



Council of the
European Union

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**Interinstitutional File:
2016/0286 (COD)**

Subject: Proposal for a Regulation of the European Parliament and of the Council
establishing the Body of European Regulators for Electronic Communications

The Annex contains the consolidated compromise text of the above draft Regulation, subject to revisions by the legal linguists of both Institutions.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the Body of European Regulators for Electronic Communications (**BEREC**) and the
Agency for Support for BEREC (BEREC Office)

**and amending Regulation (EU) 2015/2120 of the European Parliament and of the Council
of 25 November 2015 laying down measures concerning open internet access**

(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 Committee¹,

After consulting the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C [...].

² OJ C,[...].

- (1) Directive [...] of the European Parliament and of the Council³ (*EECC Directive*) ~~and Directive 2002/58/EC of the European Parliament and of the Council~~ aims 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 **and establishes a significant number of new tasks for the Body of European Regulators for Electronic Communications (BEREC) such as issuing guidelines on several topics, reporting on technical matters, keeping registers, lists or databases and delivering opinions on internal market procedures for draft national measures on market regulation.**
- (2) Regulation (EC) No 531/2012 of the European Parliament and of the Council⁴, **amended by Regulations (EU) No 2015/2120⁵ and (EU) No 2017/920⁶ of the European Parliament and of the Council**, 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.
- (3) Regulation (EU) No 2015/2120 **moreover** establishes additional tasks for BEREC in relation to open internet access. **In particular, the BEREC Guidelines of August 2016 on the Implementation by National Regulators of European Net Neutrality Rules have been welcomed as valuable clarifications to guarantee a strong free and open internet by ensuring a consistent application of the rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users rights.**

³ Directive [...] of the European Parliament and of the Council of [...] establishing the European Electronic Communications Code (OJ L [...]).

⁴ 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).

⁵ Regulation (EU) No 2015/2120 of the European Parliament and of the Council of 25 November 2015 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),

⁶ Regulation (EU) No 2017/920 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets (OJ L 147, 9.6.2017, p. 1).

(3b) In view of the need to ensure the development of consistent regulatory practice and the consistent application of the Union’s regulatory framework, the Commission established, by Commission Decision 2002/627/EC⁷, the European Regulators Group (ERG) to advise and assist the Commission in the development of the internal market and, more generally, to provide an interface between national regulatory authorities (NRAs) and other competent authorities and the Commission.

(4) BEREC and the Office (‘BEREC Office’) were established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council⁸.

BEREC replaced ~~the European Regulators Group~~ (‘ERG) and was meant to contribute **on one hand** to the development **and on the other to the** 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.

BEREC acted as a forum for cooperation among NRAs, and between NRAs and the Commission, in the exercise of the full range of their responsibilities under the Union regulatory framework. BEREC was established to provide expertise and to act independently and transparently.

(4a) BEREC also served as a body for reflection, debate and advice for the European Parliament, the Council and the Commission in the electronic communications field.

(4b) The BEREC Office was established as a Community body with legal personality to carry out tasks referred to in Regulation (EC) No 1211/2009, in particular the provision of professional and administrative support services to BEREC.

7 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).

8 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).

In order to efficiently support BEREC, the BEREC Office had legal, administrative and financial autonomy.

(4c) By Decision 2010/349/EU⁹, the Representatives of the Governments of the Member States decided that the BEREC Office would have its headquarters in Riga. The Seat Agreement between the Government of the Republic of Latvia and the BEREC Office entered into force on 5 August 2011.

(5) In its Communication of 6 May 2015 entitled ‘A Digital Single Market Strategy for Europe’, 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.~~

9 Decision taken by common accord between the Representatives of the Governments of the Member States of 31 May 2010 on the location of the seat of the Office of the Body of European Regulators for Electronic Communications (BEREC) (2010/349/EU) (OJ L156, 23.6.2010, p.12).

(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, **which is affecting companies engaged in cross-border business or active in a significant number of Member States, including where BEREC guidelines exist but could be further developed.** 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 ~~by establishing BEREC as a Union decentralised agency.~~ This also corresponds to the ~~need to reflect the significantly~~ enhanced role played by BEREC following Regulations (EC) No 531/2012 and (EU) No 2015/2120 and the **EECC Directive** ~~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.~~

BEREC and the BEREC Office governance and activities should be streamlined and suitable for the tasks they are to perform. Taking into account settled procedures and the new set of tasks assigned to BEREC and to the BEREC Office, additional stability for its management should be foreseen and the decision-making process should be simplified, with a view to strengthening the effectiveness of both BEREC and the BEREC Office.

(9b) BEREC should provide expertise and establish confidence by virtue of its independence, the quality of its advice and information, the transparency of its procedures and methods of operation, and its diligence in performing its tasks. The independence of BEREC should not prevent the Board of Regulators from deliberating on the basis of drafts prepared by working groups.

(9c) ~~The BEREC Office 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 Office should be a body of the Union having legal personality and exercising the powers conferred upon it.

As a Union decentralized agency, the BEREC Office 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.

The full official name of the BEREC Office should be ‘Agency for Support for BEREC’. The original title, namely the ‘BEREC Office’ should continue to be used as the Agency’s short name.

(9d) **Moreover, the rules governing and operating the agency BEREC Office should, where appropriate, be aligned** 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’)¹⁰.~~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~~

(9e) The Union institutions and the NRAs should benefit from BEREC's assistance and advice, including on the relevant regulatory impact of any issue concerning the overall dynamics of digital markets or with regard to their relationship, discussions and exchanges with and dissemination of regulatory best practices to third parties.

In addition to its contribution to the Commission's public consultation, BEREC should, when requested, advise the Commission in the preparation of the legislative proposals. BEREC should also be allowed to provide advice to the European Parliament and to the Council, on their request or on its own initiative.

(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 **and other relevant competent authorities** in order to ensure common criteria and a consistent regulatory approach, and keeping certain registries, **and databases and lists** 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.

(10a) In order to carry out its tasks, BEREC should continue to pool expertise from NRAs. BEREC should aim to ensure the participation of all NRAs in the fulfilment of its regulatory tasks and its functioning. To strengthen BEREC and make it more representative and to safeguard expertise, experience and knowledge of the specific situation of the full range of national markets, each Member State should ensure that its NRA has adequate financial and human resources required to participate fully in the work of BEREC.

(11) **In light of the increasing convergence between sectors providing electronic communication services and the horizontal dimension of regulatory issues related to their development, BEREC and the BEREC Office** should be allowed to cooperate with, and without prejudice to the role of, **NRAs**, other Union bodies, agencies, offices and advisory groups, in particular the Radio Spectrum Policy Group **established by Commission Decision 2002/622/EC¹¹**, the European Data Protection Supervisor **established by Regulation (EC) No 45/2001 of the European Parliament and of the Council¹²** and European Data Protection Board **established by Regulation (EU) 2016/679 of the European Parliament and of the Council¹³**, the European Regulators Group for Audiovisual Media Services **established by Commission Decision of 3.2.2014 on establishing the European Regulators Group for Audiovisual Media Services**, the European Union Agency for Network and Information Security **established by Regulation (EU) No 526/2013¹⁴**, the European GNSS Agency **established by Regulation (EU) No 912/2010**, the **Consumer Protection Cooperation Network, established pursuant to Regulation (EC) No 2006/2004 of the European Parliament and the Council¹⁵**, the **European Competition Network and European standardisation organisations**, as well as with existing committees (such as the Communications Committee and the Radio Spectrum Committee). It should also be allowed to cooperate with relevant competent authorities of Member States responsible for competition, consumer protection and data protection, and 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. **BEREC should also be allowed to consult interested parties by means of public consultations.**

¹¹ Commission Decision 2002/622/EC establishing a Radio Spectrum Policy Group (OJ L 198, 27.7.2002, p. 49).

¹² Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1)

¹³ 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).

¹⁴ 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).

¹⁵ Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (OJ L 364, 9.12.2004, p. 1).

(11-a) BEREC should be entitled to establish working arrangements with third parties, which should not create legal obligations. The goal of such working arrangements could be, for instance, to develop cooperative relationships and exchange views on regulatory issues. The Commission should ensure that the necessary working arrangements are consistent with Union policy and priorities, that BEREC, being established by a Union legal instrument and financed by the Union budget, operates within its mandate and the existing institutional framework and is not seen as representing the Union position to an outside audience or as committing the Union to international obligations.

(11a) BEREC should be composed of the Board of Regulators and working groups. The rotating chairmanship of the Board of Regulators should ensure continuity of BERECs' work. In addition, a rotation of Vice-Chairs representing various NRAs should be promoted.

