

BEREC Office follow up report on discharge 2018
EP Decision P9_TA-PROV(2020)0099 of 13 May 2020 on budgetary discharge 2018 for BEREC Office

Observation of the Discharge Authority	Response and measures taken by the Agency	Status/Reference
<p>5. Notes with concern that the Agency does not share resources with other agencies due to its limited own resources; notes, however, that in 2014 the Agency signed a service level agreement with ENISA for sharing resources in the field of internal controls; notes that that agreement was terminated by ENISA from 1 January 2020 as a result of changes in the structure of ENISA due to its expanded new mandate; notes with satisfaction that the Agency started a joint project for sharing IT infrastructure and other IT projects with several joint undertakings and other Union agencies; welcomes that initiative and urges the Agency to further explore possible ways of outsourcing its tasks and collaborating on overlapping tasks with other Union institutions and bodies;</p>	<p>The BEREC Office, due its limited size, is proactively searching for partners who could offer services to the Agency to compensate its missing capacities. The Commission, due to its well-functioning services and good capabilities, is the preferred partner for the BEREC Office. The BEREC Office has Service level agreements (SLAs) with DG Budget – for use of accounting officer function, with DG HR – for a wide range of services (incl. in the field of security), with the PMO – for establishing the individual rights of staff, with DG DIGIT (for IT procurement and use of different IT tools), with CERT EU – for IT security, etc.</p> <p>The BEREC Office signed in 2019 SLAs for sharing of IT services and capacities also with EUIPO and a group of Joint Undertakings. The first cooperation activity performed under the SLA was the functional and architecture analysis of BEREC and the BEREC Office website.</p> <p>BEREC Office actively seeks possibilities to cooperate further with others EU agencies regarding BEREC and BEREC Office webpage development and maintenance.</p>	<p>Ongoing</p>



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	<p>Currently we are with conversation with EUIPO and DIGIT to implement model, where our direct responsibility will be platforms content. All related BEREC and the BEREC Office webpage IT infrastructure would be placed on other EU agencies' infrastructure to strengthen our collaboration dividing responsibilities on doing what each agency is embedding the best.</p> <p>However, the BEREC Office has not been able yet to find a partner for the provision of the internal control coordinator and security officer functions, which leaves the Agency without such capabilities. We also tried to find another EU body to share its Data Protection Officer function, as the BEREC Office does not possess this mandatory profile in its establishment plan, without success.</p> <p>On the other hand, due to its small size the BEREC Office currently is not able to offer services to other Agencies. However, the Agency is contributing actively to the work of the EU Agencies' Network when there are projects of the interest of the BEREC Office, such as the survey on Activity Based Budgeting organised and summarised in 2019 and 2020 by the Performance Development Network.</p>	
<p>6. Notes from the Court's report that in 2018 the Agency launched a call for tender to conclude a framework contract which was awarded without requesting any explanation from the winning tenderer for the potentially abnormally low tender; acknowledges the Agency's reply that until 2018 it did not have separate guidance on abnormally low tender prices, but notes with satisfaction that the Agency introduced the definition of abnormally</p>	<p>As acknowledged by the EP, the BEREC Office introduced the definition of abnormally low tender price in its internal procurement manual, as follows: "Tenders whose price is lower than 30% of the estimated value of the contract shall be considered as appearing as abnormally low and explanation shall therefore be asked in writing in accordance with the relevant provisions of the</p>	<p>Implemented</p>

