourage BEREC to work to arrive at shared understandings of how certain types of information can be solicited in the least onerous manner for providers while preserving enforcement capacity. This could assist in identifying the most appropriate approaches, while leaving the competent authorities adequate room to adjust their application to national circumstances.

1.3. No mandate for selective reduction in identification requirements

30. ecta thus overall agrees with BEREC that the drawing up of a EU-wide notification template should help reduce the administrative efforts required for providing electronic communications. Nevertheless, ecta is concerned about the suggestion in BEREC's consultation document that the competent authorities 'might legitimately decide to limit the information requested to undertakings further'[13].

31. In ecta's understanding, such further reduction would imply that certain providers would benefit from only some of the informational requirements of the Code being applied to them.

32. While a further reduction of notification requirements *per se* might appear welcome, ecta believes that BEREC's proposed interpretation raises important issues of legality and practicality.

33. BEREC proposes that a further reduction would be 'in the spirit of this provision'. In ecta's view, this assertion is not compatible with [contrary to] the fundamental underlying principle that notification requirements in a general authorisation context, where they

[12] Ibid.

[13] BoR (19) 113, at 5.

are required, must apply equally to all electronic communications providers. Under the current regulatory framework, this means that while Member States enjoy discretion in deciding whether or not to apply notification requirements, they are obliged to apply these requirements uniformly. Any departure from this principle would be tantamount to the creation of selective advantages and thus inherently opposed to the general nature of the authorisation regime.

34. The increased specificity that the legislator has chosen to institute by enacting a closed, and thus exhaustive, list of possible informational requirements, ecta believes, only reinforces this principle. Where Member States previously were free to determine the range of information necessary for identifying providers, the Code has removed this discretion. It thus articulates for the first time a common European approach to the informational foundations of market supervision.

35. This reading is confirmed by the wording of the first subparagraph of Article 12(4) EECC, which clarifies that the minimal information to be submitted as part of the notification shall be 'limited' to the items specified in points (a) to (h). This limitation precisely expresses the fact that this list is to be considered the bare minimum necessary for provider identification and, by implication, the keeping of a register. Given this purpose, ecta considers that use of the words 'limited to' cannot be interpreted consistently therewith as implying that the list of items could be further limited, but rather has to be understood as not allowing for it to be limited any further. In this sense, the limiting of information requirements indeed combines the conceivable maximum for providers with the minimum necessary for the competent authorities.

36. Any different interpretation would lead to significant issues with the application of the new notification regime. Further to the interpretative concerns set out above, this would trigger concerns over discriminatory regulatory practices, which would not align with the requirement of such practice to be guided by the principle of non-discrimination. Moreover, it would also prompt questions about the criteria on which differentiations among electronic communications providers would be based and about the possibility to build coherent registers at national level as well as a Union database (for specific considerations on the establishment of a Union database, see paragraphs 127 to 148 below).

1.4. No mandate for gathering of additional information through use of annexes

37. As part of the consultation document, BEREC asserts that '[i]n compliance with Article 12, Member States may use Annexes to ask for additional information needed to comply with national legislation.'[14]

38. ecta wishes to attach a number of remarks to this statement on the informational competences that Member States may derive from the notification regime for provisioning of electronic communications under the Code.

[14] BoR (19) 113, at 14.

39. As outlined above, ecta considers that the items listed in points (a) to (h) of the first subparagraph 1 of Article 12(4) constitute a definitive statement of the information that Member States can require to be furnished where they deem the imposition of a notification duty appropriate.

40. Accordingly, ecta also believes that the implementation of such a notification regime must not lead to the requisitioning of additional information susceptible to impair market entry.

41. ecta thus advocates a strict separation of the notification regime from the collection of any supplementary information that may be legally required under national law. As a matter of both law and policy, the competent authorities must abstain from combining such informational requirements as this would interfere with providers' access to the market(s) of interest, and thus create a barrier to enhancing competition and providing benefit to end-users.

42. This understanding is firmly supported, first, by the wording of Article 12.

43. Neither the provision itself, nor the legislature's accompanying considerations in the preamble leave room for the inclusion into the notification regime of requests for additional information. In particular, the text also makes no specific reference to the use of annexes to collect such information, nor to consideration of other legal requirements at the stage of notification.

44. For these combined reasons, ecta has fundamental reservations about the legality of BEREC's proposed reading set out in the consultation document, especially insofar as the expression '[i]n compliance with' (cited at paragraph 37 above) suggests an explicit basis for the additional information requests that BEREC invokes. In ecta's view, the Code by its drafting cannot lend support to BEREC's assertion, be that with regard to the substance or to the format of such additional information requirements.

45. Indeed, ecta believes that the inclusion of *any* additional information requirement into an optional notification regime under Article 12(3) would mark an instance of manifest non-compliance with the Code by the Member State imposing it. This is an immediate and necessary consequence of the exhaustive definition that Article 12(4) gives to the concept of 'minimal information' that providers may be required to provide (see paragraphs 22, 34 and 35 above). As this makes clear, BEREC's proposed interpretation thus essentially runs counter to the wording of the provision itself.

46. This reading is also confirmed by the explicit prohibition of any additional notification requirements in the second subparagraph of Article 12(4) EECC. However, the solicitation of additional information in the course of the notification process must precisely be qualified as an additional notification requirement and thus fails to meet the conformity requirements for a notification regime to be considered lawful under the Code.

47. Secondly, this interpretation is also supported by the interaction between this provision and other parts of the Code.