(11aa) BEREC should be able to act in the interests of the Union, independently from any external intervention, including political pressure or commercial interference. It is thus important to ensure that the persons who sit in the Board of Regulators enjoy the highest guarantees of personal and functional independence. The Head of a NRA or a member of its collegiate body, or their replacements, enjoy such a level of personal and functional independence. More specifically, they should act independently and objectively and should not seek or take instructions in the exercise of their functions and should be protected against arbitrary dismissal. The function of the alternate representing member of the Board of Regulators in his or her absence can also be performed by the head of the NRA, a member of its collegiate body, their replacement or another member of the staff of the NRA, who shall, while performing this function, act on behalf of the Board of Regulators member and within the mandate given by him/her.

(11b) Experience has shown that most of BEREC's tasks are better carried out through working groups, **which should always ensure equal consideration of all NRAs' views and contributions.** **Therefore,** the Board of Regulators should be in charge of setting up working groups and appointing their Chairs. **NRAs should promptly respond to a nomination request** to ensure a quick set-up of certain working groups, in particular those related to **procedures with time limits.** **The working groups should be open to the participation of experts from the Commission. The BEREC Office staff should support and contribute to the working groups' activities.**

(11ba) **If necessary and on a case-by-case basis, the Board of Regulators should be able to invite any person to participate in the meetings of Board of Regulators and of the working groups as an observer.**

(11bb) **Where appropriate and depending on the allocation of tasks in each Member State, it should be ensured that the views of other competent authorities are taken into consideration in the relevant working group, for example through consultation at national level or by inviting them to the relevant meetings where expertise from other competent authorities is needed. In any event, the independence of BEREC should be preserved.**

~~(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 Council¹⁶.~~

¹⁶ 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).

(12) ~~Compared to the situation in the past where a~~ **A Board of Regulators and a Management Committee Board** ~~are~~ were running in parallel, ~~having a single board giving general orientations for the activities of BEREC,~~ with the former deciding on regulatory matters ~~and operational~~ and the latter deciding on administrative ~~and budgetary management~~ matters **such as the budget, staff, audit, etc.** ~~should help improving the efficiency, coherence and performance of the agency.~~

In principle and in addition to the representatives of the Commission, the representatives **of the NRAs** on the Management Board should be the same persons as those sitting on the Board of Regulators, with the possibility for **NRAs** to appoint other representatives fulfilling the same 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 of the BEREC Office** ~~as well as to ensuring that the Management Committee, as well as the Chairperson and Deputy Chairperson, can concentrate on their functions.~~

(15) The **Board of Regulators and the** Management Board should hold at least two ordinary meetings a year. In view of past experience and the enhanced role of BEREC, the **Board of Regulators or the** Management Board may need to hold additional meetings.

(16) ~~The role of The Executive Director, who would be~~ **should remain** the legal representative of ~~BEREC~~ **the BEREC Office as regards to legal and administrative matters,** ~~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 or her, ~~on the basis of 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~~ for the BEREC Office.

(19) Commission Delegated Regulation (EU) No 1271/2013 of the European Parliament and of the Council¹⁷ should apply to **the BEREC Office**.

(19a) The BEREC Office should provide all necessary professional and administrative support for the work of BEREC, including financial, organisational and logistical support, and should contribute to BEREC's regulatory work.

(20) In order to guarantee **the BEREC Office's autonomy and independence, and in order to provide support to the work of BEREC, the BEREC Office** should have its own budget, most of which comes essentially from a contribution from the Union. **The budget should be adequate and reflect the additional tasks assigned and the enhanced role of the BEREC Office and BEREC.** The financing of **the BEREC Office** 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 management¹⁸.

(20a) The BEREC Office should be adequately staffed to carry out its duties. All tasks assigned to the BEREC Office, including professional and administrative services supporting BEREC in carrying out its regulatory tasks, together with compliance with the financial, staff and other applicable regulations, and the increased weight of operational tasks required of the BEREC Office vis-à-vis administrative ones should be duly assessed and reflected in the resource programming.

(23) In order to further extend the consistent implementation of the provisions of the regulatory framework for electronic communications within ~~the its scope of BEREC, the new agency~~ **the Board of Regulators, the working groups and the Management Board of the BEREC Office** 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 as EEA EFTA States and candidate countries.

¹⁷ 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).

¹⁸ 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).

(23a) In line with the principle of transparency, BEREC and the BEREC Office should, where relevant, publish information on their work on their webpage. In particular, BEREC should make public any final documents issued in carrying out its tasks, such as opinions, guidelines, reports, recommendations, common positions and best practices, as well as any study which is commissioned to support its tasks. BEREC and the BEREC Office should also make public up-to-date lists of their tasks and up-to-date lists of members, alternates and permanent participants in the meetings of their organisational bodies, together with their declarations of interest.

(24) BEREC, **supported by the BEREC Office**, should be allowed to engage in communication activities within its field of competence, which should not be detrimental to BEREC's core tasks. The content and implementation of **the BEREC's** communication strategy should be coherent, **objective**, 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. **The BEREC Office's communication activities** should be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board.

(25) In order to carry out its tasks effectively, **BEREC and the BEREC Office** 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 **reasoned**, proportionate and not impose an undue burden on the addressees. NRAs, should cooperate with **BEREC and the BEREC Office** and have a timely and accurate provision of information to ensure that BEREC and the BEREC Office is able to fulfil its mandate. BEREC and the BEREC Office should also, on the basis of the principle of sincere cooperation, share with the Commission, ~~and~~ the NRAs, **and other competent authorities** the necessary information. **Where relevant, the confidentiality of information should be ensured. When assessing if a request is duly justified, BEREC should take into consideration if the requested information is related to the carrying out of tasks exclusively attributed to national regulatory authorities.**

(25-a) BEREC Office should establish a common information and communication system to avoid duplication of information requests and facilitate communication between all authorities involved.

(25a) In order to ensure a high level of confidentiality and to avoid conflicts of interest, the rules on these matters applying to members of the bodies of BEREC and the BEREC Office should apply also to their alternates.

(25b) Since new tasks have been established for BEREC and legal acts of the Union might confer additional tasks on it in the future, the Commission should perform a regular evaluation of the operation of BEREC and the BEREC Office and the effectiveness of this institutional structure in a changing digital environment. If the outcome of that evaluation is that the institutional structure is not suited to the carrying out of the tasks, and particularly to ensure the consistent implementation of the regulatory framework for electronic communications, the Commission should explore all possible options for improving the structure.

(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 **but** can **rather**, 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 **on European Union**. 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. 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 Office, which was established as a Community body with legal personality by Regulation (EC) No 1211/2009, is succeeded by **the BEREC Office established in this Regulation** as regards all ownership, agreements, **including the Host Agreement**, legal obligations, employment contracts, financial commitments and liabilities. **The BEREC Office established in this Regulation** should take over the staff of the Office whose rights and obligations should not be affected.

In order to ensure continuity in the work of BEREC and the BEREC Office, their representatives, namely the Administrative Manager and the Chair and Vice-Chairs of the Board of Regulators and the Management Committee, should serve for the whole period of their current term of office.

29) A significant number of consumers in most Member States continue to rely on traditional international communications such as telephony calls and SMS, in spite of an increasing number of them having access to number-independent interpersonal communications services for their international calling needs at lower charges than traditional services or without monetary payment.

29a) In 2013 the Commission proposed an impact-assessed Regulation which included a provision with regulatory measures applicable to intra-EU communications. Additional data on the intra-EU communication market was collected in 2017-2018 by BEREC¹⁹ and by the Commission through a Commission study²⁰ and the Eurobarometer²¹. As shown by this information significant price differences continue to prevail, both for fixed and mobile communications, between domestic voice and SMS communications and those terminating in another Member State in a context of substantial variations of prices between countries,

¹⁹ BEREC Preliminary analysis of intra-EU calls BOR(18)41 and BEREC supplementary analysis of intra-EU calls BoR (18)75

²⁰ Actual consumer practices and operators' offers for intra-EU calls" (SMART 2017/0012, not yet published)

²¹ Special Eurobarometer report 462 on E-Communications and Digital Single Market (not yet published)

operators and tariff packages, and between mobile and fixed voice communications. Providers often charge consumption based intra-EU communication prices that largely exceed the prices for domestic tariffs plus additional costs. On average, the standard price of a fixed or mobile intra-EU call tends to be three times more expensive than the standard price of a domestic call and the standard price of an intra-EU SMS more than two times more expensive than a domestic one. However, these arithmetic averages hide significant differences across Member States. In some cases the standard price of an intra-EU call can be up to eight times higher than the standard price for domestic calls. As a consequence, customers in several Member States are exposed to very high prices for intra-EU communications. Those high prices affect mainly consumers, in particular those placing such communications infrequently or having a low volume of consumption, which represent the vast majority of the consumers making intra-EU communications. At the same time, several providers propose special offers particularly attractive for business customers and consumers with a significant consumption of intra-EU communications. Such offers are often not charged based on actual consumption and may consist in a certain number of intra-EU minutes or SMS for a fixed monthly fee (add-on offers) or in the inclusion of a certain number of intra-EU minutes or SMS in the monthly allowance of call minutes or SMS, either without any surcharge or with a small surcharge. However, the terms of those offers are often not attractive for consumers with only occasional, unpredictable or relatively low volumes of intra-EU communications. Consequently those consumers are exposed to a risk of paying excessive prices for their intra-EU communications and should be protected.

