

## **BEREC's position on Governance matters in the DNA**

2 June 2026

**Key messages**

- BEREC welcomes the proposal to move towards a more coherent and clearly delineated set of NRA competences. However, the DNA should place a stronger and more explicit emphasis on the practical safeguards underpinning the independence and regulatory capacity of NRAs.
- The impact of several DNA provisions (e.g., general authorisation or spectrum) on NRAs' financing capability, essential to ensure their necessary resources and, ultimately, their independence, is identified as a significant risk.
- Substantive changes to the BEREC's layout jeopardise the effective functioning of its two-tier structure, transitioning towards a centralised agency, and seriously impacting its independence.
- The main changes in this direction include the shifting of BEREC's tasks to the ODN, the involvement of the ODN in BEREC's work beyond a supportive role, the incorporation of non-independent bodies in BEREC working groups and the EC veto powers in staff and financing matters.
- BEREC calls for maintaining the two-thirds majority voting required in the Board of Regulators to preserve the cooperation dynamics established in the institution.
- The need for implementing acts across the DNA should be clearly justified. In particular, when those are to be delivered on top of BEREC's guidelines, these latter shall be duly considered by the EC, and BEREC's involvement in the elaboration of the implementing acts should be envisaged.

**Commission proposal:**

Part VII (Articles 115-180) of the DNA covers the institutional aspects of the regulatory framework. These articles set out the responsibilities of national regulatory authorities (NRAs) and other competent authorities (OCAs), as well as the organisation and tasks of the Body of European Regulators for Electronic Communications (BEREC), the newly established Radio Spectrum Policy Body (RSPB), and the Office for Digital Networks (ODN), which would succeed the BEREC Office.

Article 115 revises and expands the tasks of the independent NRAs compared with the European Electronic Communications Code (EECC)<sup>1</sup>; brand-new tasks are introduced, such as managing the GA scheme and collecting data necessary for the performance of the NRAs' duties, including in relation to resilience and sustainability; in other areas, the NRAs' remit is expanded, e.g., in relation to making decisions on competition-related aspects concerning national processes for assigning spectrum rights for ECN/S providers, managing numbering resources and supervising and enforcing open internet access.

The proposal also expands the BEREC tasks to include, *inter alia*, participation in proceedings of EU-level mergers' review and involvement in the newly introduced "ecosystem cooperation" as in Articles 191-193 of the DNA and calls the Body to pursue also the new general objectives introduced, i.e., competitiveness, network resilience and sustainability. On the other hand,

<sup>1</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, <https://eur-lex.europa.eu/eli/dir/2018/1972/oj/eng>.

some BEREC tasks, such as the Opinion on the impact of technological developments on end users' rights (Article 123 EECC), have been removed, and other BEREC's tasks, such as the annual reporting on the state of the market, are assigned to the ODN.

Title III of Part VII of the DNA is devoted to establishing the RSPB, which is expected to replace the currently existing Radio Spectrum Policy Group (RSPG) and to take over its duties. These provisions formalise the role of the RSPB by means of a primary legislative act, namely a Regulation, instead of the 2019 EC's Decision currently setting up the RSPG, and set out its coordination role in the European radio spectrum policy.

Title V of Part VII of the DNA addresses the ODN, which is intended to replace the current BEREC Office in continuity with the existing framework, and to provide professional and administrative support to both BEREC and the RSPB. The ODN's competences include, *inter alia*, the new task of preparing – in close cooperation with the EC and the NIS Cooperation Group (NIS CG) and without the NRAs' express support, except for national information collection – the Union Preparedness Plan for Digital Infrastructures (Article 6), as well as drafting a report on the progress towards the single market for electronic communications, pursuant to Article 146(2).

### **BEREC's assessment:**

BEREC welcomes the proposal to move towards a more coherent and clearly delineated set of NRA competences. More harmonisation of NRA prerogatives and powers can facilitate more effective regulatory exchange and cooperation within BEREC, thereby reinforcing its capacity to contribute to a consistent application of the regulatory framework across the Union. This is also recognised by the EC itself in its report entitled an "Evaluation of BEREC and the BEREC Office"<sup>2</sup> and has already been reflected in BEREC's previous public positions.

