



Liberty Global response to draft Guidelines for the notification template

Liberty Global welcomes the opportunity to comment on BEREC's draft Guidelines for the notification template pursuant to article 12, paragraph 4 of Directive 2018/1972 of the European Parliament and of the Council, published on 14 June 2019 (the draft Guidelines).¹ As addressed in our response to BEREC's Work Programme for 2019, Liberty Global strongly supports BEREC's commitment to engage with stakeholders on issues that are relevant to them.

General authorization has been a cornerstone of the EU regulatory framework on electronic communications services (ECS) and electronic communications networks (ECN) since its inception. It led to harmonized and liberalized conditions for market access, and has thus been a key enabler of innovation and investment. Liberty Global welcomes the confirmation of this unified system for market entry and the goal of further harmonization of this domain, as laid down by the European Electronic Communications Code (Code).² This paper sets out how BEREC's Guidelines can contribute to the achievement of this objective.

The Code requires further harmonization of the regulatory requirements for market entry

The newly adopted Code acknowledges that notification – to a national regulator or competent authority – at the beginning of an activity, remains the *only* requirement which Member States may impose upon ECN or ECS providers under the general authorisation framework. By exhaustively listing the information requirements which Member States may include in notification forms,³ the Code targets greater harmonization of the regulatory requirements for market entry than the Authorisation Directive does.⁴

Liberty Global strongly supports harmonized implementation of the Code as a means to achieving the key objectives of promoting competition and investment, promoting the internal market, empowering and protecting consumers and promoting connectivity. At its core, harmonization requires regulatory clarity and uniformity, which significantly contribute to these objectives.

BEREC plays a key role in the further harmonization of regulatory requirements for market entry

The Code unequivocally assigns BEREC responsibility for publishing guidelines for the notification template (Guidelines), as well as setting up an EU database of notifications transmitted to national regulators. The key objective of both initiatives is to 'approximate notification requirements'.⁵ Liberty Global welcomes the clearly defined mandate given to BEREC by the Code, and has taken note of the recent draft Guidelines, published for consultation, in which BEREC acknowledges this mandate.

¹ 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 (Draft Guidelines).

² Directive (EU) 2018/1972 establishing the European Electronic Communications Code (Recast), OJ L 321/36 [2018] (EECC).

³ Article 12 (4), (EECC).

⁴ Directive 2002/20/EC on the authorisation of electronic communications networks and services OJ L 108/21 [2002], as amended by Directive 2009/140/EC, OJ L 337/37 [2009] (Authorisation Directive).

⁵ Article 12 (4), (EECC).



The importance of these Guidelines for harmonization of these notification requirements can be inferred from the Code, which states unequivocally that ‘Member States shall not impose any *additional* or *separate* notification requirements’.⁶ In short, because no other notification requirements may be imposed, these Guidelines will form the blueprint for the harmonized application of all notification requirements that Member States could legitimately envisage.

Text and spirit of the Code should be leading in the drawing up of the notification template

Liberty Global agrees with the comments made by BEREC as regards the scope of these Guidelines. These should indeed ‘facilitate market entry [...] consistently throughout the Union, [...] minimizing [...] procedural requirements and relevant administrative costs, [...] ultimately streamlining the fulfilments bearing on providers with a[n] EU-wide scale of operation’. The notification template laid down therein should thus ‘materialize the spirit of article 12, [in] an exhaustive list of information that can be required, [...] within the boundaries drawn by the EECC itself’, as BEREC holds.⁷

The Code foresees an exhaustive notification template with limited information requirements

In response to the first three questions of BEREC’s consultation, Liberty Global submits that the items covered by Table 1 are sufficiently clear and should be exhaustive. In light of the objectives of the Code, which envisage the use of the ‘*least onerous* authorisation system’⁸ for market entry and notification requirements going no further than ‘a *mere declaration* of the provider’s intention’⁹, it would be inappropriate to go beyond the items listed in Table 1. The Code clearly precludes Member States from requiring more than the ‘*minimal information* [...] required [...] to keep a register’.¹⁰

