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Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications. - Examination of the Presidency text

A. INTRODUCTION

1. Following the discussions in WP TELE of 10 and 11 October, and written comments received from Member States, **the Presidency intends in the WP TELE meeting of 26 October to hold a discussion in three parts.**
2. The first part of the discussion will **focus on the legal personality and structure of BEREC.**
3. The second part will be an **examination of the Presidency new compromise** text set out in the Annex.
4. The third part will be an overall **discussion on the voting rules** as set out in Articles 5 and 8.

Part A: Legal Personality and structure of BEREC

5. The Presidency has requested a written opinion by the Council Legal Service on the necessity to provide a legal personality.
6. **Based on that opinion, the delegations will be invited to state if they can support the structure proposed by the Presidency, or to further explain why another structure is required.**

Part B: Examination of the Presidency Compromise

7. Following the comments of Member States, the Presidency has prepared a new compromise set out in the Annex of this document.
8. All changes compared to doc. 12512/17 are marked as underline, and are detailed below.
9. In **recital 1**, the reference to the ePrivacy Directive has been removed in line with the changes already made in **Article 1**.
10. In **recital 7** the reference to opinions on assignments of rights of use for radio spectrum has been removed.
11. **Recital 9** has been put into brackets as it is strongly linked to the discussion on the legal personality and structure of BEREC.
12. **Recital 10** now makes it clear that BEREC guidelines can also be for other competent authorities than the NRAs. In line with **paragraph 2a of Article 10**, it also further clarifies the role of these other competent authorities, and that BEREC should aim to ensure that all NRAs participate.
13. A **new recital 10a** has been included to provide further guidance on how NRAs and BEREC can collaborate, in particular on the subject of the open internet.

14. **Recital 17** has been aligned with the changes in Article 10 (see below).
15. **Recital 22** has been amended to better explain the **second sub-paragraph of paragraph 1 of Article 26** and to clarify why the prior approval of the Commission is necessary in **Article 26 paragraph 1**.
16. **Recital 23** clarifies who can participate in BEREC.
17. **Recital 25** now makes it clear that requests for information should be reasoned, in line with the fact that these requests should not impose an undue burden, and that confidentiality should be ensured.
18. In **Article 1, paragraph 3** has been simplified, while a **new paragraph 4** has been added to include the notions that exist in Article 1(3) of the current BEREC regulation.
19. In **Article 2 paragraph 1**:
 - (a) **sub-paragraph (a)** has been updated to clarify that BEREC can assist, advise and cooperate with the co-legislators also on its own initiative;
 - (b) indents in **sub-paragraphs (d) and (e)** have been numbered in roman numerals to ease the possibility of making references either inside the text (cf. Article 10) or during working party discussions;
 - (c) the former indent on potential transnational markets has been moved as **point v** to respect the order of the articles in the Code;
 - (d) the indent relating to article 114a has been deleted as being redundant with **paragraph 2(da)**;
 - (e) **sub-paragraph (f)** has been added, for consistency with Article 35 of the Code and therefore **sub-paragraph (d), point iii** has been deleted.

20. In **Article 2 paragraph 2**:

- (a) indents in **sub-paragraphs (b) and (d)** have been numbered in roman numerals to ease the possibility of making references either inside the text or during working party discussions;
- (b) in **sub-paragraph (b)** a **new point v** has been added, specifying the frequency at which BEREC should report on the developments of the electronic communications sector. This addition also corresponds to the current BEREC Regulation an ITRE amendment;
- (c) in **sub-paragraph (d), point i** has been amended to be fully consistent with Article 12 paragraph 4 of the Code;
- (d) **paragraph (da)** has been amended to be fully consistent with Article 114a of the Code;
- (e) a **new paragraph (db)** has been added, giving BEREC a new task. This addition also corresponds to an ITRE amendment;

21. A **new paragraph 5** has been added to **Article 2** to further clarify that BEREC shall not adopt binding decisions, even if it has legal personality;

22. In **Article 4**:

- (a) **paragraphs 1 and 3** have been amended to clarify that the NRAs would be responsible for the appointment of their representatives and alternates;
- (b) the fact that the alternate should only be there in exceptional cases has been made explicit in **paragraph 2**;
- (c) **paragraph 3** is now consistent with the rest of the article;
- (d) **paragraph 4** has been deleted to give flexibility on the terms of office for the representatives of the members of the Management Board.

23. In **Article 5, paragraph 1** has been further clarified in line with Article 2.

24. In **Article 6, paragraph 1** now gives flexibility to have more than one Deputy Chairperson, and their terms of office have been modified in **paragraph 3**.

25. In **Article 7**, the procedure for holding extraordinary meetings has been amended to make it easier for members to request such a meeting.
26. In **Article 8**, the voting rules of the Chairperson and of the Commission have been further clarified.
27. In **Article 9**, it has been clarified that the Director would be the representative of BEREC for both legal and administrative matters, in line with **Article 24(3)**. Moreover, the obligation foreseen in sub-paragraph (f) to reporting on the progress has been simplified to avoid unnecessary burden.
28. **Article 10** has been amended to clarify the setting up, composition and functioning of working groups, in particular in relation to the possibility for all NRAs to participate and in relationship to the participation of third countries or of competent authorities others than NRAs. It is not required anymore to appoint experts from a list, but the possibility to do so has been kept in **recital 17**.
29. In **Article 15, paragraph 1** has been amended to clarify that the Commission guidelines are only relevant for BEREC administrative matters, and to allow the Director to receive guidance from the Management Board before she/he draws up the draft single programming document.
30. In **Article 16, paragraph 2** has been amended to avoid an unnecessary burden.
31. **Article 22** now includes criteria for the selection of the Director, in line with those requested from the Members of the Management Board. In addition, in **paragraph 4**, the extension of the term of office has been limited to three additional years instead of five.
32. In **Article 26**, the participation of regulatory authorities of third countries have been clarified.

33. In **Article 28**, the reference to Article 27(1) has been removed to replace it with an explicit reference to the regulation on public access to European Parliament, Council and Commission documents.
34. In **Article 30 paragraph 2**, it is clarified that NRAs and other competent authorities shall ensure the confidentiality in accordance with national and Union law.
35. In **Article 32**, the cooperation agreements with third countries and international organisations contained in **paragraph 4** have brought back.

Part C: Voting Rules

36. The Presidency will invite delegations to state when they cannot agree to the voting rules as proposed in Articles 5 and 8 and justify any alternative proposal.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the Body of European Regulators for Electronic Communications

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

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

After consulting the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C [...].

² OJ C,[...].

Whereas:

- (1) Directive [...] of the European Parliament and of the Council³ ('the Directive'), which establishes a number of tasks for the Body of European Regulators for Electronic Communications ('BEREC'), ~~and Directive 2002/58/EC of the European Parliament and of the Council~~ aims to create an internal market for electronic communications within the Union while ensuring a high level of investment, innovation and consumer protection through enhanced competition.
- (2) Regulation (EC) No 531/2012 of the European Parliament and of the Council⁴ complements and supports, in so far as Union-wide roaming is concerned, the rules provided for by the regulatory framework for electronic communications and establishes certain tasks for BEREC.
- (3) Regulation (EU) No 2015/2120 of the European Parliament and of the Council⁵ establishes common rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights and sets up a new retail pricing mechanism for Union-wide regulated roaming services. This regulation establishes additional tasks for BEREC, in particular the issuing of guidelines on the implementation of national regulatory authorities ('NRAs') obligations in relation to open internet access as well as reporting and consultation on draft implementing acts to be adopted by the Commission in relation to Union-wide roaming.

