



BoR PC08 (24) 07

Response to BEREC Consultation

BoR (24) 101

BEREC draft 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

26 July 2024

I. Introduction

1. MVNO Europe¹ welcomes the opportunity to provide its brief written input to the BEREC draft 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.
2. Several MVNO Europe members, notably those providing Internet of Things (IoT) connectivity and related services, operate in all EU Member States. Other MVNO Europe members, for instance those focused on serving business users including Small and Medium-Size Enterprises (SMEs), operate in several EU Member States and have ambitions to continue expanding across borders. Some consumer-focused MVNOs also provide their services in more than one EU Member State. The subject of the functioning of the General Authorisation rules is therefore of interest to many MVNO Europe members.

II. Brief comments on BoR (24) 101

3. MVNO Europe has studied the draft BEREC Report and acknowledges the efforts made by BEREC and by its constituent National Regulatory Authorities (NRAs) since the transposition of the European Electronic Communications Code (EECC), progressing considerably towards:
 - a) Introducing commonality in the NRA notification forms for the initiation of activities by providers of electronic communications and services (ECNS), notably based on the BEREC notification template defined in 2019 - BoR (19) 259.
 - b) The establishment of a General Authorisation Database (GADB).
4. This being stated, MVNO Europe is not convinced that sufficient progress has been made towards *"facilitating market entry in all Member States and getting to as consistent and lean as possible notification duties bearing down on providers"* (page 4, paragraph 2 of the draft BEREC Report). Our comments in this regard are provided below.

ECNS notification forms and related modalities

5. Despite best efforts by BEREC and by many NRAs, numerous non-harmonised, complex, and restrictive practices remain in place in several EU Member States when it comes to the implementation of the General Authorisation system which is provided by the EU regulatory framework since 2002.

¹ <http://mvnoeurope.eu/> and <http://mvnoeurope.eu/members/>

6. Past and present practices of several NRAs, to the effect that the ECNS notification of an undertaking *must be accepted, or can be rejected*, that *inclusion in a registry* of authorised undertakings is *subject to a regulatory decision*, or even that a General Authorisation needs to be *granted*, stand in stark contrast with both the spirit and the letter of the EU regulatory framework for electronic communications, notably Article 12(3) EEC.
7. Specifically relating to the status of MVNOs, the notion that an MVNO would need to reach an agreement with a Host operator, prior to an NRA *accepting* its notification as a provider of ECNS, or before it can be granted rights-of-use over numbering resources, constitutes an undue restriction, which has proven to be a clear blocking factor for the development of MVNOs in some EU Member States.
8. Where the status of authorised ECNS provider is particularly difficult to achieve for undertakings/persons which are not from inside the EU Member State concerned, not only is the intention of EU law not respected, it constitutes undue discrimination.
9. Problematic practices, mostly, do not relate to network/services categorisations² or to the tick-boxes on the NRAs' notification forms, but to other elements. The problematic practices often relate to the set of accompanying documentation being demanded by NRAs from undertakings making notifications. MVNO Europe understands that many (but not all) of these practices stem from outside the regulatory framework for electronic communications, and in some cases may constitute infringement of the EU regulatory framework for electronic communications and/or the four freedoms underlying the EU Single Market.
10. Some of the most serious problems relate to requirements for the notification form to be accompanied with (official) documents, which are difficult to provide, for all undertakings, but especially for undertakings from another EU Member State. The documents concerned include those identifying the undertaking, its articles of association or statutes, its financial standing (incl. tax and social security payment status), its digital identity certificate, etc. The same issues arise with regard to the persons entitled to represent the undertaking, involving often complex requirements for proof of standing. Undertakings whose registered office is another EU Member State, and/or whose representative is from another EU Member State, continue, in practice, to face undue difficulties having their notifications *accepted* by the NRAs of several EU Member States. These include requirements for notarisation of foreign documents, certified translations, apostilles on documents, requirements to provide digital identifiers that only exist in the particular Member State, requirements for having a registered address or even

² BEREC's draft Report identifies outstanding issues with regard to categorisation (page 10, paragraph 5).

requirements for an official representative in the Member State in which the notification is sought to be made, etc. This does not facilitate market entry. At best it causes substantial delay and increases costs. At worst, some legitimate undertakings, such as MVNOs, which are able to provide competitive impetus and end-user benefits, may be prevented from entering the market in an EU Member State, or may have to renounce to doing so due to excessive bureaucratic/regulatory obstacles.

11. Fees to be paid to NRAs (in Italy to a Ministry) in association with the one-time act of notification of initiation of the provision of ECNS, vary from zero to very high amounts, some of which are not in line with the administrative cost of processing a notification.

12. On the basis of what precedes, MVNO Europe calls on BEREC to include, in the final text of its Report, that stakeholders have flagged to it that there remain serious issues with the process of notification of the initiation of ECNS activities in several EU Member States, notably (but not exclusively) for undertakings from a Member State other than the one in which the notification is sought to be made.

Tip of the iceberg: the real issue is that regulatory conditions attached to the status of notified ECNS operator differ (in some cases increasingly) between EU Member States. BEREC has an opportunity to lead harmonisation

13. BEREC's draft Report limits itself to assessing the implementation of the provisions of Article 12 of the EECC, i.e.: (i) the modalities of the administrative act of notification by an undertaking wishing to benefit from a General Authorisation to provide ECNS, and (ii) the maintenance of a database of entities registered as benefiting from a General Authorisation to provide ECNS in the EU Member States.
14. The provisions of Article 12 of the EECC represent just the tip of the iceberg in terms of facilitating market entry and operating ECNS in more than one EU Member State, not to mention on an EU-wide basis.
15. Whilst there remain serious issues relating to the notification procedures in their own right (identified in paragraphs 5-11 above), the operational implications and costs of doing business in multiple EU Member States in an integrated way are impacted to a far greater extent by substantial divergences in terms of the regulatory conditions attached to the status of notified ECNS operator in each EU Member State.

