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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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OF THE COUNCIL establishing the Body of European Regulators for
Electronic Communications

Delegations will find attached document COM(2016) 591 final.

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Brussels, 14.9.2016
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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the Body of European Regulators for Electronic Communications

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

In its Communication of May 2015, *A Digital Single Market Strategy for Europe*¹ ('the DSM Strategy'), the Commission envisaged presenting proposals in 2016 for an ambitious overhaul of the regulatory framework for electronic communications. The aim of the overhaul is *inter alia* to ensure a more effective regulatory institutional framework in order to make the telecoms rules fit for purpose as part of the creation of the right conditions for the digital single market. These include the deployment of very high capacity connectivity networks, more coordinated management of radio spectrum for wireless networks and creating a level playing field for advanced digital networks and innovative services. The communication pointed out that the changing market and technological environment make it necessary to strengthen the institutional framework by enhancing the role of the Body of European Regulators for Electronic Communications ('BEREC').

In its Resolution 'Towards a Digital Single Market Act'², the European Parliament called on the Commission to integrate further the digital single market by ensuring that a more efficient institutional framework is in place. It can do this by strengthening the role, capacity and decision-making powers of BEREC in order to allow it (i) to foster the consistent implementation of the regulatory framework for electronic communications, (ii) to enable an efficient oversight of BEREC over the development of the single market and (iii) to help it to resolve cross-border disputes. The European Parliament also stressed, in this regard, the need to improve the financial and human resources and further enhance the governance structure of BEREC.

This proposal has to be read in conjunction with the proposal for Directive of the European Parliament and of the Council establishing the European Electronic Communications Code ('the Directive'). That proposal entrusts BEREC with additional tasks that would help to ensure that the regulatory framework is implemented consistently. This in turn would foster the development of the electronic communications market throughout the Union. Furthermore, BEREC would also contribute to the promotion of access and take up of very high capacity data connectivity, of competition in the provision of electronic communications networks and services as well as to the promotion of the interests of the citizens of the Union. This proposal aims to strengthen the institutional role of BEREC and enhance its governance structure by turning it into an agency in order to make it fit for the purpose of carrying out its future tasks.

Since taking up its responsibilities in 2010 and becoming fully functional in 2011, BEREC and the BEREC Office ('the BEREC Office') have made a positive contribution to the consistent implementation of the regulatory framework. They have also provided valuable technical expertise to the national regulatory authorities ('NRAs') and EU institutions. Regulation (EU) No 2015/2120 recently set out additional tasks for BEREC. These are issuing guidelines on the fulfilment of the obligations of NRAs in relation to open internet access, as well as issuing opinions on draft implementing acts to be adopted by the Commission in relation to Union-wide roaming and certain reporting obligations. The

¹ COM(2015) 192 final.

² European Parliament resolution of 19 January 2016 on Towards a Digital Single Market Act (TA(2016)0009).

proposal for a Directive accompanying this proposal entrusts BEREC with further new tasks, such as playing a greater role in the consultation mechanism for market regulatory remedies, providing guidelines for NRAs on geographical surveys, developing common approaches to meeting transnational end-user demand, delivering opinions on draft national measures on assignments of rights of use for radio spectrum (the radio spectrum ‘peer review’), and setting up a register on the extraterritorial use of numbers and cross-border arrangements and one on providers of electronic communications networks and services.

BEREC and the BEREC Office have had a significantly enhanced role, in particular in cross-border matters (such as machine-to-machine (M2M) services or transnational demand for business users) and gained experience in ensuring a consistent implementation of the regulatory framework. It seems appropriate and necessary to build on this experience by turning both together into a fully fledged agency. The new agency, which will have a broader mandate, should continue the work of BEREC and continue the pooling of expertise from NRAs. Given that BEREC’s brand identity is already well established and we seek to build upon it plus in light of the not insignificant costs of changing its name, the new agency should retain the name of BEREC.

By enhancing the role of BEREC in the field of electronic communications and by aiming to align its structure and governance, operation, programming and accountability with the Joint Statement of the European Parliament, the Council and the Commission on decentralised agencies of 19 July 2012 (‘the Common Approach’)³, we are ensuring that the proposal serves to support Union's priorities.

- **Consistency with existing policy provisions in the policy area**

The clear objectives of BEREC make this proposal highly synergetic with the other initiatives included in the DSM Strategy. This is because connectivity services provided over electronic communications networks serve as the backbone for the distribution of digital products and services.

The proposal complements the existing sector-specific regulation. Proposed radio spectrum tasks for BEREC take into account the existing instruments in the area, in particular the Radio Spectrum Decision 676/2002/EC, the Radio Spectrum Policy Group Decision 2002/622/EC and Decision 243/2012/EU establishing a multiannual radio spectrum policy programme (RSPP).

It also incorporates in the BEREC Regulation the tasks assigned to BEREC in the recently adopted Regulation (EU) 2015/2120, which sets out rules for ensuring open internet and abolishing roaming surcharges.

By the end of 2016, the Commission is expected to present a review proposal for the Directive on privacy and electronic communications⁴. The scope of the current proposal for a Regulation may need to be adjusted in light of the outcome of the future review proposal.

The aim of this proposal is to provide BEREC with an appropriate and efficient governance structure, mandate and the tools it needs to ensure a consistent implementation of the

³ Joint Statement of the European Parliament, the Council and the Commission on decentralised agencies of 19 July 2012.

⁴ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).

regulatory framework. In this respect, it complements other electronic communications legal and policy instruments.

BEREC may carry out its tasks as necessary in cooperation with other Union bodies, agencies, offices and advisory groups, in particular the Radio Spectrum Policy Group, the European Data Protection Board, the European Regulators Group for Audiovisual Media Services and the European Union Agency for Network and Information Security; as well as with existing committees (such as the Communications Committee and the Radio Spectrum Committee).

- **Consistency with other Union policies**

The DSM Strategy is one of the 10 priorities the new Commission set out in 2014. This proposal is also in line with other top priorities of the Commission, in particular other initiatives to make the internal market deeper and fairer and to stimulate investment, create jobs and foster sustainable growth.

Some of BEREC's tasks build on and complement existing Union law in several areas. One such task is to provide opinions on draft national measures related to the internal market procedures for market regulation. These continue to be based on the principles of competition law. Another such task is to provide guidelines on geographical surveys of network deployments. These also provide useful information for State aid purposes, enhancing the coherence between the two policies.

Moreover, the proposal aims at BEREC becoming a Union decentralised agency and aligns it with the principles of the Common Approach.

Consistency with international law obligations

If necessary when carrying out its tasks, BEREC may cooperate with competent authorities of third countries and/or with international organisations. This cooperation should be based on working arrangements, which should respect the Union's international relations and should not create legal obligations incumbent on the Union and its Member States.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 114 of the Treaty, as it relates to the development and functioning of the internal market for electronic communications.

- **Subsidiarity (for non-exclusive competence)**

The Union needs to act to address inconsistencies in the application of the current framework and the shortcomings of the existing institutional set-up as well as the inconsistencies in the distribution of responsibilities among Member States, NRAs and the Commission. Market fragmentation is not solely to blame on the current regulatory set-up in the Union. However, it has become apparent over the past few years that the lack of consistency in telecoms regulation is, at least partly, due to the current institutional set-up and the way the various institutional players (mainly the NRAs, BEREC and the Commission) interact and can influence the regulatory outcome. Giving BEREC strengthened powers in the area of *ex ante* market regulation will enhance legal certainty and contribute to regulatory consistency.

Market and technological developments also mean that there are a number of cross-border aspects which required regulatory consistency across Member States. A Union body can deal better with these aspects than individual Member States. This is particularly true for services such as M2M. These services should be provided in such a way as to be able seamlessly to cross national boundaries. There are also still national barriers to the provision of cross-border business communications services. This is a significant missed opportunity for the functioning and development of the internal market.

It is a common and shared interest to ensure harmonised, consistent and efficient implementation of the regulatory framework with the support of BEREC. The Member States cannot therefore sufficiently achieve the objectives of this proposal. They can be achieved better at Union level. The Union may therefore adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

- **Proportionality**

The proposal complies with the proportionality principle, in particular with regard to the objectives and tasks of BEREC. It aims to ensure the consistent implementation of the regulatory framework, thus contributing to the development of the electronic communications market throughout the Union, the promotion of access to and take-up of both fixed and mobile very high capacity data connectivity, of competition in the provision of electronic communications networks and services and of the interests of the citizens of the Union. BEREC should assist the Commission and NRAs; provide guidelines in order to ensure consistency of NRAs measures; issue opinions through efficient internal market procedures on draft national measures; keep registers of network and services providers and numbers with extraterritoriality use; adopt binding decisions on two cross-border matters: the identification of transnational markets and a contract summary template. BEREC would have quasi-binding powers in relation to the internal market procedures for draft national measures on market regulation (the 'double-lock' system) and the establishment of a single maximum termination rate for the Union.

The new agency should continue the work of BEREC and continue pooling the expertise of NRAs, which remain at the core of the agency's work and are members of its Management Board. NRAs will continue to do most of the work relating to the implementation of the regulatory framework.

In particular regarding access regulation, the NRAs remain competent to ensure that market failures are addressed with appropriate remedies and that regulation helps achieve the common policy objectives. The proposed rules provide regulators with additional tools to address the current connectivity challenges, but the way they are to be used depends on national circumstances which are for national regulators to assess. The reason for the targeted strengthening of the regulatory oversight, mainly by giving BEREC a greater role in such an oversight process, is the evident lack of consistency in the application of current rules, when consistency is crucial for the internal market to function properly.

Radio spectrum management also remains the competence of Member States. The proposed rules provide an overall framework for coherent radio spectrum management across the Union, while Member States may apply the rules taking national circumstances into account. Given the major cross-border implications of radio spectrum management and its wider impact on connectivity in the internal market, certain coordination procedures at Union level are necessary.

As a regulation, the proposed instrument will apply directly in the Union. The financial and administrative burden on the Union, national governments and economic operators will therefore be minimised and proportionate to the objective of the proposal. It enhances the proportionality of the current situation in which a Union agency was set up mainly to support BEREC. It ensures that the new agency provides further added value and is aligned with Union policy priorities, in particular the DSM Strategy.

In view of its objectives and in accordance with the principle of proportionality, as set out in Article 5 of the Treaty on European Union, this regulation does not go beyond what is necessary in order to achieve those objectives.

- **Choice of the instrument**

Only a regulation having direct application can provide for the setting up of a Union decentralised agency and for setting out its tasks and objectives, thus providing the necessary degree of efficiency and uniformity needed to implement the regulatory framework.

The same legal instrument was chosen for the setting up of BEREC and the Office (Regulation (EC) 1211/2009). This regulation aims to amend and expand the provisions of Regulation (EC) 1211/2009. Since the amendments to be made are substantial, that act should, in the interests of clarity, be replaced and repealed.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Commission carried out an *ex post* evaluation ('REFIT'), which assessed the effectiveness, efficiency, relevance, coherence and EU added value of the BEREC Regulation and of other parts of the regulatory framework. It pinpointed areas where there is potential for simplification, without undermining their objectives. A previous evaluation of BEREC and the Office⁵ was also carried out in 2012-2013 in accordance with Article 15 of Regulation (EC) 1211/2009. Its results have been incorporated into the *ex post* evaluation.

Overall, the staff working document accompanying the proposal and assessing the regulatory fitness of the current rules concludes that the regulatory framework for electronic communications has broadly achieved its general objective of ensuring a competitive sector providing significant end-user benefits. Its main specific objectives — promoting competition, developing the internal market and cultivating end-user interest — remain relevant. However, it appears necessary to review the regulatory framework, including the BEREC Regulation, in order to address the growing need for increased connectivity of the digital single market and to streamline provisions taking into account market and technological developments.

⁵ This evaluation was carried out in accordance with the requirement established in Article 15 of the BEREC Regulation: 'Study on the evaluation of BEREC and the BEREC Office' by PwC of September 2012, Commission Staff Working Document of April 2013 (SWD(2013) 152 final), followed by EP Report of November 2013 (2013/2053(INI), A7- 0378/2013). The outcome of that evaluation should be treated with caution as some of BEREC's tasks had not been carried out at the time. The evaluation did not assess the possible alignment of the BEREC Office with the Common Approach on decentralised agencies.

The findings, according to the specific evaluation criteria, can be summarised as follows.

Relevance — As far as the role and functioning of other important institutional players is concerned, BEREC must, in accordance with the provisions in force, pursue the objectives of the framework. In particular, it must ensure consistent implementation of the regulatory framework in order to contribute to the development and better functioning of the internal market. With this objective and its broader mandate, BEREC's relevance is increasing, even though there was no consensus in the public consultation on how to reflect this increase in regulatory terms.