29b) Moreover, high prices for intra-EU communications present a barrier to the Single Market as they discourage seeking and purchasing goods and services from a provider located in another Member State. It is hence necessary to set specific and proportionate limits to the price that providers may charge on consumers for intra-EU communications in order to eliminate such high prices.

29c) When providers of publicly available number-based interpersonal communications services charge their consumers for intra-EU communications at rates wholly or partly based on the consumption of such services, including in cases of consumption-based deduction from a monthly or prepaid allowance for such services, those rates should not exceed a maximum of EUR 0.19 per minute for calls and EUR 0.06 per SMS message; those correspond to the maximum prices which currently apply to regulated roaming calls and SMS, respectively.

When roaming in the Union, consumers benefit from the protection of the Euro-tariff that has been progressively replaced by roaming like at home. Those ceilings are considered as a suitable benchmark also for setting the maximum rate for intra-EU communications for five years starting from 15 May 2019. The current level of the cap represents a simple, transparent and proven safety-net for protection against high prices and is suitable as a maximum ceiling for retail prices of all cross border EU communications. Both intra EU roaming calls and intra-EU calls share similar cost structure. The caps should allow the providers to recoup their costs thus ensuring a proportionate intervention on both the mobile and fixed calls market. The ceiling will directly apply only to rates based on actual consumption. They should have a disciplining effect [also on those offers where a certain volume of intra-EU communications is included without being charged separately as consumers have the choice to switch to a consumption-based tariff for their intra-EU communications. Intra-EU communication volumes which go beyond those included in a bundle and are charged separately should be subject to the ceiling. The measure should ensure in a proportionate way that consumers with a low level of consumption of intra-EU communications are protected against high prices and at the same time should have only a moderate impact on providers.

29d) Providers should be able to propose to their consumers alternative tariff offers for international communications with different rates for regulated intra-EU communications and consumers should be free to opt for such offers deliberately, and to switch back any time and free of charge, even for offers to which consumers subscribed before the entry into force of this provision. Only alternative offers for international communications, for instance covering all or some countries of the world other than Member States, where accepted by a consumer, should be able to free a provider from its obligation not to exceed the maximum prices for intra-EU communications. Other advantages, such as subsidised terminal equipment or discounts on other electronic communications services, offered by providers to consumers are part of the regular competitive interaction and should not affect the applicability of the price ceilings for intra-EU communications.

29e) Some providers may be significantly more affected than the majority of other providers in the Union by a price ceiling for intra-EU communications. This could, in particular, be the case for those providers which generate a particularly high share of their revenues or operational profits with intra-EU communications and/or whose domestic margins are low

relative to industry benchmarks. As a consequence of margin compression as regards intra-EU communications, a provider might not be able to sustain its domestic pricing model. Such scenarios should be very exceptional as the maximum prices are clearly above the costs for providing intra-EU communications. Nevertheless, in order to address such scenarios in a proportionate way, national regulatory authorities should be empowered to grant a derogation at the request of the provider in justified and exceptional cases. Any derogation should only be granted where a provider can demonstrate, against a relevant benchmark defined by BEREC, that it is significantly more affected than most other providers in the Union and where that impact would significantly weaken that provider's capacity to maintain its charging model for domestic communications. Where a national regulatory authority grants a derogation, it should determine the maximum price level that a provider could apply for regulated intra-EU communications and which would enable it to maintain a competitive price level for domestic communications. Any such derogation should be limited to one year and be renewable if the provider demonstrates that the conditions for a derogation continue to be fulfilled.

29f) In light of the principle of proportionality, the applicability of the price cap for intra-EU communications should be limited in time and should expire five years after its entry into force. Such a limited duration should allow a proper assessment of the effects of the measures and to evaluate to what extent there is an ongoing need to protect consumers .

29g) In order to ensure a Union-wide consistent, timely and most effective protection of consumers negatively affected by the significant price differences of intra-EU communications, this provision should be directly applicable, by making it part of a Regulation. The most suitable act for this purpose should be Regulation (EU) 2015/2120 of the European Parliament and of the Council. That Regulation was adopted on the basis of an impact-assessed Commission proposal which had proposed *inter alia* a provision on intra-EU communications as a necessary means to complete the single market for electronic communications. Compared to that proposal of 2013 the likely impacts on operators' revenues generated by the provision of intra-EU communications are further mitigated, by the application in the present measure of the amount of the roaming Euro-tariff as a safety cap to both fixed and mobile communications; and by the evidence, provided by BEREC's 2018 analysis, of a considerable decline in relevant fix traffic volumes affected by the measure in the intervening period. This provision should hence be introduced as an amendment to

Regulation (EU) 2015/2120, which should also be adapted to ensure that Member States adopt rules on penalties for the infringement of this provision.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

OBJECTIVES AND TASKS

Article 0

Subject matter and scope

- 1. This Regulation establishes the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office).**
- 2. This Regulation sets-up common rules aimed at ensuring that consumers are not charged excessive prices for making number-based interpersonal communications originating in the Member State of the consumer's domestic provider and terminating at any fixed or mobile number in another Member State**

Article 1

Establishment of BEREC

1. The Body of European Regulators for Electronic Communications ('BEREC') is hereby established.

Article 1a

Establishment of the BEREC Office

- 1. The Agency for Support for BEREC (the 'BEREC Office')** is hereby established. The BEREC Office shall be a body of the Union. It shall have legal personality.
- 2. In each Member States the BEREC Office shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It shall, in particular, be capable of acquiring and disposing of movable and immovable property and being party to legal proceedings.**

3. ~~In legal and administrative matters~~ The BEREC Office shall be represented **by its** Director.
4. The BEREC Office shall have sole responsibility for the **tasks assigned to and the powers conferred on it**.
5. The BEREC Office shall have its seat in Riga (Latvia).

CHAPTER Ia

OBJECTIVES AND TASKS OF BEREC

Article 1b

Objectives of BEREC

1. BEREC shall act within the scope of ~~EECC Directive [...]~~ ('~~Electronic Communications Code~~'), and Regulations (EC) No 531/2012 **and** (EU) No 2015/2120, ~~Decision 243/2012/EU of the European Parliament and of the Council²²~~ (~~Radio Spectrum Policy Programme~~).
2. The definitions laid down in **the legal acts referred to in paragraph 1** ~~Directives [...]~~ shall apply for the purposes of this Regulation.
3. BEREC shall pursue the objectives set out in Article 3 of the ~~EECC Directive~~. In particular, BEREC shall aim at ensuring a consistent implementation of the regulatory framework for electronic communications within the scope referred to in paragraph 1.
4. **BEREC shall carry out its tasks independently, impartially, transparently and in a timely manner.**
5. **BEREC shall draw upon the expertise available in the national regulatory authorities (NRAs).**

22 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).

6. In accordance with Article 9(3) of the EECC Directive, each NRA shall be able to fully participate in the work of organisational bodies of BEREC.

7. In the Member States where there is more than one NRA responsible under EECC Directive, those NRAs shall coordinate as necessary.

Article 2

Regulatory tasks of BEREC

1. The regulatory tasks of BEREC shall be to:

(a) assist **and** advise **the NRAs, the Commission, the European Parliament and the Council**, and cooperate with the NRAs **and the Commission**, on request or on its own initiative, on any **technical-matter regarding electronic communications** within its **competence**;

(b) assist **and advise** the Commission, **on request**, ~~as a consultative body~~ in relation to the preparation of proposals for legislative acts in the field of electronic communications, including on any proposed amendment of this Regulation or of the EECC Directive[...]~~(‘Electronic Communications Code’)~~.