48. Specifically as regards the provisioning of information for general authorisation purposes, the first subparagraph of Article 21(1) EECC exhaustively defines all such information as may be required to this end. As the second subparagraph explicitly goes on to state, reiterating currently applicable law under the Authorisation Directive, that information shall 'not be required prior to, or as a condition for, market access.' The only exception to this rule, i.e. situations concerning the grant of rights of use, do not fall within the scope of general authorisation and thus are not supportive of BEREC's proposed interpretation.

49. ecta contends that also the possibility for the competent authorities to require additional information under Article 20 EECC to perform their tasks cannot lead to a different conclusion, as this power addresses undertakings in their role as providers of electronic communications and thus is not applicable to undertakings not yet having discharged an applicable notification duty.

50. Thirdly, the purposes of identifying providers and enabling the maintenance of databases that a notification regime serves provide no basis for coupling requests for information in that context with additional informational obligations. Indeed, the addition of further queries unrelated to these purposes has to be considered disproportionate and exceeding the remit of a notification regime lawfully operable under EU law. It therefore remains essential to maintain a strict separation between compliance duties under the notification regime and any other obligations, whether these exist in sectoral regulation or general law.

51. Overall, ecta is thus convinced that notification regimes operated under Article 12 EECC cannot include any additional requirements for information, irrespective of their specific nature or form. Critcially, the Code does not offer a basis, explicit or otherwise, that would allow claiming such additional requirements to be in compliance with this specific provision. Accordingly, ecta calls on BEREC to renounce any combinations of a notification regime with such additional requirements as a hindrance to market access, and instead to take all reasonable steps to render the notification regime within the categories of Article 12(4) as light-weight and easily practicable as possible (see also paragraph 29).

52. If the competent authorities were to choose to distribute requests for additional information to providers together with an invitation to notify the pertinent minimal information, they would be obligated to explicitly state that to furnish such additional information – irrespective of its type and the legal basis on which the demand for it is founded – is not a necessary condition for commencement of the provisioning of electronic communications. This is a necessary consequence of the legislature's clarification that even where a notification is incomplete, i.e. where it does not contain all minimal information, Member States should not impede the provision of electronic communications.[15] To avoid any confusion in this respect, ecta would generally encourage the competent authorities not to engage in such parallel communication. Where separate transmission of requests for information regarding provider notification and other legal requirements proves impossible for justified imperative reasons [in the public interest], ecta considers it best practice for the

[15] Recital 43 EECC.

responsible authority to clearly and unequivocally separate the different requests within the same transmission and to highlight, as part of the notification form, that any further requested information does not form part of the notification regime; is subject to assessment under different rules (which should be specified); and has no bearing on compliance with the notification requirements and on the possibility to provide electronic communications subject to the conditions of the general authorisation.

2. BEREC's proposal for a notification template

2.1. General remarks

53. As outlined above, ecta considers BEREC's mandate for the development of a notification template not to comprise specificities regarding layout, language and other elements unrelated to the minimal information requirements specified by the first subparagraph of Article 12(4).

54. To maximise the impact of its work on the approximation of notification requirements, it will be critical for BEREC to promote the widest possible agreement on the individual items that make up the list of minimal information requirements in points (a) to (h) of that subparagraph (hereinafter: 'EECC list of informational requirements').

55. Such approximation should, in ecta's view, rely on a prior examination of existing administrative practices and the understandings on which they are based, to avoid that the guidelines either remain too abstract or provide guidance whose specificity cannot be accommodated in implementation.

56. Neither the draft of a proposed template, nor its accompanying considerations reveal the extent to which such groundwork has been carried out. While the consultation document does include reference to the publication of an outline of national notification-related requirements in 2013, it remains unclear how this has shaped the consultation document or how changes to those requirements in the last six years have been considered.

57. ecta also notes that there apparently have not been any early calls for input to allow market participants to report on their experiences with currently applicable notification regimes and the associated information requirements.

58. Given this context and the contents of the consultation document, ecta considers that the means of approximation remain largely unspecific. Given the brevity of exposition, so does their operational implementation.

59. Due to this lack of specificity, the comments set out in the following section in response to the consultation questions therefore remain somewhat preliminary in nature.

60. For the same reason, ecta is also concerned that the added certainty that providers will be able to derive from BEREC's guidance about the functioning of the notification regime under the Code will remain substantively limited.

61. ecta therefore invites BEREC to submit a revised and consolidated version of the notification template to renewed consultation to validate the final range of categories it

intends to use as well as, where applicable, the content classifications by category. This should also allow operators present in multiple jurisdictions to confirm the suitability and appropriateness of the proposed approach. ecta encourages BEREC and its members to ensure availability and publicity of this document.

62. Cognisant of the possible appeal that a single template redacted in a common working language might have, ecta wishes to underline that the principal objective of approximation must be to provide notifying undertakings with enhanced clarity as to what notification requires of them and what it does not require. The resultant increase in legal certainty must be arrived at in the language(s) in which the notification is processed and produces legal effect, so that it is actionable, including in cases of dispute.

63. To this end, the guidelines need to enable undertakings to respond correctly and comprehensively to minimal information requirements when filing their initial notification in order to avoid unnecessary delays in the handling thereof as well as requests for clarification that are due to a lack of publicity regarding the categories or the classification schemes by category in which this information is to be provided.

64. ecta Is aware of cases in which the competent authorities use classification schemes without ensuring their upfront availability to undertakings at the time of notification. This, in turn, entails substantively baseless findings of erroneous notifications and requests for clarification, which represent gratuitous and entirely preventable administrative costs for notifying undertakings. Such administrative practices stifle competitive dynamics, insulate markets and unduly complicate entry, both domestically and in a cross-border perspective.