Effectiveness — There were mixed views in the public consultation on the telecoms review as regards the effectiveness of BEREC's role in supporting consistent outcomes. Some stakeholders see BEREC's independent technical advice and its role in the market review process in a positive light. Others think that its structure as a group of NRAs without legal personality undermines BEREC's incentives to work to achieve internal market objectives as opposed to the individual or collective objectives of its national members. Respondents said that BEREC needed to be more proactive on key topics. They also said that as a result of its current institutional set-up, BEREC often opts for greater flexibility or the lowest common denominator instead of adopting a harmonised approach for the single market.

With regard to its current tasks, in view of the Opinion on the Review of the EU Electronic Communications Regulatory Framework⁶, BEREC has identified some areas in which it could play a greater role. For example, broader scope of BEREC Opinions under Article 7 and 7a, issues of a cross-border nature (such as international roaming), benchmarking the quality of internet access services at Union level, and developing technical guidelines.

Regarding the alignment of the goals of the BEREC Office as a Union agency with current Union priorities, the evaluation concluded that, by supporting BEREC, the current functions of the BEREC Office should ultimately contribute to the development of the single market and the consistent implementation of the rules. Nonetheless, the situation is unique, in which an agency was set up to exclusively perform a support function for another regulatory body set up under Union law. This presents certain challenges because, despite its relatively limited functions, the BEREC Office has to follow the same detailed set of rules that apply to all Union decentralised agencies (financial, staff/implementing rules, procurement, reporting, etc.).

Efficiency — It was not possible to carry out a precise cost calculation, but the evaluation has shown that the benefits of the framework — for most operators, end-users and society as a whole — greatly outweigh the costs of implementing it.

In many respects, the BEREC Office is not in line with the principles of the Common Approach. The limited tasks and size of the Office compared to other Union agencies have negative implications for attracting and retaining staff and for organisational aspects. The current two-tier structure also results in inefficiencies. Although it is difficult to quantify such inefficiencies, the two-tier structure complicates matters and creates an administrative burden; for example, two separate annual reports and two work programmes need to be adopted — one by the Board of Regulators for BEREC and one by the Management Committee for the Office.

⁶ Opinion of the Board of Regulators BoR (15) 206, of 10 December 2015.

The evaluation has identified a number of issues that could be simplified and streamlined (the delegation of appointing authority powers, longer or extendable mandates for the Chair, majority voting rules, adequate resources, streamlining of the Management Committee and longer consultation periods or a two-stage consultation process for key policy matters).

EU added value — The EU added value of setting up BEREC, in particular in terms of its advising the EU institutions, is linked to the functioning of the internal market for electronic communications. In general, this is positively perceived, but BEREC's effectiveness is at times questioned. Being more effective would increase its added value. The added value of the Office as an Union agency that supports BEREC is another relevant aspect.

Coherence — Overall, the various instruments constituting the regulatory framework have complemented each other. However, the evaluation has identified a limited number of internal inconsistencies, such as the mismatch between the tasks of the independent NRAs and BEREC's tasks. This is because BEREC is sometimes expected to issue opinions at European level in areas, for which not all its NRA members are competent at national level. The evaluation has also shown that on some occasions the coordination between BEREC and the Commission has proved challenging. This was the case with regard to giving information to and getting information from BEREC and the Office on termination rates and roaming. There is room for improvement, so that each organisation can efficiently perform its tasks.

- **Stakeholder consultations**

A 12-week open public consultation was launched on 11 September 2015 to get input for the evaluation process to assess the current rules and to seek views on possible adaptations to the framework in the light of market and technological developments. It covered a general evaluation of the current framework and a detailed evaluation and review of the specific parts of the framework. They are:

- network access regulation,
- radio spectrum management and wireless connectivity,
- sector-specific regulation of communications services,
- universal service rules,
- institutional set-up and governance.

The consultation was both broad and detailed, with extensive input from consumers, providers of electronic communications networks and services, national and EU operator associations, civil society organisations, broadcasters, technology providers, internet and online service providers, businesses relying on connectivity and wider digital economy players, national authorities at all levels, national regulators and other interested stakeholders. Input came from stakeholders affected by the policy, those who have to implement it and those with a stated interest in the policy. The consultation received a total of 244 online replies from stakeholders in all Member States and from outside the Union. Halfway through, there was a public hearing on 11 November 2015.

In addition to the public consultation BEREC itself contributed to the evaluation and the review process and published its opinion in December 2015⁷. The RSPG also gave its opinion on the DSM Strategy and the Framework Review⁸.

The following trends emerged from the consultation process.

- Good connectivity is perceived as a necessary condition for the digital single market. Many respondents highlighted the need for policy measures and possible adjustments to current policy and regulatory tools to support the deployment of infrastructure in line with future needs.
- A number of respondents said that the current regulatory framework does not benefit much the internal market. There is a general perception that the regulatory framework needs to be adjusted to the current market dynamics. Nonetheless, many respondents recognised that the liberalisation of the telecoms markets had improved matters, in particular in terms of end-user benefits and competition within most national markets.
- With regard to radio spectrum, respondents recognised the importance of wireless connectivity and wireless broadband. In general, industry, which is in favour of a more coordinated approach, seeks additional certainty for investments and possibilities to develop new wireless and mobile communications, including 5G, throughout the Union.
- While the continuing role of NRAs and radio spectrum management authorities is widely acknowledged, almost half of the respondents stressed that the institutional set-up at Union level should be adjusted to ensure better legal certainty and accountability. They advocated the following changes:
 - a clearer division of powers between the different institutions (to avoid overlapping),
 - making sure that institutions are politically and legally accountable for their decisions,
 - a high level of transparency in decision-making (greater stakeholder involvement).

As part of the evaluation process the Commission also commissioned a number of studies. They included public workshops that allowed stakeholders to comment and provide feedback on the ongoing evaluation work.

- On 6 April 2016 a public workshop was held to validate the interim findings of a study done by WIK, IDATE and Deloitte on ‘regulatory, in particular access, regimes for network investments models in Europe’ (SMART 2015/0002).

⁷ http://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/5577-berec-opinion-on-the-review-of-the-eu-electronic-communications-regulatory-framework.

⁸ http://rspg-spectrum.eu/wp-content/uploads/2013/05/RSPG_16-001-DSM_opinion.pdf.

- On 2 May 2016 a public workshop was held to validate the interim findings of a study done by WIK, CRIDS and Cullen on ‘Substantive issues for review in the areas of market entry, management of scarce resources and general end-user issues’ (SMART 2015/0003).
- **Collection and use of expertise**

The Commission used the following external expert advice:

- - Policy recommendations from other EU institutions, in particular the European Parliament⁹ and the European Council¹⁰.
- - Three review studies.
 - ‘Support for the preparation of the impact assessment accompanying the review of the regulatory framework for e-communications’ (SMART 2015/0005).
 - ‘Regulatory, in particular access, regimes for network investment models in Europe’ (SMART 2015/0002).
 - ‘Substantive issues for review in the areas of market entry, management of scarce resources and general consumer issues’ (SMART 2015/0003).
- - In addition, a number of other studies have provided input to the review process. These studies are listed in section 6.1.4 of the Impact Assessment.
- - A high-level expert panel as part of of study SMART 2015/0005¹¹.
- **Impact assessment**

The executive summary of the Impact Assessment and the positive opinion of the Regulatory Scrutiny Board can be found on the Commission website¹².

The following governance options have been examined. The preferred option is Option 3, although the alignment of the structure of BEREC with the Common Approach is also considered in Option 2¹³.

Option 1 — No change — baseline scenario

This option is based on the current provisions. The lack of current appropriate harmonisation of NRAs’ competences has an impact. This is because the legislator has given BEREC a role

⁹ European Parliament resolution of 19 January 2016 on Towards a Digital Single Market Act ([2015/2147\(INI\)](#)).

¹⁰ Conclusions of the European Council meeting of 28 June 2016 (EUCO 26/16)

¹¹ Expert profiles and a report of the discussion are presented in Annex 13 of the Impact Assessment.

¹² http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm

¹³ The possibility for exploring efficiency gains and synergies with other existing Union agencies was analysed, in particular with the EU Agency for Network and Information Security. However, due to several reasons (lack of overlapping mandates, increased mandates since 2007, distinct nature of tasks, different participation at Board level, etc.) a possible merger between the two agencies was discarded.

in areas in which competence at national level is not harmonised for its members, such as the resolution of cross-border disputes.

Option 2 — Enhanced advisory role and strengthened competences

This option envisages some adjustments to the current rules on the basis of the experience of the implementation of the framework in recent years and of the REFIT exercise, in particular strengthening the role of independent NRAs by laying down a minimum set of competences for those NRAs across the Union.

At Union level, BEREC should extend its advisory role to the areas in which the independent NRAs are competent in order to bring its tasks into line with those of the NRAs. However, to make it more efficient and provide more stable management, BEREC's governance structure would be adapted to bring it closely into line with the Common Approach. This means that a body with legal personality would perform the regulatory functions under BEREC's aegis.

A new Management Board would be set up to oversee the general orientations for the agency's activities, replacing the current Board of Regulators and Management Committee. A more stable governance structure is envisaged by appointing a chairperson (to be selected from amongst the members of the Management Board) for a longer term of office (currently the term is one year). The Executive Director will have more powers than the current Administrative Manager of the Office and will be selected from a list of candidates proposed by the Commission following an open selection procedure as envisaged under the Common Approach and as in other agencies.

Option 3 — Advisory role with certain pre-normative powers and better market review process and spectrum assignment of right of use for radio spectrum

This option contains most aspects of Option 2, in particular the minimum set of harmonised competences (including a competence to define the regulatory and market-shaping aspects of electronic communications network and services assignments of rights of use for radio spectrum) and the alignment of NRAs' and BEREC's tasks, as well as the substantial alignment of BEREC's governance structure with the Common Approach .

BEREC will be given some additional tasks, such as powers to adopt binding decisions on the identification of transnational markets and on a contract summary template; quasi-binding powers in relation to the internal market procedures for draft national measures on market regulation (the 'double-lock' system – see below) and the establishment of a single maximum termination rate for the Union; and the issuing of guidelines in a number of areas: geographical surveys, common approaches to meeting transnational demand, minimum criteria for reference offers, common criteria for the management of numbering resources, quality-of-service parameters, applicable measurement methods and the technical details of the cost model to be applied by NRAs when setting maximum symmetric termination rates. It will also be given the power to request information directly from operators.

BEREC will also be in charge of setting up a register for the extraterritorial use of numbers and cross-border arrangements and another register of providers of electronic communications networks and services. It will also assist the Commission and NRAs in the area of standardisation by helping them identify a threat to end-to-end connectivity or to effective

access to emergency services. This could be done by imposing existing standards and setting new standards.

To improve the current situation, in which the Commission and BEREC have only non-binding powers with regard to remedies, a ‘double-lock’ system is proposed. In such a system, if BEREC and the Commission agree on their position regarding the draft remedies an NRA proposes, the Commission could require the NRA to amend or withdraw the draft measure and, if necessary, to re-notify the market analysis. A ‘peer review’ system within BEREC will also be introduced as a new coordination mechanism to improve efficiency and coherence amongst Member States with regard to regulatory market aspects of assignments of rights of use for radio spectrum.

Option 4 — EU regulator with certain implementation/execution powers

This option looks at setting up an EU regulator, as a reinforced agency with the necessary resources to accommodate a transfer of implementing powers, including supervision and enforcement powers. It could act with binding powers in areas in which it is necessary to ensure the uniform implementation of EU rules. One such area is new pan-EU or global services, currently largely unregulated or subject to unclear regulatory frameworks (M2M, OTT and other areas of great importance to the Union, such as roaming or transnational markets).

With regard to radio spectrum, there would also be a preliminary peer review mechanism involving the EU regulator, possibly with a Commission veto. The EU regulator could also coordinate binding pan-European assignment procedures for specific bands. Finally, the agency would also institutionalise a good office mediation service for cross-border interference and regulatory issues.

• Regulatory fitness and simplification

The policy measures proposed under the preferred option are in line with the REFIT agenda because they aim to simplify and reduce the administrative burden in line with the findings of the evaluation of the REFIT potential of the review. Several of the proposed changes in governance and other policy areas aim to make rules clear; enable parties to easily understand their rights and obligations; and to avoid overregulation and administrative burdens.

With a view to having a more efficient and streamlined institutional set-up and taking the REFIT evaluation into account, the proposal contains a number of changes that would bring BEREC into line with the Common Approach and the structure of other Union agencies. The proposal that BEREC becomes a Union decentralised agency should achieve certain level of efficiency gains and synergies, in order to partly offset the need for additional resources to fulfil the new tasks entrusted to BEREC.

- A Union decentralised agency will be set up with an appropriate structure and governance, mandate and powers. It will strengthen legal and political accountability because all decisions (regulatory, administrative, financial, etc.) will now be adopted under the aegis of a Union agency with legal personality.

- The governance structure will be simplified by replacing the two current managing structures (the Board of Regulators for regulatory decisions and the Management Committee for administrative and financial decisions) by a single Management Board. This will reduce

the administrative burden by putting an end to the current duplication of agendas, working programmes, annual reports, document registers, member appointments, etc.

