

2025/2407

27.11.2025

EFTA SURVEILLANCE AUTHORITY DECISION No 102/25/COL

of 2 July 2025

EFTA Surveillance Authority Recommendation on the form, content, time limits and level of detail to be given in notifications under the procedures set in Article 32 of the Act referred to at point 5c of Annex XI to the EEA Agreement (Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code), as adapted by Protocol 1 to the EEA Agreement and by the sectoral adaptations contained in Annex XI to that Agreement [2025/2407]

THE EFTA SURVEILLANCE AUTHORITY ('THE AUTHORITY'),

Having regard to the Agreement on the European Economic Area ('EEA Agreement') ⁽¹⁾ and the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement') ⁽²⁾, and in particular Article 5(2)(b) of Part II of the Surveillance and Court Agreement,

Having regard to the Act referred to at point 5c of Annex XI to the EEA Agreement, *Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code* ('the Code') ⁽³⁾, as adapted by Protocol 1 to the EEA Agreement and by the sectoral adaptations contained in Annex XI to that Agreement, and in particular Article 34 of the Code,

Having regard to the Authority's Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5c of Annex XI to the EEA Agreement ('the Authority's 2009 Recommendation') ⁽⁴⁾,

WHEREAS:

- (1) On 30 March 2021, the European Commission ('the Commission') issued 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 the Code ('Recommendation (EU) 2021/554') ⁽⁵⁾. The Body of European Regulators for Electronic Communications ('BEREC') was consulted by the Commission pursuant to Article 34 of the Code and delivered an opinion on 12 February 2021.
- (2) The objective of the EEA Agreement is to establish a dynamic and homogeneous European Economic Area ('EEA') based on common rules and equal conditions of competition ⁽⁶⁾. In light of this objective and the considerations above, the Authority adopts the present Recommendation ('this Recommendation') aligned with Recommendation (EU) 2021/554 in order to ensure a uniform application of the common regulatory framework and legal certainty for stakeholders within the electronic communications markets in the EEA.

⁽¹⁾ OJ L 1, 3.1.1994, p. 3.

⁽²⁾ OJ L 344, 31.12.1994, p. 1 and EEA Supplement No 59, 31.12.1994, p. 1.

⁽³⁾ OJ L 321, 17.12.2018, p. 36.

⁽⁴⁾ EFTA Surveillance Authority Recommendation of 2 December 2009 on notifications, time limits and consultations provided for in Article 7 of the Act referred to at point 5c of Annex XI to the EEA Agreement (*Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*), as adapted by Protocol 1 thereto and by the sectoral adaptations contained in Annex XI to that Agreement (OJ C 302, 13.10.2011, p. 12 and EEA Supplement No 56, 13.10.2011, p. 10).

⁽⁵⁾ 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 (OJ L 112, 31.3.2021, p. 5).

⁽⁶⁾ 4th recital in the Preamble to the EEA Agreement.

- (3) Under the Code, the national regulatory authorities ('NRAs') are to contribute to the development of the internal market by working with NRAs of other EEA States, with the Authority and with BEREC under Regulation (EU) 2018/1971 of the European Parliament and of the Council ⁽⁷⁾, in a transparent manner in order to ensure the consistent application of the Code in all EEA States.
- (4) 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 Authority, BEREC and the NRAs in other EEA 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 ⁽⁸⁾.
- (5) Articles 32 and 33 of the Code lay down certain procedures and binding time limits for the consideration of the notifications.
- (6) 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 the EFTA Surveillance Authority Recommendation of 14 July 2004 ('the Authority's 2004 Recommendation') ⁽⁹⁾. The Authority's 2004 Recommendation was later replaced by the Authority's 2009 Recommendation 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.
- (7) Pre-notification contacts to discuss formal and substantive issues concerning draft measures before formal notification have proven to be very useful for both the Authority 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 Authority 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.
- (8) Contacts between the Authority and the notifying NRAs are foreseen at different stages of the notification process, including when the Authority requests additional information from the NRA or immediately after the Authority adopts comments or no comments letters or decisions opening an in-depth phase of investigation.
- (9) 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 and from the public register ⁽¹⁰⁾. Where, however, the notified draft measure is withdrawn only after the Authority 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 register in the secure electronic interface and in the public register for transparency purposes. In either case, a notice of withdrawal is published in the public register.

⁽⁷⁾ 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) (referred to at point 5c of Annex XI to the EEA Agreement).

