



Brussels, 23.4.2013
SWD(2013) 152 final

COMMISSION STAFF WORKING DOCUMENT

**on the Evaluation Report of the Body of European Regulators for Electronic
Communications (BEREC) and its office**

COMMISSION STAFF WORKING DOCUMENT

on the Evaluation Report of the Body of European Regulators for Electronic Communications (BEREC) and its office

TABLE OF CONTENTS

1.	Background and process	2
2.	Key findings of PWC Evaluation Report.....	2
3.	Links to the complete documents.....	3
4.	Conclusions	4

1. BACKGROUND AND PROCESS

This Staff Working Document responds to the requirement, under article 25 of the BEREC regulation, for the Commission to publish an evaluation report on the experience acquired with the operation of the Body of European Regulators for Electronic Communications (BEREC) and its Office¹ which was established as a result of the review of our e-communications regulatory framework in 2009. The report must be published within three years of the effective start of operations of BEREC and its Office. The same article provides that the evaluation report examines, taking account of the overall objectives of BEREC and the subsequent roles and tasks of BEREC and its Office, how efficiently, based on the experience so far, BEREC has succeeded in its role and thus contributed to the development of the internal market for electronic communications. Therefore, the report assesses, in particular the working practices, organisation of BEREC's and its Office and, remit and where appropriate, makes recommendations for improvements.

In order to ensure an impartial evaluation, DG CONNECT launched a call for tender for an external study on the evaluation of BEREC and the BEREC Office at the end of 2011. Following the tendering procedure, the contract was awarded to PriceWaterhouse Coopers (PWC). The final study report is annexed to this staff working document.

PWC's work has been coordinated by a Steering Committee which included representatives from the Commission (DG CONNECT), BEREC, associations of market players (ETNO and ECTA) and consumer associations (BEUC). The final Evaluation Report of PWC was sent to the Commission in October 2012. This report was carried out following interviews and collecting views through an online questionnaire from representatives from NRAs, EU Institutions and industry. Furthermore, the conclusions reached in the Evaluation Report by PWC were presented at a public workshop on 8 October 2012, in order to take full account of any stakeholder's view on the matter. BEREC has also adopted its own views on the evaluation exercise.

2. KEY FINDINGS OF PWC EVALUATION REPORT

The key findings of PWC Evaluation Report regarding the evaluation of BEREC are the following:

- (1) Overall, the structure of BEREC is overall relevant and efficient. It has so far fulfilled its functions rather successfully, in particular under Article 7/7a procedures as well as in contributing to debate on international roaming and net neutrality, but there may be elements for improvement. Furthermore, when considering the effectiveness of the platform to achieve its requirements and objectives, BEREC may be considered, until now, a success.
- (2) BEREC can play a significant role to harmonise the electronic communications market. It may fulfil this activity through the development and dissemination among

¹ Regulation (EC) N° 1211/2009.

NRAs of regulatory best practices on the implementation of the regulatory framework, through its advisory role and through reports and common positions which should serve as guidelines for NRAs towards a harmonised approach.

- (3) The study indicates the difficulty of getting agreed positions within BEREC - this will require a significant cultural change among NRAs. BEREC, being a bottom-up regulatory model, exemplifies in some cases more national considerations than a pure EU single-market driven approach.
- (4) The independence of BEREC vis-à-vis the individual NRAs could be improved, in the sense of developing a collective European thinking different from the national interests of the NRAs which form it. BEREC, as a single entity, should be more focused on missions that concern the Single Market: harmonisation of the internal market and empowerment of EU consumers. Furthermore, BEREC has to be independent from any government or stakeholder. In order to achieve this, it is of utmost importance that, at the national level, each NRA composing BEREC carries out its functions independently.
- (5) Better ensure the accountability of BEREC towards its own objectives. BEREC should be more accountable for the tasks it chooses to tackle by itself, meaning the tasks included in its Work Programmes and the Mid-Term Strategy. To do so, BEREC could indicate in each Annual Work Programme the commitments chosen for the year and in each Annual Report detail what has been achieved with relation to these objectives, for example progress towards its long-term goals: In that perspective, BEREC should reflect on Key Performance Indicators to assess its own progress. However, BEREC's increased accountability shall not be at the detriment of its capacity to take up additional tasks on emerging issues, on its own initiative or upon request of the EU Institutions. If BEREC could express clearly the topics it considers as key, it could then define priorities and could strengthen, first, its role of advisor to the EU institutions regarding the harmonisation of the Single Market and, second, its role with regard to NRAs in relation to benchmarking, snapshots sharing and exchange of best practices.
- (6) As to the efficiency of the organisation, the scope and the regular review of the BEREC Work Programme could be enhanced, in order to achieve greater prioritisation. The decision-making process should provide more room to the Board of Regulators (BoR) to take strategic decisions.

Regarding the evaluation of the BEREC Office, the external Evaluation Report finds that the use of the BEREC Office needs to be clarified and improved. It is the responsibility of the whole BEREC platform to best utilise the BEREC Office for both administrative and professional purposes. As per the professional support, the expertise of the Office staff is not used today as much as it could or should be. In that perspective, BEREC should decide, together with the Office and in line with the Regulation, on the exact tasks of the Office and on the role and responsibilities of each actor.

3. LINKS TO THE COMPLETE DOCUMENTS

Study on the Evaluation of BEREC and the BEREC Office conducted by PwC is published at:

http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=1403

BEREC's own view on the evaluation exercise is published at:

http://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/1073-berec-input-to-the-european-commission-o_0.pdf

4. CONCLUSIONS

Whilst BEREC is a recently created Body, the report already contains some insights and suggestions on how further to improve its role and efficiency and will therefore be a valuable input in our forthcoming reflections on how to deepen the internal market in this area.

On the one hand, the report considers that BEREC is functioning rather well overall and particularly through its opinions under the Article 7/7a notification of national measures' procedure is contributing to a more consistent application of the EU's e-communication regulation in Member States and consequently to the promotion of an internal market. The report also credits BEREC for providing useful input on international roaming, which was instrumental for the successful negotiations on the Roaming Regulation, as well as for the work it has undertaken on net neutrality.

On the other hand, the evaluation shows that there is still room for improvement in the BEREC set up. The report points out, in particular, that whereas BEREC is making efforts to improve the functioning of the internal market, the fact that it is composed of National Regulatory Authorities means that aligning European objectives with national views and considerations can prove challenging.