

EUROPEAN PARLIAMENT

2004



2009

Committee on the Internal Market and Consumer Protection

2007/0249(COD)

18.6.2008

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Industry, Research and Energy

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))

Draftswoman: Edit Herczog

PA_Legam

SHORT JUSTIFICATION

The Committee on Internal Market and Consumer Protection supports the establishment of a leaner, more effective organization, embedded into the European legal system.

A new name, Body of European Regulators in Telecom (BERT) would indicate a slight shift in the nature of the organization, and reflect that BERT is consisting of the representatives of the national regulatory authorities (NRAs). The new entity would not possess the powers of an authority, but it would remain embedded into the European legal system.

Strengthening decentralized nature of regulation

The revised wording of the Regulation is aimed to provide a set-up which does not contradict the long-term goal to replace ex-ante regulation by competition law, and ensures that electronic communications regulations in Europe relies on a decentralized system of independent regulators in which NRAs play a decisive role.

The highest decision-making body of BERT would be the Board of Regulators. The Board of Regulators is composed of the NRAs¹, and chaired by one of the members appointed by the Board of Regulators for a term of one year. The Board of Regulators takes all decisions related to BERT's functions by a qualified (two thirds) majority. No Administrative Board, as envisaged in the Commission proposals is set up.

Improved governance rules to ensure efficient and timely regulatory decision-making

An Executive Board would be set up, which would be composed of a maximum of five members (i.e., Chairperson for the current year, previous and prospective chairpersons acting as vice-chairpersons, and two additional members, appointed by the Board of Regulators.) The Executive Board is responsible for the strategic management of BERT and provides guidance and instructions to the Executive Director in the execution of the his/her tasks.

The Executive Director is responsible for the management of the day-to-day operation of BERT, and will act on the instructions of the Executive Board. The Executive Director shall be appointed by the Board of Regulators for a term of three years (which may be renewed once).

The office of BERT should work under the direction of the Executive Director. For regulatory issues it would be composed of 15 experts seconded by the national regulators and 15 Community civil servants. The total number of staff should not exceed 40. This figure is a significant decrease compared to the staffing figures proposed for EECMA.

To profit from the expertise of NRAs, BERT would set up working groups responsible for key regulatory topics related to its work, in which representatives of NRAs would work together with the representatives of BERT.

Focused responsibilities to enhance consistent regulatory actions

BERT would be in charge of five key matters:

- Contribute to consistency of implementation of remedies in the Members States through an increased role in the Article 7 procedure;
- Adopt common regulatory positions which would have to be taken into utmost

¹ The Board of Regulators would also include delegates from EFTA and accession countries, as well as of the Commission, however, without voting rights, in observer status.

account by national regulators;

- Opine to the Commission regarding analyses of transnational markets;
- Advise on spectrum policy issues of pan-European interest (including to RSPG(Radio Spectrum Policy Group)/RSC(Radio Spectrum Committee));
- International coordination and cooperation.

In addition, BERT would perform specific administrative, registering and monitoring duties related to pan-European matters (similarly as envisaged for EECMA), in particular duties contributing to an increased level of consumer awareness, to the extent such duties do not interfere with delegation rules applicable to the Commission, and with the exception of those related to network security matters.

The budget of BERT would be financed from the EU Budget. A Budgetary Committee, consisting of representatives of the Parliament, the Council and the Commission, would be set up to approve the budget. The utilization of the community funding will be subject to approval and monitoring by the Parliament and the Council, and its implementation subject to a discharge by the Parliament.

The annual work program of BERT would be finalized after consultation with the Commission, and would be presented to the Parliament and the Council.

An annual report would be presented to the Commission, Council and Parliament.

The Chairperson may be called upon to attend a hearing before the competent committee of the Parliament and the Council to answer questions regarding the performance of BERT on an annual basis.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

Amendment

(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), 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), 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), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) 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) (hereinafter together referred to as "the Framework Directive and the Specific Directives") 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.

(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), 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), 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), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) 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) (hereinafter together referred to as "the Framework Directive and the Specific Directives"), ***as well as the resolution of the European Parliament on consumer confidence in the digital environment***¹, 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.

¹ *Texts adopted, P6_TA(2007)0287.*

Amendment 2

Proposal for a regulation Recital 22 a (new)

(22a) Global telecommunications services 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. The Authority should develop a common regulatory approach so that the economic benefits of integrated, seamless services can accrue to all parts of Europe.

Amendment 3

Proposal for a regulation Recital 23

Text proposed by the Commission

Amendment

(23) The Authority should in particular assess the need for a single selection procedure at Community level for rights of use subject to harmonised conditions, advise the Commission on the terms and criteria to be applied in such a selection procedure and receive and assess applications from undertakings for such rights of use. The Authority should also have the task of advising the Commission as to the withdrawal of such rights of use, where appropriate.

deleted

Justification

Conforming change

Amendment 4

Proposal for a regulation Recital 24

Text proposed by the Commission

Amendment

(24) The Authority should act as a centre of expertise at European level on network and information security issues, providing guidance and advice to the European Parliament, the Commission or competent bodies appointed by the Member States. The security and resilience of communication networks and information systems remain a prime concern for society and a key element in the EU regulatory framework for electronic communications networks and service. The smooth functioning of the internal market risks being undermined by a heterogeneous application of the security-related provisions laid down in the Framework Directive and the Specific Directives. The opinion of the Authority providing technical advice at the request of the Commission and the Member States should facilitate the consistent application of those directives at national level. *deleted*

Justification

Conforming change

Amendment 5

Proposal for a regulation Recital 25

Text proposed by the Commission

Amendment

(25) Administrative charges may be imposed on providers of electronic communications for managing the authorisation system and for the granting of rights of use. In addition to administrative charges, usage fees may be levied for the use of frequencies and numbers. In the interest of reducing the administrative burden on undertakings, in case of a common selection procedure the Authority should collect and redistribute to the Member States the administrative charges and usage fees.

deleted

Justification

Conforming change

Amendment 6

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) The Authority 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 making appropriate information available to the public in an easily accessible manner. The Authority should have the possibility to address economic and technical matters and to access the most updated information available in order to be able to respond to the economic and technical challenges posed by the developing information society, ***for example in areas like network and information security and radio frequency identification devices.***

Amendment

(27) The Authority 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 making appropriate information available to the public in an easily accessible manner. The Authority should have the possibility to address economic and technical matters and to access the most updated information available in order to be able to respond to the economic and technical challenges posed by the developing information society.

Justification

Conforming change

Amendment 7

Proposal for a regulation Recital 28

Text proposed by the Commission

Amendment

(28) To be able to perform its tasks as set out in this Regulation and to understand better the challenges in the electronic communications field, including current and emerging risks in the network and information security field, the Authority needs to be able to analyse current and emerging developments. For that purpose the Authority may collect appropriate information, in particular concerning breaches of security and integrity that had a significant impact on the operation of network or services provided by national regulatory authorities in accordance with Article 13a(3) of Directive 2002/21/EC (Framework Directive), as well as through questionnaires. **deleted**

Justification

Conforming change

Amendment 8

Proposal for a regulation Recital 36

Text proposed by the Commission

Amendment

(36) It is necessary to ensure that parties affected by decisions of the Authority have recourse to the necessary remedies. An appropriate appeal mechanism should be set up so that decisions of the Authority can be subject to appeal to a specialised Board of Appeal, whose decisions, in turn, should be open to action before the Court of Justice. **deleted**

Justification

Conforming change

Amendment 9

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) The Authority's procedures should therefore ensure that the Authority has access to specialist expertise and experience in the electronic communications sector, particularly in areas of technical complexity and rapid change ***such as network and information security.***

Amendment

(38) The Authority's procedures should therefore ensure that the Authority has access to specialist expertise and experience in the electronic communications sector, particularly in areas of technical complexity and rapid change.

Justification

Conforming change

Amendment 10

Proposal for a regulation

Recital 39

Text proposed by the Commission

(39) In order to ensure that the necessary degree of expertise and experience are brought to bear in the performance of the tasks of the Authority related to network and information security, a Chief Network Security Officer should be appointed. A Permanent Stakeholders' Group should be established in order to provide advice to the Chief Network Security Officer, encourage the sharing of experience and best practices in these matters and maintain regular dialogue with the private sector, consumer organisations and other stakeholders.

Amendment

deleted

Justification

Conforming change

Amendment 11

Proposal for a regulation
Recital 46

Text proposed by the Commission

Amendment

(46) The smooth transition should be ensured for the ongoing activities of the ENISA falling within the remit of the Authority. **deleted**

Justification

Conforming change

Amendment 12

Proposal for a regulation
Article 1 - paragraph 1

Text proposed by the Commission

Amendment

1. A European **Electronic Communications Market Authority** is established with the responsibilities laid down in this Regulation.

1. A **Body of European Regulators in Telecommunications (BERT)** (the **“Authority”**) is *hereby* established with the responsibilities laid down in this Regulation.