BEREC also welcomes and supports the confirmation in the DNA proposal of the key political, structural and financial independence guarantees for NRAs. At the same time, it notes that further strengthening could be considered. The DNA should place a stronger and more explicit emphasis on the practical safeguards underpinning the independence and regulatory capacity of NRAs. As evidenced by the 'Study on the NRA independence' (Ecorys & Utrecht University, 2022) commissioned by BEREC<sup>3</sup>, experience shows that the formal independence provisions laid down under the EECC, and now largely carried forward into the DNA, have not proved sufficient to ensure effective independence in practice. This points to the need not only for appropriate implementation at national level, but also for the DNA to build on existing high-level independence guarantees by providing more detailed and prescriptive rules so as to ensure that NRAs have the stable governance conditions, staffing autonomy, regulatory and financial capacity required to exercise their responsibilities independently and effectively across the Union.

Turning to its institutional architecture, BEREC very much welcomes the confirmed intention to keep the existing two-tier structure of BEREC and its supporting Office. This will enable

<sup>2</sup> COM(2026) 34 final - REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Evaluation of BEREC and the BEREC Office, <https://digital-strategy.ec.europa.eu/en/library/evaluation-berec-and-berec-office>

<sup>3</sup> BEREC BoR (22) 189 - Study on the NRA independence Final Report, [https://www.berec.europa.eu/en/document-categories/berec/reports/study-on-the-nra-independence-final-report?language\\_content\\_entity=en](https://www.berec.europa.eu/en/document-categories/berec/reports/study-on-the-nra-independence-final-report?language_content_entity=en)

continuity of the unique bottom-up approach pursued in BEREC work and strongly supported by BEREC members. It is therefore necessary to avoid weakening the currently effective functioning of its two-tier structure, whereby BEREC holds regulatory cooperation competences – provided by its member NRAs - as an independent Body, and the ODN provides its administrative and professional support to it. BEREC has identified several provisions in the DNA which pose risk of such weakening and possible gradual transition to a centralised agency setup.

Such risk can be seen, among others, in introducing new tasks for the ODN which are beyond the current tasks to mainly provide administrative support and that are to be fulfilled as a traditional agency, with a limited supervisory role of the NRAs within the Board of Regulators (e.g. Resilience Plan, Single Market Report in line with Article 146(2)); other issues stem from envisaging the ODN participation in BEREC's own tasks and increasing the ODN Director's powers (e.g., preparation of MB meetings without the MB Chair, Director's shielding in the renewal and removal procedures and the role regarding participation in Plenary meetings).

Article 121(4) introduces indeed the principle whereby "BEREC shall draw upon the expertise available in the NRAs and in the ODN". This principle finds application, inter alia, in Article 140, which introduces for the first time the possibility for the ODN staff to chair BEREC working groups – now chaired by experts from the NRAs, where the relevant regulatory expertise lies – and requires a duty for the Board of Regulators to consult the ODN before setting up working groups. Taken together, these elements amount to a significant and concerning expansion of the ODN's role into areas that are traditionally and appropriately exercised under the collective expert remit of independent NRAs within BEREC and alter the current governance arrangements that are there to preserve BEREC's rootedness in the regulatory expertise of its NRAs.

BEREC is also concerned that the DNA introduces provisions that directly challenge its institutional independence, as they would allow **non-independent national bodies to access BEREC work**, e.g., via participating in working group meetings pursuant to Article 140(5). Such provisions constitute a serious breach of both BEREC's and the NRA's obligations of independence as foreseen in Articles 118 and 128.

BEREC also has concerns regarding the proposed **strengthening of the EC's role within the Body**, in particular its veto power in the MB over financial and staff decisions pursuant to Article 154(2), the possibility to restrict the participation at plenary meetings of any BEREC member or participant, and the increased powers in relation to the Director's removal.

On the other side, the voting rules introduced for the Board of Regulators – providing for decisions being adopted by a simple majority of all members instead of two thirds majority – risk **reducing the chance for discussion and agreement among BEREC NRAs**, with the declared goal of fostering more single market-oriented decisions. BEREC has not encountered difficulties under the current voting rules, which have always allowed for the adoption of ambitious opinions and guidelines.