³ Directive [...] of the European Parliament and of the Council of [...] establishing the European Electronic Communications Code (OJ L [...]).

⁴ Regulation (EC) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p.10).

⁵ Regulation (EU) No 2015/2120 of the European Parliament and of the Council of 25 November 2015⁵ 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 (OJ L 310, 26.11.2015, p.1

- (4) BEREC and the Office ('BEREC Office') were established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council⁶. BEREC replaced the European Regulators Group ('ERG')⁷ and was meant to contribute to the development and better functioning of the internal market for electronic communications networks and services by aiming to ensure a consistent implementation of the regulatory framework for electronic communications. The BEREC Office was established as a Community body with legal personality to carry out the tasks referred to in Regulation (EC) No 1211/2009, in particular the provision of professional and administrative support services to BEREC.
- (5) In its Communication of 6 May 2015 entitled 'A Digital Single Market Strategy for Europe'⁸, the Commission envisaged presenting proposals in 2016 for an ambitious overhaul of the regulatory framework for electronic communications focusing *inter alia* on a more effective regulatory institutional framework in order to make the telecoms rules fit for purpose as part of the creation of the right conditions for the digital single market. These include the deployment of very high capacity connectivity networks, more coordinated management of radio spectrum for wireless networks and creating a level playing field for advanced digital networks and innovative services. The Communication pointed out that the changing market and technological environment make it necessary to strengthen the institutional framework by enhancing the role of BEREC.
- (6) In its Resolution of 19 January 2016 'Towards a Digital Single Market Act', the European Parliament called on the Commission to integrate further the digital single market by ensuring that a more efficient institutional framework is in place. ~~It can do this by strengthening the role, capacity and decision-making powers of BEREC in order to allow it to foster the consistent implementation of the regulatory framework for electronic communications, to enable an efficient oversight of BEREC over the development of the single market and to help it to resolve cross-border disputes. The European Parliament also stresses, in this regard, the need to improve the financial and human resources and further enhance the governance structure of BEREC.~~

⁶ Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (OJ L 337, 18.12.2009, p.1).

⁷ Commission **Decision 2002/627/EC of 29 July 2002 establishing the European Regulators Group for Electronic Communications Networks and Services** (OJ L 200, 30.7.2002, p. 38).

⁸ COM(2015) 192 final.

- (7) BEREC and the BEREC Office have made a positive contribution towards a consistent implementation of the regulatory framework for electronic communications. Notwithstanding, there are still significant disparities between Member States as regards regulatory practice. Moreover, the governance structure of BEREC and the BEREC Office is cumbersome and gives rise to unnecessary administrative burden. In order to ensure efficiency gains and synergies and to further contribute to the development of the internal market for electronic communications throughout the Union as well as to the promotion of access to, and take-up of, very high capacity data connectivity, competition in the provision of electronic communications networks, services and associated facilities and the interests of the citizens of the Union, this regulation aims to strengthen the role of BEREC and enhance its governance structure ~~by establishing BEREC as a Union decentralised agency~~ **by giving BEREC legal personality**. This also corresponds to the ~~need to reflect the significantly~~ enhanced role played by BEREC following Regulation (EC) No 531/2012 which establishes tasks for BEREC in relation to Union-wide roaming, Regulation (EU) No 2015/2120 which establishes tasks for BEREC in relation to open internet access and Union-wide roaming, and the Directive which establishes a significant number of new tasks for BEREC such as issuing ~~decisions and~~ guidelines on several topics, reporting on technical matters, keeping registers **or databases** and delivering opinions on internal market procedures for draft national measures on market regulation ~~as well as on assignments of rights of use for radio spectrum~~.
- (8) The need for the regulatory framework for electronic communications to be consistently applied in all Member States is essential for the successful development of an internal market for electronic communications throughout the Union and the promotion of access to, and take-up of, very high capacity data connectivity, of competition in the provision of electronic communications networks, services and associated facilities and of the interests of the citizens of the Union. In view of market and technological developments, which often entails an increased cross-border dimension, and to the experience so far in ensuring a consistent implementation in the electronic communications field, it is necessary to build on the work of BEREC and the BEREC Office ~~and further develop them into a fully fledged agency~~.
- (9) ~~[The agency~~BEREC should be governed and operated in line with the principles of the Joint Statement of the European Parliament, the Council and the European Commission of 19 July 2012 on decentralised agencies ('Common Approach')⁹. Due to the established image of BEREC and the costs that a modification of its name would entail, the new ~~agency~~ **body** should retain the name of BEREC.]

⁹ Joint Statement of the Parliament, Council and the Commission on decentralised agencies of 19 July 2012.

- (10) BEREC, as a technical body with expertise on electronic communications and composed of representatives from NRAs and the Commission, is best placed to be entrusted with tasks such as ~~deciding on certain issues with a cross-border dimension~~, contributing to efficient internal market procedures for draft national measures ~~(both as regards market regulation and assignments of rights of use for radio spectrum)~~, providing the necessary guidelines to NRAs **and other competent authorities** in order to ensure common criteria and a consistent regulatory approach, and keeping certain registries **and databases** at Union level. This is without prejudice to the tasks established for NRAs, which are closest to the electronic communications markets and their local conditions. In order to carry out its tasks, ~~the agency~~ BEREC would require adequate financial and human resources and would also continue the pooling of expertise from NRAs. **BEREC should aim to ensure the participation of all NRAs in the fulfilment of its regulatory tasks and its functioning. Where appropriate and depending on the allocation of tasks in each Member State according to the notifications referred to in Article 5 of the Directive, experts from other competent authorities can participate as observers in the relevant working groups.**
- (10a) In order to facilitate a consistent implementation of the Directive and of Regulation 2015/2120, an NRA which considers issuing a formal position related to the implementation of Regulation 2015/2120 should inform BEREC in due course before issuing such position, including a summary of the case, and, to the extent possible, indicating the possible courses of action. BEREC should facilitate the close cooperation among NRAs on this matter.**
- (11) BEREC should be allowed if necessary to cooperate with, and without prejudice to the role of, other Union bodies, agencies, offices and advisory groups, in particular the Radio Spectrum Policy Group¹⁰, the European Data Protection Board¹¹, the European Regulators Group for Audiovisual Media Services¹² and the European Union Agency for Network and Information Security¹³; as well as with existing committees (such as the Communications Committee and the Radio Spectrum Committee). It should also be allowed to cooperate with competent authorities of third countries, in particular, regulatory authorities competent in the field of electronic communications and/or groups of those authorities, as well as with international organisations when necessary for the performance of its tasks.

¹⁰ Decision 2002/622/EC establishing a Radio Spectrum Policy Group (OJ L 198, 27.7.2002, p. 49).

¹¹ Established under Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p.1).

¹² Directive [...].

¹³ Regulation (EU) No 526/2013 of the European Parliament and of the Council of 21 May 2013 concerning the European Union Agency for Network and Information Security (ENISA) and repealing Regulation (EC) No 460/2004 (OJ L 165, 18.6.2013, p.41).