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low tender price in its internal procurement manual; calls on the Agency to request the reasons for abnormally low tenders and analyse them in order to ensure the sustainability of potentially abnormally low tenders;	Financial Regulation.”	
9. Notes with concern that the Agency is dependent on external resources and on one company, which creates a risk to business continuity; notes with concern that the Agency does not possess the critical mass of staff and competence; calls the Commission to present appropriate resource allocation to the budgetary authority;	To address this comment the Management Board requested 8 additional establishment posts in the draft budget 2021 – to fill in its missing capacities and to reach critical mass. The Commission, in the draft Budget 2021, has acknowledged the fact that the Agency needs additional establishment plan posts. However, this acknowledgement has not been reflected in the proposed figures of the establishment plan post, which are proposed to remain at the level of 2020, namely: 16.	Ongoing – out of the competence of the Agency, requires action by the EU budgetary authority
10. Notes with satisfaction that at the end of 2018 gender balance was almost achieved at staff level (52 % women and 48 % men) and was achieved in middle management positions (50 % women and 50 % men), and notes that a good geographical balance was achieved, with the Agency employing staff from 13 Member States; is concerned, however, that gender balance was not achieved among the members of the management board, with only 5 women among the 28 members; asks in this regard the Commission and the Member States to take into account the importance of ensuring gender balance when presenting their nominations for members of the management board;	The BEREC Office took note on the Discharge Authority comment and we would like to inform you that this concern was brought to the attention of the European Commission and the National Regulatory Authorities of the Member States.	Ongoing
11. Notes with concern that in 2017 the average employment period in the Agency was only 2,7 years which is reflected in a high staff turnover; understands that the Agency struggles to attract professionals, inter alia	The BEREC Office management regularly analyses the reasons for the high staff turnover and continues its efforts to address these reasons for as far as they are within the influence of the Agency. To this end, in 2018, the Agency	Ongoing

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<p>because of the low salary correction coefficient of the host country (74,9 %); stresses that the high staff turnover highlights possible problems with the Agency's revolving door policy; calls on the Agency to re-evaluate its revolving policy; expresses its concern that the reduction of the posts authorised under the Union budget in recent years together with the additional tasks acquired have increased the workload of the Agency's staff; points out that this situation may pose risks to the implementation of its work programmes; observes that the Agency works towards improving the employment conditions for its staff, and that in 2018 the Agency started the implementation of an action plan for social welfare; calls on the Agency to find further possibilities for improving the working and living conditions for the staff with the Latvian authorities aiming to conclude a new headquarters agreement;</p>	<p>adopted a Management Committee Decision on the implementation of measures of a social nature at the BEREC Office. The multiannual action plan annexed to this Decision continues to be executed with the aim of reducing the staff turnover. The measures taken are regularly reported to the Management Board, and have been included in the Consolidated Annual Activity Report (CAAR) of 2019.</p> <p>Moreover, in compliance with Article 47(1) of Regulation (EU) 2018/1971, and after obtaining the approval of the Management Board (Decision No MB/2019/06), the Agency in 2019 started a joint project with the host Member State to conclude a new Headquarters Agreement. During the negotiations, the Agency is advocating for an improvement of the living and working conditions for its staff with the purpose of improving staff retention and reducing staff turnover.</p> <p>As for the revolving door policy, the Commission Decision C(2018) 4048 of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service applies to the BEREC Office by analogy. Under Title 4 of abovementioned Decision, (former) staff members have the obligation to declare their intention to engage in an occupational activity, following which the Appointing Authority may forbid the staff member to undertake this new activity, or impose other conditions mitigating a conflict of interest. From such declarations of staff having left the BEREC Office over the past years, there are no indications that there are revolving door issues: there is very limited staff mobility between the BEREC Office and the electronic communications industry, or between the Agency and the NRA's.</p>	

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	The Agency would welcome a Commission Decision further specifying rules, controls and guidelines on cooling-off periods for outgoing staff and other revolving-door related, which the Agency could then implement.	

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<p>12. Notes with concern from the Court's report that on 4 May 2018 the Agency signed a framework contract with one company for the provision of clerical and secretarial support services for a duration of four years for a maximum amount of EUR 433 000 (2018 payments: EUR 27 655) and that from June 2018 on average 4 of that company's staff were working at the Agency in addition to its own 27 employees; stresses that the use of this service contract for the provision of labour does not comply with the Union's social and employment rules and exposes the Agency to legal and reputational risks; calls on the Agency to redress the situation and report back to the discharge authority;</p> <p>13. Notes that the Agency signed a framework contract with one company for the provision of clerical and secretarial support services, but recalls that the loan of staff can take place only by means of contracts with authorised temporary work agencies and in accordance with Directive 2008/104/EC of the European Parliament and of the Council¹, and with specific rules adopted by the Member States; notes with concern that the use of this service contract does not comply with the Union's social and employment rules; takes note of the Agency's reply that following an open tender procedure, it concluded a framework contract for the provision of clerical and secretarial support services, guaranteed over the duration of the contract, which is different from the use of interim workers; notes that according to the tender specifications of the framework contract, which are annexed to it, the contractor is required to comply with the applicable Union and national legal framework;</p>	<p>The BEREC Office would like to emphasise that the subject of the framework contract is the provision of certain services and not the loan of staff. The BEREC Office has envisaged as a minimum requirement the obligation of the contractor to comply with the Union's and national social and employment rules.</p> <p>The subject of the contract is the provision of clerical and secretarial support services, which has been outsourced due to the fact that the BEREC Office has no posts that are suitable for assigning the clerical and secretarial support activities to.</p> <p>In the understanding of the BEREC Office the conclusion of such contracts is allowed by the provisions of Article 62 (3) of the Financial Regulation, which forbids the outsourcing only of tasks involving the exercise of public authority and discretionary powers of judgement, which is not the case for the clerical and secretarial support services.</p> <p>However, the BEREC Office would be happy to internalise these services if the budgetary authority would decide to establish posts for clerical and secretarial support in the establishment plan of the BEREC Office. The current establishment plan, with total 16 posts, would not allow hiring assistants and secretaries.</p>	<p>Implemented – internalisation and full compliance could be envisaged after addressing note 9 above.</p>