Justification

A new name should be given to the Authority that covers the presence of the Regulators in this body.

Amendment 13

Proposal for a regulation
Article 1 - paragraph 2

Text proposed by the Commission

Amendment

2. The Authority shall act within the scope of the Framework Directive and the Specific Directives and draw upon expertise available in the national regulatory authorities. It shall contribute to the better functioning of the internal market for electronic communications networks and services, including in particular the development of cross-Community electronic communications **and a high and effective level of network and information security**, through the tasks listed in Chapters II and III.

2. The Authority shall act within the scope of the Framework Directive and the Specific Directives and draw upon expertise available in the national regulatory authorities. It shall contribute to the better functioning of the internal market for electronic communications networks and services, including in particular the development of cross-Community electronic communications through the tasks listed in Chapters II and III.

Justification

New name indicates shift in core functions. References to network and information security related duties should be removed, as BERT would not take up such functions

Amendment 14

Proposal for a regulation Article 1 - paragraph 5

Text proposed by the Commission

5. The objectives and the tasks of the Authority shall be without prejudice to the competencies of the Member States regarding network and information security which fall outside the scope of the EC Treaty, in particular, those covered by Titles V and VI of the Treaty on European Union. In any case, the objectives and the tasks of the Authority shall be without prejudice to activities concerning public security, defence, activities of the State in areas of criminal law and State security, including the economic well-being of the State when the issues relate to State security matters.

Amendment

5. The objectives and the tasks of the Authority shall be without prejudice to activities concerning public security, defence, activities of the State in areas of criminal law and State security, including the economic well-being of the State when the issues relate to State security matters.

Justification

Also in the case of this amendment, the new name indicates shift in core function; references to network and information security related duties should be removed, as BERT would not

take up such functions.

Amendment 15

Proposal for a regulation Article 3 - point a a (new)

Text proposed by the Commission

Amendment

***(aa) develop common positions,
guidelines and best practices for the
imposition of regulatory remedies at the
national level and monitor their
implementation across Member States;***

Justification

The proposed amendment aims to emphasize the role of BERT to increase consistency of remedies through the provision of guidance to the NRAs and monitoring implementation.

Amendment 16

Proposal for a regulation Article 3 – point c

Text proposed by the Commission

Amendment

(c) provide advice for market players and national regulatory authorities on regulatory issues;

(c) provide advice for market players ***(including consumers and consumer organisations)*** and national regulatory authorities on regulatory issues;

Amendment 17

Proposal for a regulation Article 3 – point d a (new)

Text proposed by the Commission

Amendment

(da) exchange of experience and promotion of innovation in the field of electronic communications;

Justification

The role of BERT in promoting innovation in Europe must be emphasised, since innovation is also in the interests of consumers.

Amendment 18

**Proposal for a regulation
Article 3 - point e**

Text proposed by the Commission

Amendment

(e) provide advice and assistance to the Commission or any competent body appointed by a Member State with regard to any network and information security issue falling within the Authority's remit; ***deleted***

Justification

Information and network security related tasks are removed, as BERT would not be merged with ENISA. ENISA has different priorities which require a different organizational and governance structure. BERT will be able to fulfil its duties most effectively if the independence of the NRAs is preserved. Mixing BERT with ENISA would inevitably lead to a deterioration of the independence of the NRAs, confusion of priorities and uncertainties in its operations. In addition, NRAs are not necessarily involved in information and network security related issues in the member states, making any community entity led by NRAs unable to address (or at least ineffective in addressing) such issues at the community level.

Amendment 19

**Proposal for a regulation
Article 3 - point f**

Text proposed by the Commission

Amendment

(f) take individual decisions in relation to the issuance of rights-of-use for numbers from the European Telephone Numbering Space (ETNS); ***deleted***

Justification

BERT cannot take decisions related to numbers in the ETNS, as such powers are reserved for the Commission. Also, in light of the likely small number of such procedures, it is not justified and proportionate to outsource this task to an agency.

Amendment 20

Proposal for a regulation

Article 3 - point g

Text proposed by the Commission

Amendment

(g) assist the Commission in the selection of undertakings to be granted rights of use of radio frequencies and numbers; ***deleted***

Justification

BERT would provide advice (similarly as in any other issue, including Article 7 procedures) to the Commission, and also to other competent bodies with frequency related responsibilities, so that they can fulfil such responsibilities more effectively. BERT would not take over actual procedures from the Commission (which is described with the verb “assist”), as such procedures are reserved for the Commission and, in light of the likely small number of such procedures, it is not justified and proportionate to outsource this task to an agency.

Amendment 21

Proposal for a regulation

Article 3 - point h

Text proposed by the Commission

Amendment

(h) collect and redistribute usage fees for rights-of-use of radio frequencies and numbers; ***deleted***

Justification

BERT cannot collect and redistribute usage fees, as BERT would not take over the duty of conducting the actual licensing procedures. Again, outsourcing this task is not justified and proportionate in light of the likely small number of procedures.

Amendment 22

Proposal for a regulation
Article 3 – point i a (new)

Text proposed by the Commission

Amendment

(ia) provide advice and assistance to market players and national regulatory authorities with regard to piracy and security issues.

Justification

The role of BERT in increasing data security and strengthening obligations to comply with copyright and related rights must be emphasised.

Amendment 23

Proposal for a regulation
Article 3 – point i b (new)

Text proposed by the Commission

Amendment

(ib) assist the Member States and the national regulatory authorities in matters pertaining to the interoperability of telecommunication systems used by emergency services, especially during major emergencies and disasters, and to the establishment of the communication system for warning and alerting citizens provided for in Article 26a of Directive 2002/22/EC.

(Note: The reference to Article 26a of Directive 2002/22/EC (USD) refers to a possible new Article as proposed by AM 224 to the Harbour draft report.)

Amendment 24

Proposal for a regulation
Article 3 – point i c (new)

Text proposed by the Commission

Amendment

(ic) develop a common regulatory approach to pan-European services, such as global telecommunications services, in order to ensure consistency between national rules.

Amendment 25

Proposal for a regulation Article 4 - paragraph 1

Text proposed by the Commission

1. At the request of the Commission, the Authority shall deliver opinions on all matters regarding electronic communications.

Amendment

1. At the request of the Commission the Authority shall deliver opinions ***to the Commission and the national regulatory authorities*** on all matters regarding electronic communications. ***The Authority may also deliver opinions to the Commission or the national regulatory authorities on any matter regarding electronic communications on its own initiative.***

Justification

Together with other amendment related to this Article.

Amendment 26

Proposal for a regulation Article 4 - paragraph 2

Text proposed by the Commission

Amendment

2. The Authority shall in particular contribute to the harmonised application of the provisions of the Framework Directive and the Specific Directives by assisting the Commission 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).

2. The Authority shall in particular contribute to the harmonised application of the provisions of the Framework Directive and the Specific Directives by assisting the Commission in the preparation of recommendations or decisions ***or technical implementing measures*** to be adopted by the Commission in accordance with Article 19 of Directive 2002/21/EC (Framework Directive). ***The Authority shall in this regard also provide assistance to the European Parliament in relation to any enquiry or legislation within the scope of its functions.***

Justification

Together with other amendment related to this Article.

Amendment 27

Proposal for a regulation

Article 4 - paragraph 3 - point b

Text proposed by the Commission

Amendment

(b) the security and integrity of public electronic communications networks and services, including issues linked to breaches of security and/or integrity, in accordance with Article 13a of Directive 2002/21/EC (Framework Directive) and Article 4 of Directive 2002/58/EC (Directive on privacy and electronic communications);

deleted

Justification

Together with other amendment related to this Article.

Amendment 28

Proposal for a regulation

Article 4 - paragraph 3 - point e

Text proposed by the Commission

Amendment

***(e) analyses of specific national markets
in accordance with Article 16 of Directive
2002/21/EC (Framework Directive);*** ***deleted***

Justification

Together with other amendment related to this Article

Amendment 29

Proposal for a regulation

Article 4 – paragraph 3 – point h a (new)

Text proposed by the Commission

Amendment

***(ha) effective implementation of
interoperable telecommunication systems
for emergency services as well as the
communication system for warning and
alerting citizens provided for in Article
26a of Directive 2002/22/EC;***

Amendment 30

Proposal for a regulation

Article 4 - paragraph 3 - point o

Text proposed by the Commission

Amendment

***(o) measures on radio frequencies issues
in accordance with Articles 4 and 6 of
Decision 676/2002/EC (the Radio
Spectrum Decision);*** ***deleted***

Justification

Together with other amendment related to this Article.

Amendment 31

Proposal for a regulation

Article 4 - paragraph 3 - point p

Text proposed by the Commission

Amendment

(p) in accordance with Articles 6a and 6b of Directive 2002/20/EC (Authorisation Directive): **deleted**

(i) harmonised conditions relating to rights of use of radio frequencies or numbers;

(ii) amendment or withdrawal of rights of use issued on a coordinated or harmonised basis;

(iii) the selection of undertakings to which individual rights of use for frequencies or numbers could be granted for services with cross-border potential.

