

**BEREC input to the European Commission
on the functioning of BEREC and the BEREC Office
in view of the evaluation under Article 48 of the BEREC
Regulation**

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List of acronyms

Acronym	Meaning
AI	Artificial Intelligence
AVC	Audio Visual Conferencing
BAG	BEREC Office Advisory Group
BEREC	Body of European Regulators for Electronic Communications
BO	Agency for Support for BEREC
CN	Contact Network
CPC	Consumer Protection Cooperation Network
CRTC	The Canadian Radio-television and Telecommunications Commission
DG CNECT	Directorate-General for Communications Networks, Content and Technology
DMA	The Digital Markets Act
DSA	The Digital Services Act package
EC	European Commission
ECA	European Court of Auditors
ECJ	Court of Justice of the European Union
ECN	the European Competition Network
ECS	Electronic Communications Systems
EDPB	European Data Protection Board
EDPS	European Data Protection Supervisor
EEA	The European Economic Area
EECC	Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code
EFTA	The European Free Trade Association
EMERG	The European ME Research Group
ENISA	The European Union Agency for Cybersecurity
ERGA	European Regulators Group for Audiovisual Media Services
ERGP	European Regulators Group for Postal Services
ETSI	European Telecommunications Standards Institute
EU	European Union
FCC	The US Federal Communications Commission
GHG	Greenhouse gases

GL	Guidelines
IAS	Internal Audit Service
ICT	Information and communication technologies
IT	Information technologies
ITU	The International Telecommunication Union
MB	Management Board
NCT	New Competition Tool
NI-ICS	Number-Independent Interpersonal Communication Services
NRA	National Regulatory Authority
OECD	Organisation for Economic Co-operation and Development
RSPG	The Radio Spectrum Policy Group
SPD	Single Programming Document
TRAI	The Telecom Regulatory Authority of India
US	The United States
WG	Working Group

EXECUTIVE SUMMARY

INTRODUCTION

This document assesses the activities and performance of the Body of European Regulators for Electronic Communications (hereinafter, also BEREC) and the BEREC Office (hereinafter also, the BO) since the adoption in 2018 of the European Electronic Communications Code¹ (hereinafter also, the EECC) and the new BEREC Regulation². The report focuses on the achievements, challenges and opportunities presented by emerging technologies and changing business models, trends, and market dynamics in the communications sectors.

The analysis is triggered by Article 48 of the BEREC Regulation, setting out that the European Commission (hereinafter, also the EC) must evaluate the BEREC and BO's performance by 21 December 2023. The scope of the evaluation includes the BEREC and BO objectives, mandate, tasks, and location. Subject to the results of the evaluation, the EC may propose that the Regulation be amended or repealed. BEREC aims at contributing to this exercise by providing its own assessment, as presented in this document.

The electronic communications sector is undergoing significant transformations driven by innovations in technology and markets, regulatory evolution, as well as emerging issues and expectations regarding users' rights. The EU legislative framework is keeping pace with these developments, with significant new policies and regulatory initiatives being launched in the fields of digital markets and services, cloud services, artificial intelligence, online platforms, cybersecurity, data governance, internet ecosystem, sustainability, etc.

BEREC has carried out a deep reflection on the implications of these developments and shared its conclusions in its 2030 Action Plan³ where strategic actions were tabled, *inter alia*, in the field of digital economy, as the electronic communications landscape under its remit progressively turns into an internet communication one and its member NRAs see their competences broaden accordingly to the wider digital domain.

The new regulatory challenges, as described in the abovementioned Action Plan, as well as in the BEREC contribution to the EC's exploratory consultation on the future of the electronic communications sector and its infrastructure⁴ raise the need of enhancing cross sectoral and cross border cooperation mechanisms, including with third countries. In the last years, BEREC has worked

¹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code

² Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009

³ Document BoR (23) 48 available at <https://www.berec.europa.eu/en/document-categories/berec/others/berec-action-plan-for-2030>

⁴ Accessible through the link <https://www.berec.europa.eu/en/news-publications/news-and-newsletters/berecs-input-to-the-future-of-the-electronic-communications-sector-and-its-infrastructure-public-consultation>

accordingly to adapt to these transformations by monitoring and analysing the upcoming trends as well as providing advice to the new EU legislative proposals.

At the same time, BEREC has successfully delivered on the several new competences assigned to it by the 2018 Regulation. To carry out all such tasks and gain further efficiencies, BEREC adapted its organisation and management and designed, when necessary, new working methods.

In addition, BEREC has made significant efforts to further improve communication and facilitate public exchanges such as the annual Stakeholder forum, the meet & great session with the experts, increasing the number of public consultations and workshops and the representation of BEREC in public sectoral events.

The BO is the smallest of the over 30 decentralised EU agencies, featuring a tiny workforce. It has undergone a major adaptation of its overall structure and functioning to comply with the EU agencies' legal obligations and specific requirements despite of the difficulties entailed by its size.

The number and quality of BEREC's outputs along the last years, delivered with the professional support by the BO have been hereinafter analysed.

ANALYSIS

BEREC has carried out a self-assessment exercise after consulting all its member NRAs, the Working Groups (hereinafter, WGs), the BO and the BEREC Advisory Group (hereinafter, the BAG)⁵ for comments, opinions, data, and proposals. The analytic part of the present document includes:

- a fact-finding analysis of the BEREC and the BO's governance, organisational structures, management and working methods on the background of their respective objectives, mandates and tasks as defined in the Regulation and in their work programmes and strategies (chapters 1 to 4),

- a forward-looking assessment of the BEREC and the BO's challenges, with a view to implementing their competences in a consistent manner within the electronic communications sector and the adjacent fields, as stemming from the digital transformation (chapter 5).

The main takeaways that can be drawn from the analysis carried out are as follows:

First, BEREC roots its activity in the collective on the ground experience and expertise of independent national regulators. This is achieved thanks to a *two-tier* institutional design that concurrently preserves institutional stability, the independence requirements envisaged by the EU framework as well as operational flexibility and effectiveness. Such a layout has to date guaranteed effective management, decision-making and benefit from the technical value of the BEREC 'bottom up' working practices and has been key to the Body's capacity to provide the EC and the other EU Institutions with sound and reliable input. To this regard, BEREC and the BO's two-tier governance could also serve as a reference model for the institutional set-up of other sectoral regulators groups, with similar requirements of independence from European institutions, national governments, and market players.

⁵ BAG – BEREC Office Advisory Group is a group set up under art. 12 of the Rules of Procedure of the Management Board, pursuant to Art 16 of the BEREC Regulation. See Section 4.3 below.

Second, the working methods and procedures of BEREC and the BO have been tailored and periodically fine-tuned to enable the Board of Regulators and the WGs to work responsively and efficiently, which has ensured transparency and accountability to the members and stakeholders. At the same time, these procedures have enabled the BO to provide professional and administrative support services through its Management Board and Director. With the development of mid-term planning and expanded institutional and international cooperation, BEREC has tasked its Chair, vice-Chairs and WGs' co-chairs with specific roles, designing an effective and responsive management and **operational structure which has proven effective** also in the middle of unexpected events such as the Covid-19 pandemic and the Russian invasion of Ukraine, in the face of which BEREC and the BO have proven their capacity to provide valuable input amidst emerging critical situations. Some of this input include the monitoring of network congestion during lock-in periods or facilitating roaming communication for Ukraine citizens.

Third, the four regulatory objectives in Article 3 EECC are the guiding principles of BEREC's activities and have been reflected in BEREC's multi-annual work programmes. The fulfilment of these objectives has led BEREC to gain a **broader look into digital markets**, due to the progressive expansion of the traditional ECN/ECS scope towards the IT world. BEREC has consequently taken on additional lines of activity to investigate emerging technological trends and complex regulatory issues via developing an independent take on them, looking into digital markets from different angles, in addition to its traditional remit in the electronic communications sector and to the new competences provided for by the EECC.

Fourth, the co-legislators have entrusted BEREC with a wide range of tasks and the relevant numerous outputs timely produced by BEREC confirm the **suitability of its structure** to deliver on the goals set, showing the dedication, knowledge and competence of the WG Co-Chairs and experts drawn from all NRAs, who strive to achieve the best outcomes. The BO professional contribution also represents a significant component in implementing such a successful model.

Last, this self-assessment is carried out at a point in time when several issues concerning the entire communications sector and its regulatory perspectives are under discussion at EU level and the convergence of information/digital and communication technologies is quite advanced within digital markets. BEREC is fully committed to keep following the relevant institutional debates at EU level and making a meaningful contribution, where appropriate. Working towards its three strategic goals - promoting full connectivity, sustainable open digital markets, and empowering end users - BEREC contributed already to recent legislative processes with a view to supporting independent, consistent, and high-quality regulation of sustainable and open digital markets for the benefits of Europe and its citizens⁶. Indeed, **BEREC and its member NRAs are well positioned to effectively play a role in**

⁶ Examples of recent BEREC reflections and contributions on the functioning of digital markets and their potential regulatory treatment are provided by the BEREC report on interoperability of number-independent interpersonal communication services (NI-ICS) – BoR (23)92, the BEREC report on the Internet Ecosystem – BoR (22) 167 and the BEREC Report on the ex-ante regulation of digital gatekeepers - BoR (21) 131. In 2020 BEREC published its response to the EC public consultations on the DSA Package and the New Competition Tool – BoR (20)138 and provided subsequent contributions along the EU legislative process: BEREC proposal on remedies-tailoring and structured participation processes for

implementing digital rulebooks. Some of these initiatives such as the Digital Markets Act (hereinafter, DMA) Regulation already entrust BEREC with a specific role which encompasses BEREC's participation in the High-Level Group of Digital Regulators for the enforcement of the DMA.

