

EECC implementation – country & topic examples

December 2021

Welcome

We have been tracking the implementation of the European Electronic Communications Code (EECC) in various EU Member States including the UK, which remained obliged to transpose the EECC into national law under the terms of the Withdrawal Agreement, since the original transposition deadline of 21 December 2020.

With considerable delays and despite repeated threat of enforcement action by the European Commission, there is – after almost a year has passed – still only a handful of countries that have fully implemented the EECC.

Our review of final national legislation shows that the rules that were purportedly aiming at high level of harmonisation still differ significantly and providers of regulated Electronic Communications Services across multiple EU jurisdictions and the UK will still have to engage in a country-by-country analysis to ensure compliance.

This is illustrated by a selection of five important EECC topics across four jurisdictions. The first three involve topics relevant to end-user protection and in particular extension to certain categories of B2B services, which will be important for any Europe-wide operations and the corresponding contractual arrangements. Another one focuses on the obligation to ensure access to Emergency Services. The last one demonstrates how different the new general authorisation regime can be.

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If you have any questions on the EECC implementation in any jurisdiction, or if you'd be interested in receiving something similar for other topics or jurisdictions, please get in touch:



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Scope of application/ extension to business customers (i.e. Micro & Small Enterprise + Not for Profit Organisations)

UK	France	Germany	Czech Republic												
<p>Simple rule which Ofcom applied even before EECC implementation:</p> <ul style="list-style-type: none"> 10 employees or less (or volunteers on case of NFP) 	<p>1. Small Enterprise and Microenterprise are defined by reference to the EU Commission Recommendation (2003/361/EC) criteria:</p> <table border="1"> <thead> <tr> <th>Type</th> <th>Annual Turnover</th> <th>And/or Balance sheet Total</th> <th>Head count</th> </tr> </thead> <tbody> <tr> <td>Small</td> <td>≤ €10M</td> <td>≤ €10M</td> <td>< 50</td> </tr> <tr> <td>Micro</td> <td>≤ €2M</td> <td>≤ €2M</td> <td>< 10</td> </tr> </tbody> </table> <p>2. Not-for-profit organisations are not defined specifically by references to the above criteria. Under French law non-profit organisations usually include organisations governed by the 1901 Association Act and not-for-profit organisations (OSBL) such as religious congregations, foundations recognized as being of public utility and company foundations, professional unions, endowment funds.</p>	Type	Annual Turnover	And/or Balance sheet Total	Head count	Small	≤ €10M	≤ €10M	< 50	Micro	≤ €2M	≤ €2M	< 10	<p>1. Micro enterprise: do not exceed at least two of the following three characteristics:</p> <ul style="list-style-type: none"> a balance sheet total of 350,000 euros; 700,000 euros turnover in the twelve months before the balance sheet date; an annual average of ten employees. <p>2. Small enterprises & 3. Non-profit organisations: those that do not exceed at least two of the following three characteristics:</p> <ul style="list-style-type: none"> balance sheet total of 6,000,000 euros; turnover of 12,000,000 euros in the twelve months preceding the balance sheet date; an annual average of 50 employees. 	<p>1. Small Enterprise and Microenterprise are defined by reference to the same EU Commission Recommendation (2003/361/EC) criteria.</p> <p>2. Not-for-profit organisations are those legal entities pursuing public benefit, which according to their establishment documents do not divide any profit amongst their members.</p>
Type	Annual Turnover	And/or Balance sheet Total	Head count												
Small	≤ €10M	≤ €10M	< 50												
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Right to exit contract on one month's notice if contract is automatically prolonged following expiry of the Commitment Period/ Minimum Term

