

**BEREC Evaluation:  
Recommendations and Follow-up Actions  
Report 2014**

**6 June 2014**

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# 1 Introduction

In 2012, the European Commission initiated an evaluation on the performance of BEREC and the Office, as required under Article 25 of the BEREC Regulation. A study by external consultants (Price Waterhouse Coopers Luxembourg, PWC) was published by the European Commission in early 2013, together with a letter from the European Commission and an opinion of BEREC. The European Parliament appointed a rapporteur to prepare its own report on the BEREC evaluation. This resulted in a resolution by the European Parliament which was adopted on 10 December 2013. BEREC has supported the evaluation process from the start. In this report BEREC addresses the final recommendations.

The recommendations to BEREC are divided in the following categories: promotion of the internal market, advisory role of BEREC, accountability and the organisation of both BEREC and the BEREC Office. These categories will be highlighted in Chapters 2, 3, 4 and 5 of this report. The recommended actions addressed to BEREC are listed in Chapter 6. This chapter also includes an inventory of ongoing activities, which could address the recommended actions. This chapter will advise on whether extra activities are needed.

Chapter 7 contains the recommendations that are addressed to other parties. BEREC itself is not capable of addressing those recommended actions, e.g. on the independence of BEREC. Finally chapter 8 contains the conclusions.

## 2 Promotion of the internal market

The PWC report considers that the structure of BEREC is overall relevant and efficient. BEREC is functioning rather well. The Commission mentions that BEREC, particularly through its opinions under the Article 7/7a procedure, is contributing to a more consistent application of the EU's e-communication regulation in Member States and consequently to the promotion of the internal market. BEREC highlights that the PWC report acknowledges that BEREC promotes harmonisation in generating common positions, guidelines and similar documents. BEREC believes that this is due to the legitimacy of the "bottom-up" BEREC process. The Parliament stressed that the use of the procedure under Article 7/7a has worked effectively, justifying the two-tier set-up.

The PWC report finds the resource and time management demands during the article 7/7a procedures challenging. The time limit to produce an opinion is too short. NRAs have little time to make resources available and setting up of EWGs is time-consuming. Nevertheless, BEREC points out that it has always managed to generate opinions within the timeframes. The EWGs have operated independently and robustly. BEREC does, however, recognise the challenges. BEREC notes that notifications and supporting documents have not always been available in English at the launch of EWGs. BEREC **welcomes a discussion with the Commission in order to identify any further efficiencies and/or flexibility within our respective time-tables.**

### 3 Advisory Role of BEREC

One of the conclusions in the PWC report is that the advisory role of BEREC towards EU institutions is not sufficiently defined. The PWC report identifies support to the European Parliament and Council as an example of a task that has not yet been carried out. However, the Commission credits BEREC for providing useful input on international roaming and net neutrality. BEREC itself also refers to net neutrality (e.g. the traffic management exercise) as an example of how BEREC and the Commission can be more effective working together than on their own. In the context of the third Roaming Regulation, BEREC was asked to provide evidence to both the Council Working Group and the European Parliament. BEREC's challenge going forward is **to continue to develop its relationship with the legislators in order to be in the best position to contribute with its expertise and practical experience in future legislative and policy agendas in the sector, as a neutral and objective expert advisor to the European Institutions**. The Parliament report emphasises that BEREC's advisory role upstream of legislative proposals affecting the electronic communications sector should be made methodical. It is not clear though what the Parliament means by this. As this is also raised in the TSM initiative, it could be worthwhile to investigate more what is meant.

In the context of BEREC's advisory role, PWC recommends that BEREC for the long term to shed light on **emerging issues and propose recommendations to face them**. According to the Commission, BEREC should choose topics to tackle and recommend clear solutions to the EU institutions. By identifying and defining the next issues in the telecoms market, BEREC would further develop its advisory role, creating synergies between NRA perspectives and leveraging off their joint work. This recommendation combines several issues, which are (1) to shed light on emerging issues, (2) advice to the EU institutions and (3) advice to other NRAs.

