

P6_TA(2008)0450

European Electronic Communications Market Authority *I**

European Parliament legislative resolution of 24 September 2008 on the proposal for a regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority (COM(2007)0699 – C6-0428/2007 – 2007/0249(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0699),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0428/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Budgets, the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0316/2008),
1. Approves the Commission proposal as amended;
 2. Notes that the Commission has communicated its intention to finance the new Body of European Regulators in Telecom (BERT) within subheading 1a of the current Multiannual Financial Framework 2007 - 2013 partly through redeployment and partly by an increase for the period 2009-2013; points out, however, that the budgetary authority has not yet received any information as to the details of this exercise so that it remains unclear, to date, which programmes or priorities are affected and what consequences arise from this throughout the financial period and whether a sufficient margin will remain in subheading 1a;
 3. Points out that the proposed BERT will also fulfil administrative tasks and assist the Commission; is consequently of the opinion that all possibilities of the Multiannual Financial Framework 2007 - 2013, including Heading 5 where sufficient margins still seem to be available, should be explored to finance the body;
 4. Underlines that the provisions of Point 47 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management¹ (IIA) will apply for the setting-up of BERT; stresses that,

¹ OJ C 139, 14.6.2006, p. 1.

should the legislative authority decide in favour of the setting-up of such an agency, Parliament will enter into negotiations with the other arm of the budgetary authority with a view to coming to a timely agreement on the financing of this agency in line with the relevant provisions of the IIA;

5. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
6. Instructs its President to forward its position to the Council and Commission.

P6_TC1-COD(2007)0249

Position of the European Parliament adopted at first reading on 24 September 2008 with a view to the adoption of Regulation (EC) No .../2008 of the European Parliament and of the Council establishing the *Body of European Regulators in Telecom (BERT)*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ||,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)⁴, Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)⁵, Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)⁶, Directive 2002/22/EC of the European Parliament and of the Council of

¹ OJ C 224, 30.8.2008, p.50.

² OJ C 257, 9.10.2008, p. 51.

³ *Position of the European Parliament of 24 September 2008.*

⁴ OJ L 108, 24.4.2002, p. 33.

⁵ OJ L 108, 24.4.2002, p. 7.

⁶ OJ L 108, 24.4.2002, p. 21.

7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)¹ and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)² (hereinafter together referred to as "the Framework Directive and the Specific Directives"), *as well as the resolution of the European Parliament of 21 June 2007 on consumer confidence in the digital environment*³, aim to create an internal market for electronic communications within the Community while ensuring a high level of investment, innovation and consumer protection through enhanced competition.

- (2) The 2002 regulatory framework for electronic communications establishes a system of regulation undertaken by national regulatory authorities ("**NRAs**") and provides for those authorities to co-operate with each other and with the Commission in order to ensure the development of consistent regulatory practice and the consistent application across the Community of the regulatory framework *but leaving room for regulatory competition between the NRAs in light of specific national market conditions*.

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- (3) **NRAs** exercise considerable discretion in implementing the regulatory framework reflecting their expert knowledge of local market conditions, but this discretion has to be reconciled with the need to ensure the development of coherent regulatory practice and the consistent application of the regulatory framework in order to contribute effectively to the development and completion of the internal market.
- (4) *The Body of European Regulators in Telecom ("**BERT**") should be established to accomplish co-ordination between NRAs of Members States without harmonising existing regulatory approaches to a degree which undermines regulatory competition.*
- (5) In view of the need to apply the relevant rules consistently in all Member States, the Commission established the European Regulators Group (ERG) by Commission Decision 2002/627/EC⁴ to advise and assist the Commission in consolidating the internal market and, more generally, to provide an interface between **NRAs** and the Commission.
- (6) The ERG has made a positive contribution by *facilitating* moves towards consistent regulatory practice, in *so far* as this has proved possible. By its nature, however, the ERG is *an informal* grouping relying essentially on voluntary cooperation whose existing institutional status does not reflect the important responsibilities exercised by the **NRAs** in implementing the regulatory framework.
- (7) A more substantial institutional basis *is necessary* for the establishment of a body *with a clearly defined set of competencies*, to bring together the expertise and experience of the

¹ OJ L 108, 24.4.2002, p. 51.

² OJ L 201, 31.7.2002, p. 37. ||

³ **OJ C 146 E, 12.6.2008, p. 370.**

⁴ OJ L 200, 30.7.2002, p. 38.

NRAs, taking account of the need for this body to exercise ■ authority in the eyes of its members and *for the sector to be regulated through the quality of its output.*

- (8) The need to enhance the mechanisms for ensuring consistent regulatory practice in order to complete the internal market in electronic communications and services has been underlined by the findings of the Commission's reports *of 20 February 2006 and of 29 March 2007* on the implementation of the 2002 regulatory framework¹ and by the public consultation on the Communication of the Commission of 29 June 2006 to the Council, the European Parliament the European Economic and Social Committee and the Committee of the Regions on the Review of the EU Regulatory Framework for electronic communications networks and services. These identified the continuing lack of an internal market for electronic communications as the most important issue that needed to be addressed by the reform of the regulatory framework. Regulatory fragmentation and inconsistencies resulting from the loosely coordinated activities of the **NRAs** risk jeopardising the competitiveness of the sector as well as the substantial consumer benefits resulting from cross-border competition and trans-national and even cross-Community services.
- (9) In particular, delays in carrying out market analyses pursuant to Directive 2002/21/EC (Framework Directive), divergent approaches by **NRAs** towards the imposition of obligations designed to remedy a lack of effective competition found by the market analysis, the heterogeneous conditions attached to rights of use, the varying selection procedures for cross-Community services, different numbers within the Community for cross-Community services, and problems faced by **NRAs** in dealing with cross-border disputes lead to inefficient solutions and create obstacles to the internal market.
- (10) *The current approach to developing greater consistency among NRAs by exchanging information and knowledge on practical experience has proved to be successful in the short term following its deployment. However, more intense coordination between all regulatory authorities at national and European level will be required to understand and further develop the internal market in electronic communication services in order to enhance regulatory consistency.*
- (11) This calls for the establishment of a new ■ body, **BERT**. **BERT** would make an effective contribution to furthering the completion of the internal market through the assistance it provides to the Commission and **NRAs**. It would operate as a point of reference and would establish confidence by virtue of its independence, the quality of the advice it delivers and the information it disseminates, the transparency of its procedures and methods of operation, and its diligence in performing the tasks assigned to it.
- (12) **BERT** should, through the pooling of expertise, reinforce the capacities of the **NRAs** without replacing their existing functions or duplicating work already being undertaken, for the further benefit of assisting the Commission in the execution of its responsibilities.