- An Executive Director will be appointed at the head of the agency, to be the legal representative of BEREC and responsible for the performance of the tasks assigned to the agency. In particular, he/she will have delegated 'appointing authority powers'. This would make management of the staff of the agency more efficient (under the current BEREC Regulation, these powers are given to the Vice-Chair, whose term of office is one year, and they cannot be delegated/sub-delegated).

- The Chairperson of the Management Board (four years renewable, currently one year) and the Executive Director (five years renewable, currently three years renewable) will have longer terms of office to ensure the necessary continuity and stability.

In conclusion, BEREC would be better equipped to help the Commission and the NRAs, and efficiency gains derived from the areas highlighted above would be achieved. This proposal contributes to an efficient Union system of regulatory authorities in the digital single market and should provide the necessary support for an efficient implementation of the revised telecoms framework.

- **Fundamental rights**

The proposal also takes full account of the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union. In particular, the proposed measures, including setting up BEREC, aim to increase connectivity with a modernised set of end-user protection rules. This will in turn ensure non-discriminatory access to any content and services, including public services. It will also help promote freedom of expression and of business and enable Member States to comply with the charter at a much lower cost in the future.

4. BUDGETARY IMPLICATIONS

BEREC, which is to be set up on the basis of the existing BEREC and BEREC Office, is given a number of tasks which aim to ensure a consistent implementation of the regulatory framework, thus contributing to the development of the electronic communications market throughout the Union, the promotion of access to and take-up of very high capacity data connectivity by all Union citizens and businesses, of competition in the provision of electronic communications networks and services and of the interests of the citizens of the Union.

The total financial resources necessary for BEREC to fulfil its mission amount to EUR 14.135 million for the period 2019-2020¹⁴. In addition to the contribution from the Union, BEREC may collect charges for publications and other services provided, contributions from third countries or the electronic communications regulatory authorities of third countries

¹⁴ The Legislative Financial Statement indicates the figures under the current Multiannual Financial Framework which ends in 2020. Further staffing needs of BEREC will be assessed in the framework of the Commission proposals for the post-2020.

participating in the work of BEREC and voluntary contributions from the Member States and NRAs¹⁵.

The new agency is expected to continue in the future the current service agreements with the Commission (accounting officer and using certain applications and tools) and with other Union agencies (in particular with ENISA as regards off-site storage of back-up data and the internal control coordinator), which could be even further expanded to new areas in order to achieve further efficiency gains and synergies.

In addition to the existing number of staff members, BEREC should calculate 11 contractual agents and 7 seconded national experts to make up a total of 44 staff members by the end of the period 2019-2020¹⁶. Based on the Impact Assessment, and without prejudging the next MFF, the total additional staff needed by BEREC in order to fulfil its new tasks under the enlarged mandate is estimated at 34 FTEs, envisioning an overall staff figure of 60 FTEs at the end of the implementation period 2019-2022.

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

In line with the Common Approach, the current proposal foresees that the Commission must perform an evaluation within five years of entry into force of this regulation, and every five years after that, to assess, in compliance with the Commission guidelines, BEREC's performance in relation to its objectives, mandate, tasks and location(s). The evaluation should, in particular, address the possible need to modify the mandate of BEREC and the financial implications of any such modification. If the Commission considers that the continuation of BEREC is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this regulation be amended accordingly or be repealed. The Commission must report on the findings of the evaluation to the European Parliament, the Council and the Management Board. The findings of the evaluation must be made public.

BEREC would also issue annual activity reports evaluating the results of its activities throughout the year. Annual activity reports must be transmitted to the European Parliament, the Council, the Commission and the Court of Auditors and must be made public.

In addition, the Commission will continue to ensure that the implementation of the regulatory framework is monitored on the basis of the following.

The European Digital Progress Report

The **European Digital Progress Report** (EDPR), covering 28 Member States, provides comprehensive data and analysis of market, regulatory and consumer developments in the digital economy. It combines the reports and all evidence published for the Digital Scoreboard¹⁷ with the Telecom Implementation Report, and adds country reports. In this way, it draws on evidence from:

¹⁵ The option of BEREC being (fully or partly) financed by fees was discarded due to the nature of the agency functions, which are mainly of an advisory character to the NRAs and EU Institutions with the aim of ensuring greater consistency of telecoms regulation across the Union rather than addressing market players directly.

¹⁶ The Legislative Financial Statement indicates the figures under the current Multiannual Financial Framework which ends in 2020. The implementation phase for the new agency is expected to last until 2022.

¹⁷ The reports are available at: <https://ec.europa.eu/digital-single-market/en/digital-scoreboard>.

- **Digital Scoreboard.** This measures the progress of the European digital economy. It draws on data provided by the NRAs, Eurostat and additional relevant sources and includes data relating to the general situation regarding all aspects of the Digital Economy Society Index in the EU Member States¹⁸. The indicators included in the report make it possible to compare progress across European countries as well as over time.
- **Telecom reports on European electronic communications regulation and markets.** These provide comprehensive data and analysis of market, regulatory and consumer developments in the sector.

- **Explanatory documents (for directives).**

N/A

- **Detailed explanation of the specific provisions of the proposal**

Regulation (EC) No 1211/2009 set up the Body of European Regulators for Electronic Communications (BEREC) and the Office and the tasks of each. This proposal broadens the current mandate of BEREC and turns it into a fully fledged agency equipped with the necessary tools and adequate resources to achieve its objectives and carry out its tasks.

(1) Establishment, scope and objectives:

Chapter I ‘Objectives and tasks’

Article 1 sets up BEREC and provides for the scope of application of the regulation, definitions and the objectives of BEREC, which should aim to achieve the same objectives as NRAs.

Article 2 enumerates BEREC’s tasks. It adds that BEREC may cooperate with Union bodies, agencies, offices and advisory groups, with competent authorities of third countries and/or with international organisations if necessary and should consult interested parties if appropriate.

Chapter II ‘Administrative and Management Structure’

Article 3 concerns the administrative and management structure of BEREC, which comprises a Management Board, an Executive Director, Working Groups and a Board of Appeal.

Articles 4-5 stipulate that the Management Board is to be composed of the head, or a member of the collegiate body, of each NRA, and two representatives of the Commission, all with voting rights. It also sets out its functions. In particular, the Management Board should delegate relevant appointing authority powers to the Executive Director. The Executive Director should be authorised to sub-delegate those powers, defining the conditions under which this delegation of powers can be suspended.

Article 6 stipulates that the Management Board elects a Chairperson and a Deputy Chairperson from among its members, by a majority of two thirds and for a four-year term of office, renewable once.

¹⁸ All information is available here: <https://ec.europa.eu/digital-single-market/en/download-scoreboard-reports>.

Articles 7-8 set out the minimum number of ordinary meetings a year for the Management Board (two) and its voting rules (majority by default).

Articles 9 sets out the responsibilities of the Executive Director, who should manage the agency and be its legal representative. The Executive Director is accountable to the Management Board and shall report to the European Parliament and may be invited to report to the Council on the performance of his/her duties.

Articles 10 sets out that the Management Board may set up working groups as necessary, which would be coordinated and moderated by a member of the BEREC staff. For the establishment of certain working groups, lists of qualified experts should be ready beforehand.

Articles 11-14 set up the Board of Appeal and set out its composition and the appointment of its members, who should be independent and not perform any other duties within BEREC. Any natural or legal person, including NRAs, may appeal against a binding decision issued by BEREC. Such appeals should not have a suspensory effect, but the Board of Appeal may suspend the application of the decision.

Chapter III ‘Annual and multi-annual programming’

Article 15 sets out the procedure for the adoption of the annual and multi-annual programming document. It should include the strategy for relations with Union bodies, agencies, offices and advisory groups, with competent authorities of third countries and/or with international organisations.

Articles 16-17 provides for the establishment of BEREC’s budget and its structure in terms of revenue and expenditure.

Articles 18-20 state that the Executive Director is responsible for implementing BEREC’s budget and sets out the procedure for the presentation of accounts and discharge. The Management Board should adopt the financial rules applicable to BEREC.

Chapter IV ‘Staff’

Article 21 states that the Staff Regulations and the Conditions of Employment of Other Servants and implementing rules adopted to give effect to them shall apply to the BEREC staff.

Article 22 sets out the procedure for the Management Board to appoint the Executive Director from a list of candidates proposed by the Commission, for a five-year renewable term of office, as well as for the extension of his/her term of office or his/her removal from office.

Article 23 states that BEREC can make use of seconded national experts or other staff not employed by BEREC, to whom the Staff Regulations and the Conditions of Employment of Other Servants will not apply.

Chapter V ‘General provisions’

Articles 24-25 stipulate that BEREC should have legal personality and be a Union body. The Protocol on the Privileges and Immunities of the European Union applies to BEREC and its staff.

Article 26 states that, where necessary, BEREC may cooperate with competent Union bodies, agencies, offices and advisory groups; with competent authorities of third countries and/or with international organisations. This cooperation should be based on working arrangements, which should receive prior approval from the Commission. In line with the Common Approach, the Commission and the agency should conclude an appropriate working arrangement aiming at ensuring that BEREC operates within its mandate and the existing institutional framework. This article also stipulates that BEREC is open to the participation of regulatory authorities of third countries competent in electronic communications that have entered into agreements with the Union to that effect.

Article 27 states that Regulation (EC) No 1049/2001 applies to documents BEREC holds and that the processing of personal data by BEREC will be subject to Regulation (EC) No 45/2001. It also states that BEREC may engage in communication activities on its own initiative within its area of competence.

Article 28 refers to the confidentiality rules to be followed by BEREC.

Article 29 refers to the security rules for protecting classified and sensitive non-classified information to be adopted by BEREC.

Article 30 stipulates that the Commission and the NRAs give BEREC information (and vice versa). It also stipulates that, as a last resort, BEREC may request necessary information from other authorities and undertakings.

Article 31 stipulates the need for the members of the Management Board, the Executive Director, seconded national experts and other staff not employed by BEREC to make a declaration indicating their commitment and the absence or presence of any direct or indirect interest which might be considered prejudicial to their independence; as well as for these and experts participating in working groups to declare any interest which might be considered prejudicial to their independence in relation to the items on the agenda.

Article 32 stipulates that BEREC accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) and adopt appropriate provisions applicable to all employees of BEREC.

Article 33 includes provisions on BEREC's contractual liability.

Article 34 stipulates that the activities of BEREC be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.

Article 35 stipulates that Regulation No 1/58 applies to BEREC and that the Translation Centre of the bodies of the EU provide the translation services required for the functioning of BEREC .

Article 36 refers to the procedure for establishing the rules of procedure of the Board of Appeal, for which the Commission is conferred implementing powers.

Chapter VI 'Transitional and final provisions'

Article 37 stipulates the need for a Headquarters Agreement to be concluded between BEREC and the Member State in which they are located. BEREC's host Member State shall provide the conditions necessary to ensure the smooth and efficient functioning of BEREC, including multilingual, European-oriented schooling and appropriate transport connections.

Article 38 stipulates that the Commission must perform an evaluation within five years of entry into force of this regulation, and every five years after that, to assess, in compliance with the Commission guidelines, BEREC's performance in relation to its objectives, mandate, tasks and location(s). The Commission must report on the findings of the evaluation to the European Parliament, the Council and the Management Board and they must be made public.

Article 39 stipulates that BEREC succeeds the Office set up under Regulation (EC) No 1211/2009 with regard to all ownership, agreements, legal obligations, employment contracts, financial commitments and liabilities. This article also sets out transitional provisions with regard to the Administrative Manager acting as interim Executive Director, the contract of the Administrative Manager, the composition of the Management Board and the discharge procedure.

Article 40 states that Regulation (EC) No 1211/2009 is repealed and references to it and to the BEREC Office are to be construed as references to this regulation and to BEREC.

Article 41 contains the standard clause for entry into force of the regulation and provides for the deferred application of some of its provisions.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the Body of European Regulators for Electronic Communications

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹⁹,

After consulting the Committee of the Regions²⁰,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive [...] of the European Parliament and of the Council²¹ ('the Directive'), which establishes a number of tasks for the Body of European Regulators for Electronic Communications ('BEREC'), and Directive 2002/58/EC of the European Parliament and of the Council²² aim to create an internal market for electronic communications within the Union while ensuring a high level of investment, innovation and consumer protection through enhanced competition.
- (2) Regulation (EC) No 531/2012 of the European Parliament and of the Council²³ complements and supports, in so far as Union-wide roaming is concerned, the rules provided for by the regulatory framework for electronic communications and establishes certain tasks for BEREC.

¹⁹ OJ C [...].

²⁰ OJ C, [...].

²¹ Directive [...] of the European Parliament and of the Council of [...] establishing the European Electronic Communications Code (OJ L [...]).

²² Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p.37).

²³ Regulation (EC) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p.10).

