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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2021/553

of 29 March 2021

granting derogations to Greece, Spain and Malta as regards the provision of statistics pursuant to Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics*(notified under document C(2021) 1937)***(Only the English, Greek, Maltese and Spanish texts are authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics ⁽¹⁾, and in particular Article 5(4) thereof,

Whereas:

- (1) Commission Regulation (EU) 2019/2146 ⁽²⁾ requires the Member States to transmit more disaggregated annual statistics on final energy consumption in industry.
- (2) Greece, Spain and Malta have requested derogations from that requirement for certain disaggregations and reference years, as they would need to modify their data collection methods, develop new studies and methodologies, or find new administrative sources. On the basis of the information they have provided to the Commission, it appears that the requests are justified, as the collection of such statistics would lead to an excessive burden on respondents in those Member States.
- (3) The requested derogations should be granted to Greece, Spain and Malta.
- (4) The measures provided for in this Decision are in accordance with the opinion of the European Statistical System Committee established by Article 7 of Regulation (EC) No 223/2009 of the European Parliament and of the Council ⁽³⁾,

⁽¹⁾ OJ L 304, 14.11.2008, p. 1.

⁽²⁾ Commission Regulation (EU) 2019/2146 of 26 November 2019 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics, as regards the implementation of updates for the annual, monthly and short-term monthly energy statistics (OJ L 325, 16.12.2019, p. 43).

⁽³⁾ Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

HAS ADOPTED THIS DECISION:

Article 1

The derogations set out in the Annex are granted to the Member States listed therein.

Article 2

This Decision is addressed to the Hellenic Republic, the Kingdom of Spain and the Republic of Malta.

Done at Brussels, 29 March 2021.

For the Commission
Paolo GENTILONI
Member of the Commission

ANNEX

Derogations from Regulation (EC) No 1099/2008Member State: **Greece**

Annex A Paragraph (identifying product concerned)	Annex B Paragraph (identifying industry concerned)	Derogation period	Coverage of derogation
3.2, 3.1.13 3.4	7.1.1.1.1, 7.1.1.1.2, 7.1.1.1.3 7.1.1.2.1, 7.1.1.2.2, 7.1.1.2.3 7.1.1.5.1, 7.1.1.5.1.1, 7.1.1.5.1.2, 7.1.1.5.2 7.1.1.6.1, 7.1.1.6.2 7.1.1.7.1, 7.1.1.7.2, 7.1.1.7.3 7.1.1.9.1, 7.1.1.9.2 7.1.1.10.1, 7.1.1.10.2, 7.1.1.10.3, 7.1.1.10.4 7.1.1.12.1, 7.1.1.12.2, 7.1.1.12.3	1 year	Transmission of all elements of detailed final energy consumption in industry for gas and for oil and petroleum products.
3.5 (except 3.5.8.1 and 3.5.8.2)	7.1.1.1.1, 7.1.1.1.2, 7.1.1.1.3 7.1.1.2.1, 7.1.1.2.2, 7.1.1.2.3 7.1.1.5.1, 7.1.1.5.1.1, 7.1.1.5.1.2, 7.1.1.5.2 7.1.1.6.1, 7.1.1.6.2 7.1.1.7.1, 7.1.1.7.2, 7.1.1.7.3 7.1.1.9.1, 7.1.1.9.2 7.1.1.10.1, 7.1.1.10.2, 7.1.1.10.3, 7.1.1.10.4 7.1.1.12.1, 7.1.1.12.2, 7.1.1.12.3	2 years	Transmission of all elements of detailed final energy consumption in industry for renewable energy and waste, with the exception of solid biofuels and biogases.
3.3.1	7.1.1.5.1.1, 7.1.1.5.1.2	3 years	Transmission of 'Manufacture of pulp' and 'Other paper and paper products' elements for electricity.

Member State: **Spain**

Annex A Paragraph (identifying product concerned)	Annex B Paragraph (identifying industry concerned)	Derogation period	Coverage of derogation
3	7.1.1.1.1, 7.1.1.1.2, 7.1.1.1.3 7.1.1.2.1, 7.1.1.2.2, 7.1.1.2.3 7.1.1.5.1, 7.1.1.5.1.1, 7.1.1.5.1.2, 7.1.1.5.2 7.1.1.6.1, 7.1.1.6.2 7.1.1.7.1, 7.1.1.7.2, 7.1.1.7.3 7.1.1.9.1, 7.1.1.9.2 7.1.1.10.1, 7.1.1.10.2, 7.1.1.10.3, 7.1.1.10.4 7.1.1.12.1, 7.1.1.12.2, 7.1.1.12.3	2 years	Transmission of all elements of detailed final energy consumption in industry for all fuels.

