

## **Rules of Procedure of the Management Committee of the BEREC Office**

The Management Committee of the Office of the Body of European Regulators for Electronic Communications has been established by Regulation (EC) 1211/2009 (hereinafter the “**Regulation**”) and its functioning shall be governed by the Regulation and these Rules of Procedure (hereinafter, the “**Rules of Procedure**”). In case of inconsistency between these Rules of Procedure and the Regulation, the Regulation shall prevail.

In accordance with Article 6 (3) of the Regulation, the Management Committee is part of the Office.

The Management Committee shall exercise the relevant tasks assigned by the Regulation, in accordance with the provisions of these Rules of Procedure. The tasks are listed in Annex 1.

### **Article 1 – Composition**

#### ***Members***

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 national regulatory authority established in each Member State with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services (hereinafter NRA), and one member representing the Commission.
2. NRAs and the Commission shall nominate one alternate, whose names shall be communicated to the BEREC Office (hereinafter “Office”). When neither the Member nor the nominated alternate can attend a meeting of the Management Committee, a further alternate may attend and stand in for those representatives, provided that he/she is authorised to do so in writing and that the authorisation is communicated to the Chair and to the Administrative Manager of the Office in advance of the meeting concerned.
3. The Management Committee shall be assisted by a working group (Contact Network) composed of senior representatives of all Members to prepare the decisions to be taken by the Management Committee.

#### ***Observers***

4. Heads (or their nominated high-level representatives) of the independent national regulatory authorities from EEA States that are not members of the European Union and from those States that are candidates for accession to the European Union shall have the right to participate in the Management Committee meetings as observers (“Observers”).

5. The EFTA Surveillance Authority shall attend as Observer and shall be represented at an appropriate level.

### **Nomination**

6. The Office shall be responsible for maintaining and keeping updated a contact list of all the nominated representatives mentioned above.

### **Article 2 – Appointment and Term of the Chair and Vice-Chairs**

1. Before serving her/his term as Chair for one year, the Chair shall first serve one year as Vice-Chair. During this term, the Vice-Chair shall be responsible for the exercise of the powers as in article 10.3 of the Regulation. She/he shall also serve as Vice-Chair for the year following her/his term as Chair. Every year the Management Committee shall appoint the Chair for the year subsequent to the following year according to the selection procedure described in this Article.
2. The Management Committee shall elect the Vice-Chair who shall become Chair the following year from among the Members with voting rights. Candidacies for Vice-Chair shall be submitted to the Office in writing either by the candidates themselves or by other members of the Management Committee at least 2 months before the election. The Chair will circulate the list of candidates to the Members within five working days of that date.
3. A nomination for candidacy must be supported in writing by at least 4 Members. The candidate shall have a record of active personal participation in BEREC and shall ensure that she/he is able to devote a significant part of her/his time to the position in the BEREC Office;
4. A candidate shall be elected by a 2/3 majority of the Members. The election shall take place at the last ordinary plenary meeting of the year. Two tellers shall be designated from among the members to assist in the vote.
5. The election shall take place in accordance with the following procedure:
  - a. If the Office only receives one candidacy, this candidate shall be elected provided that she/he receives the support of 2/3 majority of all Members. Should the candidate not receive that support in the first round, the vote shall be repeated once. Should the candidate not receive that support in the second round, a new invitation for candidacies shall be opened.
  - b. If two or more candidacies are submitted and during the first vote no candidate obtains a 2/3 majority of the votes of all Members, the candidate with the least support shall be withdrawn from the selection process. Rounds will run until a candidate receives a 2/3 majority of votes of all Members. Where there remains a sole candidacy that does not obtain the support of a 2/3 majority, a new invitation for candidacies shall be opened.

6. In addition to the support provided to the Chair by the two Vice-Chairs, the Management Committee may decide to elect other Members as additional Vice-Chairs for 1 year. The election of the additional Vice-Chairs will take place during the last ordinary Plenary meeting of the year for the following year, in accordance with the voting rules set out in paragraph 3,4 and 5.
7. The serving Chair shall inform the Management Committee of the voting results.

### **Article 3 – Duties of the Chair and the Vice-Chairs**

1. The Chair shall be responsible for external relations on behalf of the BEREC Office. She/he shall inform all Members of any planned external contacts and report on their results, also providing relevant materials.
2. The Management Committee may decide to grant the Chair a clearly defined mandate to speak and act on behalf of the BEREC Office.
3. A Vice-Chair shall assume the duties of the Chair if the latter is not in a position to perform her/his duties. The Vice-Chairs will assist the Chair, at her/his request, in the performance of her/his duties.