- (3) Regulation (EU) No 2015/2120 of the European Parliament and of the Council²⁴ establishes common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights and sets up a new retail pricing mechanism for Union-wide regulated roaming services. This regulation establishes additional tasks for BEREC, in particular the issuing of guidelines on the implementation of national regulatory authorities ('NRAs') obligations in relation to open internet access as well as reporting and consultation on draft implementing acts to be adopted by the Commission in relation to Union-wide roaming.
- (4) BEREC and the Office ('BEREC Office') were established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council²⁵. BEREC replaced the European Regulators Group ('ERG')²⁶ and was meant to contribute to the development and better functioning of the internal market for electronic communications networks and services by aiming to ensure a consistent implementation of the regulatory framework for electronic communications. The BEREC Office was established as a Community body with legal personality to carry out the tasks referred to in Regulation (EC) No 1211/2009, in particular the provision of professional and administrative support services to BEREC.
- (5) In its Communication of 6 May 2015 entitled 'A Digital Single Market Strategy for Europe'²⁷, the Commission envisaged presenting proposals in 2016 for an ambitious overhaul of the regulatory framework for electronic communications focusing *inter alia* on a more effective regulatory institutional framework in order to make the telecoms rules fit for purpose as part of the creation of the right conditions for the digital single market. These include the deployment of very high capacity connectivity networks, more coordinated management of radio spectrum for wireless networks and creating a level playing field for advanced digital networks and innovative services. The Communication pointed out that the changing market and technological environment make it necessary to strengthen the institutional framework by enhancing the role of BEREC.
- (6) In its Resolution of 19 January 2016 'Towards a Digital Single Market Act', the European Parliament called on the Commission to integrate further the digital single market by ensuring that a more efficient institutional framework is in place. It can do this by strengthening the role, capacity and decision-making powers of BEREC in order to allow it to foster the consistent implementation of the regulatory framework for electronic communications, to enable an efficient oversight of BEREC over the development of the single market and to help it to resolve cross-border disputes. The European Parliament also stresses, in this regard, the need to improve the financial and human resources and further enhance the governance structure of BEREC.

²⁴ Regulation (EU) No 2015/2120 of the European Parliament and of the Council of 25 November 2015²⁴ laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (OJ L 310, 26.11.2015, p.1)

²⁵ Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (OJ L 337, 18.12.2009, p.1).

²⁶ Commission Decision 2002/627/EC of 29 July 2002 establishing the European Regulators Group for Electronic Communications Networks and Services (OJ L 200, 30.7.2002, p. 38).

²⁷ COM(2015) 192 final.

- (7) BEREC and the BEREC Office have made a positive contribution towards a consistent implementation of the regulatory framework for electronic communications. Notwithstanding, there are still significant disparities between Member States as regards regulatory practice. Moreover, the governance structure of BEREC and the BEREC Office is cumbersome and gives rise to unnecessary administrative burden. In order to ensure efficiency gains and synergies and to further contribute to the development of the internal market for electronic communications throughout the Union as well as to the promotion of access to, and take-up of, very high capacity data connectivity, competition in the provision of electronic communications networks, services and associated facilities and the interests of the citizens of the Union, this regulation aims to strengthen the role of BEREC and enhance its governance structure by establishing BEREC as a Union decentralised agency. This also corresponds to the need to reflect the significantly enhanced role played by BEREC following Regulation (EC) No 531/2012 which establishes tasks for BEREC in relation to Union-wide roaming, Regulation (EU) No 2015/2120 which establishes tasks for BEREC in relation to open internet access and Union-wide roaming, and the Directive which establishes a significant number of new tasks for BEREC such as issuing decisions and guidelines on several topics, reporting on technical matters, keeping registers and delivering opinions on internal market procedures for draft national measures on market regulation as well as on assignments of rights of use for radio spectrum.
- (8) The need for the regulatory framework for electronic communications to be consistently applied in all Member States is essential for the successful development of an internal market for electronic communications throughout the Union and the promotion of access to, and take-up of, very high capacity data connectivity, of competition in the provision of electronic communications networks, services and associated facilities and of the interests of the citizens of the Union. In view of market and technological developments, which often entails an increased cross-border dimension, and to the experience so far in ensuring a consistent implementation in the electronic communications field, it is necessary to build on the work of BEREC and the BEREC Office and further develop them into a fully-fledged agency.
- (9) The agency should be governed and operated in line with the principles of the Joint Statement of the European Parliament, the Council and the European Commission of 19 July 2012 on decentralised agencies ('Common Approach')²⁸. Due to the established image of BEREC and the costs that a modification of its name would entail, the new agency should retain the name of BEREC.
- (10) BEREC, as a technical body with expertise on electronic communications and composed of representatives from NRAs and the Commission, is best placed to be entrusted with tasks such as deciding on certain issues with a cross-border dimension, contributing to efficient internal market procedures for draft national measures (both as regards market regulation and assignments of rights of use for radio spectrum), providing the necessary guidelines to NRAs in order to ensure common criteria and a consistent regulatory approach, and keeping certain registries at Union level. This is without prejudice to the tasks established for NRAs, which are closest to the electronic communications markets and their local conditions. In order to carry out its tasks, the

²⁸ Joint Statement of the Parliament, Council and the Commission on decentralised agencies of 19 July 2012.

agency would require adequate financial and human resources and would also continue the pooling of expertise from NRAs.

- (11) BEREC should be allowed if necessary to cooperate with, and without prejudice to the role of, other Union bodies, agencies, offices and advisory groups, in particular the Radio Spectrum Policy Group²⁹, the European Data Protection Board³⁰, the European Regulators Group for Audiovisual Media Services³¹ and the European Union Agency for Network and Information Security³²; as well as with existing committees (such as the Communications Committee and the Radio Spectrum Committee). It should also be allowed to cooperate with competent authorities of third countries, in particular, regulatory authorities competent in the field of electronic communications and/or groups of those authorities, as well as with international organisations when necessary for the performance of its tasks.
- (12) Compared to the situation in the past where both a Board of Regulators and a Management Committee were running in parallel, having a single board giving general orientations for the activities of BEREC, deciding on regulatory and operational as well as on administrative and budgetary management matters should help improving the efficiency, coherence and performance of the agency. To this end, the Management Board should carry the relevant functions and should consist, in addition of two representatives of the Commission, of the Head, or otherwise a member of the collegiate body, of each NRA, who are protected by dismissal requirements.
- (13) In the past the appointing authority powers were exercised by the Vice-Chair of the Management Committee of the BEREC Office. The Management Board of the new agency should delegate relevant appointing authority powers to the Executive Director, who would be authorised to sub-delegate those powers. This would contribute to an efficient management of the BEREC staff as well as to ensuring that the Management Committee, as well as the Chairperson and Deputy Chairperson, can concentrate on their functions.
- (14) In the past the term of office of the Chair and of the Vice-Chairs of the Board of Regulators was one year. In view of the additional tasks assigned to BEREC and the need to ensure annual and multiannual programming for its activities, it is crucial to ensure that the Chairperson and Deputy Chairperson benefit from a stable and long-term mandate.
- (15) The Management Board should hold at least two ordinary meetings a year. In view of past experience and the enhanced role of BEREC, the Management Board may need to hold additional meetings.
- (16) The role of the Executive Director, who would be the legal representative of BEREC, is crucial for the adequate functioning of the new agency and the implementation of the tasks assigned to it. The Management Board should appoint him/her on the basis of

²⁹ Decision 2002/622/EC establishing a Radio Spectrum Policy Group (OJ L 198, 27.7.2002, p. 49).

³⁰ Established under Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p.1).

³¹ Directive [...].

³² Regulation (EU) No 526/2013 of the European Parliament and of the Council of 21 May 2013 concerning the European Union Agency for Network and Information Security (ENISA) and repealing Regulation (EC) No 460/2004 (OJ L 165, 18.6.2013, p.41).

a list drawn up by the Commission following an open and transparent selection procedure in order to guarantee a rigorous evaluation of the candidates and a high level of independence. Moreover, in the past the term of office of the Administrative Manager of the BEREC Office was three years. It is necessary that the Executive Director has a sufficiently long mandate in order to ensure stability and delivery of a long-term strategy for the agency.

- (17) Experience has shown that most of BEREC's tasks are better carried out through working groups, therefore the Management Board should be in charge of setting up working groups and appointing their members. In order to ensure a balanced approach, the working groups should be coordinated and moderated by members of the BEREC staff. Lists of qualified experts should be prepared in advance to ensure a quick set-up of certain working groups, in particular those related to internal market procedures for draft national measures on market regulation and on assignments of rights of use for radio spectrum, due to the time limits of those procedures.
- (18) As BEREC is competent for taking decisions with a binding effect, it is necessary to ensure that any natural or legal person subject to, or concerned by, a decision of BEREC has the right of appeal to a Board of Appeal, which is part of the agency but independent from its administrative and regulatory structure. As the decisions issued by the Board of Appeal are intended to produce legal effects towards third parties, an action for review of their legality may be brought to the General Court. In order to ensure uniform conditions as regards the rules of procedure of the Board of Appeal, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council³³.
- (19) Commission Delegated Regulation (EU) No 1271/2013 of the European Parliament and of the Council³⁴ should apply to BEREC.
- (20) In order to guarantee BEREC's autonomy, it should have its own budget, most of which comes essentially from a contribution from the Union. The financing of BEREC should be subject to an agreement by the budgetary authority as set out in point 31 of the Inter-institutional Agreement on budgetary discipline, on cooperation in budgetary matters and on sound financial management³⁵.
- (21) BEREC should be independent as regards operational and technical matters and should enjoy legal, administrative and financial autonomy. To that end, it is necessary and appropriate that BEREC should be a body of the Union having legal personality and exercising the powers conferred upon it.

³³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

³⁴ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

³⁵ Inter-institutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management (OJ C 373, 20.12.2013, p. 1).

- (22) As a Union decentralised agency, BEREC should operate within its mandate and the existing institutional framework. It should not be seen as representing a Union position to an outside audience or as committing the Union to legal obligations.
- (23) In order to further extend the consistent implementation of the provisions of the regulatory framework for electronic communications within the scope of BEREC, the new agency should be open to the participation of regulatory authorities of third countries competent in the field of electronic communications that have entered into agreements with the Union to that effect, in particular those of EEA EFTA States and candidate countries.
- (24) BEREC should be allowed to engage in communication activities within its field of competence, which should not be detrimental to BEREC's core tasks and should be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board. The content and implementation of BEREC's communication strategy should be coherent, relevant and coordinated with the strategies and activities of the Commission and the other institutions in order to take into consideration the broader image of the Union.
- (25) In order to carry out its tasks effectively, BEREC should have the right to request all necessary information from the Commission, the NRAs and, as a last resort, other authorities and undertakings. Requests for information should be proportionate and not impose an undue burden on the addressees. NRAs, which are closest to the electronic communications markets, should cooperate with BEREC and have a timely and accurate provision of information to ensure that BEREC is able to fulfil its mandate. BEREC should also share with the Commission and the NRAs the necessary information based on the principle of sincere cooperation.
- (26) Since the objectives of this regulation, namely the need to ensure a consistent implementation of the regulatory framework for electronic communications within the defined scope, in particular in relation to cross-border aspects and through efficient internal market procedures for draft national measures, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this regulation does not go beyond what is necessary in order to achieve those objectives.
- (27) This regulation aims to amend and expand the provisions of Regulation (EC) 1211/2009 of the European Parliament and of the Council. Since the amendments to be made are of a substantial nature, that act should, in the interests of clarity, be replaced and therefore repealed. References to the repealed regulation should be construed as references to this regulation.
- (28) The BEREC Office, which was established as a Community body with legal personality by Regulation (EC) No 1211/2009, is succeeded by BEREC as regards all ownership, agreements, legal obligations, employment contracts, financial commitments and liabilities. BEREC should take over the staff of the BEREC Office whose rights and obligations should not be affected,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

OBJECTIVES AND TASKS

Article 1

Establishment and objectives

1. The Body of European Regulators for Electronic Communications ('BEREC') is hereby established.
2. BEREC shall act within the scope of Directive [...], Directive 2002/58/EC, Regulation (EC) No 531/2012, Regulation (EU) No 2015/2120 and Decision 243/2012/EU³⁶ (Radio Spectrum Policy Programme).

The definitions laid down in those Directives, Regulations and Decision shall apply for the purposes of this regulation.

3. BEREC shall pursue the same objectives as those of national regulatory authorities ('NRAs') referred to in Article 3 of the Directive. In particular, BEREC shall ensure a consistent implementation of the regulatory framework for electronic communications within the scope referred to in paragraph 2 and thereby contribute to the development of the internal market. It shall also promote access to, and take-up of, very high capacity data connectivity; competition in the provision of electronic communications networks, services and associated facilities; and the interests of the citizens of the Union.

Article 2

Tasks

1. The tasks of BEREC shall be to:
 - (a) assist, advise and cooperate with the Commission as well as NRAs, on request or on its own initiative, on any technical matter within its mandate, and assist and advise the European Parliament and the Council on request;
 - (b) issue decisions:
 - on the identification of transnational markets in accordance with Article 63 of the Directive;
 - on a contract summary template in accordance with Article 95 of the Directive;

³⁶ Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L 81, 21.3.2012, p. 7).

