

## **BEREC statement on the independence of the national regulatory authorities**

**Despite the confirmation of the guarantees for the independence of the national regulatory authorities' ("NRAs") in the new European Electronic Communications Code<sup>1</sup> ("EECC"), BEREC observes with concern measures by some Member States that could hamper NRAs' independence.**

**BEREC recalls the obligation for the timely, full and correct transposition into national legislation of the new rules as well as the effective application of existing and enhanced independence requirements. It calls on the Commission to continue to actively monitor developments and proactively guard against any action that undermines the independent regulatory authorities' ability to perform their regulatory functions, as foreseen in the EU electronic communications framework.**

The independence of the NRAs that are responsible for applying the European framework for electronic communications at national level is of paramount importance for impartial and effective decision-making, with a view to safeguarding the internal market, promoting sustainable competition, efficient investment as well as the interests of the citizens of the Union - the key objectives enshrined in the sectoral framework - consistently throughout Europe. In line with its Strategy, BEREC "aims at fostering independent, consistent, high-quality regulation of digital markets for the benefit of Europe and its citizens"<sup>2</sup> and therefore attaches significant importance to the independence requirements of the EU electronic communications

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<sup>1</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

<sup>2</sup> BEREC Mission statement as in the BEREC Strategy 2021-2025 (BoR (20) 108).

legislative framework that, since 2002 already, protect its constituent NRAs, which is also a prerequisite for BEREC's own independence.

Independence is identified as a landmark feature for all regulators to shape stable and predictable regulatory environments, independent of short-term political cycles, industry as well as other stakeholders' pressures. It allows regulators to efficiently and effectively intervene ex-ante on market failures, foster a level-playing field and ultimately ensure that they can act neutrally and impartially in national markets, consequently ensuring that market players deliver effective and efficient services.

With every successive review (2009 and 2018), the co-legislators chose to strengthen the structure of the NRAs and the imperviousness of their decisions to external interventions.

The EECC, the most recent reform, established requirements for the appointment of the head and members of the board of NRAs (e.g. minimum term of office, professional experience, open selection procedure) fostering regulatory stability and also made a number of clarifications as regards the minimum set of NRA tasks and their regulatory capacity, in terms of autonomy in managing their resources, human and financial. The EECC also recalled NRAs' independence from any political pressure liable to jeopardise their independent assessment. These requirements do not prevent supervision in accordance with national constitutional law, in particular accountability to national Parliaments and scrutiny of appeal bodies, Courts or Tribunals on the way NRAs are exercising their tasks.

Against this trend towards reaffirming and reinforcing NRAs' independence, BEREC observes with concern certain actions taken by some Member States that could hamper the NRAs' independence and autonomy and risk compromising the attainment of the objectives of the framework.

It is essential to ensure that NRAs remain able to react promptly to competition challenges in electronic communications markets, continue to promote efficient investment and effectively protect end-user welfare, as well as foster the internal market through consistently applying regulatory best practices developed by BEREC.

For the proper functioning of the whole sectoral framework and the attainment of its objectives, it is fundamental that the range of tools made available by the EU legislators translate throughout the Union into adequate independence requirements enshrined in national legislation and practice. This is even more important in the current times of transposition of the EECC, when it is crucial for Member States to adopt suitable transposition formulas in order to preserve NRAs' independence, in line with the design provided by EU Law.

This is why BEREC recalls its statement of 2012<sup>3</sup> and points to the importance of actively monitoring any developments in the domain of NRAs' independence, and the need for firm action whenever concerns about the weakening of the institutional arrangements needed for the correct application of the regulatory framework arise.

BEREC calls on the Commission to continue, as guardian of the Treaties, to proactively guard against any action and/or omission that undermines the ability of independent NRAs to perform their regulatory tasks effectively, as prescribed by EU Law. In this respect, BEREC calls on the Commission to closely monitor the timely, full and correct transposition of the provisions in the EECC into national legislation. Any interference in the efficient execution of the NRAs' tasks through the erosion of their powers, competences or resources, threatens the effective functioning of national markets and ultimately the single market, furthermore weakening the BEREC's stance in promoting the consistent application of the regulatory framework throughout the EU.

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<sup>3</sup> BEREC Statement on independence of NRAs, 2012, [https://bereg.europa.eu/eng/document\\_register/subject\\_matter/bereg/download/1/9262-letter-to-the-european-commission-on-ber\\_1.pdf](https://bereg.europa.eu/eng/document_register/subject_matter/bereg/download/1/9262-letter-to-the-european-commission-on-ber_1.pdf)