Member State: **Malta**

Annex A Paragraph (identifying product concerned)	Annex B Paragraph (identifying industry concerned)	Derogation period	Coverage of derogation
3.3.1	7.1.1.9.1, 7.1.1.9.2	1 year	Transmission of 'Aluminium production' and 'Other non-ferrous metal industries' elements for electricity.
3.4	7.1.1.12.1, 7.1.1.12.2, 7.1.1.12.3	3 years	Transmission of 'Manufacture of rubber and plastic products', 'Manufacture of furniture' and 'Other manufacturing' elements for oil and petroleum products.

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2021/554

of 30 March 2021

on the form, content, time limits and level of detail to be given in notifications under the procedures set in Article 32 of Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code ⁽¹⁾ (the Code), and in particular Article 34 thereof,

Whereas:

- (1) Under the Code, the national regulatory authorities (NRAs) are to contribute to the development of the internal market by working with each other, with the Commission and with the Body of European Regulators of Electronic Communications (BEREC) under Regulation (EU) 2018/1971 of the European Parliament and of the Council ⁽²⁾, in a transparent manner in order to ensure the consistent application of the Code in all Member States.
- (2) To ensure that decisions taken at national level do not adversely affect the internal market for electronic communications or the objectives of the regulatory framework, NRAs are required to notify the Commission, BEREC and the NRAs in other Member States of the draft measures referred to in Article 32(3) of the Code. This notification therefore constitutes an essential procedural requirement. Consequently, failure to comply with this requirement, including in the case of draft decisions specifying or modifying previously notified regulatory obligations, may lead to the annulment of the measure in conformity with national law ⁽³⁾.
- (3) Articles 32 and 33 of the Code lay down certain procedures and binding time limits for the consideration of the notifications.

⁽¹⁾ OJ L 321, 17.12.2018, p. 36.

⁽²⁾ Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (OJ L 321, 17.12.2018, p. 1).

⁽³⁾ Judgment of the European Court of Justice of 20 December 2017, Polkomtel sp. z o.o v Prezes Urzędu Komunikacji Elektronicznej, C-277/16 paragraph 45, ECLI:EU:C:2017:989; judgment of the European Court of Justice of 14 April 2016, Polkomtel, C-397/14, paragraph 56 and reply of the Court to question 2, EU:C:2016:256; judgment of the European Court of Justice of 17 September 2015, KPN BV v Autoriteit Consument en Markt (ACM) C-85/14 point 47, ECLI:EU:C:2015:610. Please also see national court judgments of the Italian Consiglio di Stato, n. 3722/2019, which annulled AgCom's decision n. 259/14/CONS based on purely procedural grounds (without entering in the merits of the dispute) for failure to comply with the internal market consultation procedure. Also, the Polish courts annulled the national regulatory decisions, affecting trade between Member States which imposed regulatory obligations without mandatory prior EU consultations (VI ACa 1148/11, VI ACa 137/14).

