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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a regulation of the European Parliament and of the Council establishing the Group of European Regulators in Telecoms (GERT)
(16498/1/2008 – C6-0067/2009 – 2007/0249(COD))

Committee on Industry, Research and Energy

Rapporteur: Pilar del Castillo Vera

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a regulation of the European Parliament and of the Council establishing the Group of European Regulators in Telecom (GERT) (16498/1/2008 – C6-0067/2009 – 2007/0249(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (16498/1/2008 – C6-0067/2009),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2007)0699),
 - having regard to the amended Commission proposal (COM(2008)0720),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Industry, Research and Energy (A6-0271/2009),
1. Approves the common position as amended;
 2. Instructs its President to forward its position to the Council and Commission.

AMENDMENTS BY PARLIAMENT*

to the Council common position

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the ***Body*** of European Regulators ***for Electronic Communications and the Office***

(Text with EEA relevance)

¹ Texts adopted, 24.9.2008, P6_TA(2008)0450.

* Political amendments: new or replacement text is marked in bold italics and deletions are indicated by the symbol **||**.

Technical corrections and adaptations by the services: new or replacement text is marked in italics and deletions are indicated by the symbol **||**.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

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

Whereas:

- (1) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)⁴, Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)⁵, Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)⁶, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)⁷ 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)⁸ (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.
- (1a) Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community⁹ complements and supports, insofar as Community-wide roaming is concerned, the rules provided for by the regulatory framework for electronic communications.***

¹ OJ C 224, 30.8.2008, p. 50.

² OJ C 257, 9.10.2008, p. 51.

³ Opinion of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Common Position of 16 February 2009 (not yet published in the Official Journal) and Position of the European Parliament of xx May 2009.

⁴ OJ L 108, 24.4.2002, p. 33.

⁵ OJ L 108, 24.4.2002, p. 7.

⁶ OJ L 108, 24.4.2002, p. 21.

⁷ OJ L 108, 24.4.2002, p. 51.

⁸ OJ L 201, 31.7.2002, p. 37.

⁹ ***OJ L 171, 29.6.2007, p. 32.***

- (2) The need for the EU regulatory framework to be consistently applied in all Member States is essential for the successful development of an internal market for electronic communications networks and services. The EU regulatory framework sets out objectives to be achieved and provides a framework for action by national regulatory authorities (NRAs), whilst granting them flexibility in certain areas to apply the rules in the light of national conditions.
- (3) In view of the need to ensure the development of consistent regulatory practice and the consistent application of the EU regulatory framework, the Commission established the European Regulators Group (ERG) pursuant to Commission Decision 2002/627/EC of 29 July 2002 establishing the European Regulators Group for Electronic Communications Networks and Services¹ to advise and assist the Commission in the development of the internal market and, more generally, to provide an interface between NRAs and the Commission.
- (4) The ERG has made a positive contribution towards consistent regulatory practice by facilitating cooperation between NRAs, and between NRAs and the Commission. This approach to developing greater consistency among NRAs by exchanging information and knowledge on practical experience has proved successful in the short period following its deployment. Continued and intensified cooperation and coordination between NRAs will be required to develop further the internal market in electronic communication networks and services.
- (5) This calls for the strengthening of the ERG and its recognition in the EU regulatory framework as the **Body of European Regulators for Electronic Communications (BEREC)**. **BEREC** should neither be a Community agency nor have legal personality. **BEREC** should replace the ERG *and act as an exclusive forum for cooperation among NRAs and between NRAs and the Commission, in the exercise of the full range of their responsibilities under the regulatory framework. It should* provide expertise and establish confidence by virtue of its independence, the quality of its advice and information, the transparency of its procedures and methods of operation, and its diligence in performing its tasks.
- (6) **BEREC** should, through the pooling of expertise, assist NRAs without replacing the existing functions or duplicating work already being undertaken, and assist the Commission in the execution of its responsibilities.
- (7) **BEREC** should continue the work of the ERG, developing cooperation between NRAs, and between NRAs and the Commission, so as to ensure the consistent application in all Member States of the EU regulatory framework for electronic communications networks and services, and thereby contributing to the development of the internal market.
- (8) **BEREC** should also serve as a body for reflection, debate and advice for the European Parliament, the Council and the Commission in the electronic communications field. **BEREC** should accordingly advise the European Parliament, the Council and the Commission, at their request or on its own initiative.

¹ OJ L 200, 30.7.2002, p. 38.