~~(b) — issue regulatory decisions~~

(d) issue opinions as referred to in the **EECC** Directive and Regulation (EU) No 531/2012, in particular **on**:

i. ~~on~~ the resolution of cross-border disputes in accordance with Article 27 of the EECC Directive;

- ii. ~~en~~ draft national measures related to the internal market procedures for market regulation in accordance with Articles 32, 33 and 66 of the EECC Directive;
- iv. ~~en~~ draft decisions and recommendations on harmonisation in accordance with Article 38 **and 87** of the EECC Directive;
- ~~v. on the identification of transnational markets in accordance with Article 63 of the Directive;~~
- vi. ~~en~~ the determination of the **single maximum mobile voice termination rate and a single maximum fixed voice termination rate** in the Union in accordance with Article 73 of the **EECC** Directive;
- viii. **the contract summary template in accordance with Article 95 of the EECC Directive;**
- ix. **where relevant, on the market and technological developments regarding the different types of electronic communications services and their impact on the application of Title III of the EECC Directive according to its Article 114a(1);**
- x. **the national implementation and functioning of the general authorisation, and their impact on the single market in accordance with Article 114a(3) of the EECC Directive.**

(e) issue guidelines **on the implementation of the EU regulatory framework in particular** as referred to in the EECC Directive, Regulation (EC) No 531/2012 and Regulation (EU) No 2015/2120 **on:**

- i. **the notification template in accordance with Article 12 of the Directive;**
- ii. ~~en~~ the implementation of NRAs² obligations as regards geographical surveys **and forecasts** in accordance with Article 22 of the EECC Directive;
- ii.a. **relevant criteria in order to foster a consistent application of Article 59(2) of the EECC Directive;**
- iii. ~~en~~ common approaches to the identification of the **network termination** point in different network topologies in accordance with Article 59(6) of the EECC Directive;
- iv. ~~en~~ common approaches to meet transnational end-user demand in accordance with Article 64 of the EECC Directive;
- v. ~~en~~ the minimum criteria for a reference offer in accordance with Article 67 of the EECC Directive;

- vii. the fostering of the consistent application by NRAs of the criteria set out in Article 74(1) and Annex IV of the EECC Directive;**
- vii.a. the criteria for a network to be considered a very high capacity network in accordance with Article 78b of the EECC Directive;**
- viii. ~~the~~ 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 EECC Directive;**
- viii.a. the criteria to be taken into account by NRAs in the assessment of the sustainability of domestic charging models in accordance with Article 92a of the EECC Directive;**
- ix. ~~the~~ relevant quality of service parameters, the applicable measurement methods, **the content and format of publication of the information, and quality certification mechanisms** in accordance with Article 97 of the EECC Directive;**
- ix a. how to assess whether the effectiveness of public warnings under Article 102a(2) of the EECC Directive is equivalent to those under paragraph 1;**
- x. ~~the~~ the implementation of NRAs' obligations as regards open internet access in accordance with Article 5 of Regulation (EU) No 2015/2120;**
- xi. ~~the~~ wholesale roaming access in accordance with Article 3 of Regulation (EU) No 531/2012**
 - (ea) issue other guidelines ensuring the consistent implementation of the regulatory framework for electronic communications and consistent regulatory decisions by the NRAs on its own initiative or upon a request from an NRA, the European Parliament, the Council or the Commission, in particular for regulatory issues affecting a significant number of Member States or with a cross-border element;**
 - (f) where relevant, participate in the Peer Review Forum on draft measures on selection procedures in accordance with Article 35 of the EECC Directive and participate on issues concerning competencies relating to market regulation and competition related to radio spectrum in accordance with Article 4 of that Directive;**
 - (g) conduct analyses of potential transnational markets in accordance with Article 63 of the EECC Directive and of transnational end-user demand in accordance with Article 64 of that Directive.**

2. BEREC shall also carry out the following **regulatory** tasks:

a) monitor **collect information and, where relevant, make up-to-date information publicly available on the application of** Regulation (EU) No 531/2012, , **in accordance with its Articles 16 and 19;**

(b) report on technical matters within its competence, in particular on:

i. the practical application of the opinions and guidelines referred to in **points (d), (e) and (ea) of Article 2(1);**

ii. end-to-end connectivity between end-users in accordance with Article 59 of the **EECC** Directive;

ii a. Member States' best practices in respect of defining the adequate broadband internet access service in accordance with Article 79 of the EECC Directive;

iii. ~~on~~ the evolution of **pricing and consumer patterns both for domestic and roaming services, the evolution of actual wholesale roaming rates for unbalanced traffic, the relationship between retail prices, wholesale charges and wholesale costs for roaming services and as well as** on transparency and comparability of tariffs in accordance with Article 19 of Regulation (EU) No 531/2012;

iv. 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;

v. annually on the market developments in the electronic communications sector;

(c1) issue recommendations **and common positions**, and **disseminate regulatory** best practices addressed to the NRAs in order to encourage **better and** consistent implementation ~~on any technical matter within its mandate~~ **of the regulatory framework for electronic communications;**

(d) ~~a register of~~ **establish and maintain a database of:**

~~BEREC shall also issue standardised declarations on notifications by undertakings in accordance with Article 14 of the Directive;~~

ii. the notifications transmitted to the **competent authorities by undertakings subject to general authorisation** in accordance with Article 12 of the **EECC** Directive;

iii. **the numbering resources** with a right of extraterritorial use **within the Union** in accordance with Article 87 of the **EECC Directive**;

iv. **where relevant, E.164 numbers of European emergency services, in accordance with Article 102 of the EECC Directive.**

(f) **evaluate the needs for regulatory innovation and coordinate actions between NRAs to enable the development of new innovative electronic communications;**

(h) **promote the modernisation, coordination and standardisation of the collection of data by NRAs. Without prejudice to intellectual property rights, personal data protection rules and the required level of confidentiality, this data shall be made available to the public in an open, reusable and machine-readable format on the BEREC website and the European data portal;**

(e) carry out other tasks **assigned to it** by legal acts of the Union, in particular by **EECC Directive, Regulation (EC) No 531/2012 and Regulation (EU) No 2015/2120.**

2a. BEREC shall make public its regulatory tasks. This public information shall be updated when new tasks are assigned to BEREC.

2b. BEREC shall make public all the ~~final regulatory decisions~~, opinions, guidelines, reports, recommendations, common positions and best practices, ~~as well as~~ **and** any commissioned studies, **as well as the relevant draft documents for the purpose of the public consultations referred to in paragraph 3a.**

3. Without prejudice to compliance with relevant Union law, NRAs and the Commission shall ~~comply with any decision and~~ take the utmost account of any guideline, opinion, recommendation, **common position 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 **1b(1)**.

Where an NRA deviates from the guidelines referred to in point (ea) of Article 2(1), it shall provide the reasons therefor.

3a. BEREC shall, where appropriate, consult interested parties and give them the opportunity to comment within a reasonable period having regard to the complexity of the matter, **which** shall not be shorter than 30 days, **except in exceptional circumstances.** BEREC shall, without prejudice to Article 28, make the results of such public consultations publicly available. Such consultations shall take place as early as possible in the decision-making process.

3b. BEREC may, where appropriate, consult and cooperate with relevant national authorities such as those competent in the fields of competition, consumer protection and data protection.

4. ~~Insofar as is necessary in order to achieve the objectives set out in this regulation and perform its tasks,~~ BEREC may, **where appropriate**, cooperate 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(1).

CHAPTER Ib

TASKS OF BEREC OFFICE

Article 2a

Tasks of the BEREC Office

The BEREC Office shall have the following tasks:

- (a) to provide professional and administrative support services to BEREC, in particular in fulfilling its regulatory tasks pursuant to Article 2;**
- (b) to collect information from NRAs and exchange and transmit information in relation to the regulatory tasks assigned to BEREC pursuant to Article 2;**
- (c) to produce, on the basis of the information referred to in point (b), regular draft reports on specific aspects of developments of the European telecommunications market such as roaming and benchmarking reports, to be submitted to BEREC;**
- (d) to disseminate regulatory best practices among NRAs, in accordance with point (c) of Article 2(1);**
- (da) to assist BEREC to establish and manage registries and databases, in accordance with point (d) of Article 2(2).**

- (db) to assist BEREC to establish and manage an information and communications system, in accordance with Article 30a;**
- (dc) to assist BEREC in conducting public consultations, in accordance with Article 2(3a);**
- (e) to assist in the preparation of the work and provide other administrative and content-related support to ensure the smooth functioning of the of the Board of Regulators;**
- (f) to assist in setting up working groups, upon request of the Board of Regulators, contribute to the regulatory work and provide administrative support to ensure the smooth functioning of those groups;**
- (e) to carry out other tasks assigned to it by this Regulation or other legal acts of the Union.**

CHAPTER II

ORGANISATION OF BEREC

Article 2aa

Organisation of BEREC

BEREC shall comprise:

- (a) a Board of Regulators;**
- (b) working groups.**

SECTION 1

BOARD OF REGULATORS

Article 2b

Composition of the Board of Regulators

1. The Board of Regulators shall be composed of one **member** from each Member State, **each** with voting rights.

Each member shall be appointed by the NRA with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services under the EECC Directive. He or she shall be the head of the NRA, a member of its collegiate body, or the replacement of either of them.

