



# Study on the Evaluation of BEREC and the BEREC Office

## FINAL REPORT

A study prepared for the European Commission  
DG Communications Networks, Content & Technology

**This study was carried out for the European Commission by**



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## ***Acknowledgements***

We would like to acknowledge the useful guidance and feedback provided by the Steering Committee throughout this study, and for providing key data sources.

This Report provides you with the fundamental understanding of the evaluation study on BEREC and its Office.

Responsibility for the contents of this report remains with PwC.



## Executive Summary

### Study objectives, scope and challenges

The present evaluation study was conducted for the European Commission Directorate General for Communications Networks, Content and Technology. It was initiated in March 2012 and was finalised in October 2012 with a workshop presentation at the European Commission's premises.

The **overall objective** of the study was to assess the achievements and added value of the Body of European Regulators for Electronic Communications (BEREC), as well as whether the governance, organisational structures, management and working methods of BEREC and of the BEREC Office have been working as intended with regards to their respective objectives, mandates and tasks defined in the regulation and in their respective work programmes.

This evaluation study took into consideration the particular organisation of BEREC. This platform of telecoms National Regulatory Authorities (NRAs) gathers national experts according to the topics addressed. It is composed of three levels: (1) the Board of Regulators (BoR), composed of the NRA Heads, (2) the Contact Network (CN), composed of high-level representatives from NRAs in charge of harmonising BEREC work and diffusing information between BEREC and their NRA and, (3) the Expert Working Groups (EWGs) composed of national experts and in charge of drafting and writing BEREC outputs. The BoR and each EWG is chaired by a designated NRA. In order to provide professional and administrative support to BEREC, a BEREC Office was created by the BEREC Regulation (2009). BEREC and the BEREC Office are also at their early stages: BEREC exists since January 2010, the revised Directives creating BEREC had to be transposed in May 2011 and the BEREC Office obtained full autonomy in September 2011.

The regulation requires the Commission to publish an evaluation report within the three years of the effective start of operations of BEREC and the Office<sup>1</sup>.

The **scope** of the evaluation study covers the organisational structures, the governance and the working methods of BEREC and of the BEREC Office, as well as the achievements and value-added of BEREC.

Three main **challenges** were faced during the evaluation:

1. Balancing diverse opinions.

All stakeholders do not have the same definition or the same expectations regarding BEREC. That is why they may have contradictory views despite the same willingness to make BEREC a success. It was necessary to consider all the collected views in an impartial and balanced manner so as to ensure the participation of all relevant stakeholders and secure the buy-in.

2. Assessing two complementary but distinct entities.

The study assesses the achievements, organisational structures and working methods of both BEREC and the BEREC Office. These two entities are distinct and with particular specificities: while BEREC is a platform of regulators with no legal personality but with decision-making powers, the Office is an EU body with legal personality but with only a supporting role. A clear distinction had to be made between them and assessing each entity necessitated a specific approach.

3. Assessing two entities that are only at early implementation stages.

Due to the recent full establishment of BEREC and the BEREC Office, some of their impacts may not be clearly distinguished yet. Moreover, while BEREC inherits from the ERG structures, the BEREC Office is a new organisation that needs to adapt. Finally, their

<sup>1</sup> Article 25, BEREC Regulation: *“Within three years of the effective start of operations of BEREC and the Office, respectively, the Commission shall publish an evaluation report on the experience acquired as a result of the operation of BEREC and the Office [...]. The evaluation report shall take into account the views of stakeholders, at both Community and national level and shall be forwarded to the European Parliament and to the Council. The European Parliament shall issue an opinion on the evaluation report”*.

required cooperation, coordination and informal aspects of governance may require time to fully develop.

On the basis of this evaluation, the present evaluation study provides an assessment on BEREC's and its Office's strengths and weaknesses and makes recommendations for improvements.

## **Study approach and methodology**

A **four-phased approach** to conduct this study was applied.

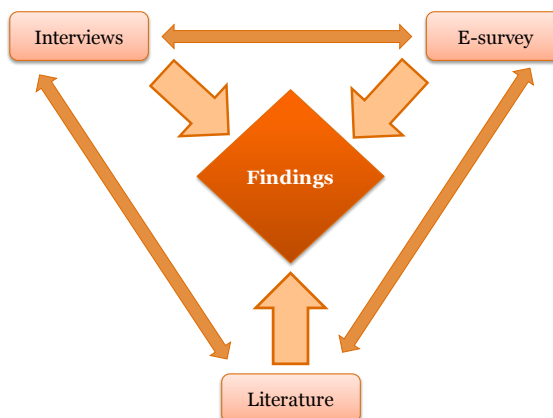
In the first phase, the methodological approach was designed and the research strategy was detailed. A list of required data and information was defined - for both BEREC and the BEREC Office - based on the criteria and dimensions to be assessed. These criteria and dimensions were defined to establish the general profiles of BEREC and the BEREC Office. Our six main evaluation criteria are: (1) relevance, (2) added value, (3) effectiveness, (4) efficiency, (5) impact and (6) coherence.

In the second phase, data sources were identified. These were a literature review, face-to-face and phone interviews, an online survey and case studies.

In the third phase, data was collected: the literature review was conducted and the stakeholder consultation along with the online survey were organised with the development of two different questionnaires. Two case studies were also conducted, namely: (1) the Article 7/7a procedure and (2) the Next Generation Access Networks and BEREC. We interviewed 36 people during face-to-face and phone meetings and conducted an online survey covering all the countries concerned by the BEREC platform (which is larger than the EU-27 Member States). 129 people answered the questionnaire developed for the online survey. The involvement of the European Commission, the National Regulatory Authorities (NRAs), the BEREC Office and the representatives of the industry and EU consumers was crucial to this study. Discussions with senior representatives were essential not only to understand the operational and strategic functioning of BEREC and its Office but also to collect data.

In the fourth phase, data was analysed in order to draw clear and specific conclusions and recommendations. Since the evaluation results and conclusions of the present study depended more on the views and opinions gathered during interviews and the online survey, we considered that our collected data had to be triangulated in order to validate the findings. The principles of **triangulation** are that all findings should be supported by three different data sources: in this case the literature, interviews and the online survey. This approach allowed us to confirm or invalidate a finding, as well as substantiate our results. The principle of triangulation is illustrated in the Figure below.

**Figure 1 : Principle of triangulation for the evaluation of BEREC and the BEREC Office**



Source: PwC

Instead of using only established judgement criteria and fixed target levels, this triangulation process and its related analysis provided additional valuable elements which enriched the findings and conclusions on the evaluation of BEREC and the BEREC Office. It also enabled us to test and validate findings through the use of closed and open questions.

## Main findings

Our analysis is structured according to the three evaluations addressed by the study:

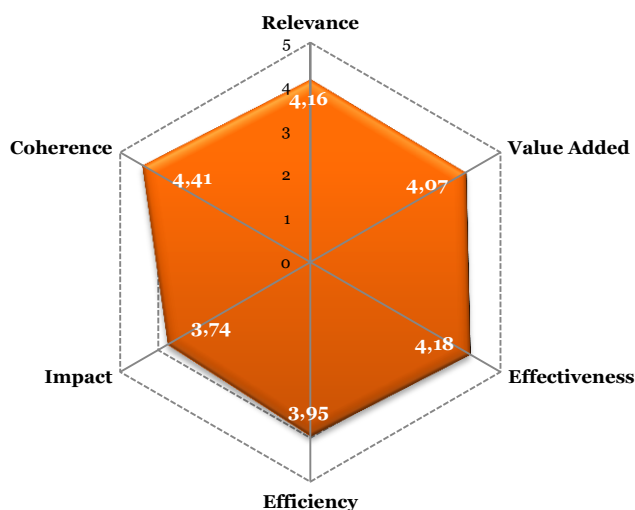
- Evaluation of the achievements and value added of BEREC;
- Evaluation of the governance, organisational structure and management of BEREC;
- External evaluation of the structure and working methods of the BEREC Office;
- Internal evaluation of the structure and working methods of the BEREC Office.

The first three evaluations followed the same structure, based on our evaluation criteria. Each evaluation examines the relevance, added value, effectiveness, efficiency, impact and coherence, complementarity and synergy of the topic evaluated. The fourth evaluation concerns the internal evaluation of the working methods of the BEREC Office.

Indeed, our evaluation of the structure and working methods of the BEREC Office was divided into two parts: an “external evaluation” and an “internal evaluation”. The results of the first evaluation derive from the views and opinions of people mainly not working within the Office. The results of the second evaluation are based on different evaluation dimensions and tackle issues that vary from the third chapter on the external evaluation. This evaluation also derives from a specific questionnaire and our field visit in Riga. It focuses more on the internal processes of the BEREC Office.

Hereafter are presented the four general profiles of BEREC and the BEREC Office deriving from the four evaluations conducted:

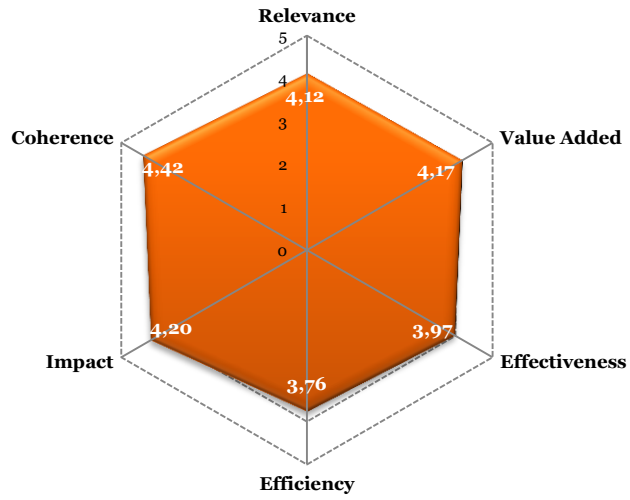
**Figure 2 : BEREC general profile - Achievements & Value-Added**



Source: PwC

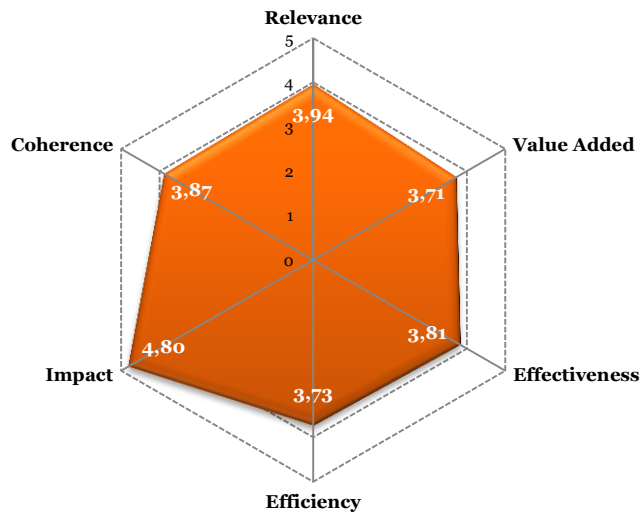


**Figure 3 : BEREK general profile - Governance, organisational structure and management**



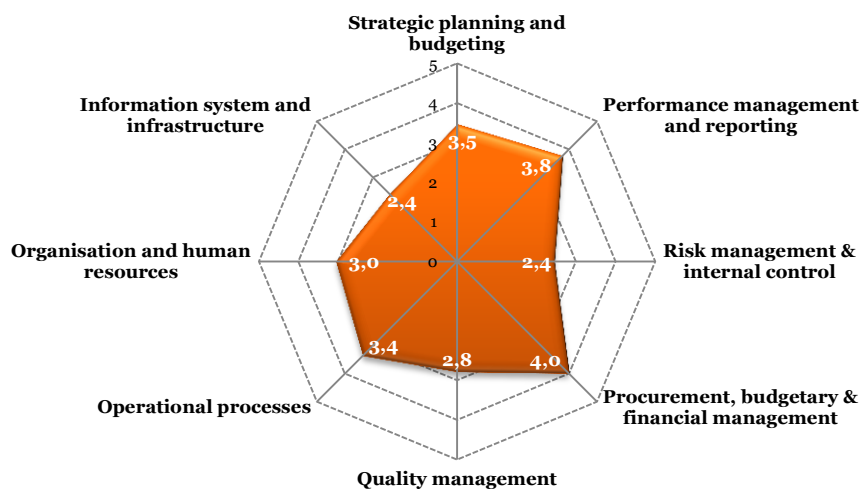
Source: PwC

**Figure 4 : General profile of the BEREK Office – External evaluation of the structure and working methods**



Source: PwC

**Figure 5 : General profile of the BEREC Office – Internal evaluation of the structure and working methods**



Source: PwC

## Conclusions

To develop our conclusions, the findings from the survey were combined with the two case studies. Our conclusions cover the overall assessment of BEREC and the BEREC Office.

**The structure of BEREC is overall relevant and efficient even though the everyday work of NRAs has not changed with the creation of BEREC by comparison with the ERG.** Also, BEREC appears nowadays the most adaptable and balanced organisational structure to regulate electronic communications in the EU: promoting the harmonisation of the Single Market and adapting BEREC outputs to each national market. Furthermore, when considering the effectiveness of the platform to achieve its requirements and objectives, BEREC may be considered, until now, a success. The structure of BEREC is able to provide a more organised work and brings added value to EU institutions and NRAs. Furthermore, the involvement of NRAs in the Expert Working Groups (EWG) delivers contributions on time despite a heavy Work Programme and *ad hoc* requests that require the setting-up of *ad hoc* Expert Working Groups.

**The advisory role of BEREC is not sufficiently defined,** despite a clear statement in BEREC Regulation: “BEREC shall advise the Commission, and upon request, the European Parliament and the Council”<sup>2</sup>. In addition, many of the large number of BEREC outputs are to a certain extent advisory documents. However, many participants to the survey regret that BEREC does not shed enough light on emerging issues or propose recommendations and/or guidelines to face them, within the remits of its advisory role. As will be exemplified in the NGA case study, there is a difficulty of getting affirmed positions - this is work in progress for BEREC and will require a change of culture among NRAs. BEREC being a bottom-up regulatory model exemplifies in some cases more national considerations than a pure EU Single Market driven approach. At the same time, the Single Market is a long-term project mainly served through the work NRAs achieve together and with the Commission to ensure the consistent application of regulation in all Member States and to increase the quality of regulation across national markets.

**The independence of BEREC could be improved.** BEREC independence needs to be mainly considered *vis-à-vis* two sets of stakeholders: (1) EU institutions and (2) different NRAs. The EU institutions welcome BEREC’s independent advisory role and are willing to maintain its independence. Independence towards NRAs, that is, whether BEREC assumes an EU vision rather than a nationally driven one, is more complex in the sense that NRAs intrinsically

<sup>2</sup> Article 1, BEREC Regulation.

compose BEREC and strengthen the platform thanks to their own knowledge and expertise. Even though, “*in all its activities BEREC shall pursue the same objectives as those of the national regulatory authorities*”<sup>3</sup>, BEREC outputs should illustrate an EU perspective and provide an EU-wide approach towards the issues addressed. NRAs very much appreciate the sharing of knowledge and experience that the platform enables, but BEREC, as a single entity, should be more focused on missions that concern the Single Market: harmonisation of the internal market and empowerment of EU consumers. Furthermore, BEREC has to be independent from any government or stakeholder<sup>4</sup>. In order to achieve this, it is of utmost importance that, at the national level, each NRA composing BEREC carries out its functions independently.

**The accountability of BEREC is complicated to consider.** Since BEREC is independent from EU institutions and is composed of national entities, the first question concerning accountability that comes to mind - *towards which entity should BEREC be accountable?* - is difficult to answer, because BEREC is an independent body. On the other hand, another question related to accountability is to be considered: *what BEREC should be accountable for?* This second question appears more appropriate to consider. That is why if BEREC could express clearly the topics it considers as key, it could then define priorities and could strengthen, first, its role of advisor to the EU institutions regarding the harmonisation of the Single Market and, second, its role with regard to NRAs in relation to benchmarking, snapshots sharing and exchange of best practices.

**The scope and the regular review of the BEREC Work Programme could be enhanced.** BEREC implements different methods to manage its workload; nevertheless, upcoming *ad hoc* requests and article 7/7a procedures require BEREC to deliver more documents than expected during the adoption of the Work Programme. As a consequence, the BEREC Work Programme is difficult to accomplish considering that BEREC is willing to pay more attention to *ad hoc* requests while at the same time some NRAs face resource downsizing. Therefore, it is in the interest of both BEREC and the European Commission to have greater flexibility and to invest more time and effort to manage the BEREC Work Programme. In that perspective, BEREC has set up a Mid-Term Strategy and currently develop a strategy paper.

**The role of BEREC towards some topics should be clarified and BEREC should better prioritise its Work Programme.** For instance, since the Digital Agenda is high on the agenda of the European Commission and of NRAs, it also influences BEREC, even though the latter has no official role in relation to it. Therefore, since the BEREC Work Programme is already quite dense, the platform needs to pay more attention in prioritising the topics it addresses. BEREC has developed a Mid-Term Strategy that defines a timeframe for Work Programmes. Also, since this Mid-Term Strategy has been developed in 2011 and 2012, it is still early to show visible effects in terms of prioritisation.

**The quality of BEREC work varies according to the topic addressed.** Although, most of the documents are considered of good quality by stakeholders, some documents could be better drafted and consistency between documents could be improved. These issues are linked to the number of documents to deliver, the time and the national experts' availability to draft them as well as the internal work organisation chosen by the EWG Chair. This issue is exacerbated by the fact that the organisation of EWGs is not harmonised and is defined *ad hoc* by each EWG Chair. If each topic requires a particular approach, BEREC could improve the quality of its deliverables through a more systematic organisation. BEREC also realised that to improve the consistency of its documents it needed to improve its editorial style (layout, format, and quality of English).

**Resource and time management during the Article 7/7a procedure is challenging.** BEREC and the BEREC Office have so far fulfilled their functions under the Article 7/7a procedure successfully, but the workload has been higher than expected and resources are stretched. The cooperation between BEREC, the BEREC Office, the Commission and the notifying NRA appears to be well-functioning. The BEREC Office has also fulfilled its role professionally and, on the whole, effectively, given the high workload and with limited

<sup>3</sup> Article 1(3), BEREC Regulation.

<sup>4</sup> Article 4(2), BEREC Regulation.

resources. There are nonetheless a number of procedural challenges during this Article 7/7a procedure: NRAs have little time to make resources available; the setting up of Article 7/7a Expert Working Groups is time consuming and could be more systematic; the time-limit for the working group to produce draft opinions is too short, the time-limits for Article 7 and 7a respectively could be better aligned and the time provided for comments on draft opinions is considered too short.