## 4 Accountability

A conclusion presented in the PWC report is that it is complicated to consider the accountability of BEREC: towards which entity should BEREC be accountable? and what should BEREC be accountable for? PWC recommends for the medium term to better ensure the accountability of BEREC in relation to its own objectives. This would allow BEREC to define priorities and strengthen, first, its role of advisor to the EU institutions regarding harmonisation and the promotion of the single market and, second, its role with regard to NRAs in relation to benchmarking, snapshots and the exchange of best practices.

According to the Commission BEREC should be more accountable for the tasks it chooses to tackle on its own initiative, meaning the tasks included in its Work Programmes and identified in the Medium-Term Strategy. For PWC, BEREC could indicate in each annual Work Programme the commitments chosen for the year and in each Annual Report detail what has been achieved in relation to these objectives. BEREC should **reflect on Key Performance Indicators to assess its own progress, support its outputs by illustrating their impact and validate its choices for the future with regard to emerging issues**. By doing so, BEREC would maintain its independence – and so its role as advisor would be improved – while clarifying its priorities as well as strengthening its accountability towards commonly agreed objectives. The same recommendation is made by the Parliament.

It is additionally recommended in the PWC report that the scope and regular review of the BEREC Work Programme could be enhanced, the role of BEREC towards some topics should be clarified, and BEREC should better prioritise its Work Programme. BEREC should also **reduce the number of Expert Working Groups**, while ensuring that NRAs have sufficient resources to participate in BEREC. Also the Parliament report called for greater coherence and consistency of BEREC's work to better prioritise its tasks. BEREC itself mentions the introduction of a **"spring-clean" mid-way through the BEREC Work Programme year**, to provide an opportunity for the re-prioritisation of BEREC projects should the need arise to respond to an urgent request.

The Parliament considers that BEREC should act in the interests of the European public, and that the mechanisms for accountability to the European Parliament, as the only EU institution directly elected to represent the interests of the European public, should be strengthened. Based on the BEREC Regulation, the Board of Regulators is required to transmit its annual report to the Parliament, the Council and the Commission. The Parliament may request the Chair of the Board of Regulators to address it on relevant issues relating to the activities of BEREC. To date the European Parliament has not made use of this prerogative.

The PWC report recommends BEREC for the long term to leverage off progress data to define its future. Based on the information gathered, BEREC should **define its next objectives according to its medium-term and long-term strategies**. BEREC should also take the advantage of the preparation phase of the new programming period to reconsider its mission statement and communicate it both internally and externally.

According to PWC the roles related to external communications should be clarified. For instance, the BoR could **give its Chair a clearer and pre-defined mandate for communicating in the name of BEREC**. PWC additionally recommends to **explain and present in a "pedagogical" way its internal procedures and methods of operation, as well as the role of BEREC Office**, to prevent BEREC from being considered as a "black box". Moreover the Parliament report called for **better external communications in order to encourage stakeholder involvement**.

## 5 Organisation

### 5.1 Internal organisation

According to PWC's report the internal organisation of BEREC needs to be improved, an issue which has been identified by BEREC as well:

- **The Board of Regulators should focus more on strategic issues.** This is repeated both by the Commission and by the Parliament.
- **The Contact Network should better enable the BoR to discuss and take strategic decisions.**
- The operation of EWGs lacks consistency due to different working methods of each Chair. Also the quality of BEREC work varies according to the topic addressed. **Guidelines** could improve outcome consistency and delivery, while taking into consideration the particular approach required for each topic addressed.

PWC then recommends BEREC **to better define tasks within its organisation and improve internal communications**. The decision-making process should be more top-down and provide more room for the BoR to take strategic decisions. Additionally the PWC report recommends that EWGs should be organised into task forces, based on outputs. This recommendation is not very clear though and is probably already addressed by making project requirement documents for the outputs and the current review of the EWG structure and prioritisation.