2. Each member of the Board of Regulators shall have an alternate, ~~who~~ **appointed by the NRA. The alternate** shall represent the member in **his or her** absence. **He or she shall be appointed from amongst the head of the NRA, a member of its collegiate body, their replacement or the staff of the NRA** ~~the replacement of either of them.~~

~~2a. [...] ('Electronic Communications Code'), those authorities shall agree on a common representative and the necessary coordination between the NRAs shall be ensured.~~

3. Members of the Board of Regulators 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 **appointing NRAs** shall make efforts to limit **the** turnover of their **members and where possible also of their alternates**, in order to ensure continuity of the work **of the Board of Regulators and** shall aim to achieve a balanced representation between men and women on the Board of Regulators.

4. **The Commission shall participate, in all deliberations of the Board of Regulators without the right to vote** and shall be represented at an appropriately **high** level.

5. **An up-to date list of members of the Board of Regulators, including their alternates, together with their declaration of interest, shall be made public.**

Article 2c

Independence of the Board of Regulators

1. When carrying out the tasks conferred upon it and without prejudice to its members acting on behalf of their respective NRA, the Board of Regulators shall act independently and objectively in the interests of the Union as a whole, regardless of any particular national or personal interests.
2. Without prejudice to the coordination referred to in Article 1b(7), the members of the Board of Regulators shall neither seek nor take instructions from any government, institution, person or body.

Article 2f

Functions of the Board of Regulators

1. The Board of Regulators shall:

- (a) fulfil the regulatory tasks of BEREC set out in Article 2 and shall therefore adopt the ~~decisions~~, opinions, guidelines, reports, recommendations, best practices and common positions referred to in that Article. **In doing so, it shall rely on the preparatory work carried out by the working groups.**
- (aa) take administrative decisions relating to the organisation of BEREC's work;
- (b) adopt the annual work programme of BEREC referred to in Article 14a;
- (c) adopt the annual report on the activities of BEREC referred to in Article 14b;

- (d) 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 working groups ~~and of the Board of Appeal~~;
- (e) adopt, the detailed rules on the right of access to documents held by BEREC, in accordance with Article 27;**
- (f) adopt and regularly update the communication and dissemination plans referred to in Article 27a(2), based on an analysis of needs;
- (g) adopt, **acting by a two-thirds majority of its members, and make public** its rules of procedure;
- (h) co-authorise **together with the Director** the conclusion of working arrangements with competent Union bodies, agencies, offices and advisory groups; with competent authorities of third countries and with international organisations in accordance with Article 26;
- (i) set up working groups and appoint their **chairs**;
- (j) give** guidance to the Director **of the BEREC Office regarding the performance of the tasks of the BEREC Office.**

Article 2d

Chair and Vice-Chairs of the Board of Regulators

1. The Board of Regulators shall **appoint, acting by a two-thirds majority of its members**, a Chair and at least **two** Vice-Chairs from among its members.
2. **One of the Vice-Chairs** shall automatically **assume the duties** of the Chair **if the latter is not in a position to perform those duties.**
3. **The term of office of the Chair shall be one year, renewable once. To ensure the continuity of BEREC's work, the incoming Chair shall serve, where possible, one year as Vice-Chair before his or her term of office as Chair. The Rules of Procedure shall provide for a shorter term where it is not possible for the incoming Chair to serve as Vice-Chair one year before his or her term of office as Chair.**
4. **Without prejudice to the role of the Board of Regulators in relation to the Chair's tasks, the Chair shall neither seek nor take instruction from any government, institution, person or body.**

5. The Chair shall report to the European Parliament and to the Council on the performance of BEREC's tasks when invited to do so.

Article 2e

Meetings of the Board of Regulators

1. Meetings of the Board of Regulators shall be convened by its Chair.

The agenda of the meetings shall be set by the Chair and shall be made public.

2. The Board of Regulators shall hold at least two ordinary meetings a year.

Extraordinary meetings shall be convened at the initiative of the Chair, at the request of at least three of its members or at the request of the Commission.

3. The Director of the BEREC Office shall take part in all deliberations without the right to vote.

4. The Board of Regulators may invite any person whose opinion may be of interest to it, to **participate in** its meetings as an observer.

5. The members and the alternates of the Board of Regulators may, subject to its rules of procedure, be assisted at the meetings by **their** advisers or **other** experts.

6. BEREC Office shall provide the secretariat for the Board of Regulators.

Article 8

Voting rules of the Board of Regulators

1. The Board of Regulators shall take decisions by a simple majority of its members unless otherwise provided for in this Regulation or in another legal act of the Union.

A majority of two-thirds of the members of the Board of Regulators shall be required for the opinions referred to in points (d)(ii) and (vi) of Article 2(1) and the guidelines referred to in points (e)(i), (ii),(ii.a), (iii), (v), (vii) and (ix) of Article 2(1).

Notwithstanding Subparagraph 2, the Board of Regulators may decide by a simple majority, and on a case-by-case basis, to adopt opinions referred to in point (d)(ii) in Article 2(1) by simple majority, related to draft measures falling under Paragraphs (2) or (3) of Article 74 of the EECC Directive, that lead to the launching of the procedure under Article 33 (5) of the EECC Directive

The decisions of the Board of Regulators shall be made public, and shall indicate the reservations of any member at his or her request.

2. Each member shall have one vote. In the absence of a member, his or her alternate shall be entitled to exercise his or her right to vote.

In the absence of a member, or his or her alternate, the voting rights may be delegated to another member.

3. The Chair shall take part in the voting in his or her capacity as a member unless voting rights have been delegated.

3a. The rules of procedure of the Board of Regulators shall set out in detail the arrangements governing voting, including the conditions under which one member may act on behalf of another member, quorum, and the notification deadlines for meetings. Furthermore, the rules of procedure shall ensure that the members of the Board of Regulators are provided with full agendas and draft proposals in advance of each meeting so that they have the opportunity to propose amendments prior to the vote. The rules of procedure may, inter alia, set out a procedure for urgent votes and other practical arrangements for the operation of the Board of Regulators.

SECTION 2

WORKING GROUPS

Article 2g

Functioning of the working groups

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

3. The Board of Regulators shall appoint the **Chairs of the** working groups, **representing, where possible, different NRAs.**

2a. The working groups shall be open to the participation of experts from all the NRAs participating in the work of BEREC ~~including those of third countries and the Commission.~~

The working groups shall also be open to the participation of the staff of the BEREC Office, who shall contribute to the regulatory work of, and provide administrative support to, the working groups.

~~In the case of the working groups which are set up to carry out the tasks referred to in the second indent point (d)(ii) of Article 2(1) the experts from the Commission shall not participate. their members shall be qualified experts NRAs and the Director.~~

In working groups which are set up to carry out the tasks referred to in Article 2(1)(d)(viii, ix, x), 2(1)(e)(i, ii, viii, ix, ix.a), Article 2(2)(b)(ii, ii.a), Article 2(2)(d) and, where relevant, Article 2(1)(d)(iv), and Article 2(2)(b)(i) of this Regulation, the views of experts from other relevant competent authorities notified pursuant to Article 5(4) of the EECC Directive shall be taken into consideration.

The **Board of Regulators or the chairs of the working groups** may invite individual experts recognised as competent in the relevant field to participate in the working groups **meetings** if necessary on a case-by-case basis.

3. The Board of Regulators shall adopt rules of procedure laying down the practical arrangements for the operation of the working groups.

CHAPTER X

ORGANISATION OF THE BEREC OFFICE

SECTION 1A

ORGANISATIONAL STRUCTURE OF THE BEREC OFFICE

Article 2h

The BEREC Office shall comprise:

- a Management Board;
- a Director.

SECTION 1B

Management Board

Article 8b

Composition of the Management Board

1. The Management Board shall be composed of the **persons appointed** as members of the Board of Regulators and of one **high level** representative of the Commission, all with voting rights.

Each appointing NRA, as referred to in Article 2b(2), may appoint a person other than the member of the Board of Regulators as member of the Management Board. That person shall be the head of the NRA, a member of its collegiate body, or the replacement of either of them.

2. **Each member of the Management Board shall have an alternate. The alternate shall represent the member in his or her absence.**

The alternates of each member shall be the persons appointed as alternates of the members of the Board of Regulators. The representative of the Commission shall also have an alternate.