Justification

Together with other amendment related to this Article.

Amendment 32

Proposal for a regulation

Article 4 - paragraph 3 - point p a (new)

Text proposed by the Commission

Amendment

(pa) advising the RSPG (Radio Spectrum Policy Group) and/or the RSC (Radio Spectrum Committee) or other relevant bodies, as appropriate, in relation to matters within the scope of the Authority's responsibility, insofar as these matters impact on or are affected by spectrum management.

Justification

Together with other amendment related to this Article.

Amendment 33

Proposal for a regulation

Article 4 – paragraph 3 – point p – point i a new

(ia) harmonised conditions for authorisations for pan-European services, such as global telecommunications services;

Amendment 34

Proposal for a regulation

Article 4 - paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission shall take the utmost account of opinions delivered by the Authority, and publicly explain how they have been taken into account.

Justification

The proposed changes in the article clarify that the addressees of opinions provided by BERT would only be the Commission and the NRAs (unless provided otherwise in specific paragraphs in the Regulation). Obtaining the opinion of BERT is not optional but a requirement in cases when the Commission's action may have an impact on the national markets. The right of BERT to act at its own initiative is made a general rule (rather than limited to specific matters, as proposed initially by the Commission in Article 15, which we propose to delete in its entirety). For avoidance of doubt, reference is made to a task of BERT to also contribute to technical implementing measures taken by the Commission. The openness of BERT towards the Parliament is demonstrated in added language. All those tasks are removed which BERT is not positioned to undertake, either due to danger of confusion of competencies (such as network and information security matters) or as the power of the Commission in relation to which the opinion should be provided is not supported by us. Added changes ensure that the Commission takes the utmost account of the opinions delivered by BERT.

Amendment 35

Proposal for a regulation

Article 5 - title and paragraph 1

Text proposed by the Commission

Amendment

Consultation of the Authority on the definition and analysis of national markets,
and on remedies

Consultation of the Authority on the definition and analysis of national markets

1. The Commission shall inform the Authority when it acts in accordance with **Article 7(4) and (8)** of Directive 2002/21/EC (Framework Directive).

1. The Commission shall inform the Authority when it acts in accordance with **Article 7(4)** of Directive 2002/21/EC (Framework Directive).

Justification

Together with other amendment related to this Article.

Amendment 36

**Proposal for a regulation
Article 5 - paragraph 2**

Text proposed by the Commission

2. The **Authority shall deliver** an opinion **to the Commission** on the draft measure concerned within 4 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 Authority **shall** indicate what changes should be made to the draft measure so as to ensure that these objectives are most effectively met.

Amendment

2. The **Commission shall request** an opinion **from the Authority** on the draft measure concerned within 4 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** the Authority **to** indicate what changes should be made to the draft measure so as to ensure that these objectives are most effectively met.

Justification

Together with other amendment related to this Article.

Amendment 37

**Proposal for a regulation
Article 5 - paragraph 3**

Text proposed by the Commission

Amendment

3. ***The Authority shall provide the*** Commission ***upon request*** with all the information available to carry out the tasks referred in paragraph 2.

3. ***The Commission may ask the Authority to provide it*** with all the information available to carry out the tasks referred in paragraph 2.

Justification

Reference to remedies has been removed from this provision to reflect our belief that the Commission's veto powers should not be extended to remedies. However, as noted above in relation to Article 4, we do believe that there is a role to be performed by the BERT which would also need to be reflected in appropriate amendments to the Framework Directive.

Amendment 38

Proposal for a regulation Article 6

Text proposed by the Commission

Amendment

Article 6

deleted

Reviews of national markets by the Authority

1. If the Authority 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 the Authority 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. The Authority may, where appropriate, consult the relevant national competition authorities before issuing its opinion to the Commission.

3. The Authority shall provide the Commission upon request with all the information available to carry out the tasks referred in paragraph 1.

Justification

Entire Article 6 should be deleted as BERT is not in a position to undertake the duty of conducting a market analysis procedure, as it fails to possess the relevant local knowledge required for an effective procedure.

Amendment 39

**Proposal for a regulation
Article 7 - paragraph 2**

Text proposed by the Commission

2. Where the Commission has identified a trans-national market in accordance with Article 15(4) of Directive 2002/21/EC (Framework Directive), the Authority ***shall undertake the market analysis in cooperation with*** the national regulatory authorities in accordance with Article 16(5) of that Directive ***and deliver an opinion to the Commission thereon.***

Amendment

2. Where the Commission has identified a trans-national market in accordance with Article 15(4) of Directive 2002/21/EC (Framework Directive), the Authority ***may, upon request, assist*** the national regulatory authorities ***concerned in the joint market analysis*** in accordance with Article 16(5) of that Directive.

Justification

Together with other amendment related to this Article.

Amendment 40

**Proposal for a regulation
Article 7 - paragraph 3**

Text proposed by the Commission

Amendment

3. Where the Authority concludes that the relevant trans-national market is not effectively competitive, the opinion to the Commission shall 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. *deleted*

Justification

Together with other amendment related to this Article.

Amendment 41

Proposal for a regulation Article 7 - paragraph 4

Text proposed by the Commission

Amendment

4. Prior to delivering its opinion under paragraphs 1 or 3, the Authority shall consult with national regulatory authorities and the national competition authorities and conduct a public consultation in accordance with Article 42 of this Regulation. *deleted*

Justification

Together with other amendment related to this Article.

Amendment 42

Proposal for a regulation Article 7 - paragraph 5

Text proposed by the Commission

Amendment

5. The Authority shall provide the Commission upon request with all the information available to carry out the tasks referred in *paragraphs 1 to 4*.

5. The Authority shall provide the Commission upon request with all the information available to carry out the tasks referred in *paragraph 1*.

Justification

As opposed to national markets (where the NRAs should retain a power to take measures), the power of the Commission to take measures with respect to trans-national markets is acknowledged, however, it is unjustified and not proportionate, and also inflexible, to define specific content and methodology for BERT with respect to its opinion to be delivered, in particular, as there is no precedent with respect to analysis of trans-national markets.

Amendment 43

Proposal for a regulation

Article 8 - paragraph 1

Text proposed by the Commission

Amendment

1. The Authority shall be able to take decisions in relation to the issuance of rights of use for numbers from the European Telephone Numbering Space (ETNS) in accordance with Article 10 of Directive 2002/21/EC (Framework Directive). It shall also be responsible for the administration and development of the European Telephone Numbering Space (ETNS) on behalf of the Member States to which the prefix 3883 has been awarded. ***deleted***

Justification

References to powers of BERT to take decisions are removed (see also comments to Article 3).

Amendment 44

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. The Authority shall undertake tasks associated with the administration and management of harmonised numbering ranges in accordance with Article 10(4) of Directive 2002/21/EC (Framework Directive). ***deleted***

Amendment 45

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

2. The Authority 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*).

Amendment

2. The Authority shall at the request of the Commission, deliver ***opinions*** to the Commission on the technical issues related to the implementation of:

(a) the European emergency call number 112 in accordance with Article 26 of Directive 2002/22/EC;

(b) interoperability issues concerning telecommunication systems for emergency services;

(c) the EU-wide communication system for warning and alerting citizens provided for in Article 26a of Directive 2002/22/EC.

Amendment 46

Proposal for a regulation Article 10 - paragraph 1

Text proposed by the Commission

Amendment

1. Upon request, the Authority shall provide advice to the Commission **and conduct studies and reviews, in particular on technical and economic aspects, regarding** the use of radio frequencies for electronic communications in the Community.

1. Upon request, **or at its own initiative**, the Authority shall provide advice to the Commission, **the RSPG and/or the RSC or other relevant bodies, as appropriate, in relation to matters within its scope of responsibility which impact on or are affected by** the use of radio frequencies for electronic communications in the Community, **as well as develop joint advice to the Commission regarding the drawing up of common policy objectives referred to in Article 6(3) of Decision 676/2002/EC (Radio Spectrum Decision), working in close cooperation with the RSPG and the RSC, as appropriate.**

Justification

Together with other amendment related to this Article.

Amendment 47

**Proposal for a regulation
Article 10 - paragraph 3**

Text proposed by the Commission

3. Upon request, the Authority shall provide advice to the Commission regarding the drawing up of common policy objectives referred to in Article 6(3) of Decision 676/2002/EC (Radio Spectrum Decision), when these fall within the electronic communications sector.

Amendment

3. Upon request, **or at its own initiative**, the Authority shall provide **advice to the RSPG and/or the RSC or other relevant bodies in relation to their** advice to the Commission regarding the drawing up of common policy objectives referred to in Article 6(3) of Decision 676/2002/EC (Radio Spectrum Decision), when these fall within the electronic communications sector.