- (9) ***BEREC*** should pursue its tasks in cooperation with, and without prejudice to the role of, existing groups and committees such as the Communications Committee, established under the Directive 2002/21/EC (Framework Directive), the Radio Spectrum Committee established under Decision No 676/2002/EC of the European Parliament and Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)¹, the Radio Spectrum Policy Group established under Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group², and the Contact Committee established under Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities³.
- (9a) ***To provide BEREC with professional and administrative support, the Office should be established as a Community body with legal personality and should exercise the tasks conferred on it by this Regulation. This Office should have legal, administrative and financial autonomy, in order efficiently to provide BEREC with its support. The Office should comprise of a Management Committee and an Administrative Manager.***
- (9b) ***The organisational structures of BEREC and of the Office should be lean and suitable for the tasks they are to perform.***
- (9c) ***The Office should be a Community body within the meaning of Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁴ (Financial Regulation). The Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management⁵, and in particular Point 47 thereof, should apply to the Office.***
- (10) Since the objectives of the proposed action, namely the further development of consistent regulatory practice through intensified cooperation and coordination between NRAs, and between NRAs and the Commission ■ cannot be sufficiently achieved by the Member States in view of the EU-wide scope of this Regulation, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

¹ OJ L 108, 24.4.2002, p. 1.
² OJ L 198, 27.7.2002, p. 49.
³ OJ L 202, 30.7.1997, p. 60.
⁴ ***OJ L 248, 16.9.2002, p. 1.***
⁵ ***OJ C 139, 14.6.2006, p. 1.***

CHAPTER I *ESTABLISHMENT*

Article 1 *Establishment*

1. *The Body of European Regulators for Electronic Communications (BEREC) is hereby established with the responsibilities laid down in this Regulation.*
2. *BEREC shall act within the scope of Directive 2002/21/EC (Framework Directive) and Directives 2002/19/EC, 2002/20/EC, || 2002/22/EC and 2002/58/EC (Specific Directives), and of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community¹.*
3. *BEREC shall carry out its tasks independently, impartially and transparently. In all its activities, BEREC shall pursue the same objectives as those of the national regulatory authorities (NRAs), as set out in Article 8 of Directive 2002/21/EC (Framework Directive). In particular, BEREC shall contribute to the development and better functioning of the internal market for electronic communications networks and services, by aiming to ensure a consistent application of the EU regulatory framework for electronic communications.*
4. *BEREC shall draw upon expertise available in the NRAs and shall carry out its tasks in cooperation with the NRAs and the Commission. BEREC shall promote cooperation between NRAs, and between NRAs and the Commission. Furthermore, BEREC shall advise the Commission, and upon request the European Parliament and the Council* ■ .

CHAPTER II *ORGANISATION OF BEREC*

Article 2 *Role of BEREC*

BEREC shall:

- (a) develop and disseminate among NRAs regulatory best practice, such as common approaches, methodologies or guidelines on the implementation of the EU regulatory framework;
- (b) on request, provide assistance to NRAs on regulatory issues ■ ;
- (c) deliver opinions on the draft decisions, recommendations and guidelines of the Commission, referred to in *this Regulation, Directive 2002/21/EC (Framework Directive) and the Specific Directives*;

¹ *OJ L 171, 29.6.2007, p. 32.*

- (d) issue reports **and** provide advice, **upon reasoned** request of the Commission or on its own initiative, and **deliver opinions** to the European Parliament and the Council, upon **reasoned** request or on its own initiative, on any matter regarding electronic communications within its competence;
- (e) on request, assist the European Parliament, the Council, the Commission and the NRAs **in relations, discussions and exchanges with third parties; and assist the Commission and NRAs** in the dissemination of regulatory best practices to third parties.