65. Therefore, ecta calls on BEREC to reflect these concerns in and ensure the availability and accessibility of its guidelines to all market participants. The guidelines should include a requirement for maximum transparency and publicity both as regards the substance of notification regimes and as regards their procedural setting and operation. It is also by acknowledging the interaction between these two dimensions that BEREC can promote the effective approximation of notification requirements (see paragraphs 152 to 159).

2.2. Specific consultation questions

Q1. Do you think that the items covered by Table 1 on the purpose of the notification are sufficiently clear and exhaustive?

66. ecta generally welcomes the attempt made by BEREC to structure the notification template in a manner conducive to reducing the form-filling efforts required of operators.

67. However, ecta considers especially Table 1 regarding the purpose of the notification an example of unsuccessful pursuit of this objective. The number of explanatory footnotes and the burdensome 'yes/no' answer format are testimony thereto, as are the implied assumptions and the disproportionate information demands. Taken together, these factors also confirm ecta's above remark (at paragraph 55) that elaboration of the template would have benefitted from a thorough analysis of existing notification regimes.

68. Design-wise, the template's 'yes/no' answer format suggests that multiple affirmatory answers would be possible, leading to countervailing information requirements and likely leading to a lack of clarity for the receiving authority. ecta therefore suggests modifying the template to comprise all answer options in individual boxes, from which addressees might select a single one. Introductory text could specify that notifications not unequivocally indicating their purpose will not be processed. For each selection, immediately accompanying text should clearly signpost the tables to be completed.

69. As regards the answer categories, ecta considers that Article 12(4) does not provide any basis for mandating providers to notify the termination of their activities. The rights of the general authorisation ceding to exist with the withdrawal from the market, there is no discernible need to collect such information. ecta thus suggests this point (1.4) to be deleted from the template. Where national law nevertheless establishes a requirement to that effect, this must be kept clearly separate from pre-provisioning notification requirements (see paragraph 41).

70. Similarly, ecta suggests that greater clarity be brought to the notion of a change of activities already notified (point 1.2), without which the item should be suppressed for the reasons set out below.

71. The accompanying footnote that serves to elaborate that notion speaks of 'any changes in terms of switch, increase or decrease of activities'. This wording appears not to be sufficiently intelligible, as the precise meaning of each of these terms is neither contextually specific, nor explicitly defined.

72. It is ecta's view that neither 'increases' or 'decreases' of activities where these concern already notified activities require renewed notification.

73. The concept of a 'switch … of activities' being equivocal, ecta wishes to highlight that business decisions about the product range offered only assume relevance under a notification regime to the extent that these imply the take-up of new activity. Such cases should, however, be dealt with under the relevant point (1.1) instead.

74. Moreover, the accompanying footnote also refers to possible changes of the commencement date. ecta considers this not to form part of a 'change of activity', but only of the estimated date for staring the activity in the sense of point (h) of the first subparagraph of Article 12(4). This being indeed a legitimate informational requirement under the Code, ecta suggests that this element be removed from this context and presented in a point of its own. For notifications concerning the uptake of multiple provisioning activities, the first commencement date should be stated in Table 1 (see also comments on Table 4 below, at paragraph 125).

75. In any case, it must be avoided that providers diversifying their product range are held to renotify the entire range of activities in which they are engaged, as suggested in footnote 3. Such a requirement is clearly disproportionate to the take-up of a new activity, and, where desired, information regarding the continuity of provisioning can be requested outside the notification regime (see paragraph 49 above).

76. Similarly, the mere change of the intended commencement date for an activity that has already been notified in full should be limited to a bare minimum rather than requiring the renewed completion of the entire notification form.

77. As regards the category '[v]ariation of identification data' (point 1.3), ecta agrees to the relevance of reserving a distinct category for provider-related information and suggests to relabel it as '*change* of *provider* identification data' to enhance clarity.

78. For reasons of administrative simplicity and efficiency, which are further set out below (see paragraphs 122 to 124), ecta would further encourage the inclusion of a possibility under point 1.1 to specify whether the activity to be commenced constitutes reselling.

79. As regards further the information required of notifying operators, ecta considers that a requirement to state the 'notification number' should be avoided. Given that such numbers will be merely transitory in nature and are not currently in use in all Member States, a more appropriate approach would seem to be to have providers state the unique identifier under which the competent authority has registered the general authorisation to which their communication pertains. To keep the administrative efforts of notification regimes to a minimum, ecta believes that BEREC has to preclude creating a distinct novel identifier only for notification purposes. In practical terms, this issue could be effectively addressed by opening the template with a form field worded as follows: 'This communication pertains to activities registered under: [UNIQUE IDENTIFIER] (Leave blank, if this is the initial pre-commencement notification)'.

80. Finally, ecta finds it convenient to further enhance the template by adding an additional response option that would allow undertakings to address other notification-related matters not covered by the template, e.g. situations in which provisioning is contingent on the award of rights of use. Accompanying text could clarify that the competent authority may choose to re-classify such queries as belonging to other categories if this allows for the matter to be addressed, or to move them to separate proceedings if this is necessary for doing so effectively.

Q2. 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?

81. As outlined above at paragraphs 69 and 70, ecta considers the wording of point 1.2 itself and the accompanying explanatory note to be significantly lacking in clarity.

82. As further elaborated in the context of the above discussion of Table 1 (at paragraph 71), ecta also takes issue with the unspecific manner in which the informational requirement of providing an indicative commencement date is proposed to be integrated into the template.

