

CONTENTS

Background

- Introduction
- Context
- Existing situation
- Parliament's starting position
- Council & European Council starting position

Proposal

- Preparation of the proposal
- The changes the proposal would bring

Views

- Advisory committees
- National parliaments
- Stakeholders' views

Legislative process

References

- EP supporting analysis
- Other sources

6 July 2018
Third edition
The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.

Body of European Regulators for Electronic Communications (BEREC)

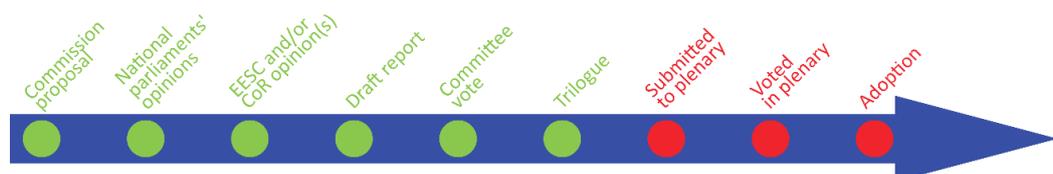
On 14 September 2016, the European Commission proposed an updated regulation on the Body of European Regulators of Electronic Communications (BEREC). The proposal aims at transforming BEREC into a fully fledged agency. The Commission proposes allocating new tasks to BEREC and granting it legally binding powers. New tasks include providing guidelines for national regulatory authorities (NRAs) on geographical surveys, developing common approaches to meet end-user interests, and also developing common approaches to deliver peer-reviewed opinions on draft national measures (e.g. radio spectrum assignments) and on cross-border disputes.

Parliament and Council found a compromise in trilogues. The BEREC Office will have legal personality, but not BEREC itself, which remains a body of NRAs. Parliament and Council also agreed on giving new tasks to BEREC and on moving from simple majority to two-thirds majority for key decisions of the Board of Regulators and of the Management Board. The Council endorsed the compromise on 29 June 2018, Parliament's ITRE committee is due to vote on it on 10 July 2018.

Proposal for a regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications

COM(2016) 591, 14.9.2016, 2016/0286(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

Committee responsible:	Industry, Research, and Energy (ITRE)
Rapporteur:	Evžen Tošenovský (ECR, Czech Republic)
Shadow rapporteurs:	Krišjānis Kariņš (EPP, Latvia); Constanze Krehl (S&D, Germany) Kaja Kallas (ALDE, Estonia); Michel Reimon (Greens/EFA, Austria); Rolandas Paksas (EFDD, Lithuania); Barbara Kappel (ENF, Austria)
Next steps expected:	Vote on compromise text in committee First-reading vote in plenary



[Introduction](#)[Context](#)[Existing situation](#)[Parliament's starting position](#)[Council & European Council starting position](#)

Introduction

On 14 September 2016, the European Commission adopted a set of initiatives and legislative proposals as announced in the [digital single market \(DSM\) strategy](#) for Europe (adopted in May 2015). The overhaul of the regulatory framework for electronic communications (also called the telecoms or connectivity package), aims to ensure 'a more effective regulatory institutional framework in order to make the telecoms rules fit for purpose as part of the creation of the right conditions for the digital single market.'¹ These include, amongst others, the deployment of very high capacity connectivity networks and more coordinated management of the radio spectrum for wireless networks. In addition, the Commission aims at creating a level playing field for advanced digital networks and innovative services.

In its 2016 resolution, [Towards a digital single market act](#), the European Parliament (EP) called on the Commission to further integrate the DSM digital single market by ensuring that a more efficient institutional framework is in place.

According to the Commission, this can be done, inter alia, by updating the Regulation on the Body of European Regulators of Electronic Communications (BEREC). The Commission considers that the changing market and technological environment make it necessary to strengthen the role, capacity and decision-making powers of BEREC. Furthermore, BEREC's tasks need to encompass all areas which have an effect on the internal market for electronic communications (e.g. e-market shaping aspects of radio spectrum assignment procedures or general authorisation). Lastly, BEREC needs to mirror the tasks assigned to the national regulatory authorities (NRAs) as these will soon be harmonised.

The Commission argues that the present set-up of BEREC creates unnecessary administrative burden, for example 'duplication of programming and reporting processes for BEREC and the BEREC Office, conferral of the appointing authority powers to the vice-chair of the management committee without possibility of delegating to the administrative manager and further sub-delegating.'² Furthermore, BEREC has apparently only been partially able to build up regulatory capacity to achieve some its main objectives.