Article 2a

Tasks of BEREC

1. The tasks of BEREC shall be:

- (a) **to deliver** opinions on draft measures of NRAs concerning market definition, designation of undertakings with significant market power and imposition of remedies, in accordance with **Articles 7 and -7a** of Directive 2002/21/EC (Framework Directive); **and to cooperate and work together with the NRAs in accordance with Articles 7 and -7a of Directive 2002/21/EC (Framework Directive);**
- (b) **to deliver opinions on draft** recommendations and/or guidelines on the form, content and level of details to be given in notifications, in accordance with Article 7a of Directive 2002/21/EC (Framework Directive);
- (c) **to be consulted on draft** recommendations on relevant product and service markets, in accordance with Article 15 of Directive 2002/21/EC (Framework Directive);
- (d) **to deliver opinions on draft** decisions on the identification of transnational markets, in accordance with Article 15 of Directive 2002/21/EC (Framework Directive);
- (da) **on request, to provide assistance to NRAs, in the context of the analysis of the relevant market in accordance with Article 16 of Directive 2002/21/EC (Framework Directive);**
- (e) **to deliver opinions on draft decisions and recommendations on** harmonisation, in accordance with Article 19 of Directive 2002/21/EC (Framework Directive);
- (ea) **to be consulted and to deliver opinions on cross-border disputes in accordance with Article 21 of Directive 2002/21/EC (Framework Directive);**
- (f) **to deliver opinions on draft** decisions authorising or preventing a NRA from taking exceptional measures, in accordance with Article 8 of Directive 2002/19/EC (Access Directive);
- (fa) **to be consulted on draft guidelines in accordance with Article 22 of Directive 2002/22/EC (Universal Service Directive);**

- (fb) *to be consulted on draft measures relating to effective access to the emergency call number 112, in accordance with Article 26 of Directive 2002/22/EC (Universal Service Directive);*
 - (fc) *to be consulted on draft measures relating to the effective implementation of the 116 numbering range, in particular the missing children hotline number 116000, in accordance with Article 27a of Directive 2002/22/EC (Universal Service Directive);*
 - (fd) *to assist the Commission with the updating of Annex II of Directive 2002/19/EC (Access Directive), in accordance with Article 9 of that Directive;*
 - (fe) *on request, to provide assistance to NRAs on issues relating to fraud or the misuse of numbering resources within the Community in particular for cross-border services;*
 - (ff) *to deliver opinions aiming to ensure the development of common rules and requirements for providers of cross-border business services;*
 - (fg) *to monitor and report on the electronic communications sector, including publishing of an annual report on the developments in the sector.*
2. *BEREC may, upon reasoned request from the Commission, decide unanimously to take on other specific tasks necessary for the accomplishment of its role within the scope defined in Article 1(2).*
 3. *NRAs and the Commission shall take the utmost account of any opinion, recommendation, guidelines, advice or regulatory best practice adopted by BEREC. BEREC may, where appropriate, consult the relevant national competition authorities before issuing its opinion to the Commission.*

Article 3 Composition and organisation of BEREC

1. *BEREC shall be composed of the Board of Regulators.*
2. *The Board of Regulators shall be composed of one member per Member State who shall be the head or nominated high-level representative of the NRA established in each Member State with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services.*

When carrying out its tasks conferred upon it by this Regulation, BEREC shall act independently.

The Members of the Board of Regulators shall neither seek nor accept any instruction from any government, from the Commission, or from any other public or private group.

NRAs shall nominate one alternate per Member State.

The Commission shall attend as observer and shall be represented at an appropriate level.

3. NRAs from European Economic Area (EEA) States and from those states that are candidates for accession to the European Union shall have observer status and shall be represented at an appropriate level. ***BEREC may invite other experts and observers to attend its meetings.***
4. ***The Board of Regulators shall appoint its Chair and its Vice-Chair(s) from among its members, subject to the rules of procedure. The Vice-Chair(s) shall automatically assume the duties of the Chair if the latter is not in a position to perform his/her duties. The term of office of the Chair and of the Vice-Chair(s) shall be one year.***
5. ***Without prejudice to the role of the Board of Regulators in relation to the tasks of the Chair, the Chair shall neither seek nor accept any instruction from any government or NRA, from the Commission, or from any other public or private group.***
6. Plenary meetings of ***the Board of Regulators*** shall be convened by its *Chair* and shall occur at least *four* times a year in ordinary session. Extraordinary meetings shall also be convened at the initiative of the *Chair*, at the request of the Commission or at the request of at least one third of ***the Board's*** members. The agenda of the meeting shall be set by the *Chair* and made public.
7. The work of ***BEREC*** may be organised into *Expert Working Groups* ■ .
8. The Commission shall be invited to all plenary meetings ***of the Board of Regulators***.
9. ***The Board of Regulators shall act by two-thirds majority of its all members unless otherwise provided in this Regulation or in the Framework Directive or Specific Directives. Each member or alternate shall have one vote. These decisions shall be made public, and shall indicate the reservations of an NRA at its request.***
10. ***The Board of Regulators shall adopt and make publicly available the rules of procedure of BEREC. The rules of procedure shall set out in greater detail the arrangements governing voting, including the conditions under which one member may act on behalf of another member, the rules governing quorums, and the notification deadlines for meetings. Furthermore, the rules of procedure shall guarantee that the members of the Board of Regulators are always provided with full agendas and draft proposals in advance of each meeting in order to have the chance to propose amendments prior to the vote. The rules of procedure may, inter alia, also set out urgent voting procedures.***
11. ***Administrative and professional support services shall be provided to BEREC by the Office referred to in Article 3b.***