83. The distinction between points 1.2 and 1.3 of the draft template as consulted upon is not sufficiently clear either. Indeed, the question wording suggests that point 1.3 covers a

residual category of 'other changes' when this category, as currently presented, appears as essentially limited to provider-related information.

84. For this reason, ecta proposes BEREC to follow its suggestion made at paragraph 77 above to clarify the scope of point 1.3, and to reassess the need for point 1.2 in light of the arguments at paragraphs 70 to 76. For the reasons stated there, ecta considers that this item, as currently drafted, should be deleted.

3. Do you think that other purposes of a notification should be covered in the template?

85. As stated at paragraph 80 above in discussing Table 1, ecta would welcome the inclusion of an open answer option allowing notifying undertakings autonomously to identify notification scenarios not provided for by the proposed draft 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.

86. As explained in its introductory comments on BEREC's remit in drawing up a notification template, ecta expects such work to notably include detailing of means to approximate notification requirements across jurisdictions that allow to reduce the administrative burdens incumbent on electronic communications providers. Elaboration of these means should notably include discussion of different ways to provide the legally mandated minimal information where a notification regime is put in place.

87. ecta observes that Table 2 of the draft template submitted for consultation essentially copies and pastes the informational requirements defined by points (a) to (d) of the first subparagraph of Article 12(4) EECC. In particular, the consultation document includes no discussion of existing administrative practices and possible ways of approximating and, in doing so, improving them. As already suggested at paragraph 55 above, such an analysis, building on prior BEREC work, would, in ecta's view, have been necessary to appropriately respond to the remit of the task laid down in subparagraph 3.

88. It follows from this that the nature and level of detail of information generally remains too vast and does not offer sufficient guidance that would allow for effective approximation of notification requirements beyond the letter of the law.

89. Specifically on the comments accompanying item 2.2 of the draft reproducing point (b) in the EECC list of informational requirements, ecta considers that a certification requirement as suggested by BEREC is unnecessary and excessive, in particular where this would entail additional fees and delays in processing notifications. This will notably be the case where the certification is to be obtained in another Member State and requires translation, entailing a second set of certification requirements.

90. In line with its objective of ensuring the least onerous notification regime possible, ecta believes that BEREC should agree a template that provides an impetus to remove unnecessary administrative burdens. This could be achieved in the present context by highlighting current examples of fully digitised notification regimes relying on recognised trust services.

91. As already pointed out (see paragraph 79), ecta considers that the approximation of notification requirements must not lead to the creation of additional obligations. This consideration patently applies, a fortiori, to non-essential elements such as a registration number that will only be relevant where a registration already exists upon notification.

92. ecta therefore asks BEREC to either revise the note as suggested or to delete the reference to a certification requirement. For cases of cross-border notifications, ecta further suggests to include explicit guidance to the recipient competent authority to seek verification of the registration number details with the competent authorities of the originating Member State.

93. Secondly, with regard to point 2.3 of the draft, which generally mirrors point (c) of the EECC list of informational requirements, ecta has a number of remarks on the drafting differences introduced by BEREC as well as on the accompanying footnote 7.

94. In the description of the main information to be provided, BEREC substitutes 'geographic' for 'geographical' and 'undertaking' for 'provider' relative to the formulation used in the Code. Without specific and explicit justification for these changes, ecta sees no added value in this rephrasing and therefore suggests its abolition, not only for inconsistency with that formulation, but also with the approach taken towards the other points in Table 2.

95. As regards the ancillary information to be provided, BEREC substitutes reference to 'any secondary branch in *the* Member State' for the expression 'any secondary branch in *a* Member State' in the Code (italics added for emphasis).

96. While this change in meaning would constrain the informational obligation by limiting its scope of application, and as such would be in line with the objective of reducing administrative burdens, ecta has substantial doubts about the viability of this approach and therefore cannot support it, for the following reasons.

97. Were it to base its final guidelines on this wording, BEREC would depart from its mandate under the third subparagraph of Article 12(4). This would render both notification regimes based on them as well as the guidelines themselves open to contestation for non-compliance with the Code. Further problems with this approach include its lack of precision as regards identification of '*the*' Member State as well as the additional problems deriving from the accompanying footnote 7 when it further constrains the range of relevant secondary branches not only by Member State, but also in number. Both of these restrictions are subject to the same principled objection as regards the wording of the point itself.

98. Overall, ecta therefore urges BEREC in the interest of legal certainty to adhere to the wording of point (c) as drafted and focus its efforts on streamlining the operational compliance aspects (e.g., mechanisms for ensuring that distinct address formats for branches in different Member States can be notified consistently and correctly).

99. Finally, as regards point (d) in the EECC list of informational requirements, as included under point 2.4 of the draft, ecta invites BEREC to insist more clearly on the specification of a website address.

100. While information about the legal status, form and physical address are adequate identifying parameters of electronic communications providers for purely administrative purposes, it is notably online information about the provisioning of networks and services that renders these visible to market participants and provides a natural focal point for customers, regulators and competitors alike. Even in the absence of detailed product information, the online presence will provide detail that third parties can use to contact the provider.

101. In the interest of enhancing market transparency, ecta therefore urges BEREC to clarify that a website address shall generally be provided where one is available, and that only where specific pages associated with the provision of networks and services exist should these further be specifically identified. In other words, the 'where applicable' test of point (d) should only be read as a criterion for the degree of specificity of the website information to be provided, and not as a criterion to exclude the provision of any such information altogether.