### **Article 4 – Meetings**

1. Meetings of the Management Committee will be held at the same date and venue as the meetings of the Board of Regulators. The meetings of the Management Committee shall be convened by the Chair in consultation with the Administrative Manager of the Office, in writing not less than ten days prior to the proposed meeting date.
2. Extraordinary meetings may also be convened at the initiative of the Chair in consultation with the Administrative Manager, at the request of the Commission when specific financial and administrative obligations of the Commission are concerned or at the request of at least 1/3 of the Members. Extraordinary meetings shall be convened by the Chair in writing not less than three days before the date of the meeting.
3. Notices of the meetings shall indicate the date, time and place of the proposed meeting and shall contain the agenda and the working documents, the draft proposals and all relevant material which are needed for the meeting. The Office shall be responsible for distributing the agenda and relevant documents.
4. The Administrative Manager shall be entitled to take part, without having the right to vote, in meetings of the Management Committee.
5. Each Member may be represented at the meeting by another Member, provided that written authorisation from the absent Member is submitted to the Chair. A Member may represent a maximum of two other Members.

6. Any other experts or persons whose opinions may be of interest may attend meetings at the invitation of the Chair in consultation with the Administrative Manager for the item or items for which their presence is required.

### **Article 5 – Agenda**

1. A provisional agenda shall be drawn up by the Chair assisted by the Administrative Manager. It shall contain, in addition to those items the inclusion of which is requested by a Member, any item the inclusion of which is requested by the Administrative Manager, in agreement with the Chair.
2. Any request made by Members for including, deleting or substituting an item on the agenda shall state the reasons on which it is based. The Chair shall inform the other Members of any such request.
3. The agenda shall be adopted at the beginning of each meeting.

### **Article 6 – Documents for meetings**

1. The provisional agenda and draft proposals, documents, submission notes and other relevant material shall be prepared in accordance with the decisions of the Contact Network, together with any additional material considered necessary by the Administrative Manager. As the case may require, the material shall be prepared either by the Office or by a Working Group with the assistance of the Office. The material shall be distributed by the Office not less than 10 days before ordinary meetings and not less than 3 days before extraordinary meetings, so that Members of the Management Committee have the opportunity to propose amendments prior to the vote. When justified by urgent or exceptional circumstances, the Chair, at the request of the relevant Expert Working Group or the Office, may shorten, as necessary, time limits for sending the documentation.
2. Press releases, and exceptionally other documents, such as short statements, may be prepared and agreed during meetings of the Management Committee.
3. Documents submitted to the Management Committee shall be accompanied by a covering submission note prepared either by the Office or by a Working Group with the assistance of the Office which outlines the key issues and the decision being sought by the Management Committee.

### **Article 7 – Minutes and follow-up**

1. The Office shall prepare the draft minutes of the meetings of the Contact Network and the Management Committee.
2. The minutes of each meeting shall as a general rule indicate in respect of each item
  - a. Documents submitted to the Contact Network or to the Management Committee

- b. A summary record of the proceedings
  - c. A record of the decisions adopted or the conclusions reached by the Contact Network or the Management Committee, summarising the main arguments, together with the reservations of a member at its request
  - d. The list of attendees.
3. The draft minutes shall be distributed electronically for comments by the Members no later than 5 working days after that meeting. The minutes of all meetings shall be kept by the Office in a register, which shall be accessible to any Member upon request.
  4. The follow-up actions to be undertaken after the meeting will be summarised by the Chair in the end of the meeting and will be circulated electronically within 1 working day.

### **Article 8 – Quorum**

The quorum necessary for meetings shall be achieved when at least two-thirds of all voting Members are present or represented by proxy in accordance with Article 9 (2). In order to determine whether the quorum is met, an attendance list shall be drawn up by the Office at the beginning of each meeting.

### **Article 9 – Voting procedures for meetings**

1. The Management Committee shall act by a two-thirds majority of all its Members unless otherwise provided in the Regulation, in the Framework Directive or in the Specific Directives voting in accordance with the procedures in this article and Article 10.
2. In addition to his own vote, each voting Member may cast a maximum of two votes received by written proxy. The proxy shall be submitted to the Chair at the beginning of the meeting and shall be recorded in the minutes.
3. Voting shall be by a show of hands or by secret ballot. A request for a secret ballot must be made by at least two voting Members present and supported by a majority of Members, unless decisions concerning a particular person, that shall be always voted by a secret ballot.
4. The Chair shall submit a proposal for a decision to the Members, who shall vote by “yes” if they are in favour of it, or “no”, or “abstention”.
5. If at least the requisite number of Members has voted in favour of the proposal the Chair shall declare the proposal approved.
6. If the number of Members who have either voted against the proposal or who have formally abstained results in the threshold or approval not having been met, the Chairman shall declare the proposal has not been approved.
7. The adopted documents or decisions shall include the reservations of an NRA at its request.