**Some of BEREC's tasks have not been conducted yet.** Since BEREC is a new structure, some of its tasks are still to be conducted. For instance, support to the European Parliament or the Council in relation with third parties has not been fully conducted yet.

**Roles related to external communication should be clarified.** As BEREC is a complex structure, it is complicated for industry representatives to know whom to contact in case of questions or issues. BEREC nonetheless organises public consultations, post-Plenary debriefings, public workshops and provides regular consultation times in Brussels to enhance communication with third parties.

**The internal organisation of BEREC needs to be improved,** which has been identified by BEREC as well:

- The Board of Regulators should focus more on strategic issues. BEREC strategy paper currently under development proposes to organise two strategic workshops per year<sup>5</sup>.
- The Contact Network should better enable the BoR to discuss and take strategic decisions. The introduction of "A items" during Plenary Meetings (items that are approved without discussion) allows the BoR to discuss longer on more strategic topics.
- The operation of EWGs lack consistency due to different working methods of each Chair. Guidelines could improve outcome consistency and delivery, while taking into consideration the particular approach required for each topic addressed.

**The use of the BEREC Office needs to be clarified and improved.** A clear distinction has been made between the administrative support that the Office has to provide and the professional support it should also provide. Some stakeholders consider that the administrative support should be improved, but the required adaptation is not so challenging. Considering the professional support, the expertise of the Office staff is today not used as much as it could or should be according to the European Commission and some NRAs. That is why the use of the BEREC Office firstly requires a change in mentality within BEREC. More communication and trust is needed between the BEREC Office and the Contact Network and EWGs.

Indeed, one of the biggest challenges for BEREC concerns the appropriate use of the BEREC Office. Two approaches exist:

- Either the BEREC Office only exists to provide administrative support in the sense that it diffuses information among NRAs and helps to set-up the EWGs. This option enables national experts to keep control of BEREC documents to deliver.
- Or the BEREC Office takes a greater place in the drafting and delivery of BEREC contributions by supporting the EWGs with their expertise and knowledge of the electronic communications market at the EU level. This approach could offer an EU dimension in the outputs delivered by BEREC, in addition to the national expertise provided by NRAs and resulting from their day-to-day regulatory practice in their respective national markets. Moreover, the BEREC Office is already providing strong professional support in the Article 7/7a Opinions.

According to the BEREC Regulation, the BEREC Office should provide administrative and professional support. The balance between the administrative and the professional support depends on the strategic direction chosen by the BoR, the BoR Chair and each EWG Chair.

<sup>5</sup> This strategy paper was presented during the BoR Plenary Meeting of May 2012 in Dubrovnik, Croatia.

## Recommendations

BEREC has ambitious long-term goals set out in the regulatory framework: (1) contribute to the development of the internal market for electronic communications networks and services, (2) support NRAs in their own work, and (3) contribute to the protection and consumer empowerment of EU citizens.

Translating these challenging objectives into an institutional and operational setting could be difficult, especially given the complex structure of BEREC. That is why the following paragraphs present elements that could feed into the roadmap exercise for BEREC for short-, medium- and long-term timelines.

### Short-term recommendations

#### 1. Better define tasks within the BEREC organisation and improve internal communication.

BEREC should emphasise the role of the BoR as a decision-making body, focusing the discussion on key subjects and providing orientations for the CN and EWGs. Following that, the CN level should take into greater consideration the reduction of the agenda of Plenary Meetings.

#### 2. Better prioritise the tasks to be conducted and reduce the number of EWGs, while ensuring that NRAs have sufficient resources to participate in BEREC.

All stakeholders consider the Work Programme as too heavy and difficult to fulfil, especially when considering also *ad hoc* requests from the European Commission. Even though BEREC has developed initiatives to better prioritise its tasks, the Mid-Term Strategy should become a document of prime importance. This would enable better definition in each Work Programme on an annual basis, making these programmes shorter and with better focus on fewer priorities. More time could also be given to *ad hoc* requests. Another consequence of this approach would be a reduction in the number of Expert Working Groups. National experts would consequently have more time for answering *ad hoc* requests and take part in the Article 7/7a procedures, lessening the number of NRAs who are voting on issues which they have had limited vision. Some NRAs might also have limited resources to adequately perform their tasks within BEREC. Since BEREC builds on NRA's expertise to deliver its work, it is essential to ensure that NRAs that contribute to BEREC are entrusted with the appropriate tasks and functions according to the regulatory framework and have enough resources to participate in BEREC's work<sup>6</sup>. The number of Expert Working Groups and their allocated tasks should be discussed every year by BEREC and the BEREC Office, with regard to the priorities decided by the BoR for the coming year and aligned with the Mid-Term Strategy.

#### 3. The European Commission should provide clearer visibility regarding *ad hoc* requests.

The European Commission should proactively inform BEREC of the *ad hoc* requests it intends or reasonably expects to submit. This would avoid issues for BEREC in delivery as well as improve time available for national experts and so the quality of BEREC documents. It would also continue to improve the working relationships between BEREC and the European Commission.

#### 4. Roles and responsibilities for external communication should be clarified.

BEREC is willing to be as transparent as possible towards third parties. However, BEREC could benefit from a clearer communication towards industry and consumer representatives. In that perspective:

- The BoR could give to its Chair a clearer and pre-defined mandate for communicating in the name of BEREC.

<sup>6</sup> Article 3, Framework Directive.

- The internal BEREC procedures and methods of operation, as well as the role of the BEREC Office could be explained and presented in a pedagogic way to prevent BEREC from being considered as a “black box”.

It should also be clearer for market stakeholders which BEREC internal stakeholder to contact in case of query or question.

BEREC also conducts public consultations to gather industry representatives’ views. However, BEREC rarely indicates how each consultation influenced its reports, Work Programme and recommendations. Doing so would better show the extent to which consulting market stakeholders is valuable to BEREC in its delivery process and in substantiating BEREC recommendations. To do so, the BEREC Office could follow-up the consultation process and handle the relationship with participants, along with the EWG in charge, if appropriate.

## **Medium-term recommendations**

### **1. The decision-making process should be more top-down and provide more room to the BoR to take strategic decisions.**

BEREC is currently working with a bottom-up approach, with the technical work done at the EWG level. The latter raises issues and forwards documents to the CN and the BoR. Moreover, the heavy agenda of Plenary Meetings prevents the BoR members from discussing strategic issues and considering the future role of BEREC with regards to the evolution of the electronic communications market. That is why BEREC also requires a top-down approach in its decision-making, based on discussion and prioritisation done at the BoR level. This would mean that:

- Fewer issues are addressed during BoR Plenary Meetings;
- More time is left for extensive discussion on the future of the telecoms market and the role BEREC should play in its development. BEREC proposes in its strategic paper to organise strategic workshops twice a year.

### **2. EWGs should be organised into task forces.**

To harmonise the internal work of EWGs and ensure consistency as well as increase the general quality of BEREC outputs, EWGs should be organised into task forces. By doing so:

- Each EWG would define the tasks to be achieved during the year according to the Annual Work Programme and aligned with the Mid-Term Strategy;
- A specific task force would then be defined with a clear role and scope of actions within the EWG;
- The Chair would then name the NRAs and experts to participate in each task force according to their respective expertise and the needs identified in the task force. The latter would have the full responsibility of producing the output required to the Expert Working Group.

This process could happen:

- At the beginning of each year for tasks that can be planned and that need to be tackled according to the Annual Work Programme (for established EWGs);
- As soon as an *ad hoc* request is transmitted to BEREC by the European Commission which involves an established EWG or calls for the setting-up of an *ad hoc* EWG.

These task forces would leverage the existing EWG drafting teams and Project Requirements Documents (PRD) and complement them since the task forces would be based on outputs to draft as well as topics of interest to follow or even reports that BEREC would decide to develop on its own initiative. The institutionalisation of task forces would also enable more consistency in BEREC outputs and EWG Chairs’ management.

### **3. Better ensure the accountability of BEREC towards its own objectives.**

According to the regulatory framework, BEREC is independent from EU institutions. On the other hand, BEREC should be more accountable when it recommends a particular regulatory approach (for example, on international roaming) or for the tasks it chooses to tackle by itself,



meaning the tasks included in its Work Programmes and the Mid-Term Strategy. Following that, it is important to stress that BEREC's increased accountability shall not be at the detriment of its capacity to take up additional tasks on emerging issues, on its own initiative or upon request of the EU institutions.

To do so, BEREC could indicate in each Annual Work Programme the commitments chosen for the year and in each Annual Report detail what has been achieved with relation to these objectives, for example progress towards:

- Contribution to the development of the internal market for electronic communications networks and services;
- Support to NRAs in their own work;
- Contribution to EU citizens protection and consumer empowerment.

In that perspective, 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.

#### **4. The BoR should agree on the balance between administrative and professional support that the Office has to provide to BEREC.**

By the end of 2012 the BEREC Office will have achieved its target size with the appropriate staff members able to provide professional and administrative support to BEREC. It is the responsibility of the whole BEREC platform to best utilise the BEREC Office for both administrative and professional purposes, taking into consideration the respective role of each entity: the BoR, the BoR Chair, the EWG Chair and the EWGs. In that perspective, BEREC should decide, together with the Office and in line with the regulation, on the exact tasks of the Office. Defining these tasks mostly needs a change in BEREC's consideration for the Office. BEREC should also provide yearly feedback to the Office on its performance. This feedback would be the occasion for the two entities to discuss about how to better achieve their mutual objectives and work together. Also, in the event that the regulatory framework limits the evolution of the BEREC Office, it should be considered to adapt new regulation.

Moreover, even though the location of the BEREC Office in Riga might be a problem in the everyday work of BEREC, the location issue needs to be overcome by a clear definition of the role and responsibilities of each actor and by the definition of how the BEREC Office might take full part in the EWG work, in respect to the needs of the BoR, its Chair and EWG Chairs.

### ***Long-term recommendations***

#### **1. Consider emerging issues and recommendations to face them.**

Within the remit of its advisory role (as defined by BEREC Regulation), BEREC should choose topics to tackle and recommend clear solutions to the EU institutions. For instance, in addressing the NGA issue as soon as 2006, the ERG showed its ability to work on emerging issues in a timely manner. Following that example, the EU institutions expect BEREC to provide a clear EU vision on the future of the electronic communication market which provides input to future EU policy considerations. By identifying and defining the next issues of the telecoms market BEREC would develop its advisory role, create synergies between NRA perspectives and leverage off their joint work.

#### **2. Leverage off progress data to define the future of BEREC.**

Based on the information gathered regarding its own work, BEREC should define its next objectives according to its mid-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. The platform could also take into account best practices developed by other EU organisations/agencies to improve its governance and its efficiency.

**3. Another evaluation of BEREC and the BEREC Office should be planned in 2016.**

The next evaluation of BEREC and its Office should be planned after 5 years of effective existence of the organisation. This would imply that a second evaluation of the Body of European Regulators for Electronic Communications and its Office should take place in 2016.

### ***Presentation of the evaluation findings***

Findings, conclusions and recommendations included in the present Final Study Report were presented during a workshop in October 2012 at the European Commission's premises in Brussels.

Apart from presenting the evaluation findings, the main objective of this workshop was to build consensus and obtain buy-in from stakeholders concerning the results of the evaluation study and the priority recommendations for the future.

For the outcomes of the workshop presentation, please refer to *Appendix H. - Summary of the workshop outcomes.*





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# 1. Introduction

## 1.1. Objectives of the present Final Study Report

The present Final Study Report intends to present the findings, conclusions and recommendations regarding the evaluation of BEREC and the BEREC Office. This evaluation study started in March 2012 and will be closed by a presentation workshop organised in October 2012 in Brussels.

This Final Study Report has been set up in accordance with the European Commission – Directorate General for Communications Networks, Content and Technology (DG CONNECT) Terms of References (ToR) published on October 10<sup>th</sup>, 2011 for the “Study on the Evaluation of BEREC and the BEREC Office” and our, PricewaterhouseCoopers (hereafter: “we” or “PwC”), proposal submitted on December 2<sup>nd</sup>, 2011.

This Final Report presents the following elements:

- Our methodological approach;
- Our analysis and findings;
- Our conclusions;
- Our recommendations.

It also includes two case studies on the following topics:

- The Article 7/7a procedure;
- Next Generation Networks - Access.

## 1.2. Background and context of BEREC

The Body of European Regulators for Electronic Communications (BEREC) has been created after the review of the 2002 telecoms regulatory framework. It results from an evolution of the previously existing European Regulators Group (ERG). The following Box presents the evolution from ERG to BEREC.

### Box 1: From ERG to BEREC

#### From ERG to BEREC

The “**European Regulators Group**” (ERG) was set up in 2002 as an independent advisory group to facilitate consultation, coordination and cooperation amongst National Regulatory Authorities (NRAs). However, it was judged that further steps could be taken to ensure appropriate consistency in the application of EU rules. This was due, in part, to the fact that “*all ERG common approaches are factually based on consensus, making such common approaches difficult and slow to achieve*”<sup>7</sup>. The remit and tasks of ERG were also not as clear as needed to fulfil its objectives. The ERG was also viewed as lacking transparency in term of its decision-making.

To overcome these obstacles, the Commission proposed the establishment of a **new independent Authority (EECMA – European Electronic Communications Markets Authority)**, which would take over the functions of the ERG and give them a robust and transparent foundation in EU law to further the internal market by improving consistency in the application of EU rules. The new Authority would establish an effective coordination between the Commission and the NRAs on issues where European consistency is needed and provide a cost

<sup>7</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority, COM(2007)699 rev 2.

effective platform for addressing pan-European issues.

The creation of a **powerful EU-wide independent Authority was however resisted by Member States and the European Parliament**, on the ground that NRAs are best placed and better equipped than an EU-wide Authority to define and implement measures necessary to achieve the policy objectives of the regulatory framework. A compromise emerged during the legislative process to establish a “**Body of European Regulators for Electronic Communications**” (BEREC). This body would neither be a Community agency nor have legal personality. BEREC should replace the ERG and act as an exclusive forum for cooperation among NRAs, and between NRAs and the Commission, in the exercise of the full range of their responsibilities under the EU regulatory framework. BEREC should provide expertise and establish confidence by virtue of its independence, the quality of its advice and information, the transparency of its procedures and methods of operation, and its diligence in performing its tasks<sup>8</sup>. BEREC would significantly reinforce the pre-existing set-up of ERG to enable consistency in the application of EU rules while leaving to the NRAs the responsibility for defining and analysing markets and the power to monitor the implementation of the regulatory framework and if necessary to impose remedies.

In order to provide BEREC with professional and administrative support, the **BEREC Office was established as a Community body with legal personality**. In order to efficiently support BEREC, the Office has legal, administrative and financial autonomy. The Office comprises a Management Committee and an Administrative Manager<sup>9</sup>.

Just like the preceding ERG, BEREC therefore mostly issues non-binding opinions, positions and guidelines. However, it is expected that BEREC will have a greater impact as the NRAs and the Commission are required to seek BEREC’s input in some cases and to take the utmost account of any opinion, recommendation, guidelines, advice or regulatory best practice adopted by BEREC<sup>10</sup>. The BEREC Common Positions are therefore meant to pave the way towards a **higher level of harmonisation and a common market for electronic communications, while still respecting national characteristics**. The extent to which NRAs have taken into account BEREC’s approach when taking decisions at national level and, consequently, whether BEREC has had an impact in harmonising decisions taken by individual NRAs will be an important point to analyse in the future. An example of BEREC’s advisory work is the review of the Roaming Regulation<sup>11</sup>. BEREC provided input into this review through a report prepared by an Expert Working Group and issued in December 2010 as required by the Roaming Regulation. The BEREC report helped build up commitment towards further harmonisation among NRAs and supported the development of a coordinated approach by national regulators to the monitoring of roaming services and enforcement of regulations.

Overall, BEREC should support the harmonisation of the regulatory environment of the electronic communications sector in Europe. It is due to play a major role in specific measures - in particular the Article 7/7a procedures<sup>12</sup> - and should have a stronger impact than the preceding ERG. Under certain circumstances, the Commission and NRAs must now take utmost account of BEREC’s positions as it is empowered to publish reports on any issue within its scope. The European Parliament and Council may also ask for its advice. It is expected that this enhanced role will lead to the fulfilment of the objectives of Article 8 of Directive 2002/21/EC (the “Framework Directive”), in particular by contributing to the development and better functioning of the internal market for electronic communications networks and services, by aiming to ensure a consistent application of the EU regulatory framework for electronic communications. In that sense, it is expected that BEREC plays a key role in the integration of the electronic communications market, while still respecting national specifics and characteristics.

<sup>8</sup> *Préambule* 6, Regulation (EC) No 1211/2009 of 25 November 2009 establishing the Body of European Regulators for Electronic Communications and the Office (BEREC Regulation).

<sup>9</sup> *Préambule* 11, BEREC Regulation.

<sup>10</sup> Article 3, BEREC Regulation.

<sup>11</sup> Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC.

<sup>12</sup> The Article 7/7a procedure is presented in Box 2: The Article 7/7a procedure on page 50.

**Table 1: Main evolutions from the ERG to BEREC**

ERG	BEREC
Advisory Group to the Commission	Body with clearly defined tasks and an statutory mission to contribute to the objectives of EU Telecoms Policy
Established by Commission Decision	Established by Regulation of Council and Parliament
Composed of Heads of National Regulatory Authorities	Composed of Heads of National Regulatory Authorities
Consensus principle prevails	Acting by 2/3 majority in most cases (simple majority in Art. 7a remedy proceedings)
Common Positions and opinions accommodate wide range of views	Active role in Art. 7 proceedings
Project Teams supported by small secretariat	Expert Working Groups supported by an Office with legal personality

The role and tasks of BEREC are set out in Articles 2 and 3 of Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 (the “BEREC Regulation”)<sup>13</sup>.

### 1.2.1. BEREC’s role

BEREC’s role is threefold:

1. Contribute to the development of the internal market for electronic communications networks and services by:
  - Promoting competition;
  - Supporting consistency in the application of EU regulatory framework;
  - Providing opinions to the institutions of the European Union (EU);
  - Assisting the EU institutions (European Commission, European Parliament, the Council) and National Regulatory Authorities (NRAs) in their relations with third parties, such as for dissemination of regulatory best practices.
2. Support NRAs in their own work to:
  - Develop and disseminate among NRAs regulatory best practices, such as common approaches, methodologies or guidelines on the implementation of the EU regulatory framework;
  - Support cooperation among NRAs and between NRAs and the Commission;
  - Provide assistance to NRAs on regulatory issues;
  - Support NRAs in their relations with third parties.
3. Contribute to EU citizens protection and consumer empowerment by:
  - Ensuring transparency of the market;
  - Promoting investment and innovation.