⁽⁸⁾ Judgment of the Court of Justice of 20 December 2017, *Polkomtel sp. z o.o v Prezes Urzędu Komunikacji Elektronicznej*, Case C-277/16, EU:C:2017:989, paragraph 45; judgment of the Court of Justice of 14 April 2016, *Polkomtel*, Case C-397/14, EU:C:2016:256, paragraph 56 and reply of the Court to question 2; judgment of the Court of Justice of 17 September 2015, *KPN BV v Autoriteit Consument en Markt (ACM)*, Case C-85/14, EU:C:2015:610, paragraph 47. 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).

⁽⁹⁾ Recommendation of the EFTA Surveillance Authority No 193/04/COL of 14 July 2004 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 113, 27.4.2006, p. 10 and EEA Supplement No 21, 27.4.2006, p. 39).

⁽¹⁰⁾ <https://www.eftasurv.int/competition/ecom-notifications/ecom-documents>.

- (10) 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 Authority during the assessment of the notification.
- (11) 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 Authority, BEREC and NRAs of other EEA States, and to make the process faster, NRAs should use a set of forms for notifications.
- (12) In order to increase transparency on a notified draft measure and to facilitate the exchange of information about such measures between NRAs of EEA States, BEREC and the Authority, 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.
- (13) 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 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 Authority in less than 1-month period. Similarly, the Authority's past practice shows that the assessment of those types of draft measures has often not given rise to comments by the Authority 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.
- (14) 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 ⁽¹⁾, 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.
- (15) 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).
- (16) The mechanism allowing the Authority 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 EEA law, has contributed significantly to consistent regulatory approaches amongst EEA States. The mechanism has proven to be effective in clarifying the circumstances in which *ex ante* regulation should be applied.

⁽¹⁾ For example, information regarding the calculation of the Weighted Average Cost of Capital in line with the Commission Notice on the calculation of the cost of capital for legacy infrastructure (WACC Notice) (2019/C 375/01), OJ C 375, 6.11.2019, p. 1.

- (17) 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 ⁽¹²⁾ has shown that inconsistencies in the NRAs' application of remedies under similar market conditions may undermine the internal market in electronic communications.
- (18) The Code has conferred new powers on the Authority, 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).
- (19) 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.
- (20) With the aim to increase the transparency and effectiveness of Article 32 consultation mechanism, the Authority, NRAs of other EEA States 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 Authority, BEREC or NRAs of other EEA States, after having received comments from them, it should specify the manner in which it took the utmost account of those comments.
- (21) 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 Authority to assess whether to grant the requested extension.
- (22) This Recommendation has been subject to a consultation with NRAs in the EFTA States and with the Commission ⁽¹³⁾.

HEREBY RECOMMENDS:

Communication channels

1. NRAs are encouraged to avail themselves of the opportunity to discuss informally with the Authority 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 Authority.
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 Authority by electronic mail. The NRA should upload any document, exceptionally sent by electronic mail, to the secure electronic interface as soon as technically possible.

⁽¹²⁾ 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), as referred to at point 5cl of Annex XI to the EEA Agreement and as adapted to the Agreement by Protocol 1 thereto and subsequently deleted by Article 1(3) of Decision of the EEA Joint Committee No 275/2021 of 24 September 2021 amending Annex XI (Electronic communication, audiovisual services and information society) to the EEA Agreement [2024/479] (OJ L, 2024/479, 22.2.2024 and EEA Supplement No 17, 22.2.2024, p. 94).

⁽¹³⁾ The consultation took place between 2 May 2025 and 23 May 2025.

4. Following the upload of a notification to the secure electronic interface (registration), the Authority 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⁽¹⁴⁾, where this is readily available. NRAs should inform the Authority of any problem they might encounter to meet this deadline.
5. Where an NRA of another EEA State or BEREC makes comments on a notification, it may issue these comments in any official language it chooses, and should preferably accompany them by an English translation, which may facilitate their consultation by all NRAs of other EEA States. It should communicate those comments to the Authority, BEREC and the NRAs of other EEA States, by electronic means.
6. NRAs should identify and redact any confidential information, and request correction of any errors contained in the Authority's comments or no comments letter within 3 working days, before the latter is published in the public register.
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 Authority, BEREC or an NRA of another EEA State, it should communicate to the Authority, BEREC and NRAs of other EEA States 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 Authority 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 EFTA States, accompanied by an English translation. 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 of the official languages of the EFTA States, accompanied by an English translation, which may facilitate exchanges between NRAs of EEA States and BEREC.
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 Authority, BEREC and the NRAs of other EEA States to verify that the notified draft measure does indeed contain all the information needed for them to carry out their tasks under Articles 32 and 33 of the Code within the time frame set therein.

⁽¹⁴⁾ 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), as referred to at point 6 of Annex XVI to the EEA Agreement and as adapted to the Agreement by point 6 of Annex XVI and Protocol 1 thereto.