Regarding the revised voting rules for the MB, they could also **constrain the collective decision-making** and may give rise to an institutional imbalance, conferring a privileged position on the EC vis-à-vis other MB members and threatening BEREC's independence.

Still on its two-tier structure, further assessment is required of the respective tasks that are proposed to be assigned to the entities involved (BEREC, RSPB, ODN), their interrelationship,

and the feasibility and financial implications of the proposed arrangements. This should include an evaluation of the capacity of BEREC and the ODN to fulfil all the envisaged duties – especially in terms of the availability of qualified staff - as well as the broader financial consequences for Member States and NRAs.

Nonetheless, BEREC does not see sufficient justification for the Union Preparedness Plan to be assigned to the ODN. While such a task reflects the importance that the EC attaches to network resilience, it is not clear why the preparation of the Plan should be entrusted to the ODN, considering that resilience remains primarily a national prerogative, due to the high sensitivity of data involved, among others. In addition, no separate legal personality appears necessary for the preparation of a non-binding report, as the Plan is. The drafting of the report could therefore be assigned to BEREC with the involvement of the ODN, which could provide support in terms of data collection and coordination, where appropriate.

In this context, attention should also be paid to the implications of the proposed institutional and funding arrangements for the predictability and sustainability of **national funding frameworks for NRAs**. The DNA introduces elements that treat spectrum, administrative charges and numbering as potential sources of financing at the EU level, notably in relation to the funding of the ODN as an EU agency. Such an approach risks affecting existing national funding models and, in some Member States, may limit the financial means available to NRAs to discharge their regulatory responsibilities. It also introduces an EU-level funding principle that could have unintended consequences for Member States' budgetary autonomy and for the stability of NRA financing. In BEREC's view, the DNA should ensure that EU-level financing arrangements do not undermine national funding frameworks for NRAs, nor create incentives or constraints that could weaken their independence or operational capacity. Clear safeguards are therefore required to preserve the predictability, adequacy and sustainability of NRA funding at the national level.

All in all, BEREC stresses the need to ensure that the new institutional arrangement **preserves its independence and rootedness in the expertise of its member NRAs**. In this context, any reinforcement of the ODN's supportive role, while welcome, should not result in any limitation of the NRAs' collective autonomy in defining the regulatory positions of the Body. It is therefore essential that the ODN consistently relies on the BEREC working groups' expertise, irrespective of the specific tasks entrusted to it.

In this regard, the conclusions of the recent Commission-commissioned Study supporting the evaluation of BEREC and the BEREC Office<sup>4</sup> (PwC, 2026) provides a relevant reference point for the present assessment. The study found the existing institutional framework to be largely effective and efficient, and emphasised the added value of BEREC's bottom-up functioning and its reliance on NRA expertise. This evidence further supports the view that any recalibration of the institutional design under the DNA should be approached with caution, ensuring that new structures and competences are built on and do not dilute well-functioning governance arrangements.

The DNA empowers the EC to issue, at its discretion, implementing acts for almost all the issues in the Regulation. While, when targeted defined, implementing acts are a useful instrument to detail technical matters complementing a more general piece of legislation, the very extensive use that the EC is proposing for the DNA may suggest that the proposal lacks

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<sup>4</sup> Study supporting the evaluation of BEREC and the BEREC office, <https://digital-strategy.ec.europa.eu/en/library/study-supporting-evaluation-berec-and-berec-office>

the necessary detail to be enforced in an effective manner or even that some of these matters may have been further developed for the consideration of the co-legislators. In general terms, the need for implementing acts should be clearly defined and justified so that the role of legislators is not undermined. Moreover, in many cases, those (voluntary for the EC) implementing acts are envisaged on top of a mandate for BEREC to issue guidelines. To issue those acts, BEREC's opinion is not required. Such an approach may lead to divergences between the BEREC guidelines and the EC Implementing Acts for the implementation of the same provisions, ultimately endangering legal certainty. This should be amended in the DNA to provide for BEREC's involvement and opinion, to be duly considered by the EC, on the elaboration of the relevant implementing acts.