- (12) Compared to the situation in the past where both a Board of Regulators and a Management Committee were running in parallel, having a single board giving general orientations for the activities of BEREC, deciding on regulatory ~~and operational~~ as well as on administrative ~~and budgetary management~~ matters **such as matters related to budget, staff, audit, etc.** should help improving the efficiency, coherence and performance ~~of the agency~~. To this end, the Management Board should carry **out** the relevant functions and should consist, in addition of ~~two~~ **the** representatives of the Commission, of the Head, or otherwise a member of the collegiate body, of each NRA, who are protected by dismissal requirements. **The current institutional balance should be maintained by limiting the voting rights of the Commission to administrative matters, as is currently the case as regards the role of the Commission in the Management Committee of the BEREC Office.**
- (13) In the past the appointing authority powers were exercised by the Vice-Chair of the Management Committee of the BEREC Office. The Management Board ~~of the new agency~~ should delegate relevant appointing authority powers to the ~~Executive~~ Director, who would be authorised to sub-delegate those powers. This would contribute to an efficient management of the BEREC staff as well as to ensuring that the Management Committee, as well as the Chairperson and Deputy Chairperson, can concentrate on their functions.
- (14) In the past the term of office of the Chair and of the Vice-Chairs of the Board of Regulators was one year. In view of the additional tasks assigned to BEREC and the need to ensure annual and multiannual programming for its activities, it is crucial to ensure that the Chairperson and Deputy Chairperson benefit from a stable and longer-term mandate.
- (15) The Management Board should hold at least two ordinary meetings a year. In view of past experience and the enhanced role of BEREC, the Management Board may need to hold additional meetings.
- (16) **Although the Chairperson and Deputy Chairperson will represent BEREC according to their functions,** ~~The role of the Executive Director, who would be~~ **should remain** the legal representative of BEREC **as regards to legal and administrative matters,** ~~is crucial for the adequate functioning of the new agency and the implementation of the tasks assigned to it.~~ The Management Board should appoint him/her ~~on the basis of a list drawn up by the Commission~~ following an open and transparent selection procedure in order to guarantee a rigorous evaluation of the candidates and a high level of independence. Moreover, in the past the term of office of the Administrative Manager of the BEREC Office was three years. It is necessary that the ~~Executive~~ Director has a sufficiently long mandate in order to ensure stability and delivery of a long-term strategy ~~for the agency~~.
- (17) Experience has shown that most of BEREC's tasks are better carried out through working groups, therefore the Management Board should be in charge of setting up working groups and appointing their ~~members~~ **chairpersons**. ~~In order to ensure a balanced approach, the working groups should be coordinated and moderated by members of the BEREC staff.~~ Lists of qualified experts ~~should~~ **could** be prepared in advance to ensure a quick set-up of certain working groups, in particular those related to internal market procedures for draft national measures on market regulation ~~and on assignments of rights of use for radio spectrum,~~ due to the time limits of those procedures.

- (18) ~~As BEREC is competent for taking decisions with a binding effect, it is necessary to ensure that any natural or legal person subject to, or concerned by, a decision of BEREC has the right of appeal to a Board of Appeal, which is part of the agency but independent from its administrative and regulatory structure. As the decisions issued by the Board of Appeal are intended to produce legal effects towards third parties, an action for review of their legality may be brought to the General Court. In order to ensure uniform conditions as regards the rules of procedure of the Board of Appeal, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁴.~~
- (19) Commission Delegated Regulation (EU) No 1271/2013 of the European Parliament and of the Council¹⁵ should apply to BEREC.
- (20) In order to guarantee BEREC's autonomy, it should have its own budget, most of which comes essentially from a contribution from the Union. The financing of BEREC should be subject to an agreement by the budgetary authority as set out in point 31 of the Inter-institutional Agreement on budgetary discipline, on cooperation in budgetary matters and on sound financial management¹⁶.
- (21) BEREC should be independent as regards operational and technical matters and should enjoy legal, administrative and financial autonomy. To that end, it is necessary and appropriate that BEREC should be a body of the Union having legal personality and exercising the powers conferred upon it.
- (22) ~~As a Union decentralised agency,~~ BEREC should operate within its the mandate provided for by this Regulation and the existing institutional framework. ~~It should~~ cannot be seen as representing a Union position to an outside audience or as committing the Union and its Member States to legal obligations. Taking this into account, BEREC should be entitled to establish working arrangements with third parties. The goal of such working arrangements could be, for instance, to develop cooperative relationships and exchange views on regulatory issues. The Commission should ensure that the necessary working arrangements are consistent with EU policy and priorities, that BEREC, being established by a Union legal instrument and financed by the Union budget, operates within its mandate and the existing institutional framework and is not seen as representing the EU position to an outside audience or as committing the EU to international obligations.

¹⁴ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

¹⁵ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

¹⁶ Inter-institutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management (OJ C 373, 20.12.2013, p. 1).

- (23) In order to further extend the consistent implementation of the provisions of the regulatory framework for electronic communications within ~~the its~~ scope of ~~BEREC~~, ~~the new agency~~ **BEREC** should be open to the participation of regulatory authorities of third countries competent in the field of electronic communications that have entered into agreements with the Union to that effect, in particular those of EEA EFTA States and EU candidate countries.
- (24) BEREC should be allowed to engage in communication activities within its field of competence, which should not be detrimental to BEREC's core tasks and should be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board. The content and implementation of BEREC's communication strategy should be coherent, relevant and coordinated with the strategies and activities of the Commission and the other institutions in order to take into consideration the broader image of the Union.
- (25) In order to carry out its tasks effectively, BEREC should have the right to request all necessary information from the Commission, the NRAs, **other competent authorities** and, as a last resort, other authorities and undertakings. Requests for information should be reasoned, proportionate and not impose an undue burden on the addressees. NRAs, which are closest to the electronic communications markets, should cooperate with BEREC and have a timely and accurate provision of information to ensure that BEREC is able to fulfil its mandate. BEREC should also share with the Commission, ~~and~~ the NRAs, **and other competent authorities** the necessary information based on the principle of sincere cooperation and, where relevant, the confidentiality of information should be ensured.
- (26) Since the objectives of this regulation, namely the need to ensure a consistent implementation of the regulatory framework for electronic communications within the defined scope, in particular in relation to cross-border aspects and through efficient internal market procedures for draft national measures, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this regulation does not go beyond what is necessary in order to achieve those objectives.
- (27) This regulation aims to amend and expand the provisions of Regulation (EC) 1211/2009 of the European Parliament and of the Council. Since the amendments to be made are of a substantial nature, that act should, in the interests of clarity, be replaced and therefore repealed. References to the repealed regulation should be construed as references to this regulation.
- (28) The BEREC Office, which was established as a Community body with legal personality by Regulation (EC) No 1211/2009, is succeeded by BEREC as regards all ownership, agreements, legal obligations, employment contracts, financial commitments and liabilities. BEREC should take over the staff of the BEREC Office whose rights and obligations should not be affected.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

OBJECTIVES AND TASKS

Article 1

Establishment and objectives

1. The Body of European Regulators for Electronic Communications ('BEREC') is hereby established.
2. BEREC shall act within the scope of Directive [...], ~~Directive 2002/58/EC~~, Regulation (EC) No 531/2012, **and** Regulation (EU) No 2015/2120 ~~and Decision 243/2012/EU¹⁷ (Radio Spectrum Policy Programme)~~.

The definitions laid down in ~~those that~~ Directives, and ~~those~~ Regulations ~~and Decision~~ shall apply for the purposes of this regulation.