- (4) To ensure the effectiveness of cooperation and the consultation mechanism, and to contribute to legal certainty, recommendations concerning the main procedural aspects of the notifications made under the relevant provisions were introduced by Commission Recommendation 2003/561/EC ⁽⁴⁾. Recommendation 2003/561/EC was later replaced by Recommendation 2008/850/EC ⁽⁵⁾ with a view to further simplifying and improving guidance on the notification process. This Recommendation updates the applicable guidance to reflect recent practice and accommodates the provisions of the Code.
- (5) Pre-notification contacts to discuss formal and substantive issues concerning draft measures before formal notification have proven to be very useful for both the Commission and the NRAs, which have often requested them. During such exchanges, NRAs have the opportunity to present their draft measures and have an open discussion with the Commission services on the proposed national measures. Therefore, NRAs should be encouraged to request pre-notification contacts as early as possible, before or/and after their national consultations, especially for draft measures concerning market reviews.
- (6) Contacts between the Commission services and the notifying NRAs are foreseen at different stages of the notification process, including when the Commission services request additional information from the NRA or immediately after the Commission adopts comments or no comments letters or decisions opening an in-depth phase of investigation.
- (7) The Code allows NRAs to withdraw a notified draft measure at any time. Where a notified draft measure is withdrawn in the initial 1-month period, the notified measure is always removed from the register in the secure electronic interface ⁽⁶⁾. Where, however, the notified draft measure is withdrawn only after the Commission has issued a decision requiring the NRA to withdraw that draft measure under Article 32(6), point (a) of the Code, the initially notified measure remains in the secure electronic interface for transparency purposes. In either case, a notice of withdrawal is published in the public section of the secure electronic interface.
- (8) To give further guidance to NRAs on the content of draft measures, this Recommendation identifies certain minimum information that should be provided on the content of draft measures in order for them to be properly assessed. This should also reduce the amount of information subsequently requested by the Commission during the assessment of the notification.
- (9) Account has to be taken of the need to ensure effective assessment, on the one hand, and to simplify administrative procedures as far as possible, on the other. In this respect, the notification mechanism should not involve any unnecessary administrative burdens on the parties concerned. To help simplify the examination of a notified draft measure by the Commission, BEREC and other NRAs, and to make the process faster, NRAs should use a set of forms for notifications.
- (10) In order to increase transparency on a notified draft measure and to facilitate the exchange of information about such measures between NRAs, BEREC and the Commission, both the Standard and the Short Notification Forms that are made public should contain a clear, summarised description of the main elements of the draft measure to be notified. The templates of those forms indicate that the information required in the template sections should be provided where applicable, meaning that not all the information may be relevant in every single case.
- (11) A Short Notification Form should be used for certain categories of draft measures of a recurring and/or technical character in order to reduce the administrative burden on all parties concerned. NRAs frequently amend technical details of the remedies previously imposed to take account of changes in relevant economic indicators or factors (such as changes in the cost of equipment, cost of labour, inflation rate, or property rental rates), or to update forecasts or assumptions. Only changes or updates of details that do not change the nature or the general scope of

⁽⁴⁾ Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (OJ L 190, 30.7.2003, p. 13).

⁽⁵⁾ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (OJ L 301, 12.11.2008, p. 23).

⁽⁶⁾ CIRCABC, <https://circabc.europa.eu/ui/welcome>

pre-existing remedies should be notified by means of the Short Notification Form. The assessment of such types of draft measures is likely to be less complex; therefore, as it has happened already in the past, it may be completed by the Commission in less than 1-month period. Similarly, the Commission's past practice shows that the assessment of those types of draft measures has often not given rise to comments by the Commission to the NRA in accordance with Article 32(3) of the Code. Therefore, it is clarified in the Recommendation in which situations a Short Notification Form can be used.

- (12) On the other hand, material changes to the nature or scope of remedies that have an appreciable impact on the market, such as amendments to the methodologies used to calculate costs or prices ⁽⁷⁾, determination of glide paths or changes in price levels (except for price updates that simply reflect changes in the relevant economic indicators or factors described above), should be notified using the Standard Notification Form.
- (13) The set of notification forms should also include, where applicable, indications on the content of notifications related to the new provisions introduced by the Code. This includes in particular notifications falling under the scope of Articles 61 and 76 of the Code (symmetric access obligations and co-investment offers) and under the scope of Articles 78 to 81 of the Code (voluntary separation, commitments, wholesale-only undertakings and migration from legacy infrastructure).
- (14) The mechanism allowing the Commission to require NRAs to withdraw planned measures concerning market definition and the designation of undertakings as having significant market power, where such measures would create a barrier to the internal market or would be incompatible with Union law, has contributed significantly to consistent regulatory approaches amongst Member States. The mechanism has proven to be effective in clarifying the circumstances in which *ex ante* regulation should be applied.
- (15) The experience of the internal market procedure under Articles 7 and 7a of Directive 2002/21/EC of the European Parliament and of the Council ⁽⁸⁾ has shown that inconsistencies in the NRAs' application of remedies under similar market conditions may undermine the internal market in electronic communications.
- (16) The Code has conferred new powers on the Commission, where BEREC shares its concerns, to require an NRA to withdraw draft measures relating to (i) the extension of obligations beyond the first concentration or distribution point to address high and non-transitory economic or physical barriers to replication (Article 61(3) of the Code), or (ii) to the regulatory treatment of new very high-capacity networks (VHCN) (Article 76 of the Code).
- (17) To meet the general objectives laid down in Article 3 of the Code, in particular the objectives of removing remaining obstacles to the internal market and promoting regulatory predictability, full compliance with the notification mechanism laid down in Article 32 of the Code is essential.
- (18) With the aim to increase the transparency and effectiveness of Article 32 consultation mechanism, the Commission, other NRAs and BEREC should be able to verify readily whether and how the notifying NRA has taken into account the comments provided on a notified draft measure. To this purpose, when an NRA communicates the adopted measure to the Commission, BEREC or other NRAs, after having received comments from them, it should specify the manner in which it took the utmost account of those comments.
- (19) NRAs' requests to extend the deadline to notify a new market analysis under Article 67(5) of the Code are to contain sufficient and reasoned information to allow the Commission to assess whether to grant the requested extension.
- (20) Pursuant to Article 34 of the Code, BEREC provided its opinion on this Recommendation ⁽⁹⁾ on 12 February 2021,