The Body's enduring voluntary commitment to investigate technological and market developments including in adjacent markets that are impacting on the functioning of the electronic communications sector therefore progressively couples with the recognition to BEREC and its member NRAs of regulatory responsibilities in the digital field, in the face of ever more inter-dependent communication markets. The widening of BEREC remit to digital matters accordingly appears as a natural evolution of its mandate.

BEREC will therefore keep monitoring developments in this field and will also remain available to engage with legislators and cooperate actively with other competent bodies in any relevant legislative processes.

CONCLUSIONS

The fact-finding analysis of the BEREC and the BO activities and a reflection on their achievements brings some conclusions (developed in chapter 6) regarding the challenges that BEREC and the BO might be facing ahead. While the current BEREC tasks, which were expanded by the EECC, have been carried out to date in a timely manner and with a high quality and professionalism, BEREC has identified some potential areas of concerns. These may impact BEREC's capacity to continue providing its expert contribution on the inevitable interplays between electronic communication legislation and new pieces of digital regulation intervening on adjacent fields.

Areas for improvement that have been identified within the present assessment are mostly related to external factors that directly or indirectly affect the work of BEREC and the BO. The limited harmonisation of the competences assigned to NRAs at national level, as well as the restricted availability of adequate resources conferred by Member States to their NRAs to carry out the new tasks as well as the ongoing ones are all factors on BEREC's radar in terms of possible challenges ahead to its optimal operation. Such constraints at NRA's level may affect indeed the collective Body's full capacity to foster regulatory consistency throughout the subjects covered by the EECC, to the detriment of the internal market for electronic communications and users' rights. The mentioned external factors revolve around the broader matter of NRAs' independence, which *inter*

stakeholders in the context of the Digital Markets Act - BoR (21) 94 and BEREC proposal on the set-up of an Advisory Board in the context of the Digital Markets Act -BoR (21) 93. Still in 2021, a BEREC Report was adopted on the interplay between the EECC and the EC's proposal for a Digital Markets Act concerning number-independent interpersonal communication services - BoR (21) 85, as well as the document BoR (21) 35, bearing the BEREC Opinion on the European Commission's proposal for a Digital Markets Act". In the same year, BEREC commissioned a comprehensive empirical study on consumer behaviour towards digital platforms "Analysing EU consumer perceptions and behaviour on digital platforms for communication. Analysis report" - BoR (21) 89. BEREC also analysed the economic properties of the data economy and its regulation in the context of the digital sector in its "Report on the data economy" – BoR (19)106. Previously, BEREC issued its Report on the impact of premium content on ECS markets and the effect of devices on the open use of the Internet-BoR (18)35. Earlier than that, back in 2016, BEREC issued its Report on OTT services-BoR (16)35. BEREC has also been taking part in the debate around the draft Data Act – see the BEREC statement on the draft Data Act – BoR (22)54, the BEREC High-Level Opinion on the European Commission's proposal for a Data Act - BoR (22) 118 and the summary from last April workshop on switching and interoperability of data processing services – BoR (23) 117 - and has been providing its own thinking regarding the impact of Artificial Intelligence solutions on the regulation in the telecommunications sector – BoR (23) 93.

alia means being assigned an appropriate set of institutional tasks and an appropriate amount of suitable resources (as required by the EECC). Resources, including human ones, shall furthermore be adequate with a view to the new challenges that Regulators are faced with in the wide digital domain, and shall therefore be endowed with the necessary skills in terms of background and experience. The independence of NRAs is a precondition for the overall BEREC architecture to function.

In addition, compatibly with the working procedures of the EC, it will prove even more relevant to define mechanisms for the provision of BEREC input at an early stage of the EC's decision-making, to allow its thorough consideration ahead of the formalisation of any Commission's proposals. In relation with this, it would also be important to carry out a thorough check on whether all the tasks currently assigned to BEREC are still fit for purpose and if others need to be added instead in light of the changing market landscape; in this respect, an analysis shall be carried out in view of the upcoming EECC review in 2025 that may require a redefinition of the overall BEREC's remit.

For BEREC to function effectively, the BO will also require appropriate staffing and budgeting in the future, in the face of the new and numerous tasks of the Body. In particular, actions should be taken to ensure adequate staff resources - including widening the establishment plan when new BO requirements kick in – and to minimise the numerous administrative requirements bearing down on the small Agency, e.g., in the field of programming and reporting.

1. THE EUROPEAN COMMISSION'S EVALUATION OF THE PERFORMANCE OF BEREC AND THE BEREC OFFICE

Pursuant to Article 48 of the BEREC Regulation, the EC must, by 21 December 2023 and every five years thereafter, carry out **an evaluation in compliance with the Commission's guidelines to assess BEREC's and the BEREC Office's performance about their objectives, mandate, tasks, location**. The EC must report to the European Parliament, the Council and the BEREC Management Board on the findings of its evaluation and publish them.

The evaluation is expected to address any potential need to modify the structure or mandate of BEREC and the BO, and the financial implications of any such modification. Depending on the results of the evaluation, the Commission may propose that the Regulation is amended or repealed accordingly. To this aim, the evaluation shall assess the achievements and added value of BEREC, as well as whether the governance, organisational structures, management and working methods of BEREC and of the BO have been working as intended regarding their respective objectives, mandates and tasks defined in the regulation and in their respective work programmes and strategies.

Given the relevance of the evaluation for BEREC and the BO, BEREC decided to contribute to this exercise undertaking its own assessment in the form of a BEREC input to the Commission, as presented in this document.

BEREC takes advantage of this valuable opportunity to critically reflect on the last 4 years of its system in action after the entry into force of the EECC, to identify what has worked well, as well as what might be improved.

The aim for BEREC is to continue serving as a trusted and independent expert body and adviser to the EU institutions in the field of electronic communications and the digital ecosystem.

BEREC and the BO will remain available to elaborate further on any issues raised here, and to work closely with the EC as it finalizes its evaluation report.

2. THE TWO-TIER STRUCTURE OF BEREC AND THE BEREC OFFICE

The BEREC and the BO were initially established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council, then repealed and replaced by Regulation (EU) No 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), (hereinafter: BEREC Regulation).

BEREC and the BO enjoy an original and innovative institutional design tailored to preserve, at the same time, the institutional independence of BEREC and its operational flexibility and effectiveness. Namely, this structure allows advancing in the digital single market by benefiting from the expertise and experience in the practical enforcement of the EU framework provided by national experts. At the same time, BEREC is recognised as a European body without legal personality, gathering NRAs representatives at different levels, and it is supported in the performance of its advisory tasks by an

EU Agency (the BO). The BEREC Regulation of 2018 confirmed such two-tier structure, further defining the BEREC and BO architecture.

According to Article 6 of the BEREC Regulation, BEREC comprises: (a) a Board of Regulators (hereinafter: BoR) and (b) working groups (hereinafter, WGs). To ensure consistency across the WG activities and pave the way to decision making at the Plenary, a senior group of experts from all NRAs gather in a particular WG named Contact Network (hereinafter, CN). The CN plays an essential role orchestrating BEREC's work.

Article 14 establishes that the organisational structure of the BO comprises: (a) a Management Board and (b) a Director.

