

**BEREC Opinion on the national  
implementation and functioning of the  
general authorisation, and on their impact  
on the functioning of the internal market,  
pursuant to Article 122, paragraph 3 EECC**



5 December 2024

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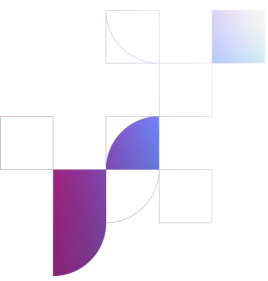
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## Introduction

Pursuant to Article 122, paragraph 3 of Directive 2018/1972 establishing the European Electronic Communications Code (hereinafter: EECC), BEREC shall adopt, by 21 December 2021 and every three years thereafter, an Opinion on the national implementation and functioning of the General Authorisation (hereinafter: GA), and on their impact on the functioning of the internal market.

Taking utmost account of such Opinion, the Commission may publish a report on the application of the GA-related provisions in the EECC and may also submit legislative proposals to amend them, should it consider it necessary in order to address any obstacles to the proper functioning of the single market.

According to the mentioned provision, on 9 December 2021, BEREC adopted its first Opinion on the GA regime in the Union<sup>1</sup>, also taking into account the views expressed by interested stakeholders within a dedicated call for input. In such Opinion, BEREC outlined the problems put forward by sector operators by distinguishing between issues rooted in the electronic communications legislative framework and problems stemming from outside it. The BEREC Opinion also covered early considerations around the adoption of the BEREC notification template<sup>2</sup> by the NRAs and on the functioning of the EU database of the notifications that providers of electronic communications networks and services are required to submit to national competent authorities and that these latter shall forward to the BEREC Office (the General Authorisation Database, hereinafter: GADB). Such database, envisaged - like the BEREC template - by Article 12, paragraph 4 of the EECC, was timely set up by BEREC in December 2020 and is maintained by the BEREC Office<sup>3</sup>.

In line with Article 122, paragraph 3 of the EECC, by December 2024, BEREC shall adopt its next Opinion on the functioning of the GA regime.

To this end, the present draft Opinion intends to provide an updated analysis of the functioning of the GA regime in the Union, pursuant to Articles 12-19 EECC.

The draft Opinion is structured as follows:

- Chapter 1 provides a short legal background to the exercise;

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<sup>1</sup> BoR (21) 178, BEREC Opinion on the national implementation and functioning of the general authorisation, and on their impact on the functioning of the internal market, pursuant to Article 122, paragraph 3 EECC, 9.12.2021, see: <https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-the-national-implementation-and-functioning-of-the-general-authorisation-and-on-their-impact-on-the-functioning-of-the-internal-market-pursuant-to-article-122-paragraph-3-eecc>

<sup>2</sup> The notification template was defined by BEREC in the context of its Guidelines for the notification template pursuant to Article 12, paragraph 4 of Directive 2018/1972 of the European Parliament and of the Council – document BoR (19) 259, adopted on December 2019.

<sup>3</sup> The General Authorisation Database is available at the link <https://gadb.berec.europa.eu/#!view=Providers&sort=ProviderName|ASC>

- Chapter 2 bears an overview of the EECC transposition status in the Union, with a focus on Article 12 EECC, and looks into the level of NRAs' adoption of the BEREC notification template;
- Chapter 3 develops an analysis of the functioning of the GADB so far;
- Chapter 4 proposes an overall assessment of the GA regime and introduces some forward-looking considerations;
- Chapter 5 provides some conclusions.

At the moment of publishing the present draft Opinion, out of the 25 NRAs contributing to the analysis, 2 informed that their Member States have not transposed into national legislation the GA-related provisions in the EECC neither completely nor partially, 1 out of them being an NRA from an EU candidate Member State (BA). The NRA from DK (DBA) declared instead that the EECC transposition was completed on December 2020, but its Member State has not transposed into the national legal order the EECC provisions around GA as they do not implement such a regime.