3. BEREC shall pursue the same objectives ~~as those of national regulatory authorities ('NRAs') and other competent authorities referred to~~ **set out** in Article 3 of the Directive. In particular, BEREC shall ensure a consistent implementation of the regulatory framework for electronic communications within the scope referred to in paragraph 2 and thereby contribute to the development of the internal market. It shall also promote access to, and take-up of, very high capacity data connectivity; competition in the provision of electronic communications networks, services and associated facilities; and the interests of the citizens of the Union.

4. BEREC shall carry out its tasks independently, impartially and transparently.

¹⁷ Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L 81, 21.3.2012, p. 7).

Article 2

Regulatory Tasks

1. The **regulatory** tasks of BEREC shall be to:

- (a) assist, advise and cooperate with the Commission, **the European Parliament and the Council** as well as NRAs on request or on its own initiative, on any technical matter within its mandate, ~~and assist and advise the European Parliament and the Council on request;~~
- (b) ~~issue decisions:~~
 - ~~– on the identification of transnational markets in accordance with Article 63 of the Directive;~~
 - ~~– on a contract summary template in accordance with Article 95 of the Directive;~~
- (c) ~~develop an economic model in order to assist the Commission in determining the maximum termination rates in the Union in accordance with Article 73 of the Directive;~~
- (d) issue opinions as referred to in the Directive and Regulation (EU) No 531/2012, in particular **on**:
 - i.** ~~on~~ the resolution of cross-border disputes in accordance with Article 27 of the Directive;
 - ii.** ~~on~~ draft national measures related to the internal market procedures for market regulation in accordance with Articles 32, 33 and 66 of the Directive;
 - iii.** ~~on~~ draft national measures related to the internal market procedures for radio spectrum peer review in accordance with Article 35 of the Directive;
 - iv.** ~~on~~ draft decisions and recommendations on harmonisation in accordance with Article 38 **and 87** of the Directive;
 - v.** ~~on the identification of~~ **potential** transnational markets in accordance with Article 63 of the Directive;
 - vi.** ~~on~~ the determination of the maximum termination rates in the Union in accordance with Article 73 of the Directive;
 - vii.** ~~the market and technological developments regarding the different types of electronic communications services and their impact on the application of Title III of the Directive in accordance with article 114a of the Directive;~~

- (e) issue guidelines **on the implementation of the EU regulatory framework in particular** as referred to in the Directive, Regulation (EC) No 531/2012 and Regulation (EU) No 2015/2120 **on**:
- i.** ~~on~~ **the notification template in accordance with Article 12 of the Directive;**
 - ii.** ~~on~~ the implementation of NRAs² obligations as regards geographical surveys in accordance with Article 22 of the Directive;
 - iii.** ~~on~~ common approaches to the identification of the ~~network termination point~~, **most adequate point for the imposition of access obligations** in different network topologies in accordance with Article 59 of the Directive;
 - iv.** ~~on~~ common approaches to meet transnational end-user demand in accordance with Article 64 of the Directive;
 - v.** ~~on~~ the minimum criteria for a reference offer in accordance with Article 67 of the Directive;
 - ~~**vi.** on the technical details of the cost model to be applied by NRAs when setting maximum symmetric termination rates in accordance with Article 73 of the Directive;~~
 - vii.** ~~on~~ **the consistent application of criteria for the regulatory treatment of new network elements according to Article 74 of the Directive;**
 - viii.** ~~on~~ common criteria for the assessment of the ability to manage numbering resources and the risk of exhaustion of numbering resources in accordance with Article 87 of the Directive;
 - ix.** ~~on~~ relevant quality of service parameters and the applicable measurement methods in accordance with Article 97 of the Directive;
 - x.** ~~on~~ the implementation of NRAs' obligations as regards open internet access in accordance with Article 5 of Regulation (EU) No 2015/2120;
 - xi.** ~~on~~ wholesale roaming access in accordance with Article 3 of Regulation (EU) No 531/2012;
- (f) **where relevant, participate in the Peer Review Forum on draft [national] measures on selection procedures in accordance with Article 35 of the Directive and provide support to the relevant competent authority.**

2. BEREC shall also carry out the following **regulatory** tasks:

- (a) monitor and coordinate the action of NRAs in applying Regulation (EU) No 531/2012, in particular as regards the provision of regulated retail roaming services at domestic prices in the interests of end-users;
- (b) report on technical matters within its competence, in particular:
 - i.** on the practical application of the opinions and guidelines referred to in Article 2(1)(d) and 2(1)(e);
 - ii.** on the level of interoperability between interpersonal communications services, threat to effective access to emergency services or to end-to-end connectivity between end-users in accordance with Article 59 of the Directive;
 - iii.** on the evolution of retail and wholesale charges for roaming services and on transparency and comparability of tariffs in accordance with Article 19 of Regulation (EU) No 531/2012;
 - iv.** on the outcomes of the annual reports that NRAs shall provide in accordance with Article 5 of Regulation (EU) No 2015/2120, through the publication of an annual synthesis report;
 - v.** **on the developments of the electronic communications sector by means of an annual report;**
- (c) issue recommendations and best practices addressed to the NRAs in order to encourage consistent implementation on any technical matter within its mandate;
- (d) keep a register of:
 - i.** **a register or list of** undertakings providing electronic communications networks and services in accordance with Article 12 of the Directive. ~~BEREC shall also issue standardised declarations on notifications by undertakings in accordance with Article 14 of the Directive;~~
 - ii.** **a database of the notifications transmitted to the NRAs in accordance with Article 12 of the Directive;**
 - iii.** **a database of** numbers with a right of extraterritorial use in accordance with Article 87 of the Directive;

- (da) **monitor the market and technological developments regarding the different types of electronic communications services and their impact on the application of Title III of the Directive according to article 114a of the Directive, and where relevant issue an opinion;**
- (db) **promote the modernisation, coordination and standardisation of the collection of data by NRAs. Without prejudice to intellectual property rights and the required level of confidentiality, this data should be made available to the public in an open, reusable and machine-readable format on the BEREC website and the European data portal;**
- (e) carry out other tasks conferred on it by legal acts of the Union in particular by the Directive, Regulation (EC) No 531/2012 and Regulation (EU) No 2015/2120.

3. Without prejudice to compliance with relevant Union law, NRAs **and the Commission** shall ~~comply with any decision and~~ take the utmost account of any opinion, guideline, recommendation and best practice adopted by BEREC with the aim of ensuring a consistent implementation of the regulatory framework for electronic communications within the scope referred to in Article 1(2). **BEREC may, where appropriate, consult the relevant national competition authorities before issuing its opinion to the Commission.**

4. In so far as is necessary in order to achieve the objectives set out in this regulation and perform its tasks, BEREC may cooperate with competent Union bodies, agencies, offices and advisory groups, with competent authorities of third countries and/or with international organisations, in accordance ~~to~~ **with** Article 26.

5. The regulatory tasks of BEREC shall not extend to the adoption of binding decisions of either a general or an individual nature.

CHAPTER II

ORGANISATION

Article 3

Administrative and Management Structure

1. The administrative and management structure of BEREC shall comprise:
 - a Management Board, which shall **fulfil the tasks set out in Article 2 and** exercise the functions set out in Article 5;
 - an ~~Executive~~ Director, which shall exercise the responsibilities set out in Article 9;
 - Working Groups;
 - ~~— a Board of Appeal.~~

SECTION 1

MANAGEMENT BOARD

Article 4

Composition of the Management Board

1. The Management Board shall be composed of one representative from each Member State and ~~two~~ **one** representatives of the Commission, all with voting rights. Each NRA shall be responsible for ~~nominating~~ **appointing** its respective representative amongst the Head or members of the collegiate body of the NRA.