## Article 10 – Electronic voting procedure

1. The Chair may seek a decision of the Management Committee by means of an electronic voting procedure when a meeting is not possible or practicable and cannot wait until the next plenary meeting.
2. The Chair shall inform the Members and Observers as soon as possible of the need and justification for an electronic voting procedure. Where a future need can be foreseen, the Chair shall, if possible, inform Members and Observers at a meeting of its intended use.
3. The electronic voting shall be initiated by the Chair in consultation with the Administrative Manager. Draft decisions together with the relevant documents shall be addressed to Members and, for information, to Observers, after approval of the Chair. The minimum period which must be given for comments to be submitted is 5 working days, except in case of justified extreme urgency where the time-limit may be shortened to a minimum of one working day. All comments on draft BEREK decisions and documents shall be copied also to the Members of the Management Committee and Contact Network.
4. If significantly different opinions are expressed in the comments, the Chair with the support of the Administrative Manager, shall attempt to resolve the differences between the respective Members. The Chair shall prepare a final proposal and submit it to the vote. She/he shall send it to the Members and shall lay down a time-limit which must not be less than 7 calendar days, except in cases of justified extreme urgency where the time-limit is of one working day.
5. For any voting round to be valid, at least the majority of the Members must have cast their vote or formally abstained.
6. Article 1(2) should apply *mutatis mutandis*. The NRA concerned should communicate to the Chair the authorisation of a further alternate to sign the electronic voting ballot at the latest when the NRA concerned casts its vote.
7. Article 9(2) should apply *mutatis mutandis*. The proxy shall be submitted to the Chair at the latest when the voting NRA casts its vote on behalf of another NRA.
8. If the number of Members who have either voted against the proposal or who have formally abstained prevent the required threshold for approval being met, the Chair shall declare the proposal not approved. In this case the Chair, in consultation with the Administrative Manager, shall inform the Members and Observers of the number of votes cast for and against the proposal, as well as the number of formal abstentions, in the first round and shall organise a second and last round of electronic voting.
9. In the second round, the votes of Members who have not cast their vote and the abstentions will be counted as representing support for the position taken by the majority

of those who have voted. The proposal will be approved if the required majority of the votes are considered to be in favour of the proposal.

10. A full report on the outcome of the procedure will be made available to Members and Observers. The report will indicate in particular:
  - a. The detailed results of the voting (i.e., number of votes cast – specifying the number of negative and positive votes and abstentions); and
  - b. The remarks and reservations of Members upon their request.
11. Members can make public use of their part of the voting report if they want.

### **Article 11 – Declarations**

1. Members of the Management Committee shall make a declaration of commitment to fulfil their duties and a declaration of interests which could be prejudicial to their independence. These declarations shall be made annually in writing and be entered in a register held by the Office which is accessible to the public, on request, at the seat of the Office. In addition, declarations of interests shall be published on the website of BEREC. These Declarations shall be made in accordance with the models contained in Annex 2 and 3.
2. At each meeting, members shall declare any interest which could be considered to be prejudicial to their independence with respect to any point on the agenda. Anyone declaring such interests shall not participate in any vote on the relevant point.

### **Article 12 – Duty of confidentiality**

Members of the Management Committee shall be required, even after their duties have ceased, not to disclose information of the kind covered by the duty of professional secrecy.

### **Article 13 – Revision of the Rules of Procedure**

1. The Chair of the Management Committee may propose, following a request from one of the Members or on her/his own initiative, amendments to these Rules of Procedure.
2. These amendments shall be adopted by the Management Committee, in accordance with article 9 of these Rules of Procedure. They may include in particular further specific provisions with regard to the preparation and approval of the budget, the reimbursement of expenses and transparency requirements.

### **Article 14 - General provisions**

These Rules of Procedure shall be published on the BEREC website.