## 1. The legal background

The GA regime was first established by Directive 96/19/EC, eliminating all special and exclusive rights for accessing the electronic communications markets, and eventually consolidated by Directive 2002/20/EC, replacing Directive 97/13/EC (the so called "General Authorisation Directive")<sup>4</sup>.

In the present context, it is worth recalling that the EECC, while confirming the General Authorisation Directive's approach as to the notification to the national competent authority being the maximum requirement that can be imposed on providers to enter the market, intervened on the list of information that may be included in national notification forms, turning it into an exhaustive one, hence further limiting Member States' room of manoeuvre when transposing the relevant *acquis* (Article 12 EECC), so to cap the range of data that national authorities can ask notifying operators to provide.

Pursuant to the same provision, BEREC published the Guidelines for the notification template, i.e., guidelines regarding the main features and contents of each national notification form – within the constraints provided for by Article 12, paragraph 4 of the EECC – to be used by Member States opting for a notification requirement.

Furthermore, BEREC established the GADB, a Union database of the notifications transmitted to the competent authorities by providers falling under the GA regime and subject to the notification requirement.

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<sup>4</sup> For a recollection of the European path to GA, please refer to the "legislative background" chapter in the first BEREC Opinion on GA; see footnote 1.

These BEREC actions worked in the direction of further streamlining and standardising GA-related fulfilments throughout the Union, with a view to facilitating market entry in all Member States and getting to as consistent and lean as possible notification duties enforced on providers.

## 2. The implementation of the General Authorisation rules in the EECC

All Member States have finalised the EECC transposition. The wide majority of Member States has a notification system in place, with the NRA being entrusted to manage the whole GA regime and has fully transposed Article 12 of the EECC confirming the NRAs' preexisting responsibility for receiving notifications from providers intending to start an activity and for managing the whole GA regime. This means that the majority of EU NRAs is responsible for implementing the relevant provisions in Title 2, Chapter 2 EECC concerning receiving notifications from relevant undertakings, forwarding them to BEREC, keeping a register of authorised undertakings, issuing declarations to facilitate the exercise of rights to install facilities and rights of interconnection, define administrative charges - if any – pursuant to Article 16 EECC and publish an overview of such charges and of the relevant administrative costs borne (ACM, AK<sup>5</sup>, AKOS, ANACOM, ANCOM, BIPT, BNetzA, CNMC, ComReg, CRC, CTU<sup>6</sup>, EETT, HAKOM, MCA, NMHH, OCECPR, RRT, RTR, SPRK, TRAFICOM, UKE).

IT also fully transposed Article 12 of the EECC confirming the national allocation of GA-related tasks in place before the entry into force of the EECC. The competent authority responsible for the tasks as in Title 2, Chapter 2 EECC is therefore the Ministry<sup>7</sup>, which is responsible for receiving notifications from undertakings wishing to enter the electronic communications markets, releasing declarations to facilitate the exercise of rights to install facilities and interconnection rights, defining administrative charges relating to the activities under its competence pursuant to Article 16 EECC and publishing a relevant yearly overview. AGCOM, being the BEREC member NRA, is the lead Administration for communications with BEREC and plays a pivotal role in ensuring the forwarding of national notifications to the GADB held by the BEREC Office.

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<sup>5</sup> Although the entry into force of the 2021 Joint Committee Decision – Decision of the EEA Joint Committee No the 275/2021 of 24 September 2021 amending Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement – which transposes the EECC into the EEA Agreement is still pending, Liechtenstein has completed the legislative process to review the national electronic communications Act. This latter will enter into force as soon as the EECC is implemented in the EEA Agreement. In such transitional phase, the GA-related provisions in the EECC have been fully transposed.

<sup>6</sup> CTU was confirmed in its responsibility to manage the GA regime and implemented all the novelties introduced by the EECC. However, it is not responsible for defining administrative charges pursuant to article 16, as these are defined by Act No. 634/2004.

