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## **BEREC statement on independence of NRA's**

*BEREC is concerned at the impact of some national legislative initiatives on the effectiveness of electronic communications regulatory authorities' performance of their regulatory functions, and, in turn, on their independence*

Under European Law, Member States are required to ensure that the tasks assigned to national regulatory authorities (NRAs) are undertaken by competent bodies and that NRAs have adequate resources, financial and human, to carry out these tasks. Furthermore Member States are required to guarantee the independence of NRAs by ensuring that they are legally distinct from and functionally independent of market players. In 2009, the European legislation strengthened this structural requirement by introducing additional measures to ensure NRAs' independence, from both market players and from any national institution, thus demonstrating how fundamental this prerogative is to ensure the effective application of the regulatory framework. While the regulatory framework acknowledges the legitimacy of supervision of NRAs' activities in accordance with national constitutional law, Article 3.3a of the Framework Directive explicitly prohibits NRAs from seeking or taking instructions in relation to their regulatory tasks from any other body.

It is therefore with great disquiet that BEREC notes the emergence in some Member States of initiatives which would have the effect of transferring responsibility for some regulatory tasks away from NRAs to become direct Government functions. This worrying trend, in contrast to both the letter and the spirit of the sector Directives, puts at risk the results achieved by independent regulators under the current institutional framework in relation to the promotion of competition and consumer protection in the electronic communications markets.

Indeed, preempting, encroaching or eroding NRAs sector-specific competencies would predictably undermine their capacity to adequately respond to competition problems identified in regulated markets, to the detriment of investment in the sector, and European citizens' welfare. This would put at risk the achievements which NRAs, both individually and collectively through BEREC, have made in bringing greater harmonisation in applying the regulatory framework for the benefit of the internal market.

As noted above, the regulatory framework explicitly recognises that an essential condition for guaranteeing NRAs' independence is the adequacy of their financial and human resources, to enable them to carry out the tasks assigned to them under the Framework. Indeed, the European

legislator has recognised that independent regulation can only be guaranteed if NRAs have adequate working tools at their disposal.

BEREC believes that the operational, organisational and budget autonomy of NRAs, including their ability to recruit and retain qualified staff to perform the complex, technical and sensitive tasks assigned to them, must absolutely be preserved. BEREC also recognises that Member States need to take appropriate measures regarding public administration in the context of current economic conditions and that NRAs, as public bodies, should not be exempt. However, fiscal or organisational measures should ensure that the ability of independent NRAs to effectively regulate the electronic communications market in accordance with the objectives enshrined in the regulatory framework is not diminished.

BEREC calls on the European Commission to continue to actively monitor developments and to take firm action where concerns arise as to the weakening of the institutional arrangements for the correct application of the regulatory framework. In particular, the Commission should guard against any national action that, in clear opposition to the objectives set out in the sector Directives, could undermine independent regulatory authorities' ability to perform their regulatory roles effectively. Such interference in the efficient execution of their tasks through the erosion of their powers, competencies, or resources, threatens the effective functioning of national markets and ultimately the single market.