16. Divergences are not only related to the use of scarce resources (numbering, spectrum), but extend to a much wider set of conditions and obligations which are not harmonised among EU Member States (and some of which are increasingly dis-harmonising).
17. In MVNO Europe's opinion, there is a clear opportunity for BEREC to play a positive role, together with its constituent NRAs, to lead harmonisation and foster the EU Single Market, as regards the regulatory conditions attached to the status of notified ECNS operator, at least on the following aspects:
- a) Fully harmonising regulatory obligations of an essentially administrative nature and for NRA/BEREC data gathering purposes. We refer in particular to harmonisation of periodically recurring information obligations imposed on ECNS providers which apply in all EU Member States, but which are currently subject to unnecessary differences. NRAs/BEREC should be able to agree to fully harmonise the modalities of, for instance:
 - i) Periodic statistical/financial reporting required by ECNS operators (precise scope of reporting and the periodicity of reporting – in essence a moving towards a single format, enabling multi-country operators to enter their data in a consistent way).
 - ii) Security incident reporting³ (precise scope of the types of incidents to report, timeframe for initial report, timeframe for follow-up reports and closing of incidents), plus the possibility to file a single or an identical report relating to a single incident that affects multiple EU Member States.
 - b) Recognising explicitly that MVNOs rely on Host operators for certain aspects of their business, and thus have no control over the activities of their Host operators, rendering separate reporting unnecessary. MVNOs should not be required to provide superfluous Quality of Service reports (identical to those of the Host operators), and certainly not be subject to liability for Quality of Service deficiencies where these concern elements of quality they do not control.
 - c) Agreeing and implementing a single set of best practices for the implementation of regulatory obligations in areas such as: (i) assignment of numbering resources, (ii) usage conditions of numbering resources, (iii) number portability, (iv) fraud prevention including Know Your Customer (KYC) obligations, etc. MVNO Europe notes in this context that number portability systems differ between Member States, with some systems being far

³ The draft NIS2 Implementing Regulation, put to consultation by the European Commission, does not cover ECNS - Ares(2024)4640447

more efficient (notably in terms of timeframes, costs) than others. Lessons can and should be learned from comparative assessments. Uniformisation is of the essence.

18. On the basis of what precedes, MVNO Europe invites BEREC to include, in the final text of its Report, a set of voluntary commitments to full harmonisation by its constituent NRAs, to be formalised by BEREC, in areas where harmonisation makes sense and is readily achievable.

European Commission White Paper: suggested Country of Origin principle for Authorisation

19. MVNO Europe is aware of the input provided by BEREC to the European Commission's public consultation on the White Paper "*How to master Europe's digital infrastructure needs?*"⁴, notably with regard to the suggested Country of Origin principle.

20. For reference, MVNO Europe's own response to the European Commission's public consultation contains the following in this regard (paragraph 16 of MVNO Europe response):

Scenario 6, part 2, concerns suggestions for a more harmonised approach to authorisation, through the possible establishment of a "country of origin" principle for certain activities. MVNO Europe expresses a strong preference for harmonising the authorisation-related conditions among Member States (maximum harmonisation, not only of the technicalities of becoming an authorised provider, but also of all the regulatory obligations associated with the status of authorised operator). MVNO Europe considers that adopting the "country of origin" approach, whilst intellectually attractive, entails high risks of unpredictable outcomes. These could include so-called forum shopping, i.e. operators picking the Member State with the least onerous set of regulatory obligations, asymmetric situations where some providers end-up being more regulated than their direct competitors, new providers being favoured over those that already comply with diverse national obligations, and asymmetric benefit to the big tech companies.

21. Voluntary commitments to full harmonisation, made by NRAs and formalised by BEREC, in areas where harmonisation makes sense and is readily achievable, may well be a relevant constructive way forward.

⁴ BoR (24) 100: <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>

III. About MVNO Europe

22. MVNO Europe represents various types of Mobile Virtual Network Operators (MVNOs), with different business models, addressing consumers, business users (including start-ups/scale-ups)/medium/large businesses, the public sector, ICT service/systems integrators, and Internet of Things markets, etc. <http://www.mvnoeurope.eu/members>
23. MVNOs currently represent +/- 10% of SIM cards in the European Union.
24. The term “virtual” refers to the fact that MVNOs do not control radio frequencies and related mobile physical infrastructure (antennas, base stations etc.). However, MVNOs do control the necessary hardware/software/resources to provide wireless/mobile services and may own other telecom infrastructures and networks depending on the extent of their business model.
25. Our members provide mobile-only offers, fixed-mobile convergent offers and offers incorporating audio-visual media content, financial services, machine-to-machine communications, embedded data SIMs for tablets, laptops and other devices, connected mobility for vehicles, IoT in a broad sense, etc. Some of our members are also active on wholesale markets as MVNE (E=Enabler) / MVNA (A=Aggregator) supporting other companies and brands that provide mobile/wireless services. MVNO Europe does not represent branded resellers.
26. MVNOs contribute strongly to innovation and competition and provide clear Business to Consumer (B2C) and Business to Business (B2B) end-user benefits.
27. MVNOs also contribute to financing mobile network infrastructure through payment of wholesale charges which assure revenues to Mobile Network Operators, whilst avoiding costly duplication of network assets. Enabling and promoting MVNOs is by far more environmentally responsible than promoting the build-out and operation of additional parallel physical mobile infrastructures, and is thus consistent with the twin green and digital transitions.

IV. MVNO Europe Contact Details

Should you require any clarifications or further information on the elements and positions set out by MVNO Europe in this document, please contact:

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