



ecta RESPONSE

**TO THE PUBLIC CONSULTATION BY BEREC
ON THE**

**DRAFT 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**

BoR (24) 101

23 JULY 2024

Introduction

1. **ecta**, the **European Competitive Telecommunications Association**,¹ welcomes the opportunity to comment on the Draft 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 European Electronic Communications Code (EECC) – BoR (24) 101.
2. **ecta** represents those alternative operators who, relying on the pro-competitive EU legal framework that has created a free market for electronic communications, have helped overcome national monopolies to give EU citizens, businesses and public administrations quality and choice at affordable prices. **ecta** represents at large those operators who are driving the development of an accessible Gigabit society, who represent significant investments in fixed, mobile and fixed wireless access networks that qualify as Very High Capacity Networks (hereafter ‘VHCN’) and who demonstrate unique innovation capabilities.
3. **ecta** members are electronic communications networks and services providers which are subject to the notification obligations in the EU Member States. Several **ecta** members are active in multiple EU Member States, which places them in a good position to observe and provide their inputs on the national implementation and functioning of the general authorisation system.
4. In the following paragraphs **ecta**:
 - I. provides very concise general considerations on the national implementation and functioning of the general authorisation and on their impact on the internal market and on BEREC’s overall assessment and further improvement proposals related to the General Authorisation regime.
 - II. puts forward some policy proposals that could be useful for the forthcoming evaluation phase 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.

Remarks on BEREC’s overall assessment and related proposals

5. In relation to the draft BEREC Opinion, **ecta** first and foremost would like to highlight that it substantially agrees with the draft opinion and believes that the two issues raised by the draft opinion in its conclusions are particularly worthy of a more detailed reflection. These consist, respectively, in the assessment of the NI-

¹ <https://www.ectaportal.com/about-ecta>

ICS and NB-ICS services' inclusion in the notification scope, and the reflection about the boundaries between NB-ICS and NI-ICS.

6. When it comes the General Authorisation regime in the European Union, as described by BEREC's draft Opinion, [ecta](#) notes the decision of France in abolishing, and Denmark in never having a notification obligation, and confining the management of the authorization related issues to the services that use scarce resources.
7. [ecta](#) considers that the merits of a "zero notification obligation policy" in terms of procedural simplification for the operators could usefully be part of the forthcoming EECC evaluation report. Such simplification could be a factor for encouraging the pan-european provision of networks and services.
8. That being stated, [ecta](#) is aware that it will be difficult to achieve this, given that some Member States may be unwilling to adopt a "zero notification requirement" policy. In fact, accepting such request could prove complicated for the Member States (and NRAs) as it could potentially bring tax and number management concerns.
9. Should this prove to be the case, [ecta](#), in order to improve the General Authorisation Framework and the notification obligations, [ecta](#) considers it fundamental that the forthcoming report pursuant to Art.122 of the EECC that BEREC is required to prepare by December 2024 includes:

- i. Recommendations on further *simplification* and *harmonization* of the notification requirements by all Member States. A clear way forward for this is NRAs agreeing on the full implementation of the BEREC template in a manner de-facto constituting the maximum set of information to be provided by entities notifying ECNS activities to any NRA (also covering any national legislation entailing requirements going beyond the ECNS regulatory framework). [ecta](#) respectfully considers that there is an opportunity for specific simplification and harmonization initiatives to achieve this objective, listed below.

First, the list of sub-categories of services to be notified should be simplified and should be standardized across all Member States. For instance, in Spain, the reselling of voice services includes 5 different categories, which is complex for the notifying operators.

Second, the practice of requiring an address within the Member State for notification (which is the current practice in Malta and in EEA States of Norway and Liechtenstein) should be abolished to avoid additional burdens and cost for companies providing networks and services in multiple Member States.

Third, the practice of requiring digital identities for companies incorporated in other Member States (which is a current practice in Italy and Greece) should be abolished, or a work-around should be

implemented, as has been done in Estonia where the application can be emailed to the national regulatory authority.

Fourth, the practice of requiring additional documents such as: extract from the criminal record of the legal entity, Power of Attorney for specific natural or legal persons and the extract from the criminal record for natural persons who have power of attorney (to be provided in the original text and at the same time in an officially translated version) which is the current practice in the Czech Republic should be abolished.

Fifth, , [ecta](#) respectfully requests BEREC to suggest that Member States refrain from requiring corporate documents and their translation and apostille (which is a current practice in Spain and Greece).

Finally, in the same vein, [ecta](#) respectfully requests BEREC to suggest ensuring notification in the English language is always an option for the notifying operators, or, as a minimum, that an unofficial translation of notification forms be provided in the English language, including any instructions issued in relation to the forms.

In relation to the second, third fourth and fifth points listed above, [ecta](#) believes that such requirements could constitute an infringement of the freedom to provide services enshrined in Article 56 of the Treaty on the Functioning of the European Union based on established case law of the European Court of Justice.²

- ii. A fully-fledged assessment of the NI-ICS services' inclusion in the notification scope. [ecta](#) believes that the NI-ICS services (both new ones to be launched on the market and the ones that are currently being offered by the service providers) should be subject to the same notification obligations as NB-ICS in the Member States where they are offered.

10. In relation to the reflection about the boundaries between NB-ICS services and NI-ICS services, [ecta](#) fully agrees with such need and called in its response to the Commission's White Paper³ to undertake a thorough assessment in this sense, by stating: *"a fully-fledged enforcement of the EECC (by assessing and where necessary reviewing the obligations of the operators providing NI-ICS services with respect to the NB-ICS providers that actually are subject to stronger regulatory obligations) is needed"*.

11. In light of the above consideration, [ecta](#) kindly invites BEREC to include in the final text of its Opinion, a chapter on the assessment of the inclusion of NI-ICS services in the scope of notification, by examining one by one the required information listed in EECC Art 12(4) and the related BEREC Guidelines BoR (19) 259. [ecta](#)

² [Judgment of 30 April 2014, UPC DTH Sàrl v Nemzeti Média- és Hírközlési Hatóság Elnökségének, C-475/12, EU:C:2014:285.](#)

³ <https://www.ectaportal.com/news/ecta-press-releases/1706-ecta-responds-to-the-european-commission-s-white-paper-how-to-master-europe-s-digital-infrastructure-needs>

believes that, should a “zero notification requirement” not be adopted in the forthcoming review of the General Authorisation Regime, for the Member States where a notification obligation will be confirmed, there is no technical or factual impediment for the NI-ICS service providers to be included in the scope of notification should the Institutions proceed in this direction in the forthcoming review of the EECC.

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In case of questions or requests for clarification regarding this contribution, BEREC and NRAs are welcome to contact Mr Luc Hindryckx, [ecta](#) Director General or Ms Pinar Serdengeci, [ecta](#) Regulation and Competition Affairs Director.