In Member States where more than one NRA is responsible under the Directive, those authorities shall agree on a common representative and the necessary coordination between the NRAs shall be ensured.

2. Each **representative of a** member of the Management Board shall have an alternate. **In exceptional cases** the alternate shall represent the member in ~~his/her~~ **the absence of the representative**. Each NRA shall be responsible for ~~nominating~~ **appointing** the alternate amongst the Heads, members of the collegiate body and staff of the NRA.

3. **Representatives of Mmembers** of the Management Board and their alternates shall be appointed in light of their knowledge in the field of electronic communications, taking into account relevant managerial, administrative and budgetary skills. All ~~parties represented in~~ **members of the** Management Board shall make efforts to limit turnover of their representatives, in order to ensure continuity of the board's work. All ~~parties~~ **members** shall aim to achieve a balanced representation between men and women on the Management Board.

~~4. The term of office for **representatives of members and their alternates** shall be four years. That term shall be extendable.~~

Article 5

Regulatory tasks and administrative ~~F~~functions of the Management Board

1. The Management Board shall **fulfil the regulatory tasks of BEREC set out in Article 2 and therefore adopt the opinions, guidelines, reports, recommendations and best practices described in that Article.**

1a. The Management Board shall exercise the following administrative functions:

- (a) give the general orientations for BEREC's activities and adopt each year BEREC's single programming document by a majority of two-thirds of members entitled to vote, taking into account the opinion of the Commission and in accordance with Article 15;
- (b) adopt, by a majority of two-thirds of members entitled to vote, the annual budget of BEREC and exercise other functions in respect of BEREC's budget pursuant to Chapter III;
- (c) adopt and proceed with an assessment of the consolidated annual activity report on BEREC's activities and send both the report and its assessment, by 1 July each year to the European Parliament, the Council, the Commission and the Court of Auditors. The consolidated annual activity report shall be made public;

- (d) adopt the financial rules applicable to BEREC in accordance with Article 20;
- (e) adopt an anti-fraud strategy, proportionate to fraud risks taking into account the costs and benefits of the measures to be implemented;
- (f) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office ('OLAF');
- (g) adopt rules for the prevention and management of conflicts of interest as referred to in Article 31, ~~as well as in respect of members of the Board of Appeal;~~
- (h) adopt and regularly update the communication and dissemination plans referred to in Article 27, based on an analysis of needs;
- (i) adopt its rules of procedure;
- (j) in accordance with paragraph 2, exercise, with respect to the staff of BEREC, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment¹⁸ ('the appointing authority powers');
- (k) adopt implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
- (l) authorise the conclusion of working arrangements with competent Union bodies, agencies, offices and advisory groups; with competent authorities of third countries and/or with international organisations in accordance with Article 26;
- (m) appoint the ~~Executive~~ Director and where relevant extend his/her term of office or remove him/her from office in accordance with Article 22;
- (n) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of other servants, who shall be totally independent in the performance of his/her duties. BEREC may appoint the Commission's Accounting Officer as the Accounting Officer of BEREC;
- ~~(o) appoint the members of the Board(s) of Appeal;~~

¹⁸ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

- (p) take all decisions on the establishment of BEREC's internal structures and, where necessary, their modification, taking into consideration BEREC's activity needs as well as having regard to sound budgetary management;
- (q) **provide guidance to the Director.**

2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the ~~Executive~~ Director and defining the conditions under which this delegation of powers can be suspended. The ~~Executive~~ Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may by way of a decision temporarily suspend the delegation of the appointing authority powers to the ~~Executive~~ Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the ~~Executive~~ Director.

Article 6

Chairperson and Deputy Chairperson of the Management Board

1. The Management Board shall elect a Chairperson and a **at least one** Deputy Chairperson from among members with voting rights representing Member States. The Chairperson and the Deputy Chairpersons shall be elected by a majority of two thirds of the members of the Management Board with voting rights.
2. The Deputy Chairpersons shall automatically replace the Chairperson if he/she is prevented from attending to his/her duties.
3. The term of office of the Chairperson and the Deputy Chairpersons shall be ~~four~~ **two** years, with the exception of the first term of office of the Deputy Chairpersons elected after the entry into force of this regulation which shall be ~~two one~~ **years**. Their term of office may be renewed once.

Article 7

Meetings of the Management Board

1. The Chairperson shall convene the meetings of the Management Board.
 - 1a. **The representative of the Commission shall take part in all the deliberations.**
2. The ~~Executive Director of BEREC~~ shall take part in **all** the deliberations, **except those related to Article 22**, without the right to vote.
3. The Management Board shall hold at least two ordinary meetings a year. In addition, **the Chairperson shall convene extraordinary meetings** ~~it shall meet on the initiative of its Chairperson,~~ at the request of the Commission, or at the request of at least **one-third three** of its members.
4. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.
5. The members and the alternates of the Management Board may, subject to its rules of procedure, be assisted at the meetings by advisers or experts.
6. BEREC shall provide the secretariat for the Management Board.

Article 8

Voting rules of the Management Board

1. Without prejudice to Articles 5(1) (a) and (b) and 22(8), the Management Board shall take decisions by majority of members with voting rights.

2. Each member with voting rights shall have one vote. In the absence of **representative of a** member with the right to vote, his/her alternate shall be entitled to exercise his/her right to vote.

3. The Chairperson shall take part in the voting **in his/her capacity as a representative of a member unless voting rights have been delegated.**

3a. The Commission shall have voting rights in relation to the administrative functions set out in Article 5(1a), except for the regulatory matters covered by letters a and c. The Commission shall have no voting rights in relation to the tasks set out in Article 2.

4. The ~~Executive~~ Director shall not take part in the voting.

5. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member.

SECTION 2

EXECUTIVE DIRECTOR

Article 9

Responsibilities of the Executive Director

1. The ~~Executive~~ Director shall ~~manage BEREC~~ **be responsible for the administrative management of BEREC and shall assist in preparing the work of the Management Board.** The ~~Executive~~ Director shall be accountable to the Management Board.
2. Without prejudice to the powers ~~of the Commission~~ and the Management Board, the Executive Director shall be independent in the performance of his/her duties and shall neither seek nor take instructions from any government, institution, person or body.
3. The ~~Executive~~ Director shall report to the European Parliament **and to the Council** on the performance of his/her duties when invited to do so. ~~The Council may invite the Executive Director to report on the performance of his/her duties.~~
4. The ~~Executive~~ Director shall be the legal representative of BEREC **on legal and administrative matters.**
5. The ~~Executive~~ Director shall be responsible for the implementation of BEREC's tasks **within its administrative functions and following the guidance provided by the Management Board.** In particular, the ~~Executive~~ Director shall be responsible for:
 - (a) the day-to-day administration of BEREC;
 - (b) implementing decisions adopted by the Management Board;
 - (c) preparing the single programming document and submitting it to the Management Board;
 - (d) implementing the single programming document, reporting to the Management Board on its implementation;

- (e) preparing the consolidated annual report on BEREC's activities and presenting it to the Management Board for assessment and adoption;
- (f) preparing an action plan following-up conclusions of internal or external audit reports and evaluations, as well as investigations by the OLAF and reporting on progress ~~twice a year to the Commission and~~ regularly to the Management Board;
- (g) protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by carrying out effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative measures, including financial penalties;
- (h) preparing an anti-fraud strategy for BEREC and presenting it to the Management Board for approval;
- (i) preparing draft financial rules applicable to BEREC;
- (j) preparing BEREC's draft statement of estimates of revenue and expenditure and implementing its budget.