<sup>7</sup> Ministry of enterprises and Made in Italy – Ministero delle Imprese e del Made in Italy.

DK and FR were confirmed as the only Member States that have not implemented a notification requirement for electronic communications providers wishing to enter the market. In particular, DK has confirmed its no-notification regime, as covered by Article 12 EECC, and has not consequently transposed the GA-related provisions in Title 2, Chapter 2 EECC: undertakings entering the market are considered as “automatically authorised”.

As concerns FR, on the 26<sup>th</sup> of May 2021, with the decree transposing the EECC, this Member State removed the notification obligation, while still identifying ARCEP as the NRA responsible to manage the other GA-related duties<sup>8</sup>. No national register is therefore maintained and the monitoring on authorised undertakings is carried out in the context of regulatory interactions, e.g., for the allocation of scarce resources.

Finally, in BA no transposition of the EECC is envisaged at present, and an individual licensing system is in place.

Regarding the level of Member States’ alignment to the BEREC notification template, the wide majority of responding NRAs declared that their national notification form fully takes into account the BEREC template; in very few cases the national notification form was not adapted or partially adapted to the BEREC template.

RTR reported that adjustments to the notification form are still in progress and need to be finalised, while 4 other NRAs do not have a notification form in place, either because they have not transposed the EECC yet (AK<sup>9</sup>, RAK) or because they adopted a no-notification system (ARCEP and DBA). In PL, the new notification form has been designed recently and has become effective on 10 November 2024; the challenge was experienced of aligning it to the short list of services as in the BEREC template.

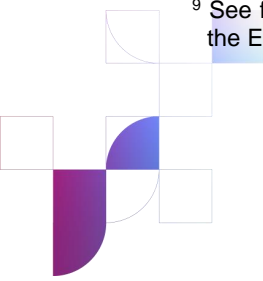
Considering the forms provided by contributing NRAs, some flexibility in the national adaptations to the BEREC template arises, e.g., in the field of contact details that notifying providers are asked to provide. In some cases, due to applicable national legislation falling outside the electronic communications sector, some data is requested, including on the postal address of an authorised representative in the country. ComReg mentioned they do not capture information on certain fields, e.g., whether a provider is a wholesale or a retail one, hence the BEREC template is implemented, setting aside certain fields, by further simplifying notification information requirements.

Some forms also continue relying on an open description of the networks or services that are meant to be provided, which seems to suggest that an adaptation activity regularly takes place within the NRA in order to upload national notifications to the GADB, which features standardised categories of networks and services relying on those identified in the BEREC template.

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<sup>8</sup> Article 50 of decree n. 2021-650

<sup>9</sup> See footnote 5: the EECC has actually been transposed in Liechtenstein, but it has not been incorporated into the EEA Agreement yet, hence it is not implemented in the national legal order either.



BEREC believes that further alignment to its template could be a suitable way to help improve the consistency in notification requirements throughout the Union, to the main benefit of cross-border electronic communications networks and services (ECNS) providers.

Another relevant element that, if national legal orders allow, might ease the operational conditions of cross-border ECNS providers, would be making it possible for them to notify the beginning of their activity in English language.

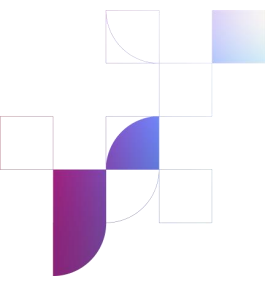
With reference to divergences in national notification experiences reported by some stakeholders, BEREC notes that the wide majority of them stems from specific national requirements laid down by pieces of national law different from electronic communications legislation (e.g. the duty to notify of the beginning of the activity in national language, the duty to have a national digital identity to run the online notification process, the duty to have national representatives to interact with national authorities...). Despite falling outside its remit, BEREC would like to flag that different overall notification fulfilments, with sometimes burdensome procedures especially for ECNS providers established outside the Member States in question and/or operating at a cross-border level, constitute obstacles to the single market.