<sup>13</sup> Regulation (EC) No 1211/2009 of 25 November 2009 establishing the Body of European Regulators for Electronic Communications and the Office.



### 1.2.2. BEREC's scope

As specified in the *préambule* of BEREC Regulation, the scope of action of BEREC and the BEREC Office is EU-wide. Nevertheless, BEREC also includes observers that are representatives of the European Commission and non-EU countries: Croatia, Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Norway, Switzerland and Turkey<sup>14</sup>. Representatives of Montenegro also participated to the Contact Network meeting of May 2012. Observers cannot vote but “*shall be represented at an appropriate level*”<sup>15</sup>. In practice, observers participate to debate and provide their views on the discussed topics.

### 1.2.3. BEREC's tasks

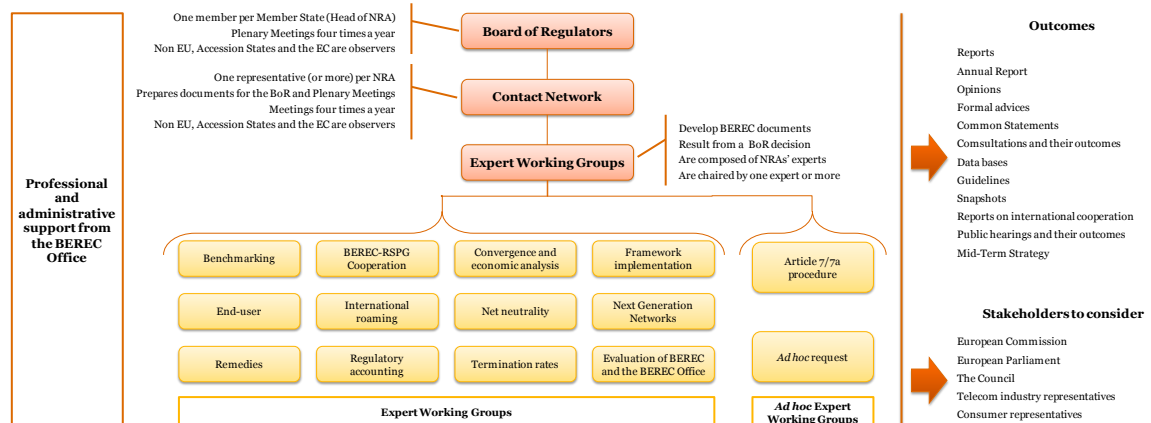
BEREC's tasks are developed in Articles 3 of the BEREC Regulation. So as to provide a clear and comprehensive view of BEREC's tasks, one might underline that BEREC:

1. Delivers opinions;
2. Is consulted on draft recommendations and draft measures;
3. Provides assistance to NRAs;
4. Provides assistance to the Commission;
5. Monitors and reports on the electronic communications sector, and publishes an Annual Report on developments in that sector.

In addition to these Article 3 tasks, the *préambule*, Article 1(4) and Article 2 of the BEREC Regulation specify that “*BEREC should accordingly advise the European Parliament, the Council and the Commission, at their request or on its own initiative*”<sup>16</sup>.

### 1.2.4. BEREC's governance structure

**Figure 6: BEREC's organisational structure**



Source: BEREC documentation, PwC

As illustrated in the Figure above, BEREC has an organisational structure that relies on National Regulatory Authorities and implies good coordination between involved stakeholders, including: the European Commission, NRAs, Expert Working Groups, the Chair and the BEREC Office.

<sup>14</sup> BoR (11) 19. BEREC Annual Report 2010. The list of BEREC members and observers is in the Annex 3 of BEREC Annual Report 2010.

<sup>15</sup> Article 4, BEREC Regulation.

<sup>16</sup> *Préambule* 9, BEREC Regulation. Article 1(4) states that “*BEREC shall advise the Commission, and upon request, the European Parliament and the Council*”. Article 2(d) states that “*BEREC shall issue reports and provide advice, upon a reasoned request of the Commission or on its own initiative, and deliver opinions to the European Parliament and the Council, upon a reasoned request or on its own initiative, on any matter regarding electronic communications within its competence*”.

BEREC functioning also implies smooth interaction between different levels of responsibility within BEREC (Expert Working Groups, Contact Network, Board of Regulators), with the BEREC Office and with external stakeholders, such as industry representatives and consumer associations. The European Commission has a more particular role: it is a key participant to the overall work of BEREC as it is often at the very source of BEREC work and is present during Board of Regulators and Contact Network meetings as an observer.

According to the Article 4(2) of BEREC Regulation “*When carrying out the tasks conferred upon it by this Regulation, **BEREC shall act independently**. The members of the Board of Regulators shall neither seek nor accept any instruction from any government, from the Commission, or from any other public or private entity [...] The Commission shall attend BEREC meetings as observer and shall be represented at an appropriate level.*”

In addition, BEREC plays the crucial role of the advisory body of the Commission on electronic communication issues. According *Préambule* 4 of BEREC Regulation, BEREC has “*to advise and assist the Commission in the development of the internal market and, more generally, to provide an interface between NRAs and the Commission*”.

In that perspective, *Préambule* 9 of BEREC Regulation established that: “*BEREC should also serve as a body for reflection, debate and advice for the European Parliament, the Council and the Commission in the electronic communications field. BEREC should accordingly advise the European Parliament, the Council and the Commission, at their request or on its own initiative*”.

### 1.2.5. Role of the BEREC Office in the BEREC environment

As illustrated in Figure 6 above, the BEREC Office provides professional and administrative support services to BEREC<sup>17</sup>. As described by the European Court of Auditors (ECA), “*the Office’s tasks is, under the guidance of the Board of Regulators, to collect and analyse information on electronic communications and to disseminate among National Regulatory Authorities regulatory best practices such as common approaches, methodologies or guidelines on the implementation of the EU regulators framework*”<sup>18</sup>.

It is located in Riga, Latvia and comprises two main components: a Management Committee (MC) including all NRAs present in BEREC and an Administrative Manager (AM), Ando Rehemaa (EE) who took up his duties in October 2010<sup>19</sup>. The Office obtained its organisational and financial autonomy on 12 September 2011. Its amended budget for 2011 reached €1,8 million. The recruitment of the BEREC Office staff started in 2010 and is planned to be completed by the end of 2012 with the recruitment of 28 staff in total.

### 1.3. Objectives and scope of the evaluation

Even though the BEREC Office was fully operational in October 2011<sup>20</sup>, BEREC carried out substantive work since its inception in January 2010 and continues the work achieved by ERG. With these elements in mind, the present evaluation is based on the following assumptions:

- The evaluation assesses the achievements and added value since the inception of BEREC, as well as whether governance structures and working methods have been working as intended;
- The findings of this evaluation provide food for thought in terms of relevance, added value, effectiveness, efficiency, impact and coherence when considering BEREC and the BEREC Office.

<sup>17</sup> Article 6, BEREC Regulation.

<sup>18</sup> European Court of Auditors, *Preliminary observations with a view to a report on the annual accounts of the Office of the Body of European Regulators for Electronic Communications for the financial year 2011*, Adopted by Chamber IV, 12 June 2012.

<sup>19</sup> Roles and responsibilities of all BEREC Office’s components are detailed in *Appendix C.3 - BEREC Office’s logical framework*.

<sup>20</sup> Considering that it obtained its organisational and financial autonomy in September 2011.

### 1.3.1. Objectives of the evaluation

As specified in the Terms of Reference issued in November 2011, the main objective of the study is to “provide an assessment of the results achieved by BEREC and the Office and their respective working methods, in relation to their respective objectives, mandates and tasks defined in the BEREC Regulation and in their respective work programmes”.

The BEREC Regulation states in its Article 25 Evaluation and review that “within three years of the effective start of operations of BEREC and the Office, the Commission shall publish an evaluation report”. The BEREC Regulation also emphasises that “the evaluation report shall take into account the views of stakeholders, at both Community and national level and shall be forwarded to the European Parliament and to the Council. The European Parliament shall issue an opinion on the evaluation report”.

Considering that BEREC and the BEREC Office started their operations on 28 January 2010, following the first meeting of the Board of Regulators (BoR) and of the Management Committee (MC), the first Commission evaluation report is due by January 2013.

Moreover, the purpose of this evaluation is to present the achievements of BEREC and the BEREC Office as compared to the established objectives, taking into account the relatively short time span the BEREC Office has been operational (October 2011) and the transposition date of the revised Directives (May 2011).

The present study consequently examines to what extent and how efficiently, based on the experience so far, BEREC has succeeded in contributing to the development of the internal market for electronic communications. In order to do so and as specified in the 2012 BEREC Work Programme, “the evaluation study should in particular evaluate the governance of BEREC, the organisational structure and management, the achievements and value-added of BEREC”.

To evaluate the results achieved by the BEREC and the BEREC Office, our Evaluation Team undertook a critical evaluation of BEREC’s performance in respect of its objectives and tasks as defined in the articles 1, 2 and 3 of the BEREC Regulation as well as the BEREC Office’s objectives as defined in article 6 of the Regulation. In parallel to the evaluation of the achievements, added-value and impact of these two entities, our Evaluation Team also examined and assessed BEREC’s and the BEREC Office’s working practices, governance, organisational structure, management and remit. We also formulate recommendations for improvement with regards to the strengths and weaknesses of BEREC and its Office. Conclusions and recommendations are proposed in Section 6 and 7 of the present Final Study Report.

### 1.3.2. Scope of the evaluation

The evaluation study assesses:

- The impact of BEREC and its Office on achieving their respective objectives, mandates and tasks defined in the BEREC Regulation;
- The working practices and methods of BEREC and its Office, in relation to their respective objectives, mandates and tasks defined in the BEREC Regulation and in their respective Work Programmes.

To this end, the study evaluates in particular the governance of BEREC and of the BEREC Office, their organisational structure and management, as well as the achievements and value-added of BEREC. In that context, the evaluation also takes into account changes between ERG and BEREC as well as challenges resulting from the first year of effective operational existence of the BEREC Office.

The evaluation study and, consequently, the evaluation questions are based on six evaluation criteria: (1) relevance, (2) added value, (3) effectiveness, (4) efficiency, (5) impact and (6)

coherence. The rationale behind the structure of the questionnaires is further elaborated in the Methodological approach hereafter (*Section 2*).

On the basis of this evaluation, the present Final Study Report provides an assessment on BEREC's and its Office's strengths and weaknesses<sup>21</sup> and makes recommendations for potential improvements (*Section 7*).

### 1.3.3. Tasks of the evaluation

Following the requirements presented in the ToR, the tasks to be performed for the study are:

#### **Task 1: Assessment of the achievements and added value of BEREC**

- Assess in qualitative terms the work undertaken by BEREC since its start of operations, as defined in the work programmes of 2010, 2011 and 2012 and taking into account the final results as adopted in the different plenary meetings (i.e. opinions, guidelines, common positions, recommendations or reports);
- Evaluate how these different work items have contributed to the objectives foreseen in Article 8 of the Framework Directive and in particular the development of the internal market, and to fulfil the role of BEREC as described in Article 2 of the BEREC Regulation, paragraphs a), b), c) and d). This should include an assessment of the priorities established for BEREC's work, as well as the flexibility to tackle any arising issue.

#### **Scope:**

- Article 8 of the Framework Directive relative to the policy objectives and regulatory principles that the tasks of National Regulatory Authorities have to cover;
- Article 2 of the BEREC Regulation relative to the role of BEREC, and more specifically the dissemination of regulatory best practices among NRAs (*paragraph a*), the assistance to NRAs on regulatory issues (*paragraph b*), BEREC's opinions (*paragraph c*), and BEREC's reports and advices (*paragraph d*);
- BEREC Work Programmes of 2010, 2011 and 2012;
- Documents adopted by the BoR during Plenary Meetings, such as: opinions, guidelines, Common Positions, recommendations and reports.

#### **Task 2: Assessment of the governance, organisational structure and management of BEREC**

- Examine how efficiently the current internal organisational structure of BEREC (Chair and Vice-Chairs, Contact Network and Expert Working Groups) contributes to the fulfilment of BEREC's objectives and role. This analysis should cover the more stable Expert Working Groups as well as the functioning of Article 7 Expert Working Groups. This analysis shall also assess the working relationships with the Commission, other institutions and stakeholders;
- On an external dimension, assess how the current structure ensures that sufficient and appropriate contacts are held between BEREC and other EU institutions, and that BEREC can accomplish its role as described in Article 2 paragraphs d) and e) of the BEREC Regulation. This analysis should also examine to what extent the stakeholders are aware and involved in BEREC's work;
- Assess the impact of the structure of BEREC in its relations to other third parties, including in an international dimension, in line with Article 2 paragraph e) of the BEREC Regulation.

<sup>21</sup> BEREC SWOT analysis is presented in the *Section Conclusions* and in *Appendix B. - BEREC SWOT analysis*.

**Scope:**

- Article 7 of the Framework Directive relative to the procedure involved for consolidating the internal market for electronic communication, the procedure for the consistent application of remedies (*Article 7a*) and the implementation of provisions (*Article 7b*);
- Article 2 of the BEREC Regulation relative to the role of BEREC, and more specifically BEREC's reports and advices (*paragraph d*) as well as BEREC's assistance to the Parliament, the Council, the Commission and NRAs in relations with third parties (*paragraph e*).

**Task 3: Assessment of the structure and working methods of the BEREC Office**

- Assess to what extent the current structure and working methods contribute to support the work of BEREC and assist it in delivering its objective (e.g. how efficient are the systems of management, internal control, budgetary and internal procedures). This analysis should measure the functioning of the BEREC Office against the tasks attributed to it in Article 6 paragraph 2 of the BEREC Regulation. This analysis should take account of the fact that the BEREC Office was in the process of being set-up in 2010 and most of 2011.

**Scope:**

- Article 6 paragraph 2 of the BEREC Regulation, relative to the tasks of the BEREC Office.

**Task 4: Formulation of recommendations for improvements**

- Against the conclusions reached in the previous tasks, give an assessment of BEREC and its Office covering strengths and weaknesses;
- Make recommendations for improvements on the aspects assessed, such as the working methods, organisational structure, governance or relations with stakeholders and other institutions.

**Task 5: Presentation of the results at a workshop**

- Once the Final Report is approved by the Commission, present the findings and conclusions of the study at a workshop organised by the Commission in Brussels;
- Prepare a summary of the outcome of this workshop.

**1.4. Challenges of the evaluation study**

A number of challenges were taken into account when performing the evaluation study of BEREC and the BEREC Office:

**1. Balancing diverse opinions.**

The evaluation study relies heavily on data - mostly qualitative through face-to-face interviews and quantitative with results from the online survey - that was obtained from stakeholders with diverse views on the role and objectives of BEREC and its Office: European Commission services, NRAs, industry and consumer representatives. For instance, all stakeholders do not have the same definition or the same expectations concerning the advisory role of BEREC towards EU institutions. Another example would be the role the BEREC Office should play as professional support to BEREC. Many times, stakeholders - even among NRAs - had contradictory views but the same willingness to make BEREC a success.

That is why it was necessary to consider all the collected views in an impartial and balanced manner. This approach was developed to ensure that all opinions and perspectives on the key issues were captured. We also chose this approach because we considered essential to secure the buy-in and participation of all relevant stakeholders.



## 2. Assessing two complementary but distinct entities.

The study assesses the results, governance and working methods of both BEREC and the BEREC Office. The first entity is a platform of regulators with no legal personality but with decision-making powers while the second entity is an EU body with legal personality but with only a supporting role. This set-up is unusual in the EU regulatory landscape, and the resulting duality generated challenges for the evaluation study as: (1) the distinct natures of BEREC and of its supporting Office called for the use of different evaluation approaches and methods (we used two questionnaires); and (2) it proved difficult to strictly separate or distinguish between the activities, results, outputs and impacts of BEREC and those of the Office.

## 3. Assessing two entities that are only at early implementation stages.

Results and impacts of both BEREC and the BEREC Office are still partial and in some cases have yet to become visible or to be obtained. Diverse changes also occurred between the beginning of the study and its end. That is why we took great care to avoid: (1) passing judgment, formulating conclusions and recommendations on the basis of data that may be incomplete, insufficient or inconclusive; and (2) passing judgment, formulating conclusions and recommendations based on results or outputs that may not be directly related to the activities and operation of BEREC and its Office (e.g. results “inherited” from the previous ERG). Though the antecedent regulatory cultures and practices of the ERG were instructive to better understand changes occurred with the new regulatory ecology around BEREC, the BEREC Office is recently fully functional and needed to be considered as such. Structuring effective organisational structures may also take time to be established, so can more informal aspects of governance. We took these elements into consideration when evaluating the two entities and more specifically their needed cooperation and coordination.

## 1.5. Contents of the report

This report is structured as follow:

- *Section 2* presents the methodological approach we applied in the evaluation;
- *Section 3* presents the findings of the analysis we conducted. Analysis is structured according to the three evaluations addressed by the study:
  - Evaluation of the achievements and value added of BEREC;
  - Evaluation of the governance, organisational structure and management of BEREC;
  - External evaluation of the structure and working methods of the BEREC Office;
  - Internal evaluation of the structure and working methods of the BEREC Office.

The first three chapters follow the same structure, based on the evaluation criteria used for the evaluation. Each evaluation examines the relevance, added value, effectiveness, efficiency, impact and coherence, complementarity and synergy of the topic evaluated. The fourth chapter concerns the internal evaluation of the working methods of the BEREC Office. It is based on different evaluation criteria and tackles issues that vary from the third chapter on the external evaluation. This chapter also derives from a specific questionnaire and our field visit in Riga.

This Section is the most sizable of the report, as it compiles analysis from primary and secondary data.

- *Section 4* presents the case study on the Article 7/7a procedure.
- *Section 5* presents the case study on Next Generation Access Networks and BEREC.
- *Section 6* presents our conclusions.
- *Section 7* presents our recommendations with regards to the continued activities of BEREC and the BEREC Office.
- *Section 8* presents the workplan conducted for the present evaluation study.



## 2. Methodological approach

This Section describes the methodological approach used for the evaluation. It offers a comprehensive overview of our research strategy and data collection activities carried out. It also gives an account of our findings and the analysis presented in the next Section.

### 2.1. Definition and scope of our research strategy

We defined a research strategy to address the evaluation questions and collect the information necessary to pass informed conclusions.