Justification

Together with other amendment related to this Article

Amendment 48

**Proposal for a regulation
Article 10 - paragraph 4**

Text proposed by the Commission

Amendment

4. The Authority shall **publish an annual report** on prospective frequencies developments in the electronic communications sector and policies in which it shall identify the potential needs and challenges.

4. The Authority shall **contribute to reports published by the Commission, RSPG, 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.

Justification

The amendments aim to define the roles of BERT regarding frequencies more precisely and clarify that it's primary role is to provide advice not only to the Commission but to the specific bodies (RSC and RSPG) which are already assigned duties in connection with radio frequencies. BERT should not be granted duties which are assigned to RSC and RSPG, as it would lead to ineffectiveness and a confusion of regulatory and frequency competences, but rather its role should be complementary to such bodies to ensure that electronic communications policy objectives are uniform in all the relevant bodies active in the electronic communications sector.

Amendment 49

Proposal for a regulation
Article 11 - paragraph 1

Text proposed by the Commission

Amendment

1. The Authority shall, at the request of the Commission provide **the Commission with** 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 the Authority'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.

1. The Authority shall, at the request of the Commission **and/or the RSPG and the RSC or other relevant bodies**, provide 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 the Authority'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.

Justification

Together with other amendment related to this Article.

Amendment 50

Proposal for a regulation

Article 11 - paragraph 2

Text proposed by the Commission

Amendment

2. Where an opinion of the Authority pursuant to paragraph 1 relates to the implementation of a common selection procedure for rights of use falling within the scope of Article 6b of Directive 2002/20/EC (Authorisation Directive), that opinion shall in particular: **deleted**

(a) identify the electronic communications services whose provision on a cross-border basis within the Community would benefit from the use of frequencies or numbers the rights to which are granted by means of a single procedure and under a single set of conditions;

(b) identify the numbers or numbering ranges that could be used for such services;

(c) assess the level of actual or potential demand within the Community for such services, and

(d) specify any limitation it considers appropriate on the number of rights of use to be offered under the common selection procedure and the procedures to be followed for the selection of the undertakings to whom those rights are to be granted, taking due account where applicable of the principles set out in Article 7 of Directive 2002/20/EC (Authorisation Directive).

Justification

Justification

Together with other amendment related to this Article.

Amendment 51

Proposal for a regulation Article 11 - paragraph 3

Text proposed by the Commission

3. If the Commission so requests, the Authority shall explain or supplement any opinion issued pursuant to paragraph 1 within the time period specified in that request

Amendment

3. If the Commission ***or the RSPG and/or RSC or other relevant body*** so requests, the Authority shall explain or supplement any opinion issued pursuant to paragraph 1 within the time period specified in that request.

Justification

Although it is in the best interest of the internal market that BERT contributes to the efforts of the Commission regarding harmonization of conditions and procedures relating to authorizations by delivering opinions to the Commission, any definite requirement regarding the content of such opinion would be against the principle of flexibility and ability of BERT to channel in the expertise of the NRAs in an effective way.

Amendment 52

Proposal for a regulation Article 12

Text proposed by the Commission

Amendment

Article 12

deleted

Proposal for the selection of undertakings

The Authority shall, in accordance with Article 6 b of Directive 2002/20/EC (Authorisation Directive):

(a) receive and process applications from undertakings for rights-of-use of radio frequencies and numbers and collect the administrative charges and fees imposed on undertakings pursuant to a common selection procedure;

(b) carry out the common selection procedure and propose the undertaking(s) to which individual rights of use may be granted in accordance with those provisions;

(c) deliver a report to the Commission detailing the applications received, describing its assessment of those applications, proposing the undertaking(s) most eligible to be granted individual rights of use and justifying this selection by reference to the selection criteria set out in the relevant implementing measure.

Justification

BERT should not be aimed and positioned to play any active role in conducting selection procedures at the community level, as the delegation of such duties from the Commission to BERT is not justified in light of the potential number of such procedures.

Amendment 53

**Proposal for a regulation
Article 13**

Text proposed by the Commission

Amendment

Article 13

deleted

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

The Authority shall, at the request of the Commission, deliver an opinion to the Commission 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.

Justification

Entire Article 13 should be removed, in accordance with the comments made to Articles 11 and 12.

Amendment 54

Proposal for a regulation Article 14

Text proposed by the Commission

Amendment

Article 14

deleted

Network and information security

In addition to the tasks referred to in Article 4(3)(b) and Article 19(4) and (5), the Authority shall contribute to the development of a culture of network and information security, in particular by:

(a) facilitating cooperation between the Commission and the Member States in the development of common methodologies to prevent, address and respond to network and information security issues;

(b) advising the Commission on research in the area of network and information security as well as on the effective use of risk prevention technologies and promoting risk assessment activities, interoperable risk management solutions and studies on prevention management solutions within public and private sector organisations and

(c) contributing to Community efforts to cooperate with third countries and, where appropriate, with international organisations to promote a common global approach to network and information security issues.

Justification

BERT would not have tasks and duties related to network security issues. The merger of ENISA into BERT would lead to confusion in policy objectives, priorities and management, and other unpredictable and unnecessary difficulties, jeopardising the smooth running and

effectiveness of the reformed regime.

Amendment 55

Proposal for a regulation

Article 15

Text proposed by the Commission

Amendment

Article 15

deleted

Own initiative

The Authority may, on its own initiative, deliver an opinion to the Commission on the matters referred to in articles 4(2), 7(1), 8 (3), 10(1), 12, 14, 21 and 22.

Justification

The provision is redundant and should be removed in light of the refined wording of Article 4.

Amendment 56

Proposal for a regulation

Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Collection of administrative charges for services provided by the Authority

1. The Commission shall set the administrative charges imposed on undertakings for services provided by the Authority in accordance with the procedure referred in Article 54(2) and on the basis of an opinion of the Authority. The Authority shall collect these administrative charges.

2. The administrative charges shall be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.

3. The administrative charges referred to in paragraph 1 may cover:

(a) the administrative costs incurred by the Authority in the management of the selection procedure in accordance with Article 12;

(b) the processing of appeals in accordance with Article 34;

(c) the administrative costs incurred by the Authority in the administration of the European Telephone Numbering Space in accordance with Article 8.

All charges shall be expressed and be payable in Euro.

4. The amount of the administrative charges shall be fixed at such a level as to ensure that the revenue from these charges is in principle sufficient to cover the full cost of the services delivered.

5. The Authority shall publish a yearly overview of its administrative costs and charges. In the light of any difference between the total sum of the charges and the total administrative costs, it shall deliver an opinion to the Commission indicating appropriate adjustments to be made to charges.

Justification

The amendment reflects that BERT would not provide services against which collection of administrative fees would be justified.

Amendment 57

Proposal for a regulation Article 17

Text proposed by the Commission

Amendment

Collection and redistribution of usage fees for rights of use of radio frequencies and numbers and of administrative charges under a common selection procedure

1. Where usage fees for rights of use of radio frequencies or numbers issued under a common selection procedure are imposed on undertakings in accordance with Article 6b of Directive 2002/20/EC (Authorisation Directive), the Authority shall be responsible for collecting and redistributing such usage fees.

Usage fees shall be redistributed, upon their receipt by the Authority, among the relevant Member States and the Authority in accordance with the time-limit and the ratio to be set by the Commission pursuant to Article 6b of Directive 2002/20/EC (Authorisation Directive).

If the time-limit and the ratio are not set up by the Commission, usage fees shall be redistributed on the basis of the population of each Member State required to issue rights-of-use in the last completed year prior to the launch of the selection procedure.

2. The Authority shall be responsible for collecting and redistributing the administrative charges imposed following a common selection procedure for rights of use for frequencies or numbers on the selected undertakings to cover the administrative costs of national regulatory authorities in monitoring compliance with the common conditions.

These administrative charges referred to in the first subparagraph shall be redistributed upon their receipt by the Authority to the relevant national regulatory authorities in accordance with the values provided by the national regulatory authorities

Justification

This article is deleted in its entirety to reflect that BERT would not be involved in collection and redistribution of usage fees and administrative charges.

Amendment 58

Proposal for a regulation

Article 19 - paragraph 1

Text proposed by the Commission

1. The Authority 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, national regulatory authorities and the Commission on the situation and development of regulatory activities regarding electronic communications networks and services, ***including network and information security.***

Amendment

1. The Authority 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, national regulatory authorities and the Commission on the situation and development of regulatory activities regarding electronic communications networks and services.

Justification

Together with other amendment related to this Article.

Amendment 59

Proposal for a regulation

Article 19 – paragraph 2 – point c

Text proposed by the Commission

(c) organising or promoting training on all matters regarding electronic communications.

Amendment

(c) organising or promoting training ***for national regulatory authorities, other national authorities and EU bodies*** on all matters regarding electronic communications.