⁽⁷⁾ For example, information regarding the calculation of the Weighted Average Cost of Capital in line with the Notice on the calculation of the cost of capital for legacy infrastructure (WACC Notice) (2019/C 375/01).

⁽⁸⁾ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

⁽⁹⁾ BoR (21) 20.

HEREBY RECOMMENDS:

Communication channels

1. NRAs are encouraged to avail themselves of the opportunity to discuss informally with the Commission services any preliminary findings or questions related to future draft measures in a pre-notification meeting (including a phone call or videoconference, where more convenient). These pre-notification contacts should be encouraged, before and/or after the national consultation provided for in Article 23(1) of the Code. These pre-notification contacts are of particular importance for draft measures consisting of market reviews but also relevant for remedies. In those cases, in particular where the draft measure is subject to significant changes following the public consultation, additional pre-notification contacts are encouraged before the formal notification of such measures under Article 32(3) of the Code.
2. NRAs should submit notifications via the secure electronic interface identified by the Commission.
3. Where, for technical or other reasons, documents related to the notification cannot be uploaded to the secure electronic interface, the NRA may send the documents to the Commission by electronic mail. Other NRAs and BEREC may nevertheless access those documents in the secure electronic interface where they are saved without delay by the Commission. The NRA should upload any document, exceptionally sent by electronic mail, to the secure electronic interface as soon as technically possible.
4. Following the upload of a notification to the secure electronic interface (registration) of a notification, the Commission may send the NRA a request for information or clarification, in accordance with Article 20(2) of the Code. It is recommended that NRAs provide the information requested within 3 working days ⁽¹⁰⁾, where this is readily available. NRAs should inform the Commission services of any problem they might encounter to meet this deadline.
5. Where another NRA or BEREC makes comments on a notification, it may issue these comments in any official language it chooses, which may facilitate their consultation by all other NRAs. It should communicate those comments to the Commission, BEREC and the other NRAs, by electronic means, preferably by uploading them into the public section of the Commission's secure electronic interface.
6. NRAs should identify and redact any confidential information, and request correction of any errors contained in the Commission comments or no comments letter within 3 working days, before the latter is published in the public section of the Commission secure electronic interface.
7. An NRA may decide at any time to withdraw the notified draft measure. In this case, the NRA should upload a Notice of Withdrawal in the secure electronic interface.
8. Where an NRA adopts a draft measure, previously notified under Article 32(3) of the Code, after having received comments from the Commission, BEREC or another NRA, it should communicate to the Commission, BEREC and other NRAs both the adopted measure and the manner in which it took the utmost account of the comments made. In order to increase transparency, and facilitate procedures for the communication of adopted measures, NRAs should communicate to the Commission their adopted measures by completing and submitting the form set out in Annex IV, along with the adopted measure.

Level of detail to be contained in notifications

9. Notifications should be in any of the official languages of the Union. The Standard Notification Form (Annexes I and II) or the Short Notification Form (Annex III), together referred to as the 'set of notification forms', and the communication of adopted measures (Annex IV) may be in any official language, which may facilitate exchanges between NRAs and BEREC.