102. Where a provider offers multiple services or networks, the relevant address should be that of the highest hierarchical level allowing access to more specific information for each category. Where a provider offers both services and networks, ecta considers it appropriate to require inclusion of both or all respective top level pages, as the case may be. To generate the full range of benefits from increased market transparency, the relevant website addresses should be published as part of the register(s) that the competent authorities maintain.

103. Also in this regard, ecta wishes to emphasize that the template should not engender novel obligations. Hence, providers should under no circumstances be required to create websites and/or pages on these sites only to comply with the notification regime.

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.

104. ecta welcomes the fact that Table 3 exhibits a higher level of detail relative to its source, i.e. point (e) in the EECC list of informational requirements concerning information about a contact person and contact details, than what is the case for Table 2, as discussed above.

105. Nonetheless, the general reservations about the lack of clarity regarding the mechanism(s) of approximation also apply here.

106. ecta sees a number of unexplained inconsistencies in how Table 3 treats the contact person and its alternate, to which it wants to draw BEREC's attention.

107. Whereas point 3.1 explicitly requires the contact person to hold a power of representation, this requirement seems not to apply to the alternate contact person under point 3.5.

108. Similarly, no geographical address is required for the alternate, although point 3.4 demands this to be specified for the contact person.

109. On the other hand, point 3.6 requires the notifying undertaking to state the role of the alternate contact person, while no such information is foreseen to be provided in points 3.1 to 3.4 regarding the contact person. Moreover, ecta observes that the requirement, as foreseen at page 13 of the consultation document, for the signatory to detail his or her position is unsuitable to close this gap, as long as it is not ensured that the signatory would be the contact person.

110. The above identification of inconsistencies in the treatment of the contact person relative to its alternate is without prejudice to the more fundamental question whether requisitioning of information about an alternate is compatible with the minimal information requirements specified in the first subparagraph of Article 12(4).

111. While a purposive interpretation might be considered as providing adequate justification for such an approach, ecta cautions against adoption of such reasoning on at least two grounds: first, the introduction of such a requirement would likely imply a substantial and disproportionate burden for certain types of operators, notably sole traders; secondly, if accepted in this context, this would open the door to notification requirements being unduly inflated for purposes beyond the remit of the notification regime.

112. For these reasons, ecta invites BEREC instead to emphasise the responsibility of the notifying undertaking to guarantee the effective responsiveness of the contact person identified as well as of the competent authorities to test this, where appropriate.

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?

113. Recognisant of the taxonomical efforts invested in columns 1 and 2 of Table 4, ecta is doubtful about its utility for the following reasons.

114. Having conducted an analysis of the notification schemes in use in 2013 on the basis of data reported by BEREC,[16] ecta found remarkable variety to exist in the categorisation of services and networks among Member States. While one fourth left notifying operators to self-classify their activities freely, 13 Member States provided for a fixed range of classifications ranging from five to 53 categories. Four more Member States specified a range of categories, but left it to operators to complement these as necessary with their own descriptions. Extending this review to the currently applicable regimes in eight Member States has substantially confirmed these findings.[17]

[16] BoR (13) 03.

[17] BE, CZ, DE, EL, IT, MT, NL, SE.

115. In functional terms, the information disclosed in the course of notification about the network or service to be offered is to enable the receiving authority to confirm that the intended provision of the network or service at issue indeed constitutes provisioning of electronic communications in the sense of applicable law, and therefore falls under the notification regime for which it is responsible and, more generally, under its supervisory competence.

116. The diversity of existing classification approaches reflects the diverse market realities in the Member States, which competitive providers of electronic communications materially shape by introducing new services and networks.

117. Considering the mandate that the creation of a notification template entails, as developed in preceding sections (see notably paragraphs 23 to 25 above), ecta does not believe that the approximation of notification requirements depends on the creation of a uniform classification scheme for networks and services. Indeed, it should be avoided that the top-down imposition of such a scheme would frustrate market entry or incur additional administrative burdens by requiring reclassification of existing networks and services.

118. In the interest of promoting continued innovation and freedom of market entry, ecta believes instead that the approach of self-classification, supported by examples given by the competent authorities,[18] constitutes the most appropriate approach. Against the widened scope of electronic communications defined by the Code (see paragraphs 12 to 19 above) as well as recent jurisprudence under the current regulatory framework,[19] ecta considers that BEREC and its members should focus on the elaboration of examples clarifying the scope of electronic communications, notably as compared to other services, to support self-classification and avoid regulatory discrimination, rather than to construe a top-down scheme to be applied domestically.

119. Therefore, ecta would suggest deletion of columns 1 and 2 to the benefit of undertakings' autonomy to describe their networks and services and possible associated facilities, as currently foreseen in columns 3 and 4. In ecta's experience, market entrants in the field of traditional, non-OTT electronic communications are generally well aware of applicable notification requirements and will ensure compliance through prior engagement with the responsible authorities. This underlines the need in the face of recent developments for BEREC and its members to extend awareness to providers of networks and services that have been and/or will be reclassified as electronic communications.

120. The suggested categories might be retained as examples in accompanying instructions on how to complete the form. Their possible role in developing a Union database is addressed below in response to question 7, where also remarks on individual response items are included.

[18] These examples should include 'negative examples' of pitfalls to be avoided by undertakings when providing minimal information in order for notifications not to be rejected or to trigger additional requests for clarification.

[19] C-142/18 *Skype Communications* vs *IBPT*, judgment of 5.6.2019.

121. As regards the remaining elements of Table 4, ecta welcomes the inclusion of dedicated fields for the identification of publicly available networks and services and wholesale only services (columns 7 and 8).