UK	France	Germany	Czech Republic
<ul style="list-style-type: none"> • Applies to all contracts for ECS (but not to NI-ICS because the UK has <u>not</u> implemented this category of ICS into their Communications Act) services involving a Minimum Term/ Commitment Period which involve (by virtue of the contract or the applicable law) automatic prolongation of the contract following expiry of the minimum term. • Right to exit a contract on one month's notice on the expiry of the Minimum Term and any time thereafter without incurring any cost/ exit charges. • Applies to all categories of customers but not M2M services. • Extends to whole bundle in case of micro/small enterprise and not-for profit. 	<ul style="list-style-type: none"> • Contractual requirements relevant to all consumers & business customers and all ECS services including NI-ICS but not M2M services. • This change will impact any fixed term contracts or contracts with a commitment (minimum term, commitment period). • Right to exit a contract on one month's notice on the expiry of the Minimum Term and any time thereafter without incurring any cost/ exit charges. 	<ul style="list-style-type: none"> • Contractual requirements relevant to all consumers & business customers and all ECS services including NI-ICS but not M2M services. • This change will impact any fixed term contracts or contracts with a commitment (minimum term, commitment period). • Right to exit a contract on one month's notice on the expiry of the Minimum Term and any time thereafter without incurring any cost/ exit charges. 	<ul style="list-style-type: none"> • Applies to any contract for publicly available ECS, with the exception of NI-ICS & M2M services, concluded for a fixed term, which allows for the automatic extension of the commitment on the same terms and for the same duration as before the expiry of the fixed term, • The right to give a (maximum) one-month's notice at any time following such automatic extension without incurring cost/exit charge. • This right also applies to bundles.

Information requirements for contracts (Contract Information & Contract Summary)

UK	France	Germany	Czech Republic
<ul style="list-style-type: none"> Applies to consumers as well as small enterprises, microenterprises, not-for-profit organisations unless the latter waive their rights. For the Contract Information, the Ofcom General Conditions of Entitlement (GCs) include a comprehensive table of all mandatory Contract Information that must be provided in Annex to GC C1.3. For the Contract Summary, it refers to the which follows the EU format issued by the Commission. There are important repercussions for the customer contracting process as (i) a contract shall only become effective after the Contract Information and Contract Summary has been received by the customer and the customer has provided an express consent to enter into a contract, and (ii) the Contract Information and Contract Summary provided to the customer becomes an integral part of the contract that cannot be altered without the express consent of both parties. 	<p>Unlike Germany, the obligations apply to both the Contract Information and the Contract Summary/ies.</p>	<ul style="list-style-type: none"> This extends the provider's information obligations vis-à-vis consumers to microenterprise, small enterprise and not-for-profit customers but only to the obligation to provide Contract Information but not the obligation to provide Contract Summary/ies. Unlike the UK, the effectiveness of the contract is not subject to the provision of complete information. It can give rise to a claim for damages or other repercussions. 	<p>The mandatory information is divided into:</p> <ol style="list-style-type: none"> Contract Information¹, and Contract Summary, which follows the EU format issued by the Commission. <p>It applies to all publicly available ECS services provided to consumers as well as microenterprise, small enterprise, or NFP, unless the latter have waived their rights. For the purposes of this obligation, it is up to the microenterprise, small enterprise or NFP to prove their status by a statement provided before the conclusion of the contract, including on whether they waived their rights.</p> <p>In case of consumers:</p> <ol style="list-style-type: none"> Contract Information must be provided before conclusion of a contract or before the ECS provider makes a binding offer. Contract Summary must be provided to consumers for free before conclusion of a contract including for contracts concluded by distance. Where such Contract Summary cannot be provided at the time, it must be provided immediately after whereas the contract can only become effective once the consumer – after the receipt of the Contract Summary, provides their consent.

¹ Which lists all the information as provided for in Annex 1 to the amended Act on Electronic Communications and is broadly similar to that listed in Ofcom GC C1.3.



			3. The Contract Summary & Contract Information provided to the consumer before the conclusion of a contract become an integral part of such contract.
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Access to emergency services