¹ OJ C 104, 3.5.2006, p. 19 and OJ C 191, 17.8.2007, p. 17.

- (13) **BERT** is to replace the ERG and *act* as *an* exclusive forum for cooperation *among NRAs and between those authorities and the Commission*, in the exercise of the full range of their responsibilities under the regulatory framework.
- (14) **BERT** should be established within the Community's existing institutional structure and balance of powers. It should be independent in relation to technical matters and have legal, administrative and financial autonomy. To that end, it is necessary ■ that it should be a Community body having legal personality and exercising the tasks conferred on it by this Regulation.
- (15) **BERT** should build on national and Community efforts and therefore perform its tasks in full cooperation with *NRAs* and the Commission, and be open to contacts with industry, consumer groups, *cultural interest groups* and other relevant stakeholders.
- (16) **BERT** has ■ an important role to play in the mechanisms envisaged for consolidating the internal market for electronic communications and for carrying out market analyses in certain circumstances.
- (17) **BERT** should accordingly advise the Commission and the *NRAs, as well as the European Parliament, at its request*, in accordance with the Community regulatory framework for electronic communications and thereby assist in *the* effective implementation of *that framework*.
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- (18) **BERT's** annual review would identify best practice and remaining bottlenecks and would contribute to *improving* the level of *benefits to* citizens travelling in the European Union.
- (19) In the context of pursuing the aims of Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)¹, the Commission may seek the independent expert advice of **BERT**, *where appropriate, on* the use of ||radio frequencies in the Community. This advice could involve specific technical investigations, as well as economic or social impact assessment and analysis of frequencies policies. It could also include matters relating to the implementation of Article 4 of Decision No 676/2002/EC, where **BERT** may be asked to provide advice to the Commission on the results obtained under Commission mandates to the European Conference of Postal and Telecommunications Administrations (CEPT).
- (20) While *the electronic communications sector is a key sector in the move towards a more advanced European knowledge-based economy, and* technological and market developments have increased the potential for the deployment of electronic communications services beyond the geographical boundaries of individual Member States, there is a risk that the existence of differing legal and regulatory conditions for the deployment of those services under national laws will increasingly hold back the

¹ OJ L 108, 24.4.2002, p. 1.

provision of such cross-border services.■

- (21) *The Commission has recognised the global and trans-border nature of the global telecommunications market, noting that this market is different from telecommunications services provided merely on a national basis and that a single market for all global telecommunications services (GTSs) is assumed which has to be distinguished from merely national telecommunications services. GTSs are a particular case where harmonising conditions of authorisation might be necessary. It is generally recognised that these services, consisting of managed business data and voice services for multinational companies with locations in different countries, and often different continents, are inherently cross-border and, within Europe, pan-European. BERT should develop a common regulatory approach so that the economic benefits of integrated, seamless services can accrue to all parts of Europe.*
- (22) Where disputes with a cross-border nature arise between undertakings in respect of rights or obligations under the regulatory framework for electronic communications, **BERT** should be able to investigate *those* disputes and *to* advise the **NRAs** concerned *on the most appropriate means of resolving them*, in accordance with the provisions of the regulatory framework.
- (23) *Investment and innovation are strongly linked in the electronic communications sector. BERT* should contribute to the development of best regulatory practice and consistency in the application of regulation in the electronic communications sector by fostering the exchange of information between national authorities and *by* making appropriate information available to the public in an easily accessible manner. **BERT** *should be able* to address economic and technical matters and to access the most *up-to-date* information available in order to be able to respond to the economic and technical challenges posed by the developing information society ■ .

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- (24) ■ In order to improve the transparency of retail prices for making and receiving regulated roaming calls within the Community and to help roaming customers make decisions on the use of their mobile telephones while abroad, **BERT** should ensure that up-to-date information on the application of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community¹ || is made available to interested parties and *should* publish the results of such monitoring on an annual basis.
- (25) **BERT** should also be able to commission studies necessary for the accomplishment of its tasks, while ensuring *its* links with the Commission and the Member States prevent duplication of effort.

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- (26) The structure of **BERT** should be *lean and* suitable for the tasks it is to perform. *It*

¹ OJ L 171, 29.6.2007, p. 32.

should be adapted to meet the specific needs of the Community system for the regulation of electronic communications. In particular, the specific role of **NRAs** and their independent nature, ***both at national and at European level, should be fully respected.***

- (27) **BERT** should have the necessary powers to perform *its* functions in an efficient and, above all, independent manner. Reflecting the situation on a national level, the Board of Regulators should therefore act independently from any market interest and *should* not seek or take instructions from any government or other public or private entity.
- (28) The smooth functioning of **BERT** requires its **Managing** Director *to* be appointed on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant to electronic communications networks, services and markets and that he/she performs his/her duties with complete independence and flexibility as to the organisation of the internal functioning of **BERT**. The **Managing** Director should ensure the efficient execution of **BERT's** tasks in an independent manner.
- (29) In order to ensure that the tasks of **BERT** are carried out effectively, its **Managing** Director should be entrusted with the necessary powers to adopt all opinions, subject to the assent of the Board of Regulators, and to ensure that **BERT** works in accordance with the general principles laid down to this end.

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- (30) In addition to its operating principles based on independence and transparency, **BERT** should be ■ open to contacts with, *inter alia*, industry, consumers, **trade unions, public sector bodies, research centres** and other interested stakeholders. *Where appropriate, BERT should assist the Commission in the dissemination and exchange of best practice among undertakings.*
- (31) **BERT's** procedures should therefore ensure that *it* has access to specialist expertise and experience in the electronic communications sector, particularly in areas of technical complexity and rapid change ■ .