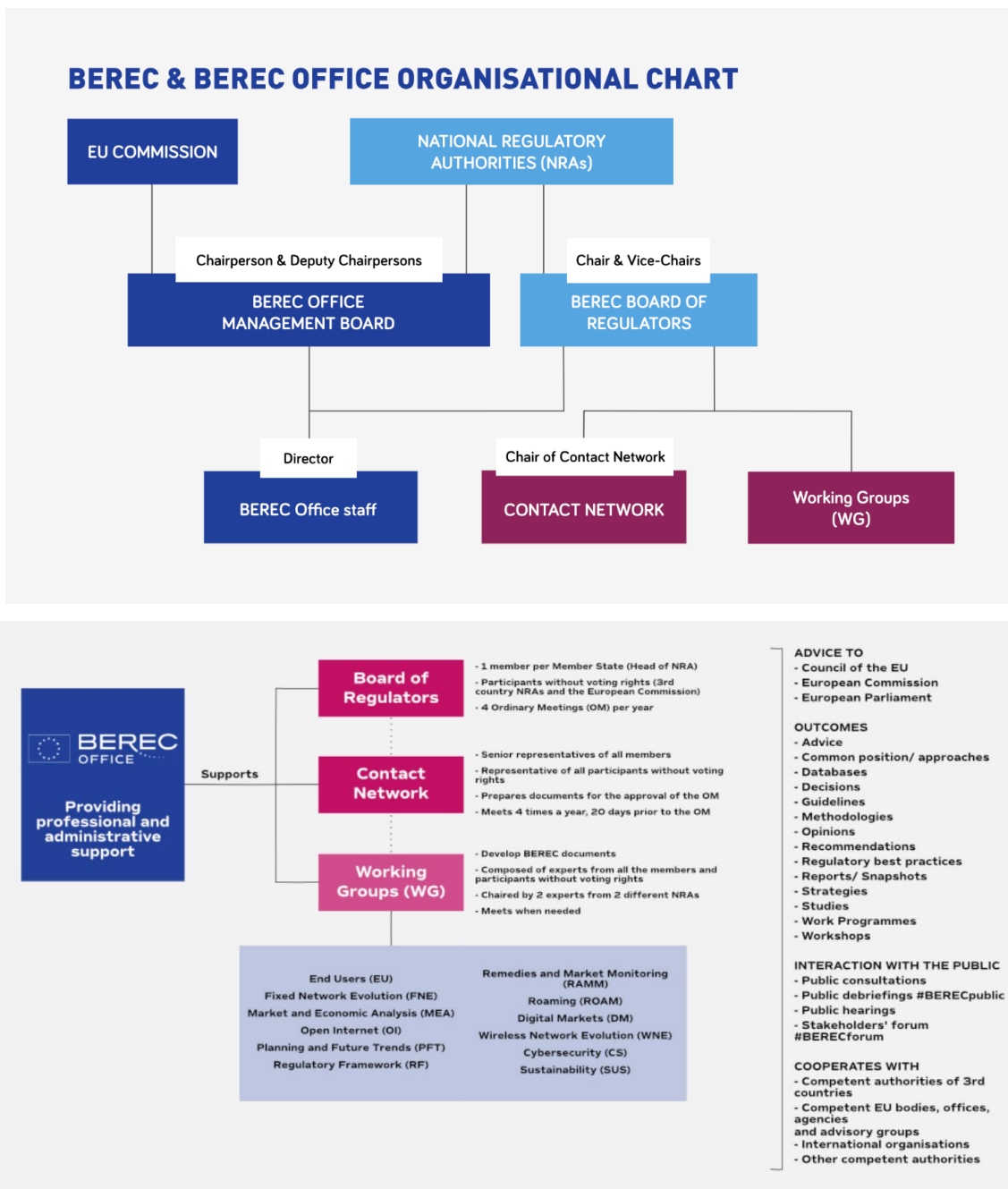


Figure 1. Source : BEREC

BEREC complements the Regulation by laying down its own functioning rules of procedure (RoP) for both the Board of Regulators (BoR RoP) and the Management Board (MB RoP). After the adoption of the EECC and the review of the BEREC Regulation in December 2018, BEREC adapted its Rules of Procedure to align them to the new framework.

The BoR RoP define the procedure to appoint the BEREC Chair (Article 2) who is assisted and supported by the Vice Chairs of the Board of Regulators, the additional Vice Chairs and one representative of the participants without voting rights, all gathered in the Mini Board led by the BEREC Chair (Article 3). The Mini Board drives forward BEREC's action, provides support and follows the WGs' work, represents BEREC under the Chair's delegation, and informs the Board of Regulators whenever necessary of its activities and, in any event, at every Board of Regulators meeting. The WGs are entrusted with achieving the deliverables set out in the annual Work Programme,

Under Article 4 of the MB RoP the Chair and Vice-Chairs of the Board of Regulators (usually) perform as the Chairperson and the Deputy Chairpersons of the Management Board (a derogation to carry out the election of different candidates is also provided). The Chairperson of the Management Board reports to the European Parliament and to the Council on the carrying out of the tasks of the BO when invited to do so.

The BO is funded through the EU budget approved by the EU co-legislators.

BEREC comprises all independent National Regulatory Authorities (NRAs) of the EU Member States. The EC takes part in BEREC's work without voting rights. According to Article 35(2) of Regulation (EU) 2018/1971, BEREC is also open to the participation of the competent authorities of third countries that have entered into agreements with the EU to that effect with the status of participants without voting rights. Namely, those are the EEA EFTA countries, except for Switzerland, the EU accession countries, including Ukraine, since June 2022, Bosnia and Kosovo*.

BEREC commenced its activities in January 2010. Its regulatory objectives and tasks, ultimately established in **Articles 3 and 4 of the BEREC Regulation**, range from assisting and advising the NRAs, the European Parliament, the Council and the Commission, upon request or on its own initiative, on technical matters as well as in relation to the preparation of legislative proposals in the field of electronic communications, to issuing opinions, guidelines, recommendations, reports, public consultations and common positions on specified matters, conducting analysis, monitoring and collecting data and information, disseminating regulatory best practices, establishing and maintaining databases, evaluating the needs for regulatory innovation, etc.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

The tasks identified by the BEREC Regulation are specified in the **European Electronic Communications Code**, the Roaming Regulation⁷, and the Telecoms Single Market Regulation⁸ and further detailed by other pieces of secondary legislation, including the Recommendation on Relevant Markets, the Delegated Regulation on Termination Rates, the Recommendation on consistent non-discrimination obligations and costing methodologies (currently under revision by the Commission), among others.

BEREC contributes to the development and the better functioning of the internal market for electronic communications networks and services. It does so by facilitating the consistent implementation of the EU regulatory framework for electronic communications by its member NRAs, so to bring greater benefits to consumers and businesses alike.

The NRAs and the Commission shall indeed take utmost account of any opinion, recommendation, guidelines, advice, or regulatory best practice adopted by BEREC. Generally, BEREC deliverables spell out in more detail the regulatory principles to be followed, so that NRAs consistently apply them, while retaining the necessary flexibility to tailor any remedies on market players to their national market situation.

Furthermore, BEREC has very recently been entrusted by the EU legislation with new tasks in the online platform economy deriving from the Digital Markets Act⁹, and its member NRAs are and will be more and more individually committed to the national application of several regulations regarding various aspects of the digital markets¹⁰.

The BO, also established by Regulation (EC) 1211/2009, is an EU body with legal personality set up to carry out the tasks referred to in the Regulation. In particular, the BO provides professional and administrative support services to BEREC, including financial, organisational and ICT services, as detailed in Article 5 of the BEREC Regulation. This mission is largely confirmed by the 2018 Regulation, as well as its legal status as decentralised EU Agency. In compliance with Article 2 (5) of the BEREC Regulation, the BO seat is confirmed in Riga, Latvia. The Management Board supervising the BO regarding the operational and management activities is composed of the high-level representatives of 27 EU NRAs and a high-level representative of the Commission (DG CNECT as the partner DG). Each of the representatives has one vote. Thus, the composition and the voting rules imply that – unlike in fully-fledged agencies – the NRAs are not only in control of the BoR but also of the Management Board.

The BO is the smallest decentralised EU Agency in the Union and is required to comply with all financial and staff regulations of the EC like all the EU decentralised Agencies. Therefore, a

⁷ [REGULATION \(EU\) 2022/612 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 6 April 2022 on roaming on public mobile communications networks within the Union.](#)

⁸ [REGULATION \(EU\) 2015/2120 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation \(EU\) No 531/2012 on roaming on public mobile communications networks within the Union.](#)

⁹ [REGULATION \(EU\) 2022/1925 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives \(EU\) 2019/1937 and \(EU\) 2020/1828.](#)

¹⁰ [REGULATION \(EU\) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC \(Digital Services Act\).](#)

considerable part of its resources is allocated to performing the administrative work resulting from these regulations.

This **two-tier governance** provides the necessary stability and flexibility for an effective management and decision-making. This is achieved thanks to the 'bottom up' BEREC working practices which means that the substantive regulatory work is carried out through the contribution of member NRAs' staff, being therefore rooted in national sectoral expertise. The merits of such an institutional layout have been key to BEREC's capacity to provide the EU Institutions and its members with sound and reliable technical input, based on the collective experience of its independent national regulators.

The fundamental prerequisite for this whole innovative system to function as a driver of regulatory harmonization in the EU is the independence of BEREC member NRAs.

NRAs' (and subsequently BEREC's) independence is a complex concept though, embracing the wider national legal systems and practices, involving dimensions ranging from systemic, operational to financial and personnel issues. The EECC provides the foundation to the regulators' independence and helps harmonize the actual implementation of the general EU requirements. However, the principles and guarantees of NRAs independence shall be duly and fully implemented in practice. There must be safeguards against arbitrary and inadequate limitations to each NRA's full independence in practice across the EU. It is therefore necessary to guarantee not only statutory provisions formally envisaging independence, but also to ensure the actual independent, hence effective functioning of relevant national authorities. While the EC is responsible for the correct implementation of the EECC, BEREC can support the EC in this task by exchanging experiences and providing information in a systematic and comparable manner. By means of a mutual learning in this respect, BEREC can foster the common understanding, the identification of a common practice and – ultimately – the consistent practice of independence across the European Union.

Actual NRAs' independence is required for the independent operation of BEREC throughout the areas covered by the EECC.

Any assessment of the functioning of such innovative architecture shall therefore take due account of this unique institutional layout which relies, on the one hand, on the support by the BO and, on the other hand, on the implementation of consistent regulatory solutions by independent national regulators. A sound evaluation of this whole system cannot ignore such 2 layers to provide valuable input on how further improving the BEREC regulatory cooperation system, building on its strengths.

3. BEREC'S ACHIEVEMENTS

3.1 BEREC and the BEREC Office working patterns

Since their establishment, BEREC and the Office have made a positive contribution towards the consistent implementation of the regulatory framework for electronic communications and the promotion of regulatory best practices, aiming at pursuing the goals of the EU sectoral legislative framework. As lastly identified by article 3 of the EECC those regulatory objectives are:

- Promoting connectivity and access to, and take-up of, very high capacity networks;

- Promoting competition and efficient investments;
- Contributing to the development of the internal market;
- Promoting the interests of the citizens of the Union.