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<p>14. Notes from the Court's report that by the end of 2017 the Agency had introduced e- tendering for certain procedures, but had not yet implemented e-invoicing and e- submission; notes from the Agency's reply that following the signature, in 2018, of a Memorandum of Understanding one-PRIOR between the Agency and the Commission's Directorate-General for Informatics, an e-submission module of e-PRIOR was deployed for the Agency;</p>	<p>As stated by the EP, by the end of 2017, the BEREC Office had introduced e-tendering for certain procurement procedures.</p> <p>In 2019, the BEREC Office introduced e-submission.</p> <p>The on-boarding of e-invoicing is in progress and depends on the availability of the European Commission services.</p>	<p>E-invoicing module: Ongoing</p>
<p>20. Calls on the Agency to focus on disseminating the results of its research to the general public, and to reach out to public via the social media and other media outlets;</p>	<p>The BEREC Office and BEREC together form a two-tier structure, which has a major impact on the way the business is organized, including the area of communication. Within the latter domain, the central focus is predominantly on BEREC, and dissemination of results of its work.</p> <p>Firstly, we would like to underline that BEREC has the External Communications Strategy since 2016 complemented by annual communications plans. All the defined activities are also reflected in single programming documents. BEREC communications experts use diverse range of communications means and ways to deliver on the planning documents. Social media (our official accounts on Twitter, LinkedIn and Youtube) has been permanently used to reach the goals of those documents. BEREC regularly issues press releases, which are distributed to the journalists (subscribers list is constantly updated), as well as holds public debriefings and stakeholder forums with open doors to stakeholders, as well as journalists. Besides, BEREC encourages interviews and swiftly responds to media enquiries.</p>	<p>Ongoing</p>

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	<p>Secondly, within the Strategy and annual plans, BEREC clearly identifies the target audiences, defined by the BoR, which do not include the general public (for limited number of topics it includes end –users). This is rooted in the expert body status and the mandate (as well as topics), which in most cases are expert oriented. BEREC member NRAs are closely linked with the stakeholders and general public and therefore better positioned to target them. This has been confirmed by the BoR and reflected in both the Strategy and annual plans. When the content is produced, BEREC uses its own communications channels and, mostly NRAs and stakeholders as multipliers of this information.</p> <p>The BEREC Office has a planned activity list in every iteration of the Single Programming document. It targets the local stakeholders and media outlets, as well as the end users/general public of the host Member State. The activity list includes numerous activities and events, organized by the Agency to raise the awareness on it and to disseminate information on the results of its work. This include a range of different communication means, for example, organization/participation to events such as Open doors, Back to school in cooperation with other EU institutions in Latvia, giving interviews to local media, holding press conferences on key topics, welcoming visitors to the premises, providing background information and producing press releases in Latvian, etc. Besides other means of communication, Agency is permanently using the official social media accounts of BEREC (producing publications also in Latvian) for the awareness raising, promotion and to reach the targets of the planning documents. It also uses the dedicated website sections,</p>	

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	<p>newsletters and a list of stakeholders and media outlets to send information on the upcoming events, published procurements, open vacancies, activities and to inform on the results of the work of the Agency.</p> <p>The Agency has also included a provision of communication and visibility of the BEREC Office in the new Headquarters agreement, which foresees planning of concrete activities and much closer cooperation between the Agency and the Member State (stakeholders in Latvia) in coming years.</p>	