6. The ~~Executive~~ Director shall also be responsible for deciding whether it is necessary for the purpose of carrying out BEREC's tasks in an efficient and effective manner to locate one or more staff in one or more Member States. ~~The~~ **Such a** decision ~~to establish a local office~~ requires the prior consent of the Commission, the Management Board and the Member State(s) concerned. The decision shall specify the scope of the activities to be carried out ~~at the local office~~ in a manner that avoids unnecessary costs and duplication of administrative functions of BEREC.

SECTION 3

WORKING GROUPS

Article 10

Functioning of the working groups

1. Where justified and in particular to implement the work programme of BEREC, the Management Board, may set up the necessary working groups.
2. The Management Board shall appoint the ~~members~~ **chairpersons** of the working groups.

2a. The working groups shall in principle be open to the participation of which may be participated in by experts from **all** the NRAs, the Commission, BEREC staff and the NRAs of third countries participating in the work of BEREC.

~~In the case of the working groups which are set up to carry out the tasks referred to in the third indent of Article 2(1)(d), their members shall be appointed from the lists of qualified experts provided by the NRAs, the Commission and the Executive Director.~~

In the case of the working groups which are set up to carry out the tasks referred to in ~~the second indent~~ of Article 2(1)(d)(**ii**), their members shall **either** be ~~appointed exclusively from the lists of~~ qualified experts ~~provided by the~~ **from the** NRAs **including of third countries, or from BEREC staff**, and the ~~Executive~~ Director.

Working groups which are set up to carry out the tasks referred to in Article 2(1)(d)(iv), Article 2(1)(e)(ii, iii, ix, x), Article 2(2)(b)(i, ii), Article 2(2)(d) and Article 2(2)(da) of this Regulation shall be open to the participation of experts from relevant competent authorities as observers.

The Management Board **or the chairpersons of the working groups** may invite individual experts recognised as competent in the relevant field, ~~in particular experts from other competent~~ **authorities**, to participate in the working groups if necessary on a case-by-case basis.

~~3. The working groups shall be coordinated and moderated by a member of the staff of BEREC, who shall be designated according to the internal rules of procedure.~~

4. The Management Board shall adopt internal rules of procedure laying down the practical arrangements for the operation of the working groups.

5. BEREC shall provide support to the working groups.

SECTION 4

BOARD OF APPEAL

Article 11

Establishment and composition of the Board of Appeal

~~1. BEREC shall establish one Board of Appeal.~~

~~2. The Board of Appeal shall be composed of a Chairperson and two other members. Each member of the Board of Appeal shall have an alternate. The alternate shall represent the member in his/her absence.~~

~~3. The Management Board shall appoint the Chairperson, the other members and their alternates from a list of qualified candidates established by the Commission.~~

~~4. Where the Board of Appeal considers that the nature of the appeal so requires, it may request the Management Board to appoint two additional members and their alternates from the list referred to in paragraph 3.~~

~~5. On the proposal of BEREC, the Commission shall establish the rules of procedure of the Board of Appeal, after having consulted the Management Board and in accordance with the procedure referred to in Article 36(2).~~

Article 12

Members of the Board of Appeal

- ~~1. The term of office of the members and alternates of the Board of Appeal shall be four years. Their term of office may be extended by the Management Board for additional four year periods acting on a proposal from the Commission.~~
- ~~2. The members of the Board of Appeal shall be independent and shall not perform any other duties within BEREC. In making their decisions they shall neither seek nor take instructions from any government or from any other body.~~
- ~~3. The members of the Board of Appeal shall not be removed from office or from the list of qualified candidates during their term of office, unless there are serious grounds for such removal and the Management Board takes a decision to that effect, acting on a proposal from the Commission.~~

Article 13

Exclusion and objection

- ~~1. The members of the Board of Appeal shall not take part in any appeal proceedings if they have any personal interest in the proceedings, if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the adoption of the decision under appeal.~~
- ~~2. If, for one of the reasons listed in paragraph 1 or for any other reason, a member of a Board of Appeal considers that he/she should not take part in any appeal proceeding, he/she shall inform the Board of Appeal accordingly.~~

~~3. Any party to the appeal proceedings may object to any member of a Board of Appeal on any of the grounds given in paragraph 1, or if the member is suspected of partiality. Any such objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.~~

~~4. The Board of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking that decision, the member concerned shall be replaced on the Board of Appeal by his/her alternate.~~

Article 14

Decisions subject to appeal

~~1. An appeal may be brought before the Board of Appeal against decisions taken by BEREC pursuant to Articles 2(1)(b).~~

~~Any natural or legal person, including NRAs, may appeal against a decision referred to in this paragraph which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.~~

~~2. An appeal brought pursuant to paragraph 1 shall not have a suspensory effect. The Board of Appeal may, however, suspend the application of the decision against which the appeal has been brought.~~

CHAPTER III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

SECTION 1

SINGLE PROGRAMMING DOCUMENT

Article 15

Annual and multi-annual programming

1. Each year, the ~~Executive~~ Director shall draw up a draft programming document containing annual and multiannual programming ('single programming document') in line with Article 32 of Commission Delegated Regulation (EU) No 1271/2013 and taking into account guidelines set by the Commission¹⁹ **for administrative matters, as well as guidance from the Management Board.**

By 31 January, the Management Board shall adopt the draft single programming document and forward it to the Commission for it to provide its opinion. The draft single programming document shall also be forwarded to the European Parliament and the Council.

The Management Board shall subsequently adopt the single programming document taking into account the opinion of the Commission. It shall forward it to the European Parliament, the Council and the Commission, as well as any later updated version of that document.

The single programming document shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.

¹⁹ Commission Communication on the guidelines for programming document for decentralised agencies and the template for the Consolidated Annual Activity Report for decentralised agencies (C(2014) 9641).

2. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year.

3. The Management Board shall amend the adopted annual work programme when a new task is given to BEREC.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the ~~Executive~~ Director.

4. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.

The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 38.

5. Annual and/or multiannual programming shall include the strategy for relations with competent Union bodies, agencies, offices and advisory groups; with competent authorities of third countries and/or with international organisations as referred to in Article 26, the actions linked to this strategy and the specification of associated resources.

Article 16

Establishment of the budget

1. Each year, the ~~Executive~~ Director shall draw up a provisional draft estimate of BEREC's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.
2. The Management Board shall, on the basis of that provisional draft, adopt a draft estimate of BEREC's revenue and expenditure for the following financial year. **This draft estimate may be included in the draft single programming document referred to in Article 15.**
3. The draft estimate of BEREC's revenue and expenditure shall be sent by the ~~Executive~~ Director to the Commission by 31 January each year. The information contained in the draft estimate of BEREC's revenue and expenditure and in the draft single programming document referred to in Article 15(1) shall be coherent.
4. The Commission shall send the draft estimate to the budgetary authority together with the draft general budget of the Union.
5. On the basis of the draft estimate, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 of the Treaty.
6. The budgetary authority shall authorise the appropriations for the contribution to BEREC.
7. The budgetary authority shall adopt BEREC's establishment plan.
8. BEREC's budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.
9. For any building project likely to have significant implications for the budget of BEREC, the provisions of Commission Delegated Regulation (EU) No 1271/2013 shall apply.