BEREC therefore underlines the importance for the relevant EU Institutions to put particular attention on such issues, with a view to simplifying the notification experience – in Member States where a notification is envisaged – on aspects where BEREC cannot play any harmonising role and consequently further facilitate market entry at a cross-border level.

As concerns other areas linked to the status as notified ECNS provider, BEREC will look into the possibility to harmonise requirements under the NRAs' responsibility (e.g., some regular statistic reporting activities) when preparing its future Work Programmes.

In terms of its effectiveness, the BEREC template was found to be effective in promoting market transparency and/or consistency in notification-related requirements across Europe.

The BEREC template could be further improved by providing some additional clarifications on important terms, for instance by means of examples concerning certain categories of services and networks put forward in the BEREC template and not always clearly understandable by the notifying party (e.g., the scope of M2M services, Satellite Internet Access, TETRA services, leased lines and data transmission services, as well as of roaming services provided on vessels and airplanes), for the sake of the consistent interpretation of the BEREC categories across Member States. Also, services could be defined in a technologically neutral manner (e.g., “mobile radio services for fixed location access”, instead of “4G/5G networks for fixed access”). In light of the above, it would be appropriate for BEREC to consider a review of its notification template, also aiming at potentially further simplifying the current set of sub-categories of services.



### 3. The General Authorisation Database

Pursuant to Article 12, paragraph 4 EECC, BEREC was due to set up and maintain the GADB, a database of the notifications that providers submit to national competent authorities. In line with the EECC, the GADB was up and running by December 2020, deadline after which the majority of the responding NRAs have started uploading newly received notifications: 18 out of the 25 responding authorities (from AT, BE, BG, CZ, DE, EL, ES, FI, HR, HU, IE, IT, LV, LT, MT, NL, PT, SI) have started forwarding to the GADB all subsequent notifications<sup>10</sup>. Notifications sent by operators before 21 December 2020 to the competent authorities listed above have also been uploaded to the EU database<sup>11</sup>.

In 5 cases (BA, DK, FR, LI and PL), no upload to the EU database is taking place, neither for notifications subsequent to the deadline for EECC transposition, nor for the backlog of previous notifications; in 2 cases, this is due to the pending transposition of the EECC (BA and LI), while in 2 cases this is due to the adoption of a no-notification approach (DK and FR). In PL, the law implementing the EECC into national legislation entered into force on 10 November 2024, hence the forwarding of national notifications to the GADB is expected to start soon.

The figure below illustrates the total number of records uploaded by NRAs into the GADB. Presently, 24<sup>12</sup> NRAs regularly upload notifications into it:

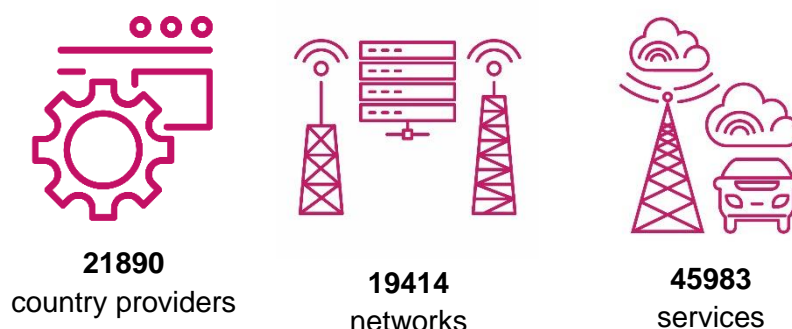


Figure 1: the Database records (25.11.2024)

The top 10 countries with the highest notification records are listed below:

<sup>10</sup> 21 out of the 25 responding NRAs adopted a notification system. Nevertheless, only 18 have started uploading national notifications to the GADB; that is because in LI the national law has been updated but the EECC has not been implemented in the EEA Agreement yet, hence notifications are not sent out to the BEREC Office.