The **four objectives in Article 3 EECC** are the foundation of the assignments set out in BEREC's multi-annual work programmes¹¹ that BEREC keeps pursuing independently, impartially, transparently, and promptly.

The EECC prompted BEREC to take up new tasks, including, among others, the delivery of technical guidelines on several subjects to facilitate the harmonised implementation of the EECC itself, along with developing and keeping databases, for instance on numbering and general authorisations.

In addition to its traditional remit in the telecommunications field, BEREC and NRAs are furthermore increasingly compelled to have a broader view of the internet ecosystem due to the latest technological trends that are not only changing the way we communicate but also adding complexity and reshaping the internet ecosystem with the entry of new players (sometimes moving upwards along the value chain), the changing roles of traditional players, the creation of new competition bottlenecks in the value chain and the removal of others¹².

In this context, the International Telecommunications Union (ITU) has called for a 5th generation of regulation, the OECD has reflected on the impact of the networks of the future and, in light of these, issued a Communication on the regulators of the future and BEREC has recently published a 2030 Action Plan along the same lines. The three organizations share the view that regulation (and, consequently, regulators) must evolve towards a holistic perspective.

Against this backdrop, BEREC has also delivered on the Internet ecosystem, number-independent interpersonal communication services (NI-ICS) and interoperability, and the new competences in the digital field that have progressively been entrusted to NRAs, e.g., regarding geo-blocking, data governance, data portability, digital divide, digital transition, electronic identification, monitoring digital platforms, artificial intelligence and sustainability. The increasing BEREC's scope of reflection has therefore led to the progressive update of its working patterns, including work planning and working groups articulation.

In operational terms, all the Work Programme items are currently assigned to BEREC's 12 WGs. WGs can be referred to as the "machine room" of BEREC as they work on the documents to be passed on to CN for discussion and from there onwards to the BoR for approval. The strength of BEREC mostly lies with this bottom-up approach, relying in turns on the technical expertise at WG

¹¹ The process of building and adopting the BEREC Work Programme is outlined in Articles 21 and 23 of the BEREC Regulation, according to which the Board of Regulators shall adopt the outline of the annual Work Programme by 31 January of the year preceding that to which the annual work programme relates, after consulting the European Parliament, the Council and the Commission on their priorities, as well as other interested parties called to provide their views (Article 4(5)). As to the BEREC Office, it is up to the Director to draw up each year the draft Single Programming Document (SPD) in line with Article 32 of the Delegated Regulation (EU) 1271/2013, taking into account the relevant regulations of the Commission and its opinion. The annual and multiannual programming document sets out overall strategic programming including objectives, expected results and performance indicators. It also sets out resource programming including multi-annual budget and staff.

¹² BEREC develops on these trends in Annex c of the BEREC input to the EC's exploratory consultation on the future of the electronics communications sector and its infrastructure <https://www.berec.europa.eu/en/news-publications/news-and-newsletters/berecs-input-to-the-future-of-the-electronic-communications-sector-and-its-infrastructure-public-consultation>

level to prepare the documents for subsequent discussion at senior level (Contact Network), and ultimately at the highest strategic level (Board of Regulators). The WG architecture is broadly stable along the years. Adaptations are punctually made when required as new challenges emerge as well as to enable BEREC keeping pace with the developments in the sector. Those are the cases of the setup of WG dedicated to wireless network evolution, cybersecurity, sustainability, or digital matters.

Already back in 2019, BEREC established a new WG named as “Planning and Future Trends WG”, which is broadly tasked with carrying out ‘horizon scanning’ exercises in the fields of 5G, cloud services and edge computing, AI solutions, etc. In the same forward-looking vein, BEREC’s Markets and Economics WG completed its report on the internet ecosystem¹³, which is becoming influential on telecoms markets in a converged world.

Finally, in 2020, 2021 and 2023 three Expert Networking Groups (Communications, IT and sustainability) were created in the BO context, while two new BEREC WGs dealing with Sustainability¹⁴ and Digital Markets respectively were set up to look into the European Green Deal implementation, environmental impact and transparency as well as upcoming challenges of the new digital ecosystem.

The timely outcomes of the WGs’ activity are fruit of the dedication, knowledge and competence of the experts drawn from all the constituent NRAs and testify the suitability of BEREC’s functioning. The adoption over the years of all the deliverables envisaged by the EECC and BEREC Work Programmes was also made possible thanks to the fundamental support by the BO, which facilitated BEREC in carrying out its institutional duties.

BEREC and the BO managed to carry out completely their tasks in an ever-evolving environment and despite critical circumstances such as those stemming from the Covid 19 pandemic and the Russian invasion of Ukraine; in these latter contexts, BEREC also provided support to the national and European decision-making by means of constant monitoring, collecting information and data, coordinating and regularly exchanging with all actors involved etc.¹⁵

3.2 BEREC’s key achievements

¹³ BoR (22) 167 “BEREC Report on the Internet Ecosystem”. 12 December 2022, <https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-on-the-internet-ecosystem>

¹⁴ In 2021 BEREC has voluntarily taken on the topic of sustainability: on one hand, BEREC has analysed the contribution of the telecoms sector to a greener Europe (via a dedicated Sustainability WG); on the other hand, the BEREC Office (via its Sustainability ENG) has studied its own contribution to sustainability, in line with the Green Deal ambitions and the lessons learned from COVID-19, with practical and sustainable resource-efficient solutions to find and implement the proper mix of its operating modes and routines.

¹⁵ The BEREC and the BEREC Office’s achievements are outlined in detail in the yearly BEREC Annual Reports (2019, 2020 and 2021) and BEREC Office Consolidated Annual Activity Reports (for 2019, 2020 and 2021). BoR (22) 78, 09 June 2022, BEREC Annual Reports 2021; BoR (21) 70, 10 June 2021, BEREC Annual Reports for 2020; BoR (20) 96, 11 June 2020, BEREC Annual Reports for 2019. Annual reports describe BEREC’s own contribution to the development of the electronic communications sector in Europe. The analysis presented include qualitative reasoning based on information from BEREC WG activity, and quantitative data based on periodic BEREC data collection exercises and other public documents.

Since the adoption of the EECC, the key achievements of BEREC in the field of electronic communications and the further initiatives it took to track the market trends in the electronic communications sector in Europe focused on market dynamics and the development of European Union public policies and regulatory practices.

2019 was marked by the BEREC new obligations under the EECC, whereby BEREC was entrusted by the co-legislators with developing ten separate sets of guidelines (GL), spanning on a broad range of topics, going from the Very-High Capacity Networks GL according to Art. 82, to the GL on the consistent application of Art. 76 commitments and the GL on Reference Offers. These guidelines need to be taken into utmost account by NRAs when taking their remedies decisions and thus contribute to a consistent application of the Code, which in turn contributes to the further development of the internal market. Beyond the EECC and following a legislative update to the Roaming Regulation, BEREC was also tasked with developing guidelines on Intra-EU communication. On its own initiative, BEREC also undertook a continuous information-sharing exercise among its NRAs on 'Net Neutrality' with the aim of aligning NRA enforcement and supervision actions and initiated the review of its 2016 guidelines on 'Net Neutrality' (Open Internet) in accordance with its mandate under the Regulation (EU) 2015/2120.

BEREC also issued several Opinions to the EC, notably on the Commission's evaluation of the roaming market, on the review of the Commission's Recommendation on Relevant Markets and on the Commission's implementing act on a contract summary template for consumer contracts.

Following the adoption of the EECC, given the wide range of new responsibilities and deliverables envisaged and their different deadlines, BEREC decided to further engage into developing mid-term perspective work to remain relevant and aligned with future market developments. Hence, a new WG, named the Planning and Future Trends, was established to consider the prospects of future communications, and a multi-annual Work Programme was inaugurated to better relate to the strategic objectives of the EECC.

2020 was marked by 'keeping everyone connected' and making sure the networks kept going despite COVID-19, by monitoring the performance of networks and operators across Europe as well as coordinating information for the European Commission. BEREC's Covid-19 monitoring mechanism has committed NRAs in Europe to regularly collect and share data from the internet service providers and other market players on the impact of the crisis on the telecommunications' networks and the actions taken on the matter. Thanks to the monitoring of the situation and the close cooperation with the Member States and other authorities, BEREC has ensured regular oversight of the Internet traffic situation in each Member State to be able to respond swiftly to capacity issues (which in the end did not occur), regularly reporting to the European Commission.

In the same year, BEREC provided its initial input to the EC's public consultations on the Digital Service Act package and the New Competition Tool (NCT), focusing on ex-ante regulation for digital platforms in the context of the DSA and by means of a position paper on the NCT.

In the same year, BEREC updated its statement on NRAs' independence from 2012. It was agreed that a timely BEREC public intervention on the background of national initiatives impacting on NRAs' independence was needed, also to align BEREC's position to the new provisions of the EECC on

the matter. The independence of NRAs was then increasingly becoming a concern in some Member States, to the point that in 2021 BEREC decided to dedicate a workstream within the Regulatory Framework WG to the study of the main features of independence and their safeguards.

Furthermore, BEREC adopted the Guidelines to support the consistent implementation of the provisions of Article 22 of the European Electronic Communications Code (the “Core Guidelines”), now presented in a single Handbook along with the other two pieces adopted in 2021.