Lastly, BEREC points to the importance of considering the position of the EEA States in the European sectoral cooperation context, whereas such States are not members of the European Union. The implementation of Union legislation, the monitoring of enforcement and the resolution of disputes are carried out within the framework of a two-tier approach, based on the EEA Agreement between parties. When new EU legislation is enacted, this arrangement must be considered in order to ensure the full participation of the EEA States in the cooperation and their adaptation to a homogenous implementation of the legislation.

#### **Alternative proposals:**

**BEREC considers it essential to maintain its effective current two-tier structure** by amending the DNA provisions in relation to widening the ODN's role vis-à-vis BEREC (including its working groups). For the sake of BEREC independence – which is a prerequisite for its effective action towards the single market – the **ODN should retain its fundamental supportive role towards BEREC** and should therefore not be assigned either a leading role for specific tasks or a role in the establishment of the working groups. As long as the ODN's supportive role is more clearly delineated and the two-tier principle is maintained, further expansion to include targeted engagement by the ODN could strengthen its executive character.

BEREC further considers that the provisions **allowing for the participation of OCAs in BEREC working group meetings should be removed**, as they pose a serious risk to BEREC's and the NRA's independence. Instead, the DNA could specify the possibility, at the discretion of BEREC, for ad hoc arrangements with other competent authorities such as an early consultation in relevant projects.

At the same time, BEREC underlines that the **objective of simplification** underpinning the DNA proposal should be consistently reflected in the sectoral governance arrangements. Several of the proposed institutional solutions risk adding layers of procedural complexity to governance structures that have so far functioned effectively. In particular, the involvement of additional actors in BEREC's internal working structures and the multiplication of coordination and consultation interfaces may lead to overlapping responsibilities, blur accountability and complicate decision-making without clear added value. In BEREC's view, governance arrangements under the DNA should therefore build on existing structures that have proven effective, supporting a clear and streamlined allocation of roles and responsibilities in line with the objective of simplification.

BEREC proposes that the Body itself **should take on the key new competences introduced in the DNA**, i.e., developing the Union Preparedness Plan and adopting a report on the progress towards the internal market, both with the support by the ODN, and in line with the effective practice followed to date.

Turning to NRAs' prerogatives, BEREC recalls a set of proposals, already elaborated in the context of the previous framework review process, that could enhance the formal independence and substantive regulatory capacity of NRAs. In this light, the DNA should more clearly set out minimum EU-level requirements in relation to key elements such as stable and clearly defined leadership mandates, staggered mandates of NRAs' Board members, transparent and legally robust appointment and dismissal safeguards to prevent undue interaction of national legislative reforms with EU level independence guarantees, sufficient and flexible staffing arrangements ensuring NRAs' autonomy in organising their internal resources and expertise, clear conditions for national Courts to grant interim measures and funding mechanisms that underpin their ability to exercise regulatory responsibilities without undue external influence.

BEREC considers that the DNA should be amended to ensure that the proposed institutional and funding arrangements do not adversely affect the independence, capacity and financial sustainability of NRAs. In particular, EU-level financing mechanisms, including those linked to spectrum and numbering resources, should be designed in a manner that fully preserves existing national funding frameworks for NRAs, and avoids any diversion of resources that could, directly or indirectly, impair their ability to fulfil their regulatory responsibilities. Clear safeguards should be introduced to ensure that the financing of the ODN as an EU agency does not create disincentives or constraints at national level, nor undermine Member States' budgetary autonomy in relation to the resourcing of NRAs.

More generally, BEREC reiterates that any new tasks or responsibilities introduced by the DNA, whether at national or EU level, should be accompanied by a clear and proportionate **assessment of their financial implications**, ensuring that both NRAs and EU-level bodies are adequately and sustainably resourced, without creating structural imbalances between national and EU-level governance.

In conclusion, a **future-proof framework should preserve the independence of NRAs and of BEREC, maintain a clear and coherent allocation of responsibilities, and ensure that any new tasks are matched by adequate governance, expertise and resources.**

On that basis, BEREC remains ready to engage constructively in the legislative process so that the final framework can support effectively the delivery on all the objectives of the DNA.

Finally, BEREC notes that governance matters strongly depend on the approaches and decisions taken in relation to other substantive parts of the DNA. In light of this and of the potential proposals on digital governance following the digital fitness check, BEREC may develop further views regarding the institutional set-up.