SECTION 2

IMPLEMENTATION, PRESENTATION AND CONTROL OF THE BUDGET

Article 17

Structure of the budget

1. Estimates of all revenue and expenditure for BEREC shall be prepared each financial year, corresponding to the calendar year and shall be shown in BEREC's budget.
2. BEREC's budget shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, BEREC's revenue shall comprise:
 - (k) a contribution from the Union;
 - (l) any voluntary financial contribution from the Member States or the NRAs;
 - (m) charges for publications and any other service provided by BEREC;
 - (n) any contribution from third countries or the regulatory authorities competent in the field of electronic communications of third countries participating in the work of BEREC, as provided for by Article 26.
4. The expenditure of BEREC shall include staff remuneration, administrative and infrastructure expenses and operational expenditure.

Article 18

Implementation of the budget

1. The ~~Executive~~ Director shall implement BEREC's budget.
2. Each year the ~~Executive~~ Director shall send to the budgetary authority all information relevant to the findings of evaluation procedures.

Article 19

Presentation of accounts and discharge

1. By 1 March of the following financial year, BEREC's accounting officer shall send the provisional accounts to the Commission's Accounting Officer and to the Court of Auditors.
2. By 31 March of the following financial year, BEREC shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors.
3. On receipt of the Court of Auditors' observations on BEREC's provisional accounts, BEREC's accounting officer shall draw up BEREC's final accounts under his/her own responsibility. The ~~Executive~~ Director shall submit the final accounts to the Management Board for an opinion.
4. The Management Board shall deliver an opinion on BEREC's final accounts.
5. The ~~Executive~~ Director shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
6. BEREC shall publish the final accounts in the *Official Journal of the European Union* by 15 November of the following year.

7. The ~~Executive~~ Director shall send the Court of Auditors a reply to its observations by 30 September. The ~~Executive~~ Director shall also send this reply to the Management Board.

8. The ~~Executive~~ Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 165(3) of Financial Regulation ²⁰.

9. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge to the ~~Executive~~ Director in respect of the implementation of the budget for year N.

Article 20

Financial rules

The financial rules applicable to BEREC shall be adopted by the Management Board after consulting the Commission. They shall not depart from Regulation (EU) No 1271/2013 unless such a departure is specifically required for BEREC's operation and the Commission has given its prior consent.

²⁰ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012).

CHAPTER IV

STAFF

Article 21

General provision

The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of BEREC.

Article 22

Appointment of Executive Director

1. The Executive Director shall be engaged as a temporary agent of BEREC in accordance with Article 2(a) of the Conditions of Employment of Other servants.
2. The Executive Director shall be appointed by the Management Board, ~~from a list of candidates proposed by the Commission~~, following an open and transparent selection procedure, **on the basis of his/her knowledge in the field of electronic communications, taking into account relevant managerial, administrative and budgetary skills.**

For the purpose of concluding the contract with the Executive Director, BEREC shall be represented by the Chairperson of the Management Board.

Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.

3. The term of office of the ~~Executive~~ Director shall be five years. By the end of that period, the ~~Commission~~ **Chairperson of the Management Board** shall undertake an assessment that takes into account an evaluation of the ~~Executive~~ Director's performance and BEREC's future tasks and challenges.

4. The Management Board, acting on a proposal from the ~~Commission~~ **Chairperson of the Management Board** that takes into account the assessment referred to in paragraph 3, may extend the term of office of the ~~Executive~~ Director once, for no more than ~~five~~ **three** years.

5. The Management Board shall inform the European Parliament if it intends to extend the ~~Executive~~ Director's term of office. Within one month before any such extension, the ~~Executive~~ Director may be invited to make a statement before the competent committee of the Parliament and to answer questions put by its members.

6. An ~~Executive~~ Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.

7. The ~~Executive~~ Director may be removed from office only upon a decision of the Management Board ~~acting on a proposal from the Commission~~.

8. The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the ~~Executive~~ Director on the basis of a two-thirds majority of its members with voting rights.

Article 23

Seconded national experts and other staff

1. BEREC may make use of seconded national experts or other staff not employed by BEREC. The Staff Regulations and the Conditions of Employment of Other Servants shall not apply to such staff.
2. The Management Board shall adopt a decision laying down rules on the secondment of national experts to BEREC.

CHAPTER V

GENERAL PROVISIONS

Article 24

Legal status

1. BEREC shall be a body of the Union. It shall have legal personality.
2. In each of the Member States BEREC shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire and dispose of movable and immovable property and be party to legal proceedings.
3. **In legal and administrative matters**, BEREC shall be represented by the ~~Executive~~ Director.
4. BEREC shall have sole responsibility for the tasks and powers assigned to it.

Article 25

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to BEREC and its staff.

Article 26

Cooperation with Union bodies, third countries and international organisations

1. In so far as is necessary in order to achieve the objectives set out in this regulation and perform its tasks, and without prejudice to the competences of the Member States and the institutions of the Union, BEREC may cooperate with competent Union bodies, agencies, offices and advisory groups, with competent authorities of third countries and/or with international organisations.

To this end, BEREC may, subject to prior approval by the Commission, establish working arrangements. These arrangements shall not create legal obligations incumbent on the Union and its Member States.

2. BEREC shall be open to the participation, **without voting rights**, of regulatory authorities of third countries competent in the field of electronic communications that have entered into agreements with the Union to that effect.

Under the relevant provisions of these agreements, arrangements shall be developed specifying, in particular, the nature, extent and manner in which those regulatory authorities of the third countries concerned will participate in the work of BEREC, including provisions relating to participation in the initiatives undertaken by BEREC, financial contributions and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations.

3. As part of the single programming document, the Management Board shall adopt a strategy for relations with competent Union bodies, agencies, offices and advisory groups, with competent authorities of third countries and/or with international organisations concerning matters for which BEREC is competent. The Commission and ~~the agency~~ **BEREC** shall conclude an appropriate working arrangement aiming at ensuring that BEREC operates within its mandate and the existing institutional framework.

Transparency and communication

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council²¹ shall apply to documents held by BEREC. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.

2. The processing of personal data by BEREC shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council²². The Management Board shall, within six months of the date of its first meeting, establish measures for the application of Regulation (EC) No 45/2001 by BEREC, including those concerning the appointment of a Data Protection Officer of BEREC. Those measures shall be established after consultation of the European Data Protection Supervisor.

3. BEREC may engage in communication activities on its own initiative within its field of competence. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the tasks referred to in Article 2(1) and 2(2) of this Regulation.

Communication activities shall be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board.

²¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

²² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

Article 28

Confidentiality

1. Without prejudice to **Regulation (EC) No. 1049/2001 and** Article ~~27(1) and~~ 30, BEREC shall not disclose to third parties information that it processes or receives in relation to which a reasoned request for confidential treatment, in whole or in part, has been made.
2. Members of the Management Board, the Executive Director, ~~members of the Board of Appeal,~~ seconded national experts, other staff not employed by BEREC and experts participating in working groups shall comply with the confidentiality requirements under Article 339 of the Treaty, even after their duties have ceased.
3. The Management Board shall lay down the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

Article 29

Security rules on the protection of classified and sensitive non-classified information

BEREC shall adopt its own security rules equivalent to the Commission's security rules for protecting European Union Classified Information ('EUCI') and sensitive non-classified information, *inter alia* provisions for the exchange, processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443²³ and 2015/444²⁴. Alternatively, BEREC may adopt a decision to apply the Commission's rules on a *mutatis mutandis* basis.