Amendment 60

Proposal for a regulation

Article 19 – paragraph 3

Text proposed by the Commission

3. The Authority shall make such information available to the public in an easily accessible form.

Amendment

3. The Authority shall make such information available to the public in an easily accessible form ***which also allows remote access.***

Amendment 61

Proposal for a regulation

Article 19 - paragraph 4

Text proposed by the Commission

4. The Authority shall collect appropriate information, in particular in accordance with Article 13a of Directive 2002/21/EC (Framework Directive), to analyse current and emerging risks. It shall in particular, analyse at European level, those risks which could produce an impact on the resilience and the availability of electronic communications networks and on the authenticity, integrity and confidentiality of the information accessed and transmitted through them, and provide the results of the analysis to the Member States and the Commission.

Amendment

deleted

Justification

Together with other amendment related to this Article.

Amendment 62

Proposal for a regulation

Article 19 - paragraph 5

Text proposed by the Commission

Amendment

5. The Authority shall contribute to awareness raising and the availability of timely, objective and comprehensive information, ***including on network and information security issues***, for all users by, inter alia, promoting exchanges of current best practices, ***including on methods of alerting users***, and seeking synergy between public and private sector initiatives.

5. The Authority shall contribute to awareness raising and the availability of timely, objective and comprehensive information for all users by, inter alia, promoting exchanges of current best practices and seeking synergy between public and private sector initiatives.

Justification

For planning and resource allocation purposes, training related duties in subsection 2(c) should be defined more restrictively. Subsection 4 is removed in its entirety and subsection 5 is removed partially to reflect the removal of network security related duties.

Amendment 63

Proposal for a regulation Article 20

Text proposed by the Commission

Amendment

Article 20

deleted

***Management of the spectrum information
register and of the mobile roaming
database***

1. A registry in the form of a common access point for the provision of information on the use of spectrum in each Member State shall be made available to the public to ensure the harmonised availability of information on the use of radio frequencies in the Community. The information on the use of radio frequencies shall be provided by Member States on a regular basis and in accordance with a request to this effect from the Authority. The Authority shall be responsible for the management and publication of the registry. The registry shall include the information specified in the Annex to this Regulation, as well as any other information the Authority may consider appropriate. The Commission may adopt implementing measures to adapt the Annex to technical or market developments. Those measures designed to amend non-essential elements of this Regulation shall be adopted in accordance with the procedure referred to in Article 54(3).

2. The Authority shall be responsible for the management and publication of a database on pricing of voice and data services for mobile customers when roaming within the Community including where appropriate, the specific costs related to roaming calls made and received in the outermost regions of the Community. It shall monitor developments in such prices and publish an annual report.

Amendment 64

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. The Authority 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.

2. The Authority 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, ***including those relating to inadequate consumer awareness and to other problems mentioned inter alia in the resolution of the European Parliament on consumer confidence in the digital environment.*** 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. ***Those parts of the report which address matters affecting consumers (including retail-price comparisons) shall be published on the Authority's website in a form easily accessible to consumers.***

Amendment 65

Proposal for a regulation Article 24

Text proposed by the Commission

The Authority shall comprise:

- (a) ***an Administrative*** Board
- (b) ***a Board of Regulators***
- (c) ***a*** Director
- (d) a Chief Network Security Officer***
- (e) a Permanent Stakeholders' Group
- (f) a Board of Appeal.***

(This amendment requires change of the names of the respective bodies throughout, including:

Amendment

The Authority shall comprise:

- (a) ***a Board of Regulators***
- (b) ***an Executive*** Board
- (c) ***an Executive*** Director
- (e) a Permanent Stakeholders' Group

Change Administrative Board into "Board of Regulators" in articles 25, 26, 29, 30, 37, 38, 39, 46 and 49.

Change Board of Regulators into "Executive Board" in articles: 28, 30 and 37

Change Director into "Executive Director in articles: 25, 26, 27, 30, 32, 37, 38, 44, 45 and 46)

Justification

The amendment reflects a material change in the governance structure, and removes positions and bodies (Chief Network Security Officer and Board of Appeal) which, in light of amendments proposed in Article 3, become irrelevant and unnecessary.

Amendment 66

Proposal for a regulation Article 25 - paragraph 1

Text proposed by the Commission

Amendment

1. The Administrative Board shall be composed of twelve members. Six shall be appointed by the Commission and six by the Council. The members of the Administrative Board shall be appointed in such a way as to secure the highest standards of competence and independence, and a broad range of relevant expertise. The term of office shall be five years, renewable once. ***deleted***

Justification

Together with other amendment related to this Article.

Amendment 67

Proposal for a regulation Article 25 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Board of Regulators shall have observer status and be composed of one member per Member State, who shall be the head or high-level representative of the national regulatory authority with responsibility for day-to-day application of the regulatory framework in that Member State. The Commission, as well as representatives of the national regulatory authorities of the EFTA States and accession countries, shall have observer status.

Justification

Together with other amendment related to this Article.

Amendment 68

**Proposal for a regulation
Article 25 - paragraph 2**

Text proposed by the Commission

2. The ***Administrative*** Board 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 and shall be renewable. In any event, however, the term of office of the Chairperson and that of the Vice-Chairperson shall expire the moment they cease to be members of the Administrative Board.***

Amendment

2. The Board ***of Regulators*** shall appoint its Chairperson and ***other members of the Executive Board*** from among its members. ***The Chairperson shall be elected for a term of one year. Before serving a term as Chairperson, the Chairperson shall first serve one year as Vice-Chairperson. That person shall also serve as Vice-Chairperson for the year following the term as Chairperson.***

Justification

Together with other amendment related to this Article

Amendment 69

Proposal for a regulation

Article 25 - paragraph 4

Text proposed by the Commission

4. Decisions of the *Administrative* Board shall be adopted on the basis of a two-thirds majority of the members present.

Amendment

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 by this Regulation.***

Justification

Together with other amendment related to this Article

Amendment 70

Proposal for a regulation Article 25 - paragraph 5

Text proposed by the Commission

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.***

Amendment

5. Each member shall have one vote.

Justification

The Administrative Board would be removed from the governance structure, making the governance structure simpler, more flexible and transparent. The Board of Regulators would be the primary decision making body of BERT. The Board of Regulators would remain consisting of the heads of NRAs of the EU member states, but Commission or the Council would be removed from the decision making process, which would entirely be controlled by the NRAs. The representative of the Commission would be a non-voting member of the Board of Regulators, ensuring that the position of the Commission is articulated (similarly to the functioning of the ERG). We note that a well defined level of control over BERT by the Council and the Parliament would be ensured by preserving and refining other control mechanisms, such as access to the annual work program and receipt of an annual report (Article 26), reporting by the Chairperson of BERT (Article 28), and participation in the establishment of the budget and granting a discharge (Articles 37 and 38).

Amendment 71

Proposal for a regulation
Article 26 - paragraph 1

Text proposed by the Commission

Amendment

1. The ***Administrative Board shall, after having consulted the*** Board of Regulators, appoint the Director in accordance with Article 29(2).

1. The Board of Regulators ***shall*** appoint the ***Executive*** Director in accordance with Article 29(2).

Justification

Together with other amendment related to this Article.

Amendment 72

Proposal for a regulation
Article 26 - paragraph 2

Text proposed by the Commission

Amendment

2. ***The Administrative Board shall, after consulting the Director, appoint a Chief Network Security Officer in accordance with Article 31(2).***

deleted

Justification

Together with other amendment related to this Article.

Amendment 73

Proposal for a regulation
Article 26 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Board of Regulators shall take all decisions relating to the performance of the Authority's functions, as set out in Article 3.

Justification

Together with other amendment related to this Article.

Amendment 74

Proposal for a regulation Article 26 - paragraph 3

Text proposed by the Commission

Amendment

3. The Administrative Board shall appoint the members of the Board of Regulators in accordance with Article 27(1). *deleted*

Justification

Together with other amendment related to this Article.

Amendment 75

Proposal for a regulation Article 26 - paragraph 4

Text proposed by the Commission

Amendment

4. The Administrative Board shall appoint the members of the Board of Appeal in accordance with Article 33(1). *deleted*

Justification

Together with other amendment related to this Article.

Amendment 76

Proposal for a regulation Article 26 - paragraph 5

Text proposed by the Commission

Amendment

5. The *Administrative* Board shall adopt, before 30 September each year, after consulting the Commission **and after the approval of the Board of Regulators in accordance with Article 28(3)**, the work programme of the Authority for the coming year and shall transmit it to the European Parliament, the Council and the Commission. The work programme shall be adopted without prejudice to the annual budgetary procedure.

5. The Board **of Regulators** shall adopt, before 30 September each year, *and* after consulting the Commission, the work programme of the Authority for the coming year and shall transmit it to the European Parliament, the Council and the Commission. The work programme shall be adopted without prejudice to the annual budgetary procedure.