Article 3a ***Tasks of the Board of Regulators***

1. *The Board of Regulators shall fulfil the tasks of BEREC set out in Article 2a and take all decisions relating to the performance of its functions.*
2. *The Board of Regulators shall approve the voluntary financial contribution from Member States or NRAs before they are made in accordance with Article 3g(1)(b) subject to the following arrangements:*
 - (a) *by unanimity where all Member States or NRAs have decided to make a contribution,*
 - (b) *by simple majority where a number of Member States or NRAs acting unanimously have decided to make a contribution.*
3. *The Board of Regulators shall adopt, on behalf of BEREC, the special provisions on right of access to the documents of BEREC, in accordance with Article 8b.*
4. *The Board of Regulators shall, after consulting interested parties in accordance with Article 5, adopt the annual work programme of BEREC before the end of each year preceding that to which the work programme relates. The Board of Regulators shall transmit the work programme to the European Parliament, the Council and the Commission each year as soon as it is adopted.*
5. *The Board of Regulators shall adopt the annual report on activities of BEREC and shall transmit it to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors each year by 15 June at the latest. The European Parliament may request the Chair of the Board of Regulators to address it on relevant issues relating to activities of BEREC.*

*Article 3b
The Office*

1. *The Office is hereby established as a body of the Community with legal personality pursuant to Article 185 of the Financial Regulation and Point 47 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management (IIA).*
2. *Under the guidance of the Board of Regulators, the Office shall in particular:*
 - *provide professional and administrative support services to BEREC;*
 - *collect information from NRAs and exchange and transmit information in relation to the role and tasks set out in Articles 2(a) and 2a;*
 - *disseminate regulatory best practices among NRAs, in accordance with Article 2(a);*
 - *assist the Chair in the preparation of the work of the Board of Regulators;*
 - *set up the Expert Working Groups, upon request of the Board of Regulators, and provide support to ensure their smooth functioning;*

3. *The Office shall comprise*
 - (a) *a Management Committee,*
 - (b) *an Administrative Manager.*
4. *In every Member State the Office shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.*
5. *The Office shall be managed by the Administrative Manager and shall have staff strictly limited to the number required to carry out its duties. The number of staff shall be proposed by members of the Management Committee and the Administrative Manager in accordance with Article 3g. Any proposal to increase the number of staff may only be taken by unanimous decision of the Management Committee.*

Article 3c
Management Committee

1. *The Management Committee shall be composed of one member per Member State who shall be the head or nominated high level representative of the independent NRA established in each Member State with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services, and one member representing the Commission.*

Each Member shall have one vote.

The provisions of Article 3 shall apply, mutatis mutandis, to the Management Committee.

2. *The Management Committee shall appoint the Administrative Manager. The Administrative Manager designated shall not participate in the preparation of, or vote on, such a decision.*
3. *The Management Committee shall provide guidance to the Administrative Manager in the execution of the Administrative Manager's tasks.*
4. *The Management Committee shall be responsible for the appointment of staff.*
5. *The Management Committee shall assist in the work of the Expert Working Groups.*

Article 3d
The Administrative Manager

1. *The Administrative Manager shall be accountable to the Management Committee. In the performance of his/her functions, the Administrative Manager shall not seek or accept any instruction from any Member State, any NRA, the Commission or any third party.*

2. *The Administrative Manager shall be appointed by the Management Committee by means of an open competition on the basis of merit and skills and experience relevant to electronic communications networks and services. Before appointment, the suitability of the candidate selected by the Management Committee may be subject to a non-binding opinion of the European Parliament. To this end, the candidate shall be invited to make a statement before the responsible committee of the European Parliament and answer questions put by its members.*
3. *The Administrative Manager's term of office shall be three years.*
4. *The Management Committee may extend the term of office of the Administrative Manager once for not more than three years, taking into account the evaluation report undertaken by the Chair and only in those cases where it can be justified by the duties and requirements of BEREC.*

The Management Committee shall inform the European Parliament of any intention to extend the Administrative Manager's term of office.