⁽¹⁰⁾ Time limits are calculated according to Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

10. Draft measures notified by an NRA should be duly substantiated and accompanied by any other documentation needed for the assessment of the measure. All information submitted by NRAs should be complete and summarised in the notification form.
11. In order to improve the efficiency of the notification mechanism, to increase legal certainty for NRAs and market players and to ensure timely implementation of regulatory measures, it is desirable that a notification by an NRA covering a market analysis also include the remedies proposed by the NRA to address the market failures identified, where possible. Where the draft measure relates to a market that is found to be competitive and remedies already exist in relation to that market, the notification should also include the proposal to withdraw those obligations.
12. The set of notification forms are not meant to replace the notified draft measure, but their correct use should enable the Commission, BEREC and the NRAs of other Member States to verify that the notified draft measure does indeed contain all the information needed to carry out their tasks under Articles 32 and 33 of the Code within the time frame set therein.
13. The requested information should be provided by the NRA in the relevant sections of the notification form, with cross-references to the part of the notified draft measure where this information is to be found.
14. NRAs are encouraged to discuss in advance with the Commission, especially during informal pre-notification contacts any questions on whether a given national measure would fall in the scope of Article 32(3) of the Code, and on the form or substance of planned notifications. Accordingly, NRAs are encouraged to consult the Commission on any aspect of or question on the set of notification forms and, in particular, on the kind of information they are requested to supply.

Notification by way of Standard Notification Form

15. Draft measures should be made available to the Commission, BEREC and other NRAs accompanied by a duly completed Standard Notification Form as set out in Annex I and II, except in the cases referred in point 18 of this Recommendation.
16. The notified draft measures should include each of the following, where applicable:
 - (a) **information required for all notifications by way of a Standard Notification Form**
 - (1) the dates and results of the prior public consultation carried out by the NRA;
 - (2) the opinion issued by the national competition authority, where provided;
 - (b) **additional information required for notifications of draft measure related to market analysis and imposition of remedies (Articles 64, 67 and 68 of the Code)**
 - (1) the relevant product or service market ⁽¹¹⁾, in particular, a description of the products and services to be included in and excluded from the relevant market on the basis of demand-side and supply-side substitutability; where, for the purposes of the market analysis, a draft measure defines a relevant market which differs from those in the Commission Recommendation (EU) 2020/2245 ⁽¹²⁾, NRAs should demonstrate that the criteria set in Article 67(1) of the Code are met;

⁽¹¹⁾ See in particular point 24 to 51 of the Commission Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (2018/C 159/01).

⁽¹²⁾ Commission Recommendation (EU) 2020/2245 of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code (OJ L 439, 29.12.2020, p. 23).

- (2) the relevant geographic market, including a reasoned analysis of the competitive conditions on the basis of demand-side and supply-side substitutability as well as information and data used in the geographic analysis, regarding the choice of the basic geographic unit, the structural and behavioural indicators used (that is to say, where applicable, number of competing networks, market shares and shares trends, analysis of pricing behaviours or different prices at regional level, and behavioural patterns) ⁽¹³⁾;
- (3) the main undertakings active on the relevant market;
- (4) the results of the analysis of the relevant market, in particular findings on the presence or absence of effective competition on the relevant wholesale market and, the analysis of the corresponding retail market, including the reasons for that presence or absence i.e. the notified draft measure should contain the market shares (preferably both in terms of value and volume) of the different undertakings and trends in these market shares and a reference to other relevant criteria, as appropriate, such as barriers to entry, economies of scale and scope, vertical integration, control of infrastructure not easily duplicated, technological advantages or superiority, absence of or low countervailing buying power, easy or privileged access to capital markets/financial resources, overall size of the undertaking, product/services diversification, highly developed distribution and sales network, absence of potential competition and barriers to expansion;
- (5) where the case, the undertakings to be designated as having, individually or jointly, significant market power and the reasoning, evidence and any other relevant factual information in support of such designation;
- (6) in the case of notification of draft measures which fall within the scope of Articles 68 of the Code, the specific regulatory obligations proposed to address the lack of effective competition in the relevant market concerned or, in cases where a relevant market is found to be effectively competitive and such obligations have already been imposed on that market, the draft measures proposed to withdraw those obligations;
- (7) for draft measures falling in the scope of Article 76(2) of the Code, the notification should contain in particular: a detailed description of the commitment offered by the significant market power operator and how it complies with the conditions of Article 76(1) of the Code, a description of the regulatory treatment of the new very high-capacity networks network elements subject to the commitment, the entities co-investing, the degree of their co-investment and their likely competitive role on the market, and, where relevant a description of the remedies imposed on the basis of the third subparagraph of Article 76(2) of the Code and the justification for imposing, maintaining or adapting such remedies;
- (8) for draft measures falling under Article 79 of the Code, the notification should include the commitment decision (where it is distinct from the draft measure), a detailed description of the conditions accepted by the NRA and the nature and results of the market test performed;
- (9) for draft measures falling under the scope of Article 80 of the Code, the notification should include the relevant information showing in detail that the conditions for removing some of the significant market power obligations, under Article 80(1) of the Code, are met;
- (10) notifications made in accordance with Article 68(3) second subparagraph of the Code should also contain adequate reasoning to support the request to the Commission as to why obligations for access or interconnection other than those listed in Articles 69 to 74 and Articles 76 and 80 of the Code should be imposed on operators with significant market power;

⁽¹³⁾ See Recommendation (EU) 2020/2245 and Explanatory Note (SWD(2020) 337 final) accompanying the Recommendation.