The scope of our research strategy has two aspects: (1) the entities under scrutiny (BEREC and the BEREC Office), (2) the variety of views and opinions collected and analysed to obtain a fair image of the BEREC platform and its related Office.

Considering the scope of entities evaluated, both BEREC and the BEREC Office have been addressed during data collection. Their interaction, interrelated objectives and activities have been tackled.

Many different views have been gathered for this report, during the primary and secondary data collection, our Evaluation Team made a particular effort to gather opposing views as well as to gather different opinions from the public as well as private spheres. The following paragraphs detail the key components of our research strategy:

- List of required data and information;
- Data sources;
- Data collection approach;
- Data analysis.

### 2.2. List of required data and information

We started by defining and listing the data required to answer our evaluation questions. Considering the nature and short existence of BEREC and the BEREC Office, most of the data gathered are qualitative, which involves more open-ended questions and discussion with stakeholders than if we evaluated an organisation established for a longer time.

We structured the required information around six evaluation criteria. Our analysis and findings are also based on these six criteria. These criteria are:

<b>Relevance</b>	The extent to which the objectives, mandates and tasks of BEREC and its Office, as defined in the BEREC Regulation, in their respective Work Programmes and in the BEREC Plenary Meetings, are relevant to the aim of contributing to the development and better functioning of the internal market for electronic communications networks and services.
<b>Added value</b>	The extent to which BEREC and its Office provide added value compared with the previous situation (ERG) and with possible alternative options for the regulation/supervision of the internal market for electronic communications networks and services (e.g. establishment of an EU-wide central regulatory authority, or action by National Regulatory Authorities only, etc.)
<b>Effectiveness</b>	The extent to which the objectives of BEREC and its Office are achieved or are expected to be achieved, and the extent to which their existing governance, organisational structures and working methods contribute to the effectiveness of their activities.



<b>Efficiency</b>	The extent to which the outputs and/or results of BEREC and its Office are produced or obtained with the lowest possible use of resources/inputs (funds, expertise, time, administrative costs, etc.), and the extent to which their existing governance, organisational structures and working methods contribute to the efficiency of their activities.
<b>Impact</b>	The long-term effects produced by the activities of BEREC and its Office (positive and negative, primary and secondary, direct and indirect, intended and unintended), and the extent to which they correspond to the market or regulatory needs they are meant to address.
<b>Coherence, complementarity, synergy</b>	The extent to which the mandates and tasks of BEREC and its Office, as well as their governance, structure, management and working practices are mutually supportive and non-contradictory; and the extent to which their objectives and activities support or contradict the EU policies for the Information Society, contribute to the achievement of their objectives, and complement other related activities implemented at EU or national level.

When assessing the governance and working methods of the BEREC Office in Riga, we developed a more specific list of data and information required. This list consists in 3 dimensions:

<b>Evaluation dimensions for BEREC Office internal processes</b>
<b>1) Processes</b>
Strategic planning & budgeting
Performance management & reporting
Risk management & internal control (BEREC Office IC Standards, Business Continuity Plan / Disaster Recovery Plan, Confidentiality)
Budgetary & Financial Management (inc. Procurement & Contract management for research studies, knowledge organisations)
Quality management
Operational processes
<b>2) Organisation &amp; Human Resources</b>
Recruitment, Ethical values & Organisational culture, competence management, mission management
<b>3) Infrastructures &amp; Information System</b>

### **2.3. Data sources**

The next step was to identify data sources that needed to be collected. To do so, we have carried out:

- A literature review based on EC regulation and completed by academic studies;
- 2 questionnaires with specific purposes: while the first one was the basis for the broad online survey, the second one structured our visit to the BEREC Office in Riga and is focused on BEREC Office's internal processes;
- Face-to-face and phone interviews;
- An online survey fine-tuned according to three stakeholder groups;
- Two case studies.

The identification of different data sources aimed at ensuring a “cross-examination” and validation of findings. These elements are described in the following paragraphs.

## 2.4. Data collection approach

The following paragraphs describe the data sources used for the evaluation. It combines qualitative and quantitative data from primary and secondary sources. It also introduces the two case studies. Finally, two questionnaires are presented. We used both of them for interviews and we deployed one of them for the online survey.

### 2.4.1. Literature review

Our Evaluation Team collected and reviewed secondary data, including:

- BEREC Regulation;
- Key directives, including the Framework Directive<sup>22</sup>, the Authorisation Directive<sup>23</sup>, the Access Directive<sup>24</sup>, the Universal Service Directive<sup>25</sup>, the Privacy and Electronic Communications Directive<sup>26</sup>;
- BEREC Work Programme of 2012<sup>27</sup> and the related Public Hearing presentation;
- BEREC Annual Reports of 2010<sup>28</sup> and 2011<sup>29</sup>;
- BEREC Mid-Term Strategy<sup>30</sup>;
- BEREC Strategy: *Building BEREC's future: practical and strategic next steps*<sup>31</sup>;
- Selected BEREC Common Statements;
- Selected BEREC Consultation Reports, such as the Consultation Report to the Common Statement "Next Generation Networks Future Charging mechanisms/Long term termination issues"<sup>32</sup> and BEREC report on the consultation of the BEREC draft Work Programme 2012<sup>33</sup>;
- Conclusions of Plenary Meetings, such as the PM in Vienna in February 2012<sup>34</sup> and in Dubrovnik in May 2012<sup>35</sup>;
- Rules of procedures of the Board of regulators<sup>36</sup>;

<sup>22</sup> Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending the Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive).

<sup>23</sup> Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending the Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services (Authorisation Directive).

<sup>24</sup> Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending the Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive).

<sup>25</sup> Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending the Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive).

<sup>26</sup> Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending the Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

<sup>27</sup> BoR(11) 62, Work Programme BEREC Board of Regulator, 9 December 2011.

<sup>28</sup> BoR(11) 19, Body of European Regulators for Electronic Communications – Annual Report 2010, May 2011.

<sup>29</sup> BoR(12) 48, Body of European Regulators for Electronic Communications – Annual Report 2011, May 2012.

<sup>30</sup> BoR(12) 09, BEREC Medium Term Strategy Outlook, 23 February 2012.

<sup>31</sup> BoR(12) 47, Building BEREC's future: practical and strategic next steps. BEREC working document, not published.

<sup>32</sup> BoR(10) 24b, Annex to the BEREC Common Statement "Next Generation Networks Future Charging mechanisms/Long term termination issues", June 2010.

<sup>33</sup> BoR(11) 61, BEREC report on the consultation of the BEREC draft Work Programme 2012, 9 December 2011.

<sup>34</sup> BoR (12) 19 and MC (12) 10, 29 February 2012.

<sup>35</sup> BoR (12) 64 and MC (12) 29, 25 May 2012.

<sup>36</sup> BoR (11) 23, Rules of procedures of the Board of regulators, As revised in May 2011.

- BEREC Press Releases, such as BEREC's press release on the review of broadband Common Positions or BEREC's press release following the Plenary Meeting in Dubrovnik in May 2012;
- Press articles on the electronic communications markets and regulation.

More specifically, our literature review for the BEREC Office covers:

- BEREC Office Work Programme of 2012, with special attention on the Performance Indicators in Table 1<sup>37</sup>;
- Rules of procedures of the Management Committee of the BEREC Office, including its Annex 1<sup>38</sup>;
- BEREC Office internal documentation, such as:
  - Decision concerning the appraisal for the Administrative Manager of the BEREC Office<sup>39</sup>;
  - Decision made by BEREC Management Committee on the secondment to the BEREC Office of national experts and national experts in professional training<sup>40</sup>;
  - BEREC Office, Internal Control Standards (ICS) Implementation Plan, 4 June 2012.
- European institutions' frames of reference:
  - Financial Regulation and implementing rules applicable to the general budget of the European Communities (2010)<sup>41</sup>;
  - Internal control standards<sup>42</sup>;
  - The performance audit manual of the European Court of Auditors<sup>43</sup> (with regards to systems adequacy to reach the three E objectives: economy, efficiency, effectiveness);
  - DG BUDGET: Risk Management in the Commission, *Implementation Guide*, October 2010.
- The European Court of Auditors report on the BEREC Office, *Preliminary observations with a view to a report on the annual accounts of the Office of the Body of European Regulators for Electronic Communications for the financial year 2011*, Adopted by Chamber IV, 12 June 2012. And the reply of the BEREC Office to these observations.
- International frames of reference:
  - Committee of sponsoring organisation of the treadway Commission - COSO (Risk management)<sup>44</sup>;
  - ISO 9000 and 9001 (Quality management)<sup>45</sup>.
- PwC guides:
  - PwC global guide (2006);

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<sup>37</sup> MC (11) 25, BEREC Office Work Programme 2012, 30 September 2011.

<sup>38</sup> MC (10) 02 Rev1, Rules of procedures of the Management Committee of the BEREC Office.

<sup>39</sup> MC (10) 26, Decision concerning the appraisal for the Administrative Manager of the BEREC Office, 3 December 2010.

<sup>40</sup> MC (10) 25, Decision by the Management Committee of the Body of European Regulators for Electronic Communications (BEREC) on the secondment to the BEREC Office of national experts and national experts in professional training, 23 December 2010.

<sup>41</sup> Commission of the European communities, *Financial Regulation and implementing rules applicable to the general budget of the European Communities*, Synoptic presentation, 2010. More particularly: Articles 27, 33, 90, 97, 98, 99, 100 and 168.

<sup>42</sup> Commission of the European communities, *Revision of the Internal Control Standards and Underlying Framework*, Brussels, 16 October 2007.

<sup>43</sup> European Court of auditors, ADAR (Audit Development And Reports) division: *Chapter 2 « performance audit approach and the 3 "E" »*, 11 December 2006.

<sup>44</sup> <http://www.coso.org/>

<sup>45</sup> <http://www.iso.org/iso/fr/qmp>

- PwC Global best practices;
- The finance function effectiveness assessment grid<sup>46</sup>.

### 2.4.2. Stakeholder consultation and online survey

We complemented our documentation sources along with interviews carried out with stakeholders. When selecting stakeholders, we chose different groups so as to cover all stakeholders involved in the scope of BEREC, covering representatives of DG CONNECT, members of NRAs (Heads and CN members) and representatives of the telecom industry. In total, we conducted:

- 22 face-to-face interviews;
- 14 phone interviews.

In the following table we detail all the stakeholders we had face-to-face/phone interviews with.

**Table 2: Interviews with the different stakeholders**

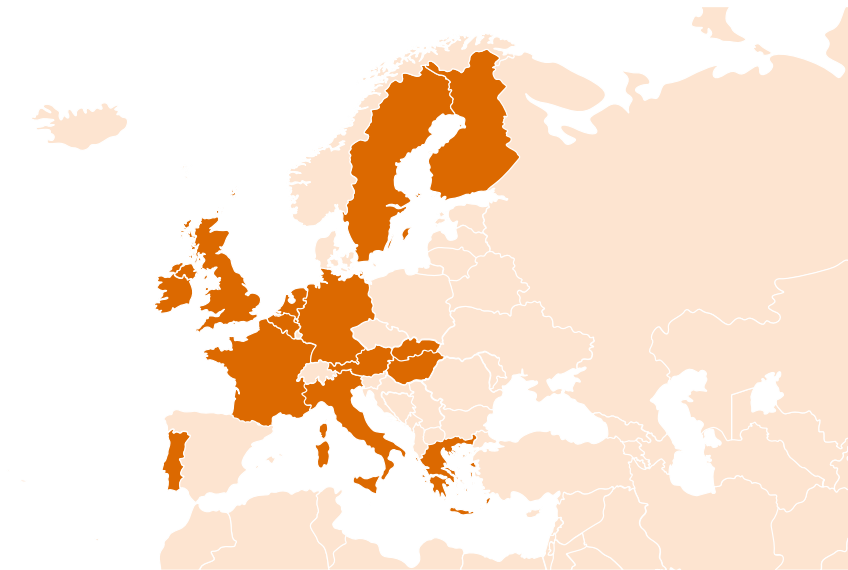
Stakeholder groups	Stakeholders consulted
<b>DG CONNECT</b>	<ul style="list-style-type: none"> <li>• Robert Madelin, Director General for Communications Networks, Content and Technology</li> <li>• Vesa Terävä (interview, Workshop I and II)</li> <li>• Pilar De La Barcena Angulo (Workshop I and II)</li> <li>• Nicoletta Falcone (Workshop I and II)</li> </ul>
<b>BEREC Board of Regulators/ Management Committee &amp; observers</b>	<ul style="list-style-type: none"> <li>• George Serentschy, BEREC Chair and Head of the Austrian NRA, RTR</li> <li>• Chris Fonteijn, BEREC former Chair and Head of the Dutch NRA, OPTA</li> <li>• Asta Sihvonen-Punkka, Head of the Finish NRA, FICORA</li> </ul>
<b>BEREC Contact Network (CN)</b>	<p>Face-to-face interview during the Contact Network Meeting with different Member States' NRAs:</p> <ul style="list-style-type: none"> <li>• Anne Lenfant (ARCEP)</li> <li>• Annegret Groebel (BNetzA)</li> <li>• Antonio de Tommaso (AGCOM)</li> <li>• Bobby Hannan (COMREG)</li> <li>• Guido Pouillon (BIPT). Also interviewed as the former responsible for the co-ordination of Article 7 procedures under the previous situation involving E/IRG</li> <li>• Dieter Staudacher (RTR)</li> <li>• Minas Karatzoglou (EETT)</li> <li>• Ola Bergstöm (PTS)</li> <li>• Päivi-Maria Virta (FICORA)</li> <li>• Pedro Ferreira (ANACOM)</li> <li>• Sven Gschweidl (RTR)</li> <li>• Viktória Jónás (TU SR) Phone interview a few days after the CN meeting</li> </ul>

<sup>46</sup> PwC, PwC Finance Function Effectiveness benchmark, 2011.

<p><b>BEREC Expert Working Groups (EWGs)</b></p>	<ul style="list-style-type: none"> <li>• From Article 7/7a working groups:             <ul style="list-style-type: none"> <li>– Alain Meton, Rapporteur on case NL/2012/1299, expert at BIPT (Belgium)</li> <li>– Andrea Coscelli, Rapporteur on cases NL/2012/1284 and NL/2012/1285, and economist at Ofcom (United Kingdom)</li> </ul> </li> <li>• From the Next Generation Networks working group:             <ul style="list-style-type: none"> <li>– Cara Schwarz-Schilling, NGN-NGA Expert Working Group Chair for 2012, expert at BnetzA (Bundesnetzagentur) (Germany)</li> </ul> </li> <li>• From the Remedies Monitoring working group:             <ul style="list-style-type: none"> <li>– Lara Stoimenova, Remedies Monitoring Working Group Chair for 2012, expert at Ofcom (UK)</li> </ul> </li> <li>• From the BEREC and BEREC Office Evaluation Working Group:             <ul style="list-style-type: none"> <li>– Marianne Kracht, BEREC and BEREC Office Evaluation Working Group Chair for 2012, expert at OPTA (Netherlands)</li> </ul> </li> </ul>
<p><b>NRA experts on Article 7/7a Case Study</b></p>	<ul style="list-style-type: none"> <li>• Ellen Optmann, responsible for cases NL/2012/1298 and 1299 on behalf of OPTA, the Dutch regulator</li> <li>• Martijn Wolthoff, responsible for cases NL/2012/1298 and 1299 on behalf of OPTA, the Dutch regulator</li> <li>• Jim Niblett, formerly of the UK regulator Ofcom</li> </ul>
<p><b>BEREC Office</b></p>	<ul style="list-style-type: none"> <li>• Ando Rehema: Administrative Manager</li> <li>• Isaac Jimenez Carvajal: former Head of Administration and Finance/Accounting Officer</li> <li>• Ritva Suurnäkki: Head of Programme Management Unit</li> <li>• Dr. Dirk Walpuski: Senior Programme Manager (main responsible for Article 7/7a procedures at the BEREC Office)</li> <li>• Antonio Manganelli, Rapporteur on case NL/2012/1298 at the BEREC Office</li> </ul>
<p><b>Representatives of the industry</b></p>	<ul style="list-style-type: none"> <li>• British Telecom: Adrian Whitchurch, Vice President European Affairs, Head of Brussels BT Group (face-to-face interview)</li> <li>• KPN: Jos Huigen, Director Regulatory and European Affairs (phone interview)</li> <li>• Verizon: Fiona Taylor, Director, European Affairs and Global Internet Strategy and Rob Rosendaal, Director European Regulatory Affairs at Verizon Business (face-to-face interview)</li> <li>• Vodafone: Eirini Zafeiratou, Head of EU Affairs (face-to-face interview)</li> </ul>

As a whole, we interviewed representatives from 14 countries<sup>47</sup>:

**Figure 7: Map of country representatives interviewed**



Source: PwC

Our Evaluation Team conducted an online survey between June 25<sup>th</sup> and August 3<sup>rd</sup>. A questionnaire was sent covering three different stakeholder groups. As a whole 227 questions were asked to participants, including 32 open questions (14.1% of the questions). Among these open questions, four questions were asked regarding the case study on the Article 7/7a procedure and four questions were asked relative to the case study on NGA.

The questionnaire was divided into four parts:

- Evaluation of the achievements and added value of BEREC;
- Evaluation of the governance, organisational structure and management of BEREC;
- Evaluation of the structure and working methods of the BEREC Office;
- Case studies:
  - The Article 7/7a procedure;
  - Next Generation Access Networks and BEREC.

Three stakeholder groups were addressed during this online survey:

- European Union Institutions representatives;
- Members of NRAs and of the BEREC Office;
- Industry and association representatives.

Each group had the opportunity to assess specific aspects of the evaluation in more depth.

A first wave of questionnaires was sent on June 25<sup>th</sup>. In order to ensure comparability of results, a second wave of emails was exclusively sent to CN and Heads members on July 17<sup>th</sup> asking them to ensure that three to four people in their respective NRA answer the questionnaire<sup>48</sup>. This

<sup>47</sup> Information on interviews is detailed in *Appendix A. - Survey results*.

<sup>48</sup> The second email sent to CN members mentioned: “A detailed list of participants has been provided by BEREC network to the Evaluation Team to reach as many people as possible working within BEREC or impacted by its work. Following the discussion on the questionnaire, a new agreement between the European Commission and the

second wave of emails resulted from an agreement between the European Commission and the Chair of the BoR to ensure consistency and relevance in the answers. In that respect, we obtained 129 answers with a very homogeneous number of answered questionnaires received from NRAs (see *Table 4* below).

Hereafter is presented the distribution of respondents according to their organisation of origin.