Justification

Together with other amendment related to this Article

Amendment 77

**Proposal for a regulation
Article 26 - paragraph 8**

Text proposed by the Commission

8. The *Administrative* Board shall exercise disciplinary authority over the Director **and the Chief Network Security Officer**.

Amendment

8. The Board **of Regulators** shall exercise disciplinary authority over the **Executive** Director.

Justification

Together with other amendment related to this Article

Amendment 78

**Proposal for a regulation
Article 26 - paragraph 11**

Text proposed by the Commission

Amendment

11. The **Administrative** Board shall adopt the annual report on the activities of the Authority 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. As provided for in Article 28(4), this report shall contain an independent section approved by the Board of Regulators concerning the regulatory activities of the Authority during the year *considered*.

11. The Board **of Regulators** shall adopt the annual report on the activities of the Authority and shall transmit it to the European Parliament, the Council, the Commission, the European and Social Committee and the Court of Auditors by 15 June at the latest. As provided for in Article 28(4), this report shall contain an independent section approved by the Board of Regulators concerning the regulatory activities of the Authority during the year *in question, including measures taken to promote consumer awareness*.

Justification

Together with other amendment related to this Article

Amendment 79

**Proposal for a regulation
Article 26 - paragraph 13**

Text proposed by the Commission

Amendment

13. The Administrative Board shall deliver an opinion to the Commission on the administrative charges which the Authority may levy from undertakings in carrying out its tasks as referred to in Article 16. **deleted**

Justification

As the Administrative Board would be removed from the governance structure, its tasks and duties would be taken over by the Board of Regulators, so that the tasks and duties included in the Commission's proposal regarding the Administrative Board and the Board of Regulators are merged in one body. The list of tasks are refined to reflect that BERT would not pass decisions (and collect fees for its procedure) and would not take up network security related duties.

Amendment 80

**Proposal for a regulation
Article 27 - paragraph 1**

Text proposed by the Commission

Amendment

1. The Board of Regulators shall be composed of one member per Member State who shall be the Head of the independent national regulatory authority with responsibility for day-to-day application of the regulatory framework in the Member State, the Director and one non-voting representative of the Commission. The national regulatory authorities shall nominate one alternate per Member State.

deleted

Justification

Together with other amendment related to this Article.

Amendment 81

Proposal for a regulation Article 27 - paragraph 2

Text proposed by the Commission

Amendment

2. The **Director** shall be the Chairperson of the Board of Regulators.

2. The **Executive Board shall be composed of a maximum of five members, two of whom shall be Vice-Chairperson of the Board of Regulators and one of whom shall be the Chairperson of the Board of Regulators. Meetings of the Executive Board shall be convened by the Chairperson.**

Justification

Together with other amendment related to this Article.

Amendment 82

Proposal for a regulation Article 27 - paragraph 3

Text proposed by the Commission

Amendment

3. *The Board of Regulators shall elect a Vice-Chairperson from among its members. The Vice-Chairperson shall replace the Chairperson if the latter is not in a position to perform his or her duties. The term of office of the Vice-Chairperson shall be two and a half years and shall be renewable. In any event, however, the term of office of the Vice-chairperson shall expire the moment he/she ceases to be members of the Board of Regulators.*

3. *Either* Vice-Chairperson shall replace the Chairperson if the latter is not in a position to perform his or her duties.

Justification

Together with other amendment related to this Article.

Amendment 83

Proposal for a regulation Article 27 - paragraph 4

Text proposed by the Commission

4. *The Board of Regulators shall act by a simple majority of its members. Each member or alternate other than the Director and the representative of the Commission shall have one vote.*

Amendment

4. *Unless otherwise specified in this Regulation, the Executive Board shall act by simple majority. Each member of the Executive Board shall have one vote. In the event of a tied vote, the vote of the Chairperson shall be decisive.*

Justification

Together with other amendment related to this Article.

Amendment 84

Proposal for a regulation Article 27 - paragraph 6

Text proposed by the Commission

Amendment

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 government of a Member State or from any public or private interest.

6. When carrying out the tasks conferred on it by this Regulation, ***the Authority, whether through*** the Board of Regulators ***or the Executive Board***, shall act independently and shall not seek or take instructions from any government of a Member State or from any public or private interest.

Justification

The amendments reflect that while the Board of Regulators would take over the tasks and duties of the Administrative Board, an Executive Board comprising of a limited number of members elected from among the members of the Board of Regulators (including a Chairperson and two Vice-Chairpersons) would also be set up.

Amendment 85

Proposal for a regulation Article 27 - paragraph 7

Text proposed by the Commission

Amendment

7. The Board of Regulators' secretarial services shall be provided by the Authority. ***deleted***

Justification

The amendments reflect that while the Board of Regulators would take over the tasks and duties of the Administrative Board, an Executive Board comprising of a limited number of members elected from among the members of the Board of Regulators (including a Chairperson and two Vice-Chairpersons) would also be set up.

Amendment 86

Proposal for a regulation Article 28

Text proposed by the Commission

Amendment

Tasks of the Board ***of Regulators***

Tasks of the ***Executive*** Board

1. The Board *of Regulators* shall *provide an opinion to the Director before the adoption of the opinions, recommendations and decisions referred to in Articles 4 to 23 within its field of competence*. In addition, the Board *of Regulators* shall *provide guidance* to the Director *in* the execution of the Director's tasks.
2. *The Board of Regulators shall deliver an opinion on the candidate to be appointed as Director in accordance with Article 26(1) and Article 29(2). The Board shall reach this decision on the basis of a majority of three quarters of its members. The Director shall not participate in the preparation of, or vote on, such opinions.*
3. *The Board of Regulators shall, in accordance with Article 26(5) and Article 30(4) and in line with the draft budget established according to Article 37 approve the work programme of the Authority for the coming year concerning its activities.*
4. *The Board of Regulators shall approve the independent section on regulatory activities of the annual report provided for in Article 26(11) and Article 30(9).*

1. The *Executive* Board shall *be responsible for representing the Authority and ensuring that the Authority performs its activities in accordance with the provisions of this Regulation*. In addition, the *Executive* Board shall *issue instructions* to the *Executive* Director *which are essential to* the execution of the *Executive* Director's tasks.
2. *The Chairperson of the Executive Board shall each year attend a hearing before the appropriate committee of the European Parliament to report on the Authority's performance.*

Amendment 87

Proposal for a regulation Article 29

Text proposed by the Commission

The Director

Amendment

The *Executive* Director

1. The Authority shall be managed by its Director, who shall act *independently in the performance of his/her functions. Without prejudice to the respective powers of the Commission, the Administrative Board and the Board of Regulators, the Director shall not seek or accept any instruction from any government or from any body.*

2. *After consulting the Board of Regulators, the* Director shall be appointed by the *Administrative* Board, on the basis of merit, skills and experience relevant for electronic communications networks and services.

3. The Director's term of office shall be *five* years. In the course of the nine months preceding the end of this period, the *Commission* shall undertake an evaluation. In the evaluation, the *Commission* shall assess in particular :

(a) the performance of the Director;

(b) the Authority's duties and requirements in the coming years.

4. *After consulting the* Board of Regulators, *the Administrative Board, acting on a proposal from the Commission,* may extend the term of office of the 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 the Authority.*

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

1. The Authority shall be managed by its *Executive* Director, who shall act *on the instructions of the Executive Board.*

2. *The Executive* Director shall be appointed by the Board *of Regulators*, on the basis of merit, skills and experience relevant for electronic communications networks and services.

3. The *Executive* Director's term of office shall be *three* years. In the course of the nine months preceding the end of this period, the *Board of Regulators* shall undertake an evaluation. In the evaluation, the *Board of Regulators* shall assess in particular:

(a) the performance of the *Executive* Director;

(b) the Authority's duties and requirements in the coming years.

4. *The* Board of Regulators may extend the term of office of the *Executive* Director once for not more than three years, taking into account the evaluation report.

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

5. The Director may be removed from office only upon a decision *by* the **Administrative** Board, *after consulting the Board* of Regulators. **The Administrative Board shall reach this decision** on the basis of a majority of *three quarters* of its members.

6. The European Parliament and the Council may call upon the Director to submit a report on the performance of his duties.

If the term of office is not extended, the **Executive** Director shall remain in office until the appointment of *a* successor.

5. The **Executive** Director may be removed from office only upon a decision of the Board of Regulators taken on the basis of a majority of *three-quarters* of its members.

Justification

The status of the Director is revised and the position is renamed Executive Director to reflect a shift in the role of the Executive Director in the revised governance structure. The Executive Director is elected by the Board of Regulators and is positioned as an executive responsible for day-to-day operational matters. As the Executive Director acts under instructions by the Executive Board, the Executive Director cannot be accountable to the Parliament and the Council.

