

The need for a minimum set of competences for independent NRAs in the European Electronic Communications Code

In September 2016, BEREC warmly welcomed the Commission's proposal to provide NRAs with a common minimum set of competences and to strengthen their independence. The Commission's proposal builds on the experience gained from three decades of telecoms regulation and caters to the future of the electronic communications in Europe as a competitive industry.

At a time when significant investment in networks is required and the digitalization of the industry is underway, the promotion of the internal market should be a high priority for Europe at the core of both the current sectoral review and the wider Digital Single Market strategy.

By building on the independent technical expertise they have developed over the years, NRAs are best placed to contribute effectively to the promotion of the internal market.

Independence is critical

The independence of NRAs (from both industry and government) ensures that all market players will be treated fairly and even-handedly, and provides for regulatory predictability to support long-term investment and innovation by incumbents and competitors alike. It also ensures that all regulators share the same objective analytical approach – based on their legal, technical and economic expertise – which enables them to pursue common solutions.

Regulatory harmonisation requires a common set of competences

As the sector is primed to make significant investment, transparency, predictability and consistency in the regulatory environment are more important than ever. When it comes to promoting infrastructure deployment and ensuring market access, common regulatory approaches that account for national circumstances are crucial to ensuring that regulation is efficient and proportionate. Progressive regulatory harmonisation, based on the development and sharing of best practices drawn from the real-life experience of regulating national markets, is in many cases the most appropriate and sustainable way to develop the internal market.

But the potential for such harmonisation depends on the NRAs around the table having the right set of common competences. Only an effective and common set of competences, as

proposed by the Commission, can ensure an informed and productive exchange at European level, and thereby the achievement of tangible progress towards the completion of internal market. Indeed, in those areas where NRAs have shared a common set of competences, BEREC has had a strong track record in pursuing regulatory convergence , with a positive impact on European markets and the promotion of better and more targeted regulation(see for instance the fall in the number of Phase II procedures over the last 8 years, the production of net neutrality guidelines and BEREC's role in the development and now the implementation of the new international roaming rules).Fragmentation of functions not only endangers further progress but also puts at risk common achievements.

Regulatory competences are increasingly interlinked

While *ex ante* market regulation was the original core competence of NRAs going back 15 years, it is increasingly difficult to dissociate such supply-side regulation from the exercise of other powers, such as, for example, the demand-side levers provided under the Framework. Indeed, it is unsurprising that the Commission is proposing to broaden NRAs' duties not only to promote the deployment of very high-capacity networks, but also their take-up. Ultimately, the promotion of investment and competition are intended to serve the interests of end users.

BEREC remains fully committed to supporting the co-legislators during the negotiations on the Code.

Done at Bucharest on 6 October 2017