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- (32) In order to guarantee the full autonomy and independence of **BERT**, it should receive an autonomous budget. *Whilst one third of its funding should come from the general budget of the European Union, the other two thirds should be provided by NRAs. Member States should ensure that NRAs have adequate and unconditional funding for this purpose. This method of financing should be without prejudice to BERT's independence of both the Member States and the Commission.*
- (33) **BERT** should, where appropriate, consult interested parties and provide them with an opportunity to comment on draft measures within a reasonable period.
- (34) The Commission should be *able to take the necessary measures in case* undertakings *fail to* provide the information that is necessary for **BERT** to achieve its tasks

effectively. Also, Member States should ensure that they have an appropriate framework for imposing on undertakings effective, proportionate and dissuasive penalties for non-compliance with obligations arising from this Regulation.

- (35) Within its scope, in pursuing its objectives and in the performance of its tasks, ***NRAs should ensure that BERT complies*** in particular with the provisions applicable to the Community institutions regarding the treatment of sensitive documents. Where relevant, it is appropriate to ensure a coherent and secure information exchange in the framework of this Regulation.
- (36) ***NRAs should ensure that BERT applies*** the relevant Community legislation concerning public access to documents as set out in 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 documents¹ and the protection of individuals with regard to the processing of personal data as set out in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data².
- (37) ***By 1 January 2014, a review should take place to evaluate whether there is a need to extend the mandate of BERT. In case an extension is justified, budgetary and procedural regulations, as well as human resources, should be reviewed,***

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT-MATTER, SCOPE, DEFINITIONS AND TASKS

Article 1

Subject-matter and scope

- 1. ***The Body of European Regulators in Telecom ("BERT") shall be*** established with the responsibilities laid down in this Regulation. ***The Commission shall consult BERT in carrying out its functions under the Framework Directive and the Specific Directives, as set out in this Regulation.***
- 2. ***BERT*** shall act within the scope of the Framework Directive and the Specific Directives and draw upon expertise available in the ***NRAs***. It shall contribute ***to improvement of national regulation in the electronic communications sector and*** to the better functioning of the internal market for electronic communications networks and services, including in particular ***the promotion of an effective and consistent application of the regulatory framework of electronic communications and*** the development of cross-

¹ OJ L 145, 31.5.2001, p. 43.

² OJ L 8, 12.1.2001, p. 1

Community electronic communications, through the tasks listed in Chapters II and III.

3. **BERT** shall carry out its tasks in cooperation with NRAs and the Commission .

BERT shall serve as a means for the exchange of information and the adoption of consistent decisions by NRAs. It shall provide an organisational basis for the decision-making of NRAs. It shall adopt common positions and comments. Furthermore, it shall advise the Commission and assist the NRAs in all matters within the scope of the tasks assigned to the NRAs by the Framework Directive and the Specific Directives.

4. In all its activities, and in particular in the drawing up of its opinions, **BERT** shall pursue the same objectives as those addressed to the NRAs by Article 8 of Directive 2002/21/EC (Framework Directive).

5. ***A decision containing the following provisions, shall be adopted establishing an office to ensure appropriate resources for BERT:***

- (a) a provision stipulating that the office is part of the Community administration with regard to the terms and conditions of employment and budgetary responsibilities;***
- (b) specific staff regulations for the office, as far as is required to ensure the autonomous fulfilment of the tasks of BERT; and***
- (c) rules for the first assembly and the first chairmanship of BERT.***

The office shall be established in Brussels.

Article 2 Definitions

For the purposes of this Regulation, the definitions set out in Article 2 of Directive 2002/21/EC, Article 2 of Directive 2002/19/EC, Article 2 of Directive 2002/20/EC, Article 2 of Directive 2002/22/EC, Article 2 of Directive 2002/58/EC and Article 2 of Decision No 676/2002/EC shall apply.

Article 3 Functions of **BERT**

BERT shall, in the furtherance of its tasks under this Regulation:

- (a) issue opinions at the request of the European Parliament, the Commission, or on its own initiative, and assist the European Parliament and the Commission by providing them with additional technical support in all matters regarding electronic communications;***
- (b) develop common positions, guidelines and best practice for the imposition of regulatory remedies at the national level and monitor their implementation across***

Member States;

- (c) assist the Community, its Member States and the ***NRAs*** in relations, discussions and exchanges with third parties;
- (d) provide advice *to* market players (***including consumers and consumer organisations***) and ***NRAs*** on regulatory issues;
- (e) exchange, disseminate and collect information and undertake studies in areas relevant to its activities;
- (f) ***exchange experience and promote innovation in the field of electronic communications;***
- (g) ***advise NRAs*** on cross-border disputes and, ***where appropriate***, on e-Accessibility matters;
- (h) ***develop common positions on pan-European issues such as GTSS in order to increase regulatory consistency and promote a pan-European market and pan-European rules.***

CHAPTER II

TASKS OF ***BERT*** RELATING TO STRENGTHENING THE INTERNAL MARKET

Article 4

Role of ***BERT*** in the application of the regulatory framework

1. At the request of the Commission, ***BERT*** shall deliver opinions on all matters regarding electronic communications ***as set out in this Regulation. BERT may also, on its own initiative, provide opinions on these matters to the Commission or to NRAs.***
2. ***In order to promote*** the harmonised application of the provisions of the Framework Directive and the Specific Directives, the Commission ***shall also request the assistance of BERT*** in the preparation of recommendations or decisions to be adopted by the Commission in accordance with Article 19 of Directive 2002/21/EC (Framework Directive). ***The European Parliament may also request such assistance from BERT as it may reasonably require in relation to any enquiry or legislation within the scope of BERT's functions.***
3. ***The matters referred to in paragraph 1 shall be:***
 - (a) draft measures of ***NRAs*** concerning market definition, designation of undertakings with significant market power and imposition of remedies, in accordance with Article 7 of Directive 2002/21/EC(Framework Directive);