- (11) notifications falling within the scope of Article 68(5) of the Code should also contain adequate reasoning as to why the intended draft measures are required in order to comply with international commitments;

(c) ***additional information required for notifications of other type of draft measures (Article 61 of the Code)***

- (1) in the case of notification of draft measures falling under Article 61(1) to 61(4) of the Code, the draft measure should include the affected undertakings, the justification of the draft measure under the legal basis used, the description of the obligations to be imposed, and a reference to any related previously notified draft measures including the results of the analysis of the relevant market which may be affected, as described in point (4);
- (2) in particular, draft measures falling under Article 61(3) of the Code should include a description of how the NRA determined the first concentration or distribution point (FCDP), and/or the point beyond the FCDP capable of hosting a sufficient number of end-user connections to enable an efficient undertaking to overcome the significant replicability barriers identified, and information and reasoning supporting the conclusion that the concerned network elements are not replicable, and that therefore obligations are justified; in particular, regarding obligations proposed under Article 61(3), second subparagraph, NRAs should include a description of which economic or physical barriers to replication they consider high and non-transitory and the competition problems and market failures at the retail level that the proposed obligations seek to address, and the justifications for any exception that would apply, such as the determination of which network deployments can be considered new and which projects can be considered small.

Notifications by way of Short Notification Form

17. The following draft measures should be made available by duly completing the Short Notification Form, set out in Annex III:
- (a) draft measures of a purely technical nature that update details of previously imposed regulatory remedies and do not have an appreciable impact on the market; such draft measures may be modifications to reference offers that contain minor adjustments of the obligations already defined, and notifications in second instances ⁽¹⁴⁾ when there is no change made or it is of technical nature;
- (b) updates of decisions concerning the Economic Replicability Test, which do not change the underlying methodology (such as testing of new prices/offers);
- (c) subsequent notifications of other operators' obligations using the same approach/methodology that was already used (such as update of obligations on termination markets), if those amendments are limited to remedies, and do not concern market definition and significant market power designation;
- (d) draft measures falling under the scope of Article 76(2) of the Code, only to the extent that they are limited to subsequent individual draft decisions under a previously notified and assessed co-investment scheme, and provided there was no material change in circumstances since the assessment of the co-investment scheme ⁽¹⁵⁾.

⁽¹⁴⁾ That may be the case when a national court annuls an NRA's decision on procedural grounds, and that NRA has to renotify the Commission the same measure.

⁽¹⁵⁾ See recital 201 of the Code: in the specific case of co-investment schemes falling under Article 76 of the Code. Recital 201 indicates that: 'In the interest of efficiency, a national regulatory authority should be able to submit a single notification to the Commission of a draft measure that relates to a co-investment scheme that meets the relevant conditions. Where the Commission does not exercise its powers to require the withdrawal of the draft measure, it would be disproportionate for subsequent simplified notifications of individual draft decisions of the national regulatory authority on the basis of the same scheme, including in addition evidence of actual conclusion of an agreement with at least one co-investor, to be subject to a decision requiring withdrawal in the absence of a change in circumstances.'

18. For draft measures listed in point 17, it should be sufficient for the NRA to complete and submit a Short Notification Form and to upload the draft measure to the Commission's secure electronic interface so that it can be publicly accessible. In case the Commission considers, during the assessment of the notified measure, that additional documentation is needed, it can request it at any stage of the procedure.
19. However, if the Commission, upon verification of the conditions for a Short Notification Form to fall within the categories listed under point 17 within 5 working days, considers that those conditions are not met, the notifying NRA should submit the draft measure using the Standard Notification Form without delay. In such cases the 1-month review period would not be interrupted.
20. In planning notifications made pursuant to Article 68(3), second to fourth subparagraphs, of the Code, the NRAs should envisage that a period of at least 5 months would be necessary for the adoption of the authorising decision by the Commission, given the need to consult with BEREC these measures that need to be adopted as implementing acts under Article 118(3).

