

Consultation response

BEREC Public Consultation on the draft Guidelines for the notification template pursuant to Art. 12(4) of the European Electronic Communications Code

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2018, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

General remarks

The American Chamber of Commerce to the European Union (AmCham EU) welcomes the opportunity to contribute to BEREC's work on developing a notification template for those services that fall under Article 12 of the European Electronic Communications Code (EECC or Code). The notification template is an important tool to simplify administrative procedures for cross-border and pan-European providers by removing national differences in the notification form and process, as acknowledged by BEREC in its reports from 2011 (BoR(11) 56¹) and 2013 (BoR(13) 03²).

This simplification risks however to be undermined if National Regulatory Authorities (NRAs) can add specific requirements through an 'Annex', as currently proposed by BEREC. Such an Annex for national requirements also contradicts the legal text of the EECC which foresees a full harmonisation of the list and type of information that can be required in the notification document (article 12(4)). Accordingly, we recommend for the Annex to be deleted.

All NRAs should be encouraged to use the BEREC template without additional changes. Even if requirements have to be translated into national languages, providers will be able to automate their notification processes to a much larger extent than is currently the case today. We encourage NRAs to use English forms, to be filled out in English by operators. If this is not permitted, NRAs should allow for replies in English by operators to a national language form. The BEREC report BoR(11) 56 notes the advantages for cross-border operators of avoiding translations into several EU official languages. Concretely, we ask BEREC to reformulate its statement (p.4 of the draft guidelines) that NRAs or other competent authorities 'might still adapt the structure and contents of such template.' It would be highly regrettable if authorities start changing the structure of the template. Instead, deleting some of the (content) elements by making available in a shortened template does not pose problems for operators. We therefore ask BEREC to provide further clarity regarding the harmonisation.

The rationale for a common template is to fully harmonise the list and type of information that can be required in the notification document in article 12(4) of the EECC. Article 12(4) of the Code fully harmonises the information that can be requested by limiting it to a clear number and types of requirements. As a result, any national requirement that goes beyond the exhaustive list of article 12 will have to be repealed during the national transposition process. Therefore, BEREC should delete the Annex in the draft notification template. Article 12(4) also states 'that information shall be limited to: [...]' and recital 43 states that: '[...] A provider should be required to complement that declaration only with the information set out in this Directive [...]'. This is also recognised by BEREC in the summary of the legal basis included in its consultation document: 'Compared to the mentioned "Authorisation Directive", the EECC now provides that Member States shall not impose any additional or separate notification requirements, therefore introducing a list bearing the widest range of information that NRAs or other competent authorities can legitimately require from ECN/ECS providers within a notification form.'

¹ BEREC Report on the impact of administrative requirements on the provision of transnational business electronic communications services

² BEREC Report on General authorization regimes in EU Member States

Consultation questions

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

Question 2: 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?

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

We believe that item 1.1 is clear. As regards items 1.2, 1.3 and 1.4, they are not foreseen in the restricted list included in article 12, paragraph 4 of the EECC. While we acknowledge that this information may be relevant for NRAs, we consider that notification requirements should be the least onerous possible, and therefore not go beyond the strict wording of article 12, paragraph 4.

Hence, we think that the requirement set out in footnotes 3-4, to fill out all or several of the tables for each change of activity or of the contact/identification data, is disproportionate. We encourage BEREC to reconsider this and to foresee that only the change as such should be notified.

In addition, item 1.3 is not sufficiently clear. Reading the footnote, it seems it is meant for changes to contact details or other details related to the identification of the provider without actual change to the network and/or services provided. In order to be clearer, it should read 'change to' rather than 'variation of' identification data. Alternatively, and to avoid any confusion, it should be referred to as the same title as the table (eg, changes to 'Details of the undertaking' or 'Contact person').

Regarding question 3, we believe that the template fully covers events that would require notification.

Question 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.

The level of details of the information requested seems appropriate. However, it is unclear what is covered by footnote 6: 'Certification from the competent chamber of commerce or equivalent, depending on national requirements in compliance with applicable EU law.' Does it simply say that certifications could be used to supply the requested data or does it imply that NRAs/national law can require certifications? In the latter case, this appears contrary to the spirit of the EECC. If certifications are required by national law, by adding a notification or registration requirement, it risks infringing the freedom of establishment and the safeguard in the EECC whereby the only requirement to offer ECN and ECS is to provide a mere declaration of intent to commence services. We recommend BEREC to clarify that if such national requirements exist that they should be limited to providing such a number in case a provider is already registered. It should clarify that it cannot be a requirement for the general authorisation to request certification by a local chamber of commerce in the country concerned.

Question 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.

The information required appears appropriate, although we do question if the details of an alternate contact person are required.

Question 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-categorisation 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?

For column 3, it would be helpful to include a footnote with a guideline to clarify what is expected for the ‘short description of the Network’ in order to prevent notifications to be returned as incomplete. This description should be as high level as possible.

We recommend table 4 column 5 to be deleted because BEREC already has this overview as the notification is always done to national regulators and thus will logically concern a national network or service. This information would have made sense in case of pan-European notifications, which unfortunately are not yet a reality. We also do not see the necessity of column 6 (geographic area of MS), as we do not understand how this is relevant for NRAs and BEREC in the context of notification.

For column 7, it would be helpful to include a footnote that clarifies that ‘publicly available’ does not entail networks and services used by a closed group of end-users.

Question 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?

Question 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?

Question 7 should not lead to extra administrative burden. As mentioned in the ‘General remarks’, we encourage NRAs to use English forms, to be filled out in English. If this is not permitted, NRAs should allow for replies in English by operators to a national language form.

In case this is also not accepted and NRAs require forms to be submitted in their national language, the translation of this form (from the national language to English) should remain the responsibility of the relevant NRA and/or BEREC. We again refer to BEREC’s report from 2011, which deems the use of English to be a best practice.

Irrespective of which automatic translation system is chosen, we recommend that BEREC first allows (but doesn’t oblige) the registrant to review the translated version before it is stored in the database. This will help ensure nothing was lost in translation.

On question 8, we agree that the database should be public at least at the high level, whereby it should be sufficient to only mention the undertaking is providing ECS and/or ECN.