- (b) identification of transnational markets, in accordance with Article 15 of Directive 2002/21/EC (Framework Directive);
- (c) standardisation issues in accordance with Article 17 of Directive 2002/21/EC (Framework Directive);
- (d) analyses of specific national markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), ***and, where appropriate, of sub-national markets;***
- (e) transparency and information for end-users, in accordance with Article 21 of Directive 2002/22/EC (Universal Service Directive);
- (f) quality of service, in accordance with Article 22 of Directive 2002/22/EC (Universal Service Directive);
- (g) effective implementation of the emergency call number '112', in accordance with Article 26 of Directive 2002/22/EC (Universal Service Directive);

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- (h) number portability, in accordance with Article 30 of Directive 2002/22/EC (Universal Service Directive);
- (i) the improvement of disabled end-users' access to electronic communication services and equipment, in accordance with Article 33 of Directive 2002/22/EC (Universal Service Directive);
- (j) measures of *NRAs* taken in accordance with Articles 5, and 8(3) of Directive 2002/19/EC (Access Directive);
- (k) transparency measures for the implementation of unbundling of the local loop, in accordance with Article 9 of Directive 2002/19/EC (Access Directive);
- (l) conditions for access to digital television and radio services, in accordance with Article 6 of Directive 2002/19/EC (Access Directive), and interoperability of interactive digital television services in accordance with Article 18 of Directive 2002/21/EC (Framework Directive);
- (m) ***matters that are the responsibility of BERT as identified in the Framework Directive and the Specific Directives, in so far as they affect management of the spectrum or are affected by its management;***
- (n) ***measures to ensure the development of common pan-European rules and requirements for GTSs providers.***

4. In addition, the ***Commission may request BERT to*** undertake the specific tasks set out in Articles 5 to 18.

5. *The Commission and NRAs shall take the utmost account of the opinion of BERT. Where BERT proposes alternative solutions in the light of different market conditions and path dependence of different regulatory approaches, NRAs shall consider which solution fits best into their regulatory approach. NRAs and the Commission shall make public the manner in which the opinion of BERT has been taken into account.*

Article 5

Consultation of **BERT** on the definition and analysis of national markets, and on remedies

1. The Commission shall inform **BERT** when it acts in accordance with Article 7(4) and (8) of Directive 2002/21/EC (Framework Directive).
2. **BERT** shall deliver an opinion to the Commission on the draft measure concerned within *four* weeks of being so informed. The opinion shall include a detailed and objective analysis of whether the draft measure constitutes a barrier to the single market and its compatibility with Community law, in particular with the objectives referred to in Article 8 of Directive 2002/21/EC (Framework Directive). Where appropriate the **Commission** shall *ask BERT to* indicate what changes should be made to the draft measure so as to ensure that these objectives are most effectively met.
3. **BERT** shall *upon request* provide the Commission with all the information available to carry out the tasks referred in paragraph 2.

Article 6

Reviews of national markets by **BERT**

1. If **BERT** receives a request from the Commission pursuant to Article 16(7) of Directive 2002/21/EC (Framework Directive) to analyse a specific relevant market within a Member State, it shall deliver an opinion and provide the Commission with the necessary information, including the results of the public consultation and the analysis of the market. If **BERT** finds that competition on that market is not effective, its opinion shall, following a public consultation, include a draft measure specifying the undertaking(s) it considers should be designated as having significant market power on that market and the appropriate obligations to be imposed.
2. **BERT** may, where appropriate, consult the relevant national competition authorities before issuing its opinion to the Commission.
3. **BERT** shall *upon request* provide the Commission with all the information available to carry out the tasks referred in paragraph 1.

Article 7

Definition and analysis of transnational markets

1. Upon request, **BERT** shall deliver an opinion to the Commission on the appropriate

definition of transnational markets.

2. Where the Commission has identified a transnational market in accordance with Article 15(4) of Directive 2002/21/EC (Framework Directive), **BERT may, upon request, assist the NRAs involved in the joint market analysis** in accordance with Article 16(5) of that Directive ■ .

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3. **BERT** shall *upon request* provide the Commission with all the information available to carry out the tasks referred in *paragraphs 1 and 2*.

Article 8

Harmonisation of numbering and number portability

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1. **At the Commission's request, BERT** shall work with the **NRAs** on issues relating to fraud or the misuse of numbering resources within the Community, in particular for cross-border services. It may issue an opinion on action that could be taken at Community or national level to address fraud and misuse and other consumer concerns about numbering.
2. **BERT** shall, at the request of the Commission, deliver an opinion to the Commission on the scope of, and technical parameters for, obligations regarding the porting of numbers or subscriber identifiers and associated information between networks and the appropriateness of extending such obligations at Community level.

Article 9

Implementation of the European Emergency Number 112

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1. **BERT** shall at the request of the Commission, deliver an opinion to the Commission on the technical issues related to the implementation of the European emergency call number '112' in accordance with Article 26 of Directive 2002/22/EC (Universal Service Directive).
2. Prior to delivering its opinion under *paragraph 1*, **BERT** shall consult with competent national authorities and conduct a public consultation in accordance with *Article 31*.

Article 10

Advice on radio frequencies issues in relation to electronic communications

1. Upon request, **BERT** shall provide advice to the Commission, **the Radio Spectrum Policy Group ("RSPG") or the Radio Spectrum Committee ("RSC")**, as appropriate,

in relation to matters within the scope of its functions which affect or are affected by the use of radio frequencies for electronic communications in the Community. It shall work in close cooperation with the RSPG and the RSC as appropriate.

2. The activities referred to in paragraph 1 may be undertaken on matters relating to the implementation of Decision No 676/2002/EC (Radio Spectrum Decision) and shall be without prejudice to the division of tasks under Article 4 of that Decision.
3. *The Commission may request BERT to provide advice to the RSPG or the RSC in relation to advice of the RSC* to the Commission regarding the drawing up of common policy objectives referred to in Article 6(3) of Decision No 676/2002/EC (Radio Spectrum Decision), when these fall within the electronic communications sector.
4. *BERT shall contribute to reports published by the Commission, the RSPG, the RSC or any other relevant body, as appropriate*, on prospective frequencies developments in the electronic communications sector and policies in which it shall identify the potential needs and challenges.