2021 was featured by setting new ambitions, new targets, a Digital Compass and a new 5G Action Plan. BEREC delivered new Guidelines on upgrading connectivity through Very High-Capacity Networks. It contributed to the European initiative on Digital Data Act, the Roaming Regulation, the Broadband Cost Reduction Directive, the Access Recommendation, the 5G Toolbox and the NIS2.0 Directive.

Finally, BEREC initiated an update to the Open Internet Guidelines considering the rulings of the Court of Justice of the European Union (ECJ) on ‘zero rating’.

2022 was an extremely intense and prolific year. BEREC conducted a broad analysis aimed at understanding how users’ internet experience is affected by the different elements of the ecosystem and how the interactions among them may have an impact on BEREC’s and/or NRAs’ regulatory intervention. With the aim of identifying risks and opportunities and their impact on the regulation, BEREC also assessed the challenges and benefits of Artificial Intelligence (AI) solutions in the electronic communications sector.

The main deliverables adopted in the period at stake are hereby summarized.

Activity	2019	2020	2021	2022	Total
Reports	38	59	45	43	185
Public consultations	14	8	9	16	47
Guidelines/Methodology	19	13	4	7	43
Regulatory best practices/common position/assessment	1			3	4
Opinions	7	3	10	5	25
Opinions on Phase II cases	1	1	2	3	7
Databases		2		2	4
Strategies, annual work programmes and outlines	3	5	7	3	18
Annual reports	1	1	1	1	4
Meetings:					
BoR	4	8	7	7	26
CN	4	7	7	5	24
WG	110	20	2	27	159
physical	421	523	490	505	1939
virtual					
External workshop	5	7	9	5	26
3 rd party meetings	6	1	0	3	10
BoR e-voting and comment round procedures	51	48	24	40	163

Table 1: Summary of BEREC activities

In continuity with the past, BEREC also exercised its duties within the European regulatory process (now under article 33 EECC) and therefore issued Opinions and cooperated with NRAs concerned by Phase II cases, therefore contributing to the definition of appropriate national regulatory measures.

3.3 BEREC interaction with third parties

In addition to public consultations, BEREC has consistently **engaged with stakeholders and the larger public** by means of Stakeholder Forums, public debriefings and BEREC Communications Plans.

Starting in 2012, BEREC has been organising an annual Stakeholder Forum in Brussels, Belgium, to meet stakeholders and discuss topics relevant to the telecommunications market and collect input in view of future work programmes. In October 2021, this event kicked off with a new type of engagement with stakeholders, namely, 'Meet & Greet' sessions with the BEREC WGs' Co-chairs. It was followed by the conference and concluded with Q&A sessions and a networking reception. The 'Meet & Greet' sessions are intended as informal meetings, during which the stakeholders can exchange ideas and discuss the sector's challenges with BEREC experts.

The BEREC Communications Plan also serves the goal of informing the public about BEREC's activities and priorities, and strengthening the perception of BEREC as an impartial, independent, European, forward-looking expert body, while disseminating information and awareness in support of BEREC's overall strategic objectives. This plan complements the BEREC External Communications Strategy, which sets out BEREC's overall approach to communications.

3.4 BEREC international dimension

International cooperation is part of BEREC's overall strategy, and it is developed in its Medium-term strategy for international cooperation, in line with Article 35 of Regulation (EU) 2018/1971. It spells out, in a transparent manner, what type of cooperation and engagement could be envisaged with each of BEREC's international partners (RSPG, ERGA, ENISA, ERGP, ECN, ETSI, OECD, BEUC, ITU, EMERG, EaPeReg, Regulatel, etc.), ranging from Memorandum of Understanding to High-level Summits, working meetings, etc.

BEREC already has a long-standing history of cooperation with other independent National Regulatory Authorities and Regional Regulatory Networks, and it has now developed a systematic and structured approach to identify institutions and relationships which are beneficial to attaining expertise and results in line with its own Work Programme and resources.

In the last years BEREC has frequently engaged in exchanges with international parties to exchange on issues of common interest related to the European regulatory framework and its implementation, especially the EECC and the Digital Service Package. The topics of interest are diverse and include, but are not limited to, wholesale access, end-users' protection, spectrum and universal service,

international roaming, and open internet regulations. On the other hand, BEREC has relied on international relations to seek information on how regulatory policies are implemented in other regions, and to learn from the experiences of other bodies which are further along a particular regulatory path or cooperate with international bodies to exchange information and ideas on digital topics which deal with broader issues than ‘traditional’ electronic communications markets and services, and on which there is little practical regulatory experience. To this end, BEREC has signed and renewed several Memorandum of Understanding (MoU) with:

- the US Federal Communications Commission (FCC),
- the Eastern Partnership Regulators for Electronic Communications (EaPeReg),
- the Telecom Regulatory Authority of India (TRAI),
- the Latin American Forum of Telecommunications Regulators (REGULATEL),
- the Euro Mediterranean Regulators Group (EMERG),
- the Canadian Radio-television and Telecommunications Commission (CRTC).

International cooperation has gained ground in BEREC’s work priorities over the recent years, and it is likely to become an even more significant part of BEREC’s work as the cross-border nature of digital services increases in a fast-changing environment, calling for BEREC to strengthen and retain its capacity to meet future challenges effectively.

Furthermore, BEREC has developed a Medium-Term Strategy for relations with other institutions 2022-2025¹⁶ in application of article 35 of the Regulation, which identifies its key institutional interlocutors in the Union beyond the EU Bodies (subjects such as RSPG, ENISA, ERGA, EDPB and the ECN, that have different responsibilities in the wider communications sector).

The need for such strategic cooperation among Regulators and EU Networks of Regulators that are active in adjacent sectors increases in the digital world and this is proven by the set-up of the High-Level Group for the Digital Markets Act (DMA) by the European Commission to provide its expertise and advice to ensure that digital markets across the EU are compliant with the DMA and fair. BEREC has nominated six of its members as representative in this Group, along with representatives from the European Data Protection Supervisor (EDPS) and European Data Protection Board, the European Competition Network (ECN), the Consumer Protection Cooperation Network (CPC Network), and the European Regulators Group for Audiovisual Media Services (ERGA).

3.5 BEREC’s ability to deliver quality outputs

BEREC institutional structure and the working arrangements the Body has progressively finetuned have proven to be fit to allow it to perform all its institutional duties, despite a remit widened by the EECC and the several additional *ad hoc* – hence unplanned - duties that BEREC was asked to accomplish, e.g., tasks triggered by unexpected critical circumstances, such as the Covid 19 crisis

¹⁶ BoR (21) 137 BEREC’s Medium Term Strategy for relations with other institutions 2022-2025

and the war in Ukraine, as well as unexpected requests for advice (for example, on numbering matters).

Areas for improvement emerging from the present reflection are therefore mostly related to other factors, i.e., the BEREC members' institutional features at national level. In particular, the **incomplete harmonisation of the competences assigned to NRAs by the EECC throughout the Union has been identified as a challenge, as well as the sometimes limited availability of adequate resources that, still according to the EECC, Member States must provide to their NRAs** to allow them to carry out their tasks.

These sensitive aspects may affect BEREC's full capacity to work on all the areas covered by the EECC via the fundamental expert contribution by all its member NRAs (for either a lack of NRA's competence or a lack of NRA's resources or both), to the detriment of a higher-quality regulatory action and of a consistent implementation of regulatory best-practices throughout national markets, ultimately prejudicing the achievement of the internal market, competition and end-user protection goals. Such a reflection leads to focus on the broader matter of NRAs' independence. Member States are required indeed under Article 6 of the EECC to ensure their NRAs are provided with adequate technical, financial and human resources to carry out the tasks assigned to them and to fulfil their obligations in respect of BEREC. If this is not the case, then the impact on the NRAs themselves, BEREC operation and the end users' rights can be quite significant, ultimately affecting the credibility and reputation of the broader framework of the European internal market and vision for electronic communications. In this respect, in order to check how they are allocated in the EU, the BO could be tasked to monitor the evolution of NRAs' remit on traditional telecom competences (e.g., numbering, net neutrality, spectrum, etc.) as well as regarding any new competences assigned to NRAs (e.g., Data Governance Act, Data Act, Artificial Intelligence Act, Digital Services Act, competences regarding sustainability, etc.), so as to keep track of any significant misalignment (with what envisaged by the EECC as well as among NRAs overall) that might hinder the BEREC capacity to work as a whole on all the matters covered by the EECC.

On the Commission's side, it must be noted that **the benefits of a BEREC's early engagement** whenever possible will likely become more relevant as the BEREC's input is required on a wide range of topics of the Commission's ambitious policy agenda, with the time and resources constraints mentioned above, combined with the fast pace of change within the sector and the increasing regulatory areas requiring BEREC's attention.

To this regard, BEREC believes that up to now it has always guaranteed the EC the contribution requested within the established times and with the highest quality of content and analysis. In fact, BEREC always makes sure to have sufficient resources to carry out its priorities and mandatory tasks and activities, as guaranteed by means of the Annual Work Programme and its prioritization. Therefore, any further efficiency of cooperation between BEREC and the Commission would serve to free up resources for the additional optional activities proposed by the NRAs. For example, the Open Internet WG has faced very busy periods since 2019, as there have been several additional projects on top of those foreseen in the annual work programmes. For instance, in **2020**, the monitoring and reporting related to the Covid-19 crisis; in **2021**, the assessment of the ECJ rulings and preparation of the review of the Open Internet Guidelines; in **2022**, (i) coordination and exchange

of information related to the sanctions on banning Russian media outlets, (ii) BEREC Opinion for the evaluation of the application of Regulation (EU) 2015-2020, (iii) preparation of input to the EC on the "fair contribution" debate. However, thanks to the availability of many NRAs' experienced and committed experts and the support of the BO, the WG managed to cope with the workload in a timely manner.