For this purpose, the administrative capacity of BEREC needs to increase. Its current architecture is made up of a body with legal personality (BEREC Office), which is (in terms of staffing) the smallest agency-like entity in the EU, plus the BEREC board of regulators (see below for more).

BEREC delivers opinions and recommendations in the area of its competence to the Commission and NRAs, which are obliged to take 'utmost account' of BEREC's positions.

1 European Commission, [Proposal for a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications](#), COM(2016) 591 final, 2016/0286(COD), 14.9.2016, p. 2.

2 Ibid., p. 47.



Introduction

Context

Existing situation

Parliament's starting position

Council & European Council starting position

Context

The initial Commission [proposal](#) for a regulation establishing a European electronic communications market authority in order to improve consistency of the EU telecoms rules and to contribute to the development of the Single Market dates back to 2007. In 2009, [Regulation \(EC\) No 1211/2009](#) of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications (BEREC) and the BEREC Office was adopted. BEREC became fully operational in 2010. BEREC replaced the European regulators group (ERG) for electronic communications networks and services, which was established as an advisory group to the Commission in 2002.

The Commission's proposal to update BEREC is part of the review of the regulatory framework for electronic communications, which contributes to one of the pillars of the DSM strategy launched in May 2015. The strategy and new legislation aim at promoting competition, the internal market, end-users' interests and widespread access to very high capacity data connectivity.

Existing situation

The [mission](#) of BEREC 'is to assist the European Commission and the NRAs in the implementation of the EU telecoms rules, to give advice on request and on its own initiative to the European institutions and to complement at European level the regulatory tasks performed at national level by the regulatory authorities'.

BEREC's main tasks are, among others:

- > to disseminate regulatory best practices, assisting the NRAs in the implementation of the EU telecoms rules;
- > to advise the EU institutions on telecoms and assist the institutions and the NRAs in their relations with third parties;
- > to deliver opinions on draft decisions and recommendations on harmonisation;
- > to ensure the development of common rules and requirements for providers of cross-border business services;
- > give opinions on cross-border disputes; and
- > monitor and report on the electronic communications sector.

BEREC is composed of two bodies: (i) the BEREC Office in Riga (Latvia) which provides assistance and support; and (ii) the board of regulators which is made up of the chief executives of the NRAs.

The BEREC Office is an EU body with a legal identity, providing several functions and support for programme management, executive support and administrative and finance support. NRAs are an important resource in the discharge of BEREC's role.



Introduction

Context

Existing situation

Parliament's starting position

Council & European Council starting position

The board of regulators [appoints](#) its chair and vice-chairs from among its members. The term of office of the chair and of the vice-Chairs is one year. Before serving the one-year term as chair, the chair has firstly to serve one year as a vice-chair. To help ensure the continuity of BERECs' work, the chair also serves as a vice-chair for the year following their term as chair. According to BEREC's rules of procedure, the board of regulators shall act by a two-thirds majority of all its members (unless otherwise provided in the Regulation).

According to the Commission, BEREC's current institutional set-up is 'often opting for greater flexibility or the lowest common denominator instead of focusing on a harmonised approach for the internal market'.³ In addition, the Commission maintains that there is insufficient consistency across Member States regarding the implementation of the existing framework.

Parliament's starting position

In its resolution of 10 December 2013, the EP issued its [opinion](#) on the Commission's evaluation report regarding BEREC and the Office (2013/2053(INI)). The EP, inter alia, recommended that BEREC's role, in particular its relationship with NRAs, should be better defined. It also recommended strengthening BEREC's responsibilities to facilitate the definition of common positions with a view to enhancing the internal market approach, including by evaluating the efficiency of current cooperation with NRAs and the Commission. Furthermore, the EP suggested providing 'more room' to BEREC to produce its own analysis and studies, enabling the agency's decision-making process to be more top-down and independent.

In its [legislative resolution](#) of 3 April 2014 on the proposal for a regulation of the European Parliament and of the Council laying down measures concerning the the European single market for electronic communications and to achieve a connected continent, the EP suggested, amongst other things, that the NRAs take into account the BEREC guidelines when considering the proportionality of imposing on providers of electronic communications services an obligation to publish a wholesale reference offer.⁴

In its resolution [Towards a digital single market act](#), adopted on 19 January 2016, the EP called on the Commission to further integrate the digital single market by ensuring that a more efficient institutional framework is in place. In this context, the EP asked in point 61 of its resolution for the role, capacity and decisions of BEREC to be strengthened in order to achieve consistent application of the regulatory framework and to ensure oversight in the development of the single market and resolve cross-border disputes. In this context, the EP stressed the need to improve the institutional capacities (financial and human resources) and the governance structure of BEREC.

