The European Electronic Communications Code and BEREC

In order to stimulate infrastructure investment and bring the EU telecom rules up to date with technological developments and changing consumer demands and habits, the European Commission put forward two legislative proposals in 2016: a directive establishing the European Electronic Communications Code and a regulation on the Body of European Regulators of Electronic Communications (BEREC). The European Parliament is expected to vote during its November I plenary session on the texts agreed with the Council in trilogue negotiations.

European Commission proposals
On 14 September 2016, the Commission adopted two proposals, as part of its telecoms package.

**European Electronic Communications Code**

The new Electronic Communications Code proposal would establish new common rules and objectives concerning the telecom industry in the EU. The new code seeks to introduce a lighter regulatory regime particularly for co-investment of rival operators in very-high-capacity networks, and easier participation of smaller players and first movers in investment projects. Furthermore, it aims to improve the coordination and use of radio frequencies across the EU through long licence durations, coordinated timing of assignments and stricter requirements on effective spectrum use. The proposal also introduces changes to governance, the universal service regime and emergency communication rules. Finally, in order to strengthen the consumer protection, the proposed code focuses on the gaps not addressed by EU general consumer protection rules.

**Body of European Regulators of Electronic Communications (BEREC)**

The second proposal would update the regulation on BEREC, the EU-level regulatory body. The mission of BEREC is to assist the Commission and the national regulatory authorities (NRAs) in the implementation of the EU telecoms rules. BEREC is currently composed of two bodies: the BEREC Office in Riga (Latvia), which provides support; and the Board of Regulators, which is made up of the chief executives of the NRAs. The proposal aims at transforming BEREC into a fully fledged agency, and to ensure that a single management board is capable of taking regulatory decisions as well as the corresponding administrative and financial decisions. The proposal would entrust BEREC with new tasks, including some legally binding powers to make sure that the regulatory framework is applied consistently, such as providing guidelines for NRAs on geographical surveys, but also developing common approaches to deliver peer-reviewed opinions on draft national measures on radio spectrum assignments or on cross-border disputes. The proposal also amends the governance of BEREC. For the time being, the Commission can only attend the Board of Regulators as an observer, and has one representative on the management committee of the BEREC Office (with mainly administrative support tasks). According to the proposal, the agency's management board would consist of one representative from each Member State, and two from the European Commission. Each management board member would have voting rights.

European Parliament position

On 2 October 2017, European Parliament’s Committee on Industry, Research and Energy (ITRE) adopted its two reports on the proposals (European Electronic Communications Code and BEREC). Following several trilogue meetings, interinstitutional negotiations were concluded with a provisional agreement on the texts on 6 June 2018. The ITRE committee endorsed the provisional agreements on 10 July 2018.

On the European Electronic Communications Code, the agreed co-investment rules aim to boost the deployment of a new very-high-capacity networks, by encouraging risk-sharing and agreements between operators. The use of existing civil engineering infrastructure for increased internet availability would also
be promoted. Furthermore, the new code would make it easier for operators without their own network to offer services, and make the regulatory regime for wholesale-only operators lighter. Inclusion of services provided over the internet in the scope of the directive would ensure uniform protection of end-users regardless of the type of communication services they use. However, communications services which are number-independent, will be subject to lighter regulation. Telecoms providers would need to use encryption to better protect users against security incidents. All citizens should have access to adequate broadband, enabling them to use services such as eGovernment and video calls. To help consumers, the code would improve monitoring of the use of time or volume billed, ensure equal access for disabled consumers, facilitate the comparison of offers, switching operators (including transfer of remaining credits and easily keeping the old number) and give a right to compensation in case the switch takes too long. Furthermore, Parliament strongly supported a ‘reverse 112 system’, based on improved geo-location localisation tools, which would enable national authorities to send alerts to citizens in case of imminent disasters and emergencies. To facilitate the deployment of 5G across Europe, the code would allow 20-year spectrum-use licences, and the making available of new frequency bands in a timely and coordinated manner. It would also facilitate regulatory intervention, including by the Body of European Regulators of Electronic Communications (BEREC), which would ensure consistent implementation of new rules particularly those on symmetric regulation and co-investments.

On BEREC, while the Commission proposed to convert BEREC and its Office into a single EU agency, the ITRE committee suggested keeping the dual structure of BEREC and BEREC Office, with appropriate tasks and organisational set-up for each. The Agency for Support for European Regulators for Electronic Communications (BEREC Office) would be a body of the EU and have legal personality. It would have sole responsibility for the tasks assigned to, and the powers conferred on, it. The BEREC Office would be independent as regards operational and technical matters, and should enjoy legal, administrative and financial autonomy. It would be represented by the chair of the Board of Regulators. Regarding governance issues, BEREC would consist of a Board of Regulators, expert working groups, and a Board of Appeal. As its primary objective, BEREC would ensure a consistent regulatory approach to the implementation of the regulatory framework for electronic communications.

The provisional agreement after trilogue negotiations is based, inter alia, on the following compromise: the BEREC Office will have legal personality but not BEREC itself, which will remain a body of NRAs. Financing and staffing have been made available for the office to be able to fulfil the new tasks given to it under the new European Electronic Communications Code – the co-legislators decided to include a recital committing to supporting it within the powers and the scope of the common framework for the decentralised agencies. Parliament agreed with Council proposals on moving from simple majority to two-thirds majority for key decisions of the Board of Regulators and of the Management board.

In the framework of the negotiations on the Code and BEREC, legislators agreed that from May 2019 the fees for intra-EU calls would be capped at 19 cents for phone calls and 6 cents for text messages. Parliament is due to vote on the final texts during the November I plenary session.