### 5.2 BEREC Office

PWC concludes that the use of the BEREC Office needs to be clarified and improved. It recommends that the Board of Regulators should **agree on the balance between administrative and professional support** that the **Office** has to provide to BEREC. The Commission calls it the responsibility of the whole BEREC platform to best utilise the BEREC Office for both administrative and professional purposes. The Commission finds that the expertise of the Office staff is not used as much as it could or should be, when it comes to professional support. In this regard, the Commission advises BEREC to decide on the exact tasks of the Office. This was echoed by the Parliament. The Parliament report called for enabling the Office to support BEREC's substantive work more effectively. BEREC mentions that in terms of the role of the BEREC Office, while the expertise of its highly qualified staff should be exploited as much as possible, its function is not, and should not, be to overlay an "EU dimension" onto BEREC outputs. Furthermore, BEREC finds it important to note that the BEREC Office cannot legitimately be entrusted with the achievement of BEREC's regulatory objectives without distorting both the letter and the spirit of the relevant provisions of the BEREC Regulation – it is therefore important that, however much the BEREC Office might legitimately become involved in the preparation of regulatory outputs, BEREC itself should remain the engine for the delivery of those outputs.

The Parliament emphasises in its report that BEREC Office is the smallest EU agency, with an EU budget contribution of only EUR 3.768.696 and 16 authorised posts under the EU 2013 budget, primarily providing administrative support. BEREC itself stresses that the same set of EU rules and procedures applies to the BEREC Office (as apply to full-scale agencies with hundreds of staff members) regardless the size of the entity involved. The result is a disproportionate overhead.

Moreover, the Parliament considers that **the mission of the BEREC Office should be revised, reinforced and defined more precisely, taking particular account of the outcome of the BEREC audit on this**

**matter.**

The Parliament additionally calls for **greater use of teleworking and videoconferencing** to cut costs and reduce the carbon footprint.

Finally the PWC report recommends that, in the longer term, BEREC should **take into account best practices developed by other EU organisations/agencies to improve its governance and efficiency.**



## 6 Concrete actions

Recommended action	Current activities	Recommended Action sufficiently addressed by current activity?
To have a discussion with the Commission to try to identify any further efficiencies and/or flexibility within our respective time-tables when it comes to article 7/7a procedures	A meeting between the EC and representatives of BEREC took place. The EC agreed to share the public documents translated into English in due time. With regard to the timeline, the EC explained their internal procedures and limited margin of maneuver to allow BEREC further time for the assessment of the cases.	Yes, although the art. 7 timeline could be further assessed for the next review of the Framework Directive.
To continue to develop its relationship with the legislators in order to be in the best position to contribute its expertise and practical experience in future legislative and policy agendas in the sector, as a neutral and objective expert advisor to the European Institutions	Continual activity by the representatives of BEREC. Examples are the opinions at the request of the Commission (roaming, recommendation relevant markets, universal services) and the report made on request by MEP Trauttmann.	Yes. BEREC is working in close cooperation with the EC and has delivered its expertise when requested. Nevertheless, further interaction with the EP and especially the Council could be further developed.
To continue to develop its advisory role <i>vis a vis</i> the NRAs.	BEREC issued an internal procedure for the implementation of art. 2b of the BEREC regulation.	Yes
To consider emerging issues and recommendations to face them	Review Medium Term Strategy Outlook in 2014 Common Positions are reviewed to reflect new market trends and emerging regulatory issues. Recently, this has been the case of the markets 4,5 and 6 and geographic segmentation.	Yes
To reflect on Key Performance Indicators to assess BEREC's progress	Every CN and Plenary, information of the implementation of BEREC WP is circulated internally. The annual report informs of the activities carried out by BEREC. Debates on the functioning of BEREC are periodically	Yes. BEREC's progress is analyzed and reviewed on a periodic basis. This in-depth qualitative analyses instead of quantitative is considered more suitable to assess BEREC performance and it allows to determine not only if the objective