Amendment 88

Proposal for a regulation

Article 30 - title and paragraph 1

Text proposed by the Commission

Tasks of the Director

1. The Director ***shall be responsible for representing*** the Authority and shall be in charge of *its* management.

Amendment

Tasks of the **Executive** Director

1. The **Executive** Director ***may be authorised by the Executive Board to represent*** the Authority ***in specific matters*** and shall be in charge of ***the*** management ***of the Authority***.

Justification

The tasks of the Executive director (replacing the position of the Director) are refined to match amendments proposed in other Articles.

Amendment 89

Proposal for a regulation
Article 30 - paragraph 3

Text proposed by the Commission

Amendment

3. The Director shall adopt the opinions, recommendations and decisions referred to in Articles 4 to 23, subject to the assent of the Board of Regulators.

deleted

Justification

The tasks of the Executive director (replacing the position of the Director) are refined to match amendments proposed in other Articles

Amendment 90

Proposal for a regulation
Article 30 - paragraph 4

Text proposed by the Commission

Amendment

4. Each year the Director shall prepare a draft work programme of the Authority for the following year, and submit it to the Board of Regulators **and** to the Commission before 30 June of that year.

4. Each year the **Executive** Director shall prepare a draft work programme of the Authority for the following year, and submit it to the Board of Regulators. **The Board of Regulators shall approve the draft work programme and submit it** to the Commission before 30 June of that year.

He/she shall present the work programme before 1 September for adoption by the Administrative Board.

Justification

The tasks of the Executive director (replacing the position of the Director) are refined to match amendments proposed in other Articles

Amendment 91

Proposal for a regulation
Article 30 – paragraph 5

Text proposed by the Commission

Amendment

5. The Director shall be responsible for implementing the annual work programme of the Authority, under the guidance of the Board of Regulators *and of the Chief Network Security Officer as appropriate, and under the administrative control of the Administrative Board.*

5. The ***Executive*** Director shall be responsible for implementing the annual work programme of the Authority, under the guidance of the Board of Regulators.

Amendment 92

Proposal for a regulation Article 31

Text proposed by the Commission

Amendment

Article 31

deleted

The Chief Network Security Officer

1. The Chief Network Security Officer shall be responsible for coordinating the Authority's tasks relating to network and information security. The Chief Network Security Officer shall work under the responsibility of, and report to, the Director. He/she will prepare the draft annual work programme for these activities.

2. The Chief Network Security Officer shall be appointed for a period of five years by the Administrative Board, on the basis of merit, skills and experience relevant for dealing with network and information security issues, from a list of at least two candidates proposed by the Commission.

3. The Chief Network Security Officer may be removed from office only upon a decision by the Administrative Board, after consulting the Director. The Administrative Board shall reach this decision on the basis of a majority of three quarters of its members.

4. After consulting the Director, the Administrative Board, acting on a proposal from the Commission, may extend the term of office of the Chief Network Security Officer once for not more than three years only in those cases where it can be justified by the duties and requirements of the Authority.

Justification

BERT would not take over the tasks designated to ENISA, therefore, the position of a Network Chief Executive Officer is unnecessary (see also amendments to Article 3).

Amendment 93

**Proposal for a regulation
Article 32**

Text proposed by the Commission

1. The **Chief Network Security Officer** shall establish a Permanent Stakeholders' Group composed of experts representing the relevant stakeholders, in particular from the information and communications technologies industry, consumer groups and academic experts ***in network and information security***. **He** shall, in consultation with the Director, determine the procedures regarding in particular the number, the composition, the appointment of the members, and the operation of the Group.

2. The Group shall be chaired by the **Chief Network Security Officer**. The term of office of its members shall be two-and-a-half years. Members of the Group may not be members of ***the Administrative Board*** **or** the Board of Regulators.

3. Representatives of the Commission shall be entitled to be present in the meetings and participate in the work of the Group.

Amendment

1. The **Board of Regulators** shall establish a Permanent Stakeholders' Group composed of experts representing the relevant stakeholders, in particular from the information and communications technologies industry, consumer groups and academic experts. **It** shall, in consultation with the **Executive** Director, determine the procedures regarding in particular the number, the composition, the appointment of the members, and the operation of the Group.

2. The Group shall be chaired by the **Executive Director**. The term of office of its members shall be two-and-a-half years. Members of the Group may not be members of the Board of Regulators.

3. Representatives of the Commission shall be entitled to be present in the meetings and participate in the work of the Group.

4. The Group may advise the **Chief Network Security Officer** in the performance of *his/her* duties under this Regulation, in drawing up a proposal for the relevant parts of the Authority's work programme, as well as in ensuring communication with stakeholders on all issues related to the work programme.

4. The Group may advise the **Board of Regulators** in the performance of *its* duties under this Regulation, in drawing up a proposal for the relevant parts of the Authority's work programme, as well as in ensuring communication with stakeholders on all issues related to the work programme.

Justification

The Permanent Stakeholders' Group is a significant board of the Authority, as it represents the relevant stakeholders and the interests of the consumers and employers as well employee representatives.

Amendment 94

Proposal for a regulation Article 33

Text proposed by the Commission

Amendment

Article 33

deleted

Board of Appeal

1. The Board of Appeal shall be composed of six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the electronic communications sector. The Board of Appeal designates its Chairperson.

2. The members of the Board of Appeal shall be appointed by the Administrative Board, on a proposal from the Commission, following a call for expression of interest, after consultation of the Board of Regulators.

3. The term of office of the members of the Board of Appeal shall be five years. This term shall be renewable. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They may not perform any other duties in the Authority, in its Administrative Board or in its Board of Regulators. A member of the Board of Appeal may not be removed during his/her term of office, unless he/she has been found guilty of serious misconduct, and the Administrative Board, after consulting the Board of Regulators, takes a decision to this effect.

4. Members of the Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.

If, for one of the reasons mentioned in the first subparagraph or for any other reason, a member of a Board of Appeal considers that a fellow member should not take part in any appeal proceedings, the member shall inform the Board of Appeal accordingly. A member of the Board of Appeal may be objected to by any party to the appeal proceedings on any of the grounds mentioned in the first subparagraph, or if suspected of partiality. An objection cannot be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step.

5. The Board of Appeal shall decide as to the action to be taken in the cases specified in paragraph 4 without the participation of the member concerned. For the purposes of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate, unless the alternate finds himself in a similar situation. Should this be the case, the Chairperson shall designate a replacement from among the available alternates.

Justification

As BERT would not pass appealable decisions, this Article becomes unnecessary.

Amendment 95

**Proposal for a regulation
Article 34**

Text proposed by the Commission

Amendment

Article 34

deleted

Appeals

1. The Board of Appeal shall be responsible for deciding on appeals against decisions or measures taken by the Authority in areas covered by Article 8(1).

2. The decisions of the Board of Appeal shall be adopted on the basis of a qualified majority of at least four out of its six members. The Board of Appeal shall be convened when necessary.

3. An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Board of Appeal may, however, if it considers that circumstances so require, suspend the application of the contested decision.

4. The appeal, together with the statement of grounds thereof, shall be filed in writing at the Authority within two months of the notification of the decision or measure to the undertaking concerned, or, in the absence thereof, of the day on which the Authority has made public its measure or decision. The Board of Appeal shall decide upon the appeal within two months after the appeal has been lodged.

5. If the appeal is admissible, the Board of Appeal shall examine whether it is well founded. It shall invite the parties as often as necessary to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make an oral presentation.

6. The Board of Appeal may, within the terms of this Article, exercise any power which lies within the competence of the Authority or it may remit the case to the competent body of the Authority. The latter shall be bound by the decision of the Board of Appeal.

7. The Board of Appeal shall adopt its rules of procedure.

Justification

As BERT would not pass appealable decisions, this Article becomes unnecessary.

Amendment 96

Proposal for a regulation Article 35

Text proposed by the Commission

Amendment

Article 35

deleted

***Actions before the Court of First Instance
and the Court of Justice***

1. An action may be brought before the Court of First Instance or the Court of Justice in accordance with Article 230 of the Treaty, contesting a decision taken by the Board of Appeal or, in cases where no right of appeal lies before the Board, by the Authority.

2. Should the Authority fail to take a decision, proceedings for failure to act may be brought before the Court of First Instance or the Court of Justice in accordance with Article 232 of the Treaty.

3. The Authority shall be required to take the necessary measures to comply with the judgment of the Court of First Instance or the Court of Justice.

Justification

As BERT would not pass appealable decisions, this Article becomes unnecessary.

Amendment 97

Proposal for a regulation Article 36 – paragraph 1

Text proposed by the Commission

1. The revenues of the Authority shall consist of:

(a) charges for services provided by the Authority;

(b) a proportion of usage fees paid by applicants in accordance with the provisions of Article 17;

*(c) a **subsidy** from the Community, entered in the general budget of the European Communities (Commission Section);*

(d) any legacies, donations or grants as mentioned in Article 26(7).