With a view to providing qualitative advice and support to the EU institutions, BEREC should also carry on designing harmonized, consistent, or coordinated indicators to help NRAs collect data on key topics such as investment in networks and services, interconnection or the impact of the digital sector on the environment. With the same aim of preserving the quality of BEREC independent expert advice, while participating in BEREC's WGs, CN and BoR meetings and expressing its views as an observer, the Commission shall not be involved in most of the cases when BEREC discusses on Opinions addressed to the Commission itself, as by definition the Commission's representatives would have a conflict of interest in these cases. In fact, while transparency on the work being carried out shall in any case be guaranteed here, the full independence of BEREC based on the NRAs' chance to express their views in the formation of a decision must also be ensured.

Another issue arising from the experience of the past years in terms of effective BEREC operation regards the coordination with the Other Competent Authorities, meaning national entities entrusted with sectoral tasks different of the independent NRAs. In this field, the delay that BEREC sometimes experienced in carrying out its tasks in cases where the relevant competences are not entrusted to the national independent regulatory authorities for electronic communications (i.e., the NRAs, but to OCAs, i.e., other competent authorities) testifies the difficulties stemming from the existing inconsistencies in national choices concerning the allocation of sectoral tasks and the challenge for BEREC to carry out its assignment when they are not assigned to sectoral NRAs

Finally, also considering the new ambitious policy proposals developed by the Commission where BEREC might be providing its own input, it would be advisable to start reflecting, even in the perspective of the EECC review in 2025, on whether all the tasks currently assigned to the Body are still fit for purpose, trying to potentially identify less strategic working areas that might be dropped, as well as brand new ones that might instead need to be added considering market and technological changes intervened.

4. THE BEREC OFFICE FUNCTIONING

4.1 Core tasks and operational activities

According to Article 5 of the BEREC Regulation, the BO has the following tasks:

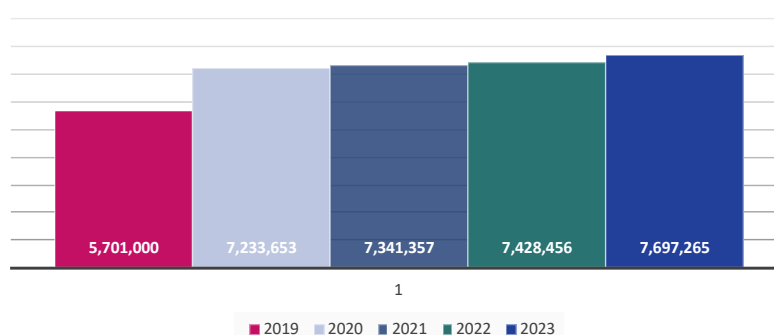
- to provide professional and administrative support services to BEREC, in particular in fulfilling its regulatory tasks,
- to collect information from NRAs and to exchange and transmit information in relation to the regulatory tasks assigned to BEREC,

- to produce, on the basis of the information received from NRAs in relation to the regulatory tasks assigned to BEREC, regular draft reports on specific aspects of developments in the European electronic communications market, such as roaming and benchmarking reports, to be submitted to BEREC,
- to disseminate regulatory best practices among NRAs,
- to assist BEREC in establishing and maintaining registries and databases, in establishing and managing an information and communications system and in conducting public consultations,
- to assist in the preparation of the work and provide other administrative and content-related support to ensure the smooth functioning of the Board of Regulators,
- to assist in setting up working groups, upon the request of the Board of Regulators, contribute to the regulatory work and provide administrative support to ensure the smooth functioning of those groups,
- to carry out other tasks assigned to it by this Regulation or by other legal acts of the Union.

The BO's work basically revolves around providing all the necessary professional and administrative support to BEREC so to facilitate this latter regulatory work in all its articulations (WGs, CN and BoR), and it has proved fundamental in order to allow the entire BEREC architecture to deliver on its goals, considering the above-mentioned pressure on available resources.

4.2 Human and financial resources overview

BEREC Office budget 2019-2023, EUR

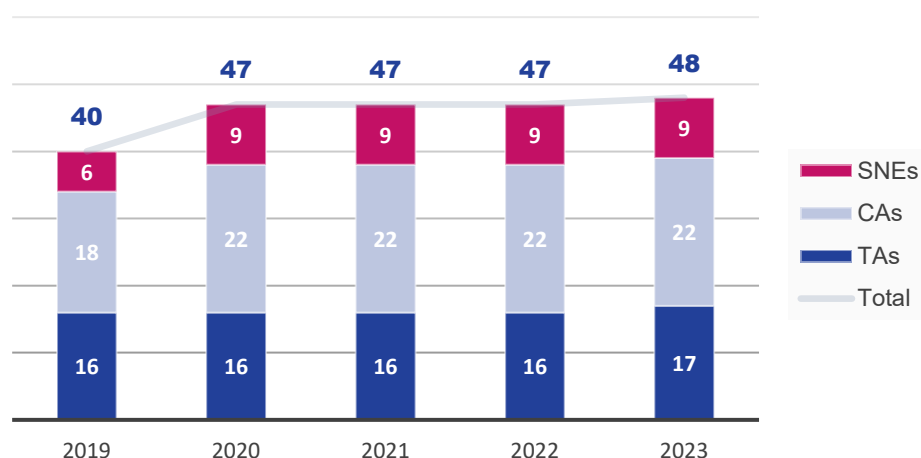


Year 2019 was as a preparatory one for the implementation of the mandate defined in the new BEREC Regulation.

Therefore, the human and financial resources for 2019 were set at a lower level than in the following years, when the BO was fully staffed, i.e., all posts of the BO establishment plan (see below) and external posts were manned. Since 2020 BO annual budgets, which consist mainly of the EU

subsidy, stand at around 7 million EUR. As a general principle, each year the subsidy of the decentralised Agencies is subject to the standard 2% increase as per the annual indexation.

Number of staff 2019-2023



As of 2020, the BO operates with 47 staff members split in the following categories: 16 temporary agents (establishment plan posts), 22 contract agents and 9 seconded national experts. However as of 1 of July 2023 the establishment plan has been modified by adding one additional temporary agent post for the creation of the accounting officer position.

According to the current Multi annual Financial Framework (MFF) 2021-2027¹⁷ the current level of BO's EU subsidy is to be maintained until at least 2027 as follows:

Agency	2021 Budget	2022 Financial Programming	2023 Financial Programming	2024 Financial Programming	2025 Financial Programming	2026 Financial Programming	2027 Financial Programming
BEREC Office	7.250	7.428	7.557	7.729	7.883	8.041	8.202

4.3 BEREC Office Advisory Group (BAG)

The 'enhanced' BAG was established at the end of 2019 by the MB Rules of Procedure (RoP)¹⁸ as a high-level permanent group to help prepare the decisions of the MB and to advise the MB and the Director on administrative matters such as programming, budget, staff, audits or reporting. The mandate, the functioning and the composition of the BAG stipulates that the BAG shall comprise at least six members, as follows: MB members, their alternates or other senior representatives from

¹⁷ https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2021-2027/documents_en#adopted-legislation---december-2020

¹⁸ MB (19) 95 Rev.1 and in particular Annex 1 thereof and Decision MB/2019/21.

NRAs, who have recent and relevant experience, such as financial, budgeting or human resource administration, the Deputy Chairperson assuming the role of the incoming Chairperson, a representative of the Chairperson and a representative of the European Commission (EC).

Except for the EC representative and the Deputy Chairperson (incoming BEREC Chair) the members of the BAG are appointed for three years, renewable once. The idea behind this three-year term is to provide the BO Director with greater advisory continuity, thus ensuring greater stability in the development of BO and its staff. Previously, the BAG members changed every year which made it more difficult to gain the necessary experience of the various dossiers on which the BAG advises the MB and the Director. Such continuity and oversight are particularly important for the elaboration of the Single Programming Document (SPD) which on a rolling basis spans over a time horizon of three years (with a yearly update).

The BAG meets regularly at appropriate intervals in the programming, financial reporting and audit cycle and also issues its opinions and/or advice by means of electronic consultations. Like the CN, the BAG usually meets a week or two prior to the Plenary meetings to discuss the documents on the agenda of the upcoming MB meeting and submits the results of its discussions in the form of conclusions to the MB to facilitate decision taking by the MB.

Advice provided by the BAG covers the following matters:

- a. Budgeting and Resources, in particular reviewing the Single Programming Document (SPD),
- b. Financial Reporting, especially going through the accounts and the Consolidated Annual Activity Report of the BO,
- c. Internal controls and risk management systems, with specific reference to going through reports related to reports assessing internal control and risk management systems,
- d. Compliance, whistleblowing, fraud and data protection, in particular going through compliance rules, whistleblowing provisions and the fraud and data protection reports,
- e. Internal audit, in particular going through the report and recommendations of the Internal Audit Service,
- f. External audit, in particular going through the annual report and remarks/recommendations of the European Court of Auditors,
- g. Annual objectives and annual appraisal, etc., in particular going through all staff related documents.

Since its establishment, BAG has convened in total 14 regular meetings, and 1 extraordinary (or informal) meetings, and has organised 15 electronic consultations.