Council & European Council starting position

In its [conclusions](#) of 28 June 2016, the European Council adopted an agenda calling for swift and determined progress to bring the full benefits of the DSM to stakeholders. The European Council considered this could be achieved through, amongst other things, pursuing 'efforts towards better regulation' and creating 'the

³ Ibid., p. 47.

⁴ On wholesale reference offers, see chapter 3 of the BEREC [Report on the wholesale roaming market](#).



Introduction

Context

Existing situation

Parliament's starting position

Council & European Council starting position

right conditions for stimulating new business opportunities'. In this context, the European Council says that 'the review of the telecoms regulatory framework should aim to incentivise major network investments while promoting effective competition and consumer rights.'

In December 2016, the Council held a policy debate on the revision of the EU telecoms regulatory framework. Most Member States agreed that the existing framework, including the radio spectrum policy group, could easily support the required cooperation for spectrum management. According to the Council, there was no need to create additional layers of cooperation or turn BEREC into a European agency, which would just add to the administrative burden. On 22 May 2017, the Maltese Presidency published a Council progress report on the European Electronic Communications Code (Recast) and BEREC. At the 9 June Council meeting on Transport, Telecommunications and Energy, ministers discussed the desired extent of EU-level coordination. The Maltese Presidency is of the view that its compromise proposals provide a strong foundation for finalising the Council position on the BEREC regulation under the upcoming Estonian Presidency.



Preparation of the proposal

The changes the proposal would bring

Proposal

Preparation of the proposal

In accordance with the founding [Regulation \(EC\) No 1211/2009](#), the Commission had an obligation to publish reports on the operation and functionality of BEREC and the BEREC Office within three years of the effective start of operations.

The [evaluation report](#) done for the Commission in 2012 was mainly focused on determining the efficiency of BEREC in contributing to the development of the internal market for electronic communications. The scope of the evaluation was to provide an assessment of BEREC's and the BEREC Office's working practices, organisation and remit. The evaluation study was also transmitted to the European Parliament and Council; with the European Parliament adopting a [resolution](#) on it.

The Commission has published several external studies on the DSM which, amongst other things, also assessed the structure and performance of BEREC.⁵

The Commission carried out an ex-post evaluation ('REFIT'), which assessed the effectiveness, efficiency, relevance, coherence and EU added value of the BEREC Regulation. The [staff working document](#) accompanying the proposal concluded that the regulatory framework for electronic communications has broadly achieved its general objective (promoting competition, developing the internal market and cultivating end-user demands).

According to the Commission, however, it appears necessary to review the BEREC Regulation in order to address the growing need for increased connectivity of the digital single market, and to streamline provisions taking into account market and technological developments.⁶

The changes the proposal would bring

The Commission proposes to revoke and replace the existing BEREC [Regulation](#) from 2009 with the proposed updated regulation.

The new [proposal](#) for a [BEREC regulation](#) aims to contribute to: (1) the better functioning of the internal market for electronic communications networks; (2) the better functioning of cross-border electronic communications services; and (3) its effectively carrying out the (new) tasks.⁷

The new proposal will transform BEREC into a fully fledged agency and make changes to its governance structure, with the aim of making BEREC more efficient and effective.

⁵ The external studies are summarised in the Commission's [Impact Assessment](#) which accompanies the BEREC Regulation proposal (SWD(2016) 303 final).

⁶ European Commission, [Proposal for a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications](#), COM(2016) 591 final, 2016/0286(COD), 14.9.2016, p. 6.

⁷ *Ibid.*, p. 45.



The governance structure will be simplified by replacing the two current managing structures (the board of regulators for regulatory decisions, and the management committee for administrative and financial decisions) with a single management board, presided by the chair of the management board. According to the Commission, this will reduce the administrative burden by putting an end to the current duplication of agendas, working programmes, documents, etc.

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). For the future, the agency's management board would consist of one representative from each Member State, and two from the Commission. Each management board member would have voting rights.