Article 11

Harmonisation of conditions and procedures relating to general authorisations and rights of use

1. *The Commission may request BERT to deliver to the Commission, the RSPG or the RSC* an opinion on the scope and content of any of the implementation measures provided for in Article 6a of Directive 2002/20/EC (Authorisation Directive). This may include in particular *BERT's* assessment of the benefits that may accrue for the single market in electronic communications networks and services from the implementing measures adopted by the Commission pursuant to Article 6a of Directive 2002/20/EC (Authorisation Directive) and the identification of the services with cross-Community potential which would benefit from those measures.
2. If the Commission, *the RSPG, the RSC or any other relevant body* so requests, *BERT* shall explain or supplement any opinion issued pursuant to paragraph 1 within the time period specified in that request.

Article 12

Withdrawal of rights of use of radio frequencies and numbers issued under common procedures

The Commission may request BERT to deliver an opinion to the Commission, the RSPG or the RSC on the withdrawal of rights of use issued under the common procedures provided for Article 6b of Directive 2002/20/EC (Authorisation Directive).

This opinion shall examine whether there have been serious and repeated breaches of the conditions attached to the rights of use.

Article 13
Own initiative

BERT may, on its own initiative, deliver an opinion to *the European Parliament and the Commission, in particular* on the matters referred to in *Articles 4(2), 7(1), 8(2), 10(1), 12, 14, 21 and 22 or on any other matter that it deems relevant.*

CHAPTER III

COMPLEMENTARY TASKS OF **BERT**<BRK>

Article 14
Cross-border disputes

1. If **BERT** receives a request from a **NRA** pursuant to Article 21 of Directive 2002/21/EC (Framework Directive) for a recommendation as to the resolution of a dispute it shall inform all parties to the dispute and all **NRA**s concerned.
2. **BERT** shall investigate the reasons for the dispute and request appropriate information from the parties and the **NRA**s concerned.
3. **BERT** shall, *except in exceptional circumstances*, issue its recommendation within three months of the request. The recommendation shall identify any measures that **BERT** considers appropriate to be taken by the **NRA**s concerned in accordance with the provisions of the Framework Directive and/or the Specific Directives.
4. **BERT** may decline to issue a recommendation where it considers that other mechanisms would better contribute to the resolution of the dispute in a timely manner in accordance with the provisions of Article 8 of Directive 2002/21/EC (Framework Directive). In such cases it shall inform the parties and the **NRA**s concerned without delay.

If after four months the dispute is not resolved, or if the parties have not had recourse to any other mechanism, **BERT** shall, *at the request of any NRA*, act in accordance with paragraphs 2 and 3.

Article 15
Exchange, dissemination and collection of information

1. **BERT** shall, taking account of the Community's electronic communications policy, promote the exchange of information both between the Member States, and between the

Member States, *NRAs* and the Commission on the situation and development of regulatory activities regarding electronic communications networks and services. ***In the light of different market conditions and path dependence of different national regulatory approaches, BERT may develop alternative solutions within the harmonised regulatory framework.***

2. ***BERT*** shall encourage the exchange of information and promote best regulatory practice and technical development within the Community and beyond, in particular by:
 - (a) collecting, processing and *publishing* information relating to the technical characteristics, quality and pricing of electronic communications services, and relating to electronic communications markets in the Community,
 - (b) commissioning or conducting studies on electronic communications networks and services and the regulation thereof, and
 - (c) organising or promoting training *for NRAs in matters that are within the scope of the functions of BERT as laid down in the Framework Directive and the Specific Directives.*
3. ***BERT*** shall make such information available to the public in an easily accessible form. ***Confidentiality shall be duly respected.***

■

Article 16

Monitoring and reporting on the electronic communications sector

1. ***The Commission may request BERT to*** monitor developments in the electronic communications market, and in particular the retail prices of products and services most commonly used by consumers.
2. ***BERT*** shall publish an annual report on developments in the electronic communications sector, including consumer issues, in which it shall identify remaining barriers to the completion of the single market for electronic communications. The report shall also include an overview and analysis of the information on national appeal procedures provided by the Member States pursuant to Article 4(3) of Directive 2002/21/EC (Framework Directive), and of the extent to which the out-of-court dispute settlement procedures referred to in Article 34 of Directive 2002/22/EC (Universal Service Directive) are used in Member States. ***The report shall be presented to the European Parliament, which may issue an opinion thereon.***
3. ***The Commission may request BERT to*** deliver an opinion on the measures that could be taken to overcome the problems identified in assessing the issues referred to in paragraph 1, ***in conjunction with the publication of the annual report. This opinion shall be presented to the European Parliament.***

4. *The Commission may request **BERT** to* periodically publish a report on the interoperability of digital interactive television services as referred to in Article 18 of Directive 2002/21/EC (Framework Directive).

Article 17

Electronic Accessibility

BERT shall, at the request of the Commission, advise the Commission and *the NRAs* on improving the interoperability of, access to, and use of electronic communications services and terminal equipment, and in particular cross-border interoperability issues, *looking* at the particular needs of disabled end-users and the elderly.

■

Article 18

Additional tasks

BERT may *subject to the consent of all its members*, take on specific additional tasks at the request of the Commission.

CHAPTER IV

ORGANISATION OF **BERT**

Article 19

*Bodies of **BERT***

BERT shall comprise:

- (a) a ■ *Board of Regulators*;

■

- (b) a *Managing* Director.