- (c) develop an economic model in order to assist the Commission in determining the maximum termination rates in the Union in accordance with Article 73 of the Directive;
- (d) issue opinions as referred to in the Directive and Regulation (EU) No 531/2012, in particular:
 - on the resolution of cross-border disputes in accordance with Article 27 of the Directive;
 - on draft national measures related to the internal market procedures for market regulation in accordance with Articles 32, 33 and 66 of the Directive;
 - on draft national measures related to the internal market procedures for radio spectrum peer review in accordance with Article 35 of the Directive;
 - on draft decisions and recommendations on harmonisation in accordance with Article 38 of the Directive;
- (e) issue guidelines as referred to in the Directive, Regulation (EC) No 531/2012 and Regulation (EU) No 2015/2120:
 - on the implementation of NRAs' obligations as regards geographical surveys in accordance with Article 22 of the Directive;
 - on common approaches to the identification of the network termination point in different network topologies in accordance with Article 59 of the Directive;
 - on common approaches to meet transnational end-user demand in accordance with Article 64 of the Directive;
 - on the minimum criteria for a reference offer in accordance with Article 67 of the Directive;
 - on the technical details of the cost model to be applied by NRAs when setting maximum symmetric termination rates in accordance with Article 73 of the Directive;
 - on common criteria for the assessment of the ability to manage numbering resources and the risk of exhaustion of numbering resources in accordance with Article 87 of the Directive;
 - on relevant quality of service parameters and the applicable measurement methods in accordance with Article 97 of the Directive;
 - on the implementation of NRAs' obligations as regards open internet access in accordance with Article 5 of Regulation (EU) No 2015/2120;
 - on wholesale roaming access in accordance with Article 3 of Regulation (EU) No 531/2012;

2. BEREC shall also carry out the following tasks:

- (a) monitor and coordinate the action of NRAs in applying Regulation (EU) No 531/2012, in particular as regards the provision of regulated retail roaming services at domestic prices in the interests of end-users;
- (b) report on technical matters within its competence, in particular:
 - on the practical application of the opinions and guidelines referred to in Article 2(1)(d) and 2(1)(e);
 - on the level of interoperability between interpersonal communications services, threat to effective access to emergency services or to end-to-end connectivity between end-users in accordance with Article 59 of the Directive;
 - on the evolution of retail and wholesale charges for roaming services and on transparency and comparability of tariffs in accordance with Article 19 of Regulation (EU) No 531/2012;
 - on the outcomes of the annual reports that NRAs shall provide in accordance with Article 5 of Regulation (EU) No 2015/2120, through the publication of an annual synthesis report.
- (c) issue recommendations and best practices addressed to the NRAs in order to encourage consistent implementation on any technical matter within its mandate;
- (d) keep a register of:
 - undertakings providing electronic communications networks and services in accordance with Article 12 of the Directive. BEREC shall also issue standardised declarations on notifications by undertakings in accordance with Article 14 of the Directive;
 - numbers with a right of extraterritorial use in accordance with Article 87 of the Directive;
- (e) carry out other tasks conferred on it by legal acts of the Union in particular by the Directive, Regulation (EC) No 531/2012 and Regulation (EU) No 2015/2120.

3. Without prejudice to compliance with relevant Union law, NRAs shall comply with any decision and take the utmost account of any opinion, guideline, recommendation and best practice adopted by BEREC with the aim of ensuring a consistent implementation of the regulatory framework for electronic communications within the scope referred to in Article 1(2).

4. In so far as is necessary in order to achieve the objectives set out in this regulation and perform its tasks, BEREC may cooperate with competent Union bodies, agencies, offices and advisory groups, with competent authorities of third countries and/or with international organisations, in accordance to Article 26.

CHAPTER II

ORGANISATION

Article 3

Administrative and Management Structure

1. The administrative and management structure of BEREC shall comprise:
 - a Management Board, which shall exercise the functions set out in Article 5;
 - an Executive Director, which shall exercise the responsibilities set out in Article 9;
 - Working Groups;
 - a Board of Appeal.

SECTION 1

MANAGEMENT BOARD

Article 4

Composition of the Management Board

1. The Management Board shall be composed of one representative from each Member State and two representatives of the Commission, all with voting rights. Each NRA shall be responsible for nominating its respective representative amongst the Head or members of the collegiate body of the NRA.

In Member States where more than one NRA is responsible under the Directive, those authorities shall agree on a common representative and the necessary coordination between the NRAs shall be ensured.

2. Each member of the Management Board shall have an alternate. The alternate shall represent the member in his/her absence. Each NRA shall be responsible for nominating the alternate amongst the Heads, members of the collegiate body and staff of the NRA.

3. Members of the Management Board and their alternates shall be appointed in light of their knowledge in the field of electronic communications, taking into account relevant managerial, administrative and budgetary skills. All parties represented in the Management Board shall make efforts to limit turnover of their representatives, in order to ensure continuity of the board's work. All parties shall aim to achieve a balanced representation between men and women on the Management Board.

4. The term of office for members and their alternates shall be four years. That term shall be extendable.

Article 5

Functions of the Management Board

1. The Management Board shall:

- (a) give the general orientations for BEREC's activities and adopt each year BEREC's single programming document by a majority of two-thirds of members entitled to vote, taking into account the opinion of the Commission and in accordance with Article 15;
- (b) adopt, by a majority of two-thirds of members entitled to vote, the annual budget of BEREC and exercise other functions in respect of BEREC's budget pursuant to Chapter III;
- (c) adopt and proceed with an assessment of the consolidated annual activity report on BEREC's activities and send both the report and its assessment, by 1 July each year to the European Parliament, the Council, the Commission and the Court of Auditors. The consolidated annual activity report shall be made public;
- (d) adopt the financial rules applicable to BEREC in accordance with Article 20;
- (e) adopt an anti-fraud strategy, proportionate to fraud risks taking into account the costs and benefits of the measures to be implemented;
- (f) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office ('OLAF');
- (g) adopt rules for the prevention and management of conflicts of interest as referred to in Article 31, as well as in respect of members of the Board of Appeal;
- (h) adopt and regularly update the communication and dissemination plans referred to in Article 27, based on an analysis of needs;
- (i) adopt its rules of procedure;
- (j) in accordance with paragraph 2, exercise, with respect to the staff of BEREC, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment³⁷ ('the appointing authority powers');

³⁷ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

- (k) adopt implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
- (l) authorise the conclusion of working arrangements with competent Union bodies, agencies, offices and advisory groups; with competent authorities of third countries and/or with international organisations in accordance with Article 26;
- (m) appoint the Executive Director and where relevant extend his/her term of office or remove him/her from office in accordance with Article 22;
- (n) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of other servants, who shall be totally independent in the performance of his/her duties. BEREC may appoint the Commission's Accounting Officer as the Accounting Officer of BEREC;
- (o) appoint the members of the Board(s) of Appeal;
- (p) take all decisions on the establishment of BEREC's internal structures and, where necessary, their modification, taking into consideration BEREC's activity needs as well as having regard to sound budgetary management.

2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Article 6

Chairperson and Deputy Chairperson of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among members with voting rights representing Member States. The Chairperson and the Deputy Chairperson shall be elected by a majority of two thirds of the members of the Management Board with voting rights.

2. The Deputy Chairperson shall automatically replace the Chairperson if he/she is prevented from attending to his/her duties.

3. The term of office of the Chairperson and the Deputy Chairperson shall be four years, with the exception of the first term of office of the Deputy Chairperson elected after the entry into force of this regulation which shall be two years. Their term of office may be renewed once.

Article 7

Meetings of the Management Board

1. The Chairperson shall convene the meetings of the Management Board.
2. The Executive Director of BEREK shall take part in the deliberations, without the right to vote.
3. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of its Chairperson, at the request of the Commission, or at the request of at least one-third of its members.
4. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.
5. The members and the alternates of the Management Board may, subject to its rules of procedure, be assisted at the meetings by advisers or experts.
6. BEREK shall provide the secretariat for the Management Board.

Article 8

Voting rules of the Management Board

1. Without prejudice to Articles 5(1) (a) and (b) and 22(8), the Management Board shall take decisions by majority of members with voting rights.
2. Each member with voting rights shall have one vote. In the absence of a member with the right to vote, his/her alternate shall be entitled to exercise his/her right to vote.
3. The Chairperson shall take part in the voting.
4. The Executive Director shall not take part in the voting.
5. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member.

SECTION 2

EXECUTIVE DIRECTOR

Article 9

Responsibilities of the Executive Director

1. The Executive Director shall manage BEREK. The Executive Director shall be accountable to the Management Board.

2. Without prejudice to the powers of the Commission and the Management Board, the Executive Director shall be independent in the performance of his/her duties and shall neither seek nor take instructions from any government, institution, person or body.

3. The Executive Director shall report to the European Parliament on the performance of his/her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his/her duties.

4. The Executive Director shall be the legal representative of BEREC.

5. The Executive Director shall be responsible for the implementation of BEREC's tasks. In particular, the Executive Director shall be responsible for:

- (a) the day-to-day administration of BEREC;
- (b) implementing decisions adopted by the Management Board;
- (c) preparing the single programming document and submitting it to the Management Board;
- (d) implementing the single programming document, reporting to the Management Board on its implementation;
- (e) preparing the consolidated annual report on BEREC's activities and presenting it to the Management Board for assessment and adoption;
- (f) preparing an action plan following-up conclusions of internal or external audit reports and evaluations, as well as investigations by the OLAF and reporting on progress twice a year to the Commission and regularly to the Management Board;
- (g) protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by carrying out effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative measures, including financial penalties;
- (h) preparing an anti-fraud strategy for BEREC and presenting it to the Management Board for approval;
- (i) preparing draft financial rules applicable to BEREC;
- (j) preparing BEREC's draft statement of estimates of revenue and expenditure and implementing its budget.

6. The Executive Director shall also be responsible for deciding whether it is necessary for the purpose of carrying out BEREC's tasks in an efficient and effective manner to locate one or more staff in one or more Member States. The decision to establish a local office requires the prior consent of the Commission, the Management Board and the Member State(s) concerned. The decision shall specify the scope of the activities to be carried out at the local office in a manner that avoids unnecessary costs and duplication of administrative functions of BEREC.

SECTION 3

WORKING GROUPS

Article 10

Functioning of the working groups

1. Where justified and in particular to implement the work programme of BEREC, the Management Board, may set up the necessary working groups.

2. The Management Board shall appoint the members of the working groups, which may be participated in by experts from the NRAs, the Commission, BEREC staff and the NRAs of third countries participating in the work of BEREC.

In the case of the working groups which are set up to carry out the tasks referred to in the third indent of Article 2(1)(d), their members shall be appointed from the lists of qualified experts provided by the NRAs, the Commission and the Executive Director.

In the case of the working groups which are set up to carry out the tasks referred to in the second indent of Article 2(1)(d), their members shall be appointed exclusively from the lists of qualified experts provided by the NRAs and the Executive Director.

The Management Board may invite individual experts recognised as competent in the relevant field to participate in the working groups if necessary on a case-by-case basis.

3. The working groups shall be coordinated and moderated by a member of the staff of BEREC, who shall be designated according to the internal rules of procedure.

4. The Management Board shall adopt internal rules of procedure laying down the practical arrangements for the operation of the working groups.

5. BEREC shall provide support to the working groups.

SECTION 4

BOARD OF APPEAL

Article 11

Establishment and composition of the Board of Appeal

1. BEREC shall establish one Board of Appeal.

2. The Board of Appeal shall be composed of a Chairperson and two other members. Each member of the Board of Appeal shall have an alternate. The alternate shall represent the member in his/her absence.

3. The Management Board shall appoint the Chairperson, the other members and their alternates from a list of qualified candidates established by the Commission.
4. Where the Board of Appeal considers that the nature of the appeal so requires, it may request the Management Board to appoint two additional members and their alternates from the list referred to in paragraph 3.
5. On the proposal of BEREC, the Commission shall establish the rules of procedure of the Board of Appeal, after having consulted the Management Board and in accordance with the procedure referred to in Article 36(2).

Article 12

Members of the Board of Appeal

1. The term of office of the members and alternates of the Board of Appeal shall be four years. Their term of office may be extended by the Management Board for additional four-year periods acting on a proposal from the Commission.
2. The members of the Board of Appeal shall be independent and shall not perform any other duties within BEREC. In making their decisions they shall neither seek nor take instructions from any government or from any other body.
3. The members of the Board of Appeal shall not be removed from office or from the list of qualified candidates during their term of office, unless there are serious grounds for such removal and the Management Board takes a decision to that effect, acting on a proposal from the Commission.

Article 13

Exclusion and objection

1. The members of the Board of Appeal shall not take part in any appeal proceedings if they have any personal interest in the proceedings, if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the adoption of the decision under appeal.
2. If, for one of the reasons listed in paragraph 1 or for any other reason, a member of a Board of Appeal considers that he/she should not take part in any appeal proceeding, he/she shall inform the Board of Appeal accordingly.
3. Any party to the appeal proceedings may object to any member of a Board of Appeal on any of the grounds given in paragraph 1, or if the member is suspected of partiality. Any such objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.
4. The Board of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking that decision, the member concerned shall be replaced on the Board of Appeal by his/her alternate.