<sup>11</sup> In SI, the new Electronic Communications Act was adopted at the end of 2022, hence AKOS could define the relevant necessary implementing acts by May 2023 only, including aligning the notification form as sketched out in the BEREC Guidelines with the electronic communications market data collection system, which is on the verge of being finalised.

<sup>12</sup> AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, HU, IE, IT, LV, LT, LU, MT, NL, PT, RO, SK, SI, and SE.



Country (NRA)	Services&Networks
Spain (CNMC)	13364
Czechia (CTU)	8906
Germany (BNETZA)	8377
Italy (AGCOM)	6417
Greece (EETT)	3688
Bulgaria (CRC)	3343
Slovakia (RU)	3279
Austria (RTR)	2911
Netherlands (ACM)	2899
Romania (ANCOM)	2764

Most NRAs proceed to monthly uploads (ACM, AGCOM, BIPT, BNETZA, CRC, CTU, TRAFICOM), while others upload notifications upon receipt (AKOS, ANCOM, MCA, NMHH, RRT), weekly (CNMC), every 3-4 months (EETT, HAKOM, SPRK), or even once a year (RTR). ANACOM and ComReg upload national notifications as data is ready<sup>13</sup>.

Based on inputs received from the stakeholders, BEREC recommends maximum update intervals of 2 months to increase the database reliability.

Summary information available at the GADB website:

Country	Services	Networks	Total number of services and networks notified	How often they upload notifications to the GADB
Austria	2122	789	<b>2911</b>	Once per year
Belgium	1026	237	<b>1263</b>	Per week
Bulgaria	2084	1259	<b>3343</b>	Upload notifications as necessary, typically within 14 days from the date of receipt of the notification.
Croatia	422	57	<b>479</b>	Every three months
Cyprus	179	36	<b>215</b>	
Czechia	5007	3899	<b>8906</b>	Monthly
Estonia	436	26	<b>462</b>	

<sup>13</sup> ComReg made one full upload to the EU database on 21st December 2021, comprised of 1772 individual notifications (covering multiple notifications of different services from the same provider).

Country	Services	Networks	Total number of services and networks notified	How often they upload notifications to the GADB
Finland	589	249	<b>838</b>	Once per month
Germany	5740	2637	<b>8377</b>	Monthly
Greece	2516	1172	<b>3688</b>	Every four-five months
Hungary	1274		<b>1274</b>	Upon receipt of the notification
Ireland	854	854	<b>1708</b>	As data is ready
Italy	6417		<b>6417</b>	Monthly
Latvia	306	272	<b>578</b>	As required (once in three month)
Lithuania	125	43	<b>168</b>	Upon receipt of the notification
Luxembourg	369	55	<b>424</b>	
Malta	53	16	<b>69</b>	Upon receipt of the notification
Netherlands	1760	1139	<b>2899</b>	Once per month
Portugal	208	86	<b>294</b>	Upon treatment of the notification and as the data is ready
Romania	1431	1336	<b>2767</b>	Upload of notifications as necessary, typically within 7 days from the date of receipt of the notification
Slovakia	1795	1484	<b>3279</b>	
Slovenia	52	29	<b>81</b>	Upon receipt of the notification
Spain	9979	3385	<b>13364</b>	Weekly
Sweden	1239	354	<b>1593</b>	
<b>Grand Total</b>	<b>45983</b>	<b>19414</b>	<b>65397</b>	

16 NRAs identified no major difficulties with uploading national notifications to the GADB and consider it very easy to work with.