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 Authority, 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 Authority 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 Authority, BEREC and the NRAs of other EEA States accompanied by a duly completed Standard Notification Form as set out in Annex I and II, except in the cases referred to 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 measures related to market analysis and imposition of remedies (Articles 64, 67 and 68 of the Code)

- (1) the relevant product or service market ⁽¹⁵⁾, 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 Authority's Recommendation on Relevant Markets of 9 April 2025 ⁽¹⁶⁾, NRAs should demonstrate that the criteria set in Article 67(1) of the Code are met;
- (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) ⁽¹⁷⁾;
- (3) the main undertakings active on the relevant market;

⁽¹⁵⁾ See in particular points 24 to 51 of the EFTA Surveillance Authority Guidelines of 16 November 2022 on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services referred to in Annex XI of the Agreement on the European Economic Area, published here.

⁽¹⁶⁾ EFTA Surveillance Authority Recommendation of 9 April 2025 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with the Act referred to at point 5c of Annex XI to the EEA Agreement (Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code), as adapted by Protocol 1 to the EEA Agreement and by the sectoral adaptations contained in Annex XI to that Agreement, available on ESA's website ('the Authority's Recommendation on Relevant Markets of 9 April 2025').

⁽¹⁷⁾ See the Authority's Recommendation on Relevant Markets of 9 April 2025 and the Explanatory Note (SWD(2020) 337 final) accompanying 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).

- (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 Article 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 Authority 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;
- (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, of the Code, 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 ⁽¹⁸⁾ when there is no change made or it is of technical nature;
 - (b) updates of decisions concerning the Economic Replicability Test ⁽¹⁹⁾, 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 ⁽²⁰⁾.
18. For draft measures listed in point 17, it should be sufficient for the NRA to complete and submit a Short Notification Form to the Authority's secure electronic interface so that it can be made publicly accessible. In case the Authority 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 Authority, 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.

⁽¹⁸⁾ That may be the case when a national court annuls an NRA's decision on procedural grounds, and that NRA has to renotify the Authority the same measure.

⁽¹⁹⁾ As referred to in point 46 and Annex III of Commission Recommendation (EU) 2024/539 of 6 February 2024 on the regulatory promotion of gigabit connectivity (notified under document C(2024) 523), OJ L, 2024/539, 19.2.2024, ELI: <http://data.europa.eu/eli/reco/2024/539/oj>.

⁽²⁰⁾ 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 [Authority] of a draft measure that relates to a co-investment scheme that meets the relevant conditions. Where the [Authority] 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.'

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 Authority.

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 receipt 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 by the Authority to NRAs, BEREC and the Commission. 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 EEA and national rules on commercial confidentiality, the originator of the information should mark it clearly as 'Confidential', before uploading it to the Authority'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 EFTA States.

Done at Brussels, 2 July 2025.

For the EFTA Surveillance Authority,

Arne RØKSUND
President

Árni Páll ÁRNASON
Responsible College Member

Stefan BARRIGA
College Member

Melpo-Menie JOSÉPHIDÈS
Countersigning as Director,
Legal and Executive Affairs

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.	(e.g. how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it and for which reasons).
1.6 Where the relevant market is different from those listed in the Authority's Recommendation on Relevant Markets of 9 April 2025, 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:

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| 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. | |
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Section 3 - Regulatory obligations

Please provide information on the following, where applicable:

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| 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). | |
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| 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. | |
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| 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. | |
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Section 3a - Draft measures under Article 76(2) of the Code

Please provide information on the following, where applicable:

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| 3a.1. Short description of the commitments offered by the SMP operator and how they comply with the conditions of Article 76(1). | |
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| 3a.2. A description of the regulatory treatment of the new VHCN network elements subject to the commitment under Article 76(2), first subparagraph. | |
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| 3a.3. If applicable, a description of the remedies imposed on the basis of the third subparagraph of Article 76(2). | |
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Section 3b - Draft measures under Article 79 of the Code

Please provide information on the following, where applicable:

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| 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). | |
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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⁾ Act referred to at point 5c of Annex XI to the EEA Agreement (<i>Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code</i>), as adapted by Protocol 1 to the EEA Agreement and by the sectoral adaptations contained in Annex XI to that Agreement	

ANNEX II

STANDARD NOTIFICATION FORM

Symmetric obligations under Article 61 of the Code (referred to in points 16(a)-(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 (Art. 61 paragraphs 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. 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 Authority on the measure at draft stage.					
1.3. Did your NRA receive comments from the Authority, other NRAs or BEREC in reaction to the notification of the draft measure under Article 32(3) Code?	<table> <tr> <th>Yes</th><th>No</th></tr> <tr> <td>☐</td><td>☐</td></tr> </table>	Yes	No	☐	☐
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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