Registration of notifications

21. Notifications made by means of the set of notification forms listed in points 16 and 17, are registered in the order in which they are notified. NRAs should note that the 1-month review period starts immediately at the moment of reception of the notification of the draft measure.
22. The acknowledgement and allocation of a notification number should be registered, and notice by electronic means should be given to all NRAs, BEREC and other registered users of the Commission's secure electronic interface. This registration notice should include the following:
 - (a) the registration date of the notification;
 - (b) the subject matter of the notification;
 - (c) the notification form;
 - (d) any supporting documentation received.

Processing of Confidential Information

23. Where the NRA considers that information related to a notification is confidential in accordance with Union and national rules on commercial confidentiality the originator of the information should mark it clearly as 'Confidential', before uploading it to the Commission's secure electronic interface or, where applicable, sending it by electronic means.
24. To ensure transparency for notifications, any notification submitted as 'Confidential' should also be submitted in a redacted or adapted non-confidential version that will be made public.
25. When completing the notification forms referred to in point 9, NRAs should not include confidential information.
26. This Recommendation is addressed to the Member States.

Done at Brussels, 30 March 2021.

For the Commission
Thierry BRETON
Member of the Commission

ANNEX I

STANDARD NOTIFICATION FORM

Draft measure related to market analysis and imposition of remedies (Articles 64, 67 and 68 of the Code)

(referred to in points 16(a) and (b))

Section 1 – Market definition	
Please provide information on the following, where applicable:	
1.1 The relevant product/service market.	
1.2. The relevant geographic market/s	
1.3. If the National Competition Authority ('NCA') issued an opinion, indication of whether it agrees or not with the proposed draft analysis of the relevant market	Agreement ☐ Disagreement ☐ If the NCA disagrees, please outline the reasons:
1.4 Dates of the national public consultation	From_____ to_____
1.5 A brief overview of the results of the public consultation on the proposed market definition. Please indicate whether any change was made to the draft measure subsequently to the public consultation, and if so, briefly describe the changes.	<i>(e.g. how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it and for which reasons).</i>
1.6. Where the relevant market is different from those listed in the Recommendation (EU) 2020/2245, a summary of the main reasons justifying the proposed market definition in light of the three criteria set in Article 67(1) of the Code (1).	
Section 2 – Designation of undertakings with Significant Market Power (SMP)	
Please provide information on the following, where applicable:	
2.1. The name of the undertakings designated as having, individually or jointly, SMP. Where applicable, the name of the undertakings considered as no longer having SMP.	
2.2. The criteria used to designate whether or not an undertaking has individual or joint SMP.	
2.3. The name of the main undertakings (competitors) active in the relevant market.	
2.4. The market shares of the undertakings mentioned above and the basis for calculation of market share (e.g. turnover, number of subscribers).	
2.5. If the National Competition Authority ('NCA') issued an opinion, indication of whether it agrees or not with the proposed draft SMP assessment.	Agreement ☐ Disagreement ☐ If the NCA disagrees, please outline the reasons:

2.6. The results of the public consultation on the proposed designation(s) as undertakings having SMP (e.g. total number of comments received, numbers agreeing/disagreeing). Please indicate whether any change was made to the draft measure subsequently to the public consultation, and if so, briefly describe the changes.	
Section 3 - Regulatory obligations Please provide information on the following, where applicable:	
3.1. The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 69 to 74 and Articles 76 to 81 of the Code).	
3.2. The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in light of the legal provision they are based on. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.	
3.3. Where the remedies proposed are other than those set out in Articles 69 to 74, and Articles 76 and 80 of the Code, please indicate what 'exceptional circumstances' within the meaning of Article 68(3) of the Code justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.	
Section 3a - Draft measures under Article 76(2) of the Code Please provide information on the following, where applicable:	
3a.1. Short description of the commitments offered by the SMP operator and how they comply with the conditions of Article 76(1).	
3a.2. A description of the regulatory treatment of the new VHCN network elements subject to the commitment under Article 76(2), first subparagraph.	
3a.3. If applicable, a description of the remedies imposed on the basis of the third subparagraph of Article 76(2).	
Section 3b – Draft measures under Article 79 of the Code Please provide information on the following, where applicable:	
3b.1. Short description of the attached commitment decision (or, indication of the paragraphs, sections or pages of the draft measure where such information is to be found).	

Section 3c – Draft measures under Article 80 of the Code

Please provide information on the following, where applicable:

3c.1. Short description of the structure of the undertaking (or indication of the paragraphs, sections or pages of the draft measure where such information is to be found).