122. While it generally also agrees to the utility of separately identifying reselling activity as proposed in column 9, ecta is unconvinced of its treatment on par with autonomous provisioning. As reselling amounts to the renewed commercialisation of services that will already have been notified, the notification effort required for such activity should be kept to the strict minimum.

123. ecta therefore urges BEREC to reduce administrative notification requirements for reselling business models by allowing notifying undertakings to refer to the identifier under which the resold service has been registered. This reduces administrative effort, avoids erroneous entries and significantly reduces processing time.

124. To implement this less burdensome notification regime for the reselling of services, ecta suggests a corresponding amendment to point 1.1 in Table 1, so as to enable undertakings to indicate the type of notified service upfront. Information on the reduced informational obligations should be included at this point. In any case, instructions on how to complete the short description (column 4) for services that are being resold should specify that only a reference to the already registered service is needed.

125. As per its comments above at paragraph 75, ecta considers that the commencement date should form part of the basic identifying information upon notification. To furnish information on a per-activity basis as suggested in column 10 should only be required in case of multiple services for which significantly different commencement dates are to be expected. Considering the potentially misleading and misrepresentative effects of excessively advanced notifications on the portrayal of market dynamics, ecta would encourage BEREC to contemplate agreeing cut-off thresholds beyond which advance notifications cannot be considered. These thresholds should feature prominently in explanatory guidance included in the template, providing for adequate differentiation between networks and services.

126. As also previously remarked (see paragraph 69), ecta considers that notification of the termination of provisioning activity is beyond the scope of BEREC's mandate for elaborating a notification template. The corresponding column 11 should therefore be removed from the template.

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?

127. The maintenance of a database that contains the notifications received by the competent authorities raises a number of questions regarding the purpose and operation of such a database.

128. Pursuant to Article 12(4), maintenance of a Union database constitutes one of two activities by which BEREC is to pursue approximation of notification requirements.

129. Nevertheless, ecta considers that the creation and running of this database does not constitute an activity independent of the elaboration of guidelines on a notification template. Notably, it cannot justify an adaptation of those guidelines to introduce elements into the template that would run counter to the objective of ensuring the least onerous authorisation system. It is therefore appropriate, in ecta's view, for the template to constitute the foundation on which to erect the database. The database, then, will not play a directive role in the approximation of notification requirements, but serve to showcase its results.

130. For the template to fulfil its role, one critical intermediate step will be to establish conversion mechanisms between existing notification regimes and the notification template. This will be especially relevant for already registered providers to avoid incurring unnecessary and unjustified administrative costs.

131. ecta suggests for BEREC to map correspondence between national notification regimes and the guidelines in two steps, by first matching categories, before examining category content.

132. Whereas correspondence of categories should be uncomplicated to establish, ecta expects there to be some need for discussion to determine the level at and the extent to which content descriptors for certain categories, such as network and service classifications, should be aligned.

133. While it is possible to conceive of the Union database as a simple means of republishing translated information from national registers in streamlined template categories, ecta finds value in the database providing a tool to compare the provisioning of electronic communications across Member States. For this to be possible, a common nomenclature will have to be created onto which existing national classification approaches can be mapped. As the major interest of the database beyond tracing the evolution in the number of notified providers will be to allow their identification by type of activity, ecta believes that efforts should focus on this dimension.

134. ecta does not perceive of the taxonomy proposed by BEREC in the first and second column of Table 4 as providing a dependable nomenclature in its present form.

135. Issues needing to be addressed include, in the networks classification, non-exclusive categories leading to double classification of the same network (e.g., 'Wireless – licensed spectrum' and 'Standard mobile network'), lack of clarity regarding network differentiating factors (wireline/wireless, technology generation, or service type) and inconsistent category descriptors (e.g. 'Standard mobile *networks*' as opposed to 'Other mobile *solutions*').

136. In the services classification, a number of abbreviations are used that should be spelled out for purposes of disambiguation. Similar concerns exist here with regard to unexplained differences in the degree of service specificity (e.g. differentiation of

broadcasting service as opposed to non-differentiation of data transmission and leased lines), definitional issues (e.g. 'Roaming services (MCA and MCV)') and also with regard to non-exclusive categories (e.g., 'Data transmission' and 'Mobile NB-ICS', 'Leased lines' and 'Fixed NB-ICS').

137. As the nomenclature should not undercut the principle of provider self-classification (see paragraph 118), nor limit competitive opportunity, ecta believes it is critically important for providers to be able to validate the classification(s) applied, notably where existing provisioning activities are concerned. Such validation should occur prior to the Union database becoming publicly accessible.

138. ecta would therefore encourage BEREC to set up a pilot exercise with providers and their associations to discuss, test drive and refine a possible nomenclature. In any case, there should be a possibility for these stakeholders to provide feedback before the database nomenclature is applied on a wider scale.

139. Once a common English-language nomenclature has been established, the competent authorities should draw up explanatory notes setting out the relationship between that nomenclature and their domestic classifications, including the domestic concepts in the national language(s). ecta urges for these notes to be published alongside the Union database as well as on the sites of the national registers, and regularly reviewed. Automated translation should proceed on this basis.

140. To reduce processing costs and preserve the accuracy and integrity of the Union database, ecta believes that only complete notifications should be subject to automated translation, in line with what applies for their notification to BEREC.

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?

141. The Union database will not only be testimony to the approximation of notification requirements on which it is based and which it articulates, but also have an important role in enhancing market transparency and monitoring the development of national electronic communications markets under a common European framework.