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

Article 3e *Tasks of the Administrative Manager*

1. *The Administrative Manager shall be the head of the Office.*
2. *The Administrative Manager shall assist with the preparation of the agenda of the Board of Regulators, the Management Committee and the Expert Working Groups. He/she shall participate, without having the right to vote, in the work of the Board of Regulators of BEREC and the Management Committee.*
3. *Every year the Administrative Manager shall assist the Management Committee with the preparation of the draft work programme of the Office for the following year. The draft work programme shall be submitted to the Management Committee before 30 June of that year, and shall be adopted by the Management Committee before 30 September of that year without pre-empting the final decision on the subsidy taken by the budgetary authority.*
4. *The Administrative Manager shall be responsible for supervising the implementation of the annual work programme of the Office, under the guidance of the Board of Regulators.*
5. *The Administrative Manager shall, under the supervision of the Management Committee, take the necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Office in accordance with this Regulation.*
6. *The Administrative Manager shall, under the supervision of the Management Committee, implement the budget of the Office pursuant to Article 3i.*

7. *Each year the Administrative Manager shall assist with the preparation of the draft annual report on the activities of BEREC referred to in Article 3a(5).*

Article 3f Staff

1. *The Staff Regulations of Officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these staff regulations and conditions of employment shall apply to the staff of the Office, including the Administrative Manager.*
2. *The Management Committee, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations of officials of the European Communities.*
3. *The powers conferred on the appointing authority by the Staff Regulations of officials of the European Communities and on the authority entitled to conclude contracts by the Conditions of employment of other servants of the European Communities, shall be exercised by the Vice-Chair of the Management Committee.*
4. *The Management Committee may adopt provisions to allow national experts from Member States to be appointed on secondment to the Office on a temporary basis and for a maximum of three years.*

CHAPTER IIa FINANCIAL PROVISIONS

Article 3g Budget of the Office

1. *The revenues and resources of the Office shall consist notably of:*
 - (a) *a subsidy from the Community, entered under the appropriate headings of the general budget of the European Union (Commission Section), as decided by the budgetary authority and in accordance with point 47 of the IIA;*
 - (b) *financial contributions from Member States or from their NRAs made on a voluntary basis in accordance with Article 3a(2). These contributions shall be used to finance specific items of operational expenditure as defined in the agreement to be concluded between the Office and the Member States or their NRAs pursuant to Article 19(1)(b) of Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities¹. Each Member State shall ensure that NRAs have the adequate financial resources required to*

¹ *OJ L 357, 31.12.2002, p. 72.*

participate in the work of the Office. Before the establishment of the preliminary draft general budget of the European Communities, the Office shall forward to the budgetary authority appropriate, timely and detailed documentation on assigned revenues under this Article.

- 2. The expenditure of the Office shall cover staff, administrative, infrastructure and operational expenses.*
- 3. Revenue and expenditure shall be in balance.*
- 4. All revenue and expenditure shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.*
- 5. The organisational and financial structure of the Office shall be reviewed five years after the date of establishment of the Office.*

Article 3h Establishment of the budget

- 1. By 15 February of each year at the latest, the Administrative Manager shall assist the Management Committee with the preparation of a preliminary draft budget covering the expenditure anticipated for the following financial year, together with a list of provisional posts. Each year the Management Committee shall, on the basis of the draft, make an estimate of revenue and expenditure of the Office for the following financial year. This estimate, including a draft establishment plan, shall be transmitted by the Management Committee to the Commission by 31 March at the latest.*
- 2. The estimate shall be transmitted by the Commission to the European Parliament and to the Council (the budgetary authority) together with the preliminary draft general budget of the European Union.*
- 3. On the basis of the estimates, the Commission shall enter in the preliminary draft general budget of the European Union the forecasts it considers necessary in respect of the establishment plan and propose the amount of the subsidy.*
- 4. The budgetary authority shall adopt the establishment plan for the Office.*
- 5. The budget of the Office shall be drawn up by the Management Committee. It shall become final after the final adoption of the general budget of the European Union. Where necessary, it shall be adjusted accordingly.*
- 6. The Management Committee 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 budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify*

the Management Committee of its intention to issue such an opinion. In the absence of a reply, the Management Committee may proceed with the planned operation.