In total, the BAG has reviewed 18 documents, 125 documents have been submitted for discussion and 24 documents submitted to BAG for information.

Among other assignments, the BAG is reviewing the draft SPD for the upcoming three-year period, checking whether the overall staff allocation is done in a way that allows fulfilling the mandate of BO to support BEREC. The BAG also checks that the BO is using its resources in a way that enables it to comply with the various administrative regulations of the EC that it must follow, so to minimize any remarks by the European Court of Auditors (ECA). Given the tight staffing situation, the BAG performed in 2021 a so-called “bottom-up exercise” assessing the staffing needs and possibilities to (re-)allocate staff efficiently in order to perform the mandatory tasks, in particular the support to

BEREC, in the best possible way. It was concluded that the overall number of staff (temporary agent positions, contractual agent positions, seconded national experts and external services) was sufficient to deal with the workload (albeit stretching the resources to the maximum extent), so no additional resources were requested from the Budgetary Authority for establishment plan posts or for external staff. The results of this exercise were used as a basis for the next SPDs. It can be said that BEREC and the BO have meanwhile acquired a smooth routine to set up and adopt the single programming document (SPD) comprising the budget, the staffing, the BO work programme etc.

The staff resources and their allocation to the various BO tasks represents the biggest challenge for the functioning of the BO. In this regard, the BAG has spent a lot of its efforts in improving the staffing situation (both for supporting BEREC as well as for the staff itself).

In that way it can be said that the BAG constitutes the link between the BO services (represented by the Director) and their activities for BEREC and the MB, which has to assess whether the BO provides in an efficient way the support it requests. In case the MB sees a need for improvement, the BAG will engage with the Director to find solutions for an enhanced way of delivering the support requested by BEREC.

In conclusion, it can be said that the work of the BAG has facilitated the decision-making by the MB, discharging it from technical discussions and thus allowing for more time for policy related debates. With its advice, the BAG has significantly contributed to improving the method of work and the compliance of the BO with the legislation in force.

BEREC considers that it would be beneficial for the BO and for the Management Board if the EC participates in the work of the BAG up to its potential, in the spirit of the rules of procedure of the BAG, and bring the relevant financial, budgeting and human resources administration experience to the group on a senior level, as it would be beneficial to have the EC's input as early as possible to take it better into account.

4.4 The BO rapid adaptation to challenging times

During the pandemic, the BO managed to switch quickly to a virtual working mode, both for its staff and the NRAs' staff, by investing in AVC and IT equipment to enable remote participation in WG, CN and BoR meetings. This ensured business continuity and showed the flexibility to adapt to unforeseeable situations. The experience gained throughout the time is used now as the majority of WG meetings continues to be held virtually. For the CN and the BoR the first meeting of the year continues to be held virtually. Physical meetings are possible now again and are generally held in a hybrid mode. This reduces travelling costs (with a positive environmental impact due to savings in GHG emissions) which is a benefit also in terms of budget savings.

4.5 The BO's Achievements

Endowed with a very small workforce, the BO manages under the Director's oversight to support BEREC in performing its tasks. The BO continuously works on increasing the efficiency of its organisation, to provide adequate support to the 12 WGs, the CN and the BoR as well as the Chair.

In terms of its administrative work, the ECA confirmed in recent years a proper conduct (with only very few remarks if any).

In the period 2019–2023¹⁹ the BO managed to cope with its increasing tasks and new assignments stemming from the new EU regulatory framework and other legal requirements under the conditions of a worldwide outbreak of the COVID-19 pandemic, war in Ukraine and high inflation.

During the period, the BO has provided BEREC with valuable professional and administrative support in line with its core tasks such as:

- providing high-quality administrative and professional support to the BEREC Board of Regulators (BoR), the BEREC Contact Network (CN) and the BEREC Working Groups (WGs), including the Ad Hoc WGs,
- providing safe and secure information and communication technology (ICT) tools (hardware and software) ensuring the smooth virtual functioning of the decision-making and the activity of the preparatory bodies of BEREC and enabling BEREC to maintain appropriate communication channels with its stakeholders,
- increasing the visibility of BEREC's work by implementing the communication activities foreseen for the Agency in the annual BEREC Communications plan and continuing its contribution to the increased transparency of BEREC's work by managing the public register of BEREC documents and the BEREC website,
- organising professional training for the national regulatory authority (NRA) experts on the EU regulatory framework for electronic communications,
- ensuring good planning of the Agency's work and systematically achieving the objectives set by the Management Board in the single programming documents, which resulted in maintaining high levels of budget execution in terms of commitment appropriations (close to 100%), and keeping the cancellation rate of appropriations carried over below the 5%,
- implementing the concept of a 'smart agency', which, among others, resulted in improving the IT services and applications offered to, and used by, the staff and continuing the modernisation of the IT infrastructure of the BO, going paperless, and strengthening its business continuity and disaster recovery plan,
- recruitment of new staff members, including in the areas of the new competences assigned to the BO and maintaining appropriate capacity for supporting existing and new BEREC tasks and activities, incl. fully staffed situation²⁰,
- implementation of the internal control framework in force and maintaining efficient and effective internal control systems at the BO,
- signing new Headquarters agreement and Service Level Agreement with the Government of the Republic of Latvia, which further improved the condition for the function of the Agency.

The following conclusions can therefore be drawn:

¹⁹ MB (22) 34	29 June 2022	2021 Consolidated Annual Activity Report of the BEREC Office
MB (21) 38	29 June 2021	2020 Consolidated Annual Activity Report of the BEREC Office
MB (20) 46	29 June 2020	2019 Consolidated Annual Activity Report of the BEREC Office

²⁰ Ensured by temporary agents, contract agents, seconded national experts and interim workers.

- The BO demonstrated exceptional mobilisation of its financial and human resources in an efficient and effective manner and maintained its capacity to support BEREC during times of a global crisis.
- The BO has reacted swiftly on any new request for services coming from BEREC, mainly associated with the new challenging conditions of work during the pandemic.
- The internal control systems at the BO continue to work as intended; the European Court of Auditors (ECA) and the independent auditor issued in the period of 2019-2022 clean opinions on the legality and regularity of the Agency's operation, the European Parliament granted the discharge and closed the accounts each year in an ordinary procedure and there were no outstanding open recommendations of the EC Internal Audit Service (IAS).
- The BO, under the management of its Director, has met all targets and expectations for its performance, which is recognised as a remarkable achievement.

4.6 Challenges and opportunities

Given the ever-tighter budget and staffing constraints, the BO will need to prioritize the tasks more than in the past so to ensure continuous support to BEREC. At the same time, the BO needs to retain its experienced staff and attract new staff members eager to work in a multi-cultural environment in Riga. As mentioned above, the BO has to comply indeed with all financial and staffing regulations of the European Commission. This purely administrative work poses a great burden on the smallest Agency of the EU in terms of budget and staffing²¹.

Given that the second term of the current BO Director comes to an end on 31st March 2024, the recruitment process has been initiated. The MB will have to select a new Director from the short-listed candidates at the latest by the end of this year.

For the purpose of this assessment exercise, the following areas for further improvement are identified:

- Work towards reducing the administrative burden.
- Mitigate the high staff turnover and balance the resourcing of the Agency.

Addressing these challenges would result in a more efficient operation of the BO in the upcoming years.

4.6.1. *Reducing the administrative burden on the BO*

The BO has a limited mandate due to the fact that it provides support activities to the mandate holder – BEREC - and has been identified as a “low-risk” Agency by the Internal Audit Service²². However, regardless the above mentioned, the BO is required to comply with all the applicable procedures and

²¹ Average EU agency budget is 61 million (Year 2021 data from 32 Agencies), while BEREC Office has a second lowest budget of 7 million.

²² Audit report: IAS.A1-2019-BEREC-001

legal requirements designed for the European Commission (EC) and for fully fledged decentralised Agencies.

For example, both BEREC (the mandate holder – a body of the EU without legal personality) and the BO are due to prepare multiannual strategies, annual work programmes and annual activity reports. The documents produced by the two bodies can be considered as complementary and therefore the EC guidelines requirements for the elaboration of the Agencies' single programming documents and consolidated annual activity reports should not apply in full to the BO.

Other areas where simpler approaches could be explored are accounting, internal controls, audits and introducing provision which would allow management of differentiated appropriations, thus allowing BO to enter in multi-year contracts.

In order to adapt the administrative burden to the size and mandate of the Agency, the following actions could be considered in the future:

1. Requirements stemming from BEREC Regulation could be revised such as:
 - management of differentiated appropriations to be introduced for operational expenditure, thus allowing BO to conclude contracts for the interest of BEREC for more than one year.
 - revision of annual programming and reporting requirements for BO to reflect the mandate of the Agency.
2. Some other areas where the administrative requirements could potentially be lightened, or the competencies could be shared with or provided by the EC, are such as:
 - accounting
 - internal control
 - audits
 - procurements

4.6.2. Staff turnover and resourcing of the Agency

In the last 5 years the BO has experienced high staff turnover²³. Given the small size of the Agency, the loss of staff puts heavy constraints on the overall operation. Systematic loss of trained and experienced staff puts the Agency potentially at a risk of low efficiency and loss of know-how and risk of non-compliance due to missing profiles.