Among the challenges identified so far, the key one seems to relate to ensuring the compatibility of the previously existing national databases and notification forms with the

categorisation put forward by BEREC (both in its template and, accordingly, in the GADB), therefore adapting the national systems in use - also due to sometimes incomplete descriptions of the networks and services in the BEREC template– which led to the need to cooperate with operators for a better understanding and aligned interpretation of the categories therein, at least in a transitional period and as regard the backlog notifications submitted by operators before the entry into force of the EECC (and the consequential implementation of the new notification patterns, i.e., the limited set of information in notification forms, as in Article 12 EECC, and the BEREC notification template).

In this latter respect, an effort to match the previously notified categories with the new ones also via reviewing the terminology used was reported by some NRAs.

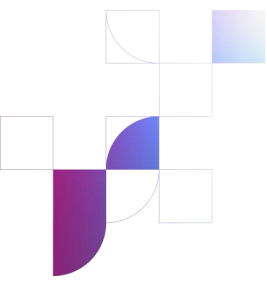
At an operational level, a not very user-friendly environment, some initial glitches and minor login problems were experienced by few NRAs. In this respect, it was suggested implementing an Application Programming Interface for NRAs to communicate directly with the database and upload new/changed notifications to be able to synchronize and automate the data uploading process and make it more efficient; while some put forward the functionality to update records online without importing/exporting Excel files, others suggested implementing a Single-Sign-On system with BERECnet, therefore unifying the login credentials for BERECnet and the GADB website. It was also suggested working at a File Export Report functionality allowing to obtain files via a local download system, rather than via an email transmission service sometimes failing to properly function. It was also proposed expanding the GADB scope to the date of actual beginning of service provision and implementing the chance of filtering data by terminated service providers, and not only terminated services. Another area for possible improvement relates to the identification of providers and treatment of duplicates, as the same undertaking is not unified when providing networks and services in more than one country.

In terms of the database effectiveness, despite some doubts on its actual usage by operators, the majority of NRAs expressed themselves in favour of its usefulness with a view to market transparency.

#### **4. Overall assessment of the General Authorisation scheme and possible adjustments in the future**

According to the NRAs' experience and the views of the majority of the contributing stakeholders, the GA regime has been properly working so far.

An issue emerged though on the clarity of the current GA scheme as defined by the EECC, and particularly on the identification data that can be requested from extra-EU notifying undertakings. A clarification is suggested in this respect to make sure that the national identification number of the place of notification or other information could be required when



the notifying undertakings are from outside the EU and they are not registered in an EU Member State.

An analysis would be useful on the overall requirements that can legitimately be imposed on ECNS providers incorporated outside a given Member State; this is something beyond the mandate of BEREC, which only covers the obligations imposed on ECNS providers as stemming from electronic communications law. On this matter, BEREC is available to contribute – within the scope of its remit - to any further investigation to be carried out by the European Commission.

As to any positive impact of the GA regime, as last reviewed by the EECC, on the pan-European scale of operation of sector undertakings, few NRAs pointed to the very limited impact of GA-related dimensions on the providers' scale, which is reported to depend instead rather on the different features of national markets.

Further issues that emerged from the public consultation relate to:

1. The appropriate scope of the General Authorisation regime, with specific reference to the suitability of expanding it to digital players providing services that are substitute to ECNS and especially providers of number-independent interpersonal communications services (NI-ICS). BEREC has already started a reflection on this subject, and suggests to further develop it in the context of the preparations for the upcoming sectoral legislative review, with a view to ensuring the same regulatory treatment in relation to the provision of the same services and relevant end-user protection guarantees in the usage of both NB-ICS and NI-ICS;
2. The possible introduction of a “Country of Origin” approach to authorising market entry for specific categories of services<sup>14</sup>. On the topic, BEREC shares the concerns expressed on the proposal by some contributing stakeholders in consideration of possible forum shopping practices that might be implemented and invites all stakeholders to carry out a thorough reflection on the implications of such an approach in the context of the upcoming legislative review.