142. The key to obtaining these objectives, in ecta's view, is notably the agreement on a shared nomenclature, as discussed above in response to question 7, at paragraphs 133 to 138. Without such a nomenclature to render comparable the notifications that the competent authorities are to forward to BEREC, the value of creating a Union database will remain inherently limited. Also, the mere translation of classifications applicable at national level will be incapable of promoting a shared understanding allowing to assess and advance a Digital Single Market.

143. To demonstrate success in the approximation of notification requirements, ecta considers it quintessential for the resultant Union database, and assorted documentation, to be publicly available.

144. Availability to the public should, in ecta's view, be ensured through a website, which should be accessible without the need to register. In line with EU open data policy, ecta further believes that the contents of the Union database should be retrievable for offline viewing and analysis. Retrieval should be possible in at least one non-proprietary format. In view of the absence of such functionality on the websites of multiple national regulatory authorities, ecta would welcome if BEREC through its work on the Union database encouraged all the competent authorities to institute such options for their domestic registers.

145. The online version of the Union database should provide search, sorting and visualisation functionalities, at national, subnational and EU levels. Visualisation options should include multi-jurisdictional and multi-service/network aggregation (e.g., comparison of the number of providers offering fixed and mobile Internet access by Member State). ecta invites BEREC to establish an EU user group with participation by providers and their associations to discuss and define the precise functional requirements.

146. For ecta, the usefulness of the database will principally depend on the currency and dependability of the information it provides. It should therefore be assured that updates to databases at Member State level are promptly reflected in the Union database as well and visibly timestamped. Cross-referencing between domestic and Union databases should guarantee data accuracy.

147. Completeness of the Union database must, in ecta's view, not distract from its contribution to monitoring effective approximation of notification requirements and derived information. Therefore, it should be possible at all times to identify the aggregate number of notified providers both at EU and Member State levels (national, subnational) currently in operation. The database should therefore include a facility for the competent authorities to either delete or mark as no longer active notifications, as appropriate. Assurance of the accuracy of the Union database should remain with the notifying authorities.

148. Finally, ecta believes that the Union database has an important role to play in appreciating global developments in the competitive dynamics of Member State electronic communications markets. Beyond presenting the total number of market participants, ecta thus also considers an indication of the number of resellers, for whom particularly easy notification requirements should apply (see paragraphs 122 to 124), and of wholesale-only operators useful features for the database.

3. Conclusion

149. In summary of the considerations it has outlined throughout this response, ecta provides the following statement of the key policy tenets that in its view should guide revision of the guidelines now presented for public consultation:

IN ecta*'S VIEW*,

i. The guiding principle for the elaboration of guidance on a notification template should be the objective of ensuring the least onerous authorisation system. To implement a notification regime must not lead to the imposition of informational duties susceptible to impair market entry or increase administrative costs.

ii. BEREC should seek to provide for a maximum of clarity as regards the prospective inclusion of number-based interpersonal communications services under applicable notification requirements as well as the exclusion of such services not reliant on numbering resources. Innovation in this latter space by notified providers must not be subject to unwarranted extension of notification requirements. Overall, ecta calls on BEREC to use its work on notification requirements to ensure fully equivalent treatment among all electronic communications providers in respect of the minimal information to be notified.

iii. Article 12(4) does not provide a brief for complete harmonisation or indeed the requirement of a single template to be applied everywhere, but for approximation that should give undertakings intending to provide electronic communications legal certainty what may be required of them to ascertain their identity.

iv. Agreement on an English-language template cannot replace administrative reliance on nationally applicable language regimes, and must also take account of the variety of expression among jurisdictions that officially use English to operate their notification regimes.

v. The focus of BEREC's work should therefore be with the interpretation of information requirements under the Code and their practical approximation rather than with their organisation and formatting. The elaboration of guidance does not require a pan-European template, but needs to guarantee that where market access is subject to notification, this entails the same predictable range of informational requirements everywhere in the EU.

vi. The exhaustiveness of the list of informational requirements that can be mandated for purposes of provider identification needs to trigger a review of existing requirements. In consequence, all requirements beyond the minimal information specified by the Code should be removed and strict separation between the latter and non-notification-related information requests maintained.

vii. Providers who have already notified their electronic communications activity in conformity with applicable law must not face additional compliance burdens as a result of the guidelines or the setting up of a Union database. In particular, the adoption by BEREC of guidelines on a notification template must not trigger any renotification obligations for already operational networks and services.

viii. The outcome of the approximation of notification requirements has to benefit all providers equally. Establishing a common understanding of those requirements should give all operators legal certainty as to what the competent authorities may

require of them, but it should not favour a particular business model or create lopsided advantages to the principal benefit of a small range of undertakings.

ix. Coherent application of notification requirements based on minimal information does not leave room for variation in the application of those requirements. The competent authorities must identify all operators and their activities based on the same informational duties. Notification rules must not grant selective advantages that would run counter to the general nature of the authorisation regime.

x. Self-classification is the most appropriate manner for notifying undertakings to describe their intended activities in terms of networks and services to be offered, and their possible associated facilities. In the interest of enabling innovation and promoting market entry, where the competent authorities choose to apply a classification scheme, this should foresee an open response option for activities not covered by its categories.

xi. The minimal information requirements should be applied in the least onerous manner to entities intending to resell electronic communications for which notification duties have already been fulfilled by other providers. In order to minimise administrative effort in these cases and enhance consistency, such entities should be able to describe their activities by reference to those previously notified.

xii. Business decisions about the range of products offered can only assume relevance under a notification regime when they imply the take-up of new activity. Article 12 does not provide support for any duty to periodically notify existing activities, and any such obligations should be repealed.