Article 3i
Implementation and control of the budget

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

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

Article 3j
Internal control systems

The Internal Auditor of the Commission shall be responsible for auditing the Office.

Article 3k
Financial rules

Commission Regulation (EC, Euratom) No 2343/2002 applies to the Office.

Further financial rules applicable to the Office shall be drawn up by the Management Committee after consultation with the Commission. Those rules may deviate from Commission Regulation 2343/2002 if the specific operational needs for the functioning of the Office so require and only with the prior agreement of the Commission.

Article 3l
Anti- fraud measures

1. *For the purpose of combating fraud, corruption and other illegal acts, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹ shall apply without any restriction.*
2. *The Office shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)² and shall immediately adopt appropriate provisions for all staff of the Office.*
3. *The funding decisions and the agreements and implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if necessary, carry out on the-spot checks among the beneficiaries of monies disbursed by the Office as well as on the staff responsible for allocating these monies.*

CHAPTER III
GENERAL PROVISIONS

¹ *OJ L 136, 31.5.1999, p. 1.*

² *OJ L 136, 31.5.1999, p. 15.*

Article 5 Consultation

When appropriate, **BEREC** shall, before adopting opinions, regulatory best practice or reports, consult interested parties and give them the opportunity to comment within a reasonable period. **BEREC** shall, without prejudice to *Article 8*, make the results of the consultation procedure publicly available.

Article 6 Transparency and accountability

BEREC and the Office shall carry out *their* activities with a high level of transparency. **BEREC and the Office** shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular in relation to the results of *their* work.

■

Article 7 Provision of information to **BEREC and the Office**

The Commission and NRAs shall provide information requested by **BEREC and the Office** to enable it to perform *their* tasks. This information shall be managed in accordance with the rules set out in Article 5 of Directive 2002/21/EC (Framework Directive).

Article 8 Confidentiality

Subject to Article 8b, neither BEREC nor the Office shall ■ publish or disclose to third parties information that *they process or receive* for which confidential treatment has been requested.

Members of the Board of Regulators, the Management Committee, the Administrative Manager, external experts including the experts of the working groups, and members of the staff of the Office shall be subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.

BEREC and the Office shall lay down in their respective internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

Article 8a Declaration of interests

The Office's staff, the members of the Board of Regulators and the Management Committee and the Administrative Manager of the Office shall make an annual declaration of commitments and a declaration of interests indicating any direct or indirect interests, which might be considered prejudicial to their independence. Such declarations shall be made in writing. The declaration of interests made by the members of the Board of

Regulators and the Management Committee, and by the Administrative Manager shall be made public.

Article 8b
Access to documents

1. *Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹ shall apply to documents held by BEREC and the Office.*
2. *The Board of Regulators and the Management Committee shall adopt practical measures for applying Regulation (EC) No 1049/2001 within six months from the date of the effective start of operations of BEREC and the Office, respectively.*
3. *Decisions taken pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice of the European Communities, in accordance with the conditions laid down in Articles 195 and 230 of the Treaty respectively.*

Article 8c
Privileges and immunities

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

Article 8d
Liability of the Office

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

CHAPTER IIIa
FINAL PROVISIONS

Article 8e
Evaluation and review

Within three years of the effective start of operations, the Commission shall publish an evaluation report on the experience acquired as a result of the operation of BEREC and the Office. The evaluation report shall cover the results achieved by BEREC and the Office and their respective working methods, in relation to their respective objectives, mandates

¹ *OJ L 145, 31.5.2001, p. 43.*

and tasks defined in this Regulation and in their respective annual work programmes. The evaluation report shall take into account the views of stakeholders, at both Community and national level and shall be forwarded to the European Parliament and to the Council. The European Parliament shall issue an opinion on the evaluation report.

Article 9
Entry into force

This Regulation shall enter into force on *the twentieth day following that of its publication in the Official Journal of the European Union*.

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

Done at ||,

For the European Parliament
The President

For the Council
The President

EXPLANATORY STATEMENT

Making BERT fit the purpose: matching tasks and organisational resources

The Body of European Regulators in Telecom, BERT, will be a specialised and independent expert advisory body in order to assist in the implementation of the EU regulatory framework for electronic communications, and would remain independent from the European Commission, the governments, the individual NRA's and the sector. BERT would act as the main advisory body to the Commission, but also to the individual NRA's in order to promote a consistent regulatory approach across the European Union. BERT will express its views freely and not only upon the request of the Commission.