²³ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

²⁴ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

Exchange of information

1. Upon a duly justified request from BEREC, the Commission, ~~and the NRAs~~ **and other competent authorities** shall provide BEREC with all the necessary information, in a timely and accurate manner, to carry out its tasks, provided that they have legal access to the relevant information and that the request for information is necessary in relation to the nature of the task in question.

BEREC may also request ~~the NRAs~~ **such** information to be provided at recurring intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats.

2. Upon a duly justified request from the Commission, ~~or an NRA,~~ **or another competent authority**, BEREC shall provide in a timely and accurate manner any information that is necessary to enable the Commission ~~or the NRA,~~ **or the competent authority**, to carry out its tasks, based on the principle of sincere cooperation. **Where information is considered confidential by BEREC, in accordance with Union rules on business confidentiality, the Commission, the national regulatory and any other competent authority concerned shall ensure such confidentiality in accordance with national and Union law. Business confidentiality shall not prevent the timely sharing of information.**

3. Before requesting information in accordance with this article and in order to avoid the duplication of reporting obligations, BEREC shall take account of any relevant existing information publicly available.

4. Where information is not available or is not made available ~~by the NRAs~~ in a timely fashion or in circumstances where a direct request by BEREC would prove more efficient and less burdensome, BEREC may address a duly justified and reasoned request to other authorities or directly to the relevant undertakings providing electronic communications networks, services and associated facilities.

BEREC shall inform the relevant ~~NRA~~ **authorities, which have failed to provide the information**, of requests in accordance with this paragraph.

At the request of BEREC, the NRAs shall assist BEREC in collecting the information.

Article 31

Declaration of interest

1. Members of the Management Board, the ~~Executive~~ Director, seconded national experts and other staff not employed by BEREC shall each make a declaration indicating their commitment and the absence or presence of any direct or indirect interest which might be considered prejudicial to their independence.

The declarations shall be accurate and complete, made in writing and updated whenever necessary.

The declarations of interests made by the members of the Management Board and the ~~Executive~~ Director shall be made public.

2. Members of the Management Board, the ~~Executive~~ Director, seconded national experts, other staff not employed by BEREC and experts participating in working groups shall each accurately and completely declare, at the latest at the start of each meeting, any interest which might be considered prejudicial to their independence in relation to the items on the agenda, and shall abstain from participating in the discussion of and voting upon such points.

3. The Management Board shall lay down the rules for the prevention and management of conflicts of interest and, in particular, for the practical arrangements for the provisions referred to in paragraphs 1 and 2.

Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council²⁵, within six months after the entry into force of this regulation, it shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the OLAF and adopt appropriate provisions applicable to all employees of BEREC using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from BEREC.
3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by BEREC, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96²⁶.
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with competent authorities of third countries and international organisations, contracts, grant agreements and grant decisions of BEREC shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

²⁵ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 of September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

²⁶ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

Article 33

Liability

1. BEREC's contractual liability shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by BEREC.
3. In the case of non-contractual liability, BEREC shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.
4. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.
5. The personal liability of its staff towards BEREC shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

Article 34

Administrative inquiries

The activities of BEREC shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.

Article 35

Language arrangements

1. The provisions laid down in Regulation No 1/58²⁷ shall apply to BEREC.
2. The translation services required for the functioning of BEREC shall be provided by the Translation Centre of the bodies of the European Union.

Article 36

Committee

- ~~1. The Commission shall be assisted by a Committee ('the Communications Committee'). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.~~
- ~~2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.~~
- ~~3. Where the opinion of the committee is to be obtained by a written procedure, the procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the committee so decides.~~

²⁷ Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ L 17, 6.10.1958, p. 385).

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

Article 37

Headquarters Agreement and operating conditions

1. The necessary arrangements concerning the accommodation to be provided for BEREC in the host Member State and the facilities to be made available by that Member State as well as the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, BEREC staff and members of their families shall be laid down in a Headquarters Agreement between BEREC and the Member State where the seat is located, concluded after obtaining the approval of the Management Board and no later than two years after the entry into force of this regulation.
2. BEREC's host Member State shall provide the necessary conditions to ensure the smooth and efficient functioning of BEREC, including multilingual, European-oriented schooling and appropriate transport connections.

Article 38

Evaluation

1. No later than five years from the day of entry into force of this regulation, and every five years thereafter, the Commission shall perform an evaluation in compliance with the Commission guidelines to assess BEREC's performance in relation to its objectives, mandate, tasks and location(s). The evaluation shall, in particular, address the possible need to modify the mandate of BEREC, and the financial implications of any such modification.

2. Where the Commission considers that the continuation of BEREC is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this regulation be amended accordingly or repealed.

3. The Commission shall report to the European Parliament, the Council and the Management Board on the findings of the evaluation. The findings of the evaluation shall be made public.

Article 39

Succession to the Office established by Regulation (EC) No 1211/2009

1. Without prejudice to paragraph 2, BEREC shall succeed the Office that was established by Regulation (EC) No 1211/2009 ('BEREC Office') as regards all ownership, agreements, legal obligations, employment contracts, financial commitments and liabilities.

In particular, this regulation shall not affect the rights and obligations of the staff of the Office established under Regulation (EC) No 1211/2009. Their contracts may be renewed under this regulation in accordance with the Staff Regulations and the Conditions of Employment and in accordance with the budgetary constraints of BEREC.

2. With effect from [the date of entry into force of this regulation] and until the ~~Executive~~ Director takes up his/her duties following his/her appointment by the Management Board in accordance with Article 22, the Administrative Manager appointed on the basis of Regulation (EC) No 1211/2009 shall ~~for the remaining period of his/her term of office~~ act as interim ~~Executive~~ Director with the functions provided for in this regulation. The other conditions of the Administrative Manager's contract shall remain unchanged.

As interim ~~Executive~~ Director, he/she shall exercise the appointing authority powers. He/she may authorise all payments covered by appropriations entered in BEREC's budget after approval by the Management Board and may conclude contracts, including staff contracts, following the adoption of BEREC's establishment plan.

3. The contract of employment of the Administrative Manager appointed on the basis of Regulation (EC) No 1211/2009 shall be terminated at the the end of his/her term of office or the day when the ~~Executive~~ Director takes up his/her duties following his/her appointment by the Management Board in accordance with Article 22, whichever is the earlier.

An Administrative Manager appointed on the basis of Regulation (EC) No 1211/2009 whose term of office has been extended shall abstain from participating in the selection procedure for the ~~Executive~~ Director referred to in Article 22.

4. The Management Board referred to in Article 4 shall be composed of the members of the Management Committee referred to in Article 7 of Regulation (EC) No 1211/2009, until new representatives are nominated.

5. The discharge procedure in respect of the budget approved on the basis of Article 11 of Regulation (EC) No 1211/2009 shall be carried out in accordance with the rules established by Regulation (EC) No 1211/2009.

Article 40

Entry into force Repeal

Regulation (EC) No 1211/2009 is repealed.

References to Regulation (EC) No 1211/2009 and to the BEREC Office shall be construed as references to this regulation and to BEREC.

Article 41

Entry into force

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

It shall apply from [...].

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President