Amendment

1. The revenues of the Authority shall consist of a **grant** from the Community, entered in the general budget of the European Union **under Article 185 of the Financial Regulation**.

(e) any voluntary contribution from the Member States or from their regulatory authorities.

Justification

As BERT undertakes, to a very large extent, duties assisting the implementation of the underlying Community policy in electronic communications, it is justified that BERT should be financed by Community funding.

Amendment 98

**Proposal for a regulation
Article 37 - paragraph 1**

Text proposed by the Commission

1. By 15 February of each year at the latest, the 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 *Administrative* Board together with a list of provisional posts. Each year the *Administrative* Board shall, on the basis of the draft prepared by the Director, make an estimate of revenue and expenditure of the Authority for the following financial year. This estimate, including a draft establishment plan, shall be transmitted by the *Administrative Board to the Commission by 31 March at the latest. Prior to the adoption of the estimate, the draft prepared by the Director shall be transmitted to the Regulatory Board, which may deliver an opinion on the draft.*

Amendment

1. By 15 February of each year at the latest, the ***Executive*** 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 ***Executive*** Director, make an estimate of revenue and expenditure of the Authority for the following financial year. This estimate, including a draft establishment plan, shall be transmitted by the ***Executive Director to the Board of Regulators and to the budgetary committee of the Authority (the “Budgetary Committee”)***.

The Budgetary Committee shall consist of 16 members, of whom seven shall be appointed by the European Parliament, seven by the Council and two by the Commission. The Budgetary Committee shall take its decisions acting by a majority of two-thirds of its members. The Budgetary Committee shall not be a permanent body. The Budgetary Committee shall approve the estimate to be included in the draft budget and establishment plan as an amount covered by Community funding under Article 26, and shall transmit its decision to the Board of Regulators and the Commission.

The Board of Regulators shall finalize the draft budget and establishment plan, taking account of the decision of the Budgetary Committee.

Justification

The changes reflect the elimination of the Administrative Board in the governance structure in Article 24. Budget related powers are assigned to the Board of Regulators. The proposal reflects that BERT would be co-funded from community and Member State sources. It is also proposed that, for sake of transparency and shared control over the spending of community funding, a “Budgetary Committee”, consisting of representatives of the Council, the Parliament and the Commission, would be set up for the specific purpose of approving the portion of the budget of BERT to be covered from community funding. Such institution would be an adequate, proportionate and well balanced solution to ensure that both the Council and the Parliament has appropriate control over the utilization of the community funding, while the Commission would also be able to provide its professional input through its participation in the Budgetary Committee.

Amendment 99

Proposal for a regulation Article 37 - paragraph 2

Text proposed by the Commission

Amendment

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 **Communities**.

2. The estimate ***approved by the Budgetary Committee and transmitted to the Commission in accordance with paragraph 1*** shall be transmitted by the Commission to the European Parliament and to the Council (the "budgetary authority") together with the preliminary draft general budget of the European **Union**.

Justification

see amendment n°77

Amendment 100

Proposal for a regulation Article 37 - paragraph 6

Text proposed by the Commission

6. The **Administrative** Board 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 the Authority of its intention to issue such an opinion. Failing a reply, the Authority may proceed with the planned operation.

Amendment

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, ***in the event that the proposed project requires additional Community funding. In such an event, the Authority*** shall inform the Commission thereof. If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify the Authority of its intention to issue such an opinion. Failing a reply, the Authority may proceed with the planned operation.

Justification

see amendment n°77

Amendment 101

Proposal for a regulation
Article 42

Text proposed by the Commission

Except in cases falling within Article 20 or Article 21, the Authority shall, when it intends to **take measures** in accordance with the provisions *described in* this Regulation, consult where appropriate interested parties and give them the opportunity to comment on the draft **measure** within a reasonable period. The results of the consultation procedure shall be made publicly available by the Authority, except in the case of confidential information.

Amendment

The Authority shall, when it intends to **issue an opinion** in accordance with the provisions *of* this Regulation, consult, where appropriate, interested parties, **including the Stakeholders Group and other consumer interest groups**, and give them the opportunity to comment on the draft **opinion** within a reasonable period. The results of the consultation procedure shall be made publicly available by the Authority, except in the case of confidential information.

Justification

The changes aim to reflect the changes of the powers and duties of BERT in Article 3. BERT is proposed not to have powers to impose measures, and would serve primarily as a consultative body providing opinions only. A reference to consumer interest groups is aimed to ensure that consumer interests are taken into account properly.

Amendment 102

Proposal for a regulation
Article 44

Text proposed by the Commission

The Authority's staff, including the Director, **the Chief Network Security Officer** and officials seconded by Member States on a temporary basis, shall make a 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.

Amendment

The Authority's staff, including the **Executive** Director and officials seconded by Member States on a temporary basis, shall make a 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.

Justification

The proposed change aims to reflect the proposals in Articles 3 and 24 concerning the

removal of the position of the Chief Network Security Officer.

Amendment 103

Proposal for a regulation

Article 46 – paragraph 2

Text proposed by the Commission

2. Members of the **Authority's** Boards, the Director, external experts, and members of the staff of the Authority including officials seconded by Member States on a temporary basis are subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.

Amendment

2. Members of the Boards, the **Executive** Director, external experts, and members of the staff of the Authority including officials seconded by Member States on a temporary basis are subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.

Amendment 104

Proposal for a regulation

Article 48 - paragraph 3

Text proposed by the Commission

3. The Authority shall be represented by its Director.

Amendment

deleted

Justification

The proposed change is in accordance with the revised governance structure and the granting of the right to represent BERT to the Executive Board in Article 28(1).

Amendment 105

Proposal for a regulation

Article 49 - paragraph 1

Text proposed by the Commission

Amendment

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 the Authority, including the Director **and the Chief Network Security Officer**.

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 the Authority, including the **Executive Director, with the exception of experts seconded from Member States**.

Justification

The proposed changes reflect the proposals in Article 3 and 24 concerning the removal of the position of the Chief Network Security Officer and the changes in the governance, i.e., the elimination of the Administrative Board and the increased role of the Board of Regulators.

Amendment 106

Proposal for a regulation Article 55

Text proposed by the Commission

Within **five** years *from* the effective start of operations and every five years thereafter, **the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and of the procedures laid down in this Regulation**. The evaluation shall cover the results achieved by the Authority and its working methods, in relation with its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation shall take into account the views of stakeholders, at both Community and national level. The report and any accompanying proposals shall be forwarded to the European Parliament **and to** the Council.

Amendment

Within **two** years *of* the effective start of operations and every five years thereafter, **the Authority shall evaluate its performance**. The evaluation shall cover the results achieved by the Authority and its working methods, in relation with its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation shall take into account the views of stakeholders **(including consumers and consumer organisations)**, at both Community and national level. The report and any accompanying proposals shall be forwarded to the European Parliament, the Council **and the Commission**.

Amendment 107

Proposal for a regulation

Article 56

Text proposed by the Commission

Amendment

Article 56

deleted

Transitional provisions

1. The Authority shall, on 14 March 2011, assume responsibility for all activities undertaken by the European Network and Information Security Agency prior to that date and which fall within the scope of this Regulation.

2. The ownership interest in any moveable property held by the European Network and Information Security Agency at the date referred to in paragraph 1 above shall be transferred to the Authority with effect from that date.

Justification

To be deleted in accordance with the changes proposed in Article 3 (ENISA would not be merged into BERT).

PROCEDURE

Title	European Electronic Communications Market Authority			
References	COM(2007)0699 – C6-0428/2007 – 2007/0249(COD)			
Committee responsible	ITRE			
Opinion by Date announced in plenary	IMCO 10.12.2007			
Drafts(wo)man Date appointed	Edit Herczog 31.1.2008			
Discussed in committee	28.2.2008	26.3.2008	6.5.2008	28.5.2008
Date adopted	16.6.2008			
Result of final vote	+: 33 -: 0 0: 0			
Members present for the final vote	Cristian Silviu Buşoi, Charlotte Cederschiöld, Janelly Fourtou, Evelyne Gebhardt, Martí Grau i Segú, Małgorzata Handzlik, Malcolm Harbour, Edit Herczog, Iliana Malinova Iotova, Kurt Lechner, Lasse Lehtinen, Toine Manders, Arlene McCarthy, Nickolay Mladenov, Catherine Neris, Bill Newton Dunn, Zita Pleštinská, Karin Riis-Jørgensen, Zuzana Roithová, Heide Rühle, Leopold Józef Rutowicz, Salvador Domingo Sanz Palacio, Christel Schaldemose, Andreas Schwab, Eva-Britt Svensson, Jacques Toubon, Bernadette Vergnaud			
Substitute(s) present for the final vote	Giovanna Corda, Jan Cremers, Manuel Medina Ortega, Anja Weisgerber			
Substitute(s) under Rule 178(2) present for the final vote	Dragoş Florin David, Rovana Plumb			