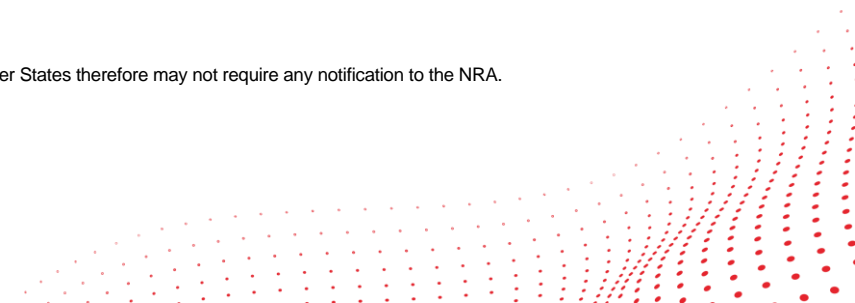
UK	France	Germany	Czech Republic
<p>The emergency service access obligations are differentiated for the following three categories of service providers:</p> <ol style="list-style-type: none"> VoIP outbound calls providers must inform consumers, small business customers and not-for-profit organisation that access to emergency services using VoIP Outbound Call Services may cease if there is a power cut or a failure of the internet connection, Voice Communications Service providers must take all necessary measures to ensure uninterrupted access to Emergency Organisations, Providers of NB-ICS for originating (voice) calls to a number or numbers in the national/int. telephone numbering plan must ensure that all end-users can access Emergency Organisations by using the emergency call numbers “112” and “999” at no charge. 	<p>The obligations to ensure access to emergency communication are imposed on all NB-ICS providers (i.e. not only voice calls to ‘traditional’ numbers).</p> <p>The obligations applying to the NB-ICS are:</p> <ul style="list-style-type: none"> this service is provided free by the NB-ICS provider, The NB-ICS provider is obliged to communicate and keep its details up to date with the relevant Ministry in order to allow the transmission of information relating to emergency communications. The NB-ICS provider is obliged to make the location information immediately available to the emergency services The NB-ICS provider is obliged to provide and transmit information of any emergency communication and the location sent from an on-board vehicle system (e-Call). 	<ul style="list-style-type: none"> The obligations to ensure access to emergency communication are imposed on only those providers of publicly available NB-ICS that provide outgoing (voice) calls to one or more numbers in the national or international numbering plan. Providers of NI-ICS that enable direct communication to emergency call answering points shall ensure that the data required to determine the location are transmitted. In order to ensure equivalent emergency communication of persons with disabilities, it shall be ensured that free emergency calls are possible when using a operator service for deaf and hearing-impaired end-users. 	<ul style="list-style-type: none"> The obligation to provide free of charge access to emergency service via emergency communications to all providers of NB-ICS where such service provides/ allow for calls to numbers in the national or international numbering plans. The emergency numbers include the EU wide 112 but also the national numbers 150, 155, 158 and any such numbers that may be defined for such purposes in the numbering plan. In addition, the national law stipulates that any ECS provider, which is not obliged to offer emergency access but offers any emergency communication voluntarily, will be also obliged to comply with the specific obligations on emergency access, for example: provide caller identity & caller location in fixed networks or location data in mobile networks, route calls to the most appropriate emergency services centre point or to block malicious calls to emergency services, etc.

General Authorisation Regime/ Notification Requirement

General authorisation of electronic communications networks and services, except for NI-ICS services²

UK	France	Germany	Czech Republic
<p>The UK maintained the current regime whereby no prior notification to/ registration with Ofcom is required.</p> <p>UK regime did not include NI-ICS within the scope of ECS.</p>	<p>Contrary to the regime until the EECC implementation, the exploitation of public networks and the provision of ECS to the public is no longer subject to prior notification to the French Telecom Regulator (ARCEP).</p>	<p>There are no significant changes to the regime before the EECC implementation.</p> <p>The obligation of prior notification to BnetZA remains.</p> <p>Relevant changes are:</p> <ul style="list-style-type: none"> Besides a change to the provider's name, a change of the legal form or address now also triggers a notification obligation. Electronic form of notification is sufficient. 	<p>There are no significant changes to the regime before the EECC implementation.</p> <p>The obligation of prior notification to the Czech NRA, the CTU, remains. The law now expressly excludes the NI-ICS, which are newly governed by the trade licensing act.</p> <p>In practice, the notification does involve filling in a simple electronic form only. It, for example, requires submission of excerpts from criminal registry for all individual entitled to act on behalf of a company being the ECS provider.</p>

² Please note that according to Article 12(2) and 12(3) of the EECC, the offering of NI-ICS is not subject to general authorisation regime and the Member States therefore may not require any notification to the NRA.