Each appointing NRA, as referred to in Article 2b(2), may appoint a person other than the alternate of the member of the Board of Regulators as the alternate of the member of the Management Board. That person shall be the head of the NRA, a member of its collegiate body, the their replacement or the staff of the NRA.

3. The members of the Management Board shall neither seek nor take instructions from any government, institution, person or body.

3a. A list of members of the Management Board, including their alternates, together with their declarations of interests, shall be made public.

Article 5

Functions of the Management Board

1. The Management Board shall exercise the following administrative functions:

(a) give the general orientations for BEREC Office's activities and adopt each year BEREC Office's single programming document by a majority of two-thirds of its members, taking into account the opinion of the Commission and in accordance with Article 15;

(b) adopt, by a majority of two-thirds of its members ~~entitled to vote~~, the annual budget of the BEREC Office and exercise other functions in respect of the BEREC Office's budget pursuant to Chapter III;

(c) adopt, **make public** and proceed with an assessment of the consolidated annual activity report on the BEREC Office's activities **referred to in Article 18a 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;**

(d) adopt the financial rules applicable to the BEREC Office 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;
- (h) adopt and regularly update the communication and dissemination plans referred to in Article **27a(2)**, based on an analysis of needs;
- (i) adopt its rules of procedure;
- (j) **without prejudice to the decision referred to in the first subparagraph of** paragraph 2, exercise, with respect to the staff of the BEREC Office, 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 Employment²³ ('the appointing authority powers');
- (k) adopt implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 **thereof**;
- (m) appoint the Director and where relevant extend his **or** her term of office or remove him **or** 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 **or** her duties. The BEREC Office may appoint **the same Accounting Officer as another Union body or institution. In particular, the BEREC Office and the Commission may agree that the Commission's accounting officer shall also act** as Accounting Officer of the BEREC Office;
- (p) take all decisions on the establishment of BEREC Office's internal structures and, where necessary, their modification, taking into consideration BEREC Office'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 Director and defining the conditions under which this delegation of powers can be suspended. The 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 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 Director.

Article 6

Chairperson and Deputy Chairpersons of the Management Board

1. The Chairperson and the Deputy **Chairpersons** of the Management Board shall be the persons appointed as the Chairperson and Deputy Chairperson(s) of the Board of Regulators. The same term of office **shall** apply.

By derogation from the first subparagraph, the Management Board may, by a majority of two thirds of its members, elect other members of the Management Board as Chairperson or Deputy Chairperson(s), from among its members representing Member States. Their term-of-office shall be the same as that of the Chair and Deputy Chairs of the Board of Regulators.

2. **One of the Deputy Chairpersons shall automatically assume the duties of the Chair if the latter is not in a position to perform those duties.**

3b. **The Chairperson of the Management Board shall report to the European Parliament and to the Council on the performance of the tasks of the BEREC Office when invited to do so.**

Article 7

Meetings of the Management Board

1. The Chairperson shall convene the meetings of the Management Board.

2. The Director of **the BEREC Office** shall take part in the deliberations, except those related to Article 22, without the right to vote.

3. The Management Board shall hold at least two ordinary meetings a year. In addition, the Chairperson shall convene extraordinary on his or her own initiative, at the request of the Commission, or of at least three 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. **The BEREK Office** shall provide the secretariat for the Management Board.

Article 8a

Voting rules of the Management Board

1. **The** Management Board shall take decisions by a **simple** majority of **its** members, **unless otherwise provided for in this Regulation.**
2. Each member shall have one vote. In the absence of a member ~~with the right to vote~~, his or her alternate shall be entitled to exercise his or her right to vote.
In the absence of a member, or his or her alternate, the voting rights may be delegated to another member.
3. The Chairperson shall take part in the voting in his or her capacity as a member unless his or her voting rights have been delegated.
5. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the urgent voting procedure and the circumstances in which a member may act on behalf of another member.

SECTION 4

DIRECTOR

Article 9

Responsibilities of the Director

1. The Director shall be **in charge of** the administrative management of **the BEREC Office**. The Director shall be accountable to the Management Board.

1a. The Director shall assist the Chair of the Board of Regulators and the Chairperson of the Management Board **in preparing the meetings of their respective bodies**.

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

3. The Director shall report to the European Parliament and to the Council on the performance of his or 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 Director shall be the legal representative of the BEREC Office.

5. The Director shall be responsible for the implementation of the BEREC Office's tasks and following the guidance provided by the Board of Regulators and the Management Board. In particular, the Director shall be responsible for:

(a) the day-to-day administration of the BEREC Office;

(b) implementing administrative decisions adopted by the Board of Regulators and the Management Board;

- (c) preparing the single programming document **referred to in Article 15** and submitting it to the Management Board;
- (ea) assisting the Board of Regulators **in** the preparation of BEREC's annual **activity** report **referred to in Article 14b**;
- (ca) assisting the Board of Regulators in the preparation of BEREC's annual work programme **referred to in Article 14a**;
- (d) implementing the single programming document, and reporting to the Management Board on its implementation;
- (e) preparing the **draft** consolidated annual report on **the** BEREC Office's activities **referred to in Article 18a** 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 at least once a year** 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 **the** BEREC Office and presenting it to the Management Board for approval;
- (i) preparing draft financial rules applicable to **the** BEREC Office;
- (j) preparing **the** BEREC Office's draft statement of estimates of revenue and expenditure and implementing its budget.

(k) co-authorise together with the Board of Regulators the conclusion of working arrangements with competent Union bodies, agencies, offices and advisory groups; with competent authorities of third countries and with international organisations in accordance with Article 26.

5b. The Director shall, under the supervision of the Management Board, take the necessary measures, in particular with regard to adopting internal administrative instructions and publishing notices, in order to ensure the functioning of the BEREC Office in accordance with this Regulation.

6. The Director shall be responsible for deciding whether it is necessary for the purpose of carrying out BEREC Office's tasks in an efficient and effective manner to locate one or more staff in one or more Member States. Such a decision requires the prior consent of the Commission, the Management Board and the Member States concerned. The decision shall specify the scope of the activities to be carried out in a manner that avoids unnecessary costs and duplication of administrative functions of BEREC Office. **Before any such decision is taken, its impact in terms of staff allocation and budget shall be set out in the multi-annual work programme referred to in Article 15(4).**

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 IIA

BEREC PROGRAMMING

Article 14a

Annual Work Programme of BEREC

- 1. The Board of Regulators shall adopt the outline of annual work programme by 31 January of the year preceding that to which the annual work programme relates. After consulting the European Parliament, the Council and the Commission on their priorities, as well as consulting other interested parties in accordance with Article 2(4a), the Board of Regulators shall adopt the final annual work programme by 31 December.**
- 2. The Board of Regulators shall transmit the annual work programme to the European Parliament, the Council and the Commission as soon as it is adopted.**

Article 14b

Annual Activity Report of BEREC

- 1. The Board of Regulators shall adopt the annual report on the activities of BEREC.**
- 2. The Board of Regulators shall transmit the annual activity report to the European Parliament, the Council, the Commission and the European Economic and Social Committee by 15 June each year.**

CHAPTER III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET OF THE BEREC OFFICE

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 Delegated Regulation (EU) No 1271/2013 and taking into account guidelines set by the Commission.

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 to 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.

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, as also referred to in Article 21a. The annual work programme shall be coherent with the **BEREC's outline of the annual work programme and the final work programme as referred to in Article 14a and with the** multi-annual work programme of the BEREC Office referred to in paragraph 4 of this Article. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year.

3. The Management Board shall, **when necessary**, amend the annual work programme **after adoption of BEREC's final annual work programme referred to in Article 14a and whenever** a new task is ~~given~~ **assigned** to BEREC or to the **BEREC Office**.

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 or multiannual programming of BEREC Office shall include the **implementation** of **BEREC's** 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 14a(2) and Article 26(3), 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 **the BEREC Office**'s revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.

The information contained in the draft estimate of the BEREC Office's revenue and expenditure and in the draft single programming document referred to in Article 15(1) shall be coherent.

3. The draft estimate of **the BEREC Office**'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 **the BEREC Office**.

7. The budgetary authority shall adopt **the BEREC Office**'s establishment plan.
8. **The BEREC Office**'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 **the BEREC Office**, the provisions of 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 **the BEREC Office** shall be prepared each financial year, corresponding to the calendar year and shall be shown in **the BEREC Office**'s budget.
2. **The BEREC Office**'s budget shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, **the BEREC Office**'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 **the BEREC Office**;

(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 **the BEREC Office**, as provided for by Article 26.