## Annex 1

### Tasks of the Management Committee

The Management Committee in particular:

#### **Administrative manager**

- appoints the administrative manager (AM) (Art. 7(2) and Art. 8(2)), may extend the term of office of the AM (Art. 8(4)) and informs the EP of its intention to do so (Art. 8(4))
- supervises the AM's implementation of the budget (Art. 9(6) and Art. 13(1));
- provides guidance to the AM in execution of AM's tasks (Art. 7(3))

#### **Staff**

- is responsible for the appointment of staff (Art. 7(4));
- adopts implementing measures in accordance with the Staff Regulation (Art 10(2))
- adopts provisions to allow SNEs to be appointed on secondment to the Office (Art. 10(4));
- together with the Administrative Manager, proposes the number of staff of the Office and, if necessary, to increase the number of staff (Art. 6(5)).

#### **Budget and financial issues**

- is responsible for the preparation of a preliminary draft budget to be passed to the Commission (Art. 12(1)) and for drawing up the budget of the Office (Art. 12(5));
- gives an opinion on the final accounts of the Office (Art. 13(6));
- notifies the budgetary authority and informs the Commission of its intention to implement any project with significant financial implications for the funding of the budget, in particular any project relating to property such as the rental or purchase of buildings (Art 12 (6));
- submits to the EP at its request any information necessary for smooth application of the discharge procedure for the financial year in question (Art. 13(10));
- draw up further financial rules applicable to the Office after consultation with the Commission and prior agreement of the Commission (Art. 15);
- seeks agreement of the Commission should the financial rules applicable to the Office deviate from Regulation 2343/2002 (Art. 15);

#### **Functioning of the Office**

- assists in the work of the expert working groups (Art. 7(5));
- prepares the work programme of the Office (Art.9(3));
- supervises the AM's adoption of internal administrative instructions for the functioning of the office (Art. 9(5));
- draws an annual report on the activity of the Office together with a statement of assurance (Art. 13(2));

#### **Other**

- members are subjected to the requirement of confidentiality (Art. 20);
- members shall make an annual declaration of commitment and interests (Art. 21);
- adopts practical measures for applying Regulation 1049 on public access to the documents of the Office within 6 months after BEREC effective start of operations of the Office(Art. 22(2)).

**Annual Declaration of Commitment for Members of the Management Committee according to Article 21 of the BEREC Regulation (1211/2009)**

I ....., hereby declare that I shall make all reasonable efforts to fulfill my duties as a member of the MANAGEMENT COMMITTEE of the Office of BEREC.

More particularly, I undertake to exercise the functions entrusted to me by the MANAGEMENT COMMITTEE and not to seek or accept any instructions incompatible with my individual tasks or with the tasks of the MANAGEMENT COMMITTEE from any other party.

I understand that this Declaration will be entered in a register held by the BEREC Office which is accessible to the public, on request, at the seat of the Office.

Done at \_\_\_\_\_ on \_\_\_\_/\_\_\_\_ 201\_\_

Signature: \_\_\_\_\_

Position: \_\_\_\_\_

## Annual Declaration of Interests

### Conflict of Interest: Legal basis

General provisions on conflict of interest are laid down in the Staff Regulation and the Conditions of Employment of other Staff<sup>2</sup>. The Financial Regulation defines what a conflict of interest of a financial nature is<sup>3</sup>.

Article 21 of Regulation (EC) No 1211/2009 establishing the Body of European regulators for Electronic Communications (BEREC) and the Office provides for the obligation for the Members of the Board of Regulators and of the Management Committee, the Administrative Manager and the staff of the Office to make a declaration of commitments and a declaration of interests indicating the absence of 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 of the management Committee, the Administrative Manager shall be made public.

Therefore, as a rule, any person facing a conflict of interest situation is under a duty of informing and, as appropriate, discussing the best way of avoiding that the situation has an impact on the validity of the decisions.

The Board of Regulators and the Management Committee have therefore decided to give guidance on how these rules should be interpreted as far as the Members of the Board of Regulators Members of the Management Committee, the Administrative Manager and the staff of the Office are concerned.

### Conflict of Interest: Definition

A conflict of interest exists when a person appointed to a function has a personal or vested interest in the outcome of decisions resulting from that function. Consequently, a person must not be involved in any decision during the course of his/her duties with the knowledge that there is an opportunity to further his/her personal interests.

It must be highlighted that an "interest" declared is not automatically considered a conflict of interest. Therefore, the immediate aim of a conflict-of-interest policy is to protect the integrity of official policy and administrative decisions and of public management generally.

Interests can be direct or indirect depending on their likely or potential impact on the individual's behaviour at a given point in time:

- Direct interests: Interests of personal benefit to the individual at the time of declaration, likely to influence or given the appearance of influencing his behaviour.
- Indirect interests: Other interests that may have some influence over the individual's behaviour and therefore have to be neutralised.

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<sup>1</sup> As revised by the Management Committee in February 2011

<sup>2</sup> See in particular Article 11 of the Staff Regulations.