**Table 3: Distribution of respondents to the online survey**

Stakeholder Group	Number of people addressed	Respondents		Percentage compare to the total number of respondents (population: 129)
		Number	Percentage (population depends on the group)	
<b>EU institutions</b>	19	4	21.1%	3.1%
<b>BEREC Office and IRG members</b>	5	2	40.0%	1.6%
<b>NRAs</b>	140 <sup>49</sup>	112	80.0%	86.8%
<b>Industry and association representatives</b>	57	11	19.3%	8.5%

Source: PwC

When considering NRAs, 112 people answered the online questionnaire. Here is presented the distribution of respondents according to their country of origin.

**Table 4: Distribution of NRA respondents according to their country of origin**

NRA Country	Number of respondents	Percentage
<b>Austria</b>	2	1.8%
<b>Belgium</b>	1	0.9%
<b>Bulgaria</b>	5	4.5%
<b>Croatia</b>	1	0.9%
<b>Cyprus</b>	0	0.0%
<b>Czech Republic</b>	8	7.1%
<b>Denmark</b>	6	5.4%
<b>Estonia</b>	1	0.9%
<b>Finland</b>	1	0.9%
<b>Former Yugoslav Republic of Macedonia</b>	1	0.9%
<b>France</b>	7	6.3%
<b>Germany</b>	4	3.6%
<b>Greece</b>	3	2.7%
<b>Hungary</b>	5	4.5%
<b>Iceland</b>	1	0.9%
<b>Ireland</b>	4	3.6%
<b>Italy</b>	3	2.7%
<b>Latvia</b>	4	3.6%

*Chairman of BEREC's Board of Directors is that each Contact Network member will nominate 3 to 4 people within her/his National Regulatory Authority to fill in the questionnaire on-line (including the people who already filled it in). By doing so, each NRA will have an equal representation in the e-survey."*

<sup>49</sup> 35 NRAs were addressed during the online survey (from the 27 EU Member States, plus Croatia, FYROM, Iceland, Liechtenstein, Montenegro, Norway, Switzerland and Turkey). If we consider that 4 people per NRA were addressed, a total of 140 people were addressed in NRAs.



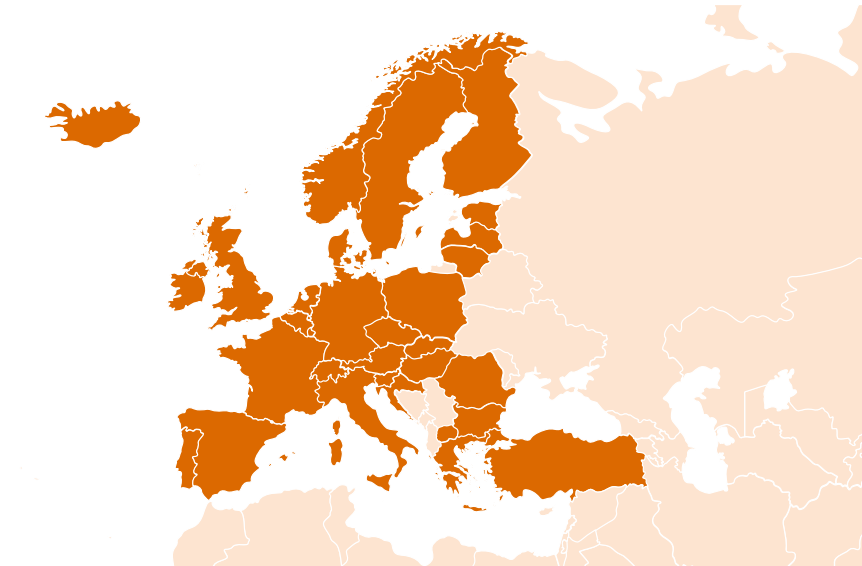
NRA Country	Number of respondents	Percentage
Liechtenstein	3	2.7%
Lithuania	5	4.5%
Luxembourg	1	0.9%
Malta	2	1.8%
Montenegro	0	0.0%
Norway	3	2.7%
Poland	4	3.6%
Portugal	6	5.4%
Romania	3	2.7%
Slovak Republic	4	3.6%
Slovenia	3	2.7%
Spain	3	2.7%
Sweden	1	0.9%
Switzerland	1	0.9%
The Netherlands	6	5.4%
Turkey	7	6.3%
The United Kingdom	3	2.7%

Population: 112

Source: PwC

In total, all EU-27 countries answered the online survey, except Cyprus.

**Figure 8: Map of country representatives who answered the online survey**



Source: PwC

Furthermore, here is what we can derive from the results obtained by the online survey:

- On average, 3.4 people in each NRA answered the online questionnaire;
- 50% of NRAs answered less than 3 questionnaires and 50% of NRAs answered more than 3 questionnaires (in other words, the median of this sample is 3);



- 95% of NRAs answers between 1.9 and 4.9 questionnaires;
- The Cypriot NRA (OCECPR) is the only EU Member State that has answered no questionnaire (along with Montenegro which is not a EU Member State);
- The Czech NRA (CTU) has been the most responsive with 8 answers. The Turkish and French NRAs also highly answered with 7 answers each.
- Three NRAs provided 6 questionnaires, three other NRAs filled in 5 questionnaires, five NRAs answered 4 questionnaires, eight NRAs provided 3 questionnaires, two NRAs answered 2 questionnaires and nine NRAs fulfilled one questionnaire each.

### 2.4.3. Case studies

Even though the scope of the evaluation study covers all the tasks of BEREC and the BEREC Office, the Steering Committee considered relevant to emphasise two case studies in parallel to the evaluation. These case studies concern:

1. The Article 7/7a procedure;
2. Next Generation Access Networks and BEREC.

The cases were selected on the basis of their importance in the present work of BEREC and changes occurred since the Framework Directive from 2009. They were considered with a broad approach to present challenges and how BEREC faces them. They were built on different types of secondary data available, interviews and results from the online survey. They were also drafted to feed our conclusions and provide specific examples for the evaluation of BEREC and the BEREC Office. The two case studies are in *Sections 4 and 5*.

### 2.4.4. Data collection tools - Questionnaires

To collect primary data, we developed two questionnaires:

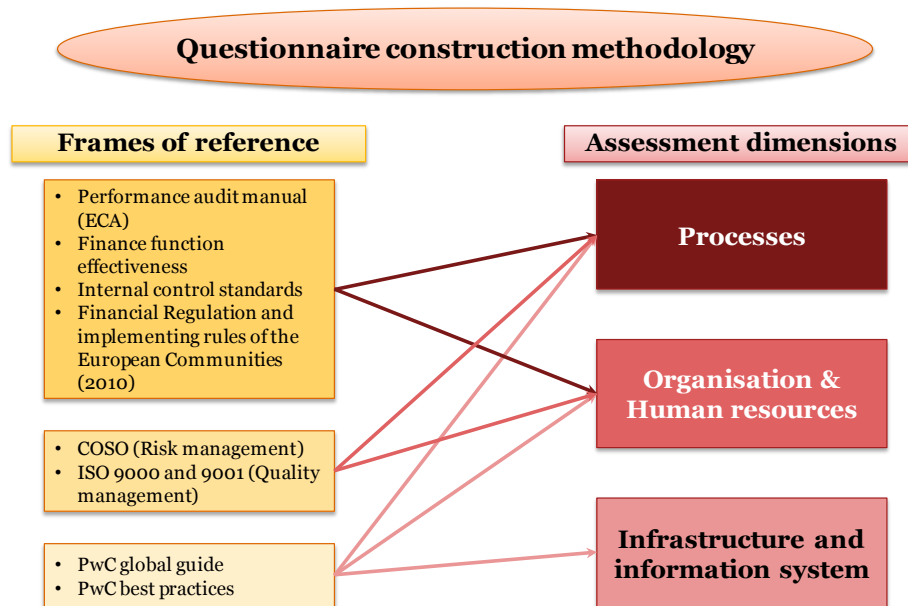
1. **A first questionnaire has been developed for the online survey.** It results from a detailed analysis of the BEREC Regulation, our literature review and the test we conducted during a workshop with DG INFSO / DG CONNECT and during our first wave of interviews with NRAs members and industry representatives. The online survey was addressed to three different stakeholder groups. The questions asked to interviewees were fine-tuned accordingly. These 3 stakeholder groups were:
  - European Union Institutions representatives;
  - Members of NRAs and of the BEREC Office;
  - Industry and association representatives.

This first questionnaire enabled us to carry out 3 targeted surveys and assess in more depth topics of special interest for each respondent group. By doing so, each targeted survey was concise and included both closed and open-ended questions. It compiles questions on the first three tasks described in *Section 1.3.3* and so addresses BEREC's achievements and governance structures as well as the BEREC Office's working methods. Each stakeholder groups answered specific questions to ensure relevant outputs for the study.

2. **A second questionnaire was specifically developed for the performance assessment of the BEREC Office** when we visited its premises in Riga. The two questionnaires tackle issues faced by the BEREC Office but while the first one is addressed to external parties (third parties), the second one has been developed so as to obtain answers from BEREC Office insiders. The first questionnaire based our analysis of the external evaluation of the Office while the second one based our analysis of the internal processes of the Office.

The following Figure explains how we used our documentation review to develop questions relative to BEREC Office's internal working methods. It presents how the three frames of reference fed our questions with regards to the three dimensions of this specific evaluation.

**Figure 9 : Our methodology to construct the questionnaire on BEREC Office's internal processes**



Source: PwC

## 2.5. Data analysis

### 2.5.1. Approach

The BEREC Office is only fully operational since October 2011. Moreover, both entities under evaluation continue functioning and present very specific governance methods. For these two reasons, there is no clear baseline or benchmark with which results and findings can be compared. BEREC derives from ERG, and our first interviews presented the extent to which these organisations cannot be closely compared.

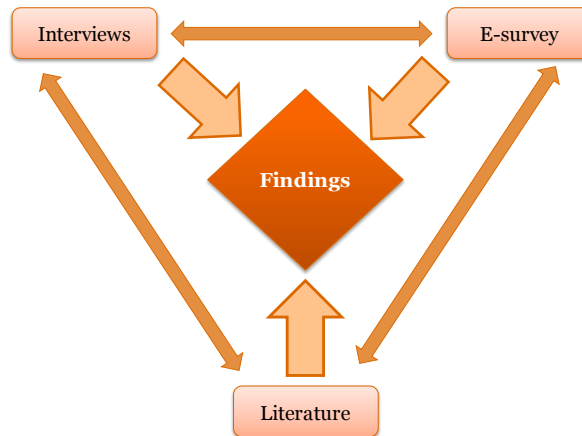
As a consequence, the evaluation results and conclusions depend more on the views and opinions gathered during interviews and the online survey and less on clear and fixed judgment criteria or target levels. For this reason, our collected data has been triangulated in order to validate the findings. The principles of triangulation involves that all findings presented in the study are supported by evidence from three different data sources: literature, interviews and the online survey. It will allow us to confirm or invalidate a finding, as well as substantiate our results.

This principle of triangulation is illustrated in the Figure below.

Thanks to this triangulation, findings from different data sources were confronted to determine:

- Clear trends in the achievements and working methods of BEREC and the BEREC Office;
- Deviations to these trends, related explanations and possible causes;
- Illustrative examples and experienced situations to support and/or discuss findings.

**Figure 10 : Principle of triangulation for the evaluation of BEREC and the BEREC Office**



Source: PwC

Instead of using only established judgement criteria and fixed target levels, this triangulation process and its related analysis provided additional valuable elements which enriched the findings and conclusions on the evaluation of BEREC and the BEREC Office.

### 2.5.2. Formulation, test and validation of findings

The final step of our research strategy is the formulation of findings and their testing/validation. The final profiles of BEREC and its Office were established by both closed questions and open-ended questions.

We present the profiles of BEREC and the BEREC Office at the end of each evaluation. In order to be comprehensive, we divided the evaluation of the working methods of the BEREC Office into two separate profiles:

- The first one illustrates the external evaluation of the Office. It is based on our interviews and the results of the online survey. It consequently includes views of diverse stakeholders.
- The second one illustrates the internal evaluation of the Office. It is based on interviews conducted during our field visit in Riga, the report delivered by the European Court of Auditors (ECA) on the BEREC Office and the answer of the Office to this ECA report.

The present Final Study Report incorporates comments from the Steering Committee received after the final meeting held in September 2012. The integration of the Steering Committee's comments is explained in *Appendix G. - Integration of Steering Committee's comments*.

## 2.6. Workshop presentation

Findings, conclusions and recommendations of the present evaluation study were presented during a workshop in October 2012 at the European Commission's premises in Brussels. In addition to presenting the evaluation findings, the main objective of this workshop was to build consensus and obtain buy-in from stakeholders concerning the results of the evaluation study and the priority recommendations for the future.

The outcomes of the workshop presentation can be found in *Appendix H. - Summary of the workshop outcomes*.

### 3. Analysis - Findings

This Section exposes our findings on the evaluation of BEREC and the BEREC Office. The following Table presents an overview of the two entities under evaluation:

**Table 5: Overview of BEREC and the BEREC Office**

General findings of the evaluation of BEREC and the BEREC Office	
<b>BEREC</b>	<ul style="list-style-type: none"> <li>• Even though BEREC has been operational since January 2010, the full exercise under the new institutional setting established by the BEREC Regulation has only been since October 2011 with the full autonomy of the BEREC Office. The performance and value added of BEREC and the BEREC Office should be considered in the context of both bodies being in the relatively early stages of development.</li> <li>• BEREC's main beneficiaries are currently NRAs and the European Commission. The European Parliament also started to ask for BEREC's advice; for instance, on international roaming issues. The Council is currently less active but BEREC is ready to answer its requests. Moreover, BEREC circulates its advices to the three institutions. BEREC's relationship with industry stakeholders is by contrast something of a work in progress.</li> <li>• All stakeholders agree on the relevance and added value of the Article 7/7a procedure, an innovation resulting from the new Framework Directive published in 2009<sup>50</sup>. According to the majority of the interviewees and the participants to the survey, outcomes resulting from this new procedure are among the most visible outputs of BEREC.</li> <li>• According to the majority of stakeholders, an important part of BEREC's outputs/deliverables need to be improved in terms of consistency and language even though some are of great quality. Following that, a more focussed and prioritised approach to BEREC work as well as a more consistent governance of the Expert Working Groups might improve BEREC contributions and so make them more valuable for internal and external stakeholders.</li> <li>• Industry representatives wonder if BEREC takes full consideration of their comments during public consultation. Telecoms companies also refer to their own NRA for queries. External communication could be improved to better explain the general governance of BEREC and so the key contacts in case of questions.</li> <li>• A further evaluation might be relevant in a later stage of BEREC's existence (until the mid-term of the next programming period) to assess tools and working methods that BEREC is not yet using but are at its disposal according to the BEREC Regulation.</li> </ul>

<sup>50</sup> The Article 7/7a procedure is explained in Box 2 on page 50 and a specific case study on Phase II investigations related to the Dutch market is developed in *Section 4. Case study 1 – The Article 7/7a procedure* on page 119.

### BEREC Office

- The BEREC Office's main purpose is to provide BEREC with professional and administrative support. To that extent, among our interviewees and participants to the online survey for the most part only NRAs and EU institutions knew its existence, role and challenges.
- The Office has been fully autonomous since September 2011. Before its existence, its role was executed by the Chair of the BoR and its own NRA staff. The Office will be constituted of 28 people by the end of 2012. It is still recruiting the missing employees, though concerns have been expressed about the need to ensure that the Office is staffed with the appropriate level of technical expertise.
- The Administrative Manager of BEREC was selected in May 2010 and took up his duties in October 2010.
- Manuals on rules and procedures are still missing. They should be developed and implemented in a short period of time.
- The value added brought by the BEREC Office is mostly appreciated and visible during the Article 7/7a procedure and when the Office provides administrative support to the Chair of the BoR and to the Expert Working Groups.
- All BEREC actors recognise that BEREC's work is different from that of each NRA and that the Chair as well as Expert Working Groups need support in their everyday work. Nevertheless, the current role, scope and margins of manoeuvre of the Office are still under question. In other words, the *raison d'être* and working methods of the BEREC Office are not yet unanimously recognised and accepted.
- One of the biggest challenges for BEREC concerns the appropriate use of the BEREC Office. BEREC, its BoR, its Chair and its Expert Working Groups may choose to use the BEREC Office to a different degree for both administrative and professional support. The appropriate balance between the role played by national experts and BEREC Office members is to be defined by BEREC.

Our analysis is detailed in the following paragraphs. It is structured according to the three topics to be evaluated and the six evaluation criteria used for the evaluation study.

### 3.1. Evaluation of the achievements and added value of BEREC

This evaluation of BEREC's achievements and added value has revealed the following trends:

- BEREC is a new structure and has created a lot of expectations since its inception in 2010. However, BEREC is still getting into its stride and has not used all the tools it has at disposal.
- BEREC takes very seriously its advisory role but both EC and some NRAs representatives would prefer to make BEREC the adviser of EU institutions on telecoms issues. The scope and activities of BEREC are related to policy advice on telecoms regulation (for instance, BEREC reports, Common Positions, opinions and advices on EC recommendations). The remaining question is the degree to which BEREC's activities and outcomes are considered and incorporated by EU institutions, NRAs - in their work at national level - and the telecom industry as advisory services, bringing value to their existing work and proper objective.
- Coordination with the European Commission has improved significantly since the predecessor ERG structure, although BEREC asks for more cooperation especially in the planning of the Annual Work Programme as well as the planning of *ad hoc* requests. Following that, clear priorities should be defined in the Annual Work Programme and room for *ad hoc* requests should be left at the beginning of the year. To do so, a clearer vision of the Commission's agenda may be helpful. In addition, timeframes for answering *ad hoc* requests and article 7/7a investigations should leave more time to NRAs for writing opinions and commenting them. This may imply a change in the given timeframes set up by the Framework Directive, even though better cooperation/communication between NRAs and with the European Commission could improve the processes with no change in regulation.
- BEREC is fully independent from EU institutions and has different priorities from the NRAs that compose it. Nevertheless, no accountability system or measures exist to ensure that the platform fulfils the objectives set in the regulatory framework and/or the ones set in the Work Programmes that BEREC develops. A fine-tuned accountability system would help BEREC prioritising and monitoring its tasks and would complement the existing mechanisms that BEREC has to presents its results, such as Annual Reports and presentations to the European Parliament and the Council.
- BEREC Work Programme is very heavy and its topics are not really prioritised: many respondents advised focussing on fewer topics and giving more space for *ad hoc* requests.
- The three stakeholder groups following BEREC's work do not have the same feedback on its achievements. If NRAs are mostly optimistic about BEREC, companies and the European Commission are more critical, especially regarding its capacity to fulfil its advisory role.
- The Article 7/7a procedure is the innovation that brought most value to BEREC's role.
- The quality and consistency of BEREC's documents are in question as there is still room for improvement especially in terms of consistency and language.