Article 14

Decisions subject to appeal

1. An appeal may be brought before the Board of Appeal against decisions taken by BEREC pursuant to Articles 2(1)(b).

Any natural or legal person, including NRAs, may appeal against a decision referred to in this paragraph which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.

2. An appeal brought pursuant to paragraph 1 shall not have a suspensory effect. The Board of Appeal may, however, suspend the application of the decision against which the appeal has been brought.

CHAPTER III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

SECTION 1

SINGLE PROGRAMMING DOCUMENT

Article 15

Annual and multi-annual programming

1. Each year, the Executive Director shall draw up a draft programming document containing annual and multiannual programming ('single programming document') in line with Article 32 of Commission Delegated Regulation (EU) No 1271/2013 and taking into account guidelines set by the Commission³⁸.

By 31 January, the Management Board shall adopt the draft single programming document and forward it to the Commission for it to provide its opinion. The draft single programming document shall also be forwarded to the European Parliament and the Council.

The Management Board shall subsequently adopt the single programming document taking into account the opinion of the Commission. It shall forward it to the European Parliament, the Council and the Commission, as well as any later updated version of that document.

The single programming document shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.

³⁸ Commission Communication on the guidelines for programming document for decentralised agencies and the template for the Consolidated Annual Activity Report for decentralised agencies (C(2014) 9641).

2. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year.

3. The Management Board shall amend the adopted annual work programme when a new task is given to BEREC.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

4. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.

The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 38.

5. Annual and/or multiannual programming shall include the strategy for relations with competent Union bodies, agencies, offices and advisory groups; with competent authorities of third countries and/or with international organisations as referred to in Article 26, the actions linked to this strategy and the specification of associated resources.

Article 16

Establishment of the budget

1. Each year, the Executive Director shall draw up a provisional draft estimate of BEREC's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.

2. The Management Board shall, on the basis of that provisional draft, adopt a draft estimate of BEREC's revenue and expenditure for the following financial year.

3. The draft estimate of BEREC's revenue and expenditure shall be sent by the Executive Director to the Commission by 31 January each year. The information contained in the draft estimate of BEREC's revenue and expenditure and in the draft single programming document referred to in Article 15(1) shall be coherent.

4. The Commission shall send the draft estimate to the budgetary authority together with the draft general budget of the Union.

5. On the basis of the draft estimate, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of

the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 of the Treaty.

6. The budgetary authority shall authorise the appropriations for the contribution to BEREC.

7. The budgetary authority shall adopt BEREC's establishment plan.

8. BEREC's budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.

9. For any building project likely to have significant implications for the budget of BEREC, the provisions of Commission Delegated Regulation (EU) No [1271/2013](#) shall apply.

SECTION 2

IMPLEMENTATION, PRESENTATION AND CONTROL OF THE BUDGET

Article 17

Structure of the budget

1. Estimates of all revenue and expenditure for BEREC shall be prepared each financial year, corresponding to the calendar year and shall be shown in BEREC's budget.

2. BEREC's budget shall be balanced in terms of revenue and of expenditure.

3. Without prejudice to other resources, BEREC's revenue shall comprise:

- (a) a contribution from the Union;
- (b) any voluntary financial contribution from the Member States or the NRAs;
- (c) charges for publications and any other service provided by BEREC;
- (d) any contribution from third countries or the regulatory authorities competent in the field of electronic communications of third countries participating in the work of BEREC, as provided for by Article 26.

4. The expenditure of BEREC shall include staff remuneration, administrative and infrastructure expenses and operational expenditure.

Article 18

Implementation of the budget

1. The Executive Director shall implement BEREC's budget.

2. Each year the Executive Director shall send to the budgetary authority all information relevant to the findings of evaluation procedures.

Article 19

Presentation of accounts and discharge

1. By 1 March of the following financial year, BEREC's accounting officer shall send the provisional accounts to the Commission's Accounting Officer and to the Court of Auditors.

2. By 31 March of the following financial year, BEREC shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors.

3. On receipt of the Court of Auditors' observations on BEREC's provisional accounts, BEREC's accounting officer shall draw up BEREC's final accounts under his/her own responsibility. The Executive Director shall submit the final accounts to the Management Board for an opinion.

4. The Management Board shall deliver an opinion on BEREC's final accounts.

5. The Executive Director shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

6. BEREC shall publish the final accounts in the *Official Journal of the European Union* by 15 November of the following year.

7. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September. The Executive Director shall also send this reply to the Management Board.

8. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 165(3) of Financial Regulation³⁹.

9. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

Article 20

Financial rules

The financial rules applicable to BEREC shall be adopted by the Management Board after consulting the Commission. They shall not depart from Regulation (EU) No 1271/2013 unless such a departure is specifically required for BEREC's operation and the Commission has given its prior consent.

³⁹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012).

CHAPTER IV

STAFF

Article 21

General provision

The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of BEREC.

Article 22

Appointment of Executive Director

1. The Executive Director shall be engaged as a temporary agent of BEREC in accordance with Article 2(a) of the Conditions of Employment of Other servants.

2. The Executive Director shall be appointed by the Management Board, from a list of candidates proposed by the Commission, following an open and transparent selection procedure.

For the purpose of concluding the contract with the Executive Director, BEREC shall be represented by the Chairperson of the Management Board.

Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.

3. The term of office of the Executive Director shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the Executive Director's performance and BEREC's future tasks and challenges.

4. The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once, for no more than five years.

5. The Management Board shall inform the European Parliament if it intends to extend the Executive Director's term of office. Within one month before any such extension, the Executive Director may be invited to make a statement before the competent committee of the Parliament and to answer questions put by its members.

6. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.

7. The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal from the Commission.

8. The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the Executive Director on the basis of a two-thirds majority of its members with voting rights.

Article 23

Seconded national experts and other staff

1. BEREC may make use of seconded national experts or other staff not employed by BEREC. The Staff Regulations and the Conditions of Employment of Other Servants shall not apply to such staff.

2. The Management Board shall adopt a decision laying down rules on the secondment of national experts to BEREC.

CHAPTER V

GENERAL PROVISIONS

Article 24

Legal status

1. BEREC shall be a body of the Union. It shall have legal personality.

2. In each of the Member States BEREC shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire and dispose of movable and immovable property and be party to legal proceedings.

3. BEREC shall be represented by the Executive Director.

4. BEREC shall have sole responsibility for the tasks and powers assigned to it.

Article 25

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to BEREC and its staff.

Article 26

Cooperation with Union bodies, third countries and international organisations

1. In so far as is necessary in order to achieve the objectives set out in this regulation and perform its tasks, and without prejudice to the competences of the Member States and the institutions of the Union, BEREC may cooperate with competent Union bodies, agencies,

offices and advisory groups, with competent authorities of third countries and/or with international organisations.

To this end, BEREC may, subject to prior approval by the Commission, establish working arrangements. These arrangements shall not create legal obligations incumbent on the Union and its Member States.

2. BEREC shall be open to the participation of regulatory authorities of third countries competent in the field of electronic communications that have entered into agreements with the Union to that effect.

Under the relevant provisions of these agreements, arrangements shall be developed specifying, in particular, the nature, extent and manner in which those regulatory authorities of the third countries concerned will participate in the work of BEREC, including provisions relating to participation in the initiatives undertaken by BEREC, financial contributions and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations.

3. As part of the single programming document, the Management Board shall adopt a strategy for relations with competent Union bodies, agencies, offices and advisory groups, with competent authorities of third countries and/or with international organisations concerning matters for which BEREC is competent. The Commission and the agency shall conclude an appropriate working arrangement aiming at ensuring that BEREC operates within its mandate and the existing institutional framework.

Article 27

Transparency and communication

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁴⁰ shall apply to documents held by BEREC. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.

2. The processing of personal data by BEREC shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council⁴¹. The Management Board shall, within six months of the date of its first meeting, establish measures for the application of Regulation (EC) No 45/2001 by BEREC, including those concerning the appointment of a Data Protection Officer of BEREC. Those measures shall be established after consultation of the European Data Protection Supervisor.

3. BEREC may engage in communication activities on its own initiative within its field of competence. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the tasks referred to in Article 2(1) and 2(2) of this Regulation. Communication activities shall be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board.

⁴⁰ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁴¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

Article 28

Confidentiality

1. Without prejudice to Article 27(1), BEREC shall not disclose to third parties information that it processes or receives in relation to which a reasoned request for confidential treatment, in whole or in part, has been made.
2. Members of the Management Board, the Executive Director, members of the Board of Appeal, seconded national experts, other staff not employed by BEREC and experts participating in working groups shall comply with the confidentiality requirements under Article 339 of the Treaty, even after their duties have ceased.
3. The Management Board shall lay down the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

Article 29

Security rules on the protection of classified and sensitive non-classified information

BEREC shall adopt its own security rules equivalent to the Commission's security rules for protecting European Union Classified Information ('EUCI') and sensitive non-classified information, *inter alia* provisions for the exchange, processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443⁴² and 2015/444⁴³. Alternatively, BEREC may adopt a decision to apply the Commission's rules on a *mutatis mutandis* basis.

Article 30

Exchange of information

1. Upon a duly justified request from BEREC, the Commission and the NRAs shall provide BEREC with all the necessary information, in a timely and accurate manner, to carry out its tasks, provided that they have legal access to the relevant information and that the request for information is necessary in relation to the nature of the task in question.

BEREC may also request the NRAs information to be provided at recurring intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats.

2. Upon a duly justified request from the Commission or an NRA, BEREC shall provide in a timely and accurate manner any information that is necessary to enable the Commission or the NRA to carry out its tasks, based on the principle of sincere cooperation.

⁴² Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁴³ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

3. Before requesting information in accordance with this article and in order to avoid the duplication of reporting obligations, BEREC shall take account of any relevant existing information publicly available.

4. Where information is not available or is not made available by the NRAs in a timely fashion or in circumstances where a direct request by BEREC would prove more efficient and less burdensome, BEREC may address a duly justified and reasoned request to other authorities or directly to the relevant undertakings providing electronic communications networks, services and associated facilities.

BEREC shall inform the relevant NRAs of requests in accordance with this paragraph.

At the request of BEREC, the NRAs shall assist BEREC in collecting the information.

Article 31

Declaration of interest

1. Members of the Management Board, the Executive Director, seconded national experts and other staff not employed by BEREC shall each make a declaration indicating their commitment and the absence or presence of any direct or indirect interest which might be considered prejudicial to their independence.

The declarations shall be accurate and complete, made in writing and updated whenever necessary. The declarations of interests made by the members of the Management Board and the Executive Director shall be made public.

2. Members of the Management Board, the Executive Director, seconded national experts, other staff not employed by BEREC and experts participating in working groups shall each accurately and completely declare, at the latest at the start of each meeting, any interest which might be considered prejudicial to their independence in relation to the items on the agenda, and shall abstain from participating in the discussion of and voting upon such points.

3. The Management Board shall lay down the rules for the prevention and management of conflicts of interest and, in particular, for the practical arrangements for the provisions referred to in paragraphs 1 and 2.

Article 32

Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁴⁴, within six months after the entry into force of this regulation, it shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the OLAF and adopt appropriate provisions applicable to all employees of BEREC using the template set out in the Annex to that Agreement.

⁴⁴ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 of September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from BEREC.

3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by BEREC, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96⁴⁵.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with competent authorities of third countries and international organisations, contracts, grant agreements and grant decisions of BEREC shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

Article 33

Liability

1. BEREC's contractual liability shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by BEREC.

3. In the case of non-contractual liability, BEREC shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.

4. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.

5. The personal liability of its staff towards BEREC shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

Article 34

Administrative inquiries

The activities of BEREC shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.

Article 35

Language arrangements

⁴⁵ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

1. The provisions laid down in Regulation No 1/58⁴⁶ shall apply to BEREC.
2. The translation services required for the functioning of BEREC shall be provided by the Translation Centre of the bodies of the European Union.

Article 36

Committee

1. The Commission shall be assisted by a Committee ('the Communications Committee'). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where the opinion of the committee is to be obtained by a written procedure, the procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the committee so decides.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

Article 37

Headquarters Agreement and operating conditions

1. The necessary arrangements concerning the accommodation to be provided for BEREC in the host Member State and the facilities to be made available by that Member State as well as the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, BEREC staff and members of their families shall be laid down in a Headquarters Agreement between BEREC and the Member State where the seat is located, concluded after obtaining the approval of the Management Board and no later than two years after the entry into force of this regulation.
2. BEREC's host Member State shall provide the necessary conditions to ensure the smooth and efficient functioning of BEREC, including multilingual, European-oriented schooling and appropriate transport connections.

Article 38

Evaluation

⁴⁶ Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ L 17, 6.10.1958, p. 385).