United Kingdom

Scope of application/ extension to business customers (i.e. Micro & Small Enterprise + Not for Profit Organisations)

Simple rule which Ofcom applied even before EECC implementation:

- 10 employees or less (or volunteers on case of NFP)

Right to exit contract on one month's notice if contract is automatically prolonged following expiry of the Commitment Period/ Minimum Term

- Applies to all contracts for ECS (but not to NI-ICS because the UK has NOT implemented this category of ICS into their Communications Act) services involving a Minimum Term/ Commitment Period which involve (by virtue of the contract or the applicable law) automatic prolongation of the contract following expiry of the minimum term.
- Right to exit a contract on one month's notice on the expiry of the Minimum Term and any time thereafter without incurring any cost/ exit charges.
- Applies to all categories of customers but not M2M services.
- Extends to whole bundle in case of micro/small enterprise and not-for profit.

Information requirements for contracts (Contract Information & Contract Summary)

- Applies to consumers as well as small enterprises, microenterprises, not-for-profit organisations unless the latter waive their rights.
- For the Contract Information, the Ofcom General Conditions of Entitlement (GCs) include a comprehensive table of all mandatory Contract Information that must be provided in Annex to GC C1.3. For the Contract Summary, it refers to the which

follows the EU format issued by the Commission.

- There are important repercussions for the customer contracting process as (i) a contract shall only become effective after the Contract Information and Contract Summary has been received by the customer and the customer has provided an express consent to enter into a contract, and (ii) the Contract Information and Contract Summary provided to the customer becomes an integral part of the contract that cannot be altered without the express consent of both parties.

Access to emergency services

The emergency service access obligations are differentiated for the following three categories of service providers:

4. VoIP outbound calls providers must inform consumers, small business customers and not-for-profit organisation that access to emergency services using VoIP Outbound Call Services may cease if there is a power cut or a failure of the internet connection,
5. Voice Communications Service providers must take all necessary measures to ensure uninterrupted access to Emergency Organisations,
6. Providers of NB-ICS for originating (voice) calls to a number or numbers in the national/int. telephone numbering plan must ensure that all end-users can access Emergency Organisations by using the emergency call numbers "112" and "999" at no charge.

Authorisation/Notification Requirement

The UK maintained the current regime whereby no prior notification to/ registration with Ofcom is required.

UK regime did not include NI-ICS within the scope of ECS.

France

Scope of application/ extension to business customers (i.e. Micro & Small Enterprise + Not for Profit Organisations)

1. **Small Enterprise and Microenterprise** are defined by reference to the EU Commission Recommendation (2003/361/EC) criteria:

Type	Annual Turnover	And/or Balance sheet Total	Headcount
Small	≤ €10M	≤ €10M	< 50
Micro	≤ €2M	≤ €2M	< 10

2. **Not-for-profit organisations** are not defined specifically by references to the above criteria. Under French law non-profit organisations usually include organisations governed by the 1901 Association Act and not-for-profit organisations (OSBL) such as religious congregations, foundations recognized as being of public utility and company foundations, professional unions, endowment funds.

Right to exit contract on one month's notice if contract is automatically prolonged following expiry of the Commitment Period/ Minimum Term

- Contractual requirements relevant to all consumers & business customers and all ECS services including NI-ICS but not M2M services.
- This change will impact any fixed term contracts or contracts with a commitment (minimum term, commitment period).
- Right to exit a contract on one month's notice on the expiry of the Minimum Term and any time thereafter without incurring any cost/ exit charges.

Information requirements for contracts (Contract Information & Contract Summary)

Unlike Germany, the obligations apply to both the Contract Information and the Contract Summary/ies.

Access to emergency services

The obligations to ensure access to emergency communication are imposed on all NB-ICS providers (i.e. not only voice calls to 'traditional' numbers).

The obligations applying to the NB-ICS are:

- this service is provided free by the NB-ICS provider,
- The NB-ICS provider is obliged to communicate and keep its details up to date with the relevant Ministry in order to allow the transmission of information relating to emergency communications.
- The NB-ICS provider is obliged to make the location information immediately available to the emergency services
- The NB-ICS provider is obliged to provide and transmit information of any emergency communication and the location sent from an on-board vehicle system (e-Call).

Authorisation/Notification Requirement

Contrary to the regime until the EECC implementation, the exploitation of public networks and the provision of ECS to the public is no longer subject to prior notification to the French Telecom Regulator (ARCEP).