This Final Study Report considers the added value of BEREC towards its main stakeholders: EU institutions, NRAs and industry representatives. In that perspective, the achievements and added value of BEREC *vis-à-vis* the Single Market, NRAs' work and EU consumers are assessed<sup>51</sup>.

#### 3.1.1. Relevance

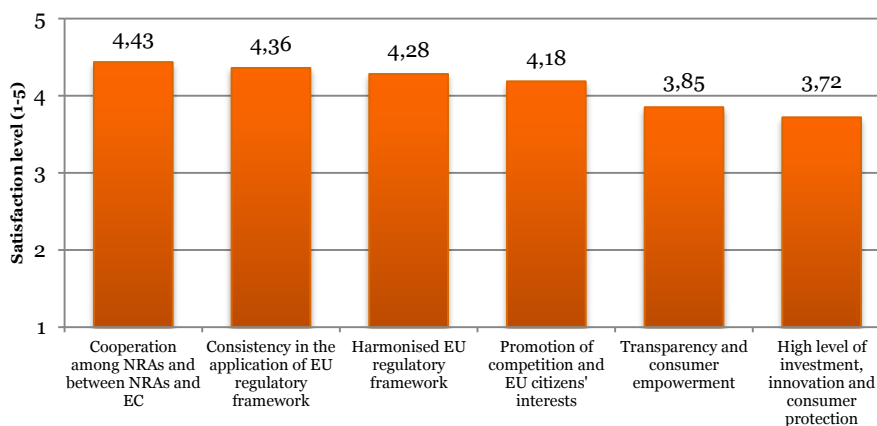
**BEREC's objectives** are defined in the Framework Directive and the BEREC Regulation, as well as in BEREC Work Programmes. These objectives are diverse and target different groups

<sup>51</sup> The Steering Committee also showed interest in having elements on BEREC's accountability. A question consequently emerges: to whom should BEREC be accountable for and on which basis (considering that the BEREC Regulation does not consider BEREC's role and tasks in terms of obligation)? For instance, it is complicated to consider BEREC's accountability *vis-à-vis* NRAs on the basis of the BEREC Annual Work Programme as, by doing so, NRAs would be "judge and party": NRAs draft the WP, implement it, revise it and assess its outcomes in the Annual Report.

that have different proper objectives. That is why it is important to know whether BEREC ensures its objectives in a consistent manner and if all groups targeted are satisfied with BEREC.

The Figure below illustrates the degree of completion of BEREC's objectives according to the participants of the online survey<sup>52</sup>.

**Figure 11: Completion of BEREC's objectives**



Source: PwC

As a whole, **participants to the online questionnaire consider that BEREC globally fulfils its objectives**. Nevertheless, objectives relative to NRAs and coordination with EU institutions appear better fulfilled and better prioritised by BEREC compared to objectives relative to the Single Market or consumer's empowerment. BEREC being composed of NRAs, it appears logical that NRAs start using the BEREC platform to improve their coordination when objectives relative to the Single Market are more of EC interest. This also needs to be put in perspective with the fact that objectives relative to the Single Market and consumer's empowerment are less tangible and need to be considered in the long run. On the opposite, leveraging BEREC to diffuse best practices and obtain market information is more tangible and might be immediately assessed.

In addition to these regulatory objectives, BEREC has defined "**themes of focus**" and "**topics that matter**" in its Mid-Term Strategy<sup>53</sup>. This Mid-Term Strategy has been revised during the BoR Plenary Meeting of May 2012<sup>54</sup>. It is nowadays considered as BEREC's strategic vision for the future. It is a document developed for the next 3 to 5 years. It has been developed because most of NRAs estimated that Work Programmes with one-year vision are not enough to define priorities. The Mid-Term Strategy aims at clarifying overall objectives for the next 3 to 5 years. These objectives would then be translated into annual objectives in each Work Programme.

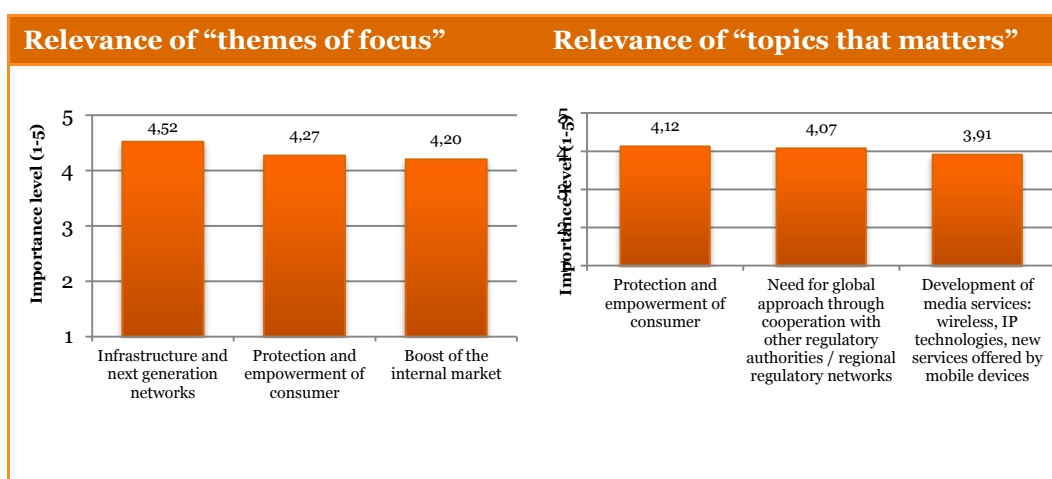
When considering these "themes of focus" and "topics that matter", we realise that objectives for the long term (such as infrastructure, empowerment of consumer, development of the internal market and of media services) are considered as very relevant and important by all stakeholders.

<sup>52</sup> Participants to the online survey could answer between 1 (strongly disagree) and 5 (strongly agree).

<sup>53</sup> BoR(12) 09, BEREC Medium Term Strategy Outlook, 23 February 2012.

<sup>54</sup> BEREC is also currently working on another Strategy "*Building BEREC's future: practical and strategic next steps*" which tackles the operational, institutional and policy thinking that BEREC is currently facing. It is a working document.



**Figure 12: Relevance of BEREC's objectives defined in its Mid-Term Strategy**

Source: PwC

In a more detailed manner, the most questioned role of BEREC is related to its **advisory role**. Although all interviewees and online survey participants emphasised that the NRAs' knowledge and experience makes them the most credible entities to advise EU institutions, some also state that this advisory role is not explained in the BEREC Regulation. Therefore, they deem it important that BEREC does not go beyond its role by tackling policy-making issues. However, this approach is not commonly accepted by all NRAs and each NRA has its own opinion on the role BEREC should play as advisor to the EU institutions. For instance, in BEREC Annual Report 2011, the 2011 Chair of the BoR, Chris Fonteijn, underlines the importance of "advice to policymakers" by stating this element as the first objective of BEREC. To support this point, the former Chair provides elements on advice on Universal Service, net neutrality, broadband services and international roaming<sup>55</sup>. That is why the underlining question behind this role is actually what stakeholders understand as an "advisory role". If BEREC should not propose policy as such, many interviewees conclude that BEREC's main activity is to collect information and produce fact and figures (the core activity of BEREC when considering benchmark, exchange of best practices and support to NRAs). These documents provide elements regarding the NRAs' own markets, their approaches and viewpoints that all stakeholders - NRAs, EU institutions and market representatives - might find relevant to their own objectives. However, EU institutions also expect concrete recommendations on key existing and emerging topics.

Following this, the advisory role of BEREC is not sufficiently defined. This is despite a clear statement in BEREC Regulation: "*BEREC shall advise the Commission, and upon request, the European Parliament and the Council*"<sup>56</sup>. The past year showed clear evidence of the willingness of the European Commission and other EU institutions to employ BEREC as an advisory body. In addition, many of the large number of BEREC outputs are to a certain extent advisory documents, such as reports and opinions. These documents may be used for advisory purposes while remaining clearly in the remits of BEREC. However, many participants to the survey – EU institutions and NRAs - regret that BEREC does not shed enough light on emerging issues or propose recommendations and/or guidelines to face them. This is a work in progress for BEREC which is still in a learning curve.

BEREC can also play a significant role to **harmonise the electronic communications market**. BEREC fulfils this activity in three ways: (1) the development and dissemination among NRAs of best practices on the implementation of the EU regulatory framework<sup>57</sup>, (2) the delivery of opinions on documents, including draft Commission Recommendations or Guidelines, and (3)

<sup>55</sup> BoR(12) 48, BEREC Annual Report 2011, 24 May 2012.

<sup>56</sup> Article 1(4), BEREC Regulation.

<sup>57</sup> According to the survey results, among the most valuable outcomes of BEREC are the data, information and collective views that NRAs receive through the BEREC network. In parallel to this, BEREC provides also the opportunity to NRAs to tackle together new issues relative to telecoms regulation; such as net neutrality.

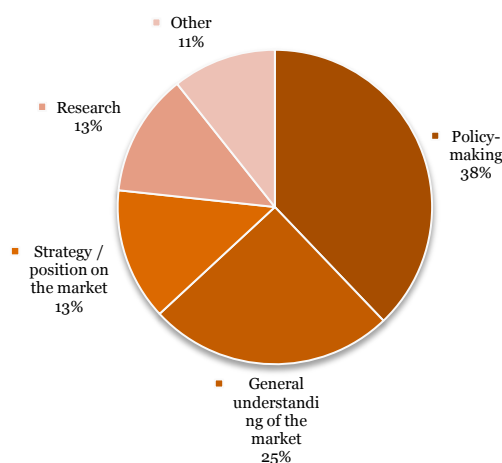


the issuance of reports and common positions meant for use as guidelines towards a harmonised and common market for electronic communications.

The **independent character of BEREC** is still questionable. By being independent, we mean an expression used by one of the participants to the online survey who stated: having “*a European vocation that transcends national interests*”. If its independence *vis-à-vis* EU institutions and industry representatives is guaranteed, it is very difficult to estimate whether BEREC is fully independent from its own members, NRAs. Indeed, even though, “*in all its activities, BEREC shall pursue the same objectives as those of the national regulatory authorities*”<sup>58</sup>, BEREC outputs should illustrate an EU perspective and provide an EU-wide approach towards the issues addressed. Also, since NRAs compose BEREC, it is complicated to differentiate the different national approaches of NRAs from BEREC’s own approach. This is also understandable given the early stages of its development. It might also be a question of perception, not least the view from industry that BEREC is little more than continuation of the ERG. It is also difficult to estimate the extent to which some NRAs influence BEREC more than others, since some of them have more experience and resources. In addition, even though most of the NRAs have a representative in each EWG, only a few are able to follow all BEREC discussions. BEREC has nonetheless all the necessary means to take decisions, adopt positions and provide opinions that do not favour any interest, NRA or market player. However, the independent character appears to vary according to the topic addressed; whether it is of interest for NRAs/the European Commission or not. In that sense, since some NRAs might not participate to all EWGs for resource reasons, they have to select them and so prioritise according to their own interest. Some improvement is also possible thanks to the drafting of Work Programme, the use of consultation and the development of the Article7/7a procedure. Indeed, the composition of Article 7 Expert Working Groups illustrate the extent to which BEREC is able to gather experts according to particular needs, without raising independence issues or questions related to the latent influence that some NRAs (having more experience and resources) might have on BEREC outputs.

Considering the **relevance and usefulness of BEREC contributions**, most of the interviewees and participants to the online survey answered that they use BEREC’s outcomes for, first, policy-making purposes and, second, acquire a better understanding of the electronic communications market (see Figure below). For instance, BEREC provides views, benchmarks and analysis on hot topics that sometimes NRAs on their own could not conduct or on which they would miss some aspects. By doing so, BEREC also provides an EU-wide approach to these topics. Furthermore, BEREC is responsible for providing advice to third parties, upon request from the European Parliament and/or the Council, for example. But this has not been put into practice yet. BEREC can also support individual NRAs in their relations with third parties, on request of NRAs. Such a request has not been made before October 2012.

**Figure 13: Use of BEREC’s contribution**



Source: PwC

<sup>58</sup> Article 1(3), BEREC Regulation.

With regards to the very large scope of topics addressed by BEREC, none of the participants to the survey proposed that BEREC should take on **new tasks**. They however suggest that BEREC develops some existing tasks, such as increasing propositions relative to consumer protection. But some NRAs have no competence in this field. Moreover, all stakeholder groups addressed insisted on the need to develop the advisory practice and better prioritise tasks. When considering new tasks to fulfil, many stakeholders also raised the challenge of resource availability and time management. EC and BEREC representatives finally emphasised the need for more BEREC outputs on cross-border issues, for which BEREC appears to be better placed than individual NRAs.

Some tasks and tools at the disposal of BEREC are not sufficiently used yet and, consequently, cannot be concretely evaluated. These include:

- Common Positions (BEREC is currently revising former ERG Common Positions);
- Acting as advisory to third parties and/or support to NRAs and EU institutions in their relations with third parties.

<b>BEREC's achievements and added value - RELEVANCE</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>• BEREC has three main activities (Advisory to EU institutions for improving the Single Market, support to NRAs and improvement of consumer empowerment) that all stakeholders consider as very relevant.</li> <li>• BEREC's documents fulfil various purposes that different stakeholders' need.</li> <li>• There is no need for new tasks to be taken on; even if BEREC could go into some topics in greater depth.</li> </ul>	<ul style="list-style-type: none"> <li>• The scope of advisory role covered by BEREC is wide but some NRAs do not consider BEREC as an adviser as such considering that BEREC should not provide policy advices to EU institutions. Nevertheless, each NRA has a different approach towards this role of advisor.</li> <li>• On the other hand, EU institutions are expecting a lot from BEREC as an advisor.</li> <li>• BEREC's independence towards EU institutions and/or industry stakeholders is guaranteed but its dependence on the NRAs that compose it may raise questions with regards to the influence of each NRA.</li> <li>• BEREC has at disposal tasks and tools it has not used yet. That is why the full relevance of BEREC's tasks needs to be re-appreciated later on.</li> <li>• NRAs should use more the BEREC platform to reflect together on topics that will become strategic in the next few years and develop new Common Positions.</li> </ul>

### Main findings

- BEREC takes very seriously its role of advisor to the EU institutions. But the definition of the advisory role of BEREC needs to be clarified by BEREC and its members together with the Commission since each NRA has a different approach toward the advisory role BEREC should fulfil towards EU institutions.
- Independence towards NRAs is still an unanswered question, even though BEREC has a Work Programme that differs from NRAs' own work plans and the Article 7/7a procedure that may oppose an NRA to the BEREC platform.
- BEREC leverages off its members to collect and disseminate data on all covered markets.

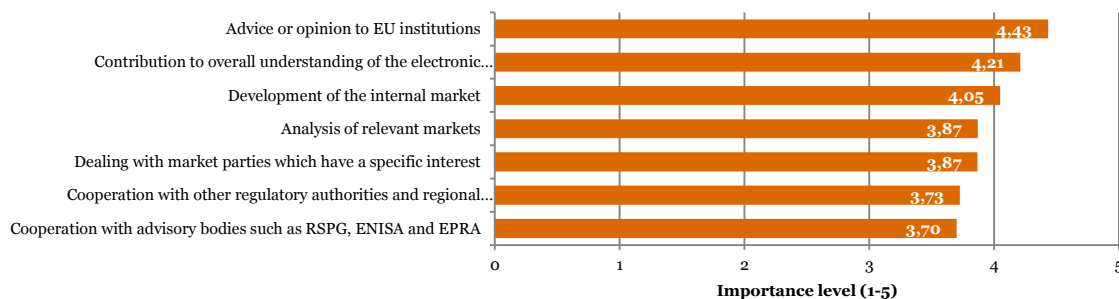
### Main recommendations

- Clarify and harmonise, to the extent specified as necessary, the advisory role BEREC may have *vis-à-vis* EU institutions and NRAs.
- Be prepared to demonstrate an independent character, notably by improving BEREC's transparency and accountability.
- NRAs should more leverage the BEREC platform to discuss and develop Common Positions on new emerging topics.

### 3.1.2. Added value

When considering **BEREC's activities**, stakeholders interviewed and participants to the online survey highly ranked all activities of BEREC, showing that all of them bring value to NRAs, EU institutions and markets players. The Figure below illustrates results from the online survey.

**Figure 14: Perception of the activities of BEREC bringing the most value**



Source: PwC

As expected, some activities are considered as bringing more value than others: **advice to EU institutions**, data collection and sharing among NRAs, development of the internal market and **the Article 7/7a procedure**. In a more detailed manner, interviews have revealed that BEREC has brought more value in terms of **data collection, sharing of views, guidelines, benchmarks, statistics** and analysis on relevant markets<sup>59</sup> than through **Common Positions (CP)**. The main reason behind this is that there have not been any new Common Positions (CPs) since the inception of BEREC. BEREC is currently revising and updating three ERG's Common Positions on broadband. Besides updating these CPs to take into account NGAs new developments, this revision appears to be particularly relevant due to the changes between the ERG and BEREC. Many interviewees consider that ERG Common Positions were compromises and "least common denominators" that could be interpreted and understood in many ways and with no formal enforcement. The new regulatory framework allows BEREC to change this situation and propose Common Positions that are agreed upon by 2/3 of NRAs and of which NRAs and the EC have to take utmost account<sup>60</sup>.

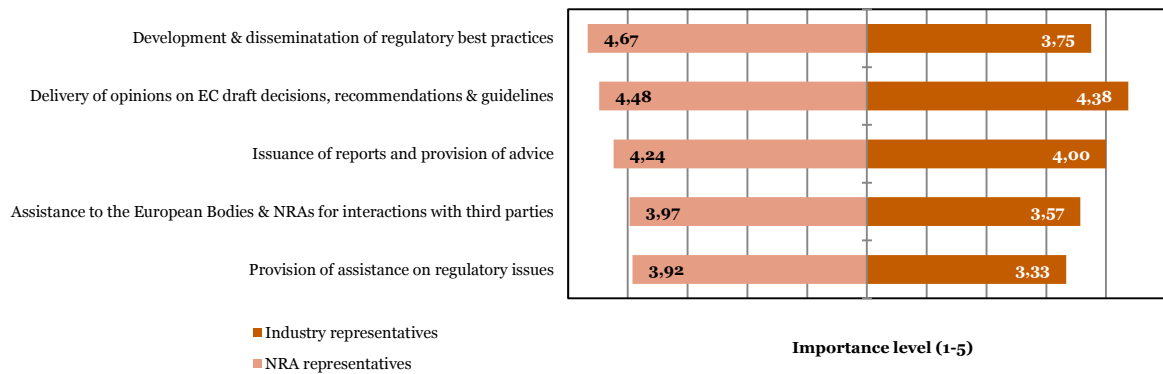
<sup>59</sup> Article 3(1e), BEREC Regulation.