In addition, an Executive Director (selected from a shortlist prepared by the Commission) will be appointed to head the agency. They will be the legal representative of BEREC and responsible for the performance of the tasks assigned to the agency. In particular, the Executive Director will have delegated 'appointing authority powers'. This aims to would make management of the staff of the agency more efficient. Under the current BEREC Regulation, these powers are given to the vice-chair, whose term of office is one year, and they cannot be delegated/sub-delegated.

The chair of the management board (to be elected for four years, renewable, whereas under the current regulation, their term is one year) and the Executive Director (elected for five years, renewable; under the current regulation: three years, renewable) will have longer terms of office to ensure continuity and stability.⁸ One potential problem regarding the chair's term could arise from the the length of national NRA terms and their inability to commit to chairing BEREC for four years.

Another aspect is that the expert working groups would be chaired by permanent members of staff rather than NRA experts, which might erode the link between BEREC outputs and national markets.

Furthermore, a broader mandate and additional authority will be given to extend BEREC's remit and tasks. The new mandate includes tasks such as:⁹

- > developing an economic model in order to assist the Commission in determining the maximum [termination rates](#) in the Union;
- > issuing opinions on the resolution of cross-border disputes;
- > issuing opinions on draft national measures related to the internal market procedures for market regulation;
- > issuing opinions on draft national measures related to the internal market procedures for radio spectrum peer review;
- > issuing guidelines on the implementation of NRAs' obligations as regards geographical surveys;

8 Ibid., p. 12.

9 Ibid., pp. 24-25.



Preparation of the proposal

The changes the proposal would bring

- > issuing guidelines on common approaches to the identification of the network termination point¹⁰ in different network topologies;
- > issuing guidelines on common approaches to meet transnational end-user demand;
- > issuing guidelines on the implementation of NRAs' obligations as regards open internet access;
- > issuing guidelines on wholesale roaming access; and
- > setting up a register of the extraterritorial use of numbers and cross-border arrangements and on providers of electronic communications networks and services.

Given the new regulatory functions, the Commission proposes to increase the current BEREC staff. Currently some [27 people](#) work at the BEREC Office, and the Commission envisages that rising to an overall staff figure of 60 full-time equivalents (FTE) at the end of the implementation period – 2019-2022.¹¹ The increase in staff and tasks would result in total costs of some €215 million per year, €13 million more than currently (see point 4.4.3.2 of the Commission's impact assessment [report](#)).

BEREC is expected to play an important role in the coming years in furthering the DSM. The new regulation should increase the calls made upon BEREC to contribute to shaping technical and policy orientations.

BEREC's work will remain dependent on the expertise of NRAs' representatives, as they will continue to work on the implementation of regulation at national level. In addition, the expertise of the NRAs will remain key given the technical character of the decisions BEREC will be called on to make, as well as of the current context of the agencies' resource constraints.¹²

The Commission and BEREC have only non-binding powers with regard to market remedies. To improve the effectiveness of BEREC, a 'double-lock' system is proposed. This would mean that, if BEREC and the Commission agree on their position regarding the draft remedies proposed by a NRA, the Commission could require the NRA to amend or withdraw the draft measure and, if necessary, to re-notify the market analysis.¹³

10 The network termination point (NTP) is defined in Article 2 (da) of the 'Framework Directive' ([Directive 2002/21/EC](#) of 7 March 2002 on a common regulatory framework for electronic communications networks and services), meaning the physical point at which a subscriber is provided with access to a public communications network. Cf. BEREC [Guidelines](#) on the Implementation by National Regulators of European Net Neutrality Rules, p. 8.

11 European Commission, [Proposal for a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications](#), COM(2016) 591 final, 2016/0286(COD), 14.9.2016, p. 13.

12 *Ibid.*, p. 47 (see chapter 1.5.2).

13 *Ibid.*, p. 11.

[Advisory committees](#)[National parliaments](#)[Stakeholders' views](#)

Views

Advisory committees

Consultation of the European Economic and Social Committee (EESC) as well as the Committee of the Regions (CoR) is mandatory on this proposal.

On 20 September 2016, the EESC [appointed](#) Jorge Pegado Liz (various interests – group III, Portugal) as rapporteur. Its opinion was [adopted](#) in plenary on 25 January 2017. The EESC, broadly speaking, supports the Commission's proposal to increase the responsibilities and coordinating powers of BEREC, but regrets that the agency will not become a genuine regulatory authority.