1. No later than five years from the day of entry into force of this regulation, and every five years thereafter, the Commission shall perform an evaluation in compliance with the Commission guidelines to assess BEREC's performance in relation to its objectives, mandate, tasks and location(s). The evaluation shall, in particular, address the possible need to modify the mandate of BEREC, and the financial implications of any such modification.
2. Where the Commission considers that the continuation of BEREC is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this regulation be amended accordingly or repealed.
3. The Commission shall report to the European Parliament, the Council and the Management Board on the findings of the evaluation. The findings of the evaluation shall be made public.

Article 39

Succession to the Office established by Regulation (EC) No 1211/2009

1. Without prejudice to paragraph 2, BEREC shall succeed the Office that was established by Regulation (EC) No 1211/2009 ('BEREC Office') as regards all ownership, agreements, legal obligations, employment contracts, financial commitments and liabilities.

In particular, this regulation shall not affect the rights and obligations of the staff of the Office established under Regulation (EC) No 1211/2009. Their contracts may be renewed under this regulation in accordance with the Staff Regulations and the Conditions of Employment and in accordance with the budgetary constraints of BEREC.

2. With effect from [the date of entry into force of this regulation] and until the Executive Director takes up his/her duties following his/her appointment by the Management Board in accordance with Article 22, the Administrative Manager appointed on the basis of Regulation (EC) No 1211/2009 shall, for the remaining period of his/her term of office, act as interim Executive Director with the functions provided for in this regulation. The other conditions of the Administrative Manager's contract shall remain unchanged.

As interim Executive Director, he/she shall exercise the appointing authority powers. He/she may authorise all payments covered by appropriations entered in BEREC's budget after approval by the Management Board and may conclude contracts, including staff contracts, following the adoption of BEREC's establishment plan.

3. The contract of employment of the Administrative Manager appointed on the basis of Regulation (EC) No 1211/2009 shall be terminated at the the end of his/her term of office or the day when the Executive Director takes up his/her duties following his/her appointment by the Management Board in accordance with Article 22, whichever is the earlier.

An Administrative Manager appointed on the basis of Regulation (EC) No 1211/2009 whose term of office has been extended shall abstain from participating in the selection procedure for the Executive Director referred to in Article 22.

4. The Management Board referred to in Article 4 shall be composed of the members of the Management Committee referred to in Article 7 of Regulation (EC) No 1211/2009, until new representatives are nominated.

5. The discharge procedure in respect of the budget approved on the basis of Article 11 of Regulation (EC) No 1211/2009 shall be carried out in accordance with the rules established by Regulation (EC) No 1211/2009.

Article 40

Entry into force

Regulation (EC) No 1211/2009 is repealed.

References to Regulation (EC) No 1211/2009 and to the BEREC Office shall be construed as references to this regulation and to BEREC.

Article 41

Entry into force

This regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [...].

This regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
 - 3.2.1. *Summary of estimated impact on expenditure*
 - 3.2.2. *Estimated impact on operational appropriations*
 - 3.2.3. *Estimated impact on appropriations of an administrative nature*
 - 3.2.4. *Compatibility with the current multiannual financial framework*
 - 3.2.5. *Third-party contributions*
- 3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications (BEREC) and repealing Regulation 1211/2009

1.2. Policy area(s) concerned in the ABM/ABB structure⁴⁷

Policy area: Communications Networks, Content and Technology

Activity: **Regulatory Framework for the Digital Agenda for Europe**

1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**⁴⁸
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to an **action redirected towards a new action**

1.4. Objective(s)

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

The measures provided for in this proposed Regulation are complementing the revision of the existing regulatory framework for electronic communications as one building block of the Digital Single Market (DSM) strategy launched in May 2015⁴⁹.

It envisages reviewing the current regulatory framework, with the view to updating it and adapting it to technology and market development and ensuring a greater degree of convergence of national and Union regulation and a consistent implementation of Union rules, as well as a widespread access to, and take-up of, very high capacity data connectivity.

The regulatory framework has been effective in delivering a competitive sector overall and significant end-user benefits, however results in the achievement of the single market objective are rather modest. Regulatory consistency has been achieved only to a limited extent, affecting the operations of cross-border providers and reducing predictability for all operators and investors.

The proposed measures aim at fostering the development of a true internal market for electronic communications in the Union, notably through a greater coordination of regulatory remedies and consistency in the regulation and design of access products needed to support a real pan-European telecoms market, which is of particular relevance to business end-users.

⁴⁷ ABM: Activity-Based Management — ABB: Activity-Based Budgeting.

⁴⁸ As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

⁴⁹ Communication of 6 May 2015 'A Digital Single Market Strategy for Europe' COM(2015) 192 final.

Measures are also envisaged to stimulate competition to invest in very high capacity data connectivity across the Union and to ensure network deployment reaches all geographical areas to breach digital divides. Furthermore the level playing between traditional telecoms operators and internet-based communications services will be addressed and a number of new provisions are envisaged to protect end-users against certain communications-specific risks while removing redundant or overlapping rules on consumer protection.

An adequate and efficient institutional set-up is key to ensure a positive and coherent outcome of the overall telecoms regulatory framework and is critical for the digital single market. NRAs competences will be strengthened and harmonised and certain tasks will be better addressed at European level. The DSM strategy indicated that the changing market and technological environment calls for strengthening the institutional framework and that enhancing the role of BEREC will also be required.

BEREC will have an important and strengthened role to play in ensuring effective implementation of the proposed legislative package with a number of additional tasks, including some 'pre-normative tasks' and binding powers, the provision of guidelines and report and the keeping of registers.

BEREC, being developed into a fully-fledged agency, would therefore become a key actor to serve the objective of achieving an internal telecoms market in the Union. The call on BEREC to contribute to shaping technical and policy orientations will be increased. Therefore, the proposed measures are strengthening BEREC's structure, including giving it a legal personality and providing additional stability for its strategic management. BEREC would also receive the power to request information directly from operators.

1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No

BEREC is contributing to the improvement of the functioning of the internal market, for the benefit of both consumers and industry. The proposed measure, which significantly aligns the new agency with the Common Approach⁵⁰, strengthens BEREC's structure and makes it the cornerstone of an efficient Union system of regulatory authorities. It also gives BEREC a coordinating role in all areas of competence of national regulatory authorities, thus strengthening its role for the internal market and ensuring an efficient implementation and follow-up in relation to the various deliverables.

ABM/ABB activity(ies) concerned

Regulatory framework for electronic communications.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The initiative is expected to bring the following impacts:

⁵⁰ See under: http://europa.eu/agencies/documents/joint_statement_and_common_approach_2012_en.pdf.

The aim is to transform BEREC into a fully fledged agency (in line with the Common Approach) capable of contributing to the better functioning of the internal market for electronic communications networks and services, including in particular the development of cross-border electronic communications services, and of effectively carrying out the tasks assigned to it.

See the accompanying Impact Assessment for more details.

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

The monitoring indicators per objective are as follows:

- number of times that BEREC assist the Commission, on request and on its own initiative
- number of times that BEREC assist the NRAs, on request and on its own initiative
- number of relevant binding decisions adopted by BEREC in the relevant areas
- number of opinions issued by BEREC, in particular in relation to the internal market procedures for market regulation and for radio spectrum peer review
- number of guidelines issued by BEREC in the relevant areas
- number of reports issued by BEREC in the relevant areas
- number of recommendations and best practices issued by BEREC addressed to NRAs
- number of activities with partners and stakeholders

1.5. **Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term*

Without prejudice to the specificities of the sector, BEREC needs to be aligned with the Common Approach. In order to fulfil the overall objective of the development of consistent regulatory practice across the Union, its tasks need to encompass all areas which have an effect on the internal market, such as for instance market-shaping aspects of radio spectrum assignment procedures or general authorisation; and mirror the tasks assigned to national regulatory authorities as these will as from now be harmonised. Its administrative capacity needs to increase to match the ambition of the new tasks assigned to it.

1.5.2. *Added value of EU involvement*

BEREC contributes to the development of consistent regulatory practice and the consistent implementation of the regulatory framework for electronic communications. However the BEREC's current institutional set-up is often opting for greater flexibility or the lowest common denominator instead of focusing on a harmonised approach for the internal market. The new measures will increase the calls made upon BEREC to contribute to shaping technical and policy orientations. BEREC will have a crucial role, in the coming years, in furthering the digital single market; therefore the proposed measure is aiming at strengthening its structure, enhancing its competence and regulatory capacity and ensuring continuity of its action. BEREC work will however remain to be built on the expertise of NRAs representatives in the different working groups and the Heads of NRAs will continue

to take the decisions at the Board level. The rootedness of BEREC in the NRAs is necessary in the light of the technical character of the decisions it will be called to make as well as of the current context of agencies' resource constraints.

1.5.3. *Lessons learned from similar experiences in the past*

The current architecture is made up of a body with legal personality (BEREC Office) which is the smallest agency in the Union and the BEREC Board of Regulators, without legal personality but adopting opinions in the area of its competence. This structure has proven its limits.

It did not prevent ambiguity in the implementation of Union rules and it has not succeeded in overcoming the administrative burden any agency despite its size is confronted with. On the contrary, it has originated unnecessary administrative burden (e.g. duplication of programming and reporting processes for BEREC and the BEREC Office, conferral of the appointing authority powers to the Vice-Chair of the Management Committee without possibility of delegating to the Administrative Manager and further sub-delegating). Furthermore it has only partially developed the necessary regulatory capacity to achieve its main objectives.

Bringing together BEREC and BEREC Office would, on the one hand, eliminate the abovementioned inefficiencies and, on the other, provide the new agency with additional resources to function with.

1.5.4. *Compatibility and possible synergy with other appropriate instruments*

The proposal is part of the review of the regulatory framework for electronic communications, which contributes to one of the pillars of the DSM Strategy launched in May 2015 and it is consistent : it is one of the main components of a package which is the cornerstone of Union legislation aiming at promoting competition, the internal market, end-users interest as well as at promoting the achievement of widespread access to, and take-up of, very high capacity data connectivity. It is consistent with Union competition and single market policy.

In the context of the proposal, efficiency gains and synergies with other existing Union agencies were analysed but discarded (see Impact Assessment for additional information).

1.6. **Duration and financial impact**

Proposition/initiative à **durée limitée**

– Proposition/initiative en vigueur à partir de [JJ/MM]AAAA jusqu'en [JJ/MM]AAAA

– Incidence financière de AAAA jusqu'en AAAA

Proposition/initiative à **durée illimitée**

- Implementation with a start-up period from 2019 to 2022⁵¹
- Followed by operation at cruising speed.

1.7. Management mode(s) envisaged⁵²

- Direct management** by the Commission
 - by its departments, including by its staff in the Union delegations;
 - by the executive agencies
- Shared management** with the Member States
- Indirect management** by entrusting budget implementation tasks to:
 - third countries or the bodies they have designated;
 - international organisations and their agencies (to be specified);
 - the EIB and the European Investment Fund;
 - bodies referred to in Articles 208 and 209 of the Financial Regulation;
 - public law bodies;
 - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
 - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
 - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

⁵¹ Implementation will start in 2019 and continue until 2022 under the next MFF.

⁵² Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html.

Monitoring system

In accordance with the founding Regulation No 1211/2009, the Commission has an obligation to publish a report on the experience acquired as a result of the operation of BEREC and the BEREC Office within three years of the effective start of operations.

The evaluation report of 2012 was focused, following the overall objectives of BEREC and the subsequent roles and tasks of BEREC and BEREC Office, on how efficiently, based on the experience so far, BEREC has succeeded in its role with a view to contributing to the development of the internal market for electronic communications. The scope of the evaluation was to provide an assessment of BEREC's and the BEREC Office's working practices, organisation and remit and if appropriate, recommendations for improvements. The evaluation was finalised in December 2012 and published. The evaluation study was also transmitted to European Parliament and Council; the European Parliament issued a Resolution containing its opinion on it⁵³.

More recently, in the context of the review, the Commission has commissioned three studies on '*Substantive issues for review in the areas of market entry, management of scarce resources and general end-users issue*'⁵⁴; on '*Regulatory, in particular access, regimes for network investment models in Europe*'⁵⁵ and on the '*Impact Assessment for the Review of the Framework for electronic communications*'⁵⁶. The last two studies also assessed the structure of BEREC, and the way it has so far carried out its main tasks.

The new agency will be reviewed and evaluated periodically. Within five years from the entry into force of the regulation, and then every five years thereafter, the Commission will perform an evaluation in compliance with the Commission guidelines to assess BEREC's performance in relation to its objectives, mandate, tasks and location(s). The evaluation will, in particular, address the possible need to modify the mandate of BEREC, and the financial implications of any such modification. The Commission must report on the findings of the evaluation to the European Parliament, the Council and the Management Board. The findings of the evaluation must be made public.