Germany

Scope of application/ extension to business customers (i.e. Micro & Small Enterprise + Not for Profit Organisations)

1. **Micro enterprise:** do not exceed at least two of the following three characteristics:
 - a balance sheet total of 350,000 euros;
 - 700,000 euros turnover in the twelve months before the balance sheet date;
 - an annual average of ten employees.
2. **Small enterprises & 3. Non-profit organisations:** those that do not exceed at least two of the following three characteristics:
 - balance sheet total of 6,000,000 euros;
 - turnover of 12,000,000 euros in the twelve months preceding the balance sheet date;
 - an annual average of 50 employees.
 - Right to exit contract on one month's notice if contract is automatically prolonged following expiry of the Commitment Period/ Minimum Term

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- Contractual requirements relevant to all consumers & business customers and all ECS services including NI-ICS but not M2M services.
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Information requirements for contracts (Contract Information & Contract Summary)

- This extends the provider's information obligations vis-à-vis consumers to microenterprise, small enterprise and not-for-profit customers but only to the obligation to provide Contract Information but not the obligation to provide Contract Summary/ies.
- Unlike the UK, the effectiveness of the contract is not subject to the provision of complete information. It can give rise to a claim for damages or other repercussions.

Access to emergency services

- The obligations to ensure access to emergency communication are imposed on only those providers of publicly available NB-ICS that provide outgoing (voice) calls to one or more numbers in the national or international numbering plan.
- Providers of NI-ICS that enable direct communication to emergency call answering points shall ensure that the data required to determine the location are transmitted.
- In order to ensure equivalent emergency communication of persons with disabilities, it shall be ensured that free emergency calls are possible when using a operator service for deaf and hearing-impaired end-users.

Authorisation/Notification Requirement

There are no significant changes to the regime before the EECC implementation.

The obligation of prior notification to BnetzA remains.

Relevant changes are:

- Besides a change to the provider's name, a change of the legal form or address now also triggers a notification obligation.
- Electronic form of notification is sufficient.

Czech Republic

Scope of application/ extension to business customers (i.e. Micro & Small Enterprise + Not for Profit Organisations)

1. **Small Enterprise and Microenterprise** are defined by reference to the same EU Commission Recommendation (2003/361/EC) criteria.
2. **Not-for-profit organisations** are those legal entities pursuing public benefit, which according to their establishment documents do not divide any profit amongst their members.

Right to exit contract on one month's notice if contract is automatically prolonged following expiry of the Commitment Period/ Minimum Term

- Applies to any contract for publicly available ECS, with the exception of NI-ICS & M2M services, concluded for a fixed term, which allows for the automatic extension of the commitment on the same terms and for the same duration as before the expiry of the fixed term,
- The right to give a (maximum) one-month's notice at any time following such automatic extension without incurring cost/exit charge.
- This right also applies to bundles.

Information requirements for contracts (Contract Information & Contract Summary)

The mandatory information is divided into:

1. Contract Information³, and
2. Contract Summary, which follows the EU format issued by the Commission.

It applies to all publicly available ECS services provided to consumers as well as microenterprise, small enterprise, or NFP, unless the latter have waived their rights. For the purposes of this obligation, it is up to the microenterprise, small enterprise or NFP to prove their status by a statement provided before the

conclusion of the contract, including on whether they waived their rights.

In case of consumers:

1. Contract Information must be provided before conclusion of a contract or before the ECS provider makes a binding offer.
2. Contract Summary must be provided to consumers for free before conclusion of a contract including for contracts concluded by distance. Where such Contract Summary cannot be provided at the time, it must be provided immediately after whereas the contract can only become effective once the consumer – after the receipt of the Contract Summary, provides their consent.
3. The Contract Summary & Contract Information provided to the consumer before the conclusion of a contract become an integral part of such contract.

Access to emergency services

- The obligation to provide free of charge access to emergency service via emergency communications to all providers of NB-ICS where such service provides/ allow for calls to numbers in the national or international numbering plans (similarly to the UK).
- The emergency numbers include the EU wide 112 but also the national numbers 150, 155, 158 and any such numbers that may be defined for such purposes in the numbering plan.
- In addition, the national law stipulates that any ECS provider, which is not obliged to offer emergency access but offers any emergency communication voluntarily, will be also obliged to comply with the specific obligations on emergency access, for example: provide caller identity & caller location in fixed networks or location data in mobile networks, route calls to the most appropriate emergency services centre point or to block malicious calls to emergency services, etc.

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