<sup>60</sup> Article 3(3), BEREC Regulation.

Following this, we might consider that BEREC should **focus on specific topics**, selected by their relevance and the extent to which BEREC can bring value (in comparison to other advisory organisation); and knowing that these specific issues may evolve with time. This is important given the potentially very large workload of BEREC juxtaposed with its limited resources.

When considering in detail which BEREC contributions bring the most value to stakeholders involved in BEREC environment, we realise that both NRA and industry representatives have an aligned vision of what documents support them in their own work. The Figure below presents the importance of specific BEREC outputs for both NRAs and market players.

**Figure 15: Level of value brought by BEREC contributions to stakeholders' work**

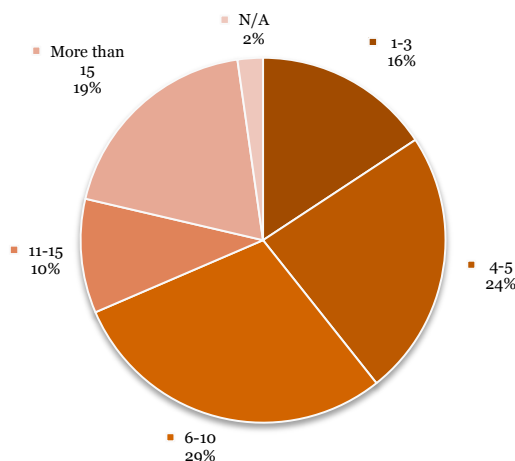


Source: PwC

The high level of value added given to the development and dissemination of best practices by NRAs is logical with the specific needs the latter have towards BEREC. What is more striking is that both NRAs and industry representatives provide a close hierarchy of value added by BEREC contributions: opinions on EC draft recommendations, reports and opinions, assistance in cooperation with third parties. In that sense, telecoms stakeholders with very diverse needs and expectations consider that BEREC adds value with the same outputs to deliver. In addition, these outputs are aligned with the activities bringing the most value presented above.

Considering **the value added of BEREC contributions** also require to consider the use of these documents on the everyday work of BEREC stakeholders. When considering this, we realise that nearly 60% of the participants to the online survey use 6 BEREC contributions or more in a quarter (see Figure below). In that sense, the documents produced by BEREC are frequently used.

**Figure 16: Number of BEREC's contributions used in a quarter**



Source: PwC

BEREC's contributions support NRAs and industry representatives to structure, understand, interpret, and, if needed challenge national regulation. These uses concern industry representatives, even though BEREC's documents are not directly addressed to them. According to a large majority of interviewees, these uses are the most valuable elements resulting from BEREC's work.

Moreover, the **number of people following BEREC's work** within NRAs depends on the size and involvement of the NRA. Interviews have revealed that, some NRAs have 1-3 people exclusively dedicated to following BEREC's work every day and BEREC's activities can involve between 10-15 people within some NRAs. Nevertheless, the size of the NRA is not a golden rule to estimate whether the NRA follows BEREC's work; in that sense, some small NRAs are only focusing on some of the most relevant EWGs' work, outcomes and documents; while other small national agencies follow all BEREC news.

When considering specific tasks of BEREC, the **Article 7/7a procedure** is among the most value added elements provided by BEREC (notably in comparison to ERG which could not conduct this procedure). The following box explains this procedure.

### Box 2: The Article 7/7a procedure

#### The Article 7/7a procedure in operation

According to the Regulatory Framework, NRAs carry out analyses of a range of telecoms markets that may necessitate *ex ante* regulation; these are based on the Commission's recommendation on relevant markets and the guidelines on market analysis and assessment of Significant Market Power (SMP). If an NRA considers that a market is lacking effective competition, it is required to impose appropriate regulatory obligations.

Alongside other measures to guarantee effective competition for the benefit of consumers, the NRA must consult on its definition and analysis of relevant markets and any proposed imposition or removal of regulatory remedies on any providers of telecoms networks or services. These consultations are the so-called Article 7/7a procedures. Their objective is to contribute to the development of a Single Market in electronic communications, relying on the cooperation between NRAs and the Commission and among NRAs themselves.

Under the consultation procedure set out in Articles 7 and 7a, NRAs are required to notify to their counterparts in other Member States, to the Commission and to BEREC their draft decisions on market definitions and designation of SMP as well as their proposed regulatory remedies. Under Phase I of the procedure, the other NRAs, BEREC and the Commission then have one month to comment on the proposed decision or measure<sup>61</sup>.

#### Assessing market definitions and SMP findings (Article 7 procedure)

If the Commission considers that the NRAs' definition of the relevant market, or its SMP designation, may create a barrier to the Single Market, or has serious doubts about its compatibility with EU law, it may open up a Phase II investigation that extends the process by two months<sup>62</sup> during which BEREC (acting on a simple majority basis) issues an opinion on whether it shares the Commission's doubts. The Commission, taking utmost account of BEREC's opinion, but not bound by it, decides whether to require the NRA to amend or withdraw the proposed measure, or whether to withdraw its serious doubts<sup>63</sup>. If required to do so, the NRA must amend or withdraw its measure within six months, taking "utmost account" of the comments from other NRAs, BEREC and the Commission<sup>64</sup>.

<sup>61</sup> Article 7(3) and Article 7a(1), Framework Directive.

<sup>62</sup> Article 7(4), Framework Directive.

<sup>63</sup> Article 7(5), Framework Directive.

<sup>64</sup> Article 7(6), (7), Framework Directive.

### Assessing regulatory remedies (Article 7a procedure)

If the Commission considers that the proposed remedy would create a barrier to the Single Market, or has serious doubts about its compatibility with EU law, it may open up a Phase II investigation that extends the process by three months<sup>65</sup>, during which the Commission, BEREC and the NRA concerned are expected to “cooperate closely”, taking into account “the views of market participants”, to agree on what they consider to be the most appropriate and effective measure<sup>66</sup>. Within six weeks of the initiation of Phase II, BEREC (acting on a simple majority basis) publicly issues a reasoned opinion on whether it considers the NRA should amend or withdraw its draft measure<sup>67</sup>. If BEREC shares the Commission’s serious doubts, it is expected to cooperate closely with the NRA concerned in identifying the most appropriate and effective measure<sup>68</sup>. Where BEREC does not agree with the Commission’s position or does not issue an opinion, or where the NRA amends or maintains its draft measure, the Commission, having taken “utmost account” of BEREC’s opinion, may, within one month following the initial three months period, issue a recommendation requiring the NRA to amend or withdraw its measure and suggesting proposals for amendment<sup>69</sup>. The NRA then has one month to communicate to the Commission and BEREC its adopted final measure<sup>70</sup>. If the NRA decides not to follow the Commission’s recommendation, it must provide a reasoned justification for not doing so<sup>71</sup>.

The BEREC Office has compiled a list of experts from every NRA in the EU, who may be called on to assess notified draft decisions or measures. As soon as a BEREC opinion is requested under the Article 7 or 7a procedure, the BEREC Office forms an Expert Working Group (EWG) of 5 to 7 experts from that list, who have 15 working days (under Article 7) and 25 working days (under Article 7a) to assess the documents and draft an opinion for the Board of Regulator’s approval. The notifying NRA is not involved.

The Article 7/7a procedure is the exclusive topic of the case study presented in *Section 4. Case study 1 – The Article 7/7a procedure* on page 118.

When considering the use of Common Positions and the current revision of some of them, we might be interested to know the future CPs BEREC considers relevant to focus on. Hereafter are the suggested topics:

- NGAs;
- Broadband;
- Competition, costing and pricing.

In that perspective, BEREC is currently updating CPs on broadband to include NGAs developments.

The added value of BEREC towards the **Digital Agenda for Europe** (DAE) is in question for many stakeholders. If all agree on the link between the platform and the Digital Agenda<sup>72</sup>, most of the NRAs do not think that BEREC should take responsibility for it. Following that, only a few of interviewees and participants to the online survey consider that BEREC should put new issues related to the DAE on its agenda.

<sup>65</sup> Article 7a(1), Framework Directive.

<sup>66</sup> Article 7a(2), Framework Directive.

<sup>67</sup> Article 7a(3), Framework Directive.

<sup>68</sup> Article 7a(4), Framework Directive.

<sup>69</sup> Article 7a(5), Framework Directive.

<sup>70</sup> Article 7a(6), Framework Directive.

<sup>71</sup> Article 7a(7), Framework Directive.

<sup>72</sup> For instance, the 2011 BoR Chairman, Chris Fonteijn, mentions the Digital Agenda in his introduction to BEREC Annual Report 2011, explaining how one of BEREC contributions will influence the Digital Agenda.

Finally, when **comparing BEREC with ERG**, we realise that BEREC is nowadays the most adapted and balanced organisational structure to regulate electronic communications in the EU: promoting the harmonisation of the Single Market as well as adapting BEREC outputs to each national market and its specificities.

### Box 3: Comparison between BEREC and ERG

#### BEREC in comparison with ERG

- BEREC tasks and role are clearer and better structured than it was with ERG (Framework Directive and BEREC Regulation). However, BEREC also continues ERG work.
- The formal organisation, established procedures and new decision-making mechanisms (such as the voting system compared to consensus) enable a more efficient and more transparent work.
- BEREC has more responsibility and liability than before.
- The approach and relations with the European Commission are better established and enable more efficient communication and mutual work.
- Now that the European Commission and NRAs have to take into utmost consideration BEREC opinions it gives BEREC a more established role in the regulatory framework.
- The fact that BEREC can also interact with the European Parliament and the Council adds value to BEREC work.
- The BEREC Office as support to Expert Working Groups and NRAs formalised the role of BEREC in comparison with ERG.

When considering stakeholders' approaches towards the differences between BEREC and ERG, we might summarise some elements that might support BEREC's value added while keeping the current balance:

- NRAs are willing to share more knowledge, practices and common methodologies;
- BEREC could be used to leverage existing resources to support NRAs that have difficulties in adapting BEREC decisions on their territory.



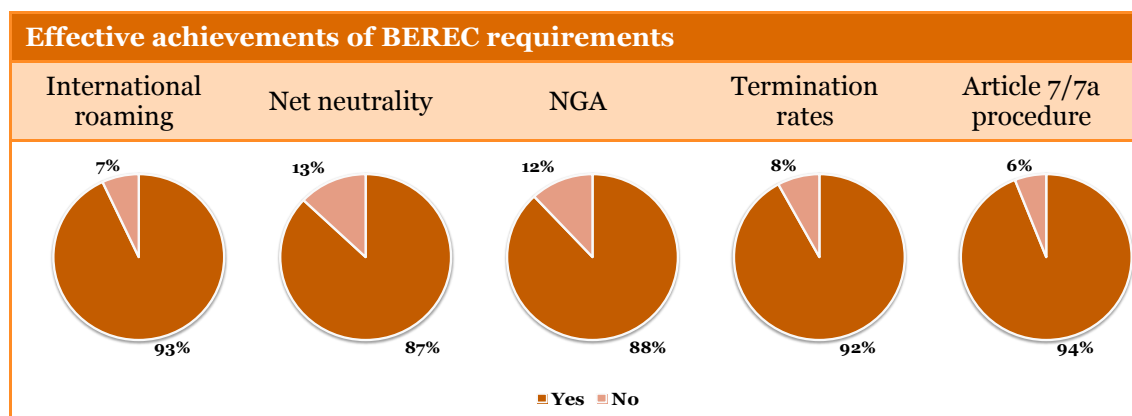
BEREC's achievements and added value - ADDED VALUE	
Positive elements	Elements to improve
<ul style="list-style-type: none"> <li>• The Article 7/7a procedure in promoting consistent regulatory practice in the EU telecoms market.</li> <li>• BEREC is a platform that provides to NRAs updated and accessible data on all European markets (35 countries).</li> <li>• BEREC provides added value in their working documents (guidelines) for NRAs and telecoms companies to be discussed with their respective countries within their own regulatory framework.</li> </ul>	<ul style="list-style-type: none"> <li>• BEREC's added value should derive more from being an advisory body than collecting data (figures and facts) that other advisory organisations are already fulfilling or could fulfil. It should contribute to developing a European approach.</li> <li>• The extent to which BEREC should intervene and be bound to achieve the objectives of the Digital Agenda for Europe (DAE) is unclear<sup>73</sup>.</li> </ul>
Main findings	
<ul style="list-style-type: none"> <li>• BEREC activities are appreciated and its contributions are used. The activities and contributions bringing the more value to NRAs, EU institutions and the industry market are considered as priorities. However, the hierarchy might differ between NRAs and industry representatives.</li> <li>• The role of BEREC and its Office under the Article 7/7a procedure adds value to improving consistent regulation and the dissemination of best practices in the Single Market in telecoms, although certain procedural tweaks could further improve their efficiency (<i>see further Case Study 1 in Section 4</i>).</li> <li>• BEREC contributions are documentation that fund and ground discussion on electronic communications at the EU and national levels.</li> </ul>	
Main recommendations	
<ul style="list-style-type: none"> <li>• Prioritisation based on the elements that bring the most value should be clearly established.</li> <li>• BEREC's role towards the Digital Agenda for Europe should be clarified, given the expectations that many stakeholders have towards BEREC's added value <i>vis-à-vis</i> the objectives and achievements of the DAE.</li> <li>• Increase the potential of BEREC by increasing exchanges of best practices and helping NRAs that might need it.</li> </ul>	

### 3.1.3. Effectiveness

When considering the effectiveness of BEREC in achieving its requirements and objectives, we may consider that, until now, **BEREC has been a success**. When asking the participants to the online survey “do you think the BEREC efficiently achieved its requirements/objectives regarding the following topics”, here are the answers:

<sup>73</sup> The Digital Agenda for Europe (DAE) is not mentioned in the BEREC Regulation; notably because the DAE is a policy document. As a consequence, BEREC does not have to refer to it to found and implement its activities and tasks. Nevertheless, many interviewees mentioned the DAE. Following that, BEREC has no responsibility in taking part of the DAE, but many stakeholders believe the platform of NRAs should be involved in the implementation of the DAE. For that reason, our Evaluation Team does not mention the DAE as an activity for which BEREC should be accountable, but recommends clarifying the situation and relations between BEREC and the DAE to improve the added value of BEREC in the achievements of the Digital Agenda.



**Figure 17: Effectiveness of BEREC in achieving its objectives**

Source: PwC

As these objectives were considered as crucial for the future of the telecoms market in Europe and the overall work of BEREC, **the very high percentage of satisfaction of participants illustrates the positive trend on which BEREC is.** The two topics with the lowest percentage of satisfaction - net neutrality and NGA - present complex issues that NRAs need to tackle together and for which knowledge has to be built in common. On the other hand, the Article 7/7a procedure and outcomes resulting from the role of BEREC in the debate on international roaming are considered as success. Indeed, international roaming was the first topic for which the European Parliament required the advice of BEREC. The platform answered and currently follows up the new regulation on the subject.

**When comparing BEREC with ERG, most of the interviewees and participants to the online survey consider BEREC as more effective.** Nevertheless, the strategic view and the consistency in the presentation of the documents need further improvement according to the external stakeholders as well as to some NRAs.

Considering the **quality of documents** produced by BEREC, interviewees stated that many working documents need improvement on many aspects, such as: consistency, structure and language. For instance, language is complicated and proofreading is needed. Furthermore, all documents do not have the same quality and consistency appears to be a challenge to ensure a better effectiveness of BEREC's outcomes. In addition, industry representatives believe that the way of communicating the results of public consultation needs to be improved: provide a clear feedback to the third parties, explain which opinions were taken into account and which were not, and provide explanation. Another aspect affecting quality of the documents is their number. For instance, regarding net neutrality, several documents are issued or planned (Guideline on Net Neutrality and Transparency<sup>74</sup> in 2011, three public consultations<sup>75</sup> in 2012) which can be confusing. BEREC recognised this risk for confusion and published an umbrella document in May 2012 to improve the consistency of its outputs. Moreover, focusing on key topics (such as the ones identified in the Mid-Term Strategy and commonly accepted and considered as particularly relevant<sup>76</sup>) could lead to reducing the number of documents to issue and ensure more consistency, improve the language and so the easiness to use BEREC contributions.

The improvement of quality of the contributions could also increase the **effectiveness of the discussion process and the voting** (by decreasing the number of documents and focusing more on quality rather than quantity). A few NRAs explained that since they are not following all the documents, they do not have enough resources to follow discussion. However, the Article 3 of

<sup>74</sup> BoR(11) 66, BEREC report on the public consultation on the draft BEREC Guidelines on Transparency in the scope of Net Neutrality.

<sup>75</sup> BoR(12) 31, BoR(12) 32, BoR(12) 33.

<sup>76</sup> As reminder the three "themes of focus" chosen by BEREC for its Mid-Term Strategy are: (1) infrastructure and next generation networks, (2) protection and empowerment of consumer and (3) boost of the internal market. The three "topics that matter" defined by BEREC are: (1) development of media services, (2) protection and empowerment of consumer and (3) need for global approach. These five subjects (consumer empowerment being tackled by both sets of topics) are considered as very relevant by most of the stakeholders.

the Framework Directive requires Member States to ensure that NRAs have adequate human resources to comply with the obligation to participate in BEREC. When the voting procedure occurs, some NRAs with fewer resources might be influenced by others. That is why BEREC should reduce the number of documents put to voting and ensures that all Heads have all elements at hand to build an opinion. NRAs' specific comments regarding the voting process for the adoption of BEREC opinions in the Article 7/7a procedure allude to similar problems (*see further Case Study 1 in Section 4*) but we noted that the EWG in charge of the Framework Implementation has recently considered this process to be operating effectively<sup>77</sup>. Considering that the voting process is efficient as such, BEREC could leverage it by ensuring that all NRAs have the same elements at hand to vote.