Recommended action	Current activities	Recommended Action sufficiently addressed by current activity?
	undertaken (BEREC Office workshop, reflection on the structure of the EWG, midterm strategy, etc.).	have been timely achieved but also if the quality of the work and the efficiency of the procedures.
To define objectives in the annual Work Programme and to present in the Annual Report the achievements and progress on the basis of those objectives	The WP foresees 4 major blocks of activities which reflect the major objectives and are also the major priorities. Annual Report lists all delivered WP items	Yes  Yes
To define priorities in the annual Work Programme	Ongoing activity for drafting WP 2015	Yes
To improve the management of the work programme through prioritisation and constant follow-up	A spring-clean was undertaken in 2013 for the first time. Corresponding follow-up to be carried out yearly.	Yes
To reduce the number of Expert Working Groups	Initiative from the Board 2014 to review organization of EWGs. One of the issues to be addressed is the EWG structure. Nevertheless, the number of the EWG (and PRDs) is related to the WP and the ongoing prioritization.	Yes
To define the next objectives according to its medium-term and long-term strategies	Review Medium Term Strategy Outlook in 2014	Yes
To give the Chair a mandate for communicating in the name of BEREC	The mandate and the procedure is already foreseen in art 3 RoP. A particular case is included in the communications plan in cases of crisis.	Yes
To explain and present in a pedagogical way the internal BEREC procedures and methods of operation, as well as the role of the BEREC Office	Communications plan currently being developed	Yes
To improve external communications in order to encourage stakeholder involvement	Communications strategy currently being developed Introduction of regular BEREC stakeholder forum. A debriefing meeting after every Plenary is organized.	Yes

Recommended action	Current activities	Recommended Action sufficiently addressed by current activity?
<p>The Board of Regulators should focus more on strategic issues</p> <p>The aim is to have guidance and discussion from the Board of Regulators to EWGs at various stages of the work.</p> <p>An orientation debate is an instrument that could be used.</p>	<p>Ad hoc workshops on emerging challenges and regulatory issues as well as high level meeting with the EC on legislative initiative are being organized</p> <p>Initiative from the Board 2014 to review organization of EWGs. One of the issues to be addressed in this context is the role of Board of Regulators as well as the role of BEREC Board in strategic issues.</p>	Yes
<p>The Contact Network should better enable the Board of Regulators to discuss and take strategic decisions</p>	<p>Increasing use of A-items</p> <p>Initiative from the Board 2014 to review organization of EWGs. One of the issues to be addressed in this context is the role of Board of Regulators as well as the role of BEREC Board in strategic issues and decisions.</p>	Yes
<p>To produce guidelines for EWGs to improve outcome consistency and delivery</p>	<p>Initiative of reviewing EWG structure</p> <p>Template introduced for structure, style of the contents, the language etc.</p> <p>With regard to art 7 and 7a procedures, a workshop has been foreseen to address (among other issues) the consistency of BEREC Opinions in this context.</p>	Yes
<p>To better define tasks within the BEREC organisation and improve internal communications</p>	<p>Ongoing initiative of reviewing EWG structure.</p> <p>Internal organisation into PRD's already in force.</p>	Yes
<p>To agree on the balance between administrative and professional support that the BEREC Office has to provide to BEREC</p>	<p>BEREC Office Taskforce</p> <p>BEREC Office Advisory Group</p> <p>The BEREC Office will be fully staffed at the end of 2014</p>	Yes
<p>To revise the mission of the BEREC Office</p>	<p>The mission is there and it will be under review in the drafting of a multiannual programme for</p>	Yes

Recommended action	Current activities	Recommended Action sufficiently addressed by current activity?
	BEREC Office.	
To take into account best practices developed by other EU organisation/agencies to improve BEREC's governance and efficiency.	Workshop organised in P2 2014 in Dublin. Contacts with other agencies take place regularly.	Yes
To increase the use of teleworking and videoconferencing	Board meetings already take place by means of videoconferencing. Videoconferencing system currently under investigation as it is supposed to be swiftly used more for other meetings as well.	Yes

## 7 Recommendations to others, including review

This section contains recommendations addressed to parties other than BEREC. These recommendations do not lead to any direct actions of BEREC. However, BEREC has produced statements on several issues, especially in the context of the ongoing legislative process on the European Commission's proposal for a Connected Continent Regulation.

### 7.1 Independence

One of the conclusions of the PWC report is that the independence of BEREC from EU institutions and different NRAs could be improved.

The Commission states that BEREC has to be independent from any government or stakeholder. In order to achieve this, it is of utmost importance that, at the national level, each NRA member of BEREC carries out its functions independently. Also the Parliament indicates that BEREC can only be effective if its independence from the Member States and EU institutions is guaranteed. The Parliament calls on **Member States and the Commission to ensure that the independence of NRAs at national level and European level is strengthened**, not weakened, as this is the only way to ensure the overall independence of BEREC. In the same way, they call on the Commission **to guarantee BEREC's independence from the EU institutions in future proposals relating to the scope of mission of BEREC**.