National parliaments

The [deadline](#) for the submission of 'reasoned opinions' on the grounds of subsidiarity was 12 December 2016. A reasoned opinion was sent by the French Parliament.

Stakeholders' views¹⁴

A 12-week open [public consultation](#) was launched by the European Commission on 11 September 2015, accompanied by a public hearing on 11 November 2015. The consultation aimed to get input for the evaluation process in order to assess the current rules and to seek external views on the framework. It also covered the review of specific parts of the framework, such as network access regulation, radio spectrum management and wireless connectivity, sector-specific regulation of communications services, universal service rules, and institutional set-up and governance.¹⁵

The consultation received a total of 244 replies from stakeholders (consumers, providers of electronic communications networks and services, national and EU operator associations, NGOs, broadcasters, technology providers, etc.) in all Member States and from outside the EU. BEREC also contributed to the review process and published its [opinion](#) in December 2015.

There were mixed views in the public consultation on the telecoms review as regards the effectiveness of BEREC's role in supporting consistent outcomes. While the role of NRAs is widely acknowledged, almost half of the respondents stressed that the institutional set-up at EU and BEREC level should be adjusted. Suggestions included, inter alia, a clearer division of powers between the different institutions, making sure that institutions are politically and legally accountable for their decisions, and a high level of transparency in decision-making (greater stakeholder involvement).¹⁶

¹⁴ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

¹⁵ Ibid., p. 8.

¹⁶ Ibid., pp. 8-9.



Legislative process

The legislative proposal was published on 14 September 2016. Parliament has referred the dossier to the ITRE committee, which appointed Evžen Tošenovský (ECR, Czech Republic) as rapporteur. The Culture and Education (CULT) Committee provided an opinion to the report, with Silvia Costa (S&D, Italy) as rapporteur. Ivan Štefanec (EPP, Slovakia) drafted the opinion on behalf of the Internal Market and Consumer Protection (IMCO) Committee and Morten Helveg Petersen (ALDE, Denmark) on behalf of the Civil Liberties, Justice and Home Affairs (LIBE) Committee.

The draft report was presented in ITRE on 27 February 2017. According to the report, the status quo is functioning well. Therefore, the rapporteur suggested not to change the status of BEREC to a fully fledged agency. The deadline for tabling amendments in the ITRE committee was 4 April 2017 with the amendments discussed in committee on 22 June. The committee adopted its [report](#) on 2 October 2017. In line with Rule 69c, the decision to enter into interinstitutional negotiations with the Council was confirmed by plenary on 25 October 2017.

The Council adopted its general approach on 4 December 2017. The first trilogue meeting was held on 6 December 2017. A final meeting took place on 5 June 2018, with Parliament and Council reaching [agreement](#). This is based, inter alia, on a compromise regarding legal and governance questions: the BEREC office will have legal personality, but not BEREC itself, which will remain a body of national regulators. Financing and staffing have also been addressed for the BEREC office, so that it will be able to fulfil the new tasks given to it under the new European Electronic Communications Code. In this context, the two co-legislators decided to include a recital committing to support it within the powers and scope of the common framework for decentralised agencies.

Parliament also agreed with the Council proposal on moving from simple majority to two-thirds majority for key decisions of the Board of Regulators and of the Management Board. In detail, it reads as follows:

- > For the Management Board: The default rule is a simple majority. However, a 2/3 majority applies for the following: the adoption of the single programming document; the adoption of the budget; the election of the Chair and Vice-Chairs; and the appointment of the Director.
- > For the Board of Regulators: The default rule is a simple majority. However, a 2/3 majority applies for the following: the adoption of the rules of procedure; the election of the Chair and Vice-Chairs; the adoption of decisions relating to Arts. 12, 22, 32, 33, 59, 66, 67, 73, and 97. When a decision under Art. 33(5) applies to Art. 74, it should be taken by a 2/3 majority, unless there is a simple majority in favour of taking a decision by a simple majority (this should be done on a case-by-case basis).

Regarding the participation of other competent authorities in the working groups, in principle, the Council procedure is accepted.

The Council (at Coreper level) approved the BEREC compromise text, together with the European Electronic Communications Code on 29 June 2018, which means that the two files should be ready for a vote in the ITRE committee on 10 July 2018.



The European Parliament is expected to vote in plenary at first reading on the proposal during one of its autumn 2018 sessions.



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EP supporting analysis

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