

Press release

BEREC adopts its Opinion on the review of the regulatory Framework

At its final Plenary meeting of 2015, BEREC has adopted its opinion on the review of the regulatory Framework to be submitted to the European Commission.

Noting the speed of change in communications markets, and the risks of premature or overly complex intervention, the opinion outlines BEREC's keenness to ensure the Framework remains future-proof and flexible enough to cope with the fast-changing digital ecosystem. In particular, BEREC explains that:

- **Ubiquitous connectivity is the ambition**, but physical networks are and will remain national – the European digital single market will always be the product of 28 competitive and well-regulated national markets.
- The current Framework balances consistency of regulatory approaches and regulators' ability to address the particularities of their national markets. While we should **continue to aspire to greater harmonisation where it makes sense**, fundamentally this balance should be retained.
- **Effective competition will remain key** to meeting Europe's high-speed broadband connectivity ambitions, and regulators will need more flexible tools to protect and promote it. These might include the ability to intervene in non-competitive oligopolistic markets.
- The **appropriate mix of network technologies and models of competition will depend on the particularities of each market**, so while FTTH and end-to-end infrastructure competition are to be welcomed, they may not be possible everywhere.
- The effectiveness of competitive markets and sufficiency of network deployments **should be measured against the extent to which they respond to the needs of Europe's end users**. General consumer law is important, but sector-specific rules will continue to be critical. And the Framework's minimum harmonisation approach should be retained to enable agile responses to emerging consumer challenges.
- While the definition of "electronic communications service" (ECS) would benefit from some clarification, **the scope of the Framework should not be extended to cover all new "OTT" services**. Rather, each service needs to be considered on a case-by-case basis, and **any regulation applied should be proportionate** so as not to undermine this highly innovative segment of the market.
- Member States should **retain the ability to define the universal service obligations (USO)** for their respective markets, including in relation to broadband and mobile services.

- Spectrum is a key input to ensure high-speed connectivity, but connectivity objectives and spectrum needs will vary from one country to the next. **Top-down harmonisation could therefore risk sterilising spectrum and resulting in inefficient use** of this scarce resource, hampering rather than supporting innovation. Instead, we would support promoting harmonised approaches to spectrum management from the “bottom up”, e.g. through the Radio Spectrum Policy Group (RSPG) working together with BEREC.
- **The record shows that BEREC has worked well** – for example, out of 801 national market reviews since its creation, the Commission only had serious doubts about 49, and the number of Commission serious doubts has fallen from 19 in 2012 to 4 during 2015. Regulatory convergence is happening.
- But BEREC is not complacent, and our opinion identifies several **areas for improvement**. Like the Commission, we believe the BEREC system would benefit from an **alignment of the competences of its members with those of BEREC** (e.g. in relation to end user protection) and the **strengthening of the independence** (including financial and operational autonomy) of the regulators. **These improvements, rather than any change in BEREC’s institutional structure**, are what would help improve BEREC’s effectiveness as an engine of the single market.
- **Indeed, key to BEREC’s success and added value is its rootedness in its member regulators**, and this must remain at the heart of the regulatory system. BEREC’s ability to meet the challenges of the next 10 years will rely on its **continued ability to draw upon the collective expertise of its members** (in relation to both its governance and the technical work carried out by its expert working groups). Therefore, as part of the review of the Framework, we would urge the Commission to strengthen the obligation on NRAs to **ensure that NRAs are adequately resourced to participate in the work of BEREC**.

BEREC looks forward to the Commission’s assessment of responses to its public consultation, and to continuing its dialogue with the Commission as it develops its legislative proposals.

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For further information:

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NOTE TO THE EDITOR

BEREC (Body of European Regulators for Electronic Communications) is composed of a Board of Regulators consisting of the Heads of the 28 national regulatory authorities (NRAs). BEREC advises the European Commission and its member NRAs, and assists the European Parliament and Council, on issues related to the application of the EU regulatory framework for electronic communications. BEREC seeks to ensure fair competition and consistency of regulation in the internal market for electronic communications, for the benefit of European consumers.

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