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

Article 18

Implementation of the budget

1. The ~~Executive~~ Director shall implement **the BEREC Office's** budget.
2. Each year the ~~Executive~~ Director shall send to the budgetary authority all information relevant to the findings of evaluation procedures.

Article 18a

Consolidated Annual Activity Report

1. **Each year, the Management Board shall adopt the consolidated annual activity report in accordance with Article 47 of Delegated Regulation (EU) No 1271/2013 and taking into account guidelines set by the Commission.**

Article 19

Presentation of accounts and discharge

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

2. ~~By 31 March of the following financial year,~~ **The BEREK Office** shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors **by 31 March of the following financial year.**
3. On receipt of the Court of Auditors' observations on **the BEREK Office's** provisional accounts, **the BEREK Office's** accounting officer shall draw up **the BEREK Office'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 **the BEREK Office'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 **by 1 July following each financial year.**
6. **The BEREK Office** 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 ~~to~~ the Court of Auditors a reply to its observations by 30 September **of the year following to the financial year in question.** 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 Regulation **(EU, Euratom) No 966/2012 of the European Parliament and of the Council²⁴.**
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.

²⁴ 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).

Article 20

Financial rules

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

CHAPTER IV

STAFF OF THE BEREC OFFICE

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 **the BEREC Office**.

Article 21a

Number of staff of the BEREC Office

In accordance with the principle of activity-based management of human resources, The BEREC Office shall have the staff required to carry out its duties.

The number of staff and corresponding financial resources shall be proposed in accordance with Article 15(2) and (4) and Article 16(2), taking account of point (a) of Article 2a and all other tasks assigned to the BEREC Office by this Regulation or other legal acts of the Union, as well as the need for compliance with the regulations applicable to all Union decentralized agencies.

Article 22

Appointment of the Director

1. The Director shall be engaged as a temporary agent of the BEREC Office in accordance with point (a) of Article 2 of the Conditions of Employment of Other Servants.
2. The Director shall be appointed by the Management Board, following an open and transparent selection procedure, on the basis of **merit**, management, administrative and budgetary skills **and the skills and experience relevant to electronic communications networks and services**.

The list of candidates may not be proposed solely by the chairperson or by a deputy chairperson. The rules of procedure of the Management Board shall set out in detail the arrangements governing a procedure to shortlist the number of eligible candidates and a voting procedure.

3. For the purpose of concluding the contract with the Director, the BEREC Office shall be represented by the Chairperson of the Management Board
4. Before appointment, the candidate selected by the Management Board ~~may~~ **shall** be invited to make a statement before the competent committee of the European Parliament **to make a statement** and to answer questions put by its members.
5. The term of office of the Director shall be five years. By the end of that period, the Chairperson of the Management Board shall undertake an assessment that takes into account an evaluation of the Director's performance and BEREC Office's tasks and challenges. **This assessment shall be forwarded to the European Parliament and the Council.**

6. The Management Board, **taking** into account the assessment referred to in paragraph 4, may extend the Director's term of office once, for no more than a further **five** years.

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

8. A 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.

8a. Where the Director's term of office is not extended, he or she , upon a decision of the Management Board, shall remain in office beyond the term of its office until the appointment of a successor.

9. The Director may be removed from office only upon a decision of the Management Board **acting on a proposal from any member.**

10. 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.

Article 23

Seconded national experts and other staff

1. The BEREC Office may make use of seconded national experts or other staff not employed by the BEREC Office. 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 the BEREC Office.

CHAPTER V

GENERAL PROVISIONS

Article 25

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to **the BEREC Office** 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 and the BEREC Office** 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 and the BEREC Office** 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~~ **The Board of Regulators, working groups and the Management Board** shall be open to the participation of regulatory authorities of third countries ~~competent~~ **with primary responsibility** in the field of electronic communications **of third countries** 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 **without the right to vote** in the work of BERC **and of the BERC Office**, including provisions relating to participation in the initiatives undertaken by BERC, financial contributions and staff **to the BERC Office**. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations.

3. As part of the **annual work programme referred to in Article 14a**, the ~~Management Board of Regulators~~ shall adopt a **BEREC's** 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 BERC is competent. The Commission, **BEREC and the BERC Office** shall conclude an appropriate working arrangement aiming at ensuring that **BEREC and the BERC Office operate** within **their** mandate and the existing institutional framework.

Article 27

Access to documents and data protection

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council²⁵ shall apply to documents held by BERC **and the BERC Office**.

1a. The **Board of Regulators and the Management Board** shall, **by six months after the date of the application of this Regulation**, adopt the detailed rules for applying Regulation (EC) No 1049/2001.

25 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).

2. The processing of personal data by BEREC **and the BEREC Office** shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council.

2a. The **Board of Regulators and the Management Board** shall, **by six months after** the date of **the application of this Regulation**, establish measures for the application of Regulation (EC) No 45/2001 by BEREC **and the BEREC Office**, including those concerning the appointment of a Data Protection Officer of **the BEREC Office**. Those measures shall be established after consultation of the European Data Protection Supervisor.

Article 27a

Transparency and communication

1. **BEREC and the BEREC Office shall carry out their activities with a high level of transparency. BEREC and the BEREC Office shall ensure that the public and any interested parties are given appropriate, objective, reliable and easily accessible information, in particular in relation to their tasks and the results of their work.**

2. BEREC, **supported by the BEREC Office**, may engage in communication activities on its own initiative within its field of competence **in accordance with relevant communication and dissemination plans adopted by the Board of Regulators**. The allocation of resources to **such support for** communication activities **within the BEREC Office's budget** shall not be detrimental to the effective exercise of BEREC's tasks referred to in Article 2 **and BEREC Office's tasks referred to in Article 2a**. **Other** communication activities **of the BEREC Office** shall be carried out in accordance with relevant communication and dissemination plans adopted by the **Management Board**.

Article 28

Confidentiality

1. Without prejudice to Article 27(1) and Article 30(2), **BEREC and the BEREC Office** 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 and other participants** of the meetings of Management Board, the **Board of Regulators and the working groups**, the ~~Executive Director, Members of the Board of Appeal,~~ seconded national experts **and** other staff not employed by **the BEREC Office** shall comply with the confidentiality requirements under Article 339 of the TFEU, even after their duties have ceased.
3. The **Board of Regulators and 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 and the BEREC Office shall adopt its own security rules equivalent to the Commission's security rules for protecting European Union Classified Information 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) 2015/443²⁶ and 2015/444²⁷. Alternatively, **BEREC or the BEREC Office** may adopt a decision to apply the Commission's rules on a *mutatis mutandis* basis.

²⁶ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

²⁷ 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).

Article 30

Exchange of information

/to be aligned with A. 20 and 29 of EECC/

1. Upon a duly justified request from **BEREC or the BEREC Office**, the Commission **and** the NRAs **represented in the Board of Regulators and other competent authorities** shall provide **BEREC or the BEREC Office** with all the necessary information, in a timely and accurate manner, to carry out **the tasks of BEREC and the BEREC Office**, 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 or the BEREC Office may also request ~~the NRAs~~ **such** 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 the NRA, **BEREC or the BEREC Office** shall provide in a timely and accurate manner any information that is necessary to enable the Commission ~~or~~ the NRA, **or other competent authority**, to carry out its tasks, based on the principle of sincere cooperation. **Where information is considered confidential by BEREC or the BEREC Office, the Commission, the NRA and any other competent authority concerned shall ensure such confidentiality in accordance with national and Union law including Regulation (EC) No 1049/2001. Business confidentiality shall not prevent the timely sharing of information.**

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

4. Where information is not made available by the NRAs in a timely fashion, **BEREC or the BEREC Office** may address a duly justified and reasoned request either to other NRAs and other competent authorities of the Member State concerned, or directly to the relevant undertakings providing electronic communications networks, services and associated facilities.

BEREC or the BEREC Office shall inform the relevant NRAs , **which have failed to provide the information**, of requests in accordance with this paragraph.

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

5. Member States shall ensure that NRAs and other competent authorities have the powers to require another responsible national authority or undertakings providing electronic communications networks and services, associated facilities, or associated services to submit all information necessary to carry out their tasks referred to in this Article. Other responsible national authorities or undertakings referred to in the first subparagraph shall provide such information promptly upon request and in conformity with the timescales and level of detail required.

Member States shall ensure that NRAs and other competent authorities are empowered to enforce such information requests by imposing penalties that are appropriate, effective, proportionate and dissuasive.