<sup>3</sup> See Article 34 of Commission Regulation (EC/Euratom) N°2342/2002 laying down the implementing rules. OJ L357/1, 31/12/2002.

Some examples of cases that could lead to a conflict of interests are:

a) any matter being considered by, or arising at, a meeting of the Board of Regulators and/or of the Management Committee in which a Member, the Administrative Manager, the staff of the Office or any household member have a direct or an indirect pecuniary interest;

b) a situation where a Member of the Board of Regulators and/or of the Management Committee, the Administrative Manager or the staff of the Office are in a position to make or make a decision, or are in a position to act or do act, motivated by other or additional considerations than the best interests of BEREC;

d) a situation where a Member of the Board of Regulators and/or of the Management Committee, the Administrative Manager, the staff of the Office or any household members learn of an opportunity for profit which might be valuable either personally or to any person in which they have a direct or indirect pecuniary interest.

These cases are not intended to be exhaustive.

It is recognized that it is often difficult to objectively assess whether a Conflict of Interest situation exists. If a Member of the Board of Regulators and of the Management Committee, the Administrative Manager or the staff of the Office feels that a potential Conflict of Interest position may exist he/she is bound to declare it immediately. Each individual is responsible for the declaration of his/her interests and, to the best of his/her knowledge, those of his household members. In order to maintain privacy, the names of the household members do not need to be declared.

### **Assessment of Conflict of Interest**

Based on the information provided by the Member of the Board of Regulators and/or of the Management Committee, the Administrative Manager, the Management Committee or the Board of Regulators will jointly evaluate whether a declared interest constitutes a conflict. As a result of such assessment, the matter will be brought to the attention of the Board of Regulators/Management Committee.

**Annual Declaration of Interests**

Title (*Ms., Mr., Dr., Prof.*).....

First Name: .....

Surname: .....

Position: **Member of the Management Committee**

hereby declares to have the following direct or indirect interests of relevance to BEREC or the BEREC Office:

1. Work and activities in organisations relevant to the operating area of BEREC.

During the past 3 years, all activities performed for or on behalf of an organization operating in a related field, whether related to the substance of BEREC mandate or to its operational support, and whether or not these activities have been subject to regular or occasional remuneration in cash or kind, either by the declaring member or to the best of his/her knowledge the members of his/her household, including i) participation in the internal decision-making of a company (e.g. Board membership, executive or non executive directorship), ii) permanent or temporary member of the personnel of a company/institute (Other activities performed within a company (e.g. traineeship) are also subject to declaration.), iii) work contracted out by companies/institute, through consultancy or otherwise. Indicate names of organisation/Position/Period:

2. From the moment of taking the post of the Member of the Board of Regulators and/or of the Management Committee, any financial interests in a company relevant to the operating area of BEREC and/or voting rights in a company, including holding of stocks and shares, equity, bonds, partnership interests<sup>4</sup> in the capital of a company, one of its subsidiaries or a company in the capital of which it has a holding (names of the companies):

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<sup>4</sup> When declaring financial interests e.g. stocks and shares, only the kind, number and company name need be stated.

3. Other links with the field of activity of BEREC during the preceding 3 years, including the participation in relevant activities supported by EU grants or contracts. All assistance and support received from stakeholders of BEREC, whether associated with direct or indirect pecuniary or material benefits, including: i) grants for study or research, ii) fellowships or sponsorships endowed by a company operating in the related business and iii) any other relevant activity related to EU grants and contracts. If such assistance or support is still subject to compensation in any form then declaration of any activity independently of granting period:

4. Any membership role or affiliation, or any other links with the organisations relevant to BEREC.

During the preceding 3 years, interests of non-pecuniary or material benefit to the declaring member, arising from professional activities or affiliation with national or international organisations or bodies with tasks similar to BEREC. It also includes the participation in public interest groups, professional societies, clubs or organisations which have an agenda or an interest or involvement in BEREC's work:

5. Other interests or facts whether or not related to such organisations which you consider should be made known to BEREC, including matters relating to the members of your household:

To the best of my knowledge, the only direct or indirect interests I, or any members of my household have, in organisations relevant to the operating area of BEREC related to my position referred to above are those listed above.

I further declare that should any changes occur and should it appear that I have or acquire additional interests that should be made known to BEREC I shall forthwith declare them and complete a new declaration of interests detailing the changes.

I understand that this Declaration **will be published on BEREC's website** and entered in a register held by the Office, which is accessible to the public, on request at the seat of the Office.

Signature:.....

Date:.....2014