When the BO was established in 2009, as a Brussels-based support office, it was assigned 16 establishment plan posts. Since then, the BO has become a decentralised Agency with its seat in Latvia and additional tasks were assigned to it as per Regulation (EU) No 2018/1971. Therefore, BO not only has an obligation to fulfil its mandate, but also to function as a decentralised Agency and fulfil all the legal and procedural requirements that apply to it. Despite the new legal structure and a

²³ Average 2018-2022: 13.87% (2018: 18.87%; 2019: 24.1%; 2020: 5.48%; 2021: 4.60%; 2022: 16.28%)

significant increase in requirements and responsibilities for the BO since 2018, it still operates with the originally granted 16 establishment plan posts.

With reference to the above, the high staff turnover can be explained by the fact that in the absence of posts in the establishment plan, duties that are normally performed by officials or temporary agents in other EU bodies, are assigned to contract agents' posts established by the Management Board.

To mitigate the high staff turnover and adjust the resourcing of the Agency, the following actions could be considered in the future:

- Following the EC's 2023 evaluation of the functioning of BEREC and BO the resources in terms of establishment plan posts could be revised in line with the requirements for a decentralised agency, and
- in the future, any new regulations and requirements for the EU Agencies (i.e., data protection regulation, cybersecurity regulation) should trigger an increase in the establishment plan rather than increased workload for the existing staff who might not have the relevant expertise.

Furthermore, the BO is to work together with Latvian Authorities to improve the conditions in the host Member State.

5. CHALLENGES AHEAD FOR THE REGULATORS OF THE FUTURE

In a fast-moving digital environment, BEREC sees it as crucial to keep tracking technological and market developments within the electronic communications as well as in adjacent sectors.

As a matter of fact, the ongoing convergence dynamics have been pushing BEREC for some years now to explore adjacent fields to better understand changes taking place within the electronic communications perimeter and originating in the digital domain. Furthermore, as digital tasks are ever more being recognised both to the Body and to its component NRAs, BEREC considers it as a natural evolution of its own mandate to progressively expand its outlook to digital markets²⁴.

In order to be prepared to meet the arising digital questions, BEREC shall therefore continue deepening its expertise on aspects such as the digitalisation of society, the digital divide, the internet value chain, digital gatekeepers, cloud and edge services and environmental sustainability. Its efforts in these fields go in turns together with the EC's ambition to oversee the development of the digital markets and put environmental consideration at the centre of policymaking.

²⁴ The recent OECD Communication "Regulators of the Future - OECD (2022), "Communication regulators of the future", *OECD Digital Economy Papers*, No. 333, OECD Publishing, Paris, <https://doi.org/10.1787/f02209e6-en> - acknowledges that the digital transformation is posing new challenges to current roles and mandates of the NRAs to which regulators need to adapt. In this context, regulatory structures need to change to get ready to meet future challenges. Although "traditional" communication regulations will remain or even become more relevant with the evolution of networks, NRAs and BEREC need to be equipped with new skills and digital tools, adopt data-driven regulatory approaches, as well as enhance collaboration with other agencies.

BEREC is also taking an active role as a trusted independent expert body in digital matters by taking part in the High-Level Group for the Digital Markets Act (DMA), where it will provide its expertise and advice to ensure that digital markets across the EU are compliant with the DMA and developing in a fair manner²⁵. The formal recognition by the EU co-legislators of such a role within the DMA witnesses the actual widening of the Body's remit to digital issues.

BEREC will also continue to serve as a forum for extensive exchange of views and as a trusted adviser of the EU institutions and, more than ever in the digital ecosystem, will need to act as a guardian of internet openness, sustainability, and fair competition.

To this end, BEREC has identified five strategic orientations that show how it can contribute to a regulatory environment fit for the digital age in the run-up to 2030:

1. Fostering national and international connectivity to reach the objectives of Europe's Digital Decade by 2030
2. Facilitating an open and sustainable internet ecosystem and supervising the evolution of the digital landscape
3. Providing for the security and resilience of the networks and services
4. Contributing to the achievement of environmental sustainability goals
5. Strengthening BEREC's agility, independence, inclusiveness, and efficiency as a centre of expertise.

In line with those, recognising that the digital economy is bringing in both new opportunities and challenges, BEREC will prioritise work relating to the functioning of digital markets, namely focusing on issues regarding digital service providers and end-users in the digital markets.

Furthermore, BEREC will need to follow the developments regarding the Data Act and the Digital Services Act (DSA), improving in parallel its knowledge on environmental sustainability to contribute with its expertise to the twin transition and EU Green Deal's targets.

All in all, BEREC will keep looking into the developments taking place in digital markets and the impact of the practices implemented by large online platforms, e.g., the environmental impact of emerging technologies transforming digital markets such as Blockchain, Metaverse and Artificial Intelligence technologies. BEREC will also be available to engage with legislators and cooperate actively with other relevant competent bodies in the legislative processes relating to digital markets and emerging electronic communication services, in order to anticipate any potential regulatory needs in a fast-changing environment.

Further to such efforts, and as a precondition to them and to its entire regulatory work, BEREC needs to further reflect around its member NRAs' independence prerogatives, both in terms of tasks entrusted to them throughout the Union, and their overall autonomy (including concerning availability

²⁵ BEREC has nominated six of its members as representative in this Group, along with representatives from the European Data Protection Supervisor (EDPS) and European Data Protection Board, the European Competition Network (ECN), the Consumer Protection Cooperation Network (CPC Network), and the European Regulators Group for Audiovisual Media Services (ERGA).

of adequate human and financial resources). In this field, BEREC shall conduct further analysis to pave the way for a smoother identification of possible areas of concern.

6. CONCLUSIONS

BEREC has consistently provided a high-level understanding and assessment of a broad number of topics, policies and trends in support of the implementation of the EECC at national level throughout the Union. It has guaranteed the EC any contribution requested within the established times and with the highest quality and has also been providing a permanent forum for NRAs' discussion on any matter covered by the electronic communications' regulatory framework, ensuring its own input to the EU Institutions with reference to key sectoral legislative initiatives.

Its innovative two-tier structure has therefore proven to be fit for the timely accomplishment of the quite extensive range of institutional tasks as in the EECC and the overall sectoral legislative framework, with the Body effectively using the NRAs and BO's resources, even in the face of unexpected critical events. The high-level expertise available within the Body and the adaptation of its internal working practices (working group articulation, work planning...) have allowed BEREC to expand its outlook to digital markets and to shed light on issues pertaining to the electronic communications sector and originating beyond it, also reflecting a progressive widening of the Body and its member NRAs' remit to digital issues.

Areas for improvement have been identified though that may negatively impact the Body's work in the future and that are mostly related to external factors. In particular, the considerably limited harmonisation of the new competences assigned to the NRAs at national level, and the sometimes-constrained availability of adequate resources conferred by Member States to their NRAs to carry out the new and current tasks are being considered by BEREC, together with its increasing need for specialised resources in response to the new responsibilities envisaged.

Such factors are of utmost importance to an unrestricted BEREC functioning as a driver for regulatory harmonisation in Europe, as the NRAs' expertise (in terms of resources availability and of formal recognition of NRAs' competences) provides the basis for an effective BEREC's statutory work in all the thematic areas covered by the legislative framework. The relevance of such aspects even increases when looking at BEREC's role in perspective, considering the need for the Body to keep looking into the digital ecosystem, adapting its activity to the constant market changes taking place and exerting new institutional tasks as in the DMA.

Also, the national allocation of sectoral tasks to Other Competent Authorities is a significant issue to consider when it comes to preserving BEREC effectiveness in the future, as BEREC working patterns might be severely impacted when competences are nationally scattered among competent authorities other than independent NRAs.

On the side of the cooperation patterns in place with the EC, BEREC will keep ensuring all its commitment to provide its input at an early stage of the Commission's decision-making processes; this might be made possible via stabilising mechanisms to this end, furthermore, allowing the Commission to collect BEREC's point of view separately of other stakeholders, while remaining

compatible with the Commission working procedures. The capacity to ensure this will likely become more relevant as BEREC's input is required on a wide range of topics of the Commission's ambitious policy agenda. Any further efficiency gain in this field would free up resources to carry out additional optional activities requested by the NRAs.

Concerning the BO, the smallest European decentralised Agency has delivered on its statutory goals and has accordingly worked properly supporting BEREC, also complying with the extensive administrative requirements applying to it, despite its limited size, even under the conditions of a worldwide outbreak of the COVID-19 pandemic, war in Ukraine and high inflation.

However, improvements could be reflected upon to reduce such administrative burden, as well as to allow the BO to rely on more and ever more specialised skills, especially given the high staff turnover in recent years, the potential need for specialists in new areas and the significant workload pressure on the Agency's staff.

Going forward, in the wake of the ongoing convergence trends, BEREC will continue its work on digital markets, both to better understand their impact on electronic communication dynamics, and because of the progressive recognition of digital duties both to the EU Body itself and its component NRAs. In turns, BEREC will be committed to participating in the DMA High-Level Group, on the background of the formalisation of its role in this context, will keep providing assistance to its NRAs as they take on new duties in the digital domain and will remain available to any exchange with the EU Institutions.

As a precondition to this, BEREC needs to be able to continue working as an independent Body, relying on the expertise of its independent NRAs when carrying out all its institutional duties laid down in the sectoral framework. The issue of NRAs' independence therefore requires further attention as, despite the additional guarantees provided in the EECC, the actual independence prerogatives of BEREC's member NRAs throughout Europe shall be preserved in order for this innovative architecture to effectively function.