Article 30a

Information and communication system

1. The BEREC Office shall establish and manage an information and communications system with at least the following functions:

(b) a common information-exchange platform, providing BEREC, the Commission and NRAs with the necessary information for the consistent implementation of the Union framework for electronic communications;

(ba) a dedicated interface for BEREC, the BEREC Office, the Commission and NRAs for the requests for information and notification of the requests referred to in Article 30;

(c) a platform for an early identification of the needs for coordination between NRAs.

2. The Management Board shall adopt the technical and functional specifications and a plan to establish the information and communication system referred to in paragraph 1. It shall be developed without prejudice to the intellectual property rights and the required confidentiality level.

3. That information and communication system shall be operational by 18 months after the date of entry into force of this Regulation.

Article 31

Declaration of interest

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

Such declarations shall be compulsory when taking up responsibilities as member of the Management Board and/or the Board of Regulators, the Director, seconded national expert or other staff not employed by the BEREC Office. The declarations shall be accurate and complete, made in writing and updated whenever there is a risk of presence of any direct or indirect interest which might be considered prejudicial to their independence. The declarations of interests made by the members of the Board of Regulators, members of the Management Board and the Director shall be made public.

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

2. Members of the Management Board, the **Board of Regulators and the working groups, and other participants in the meetings of those bodies, the Director, seconded national experts and other staff not employed by the BEREC Office** 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 **Board of Regulators and 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 application of 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 Council²⁸, **by six months after the entry into force of this Regulation, the BEREC Office** 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 **the BEREC Office** using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot **inspections**, over all grant beneficiaries, contractors and subcontractors who have received Union funds from **the BEREC Office**.
3. OLAF may carry out investigations, including on-the-spot checks and inspections, **in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96²⁹** 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 **agreement or grant decision** or a contract funded by **the BEREC Office**, ~~in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96³⁰.~~

28 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).

29 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).

30 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).

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. **The BEREC Office'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 **the BEREC Office**.
3. In the case of non-contractual liability, **the BEREC Office** 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 **the BEREC Office** shall be governed by the provisions laid down in the Staff Regulations or **the Conditions of Employment of Other Servants** applicable to them.

Article 34

Administrative inquiries

The activities of BEREC **and the BEREC Office** shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the TFEU.

Article 35

Language arrangements

1. The provisions laid down in Regulation No 1/58³¹ shall apply to **the BEREC Office**.
2. The translation services required for the functioning of **the BEREC Office** shall be provided by the Translation Centre of the bodies of the European Union.

Article 36

Committee

³¹ Regulation No 1 determining the languages to be used by the European Economic Community (OJ L 17, 6.10.1958, p. 385).

CHAPTER VI

FINAL PROVISIONS

Article 37

Headquarters Agreement and operating conditions

1. The ~~necessary~~ arrangements concerning the accommodation to be provided for **the BEREC Office** 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 Director, members of the Management Board, **the BEREC Office** staff and members of their families shall be laid down in a Headquarters Agreement between **the BEREC Office** and the **host** Member State, concluded after obtaining the approval of the Management Board and no later than two years after the entry into force of this Regulation.
2. **The BEREC Office's** host Member State shall provide the necessary conditions to ensure the smooth and efficient functioning of **the BEREC Office**, including multilingual, European-oriented schooling and appropriate transport connections.

Article 38

Evaluation

1. **By** five years **after** the **date** 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 and the BEREC Office's** performance in relation to **their** objectives, mandate, tasks and location(s). The evaluation shall, in particular, address the possible need to modify the **structure or** mandate of **BEREC and the BEREC Office**, and the financial implications of any such modification.

2. Where the Commission considers that the continuation of BEREC **or the BEREC Office** 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

Transitional Provisions

1. **The BEREC Office** shall succeed the Office that was established by Regulation (EC) No 1211/2009 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 of **Other Servants** and in accordance with the budgetary constraints of **the BEREC Office**.

2. With effect from ... [the date of entry into force of this Regulation] 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 ~~Executive~~ Director with the functions provided for in this Regulation. The other conditions of the Administrative Manager's contract shall remain unchanged.

3. **The Management Board may decide to extend the term of office of the Director referred to in paragraph 2 of this Article for another term, appointing him or her as Director. Article 22(5) and (6) shall apply mutatis mutandis. His or her cumulative term of office shall not exceed ten years.**

4. The Board of Regulators and the Management Board referred to in Article 2b and 8b of this Regulation shall be composed of the members of the Board of Regulators and Management Committee referred to in Articles 4 and 7 of Regulation (EC) No 1211/2009, until new representatives are **appointed**.

4a. The Chairs and Vice-Chairs of the Board of Regulators and of the Management Board referred to in Articles 2d and 6 of this Regulation who have been appointed on the basis of Regulation (EC) No 1211/2009 shall remain in office for the remaining period of their one-year term. Subsequent appointments of the Chair and of the Vice-Chairs that are made by the Board of Regulators before the date of entry into force of this Regulation shall be respected.

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 39a

Amendments to Regulation (EU) 2015/2120

Regulation (EU) 2015/2120 is amended as follows:

(1) The title of Regulation (EU) 2015/2120 is replaced by the following:

Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

(2) In Article 1 the following paragraph is inserted:

'3. This Regulation also lays down common rules aimed at ensuring that consumers are not charged excessive prices for making number-based interpersonal communications originating in the Member State of the consumer's domestic provider and terminating at any fixed or mobile number in another Member State.'

(3) In Article 2, the following points are added:

'(3) "regulated intra-EU communications" means any number-based interpersonal communications service originating in the Member State of the consumer's domestic provider and terminating at any fixed or mobile number of the national numbering plan of another Member State, and which is charged wholly or partly based on actual consumption;

(4) The following Article is inserted:

Retail charges for regulated intra-EU communications

1. From 15 May 2019, any retail price (excluding VAT) charged to consumers for regulated intra-EU communications shall not exceed a maximum of 0.19€ per minute for calls and 0.06€ per SMS message.

2. Notwithstanding paragraph 1, providers of regulated intra-EU communications may offer in addition, and consumers may deliberately choose, a tariff for international communications including regulated intra-EU communications other than the one set in accordance with paragraph 1 of this Article, by virtue of which consumers benefit from a different tariff for regulated intra-EU communications than they would have been accorded in the absence of such a choice. The provider of regulated intra-EU communications shall inform those consumers of the nature of the advantages which would thereby be lost.

3. Where a regulated intra-EU communications tariff qualifying pursuant to paragraph 2 exceeds the limits set in paragraph 1, consumers of such a tariff who have not confirmed or expressed, within a period of 2 months from 15 May 2019, a choice for any tariff set out pursuant to paragraph 2, shall automatically be provided with the tariffs foreseen in paragraph 1.

4. Consumers may switch from or back to a tariff set in accordance with paragraph 1 within one working day of receipt of the request, free of charge and shall ensure that such switch does not entail conditions or restrictions pertaining to elements of the subscriptions other than intra-EU communications.

4a. Where the maximum prices in accordance with paragraph 1 are denominated in currencies other than the euro, the initial limits shall be determined in those currencies by applying the average of the reference exchange rates published on 15 January, 15 February and 15 March 2019 by the European Central Bank in the Official Journal of the European Union. The limits in currencies other than the euro shall be revised annually as from 2020.

The annually revised limits in those currencies shall apply from 15 May using the average of the reference exchange rates published on 15 January, 15 February and 15 March of the same year.

5. National regulatory authorities shall monitor the market and price developments for regulated intra-EU communications and report thereupon to the Commission. They may grant, upon request, a derogation from paragraph 1 solely to the extent necessary and for a renewable period of one year, to a provider of regulated intra-EU communications, where that provider establishes that due to specific and exceptional circumstances distinguishing it from most other Union providers, the application of paragraph 1 would have significant impact on its capacity to sustain its existing prices for domestic communications. The assessment of the sustainability of the domestic charging model shall be based on relevant objective factors specific to the provider of intra-EU communications, as well as the level of domestic prices and revenues. Where the applicant provider has discharged the applicable evidentiary burden, the national regulatory authority shall determine the maximum price level in excess of one or both of the maximum prices set out in paragraph 1 which would be indispensable in order to ensure the sustainability of the provider's domestic charging model. BEREC shall publish guidelines on the criteria to be taken into account by national regulatory authorities in their assessment.

6. This Article shall expire five years after its entry into force.

(5) In Article 6 the following Paragraph is inserted:

2. Member States shall lay down the rules on penalties applicable to infringements of Article 5a and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify the Commission of the rules and measures laid down to ensure the implementation of Article 5a by 15 May 2019 and shall notify the Commission without delay of any subsequent amendment affecting them.

Article 40

Repeal

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~~ **and shall be read in accordance with the correlation table in Annex [x].**

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 **the date of entry into force**.

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