2.2. Management and control system

2.2.1. Risk(s) identified

The risks identified are limited: a Union agency exists already but will be transformed and aligned to the Common Approach and it will get new competences and tasks. The proposal would therefore strengthen its organisational function and lead to efficiency gains. The increase of operational competences and tasks does not represent a real risk, provided adequate resources are foreseen. The significant new advisory competences relate to areas in which the national regulatory authorities have expertise, on which BEREC can build through its collaborative structure, while the decision making and pre-normative competences concern areas where BEREC already has advisory experience, albeit the scale of these tasks will increase.

⁵³ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0536&language=EN>.

⁵⁴ SMART 2015/0003.

⁵⁵ SMART 2015/002.

⁵⁶ SMART 2015/005.

Furthermore the proposed structure, governance and operation model of the agency, as per the Common Approach, ensure that there is a sufficient control in place to make sure that BEREC works towards its objectives. The operational and financial risks of the proposed changes seem to be limited.

2.2.2. *Control method(s) envisaged*

See point 2.1 and point 2.2 above.

The agency's accounts will be submitted for approval of the Court of Auditors and subject to the discharge procedure and audits are envisaged.

Also the operations of the agency are subject to the supervision of the Ombudsman in accordance with the provisions of Article 228 of the Treaty.

2.3. **Measures to prevent fraud and irregularities**

Specify existing or envisaged prevention and protection measures.

The BEREC's prevention and protection measures would apply, specifically:

- Payments for any service or studies requested are checked by the agency's staff prior to payment, taking into account any contractual obligations, economic principles and good financial or management practice. Anti-fraud provisions (supervision, reporting requirements, etc.) will be included in all agreements and contracts concluded between the agency and recipients of any payments.

- In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) shall apply without restriction.

- The agency shall accede, within six months from the day of entry into force of this regulation, to the Inter-institutional Agreement of 25 May 1999 between the European Parliament and the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) and shall issue, without delay, the appropriate provisions applicable to all the employees of the agency.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number/Description	Diff./non-diff. ⁽⁵⁷⁾	from EFTA countries ⁵⁸	from candidate countries ⁵⁹	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
1.a Competitiveness for growth and employment	09 02 04 <u>Body of European Regulators for Electronic Communications (BEREC) — Office — Subsidy</u>	Diff...	YES	NO	NO	NO
5. Administrative expenditure	09 01 01 Expenditure related to staff in active employment of Communications Networks, Content and Technology policy area	Non diff.	NO	NO	NO	NO
	09 01 02 Expenditure related to external staff in active employment of Communications Networks, Content and Technology policy	Non diff.	NO	NO	NO	NO
	09 01 02 11 Other management expenditure	Non diff.	NO	NO	NO	NO

⁵⁷ Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.

⁵⁸ EFTA: European Free Trade Association.

⁵⁹ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure (in EUR millions)

EUR million (to three decimal places)

Heading of multiannual financial Framework:		1a	Competitiveness for growth and employment			
BEREC			Baseline 2017 ⁶⁰	Year 2019	Year 2020	TOTAL 2019-2020
Staff Expenditure (Title 1)	Commitments	-1	2.302	3.410	4.064	7.474
	Payments	-2	2.302	3.410	4.064	7.474
Infrastructure & operating expenditures (Title 2)	Commitments	(1a)	0.359	0.444	0.579	1.023
	Payments	(2a)	0.359	0.444	0.579	1.023
Operational expenditure (Title 3)	Commitments	(1b)	1.585	2.054	2.812	4.866
	Payments	(2b)	1.585	2.054	2.812	4.866

⁶⁰ The 2017 baseline scenario is only provided for comparison reasons and reflects the figures in the 2017 Draft Budget (BEREC Office). EUR 220.000 of this amount is assigned revenue.

TOTAL appropriations for BERE	Commitments	= 1+ 1a+ 1b	4.246	5.908	7.455	13.363
	Payments	= 2+ 2a+ 2b	4.246	5.908	7.455	13.363 ⁶¹

⁶¹ The potential efficiencies and savings for Member States, in particular as regards the enhanced powers conferred to the agency, as well as for the Commission have been analysed as part of the Impact Assessment. The new agency is expected to continue in the future the current service agreements with the Commission (accounting officer and using certain applications and tools) and with other Union agencies (with ENISA as regards off-site storage of back-up data and the internal control coordinator), which could be even further expanded to new areas.

Heading of framework:	of multiannual financial	5	'Administrative expenditure'
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EUR million (to three decimal places)

	Baseline 2017 ⁶²	Year 2019	Year 2020	TOTAL 2019-2020 ⁶³
DG CONNECT				
• Human resources	0.356	0.356	0.356	0.712
• Other administrative expenditure	0.030	0.030	0.030	0.060
TOTAL DG CONNECT	0.386	0.386	0.386	0.772

TOTAL under of the multiannual financial framework	appropriations HEADING 5	(Total commitments = Total payments)	0.386	0.386	0.386	0.772
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	Baseline 2017 ⁶⁴	Year 2019	Year 2020	TOTAL 2019-2020
TOTAL under of the multiannual financial framework				
Commitments	4.632	6.294	7.841	14.135
Payments	4.632	6.294	7.841	14.135

⁶²

The 2017 baseline scenario is only provided for comparison reasons.

⁶³

The current level of DG CNECT resources is maintained. It is however expected that BEREK will require less support from its parent DG in terms of administrative tasks and compliance with EU rules for decentralised agencies and more support on the new operational areas as well as the increased level of participation at Management Board level (two representatives instead of one).

⁶⁴

The 2017 baseline scenario is only provided for comparison reasons.

3.2.2. *Estimated impact on Agency's appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as described below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⁶⁵ ↓	Year 2019	Year 2020	TOTAL 2019-2020
Specific activities			
Pre-normative tasks and binding powers	0.226	0.309	0.535
Regulatory guidance	0.698	0.956	1.654
Market review	0.103	0.141	0.244
Radio spectrum peer-review	0.041	0.056	0.097
Registry functions	0.021	0.028	0.049
Horizontal activities			
Activities of the Management Board	0.308	0.422	0.730
Assistance and advice to Commission and other EU institutions	0.410	0.563	0.973
Support and assistance to NRAs	0.041	0.056	0.097
International cooperation	0.144	0.197	0.341
Provision of regulatory/professional training to NRAs	0.062	0.084	0.146
TOTAL COST	2.054	2.812	4.866

⁶⁵ This table outlines only operational expenditure as per Title 3.

BEREC will have an important and strengthened role to play in ensuring effective implementation of the proposed legislative package with a number of additional tasks. These tasks are of technical nature and will focus on areas where there is a cross-border dimension or where guidance from BEREC could help NRAs to ensure the consistent implementation of the regulatory framework for electronic communications.

In particular, BEREC will have some ‘pre-normative tasks’ (in particular, in relation to the calculation of maximum termination rates) as well as certain binding powers since it will issue decisions on the identification of transnational markets and on a contract summary template (these new tasks are included under ‘Pre-normative tasks and binding powers’, see table above).

It will also issue guidelines on the implementation of NRAs’ obligations as regards geographical surveys of infrastructure/investment, as well as on common approaches to meet transnational end-user demand. It will also adopt guidelines on the minimum criteria for a reference offer, on cost models for setting termination rates, on numbering management requirements, and on relevant quality of service parameters and the applicable measurement methods. Furthermore, BEREC shall report on the possible threat to end-to-end connectivity between end-users or threat to effective access to emergency services, in the context of identifying the need for standards (these new tasks are included under ‘Regulatory guidance’).

BEREC’s role in relation to the internal market procedures for market regulation is reinforced. BEREC’s opinion will now have an authoritative role when the Commission decides whether the NRA concerned should withdraw the draft regulatory measure. It is proposed that only where BEREC shares the serious doubts of the Commission, the latter would be allowed to take a decision requiring the NRA to withdraw the notified measures (these new tasks are included under ‘Market review’).

BEREC will also be in charge of a new ‘peer review’ process in relation to the assignment process of right of use for radio spectrum. This concerns primarily the review of national measures when assigning radio spectrum rights of use that can affect the functioning of wireless markets or otherwise significantly shape the valuation of radio spectrum resources. BEREC will issue (non-binding) opinions on these draft measures based on a technical and economic assessment (these new tasks are included under ‘Radio spectrum peer-review’).

BEREC will also be entrusted with the responsibility of keeping a register of undertakings providing electronic communications networks and services and a register of numbers with extraterritorial use (these new tasks are included under ‘Registry functions’).

Furthermore, some of the tasks assigned to BEREC by Regulation No 531/2012 (Roaming Regulation) and Regulation No 2015/2120 (TSM Regulation) (i.e. issuing of guidelines on net neutrality, provision of input to draft Commission implementing acts on roaming, etc.) will now be carried out under the umbrella of the new agency and will require certain additional resources⁶⁶ (see ‘Regulatory guidance’ and ‘Assistance and advice to Commission and other EU institutions’).

⁶⁶ In the past when new tasks were assigned to BEREC, the resources for the BEREC Office (the Union agency providing support to the Board of Regulators) were not modified.

Also by establishing a fully-fledged agency some horizontal activities, which are currently mainly carried out by NRAs staff, will be to a certain extent internalised by the new agency, under (for example, the preparation of the work programme of BEREC - including regulatory activities - which is currently done by the NRA staff of the incoming Chair, preparation of working arrangements for cooperation with authorities from third countries, etc.).

The significant increase of tasks implies the need of allocating additional resources (including headcount) to BEREC to secure adequate functioning and the fulfilment of its tasks.

3.2.3. *Estimated impact on Agency's human resources*

3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as described below:
 - *Estimate to be expressed in full time equivalent units*

Human resources	Baseline 2017⁶⁷		Year 2019	Year 2020
Baseline	26		26	26
Amendments	0		9	18
Modified baseline	26		35	44
Establishment posts in headcounts (AD/AST)	14		14	14
External personnel (FTE)	12		21	30
<i>Of which Contract Agent</i>	8		13	19
<i>Of which Seconded National Experts</i>	4		8	11
Total Staff	26		35	44⁶⁸

⁶⁷ The 2017 baseline scenario is only provided for comparison reasons.

⁶⁸ As indicated under point 1.6, implementation will start in 2019 and continue until 2022 under the next MFF. Due to the current context of resource constraints, the human resources proposed for 2019-2022 are CA and SNE. Based on the Impact Assessment, the total staff needed by BEREC in order to fulfil its new tasks under the enlarged mandate is estimated at 60 FTEs at the end of the implementation period 2019-2022.

Staff expenditure⁶⁹	Baseline 2017		Year 2019	Year 2020
Establishment plan Posts (in headcounts)	-		1.876	1.876
External personnel (FTE)				
- Of which contract agents	-		0.910	1.330
- Of which Seconded National Experts	-		0.624	0.858
Total Staff	2.302		3.410	4.064

⁶⁹ The 2017 baseline scenario is only provided for comparison reasons. The calculation of staff expenditure for 2019 and 2020 is based on average costs of staff with 'habillage' (Ares(2015)5703479 of 9 December 2015), which would explain part of the expenditure increase from 2017 to 2019.

Additional Staff needed by BEREC in 2020 in relation to its new tasks under the enlarged mandate⁷⁰ (detail by task)	
<i>Total Staff</i> <i>(FTE)</i>	<i>New tasks</i>
4	Pre-normative tasks and binding powers
5	Regulatory guidance
2	Market review
1	Radio spectrum peer-review
1	Registry functions
1	International cooperation
2	Assistance and advice to Commission and other EU institutions
2	Management and administrative support
18	

3.2.3.2. Estimated requirements of human resources for the parent DG

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year 2019	Year 2020

⁷⁰

Based on the Impact Assessment and without prejudging the next MFF, the total additional staff needed by BEREC in order to fulfil its new tasks under the enlarged mandate is estimated at 34 FTEs, envisioning an overall staff figure of 60 FTEs at the end of the implementation period 2019-2022.

• Establishment plan posts (officials and temporary staff)		
XX 01 01 01 (Headquarters and Commission's Representation Offices)	3	3
• External staff (in Full Time Equivalent unit: FTE)⁷¹		
XX 01 02 01 (AC, END, INT from the 'global envelope')		
TOTAL	3	3

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Represent the Commission in the Management Board of the agency. Draw up Commission opinion on the BEREC single programming document and monitor its implementation. Supervise the preparation of the agency's budget and monitor its implementation. Assist the agency in developing its activities in line with the Union policies including by participating in Working Group meetings.
External staff	

3.2.4. Compatibility with the current multiannual financial framework

- Proposal/initiative is compatible the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework⁷².

⁷¹ AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JED = Junior Experts in Delegations. .

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	Year 2019	Year 2020
EFTA	p.m. ⁷³	p.m.
Other contributions (Member states, NRAs etc.)	p.m.	p.m.
TOTAL appropriations co-financed	p.m.	p.m.

⁷² See points 19 and 24 of the Interinstitutional Agreement.

⁷³ The exact amount for the subsequent years will be known when the EFTA's proportionality factor will be fixed for the year concerned.

3.3. Estimated impact on revenue

- Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
 - on own resources
 - on miscellaneous revenue