■

Article 20

■ *Board of Regulators*

1. The ■ *Board of Regulators* shall be composed of *one member per Member State who shall be the head or nominated high-level representative of the independent NRA with responsibility for day-to-day application of the regulatory framework in that Member State. NRAs shall nominate one alternate per Member State. The Commission shall attend as an observer with the prior agreement of the Board.*

2. The █ **Board of Regulators** shall appoint its Chairperson and its Vice-Chairperson from among its members. The Vice-Chairperson shall automatically replace the Chairperson if the latter is not in a position to perform his/her duties. The terms of office of the Chairperson and of the Vice-Chairperson shall be two and a half years, *pursuant to the election procedures set out in the rules of procedure.*
 3. Meetings of the █ **Board of Regulators**, convened by *the* Chairperson, *shall occur* at least *four times* a year in ordinary session. It *may* also meet *exceptionally* at the initiative of its Chairperson, at the request of the Commission or at the request of at least a third of its members. The █ **Board of Regulators** may invite any person with potentially relevant opinions to attend its meetings in the capacity of an observer. The members of the █ **Board of Regulators** may subject to the rules of procedure, be assisted by advisers or by experts.█
 4. Decisions of the █ **Board of Regulators** shall be adopted on the basis of a two-thirds majority of the members present *unless otherwise provided for in this Regulation, the Framework Directive and the Specific Directives. These decisions shall be communicated to the Commission.*
- The Board of Regulators shall approve the rules of procedure of BERT by a two-thirds majority. Those rules of procedure shall guarantee that the members of the Board of Regulators are always provided with full agendas and draft proposals in advance of each meeting in order to have the chance to propose amendments prior to the vote.*
5. Each member shall have one vote. The rules of procedure shall set out in greater detail the arrangements governing voting, especially the conditions whereby one member can act on behalf of another and also, where appropriate, the rules governing quorums.
 6. *When carrying out the tasks conferred upon it by this Regulation, the Board of Regulators shall act independently and shall not seek or take instructions from any Member State or any public or private interest group.*
 7. *Secretarial services shall be provided for the Board of Regulators by BERT.*

Article 21

Tasks of the **Board** of Regulators

1. The █ **Board of Regulators** shall appoint the **Managing** Director in accordance with *paragraph 7. The Board of Regulators shall take all decisions relating to the performance of BERT's functions as listed in Article 3.*
- █
2. *After consulting the Commission, the █ Board of Regulators shall, in accordance with Article 23(3) and in line with the draft budget established in accordance with Article 25, adopt, before 30 September each year, BERT's work programme for the following*

year, and shall transmit it to the European Parliament, the Council and the Commission.█

- █
3. The █ Board *of Regulators* shall exercise disciplinary authority over the *Managing Director* █ .

- █
4. The █ Board *of Regulators* shall adopt, *on behalf of BERT*, the special provisions on right of access to the documents of *BERT*, in accordance with *Article 36*.

5. The Board *of Regulators* shall adopt the annual report on *BERT's* activities █ and shall transmit it to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors by 15 June at the latest. *The European Parliament may request either the Chairperson of the Board of Regulators or the Managing Director to address it on relevant issues relating to BERT's activities* █ .

- █
6. *The Board of Regulators shall provide guidance to the Managing Director in the execution of the Managing Director's tasks.*

7. *The Board of Regulators shall appoint the Managing Director. The Board of Regulators shall reach this decision on the basis of a majority of three quarters of its members. The Managing Director designate shall not participate in the preparation of, or vote on, such a decision.*

8. *The Board of Regulators shall approve the independent section of the annual report on consultative activities provided for in paragraph 5 of this Article and Article 23(7).*

█

Article 22

The *Managing* Director

1. *BERT* shall be managed by its *Managing* Director, who shall *be accountable to and act on the instructions of the Board of Regulators* in the performance of his/her functions. *The Managing* Director shall not *otherwise* seek or accept any instruction from any government or any body.
2. *The Managing* Director shall be appointed by the █ Board *of Regulators* on the basis of merit *and the* skills and experience relevant for electronic communications networks and services █ . Before appointment, *the suitability of* the candidate selected by the █ Board

of Regulators may be *subject to a non-binding opinion of the European Parliament and the Commission. To this end, the candidate shall be* invited to make a statement before the *responsible* committee of the European Parliament and answer questions put by its members.

3. The **Managing** Director's term of office shall be five years. ■
4. **The** Board of Regulators ■ may extend the term of office of the **Managing** Director once for not more than three years, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of **BERT**.

The ■ Board *of Regulators* shall inform the European Parliament about its intention to extend the **Managing** Director's term of office. Within a month before the extension of his/her term of office, the **Managing** Director may be invited to make a statement before the *responsible* committee of the Parliament and answer questions put before its members.

If the term of office is not extended, the **Managing** Director shall remain in office until the appointment of his/her successor.

5. The **Managing** Director may be removed from office only upon decision by the ■ Board *of Regulators, taking into account the opinion of the European Parliament*. The ■ Board *of Regulators* shall reach this decision on the basis of a majority of three quarters of its members.
6. The European Parliament and the Council may *request* the **Managing** Director to submit a report on the performance of his/her duties. *Should this be necessary, the responsible committee of the European Parliament may invite the Managing Director to answer questions put by its members.*

Article 23

Tasks of the **Managing** Director

1. The **Managing** Director shall be responsible for representing **BERT** and shall be in charge of its management.
2. The **Managing** Director shall prepare the *agenda* of the ■ Board *of Regulators*. He/she shall participate, without having the right to vote, in the work of the ■ Board *of Regulators*.
■
3. Each year the **Managing** Director shall prepare *the* draft work programme of **BERT** for the following year, and submit it to the Board of Regulators ■ before 30 June of that year. *The Board of Regulators shall adopt the work programme in accordance with Article 21(2).*

4. The *Managing* Director shall be responsible for *supervising the implementation of* the annual work programme of **BERT**, under the guidance of the Board of Regulators .
5. The *Managing* Director shall take the necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of **BERT** in accordance with this Regulation.
6. The *Managing* Director shall make an estimate of the revenue and expenditure of **BERT** pursuant to *Article 25* and shall implement the budget of **BERT** pursuant to *Article 26*.
7. Each year the *Managing* Director shall prepare the draft annual report on the activities of **BERT** with a section on *its consultative* activities and a section on financial and administrative matters.
8. With regard to the staff of **BERT**, *the Board of Regulators may delegate to* the *Managing* Director *the* exercise *of* the powers provided for in *Article 38(3)*.

