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COVER NOTE

From: the Parliament of Malta
date of receipt: 16 December 2016
To: the President of the European Council

Subject: Proposal for a Regulation of the European Parliament and of the Council
establishing the Body of European Regulators for Electronic
Communications
[doc. 12257/16 TELECOM 166 COMPET 489 MI 579 CONSOM 216 IA 73
CODEC 1273 - COM(2016) 591 final]
- Opinion on the application of the Principles of Subsidiarity and
Proportionality

Delegations will find attached the above-mentioned document.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the body of European Regulators for Electronic Communications

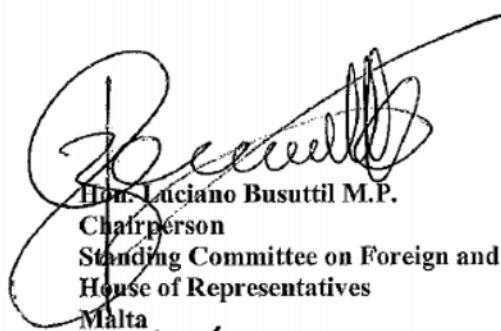
In the course of examining the above mentioned legislative proposal, the Standing Committee on Foreign and European Affairs of the House of Representatives of Malta, whilst acknowledging that it does not breach the principle of subsidiarity, remarks that:

1. The world of electronic communications continues to be a leading factor contributing to enhance economic and social development. European Member States are cognisant of the centrality of maintaining up-to-date and technologically sound systems at a national level. Furthermore, Member States recognize the pivotal importance of sustaining cooperation at a European level and promoting a coordinated approach at Union level also in this field.
2. Regulation (EC) No 1211/2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and its Office proved to be an important development in European Union cooperation and collaboration on electronic communication and opportunities. As per Article 25, the Commission rightly examined and reported on BEREC's overall objectives and subsequent roles and tasks attached to it.
3. The evaluation and report highlighted a number of positive attributes and concluded that overall, BEREC's work is relevant and efficient. As per Staff Working Document (2013) 152, *"the report considers that BEREC is functioning rather well overall and particularly through its opinions under the Article 7/7a notification of national measures' procedure is contributing to a more consistent application of the EU's e-communication regulation in Member States and consequently to the promotion of the internal market"*.
4. The same report highlights that there is still room for improvement in the BEREC set up, especially the difficulty of getting agreed positions within BEREC. The report indicates that sometimes National Regulatory Authorities take greater consideration of national interests rather than focusing on the implementation and improvement of the European single-market. *"The report points out, in particular, that whereas BEREC is making efforts to improve the functioning of the internal market, the fact that it is composed of National Regulatory Authorities means that aligning European objectives with national views and considerations can prove challenging"*.
5. As highlighted above, BEREC has proven to be an effective and important body in regulating, facilitating and developing modern and technologically sound policies aimed at enhancing connectivity across the Union and better functioning of the internal market. It is in fact "challenging" to bring to the negotiating table 28 distinct NRAs and finding agreeable terms, nonetheless this should not deter the Commission from improving the current structure.

6. The possibility of having a diverse pool of expertise, ideas and cooperation represents the epitome of the EU's core belief of maintaining a cooperative diverse Union, geared to promote the creation of common and equally shared opportunities. It is therefore, not justifiable by the Commission to push forward a proposal, aimed at increasing centralised power within a newly established Agency and the Commission.
7. The role and powers of NRAs is slowly being eroded away, with a clear indication that the establishment of an Agency and proposed powers, such as the 'double-lock procedure' seriously hamper NRAs involvement and participation.
8. The Commission's direct involvement in BEREC's structural and operational set-up, such as through direct involvement in the selection of the Executive Director, could undermine the role of the NRAs and BEREC's independence.

The Foreign and European Affairs Committee expresses concern on the Commission's move to promote a fully fledged Agency. As concluded in the report, BEREC has been positively contributing to the electronic communications market and as such minor adjustments to the current Body and Office, would be sufficient to upgrade the current system into one which further promotes the internal market and is able to keep up with technological developments without hampering Member States and NRAs competence and operability.

The Committee concludes that the setting up of an Agency would not contribute to the better functioning of the internal-market, but would rather increase burdens for Member States, NRAs and stakeholders alike, and is therefore calling on the European Commission to reconsider the proposal and the need to establish an Agency.



Hon. Luciano Busuttill M.P.
Chairperson
Standing Committee on Foreign and European Affairs
House of Representatives
Malta
12/12/16