BEREC mentions that the Regulatory Framework requires Member States to **ensure that BEREC members are adequately resourced**. BEREC refers to the particularly challenging economic period when national budgets are under pressure and sectorial regulators are not exempted from national budget cuts. The Parliament recommends in its report that the Commission and Member States ensure that adequate financing is made available for BEREC and its member NRAs. The Commission is already looking into this issue and BEREC looks forward to combine efforts on this front.

The Commission says it can be challenging for BEREC to align European objectives with national views and considerations, due to the fact that it is composed of NRAs. It believes that BEREC, as a single entity, should be more focused on missions that concern the single market: harmonisation and empowerment of EU consumers. BEREC questions this perspective, as it seems to be based on the belief that the internal market is best and most sustainably served by the imposition from above of a European way of seeing the world onto NRAs, which contradicts with NRAs' own individual regulatory objectives. However, harmonisation and the development of the internal market do in fact directly concern NRAs. BEREC believes that the internal market is a continual project, best served by increasing the quality of regulation across individual national markets, and the most robust and sustainable way of achieving this (ensuring that regulatory decisions are seen as having legitimacy within the national markets) is through the "bottom up" approach currently represented by BEREC. BEREC adds that it has not hesitated to find against its own members on Article 7/7a cases. Meanwhile, the Parliament report recommended that **BEREC's role be better defined, in particular its relationship with NRAs**.

### 7.2 Commission to provide clearer visibility regarding ad hoc requests

PWC recommends in its report that the Commission proactively informs BEREC of the ad hoc requests it intends or reasonably expects to submit. BEREC points out that these requests have at times been

disruptive, and welcomes the Commission's efforts to share its own forward-looking calendar with BEREC.

### **7.3 Another evaluation**

PWC points out that the next evaluation of BEREC and the BEREC Office should be planned after 5 years of effective existence of the organisation. This would imply that a second evaluation should take place in 2016.

### **7.4 Role of IRG**

The Parliament report recommends the formalization of the role of the Independent Regulators Group (IRG), while ensuring that it does not duplicate the tasks entrusted to the BEREC Office.

### **7.5 Strengthen BEREC's role and improve the functioning of BEREC**

The Parliament recommends in its report that BEREC's role should be strengthened so as to facilitate the definition of common positions with a view to enhancing the internal market approach.

The Parliament considers that there is still room to improve the functioning of BEREC and greater predictability for market actors, by:

- Greater harmonisation of the tasks carried out by NRAs
- Giving them competence for relevant aspects directly related to security and resilience.

### **7.6 Greater consolidation**

The Parliament report considers that greater consolidation is needed to enable operators to exploit economies of scale more fully, and that BEREC should play a prominent role in that process.

### **7.7 Stable legislative framework**

The Parliament wants to see a clear and stable legislative framework for a better internal market that would result in increased competition and improved services for consumers.

## 8 Conclusions

Although the general performance of BEREC has to be considered, in general terms, satisfactory, some elements to be improved have been also identified in order to allow BEREC to: (i) be more proactive; (ii) improve the internal communication without increasing bureaucracy and workload ; (iii) foster the participation on equal terms of all NRAs.

BEREC has developed new tools and approaches that allow more professional and streamlined work. Those have helped to reduce the workload and focus on the identified strategic subjects while, at the same time, avoiding to ignore any relevant issue identified. Those are: (i) BEREC Mid-term Strategy; (ii) multiannual work-streams; (iii) increase of exchange of information and best practice through workshops.

The current structure (division in EWG and subdivision in PRDs) and layers of decision from the technical to the decision-making level provides balance between stability and flexibility. It also leaves room for the negotiations to take place at different levels considering all views in an efficient manner.

The EWGs have improved their performance and work in a more professional manner. In the last years, the quality of the reports has been enhanced at the same time that the deadlines are met in the practical totality of the cases. However, rules or guidelines for the EWG work may also be useful for the better functioning of BEREC.

With regard to the decision making process, the more steering role of BEREC Board and Board of Regulators in strategic issues are to be evaluated. A better use of the time at the Plenary meetings is also essential.

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