CHAPTER V

FINANCIAL REQUIREMENTS

Article 24

Budget of **BERT**

1. The revenues *and resources* of **BERT** shall consist *notably* of:
- (a) *a subsidy from the Community, entered under the appropriate headings of the general budget of the European Union (Commission Section), as decided by the budgetary authority and in accordance with point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management¹;*
 - (b) *a financial contribution from each NRA. Each Member State shall ensure that NRAs have the adequate financial resources required to participate in the work of BERT;*
 - (c) *half of the professional staff shall be made up of seconded national experts (SNEs) from the national authorities;*

- (d) *the Board or Regulators shall agree, at the latest, six months after the entry into force of this Regulation, the level of the financial contribution to be made by each Member State under point (b);*
 - (e) *the appropriateness of the budgetary structure and Member States' compliance shall be reviewed by 1 January 2014.*
2. The expenditure of **BERT** shall cover staff, administrative, infrastructure and operational expenses.
 3. Revenue and expenditure shall be in balance.
 4. All ■ revenue and expenditure shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.
 5. *The organisational and financial structure of BERT shall be reviewed by 1 January 2014.*

Article 25

Establishment of the budget

1. By 15 February of each year at the latest, the **Managing** Director shall draw up a preliminary draft budget covering the operational expenditure and the work programme anticipated for the following financial year, and shall forward it to the ■ **Board of Regulators** together with a list of provisional posts. Each year the ■ **Board of Regulators** shall, on the basis of the draft prepared by the **Managing** Director, make an estimate of revenue and expenditure of **BERT** for the following financial year. This estimate, including a draft establishment plan, shall be transmitted by the ■ **Board of Regulators** to the Commission by 31 March at the latest.■
2. The estimate shall be transmitted by the Commission to the European Parliament and to the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft general budget of the European *Union*.
3. On the basis of the estimates, the Commission shall enter in the preliminary draft general budget of the European *Union* the forecasts it considers necessary in respect of the establishment plan and the amount of the grant to be charged to the general budget, in accordance with Article 272 of the Treaty.
4. The budgetary authority shall adopt the establishment plan for **BERT**.
5. The budget of **BERT** shall be drawn up by the ■ **Board of Regulators**. It shall become final after the final adoption of the general budget of the European *Union*. Where necessary, it shall be adjusted accordingly.
6. The ■ **Board of Regulators** shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for

the funding of its budget, in particular any project relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budget authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify **BERT** of its intention to issue such an opinion. Failing a reply, **BERT** may proceed with the planned operation.

Article 26

Implementation and control of the budget

1. The **Managing** Director shall act as authorising officer and shall implement **BERT**'s budget.
2. *The Managing Director shall draw up an annual activity report for BERT, together with a statement of assurance. Those documents shall be made public.*
3. By 1 March at the latest following the completion of each financial year, **BERT**'s accounting officer shall forward to the Commission's accounting officer and the Court of Auditors the provisional accounts accompanied by the report on budgetary and financial management over the financial year. **BERT**'s accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year at the latest. The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of || Regulation (EC, Euratom) No 1605/2002.
4. By 31 March at the latest following the completion of each financial year, the Commission's accounting officer shall forward the provisional accounts of **BERT** accompanied by the report on the budgetary and financial management over the financial year to the Court of Auditors. The report on budgetary and financial management over the financial year shall also be forwarded to the European Parliament and the Council.
5. After receiving the observations of the Court of Auditors on the provisional accounts of **BERT**, in accordance with Article 129 of || Regulation (EC, Euratom) No 1605/2002, the **Managing** Director, acting on his/her own responsibility, shall draw up the final accounts of **BERT** and transmit them, for opinion, to the || Board of Regulators.
6. The || Board of Regulators shall deliver an opinion on the final accounts of **BERT**.
7. The **Managing** Director shall transmit these final accounts, accompanied by the opinion of the || Board of Regulators, no later than 1 July following the completion of the financial year, to the European Parliament, the Council, the Commission and the Court of Auditors.
8. The final accounts shall be published.
9. The **Managing** Director shall reply to the Court of Auditors' observations by 15 October

at the latest. He/she shall also send this reply to the ■ Board *of Regulators*, the European Parliament and the Commission.

10. The *Managing* Director shall submit to the European Parliament, at the latter's request, and as provided for in Article 146(3) of Regulation (EC, Euratom) No 1605/2002, any information necessary for the smooth running of the discharge procedure for the financial year in question.
11. The European Parliament shall, following a recommendation from the Council acting by a qualified majority, before 15 May of year N+2 grant a discharge to the *Managing* Director for the implementation of the budget for the financial year N.

Article 27

Internal control systems

The Internal Auditor of the Commission shall be responsible for auditing BERT's internal control systems.

Article 28

Financial rules

Financial rules applicable to *BERT* shall be drawn up by the ■ Board *of Regulators* after consultation with the Commission. Those rules may deviate from Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities¹ if the specific operational needs for the functioning of *BERT* so require and only with the prior agreement of the Commission.

Article 29

Anti- fraud measures

1. For the purpose of combating fraud, corruption and other illegal acts, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)² shall apply without any restriction.
2. *BERT* shall accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud

¹ OJ L 357, 31.12.2002, p. 72.

² OJ L 136, 31.5.1999, p. 1.

Office (OLAF)¹ and shall immediately adopt appropriate provisions for all staff of **BERT**.

3. The funding decisions and the agreements and implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if *necessary*, carry out on-the-spot checks among the beneficiaries of monies disbursed by **BERT** as well as on the staff responsible for allocating these monies.