In light of these objectives, as well as exhaustive scope of article 12 of the Code, Liberty Global holds that it would be inappropriate for the Guidelines to permit Member States to impose information requirements that go beyond the purposes for notification as they are currently laid down in Table 1 of the draft Guidelines. After all, article 12 of the Code stipulates that a notification shall not entail more than a declaration of intent, accompanied by minimal information, for the purposes covered by that article. As a rule of thumb, Liberty Global holds that the aforementioned restriction on information requirements (to the bare minimum information necessary for the purposes of article 12), should apply to all areas of the notification template (and subsequent national implementations).

The Code precludes Member States from requiring local representation for notifications

Under the current general authorisation framework, providers of ECS or ECN established in another Member State can be required to notify in the Member State where they intend to provide their services. At the same time, they cannot be obliged to establish a branch or separate legal entity in

⁶ *Ibid.*

⁷ Draft Guidelines, p.4.

⁸ Consideration 41, EECC.

⁹ Consideration 43, EECC.

¹⁰ Article 12 (4), EECC.



that Member State.¹¹ However, at present, several Member States still require those providers who are duly established in other Member States, to have a *local representative* within their territory.

Whilst Liberty Global holds that such requirements are already contrary to EU law at present, it welcomes the additional clarification provided by the Code. After all, it holds that the '*least onerous* authorisation system [...] should be used to [...] stimulate [...] *pan-European communications networks and services* and to allow [...] the economies of scale of the internal market'.¹² Moreover, 'notification should not entail administrative cost and [...] could be made [...] via [...] the website of the [...] authorities'. Requiring locally established representatives would undermine the achievement of these goals.

Therefore, Liberty Global submits that BEREC should amend Tables 2 and 3, to clearly establish that Member States are precluded from requiring providers, which are seeking to notify and are duly established in another Member State, to have a local representative.

To avoid overstepping its mandate, BEREC should take a technologically neutral approach

Liberty Global agrees with the taxonomy proposed in columns 1 and 2 of Table 4 and considers it sufficiently general. However, Liberty Global has concerns about the inclusion of technology-specific terms and references to standards (some of which are still under development).

The development of standards, including of the definitions used therein, is a task delegated by EU law to the Standards Developing Organizations alone. Moreover, the principle of technology neutrality is one of the cornerstones of the Code. Therefore, Liberty Global holds that BEREC should remove references to specific standards (such as 2G, etc.) from Table 4, so as to avoid regulatory divergence, which could be caused by national regulators having to define the scope of these standards, in order to assess compliance with notification requirements. In light of the clear mandate given to Standards Developing Organizations, Liberty Global holds that it would be inappropriate for national regulators to do so and therefore recommends removing these references from the notification template. Removing the references to specific standards also ensures that the Guidelines and notification template will be more future-proof.

¹¹ Case C-475/12, *UPC v. NMMH*, para. 102-104.

¹² Consideration 41, EECC.



About Liberty Global

Liberty Global is one of the world's leading converged video, broadband and communications companies, with operations in six European countries under the consumer brands Virgin Media, Telenet and UPC. We invest in the infrastructure and digital platforms that empower our customers to make the most of the digital revolution. Our substantial scale and commitment to innovation enable us to develop market-leading products delivered through next generation networks that connect 11 million customers subscribing to 25 million TV, broadband internet and telephony services. We also serve 6 million mobile subscribers and offer WiFi service through millions of access points across our footprint.

In addition, Liberty Global owns 50% of VodafoneZiggo, a joint venture in the Netherlands with 4 million customers subscribing to 10 million fixed-line and 5 million mobile services, as well as significant investments in ITV, All3Media, ITI Neovision, LionsGate, the Formula E racing series and several regional sports networks.