## 5. Conclusions

On the background of the above assessment of the current state of the GA regime, some conclusions could be drawn, and suggestions proposed for an overall improvement of the functioning of the system to continue contributing to the single market goal:

27 EU Member States have finalised the EECC transposition. The wide majority has a notification system in place, with the NRA being entrusted to manage the whole GA scheme.

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<sup>14</sup> The potential introduction of such approach was mentioned in the European Commission's White Paper on “How to master Europe's digital infrastructure needs”.



The harmonized maximum requirements for the notifications under the GA have contributed to lowering obstacles to market entry, promoting market transparency and/or consistency in notification-related requirements across Europe. More than half of the responding NRAs stated that their national notification forms fully took into account the BEREC template. Few NRAs have encountered challenges to align features of their national legal orders with the maximum notification requirements for ECNS.

Some issues were flagged during the public consultation concerning the national implementation of Article 12 EECC, that impact on market entry conditions for ECNS providers established outside a given Member State or providing ECNS in more than one Member State; such issues are connected to the different reach and content of national provisions beyond electronic communications legislation, impacting on the consistency of some national approaches to the GA regime as in Article 12 EECC. Such inconsistencies fall outside the BEREC remit, but still BEREC would like to underline the importance of better looking into this matter, as further consistency in the overall notification-related fulfilments - beyond those, already standardised by the EECC, enshrined in electronic communications legislation - would enhance the simplicity of market entry for ECN/ECS providers, hence the single market dimension.

As concerns what is in its power, BEREC is of the view that further alignment to its template would help standardise sectoral information requirements, in line with the EECC, in the context of notifications by ECNS providers.

In this field, there is still room for further adjustments that BEREC intends to pursue, e.g., as regards the notions in its current template – to be possibly clarified via examples - and potentially the current set of ECNS sub-categories. Some clarifications on minor aspects of the GA notification requirements could be welcome at legislative level.

For a better common understanding and consistent interpretation of the scope of certain categories of networks and services, also with a view to any market developments, the following activities (or their technology neutral alternatives) could be briefly described in the notification template by BEREC, even by means of examples:

- M2M services
- Roaming services provided on vessels and airplanes
- Leased lines and data transmission services
- TETRA services
- Satellite Internet Access
- 4G/5G networks for fixed access

Lastly, most surveyed NRAs regularly upload to the GADB the notifications received under the GA. The database shows, to a great extent, the number of undertakings operating in the EU markets providing ECNS. The more MS upload on a regular basis all notifications received, the more accurate and useful the data will be. It is suggested that NRAs/other competent authorities update national information at least every 2 months. It is further suggested to consider the suitability of including automated features to improve the GADB effectiveness of

its operational functioning. The GADB is overall held to be an effective tool, ensuring a comprehensive view of ECNS being provided at EU level, in combination with national registries that, where envisaged at a national level, facilitate the monitoring of national markets by NRAs and other competent authorities.

Necessary reflections around the suitability of expanding the scope of the GA framework to NIICS providers, other digital players, virtualized networks or software-defined networks and some virtualized communication services or activities shall be developed, also in the light of any future legislative initiative in the ECNS sector, including the upcoming review of the European Electronic Communications Code<sup>15</sup>.

Regarding the concern raised during the public consultation on the possible introduction of a Country-of-Origin approach for the authorisation of certain ECNS, BEREC also calls for a careful analysis of this legal arrangement, considering its possible consequences in terms of level-playing field as well as legal certainty. In this respect, BEREC has already raised some matters of concern in a public contribution<sup>16</sup>.

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<sup>15</sup> Some early reflections in this respect have been developed by BEREC within its contribution to the European Commission's initiative of a White Paper on "How to master Europe's digital infrastructure needs", published on 21 February 2024. The BEREC input is available at <https://www.berec.europa.eu/en/document-categories/berec/others/berecs-input-to-the-ec-public-consultation-on-the-white-paper-how-to-master-europes-digital-infrastructure-needs>.

<sup>16</sup> See previous footnote.