CHAPTER VI GENERAL PROVISIONS

Article 30

Provision of information to **BERT**

1. Undertakings providing electronic communications networks and services shall provide all the information, including financial information, requested by **BERT** in order to perform its tasks as set out in this Regulation. The undertakings shall provide that information promptly on request and to the timescales and level of detail required by **BERT**. *The Commission may require BERT to give reasons justifying its request for information.*
2. **NRAs** shall provide **BERT** with the information necessary to carry out its tasks under this Regulation. Where the information provided refers to information previously provided by undertakings at the request of the **NRA**, those undertakings shall be informed.
3. *Where necessary, the confidentiality of information provided pursuant to this Article shall be guaranteed. Article 35 shall apply.*

Article 31

Consultation

BERT shall, when it intends to *issue an opinion* in accordance with the provisions of this Regulation, consult where appropriate interested parties and give them the opportunity to comment on the draft *opinion* within a reasonable period. **BERT shall make the** results of the consultation procedure **publicly available**, except in the case of confidential information.

Article 32

Supervision, enforcement and penalties

¹ OJ L 136, 31.5.1999, p. 15.

1. The *NRA*s in co-operation with *BERT* shall be responsible for verifying compliance by undertakings with obligations arising from the provisions of this Regulation.
2. *The Commission shall draw the attention of undertakings to the fact that they fail to comply with the request for information referred to in Article 30. If appropriate, and upon the request by BERT, the Commission may publish the names of those undertakings.*

Article 33 Declaration of interests

BERT's staff, the members of the Board of Regulators and the Managing Director of BERT shall make *an annual* declaration of commitments and a declaration of interests indicating any direct or indirect interests, which might be considered prejudicial to their independence. Such declarations shall be made in writing.

Article 34 Transparency

1. *BERT* shall carry out its activities with a high level of transparency.
2. *BERT* shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall also make public the declarations of interests made by the *members of the Board of Regulators and the Managing Director* .
3. The Board of Regulators, acting on a proposal from the *Managing Director*, may authorise interested parties to observe the proceedings of some of *BERT's* activities.
4. *BERT* shall lay down in its internal rules of procedure the practical arrangements for implementing the transparency rules referred to in paragraphs 1 and 2.

Article 35 Confidentiality

1. *BERT* shall not divulge to third parties information that it processes or receives for which confidential treatment has been requested.

2. Members of **BERT's Board of Regulators**, the **Managing** Director, external experts, and members of the staff of **BERT** shall be subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.
3. **BERT** shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.
4. Without prejudice to *Article 36*, **BERT** shall take appropriate measures, in accordance with Decision 2001/844/EC, ECSC, Euratom¹, to protect information subject to the requirement of confidentiality to which it has access or which is communicated to it by Member States or **NRAs**. Member States shall take equivalent measures in accordance with relevant national legislation. Due account shall be given to the gravity of the potential prejudice to the essential interests of the Community or to one or more of its Member States. Each Member State and the Commission shall respect the relevant security classification given by the originator of a document.

Article 36
Access to documents

1. Regulation (EC) No 1049/2001 || shall apply to documents held by **BERT**.
2. The || Board **of Regulators** shall adopt practical measures for applying Regulation (EC) No 1049/2001 within six months from the date of the effective start of operations of **BERT**.

||


¹ OJ L 317, 3.12.2001, p. 1.

Article 37
Legal status

1. **BERT** shall be a body of the Community with legal personality.
2. In *every* Member State **BERT** shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.
3. **BERT** shall be represented by its *Managing* Director.
4. The seat of **BERT** shall be located in [...]. Until its premises are ready, it will be hosted on Commission premises.

Article 38
Staff

1. The Staff Regulations of Officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these staff regulations and conditions of employment shall apply to the staff of **BERT**.
2. The ■ Board *of Regulators*, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations of officials of the European Communities.
3. In respect of its staff, **BERT** shall exercise the powers conferred on the appointing authority by the Staff Regulations of officials of the European Communities and on the authority entitled to conclude contracts by the Conditions of employment of other servants of the European Communities.

4. The  Board of ***Regulators*** may adopt provisions to allow national experts from Member States to be *appointed* on secondment to ***BERT***.

Article 39

Privileges and immunities

The Protocol on Privileges and Immunities of the European Communities shall apply to ***BERT*** and its staff.

Article 40

Liability of ***BERT***

1. In the case of non-contractual liability, ***BERT*** shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or its staff in the performance of their duties. The Court of Justice of the *European Communities* shall have jurisdiction in any dispute over the remedying of such damage.
2. The personal financial and disciplinary liability of ***BERT*** staff towards ***BERT*** shall be governed by the relevant provisions applying to the staff of ***BERT***.

Article 41

Protection of personal data

When processing data relating to individuals, ***BERT*** shall be subject to the provisions of Regulation (EC) No 45/2001.

Article 42
Participation of third countries

BERT shall be open to participation by European countries which have concluded agreements with the Community, where the countries concerned have adopted and are applying Community legislation in the field covered by this Regulation. In accordance with the relevant provisions of these agreements, arrangements shall be made which shall specify the detailed rules for participation by these countries in the work of **BERT**, in particular the nature and extent of such participation. *Pursuant to a decision of the Board of Regulators*, these arrangements may provide for representation, without vote, *at meetings of* the Board of Regulators.

Article 43
Communications Committee

1. In implementing the provisions of this Regulation, the Commission shall be assisted by the Communications Committee, set up by Article 22 of Directive 2002/21/EC (Framework Directive).
2. Where reference is made to this paragraph, Articles 3 and 7 of *Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission*¹ shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

¹ *OJ L 184, 17.7.1999, p. 23.*

Article 44
Evaluation and review

Within *three years* of the effective start of operations **■**, the Commission shall publish *an evaluation* report on the experience acquired as a result of the operation of **BERT**. The evaluation *report* shall cover the results achieved by **BERT** and its working methods, in relation to its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation *report* shall take into account the views of stakeholders, at both Community and national level *and* shall be forwarded to the European Parliament and to the Council. *The European Parliament shall issue an opinion on the evaluation report.*

By 1 January 2014 a review shall take place to evaluate whether it is necessary to extend the mandate of BERT. In case an extension is justified, budgetary and procedural regulations, as well as human resources, shall be reviewed.

Article 45
Entry into force

This Regulation shall enter into force on [31 December 2009].

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

Done at **||**,

For the European Parliament
The President

For the Council
The President

■