3c.2. If applicable, a description of the remedies imposed or withdrawn.

(¹) Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code.

ANNEX II

STANDARD NOTIFICATION FORM

Symmetric obligations under Article 61 of the Code

(referred to in points 16(a) and (c))

Section 1 – Draft measures concerning imposition of symmetric obligations	
Please provide information on the following, where applicable:	
1.1. A brief summary of the content of the notified draft measure.	
1.2. The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 61 paragraph 1, 2, 3 or 4).	☐ Article 61(1) ☐ Article 61(2) ☐ point (a) ☐ point (b) ☐ point (c) ☐ point (d) ☐ Article 61(3) ☐ First subparagraph ☐ Second subparagraph ☐ Article 61(4)
1.3. The Article 32 notification reference of any related previously notified draft measures, where applicable.	
1.4. The names of the affected undertakings.	
1.5. The obligations to be imposed, maintained or withdrawn.	
1.6. The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in the light of the legal provision they are based on. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.	
1.7. The opinion of the national competition authority, where provided.	
1.8. The date(s) of the public consultation on the proposed obligations and a brief overview of the results of that public consultation. Please indicate whether any change was made to the draft measure subsequently to the public consultation, and if so, briefly describe the changes.	

ANNEX III

SHORT NOTIFICATION FORM

(referred to in point 17)

Section 1 – Draft measures that change the technical details of previously imposed regulatory remedies ⁽¹⁾ or subsequent notifications of other operators' obligations using the same approach/methodology that was already used

Please provide information on the following, where applicable:

1.1 The notification reference number/s of the previously notified draft measure/s).	
1.2 Short description of the technical detail/s being changed (indicating the relevant market concerned), or in the case of a subsequent notification of other operators' obligations using the same approach/methodology that was already used, indication of the remedies to be imposed.	
1.3. If the technical details updated relate to a pricing structure (e.g. annual updates of costs and estimates of accounting models) explanation on whether this is a routine update.	
1.4. Was the NCA consulted on the proposed draft measure? If so, what was its opinion?	
1.5 Comments:	

Section 2 - Draft measures in the form of subsequent individual draft decision under a previously notified and assessed co-investment scheme provided there was no change in circumstances. (Article 76 of the Code)

Please provide information on the following, where applicable:

2.1. Short description of the content of the draft measure, indicating evidence of conclusion of an agreement with at least one co-investor.	
2.2. Notification reference number/s of the previously notified draft measure/s	
2.3. List of the operators to whom this draft measure is applicable.	
2.4. Was the NCA consulted on the proposed draft measure? If so, what was its opinion?	
2.5. Comments.	

⁽¹⁾ NRAs frequently amend technical details of the remedies previously imposed to take account of changes in relevant economic indicators or factors (such as changes in the cost of equipment; cost of labour; inflation rate; or property rental rates), or to update forecasts or assumptions. Only changes or updates of details that *do not* change the nature or the general scope of pre-existing remedies should be notified by means of the Short Notification Form. On the other hand, material changes to the nature or scope of the remedies (such as amendments to the methodologies used to calculate costs or prices; to the determination of glide paths or to price levels, except for the price changes that simply reflect changes in relevant economic indicators or factors mentioned above,) should be notified using the Standard Notification Form.

ANNEX IV

COMMUNICATION OF ADOPTED MEASURE/S

(referred to in point 8)

Section 1 - Identification of Adopted Measure

Please provide information on the following, where applicable:

1.1. Date of entry into force of the adopted measure	
1.2. Registration number and title of notification previously made to the Commission on the measure at draft stage.	
1.3. Did your NRA receive comments from the Commission, other NRAs or BEREC in reaction to the notification of the draft measure under Article 32(3) Code?	Yes No ☐ ☐

Section 2 – Detail on how utmost account was taken of comments made

Please provide information on the following, where applicable:

2.1. Explanation on how the NRA took utmost account of the comments raised. Where, in order to reflect comments made, changes have been made to the text of the draft measure please provide the relevant references to the updated Articles/section/page number.	[Heading of the comment 1] <i>Explanations how it was taken into account and/or reference to the section of the adopted measure where this information can be found</i> [Heading of the comment 2] <i>Explanations how it was taken into account and/or reference to the section of the adopted measure where this information can be found</i> [Heading of the comment 3] <i>Explanations how it was taken into account and/or reference to the section of the adopted measure where this information can be found</i>
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