xiii. The launch of new activities must not trigger an obligation to renotify already notified activities. Where the competent authorities require information about the provisioning status of previously notified activities, they should seek such information in under their information gathering powers with regard to electronic communications providers.

xiv. The intended commencement of provisioning is liable to impact the competitive conditions and should as such feature prominently alongside an indication of the take-up of new activity. Changes to that date, which do not involve any change to the notified activities, should be subject only to the least onerous notification requirements.

xv. Article 12 does not give authority to require the termination of activities to be notified and BEREC guidance should therefore not introduce an information requirement to that effect.

xvi. To keep the administrative efforts of notifications to a minimum, BEREC should avoid the creation of any informational requirements that are not strictly necessary to the efficient operation of notification regimes in accordance with Article 12(4), such as the introduction of a distinct identifier only for submitted notifications.

xvii. The diversity of existing classification approaches at Member State level reflects the diversity of administrative practices in response to market evolution, which competitive providers of electronic communications shape by introducing new services and networks. The creation of a single classification scheme at EU level is not required by the Code and would lead to significant inefficiencies and unnecessary administrative burdens where it would require providers to renotify their activities or impair market entry.

xviii. The operation of a Union database will, however, achieve its greatest possible impact where it provides for adequate comparability of market realities. To this end, BEREC and its members should elaborate a common nomenclature allowing for conversion of national classifications underlying notification regimes into coherent representation in the Union database.

xix. For a common database nomenclature not to undercut the principle of provider self-classification, nor to limit competitive opportunity, it should be elaborated with providers and their associations, and subject to validation by them prior to implementation.

xx. It is quintessential for the Union database and assorted documentation to be publicly available.

xxi. BEREC should establish an EU user group with participation by providers and their associations to discuss and define the precise functional requirements of the Union database.

xxii. The usefulness of the Union database will principally depend on the currency and dependability of the information it provides. Therefore, updates to Member States' own databases should be promptly reflected in the Union database and visibly timestamped.

xxiii. Assurance of the accuracy of the Union database should remain with the notifying authorities. Providers should have a right to request changes to database entries concerning their activities where these do not correctly reflect these activities.

150. Based on its detailed comments set out in this submission, ecta considers that the draft guidelines, including the tables and accompanying text, still require substantial work to respond to the requirements of the Code.

151. ecta is willing to participate in and support such work at all stages to ensure timely and successful delivery, and would volunteer its participation to a EU level group or other fora assisting BEREC to discuss implementation issues, define database features and requirements, and pilot a pre-release version. In any case, ecta would welcome the output of such work being subject to renewed consultation.

152. In closing, ecta wishes further to underline that BEREC's work on a European notification template must be seen as one part of the larger puzzle that consists of facilitating market entry in the least burdensome manner while guaranteeing legal certainty and competitive opportunity for all market participants, actual or potential.

153. Beyond the informational requirements associated with lawfully operable notification regimes under the Code, this involves notably a twin challenge of administrative efficiency and operational simplicity of the notification process in which they are embedded.

154. Since time to market is one of the key determinants for competitive opportunity to be seized, it has to be avoided that delayed or otherwise untimely decision-making by the competent authorities, or complete absence thereof, unduly impair market access by notifying undertakings.

155. As general authorisations must not require an explicit administrative decision, notifying undertakings must all the more so be presumed to enjoy the rights derived therefrom unless the competent authorities have presented them with clear and specific claims as to the incompleteness or otherwise deficient nature of their notifications. Such claims must be set out in a duly substantiated manner within a fully predictable timeframe. Given their critical impact on business sustainability, ecta considers that substantiation of these assertions should be accompanied by the clearest possible guidance as to how to address them, notably where it is rooted in disagreement with undertakings' classification of their activities.

156. To ensure that the potential incompleteness of a notification can be detected early on, ecta encourages operation of the notification process in electronic form with features that allow for the testing of notifications' completeness prior to filing. ecta would welcome future work by BEREC to identify best practices in this respect. In any case, as the legislator has clarified, mere incompleteness of a notification cannot constitute a valid ground on which to impede the provision of networks or services.[20]

157. For market entry not to be frustrated by unpredictable and protracted notification processes, it has already been pointed out that notifying undertakings need to be given the fullest and most transparent guidance possible about how to provide the information required (see paragraphs 63 to 65).

158. A second critical requirement in this regard is that undertakings, and notably competitive market entrants, can have confidence in their notifications being swiftly processed within clearly established timeframes that are transparently publicized. This requirement of efficient processing must apply, a fortiori, for clarification requests that the competent authorities issue. ecta advocates that this type of request should be treated within at most the same timeframe as the initial notification giving rise to the request.

159. Taken together, these considerations about the procedural framework and the processing of notifications within that framework illustrate, in ecta's view, that successful discharge of its mandate under Article 12(4) EECC should lead BEREC to explicitly acknowledge their relevance. This could subsequently be followed up with flanking initiatives to ameliorate notification processes while the Union database is being readied for publication, as a means of ensuring its currency.

[20] Recital 43 EECC.

160. By cutting unnecessary administrative efforts and costs and applying minimal information requirements consistently to create the least onerous notification regime for all providers of electronic communications, ecta is confident that, in fulfilling its remit, BEREC can help to unlock competitive potential, boost market transparency and enhance legal certainty.

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In case of questions or requests for clarification, BEREC and its members are welcome to contact Mr Oliver Füg, Director of Competition & Regulation at ecta, at ofueg@ectaportal.com.