BERT must complement at European level -but not replace- the regulatory tasks performed at national level by the regulatory authorities, in particular by providing: a framework for national regulatory authorities to cooperate; regulatory oversight of market definitions; analysis and implementation of remedies; definition of transnational markets; and general informational and advisory functions on issues related to the Framework Directive and the Specific Directives.

The current balance of coordination, based on the subsidiarity principle, has its particular *raison d'être* and the reality of the internal market is that it is still a collection of many different national sub-markets, with their own particular characteristics and dynamics. Coherence in regulatory intervention today means ensuring that regulation is applied proportionately, whilst addressing the specific competition issues that arise at a particular place and time, and the best placed to do so are the NRAs who are on the ground.

BERT shall be fully accountable and transparent to the relevant European Union institutions. BERT will be composed of the representatives of each of the Member States' NRAs as is currently the set-up in the ERG.

However the rapporteur is convinced that for BERT to carry out its mandate properly adding value to the development of the electronic communications internal market it is crucial to ensure sufficient support for all relevant activities and an effective and systematic follow-up of means and of the results of those activities.

The rapporteur also believes that in view of the significant functions that BERT will carry out in the implementation and development of the Community electronic communications regulatory framework, its Board of Regulators and Support Office must be set up and operate within the Community legal framework in a transparent and accountable manner and subject to democratic oversight by the co-legislators. Indeed, this structure will allow a maximum guarantee of independence without hampering its coherence.

It is also equally important to guarantee that this support function is efficiently implemented and remains flexible taking up new tasks and receiving more resources only if BERT is able to prove its positive impact and if so decided by the Council and Parliament through the budgetary procedure.

Under the direction of the Board of Regulators, the support office would coordinate the works of the Body of Regulators drawing upon the expertise of staff of the national regulatory authorities working groups.

Its staff would be under the direction of the Board of Regulators but at the same time subject to the staff regulations of officials and the conditions of employment of other servants of the European Communities which bind Community servants to carry out their duties and conduct themselves solely with the interests of the Communities in mind and to carry out their duties objectively, impartially and loyally to the Communities. These obligations are essential for assuring the high level of independence and impartiality required for staff involved in regulatory functions. Nevertheless national experts could be detached to BERT's support office for a limited period of time and bring additional expertise and know-how on the European dimension of the Telecoms market when they return to their national regulatory authorities.

PROCEDURE

Title	European Electronic Communications Market Authority
References	16498/1/2008 – C6-0067/2009 – 2007/0249(COD)
Date of Parliament's first reading – P number	24.9.2008 T6-0450/2008
Commission proposal	COM(2007)0699 - C6-0428/2007
Amended Commission proposal	COM(2008)0720
Date receipt of common position announced in plenary	19.2.2009
Committee responsible Date announced in plenary	ITRE 19.2.2009
Rapporteur(s) Date appointed	Pilar del Castillo Vera 17.1.2008
Discussed in committee	17.2.2009 9.3.2009 30.3.2009
Date adopted	21.4.2009
Result of final vote	+: 46 -: 0 0: 2
Members present for the final vote	Jan Březina, Jerzy Buzek, Giles Chichester, Dragoş Florin David, Pilar del Castillo Vera, Den Dover, Lena Ek, Nicole Fontaine, Norbert Glante, Fiona Hall, David Hammerstein, Rebecca Harms, Erna Hennicot-Schoepges, Romana Jordan Cizelj, Anne Laperrouze, Pia Elda Locatelli, Eugenijus Maldeikis, Eluned Morgan, Angelika Niebler, Reino Paasilinna, Atanas Paparizov, Francisca Pleguezuelos Aguilar, Anni Podimata, Miloslav Ransdorf, Vladimír Remek, Herbert Reul, Paul Rübig, Catherine Trautmann, Claude Turmes, Nikolaos Vakalis, Adina-Ioana Vălean, Dominique Vlasto
Substitute(s) present for the final vote	Alexander Alvaro, Ivo Belet, Göran Färm, Juan Fraile Cantón, Françoise Grossetête, Malcolm Harbour, Gunnar Hökmark, Erika Mann, Vittorio Prodi, Hannes Swoboda, Silvia-Adriana Țicău, Vladimir Urutchev, Lambert van Nistelrooij
Substitute(s) under Rule 178(2) present for the final vote	Bernard Lehideux, Zita Pleštinšká, Carl Schlyter
Date tabled	23.4.2009