Moreover, BEREC knows that it is acting in a fast moving market. Priorities and resources needed by BEREC will probably change because it addresses an ever-changing sector. For that reason, BEREC has to be **flexible enough to adapt and prioritise issues** to address and as said before act as an advisor for the European Commission. The European Commission also needs to be the partner of BEREC to prioritise topics and plan ahead as much as possible (also within the *ad hoc* requests). NRAs representatives are aware of this situation but resources available for BEREC might be a bottleneck and BEREC might have difficulties to prioritise the topics to tackle and documents to publish. One way to increase effectiveness is to ensure that the already existing mid-year revision of BEREC Work Programme helps to prioritise topics and emerging issues. As a consequence, BEREC could also decide to drop reports in advance in case experts will not be able to deliver and/or delay their delivery to guarantee a more adequate delivery in the deadlines established by the Mid-Term Strategy, and so, potentially during the following year.

Finally, one of the aims of BEREC is to **increase its effectiveness in communication to the third parties**. Defining a Mid-Term Strategy was the first step. A second step to better ensure the effectiveness of BEREC work would be to **define a communication strategy** towards external stakeholders that may not be aware of BEREC functioning and consider the platform as a black box.

In order to more precisely assess the effectiveness of BEREC we may consider three perspectives:

- BEREC requirements towards EU institutions,
- BEREC requirements towards NRAs, and
- BEREC requirements to keep track of the telecoms sector and specifically its relationship to telecommunications industry stakeholders.

These three perspectives are illustrated in the following boxes.

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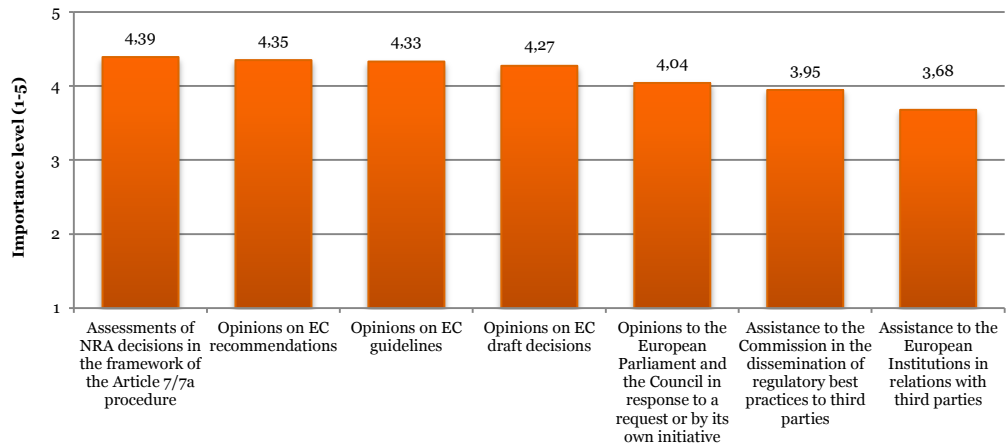
<sup>77</sup> BoR(12) 64, Conclusions of the 11<sup>th</sup> Meeting of the Board of Regulators, 30 May 2012.

**Box 4: Effectiveness of BEREC towards EU institutions**

**Is BEREC effective considering the needs of the EU institutions?**

When considering the effectiveness of BEREC towards the EU institutions, we realise that participants to the online survey are in general very satisfied with BEREC. The following Figure illustrates this situation.

**Figure 18: Perception of the effectiveness of BEREC tasks towards the EU institutions**



Source: PwC

BEREC is perceived to be most effective in serving EU institutions when performing its role under the Article 7/7a procedure, reflecting the fact that BEREC’s role in this procedure is crucial to promoting consistent regulation in the internal market in telecoms and in bringing added value (see further Case Study 1 in Section 4). The situation of the last two requirements are also not surprising: they have not been implemented as such yet, even if BEREC plans to develop its role *vis-à-vis* third parties (BoR(12) 64, Conclusion of BoR PM in May 2012).

Moreover, all tasks relative to BEREC’s opinions are considered as well performed. This comforts the idea that BEREC has an advisory role to play, that this role is expected by the EU institutions and that BEREC performs its best to comply with EC requirements.

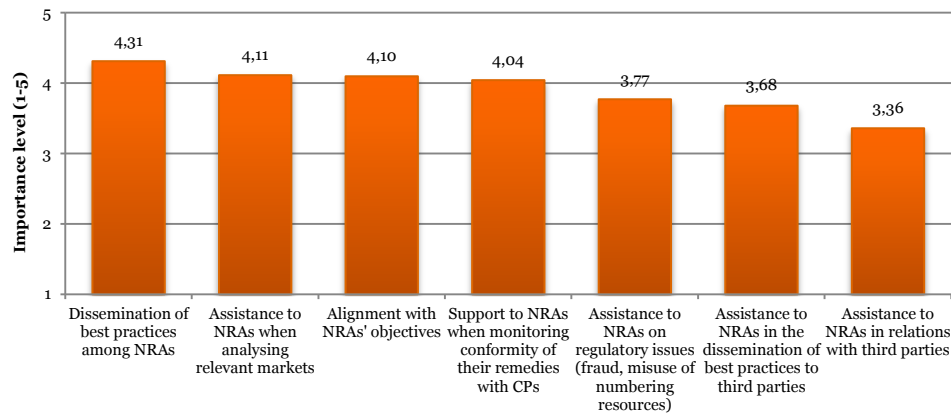
The second perspective to adopt is to consider BEREC towards NRAs.

### Box 5: Effectiveness of BEREC towards NRAs' requirement

#### Is BEREC effective considering the needs of NRAs?

In order to assess the effectiveness of BEREC towards NRAs' needs, we considered different tasks to perform when supporting NRAs. These tasks are as follow:

**Figure 19: Perception of the effectiveness of BEREC towards the NRAs**



Source: PwC

Not surprisingly the most effective tasks of BEREC *vis-à-vis* NRAs concerns the dissemination of best practices. In addition, the role played by BEREC during the Article 7/7a procedure - and more precisely the contribution of *ad hoc* EWGs - is also considered as crucial; highlighting that BEREC outputs on Article 7/7a are both judged effective for the EU institutions and for the NRAs.

Not surprisingly, and as for requirements towards the EU institutions, BEREC tasks relative to supporting NRAs in their relations with third parties are less effective, mostly because they are marginal compared to other tasks. However, BEREC intends to develop these tasks (BoR(12) 64).

Other supportive tasks are considered as more effective, illustrating that BEREC takes very seriously its role of support to NRAs when they face regulatory issues: monitoring of remedies, fraud and misuse of numbering resources for instance.

The effective alignment of BEREC's objectives with the ones of NRAs requires some explanation. The BEREC platform has proper objectives. All interviewees acknowledged and underlined this aspect. BEREC Regulation states that "*in all its activities, BEREC shall pursue the same objectives as those of the national regulatory authorities*"<sup>78</sup>. However, BEREC Regulation also emphasises that BEREC should particularly contribute to the development of the internal market.

<sup>78</sup> Article 1(3), BEREC Regulation.

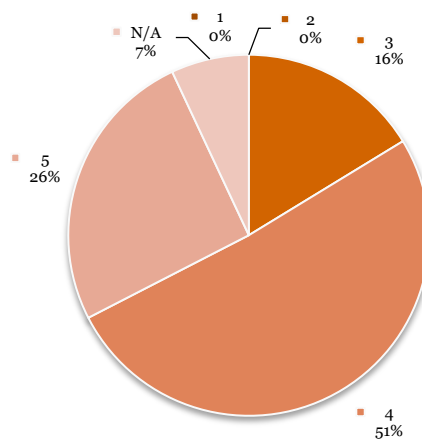
The third and last perspective to adopt is related to BEREC requirements towards the electronic communications market.

**Box 6: Effectiveness of BEREC towards the electronic telecommunications market**

***Does BEREC keep track of the actual market developments?***

When asking the participants of the online survey the extent to which BEREC succeeds in keeping track of the telecoms market developments, we obtain very clear and positive answers. These answers are illustrated in the Figure below.

**Figure 20: Perception of the effectiveness of BEREC when keeping track of the telecoms market developments**



(1: not effective at all , 5: very effective)

Source: PwC

By keeping track of the market developments the regulatory documents mention: comments on letters for the Commission, remedies for NRAs, monitoring of the market. A very large majority of the participants to the online survey consider that BEREC is effective or very effective when keeping track of these developments.

This element is particularly important because it explains how BEREC can firstly be effective when advising the EU institutions and supporting NRAs: (1) to provide advice, BEREC needs to have a very clear vision of the market at the EU level and (2) to support NRAs, it needs to understand differences between national agencies and how best practices can be shared.

BEREC's achievements and added value - EFFECTIVENESS	
Positive elements	Elements to improve
<ul style="list-style-type: none"> <li>• When considering its main objectives, BEREC is very effective.</li> <li>• When considering the three perspectives to adopt (EU institutions, NRAs and telecoms market), BEREC is also very effective.</li> <li>• BEREC is more effective than the ERG.</li> </ul>	<ul style="list-style-type: none"> <li>• The quality of BEREC contributions is not consistent; especially regarding the language.</li> <li>• No clear prioritisation of the topics to address and the lack of consistency in the documents produce negative impact on the voting process when all NRAs should be able to participate to the debate.</li> <li>• BEREC has no clear communication towards the market players.</li> </ul>
Main findings	
<ul style="list-style-type: none"> <li>• BEREC is more effective than the ERG.</li> <li>• Improvements are needed regarding: <ul style="list-style-type: none"> <li>– Prioritisation of topics to address and documents to deliver;</li> <li>– Quality of the documents to deliver in terms of consistency, structure and language.</li> </ul> </li> <li>• The large number of documents produced impact negatively on NRAs' voting: some NRAs do not vote or do not have a comprehensive vision of the topic because they have to consider too many documents. On the other hand, it is difficult for BEREC to produce too few documents since it could leave it open to the accusation of being under-productive. That is why we may assume that the platform has not achieved the right balance at this point; an element to improve thanks to better prioritisation.</li> </ul>	
Main recommendations	
<ul style="list-style-type: none"> <li>• Prioritise topics to address and documents to be published.</li> <li>• Create a template for all BEREC's documents.</li> <li>• Ensure consistency in terms of usage and perform English proofreading.</li> <li>• Leave room for flexibility, emergencies and last minute requests from EU institutions.</li> <li>• The mid-year revision of BEREC WP needs to allow NRAs to drop reports in advance in case experts will not be able to deliver.</li> <li>• BEREC should develop a communication strategy. By doing so, BEREC should clarify the difference between BEREC objectives and NRAs own objectives.</li> </ul>	

### 3.1.4. Efficiency

BEREC, and more specifically its EWGs, only operates with NRAs' resources<sup>79</sup>. Compared to ERG's, BEREC's agenda is much longer but with the same resources. To some extent, BEREC already seems to work at full capacity considering that many NRAs and the European Commission would like to reduce the WP to guarantee more time spent on strategic topics and favour the Article 7/7a procedures. That is why **this situation does not appear sustainable**, especially if the EU institutions were to ask more *ad hoc* requests and if the number of Phase II cases under Article 7/7a were to increase (although there is currently no evidence to suggest that it will).

The efficiency of the **involvement and working relationship between BEREC and the BEREC Office** needs to be improved. This could be one of the key priorities for the future

<sup>79</sup> According to Article 3 of the Framework Directive, NRAs need to have the adequate human resources to comply with the obligation to participate in BEREC.

regarding the greater utilisation of the Office in case of *ad hoc* requests and during Phase II of the Article 7/7a procedure. Nowadays, resources of the BEREC Office do not support BEREC in terms of content and analysis; despite having the capacity to do so (an exception is the Article 7/7a procedure, during which the BEREC Office has so far been very involved). This is due to a certain lack of communication between the BEREC Office and BEREC; and more specifically the Chairs of EWGs. That is why systematising relations between EWGs and the BEREC Office may increase BEREC's efficiency as a whole.

When considering the point of view of market players, the **communication** of BEREC has also to be improved. One of the ways of doing it is to increase the efficiency of BEREC's website usage. It could be improved with regards to: accessibility (BEREC website was launched on August 21<sup>st</sup>, 2012<sup>80</sup>), prioritisation and increased quality of information. Increased simplicity would also assist users to find and select documents. Concerning this last point, the impact of the new BEREC website could not be assessed in the present evaluation study due to its very recent launch. BEREC could also improve its communication towards market players by ensuring that NRAs and BEREC itself guarantee fast answers to new developments of the market, especially when BEREC was involved. For instance, BEREC could keep track of its advices and communicate about it, like in the developments of the Roaming Regulation. A better coordination of the answers of BEREC members as well as a better structured communication of BEREC itself on topics impacting the EU as whole could be an asset to BEREC.

<b>BEREC's achievements and added value - EFFICIENCY</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>• BEREC can deliver with its own resources in case of more prioritisation.</li> </ul>	<ul style="list-style-type: none"> <li>• BEREC does not really benefit enough from the Office.</li> <li>• BEREC has no structured communication on new developments of the EU telecoms market.</li> <li>• The impact of BEREC's new webpage needs to be assessed in comparison with the former ERG webpage in terms of its presentation and access to documentation.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>• BEREC's efficiency has to be considered in parallel to the efficiency of its Office.</li> <li>• The absence of own resources and sometimes the non-use of BEREC Office available resources might be a problem in the future if the agenda of BEREC keeps increasing.</li> </ul>	
<b>Main recommendations<sup>81</sup></b>	
<ul style="list-style-type: none"> <li>• Improve the communication and working relationship between BEREC and the BEREC Office.</li> <li>• BEREC could better communicate on topics impacting the whole EU telecoms market and support NRAs in their national communication to present BEREC's outputs (through common communication and pedagogic tools for instance).</li> </ul>	

<sup>80</sup> During the first two years and a half BEREC used the ERG website which many stakeholders considered as uneasy to use and in which it was difficult to navigate.

<sup>81</sup> More recommendations on BEREC's efficiency will be provided in the Final Study Report. These recommendations will mainly concern: management of NRAs' resources for BEREC, working relationships between BEREC and the BEREC Office, and information flows between all levels of involvement and responsibility (EWGs, CN, BoR). Our recommendations will take into account the current situation/challenges and propose structures to increase efficiency of BEREC's processes.



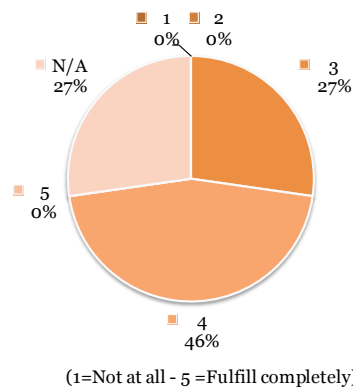
### 3.1.5. Impact

Impact of BEREC's achievements and added value can be considered towards three perspectives:

- BEREC's activities: *did BEREC activities have an impact?*
- BEREC's influence on topics: *did BEREC have an impact on key topics for the sector?*
- BEREC's contributions: *did BEREC contributions have an impact?*

When considering **BEREC activities**, we are firstly interested in its **advisory role for the EU institutions**. As illustrated in the Figure below and as already mentioned, the advisory role of BEREC needs to be clarified.

**Figure 21: Does BEREC fulfil its advisory role for the EC?**



Source: PwC

To begin with, answers of the participants of the online survey are concentrated on three answers:

- 27% of participants consider that BEREC fulfils on average its advisory role;
- 46% of participants consider that BEREC fulfils this role reasonably above expectation;
- 27% considers that they do not have the elements to answer to this question.

Following that, no participant (0%) considers that BEREC does not fulfil this role at all; implying that BEREC, to a certain extent, fulfils this role. On the opposite, no participant (0%) considers that BEREC fulfils its advisory role completely.

From these two sets of elements we may consider that:

- The advisory role of BEREC is not straightforward (while it should), since 27% of participants consider this question as non applicable to them;
- The advisory role of BEREC is neither a success nor a failure, since no extreme position derived from the survey and large majority of answers are “on average” or “reasonably above expectation”.

As already mentioned, these results do not mean that BEREC does not provide advisory services to the EU institutions. It however means that this role is today unclear to many participants since the scope of advisory services is not defined. Enhancing BEREC's advisory role implies:

- That BEREC has a better position for proposing recommendations to the EU institutions and providing a clear vision of the emerging challenges concerning each topic addressed, without going beyond its advisory remit or on the field of policy-making;

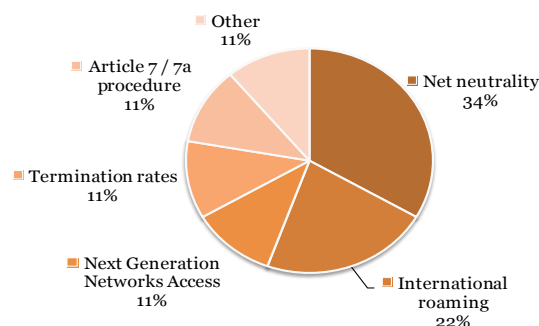


- That BEREC better emphasises its recommendations to the EU institutions and provides a clear vision of the emerging challenges concerning each topic addressed, without going beyond its advisory remit or on the field of policy-making;
- That BEREC takes more time to identify emerging issues and new trends in the rapidly changing telecoms market to anticipate changes and propose a commonly discussed vision on these changes. BEREC proposed to organise strategic workshops twice a year to discuss these emerging issues;
- That BEREC better communicates externally on its role towards the EU telecoms market and supports NRAs in their own external communication, if needed.

Apart from the advisory role to EU institutions, NRAs also insist on BEREC's impact related to elements allowing **interpretation of national regulation, exchange of views and knowledge/understanding of foreign regulations**. In parallel, the Article 7/7a procedure enables discussion between regulators and supports the promotion of consistent regulation in **the internal market**.

When considering **BEREC influence on key topics**, we may consider that BEREC has already influenced all the key topics of the telecoms market. However and as illustrated in the following Figure, BEREC had more impact on some topics than on others.

**Figure 22: Topics on which BEREC has an impact**



Source: PwC

The main reasons to explain why BEREC has particularly impacted net neutrality and international roaming are due to the fact that they are high on the agenda of the EU institutions (for instance the Roaming Regulation was adopted with inputs from BEREC) and/or as required from BEREC a particular involvement: several reports and consultations were issued on net neutrality.

Following that, it should be stated that priorities of the topics BEREC manage are still under question and depend on the fast moving market needs. That is why it is key for BEREC to know on which areas the platform has a specific impact and what topics are particularly relevant for the EU institutions, NRAs and market players. For instance, CN representatives suggested focusing on the following topics<sup>82</sup>:

- NGAs;
- Termination rates;
- Universal services;
- Net neutrality;
- International roaming;
- New media;

<sup>82</sup> This list of topics derives directly from the interviews conducted during the CN meeting in Bratislava in May 2012 and is for illustrative purposes only. It does not constitute a recommendation for BEREC.

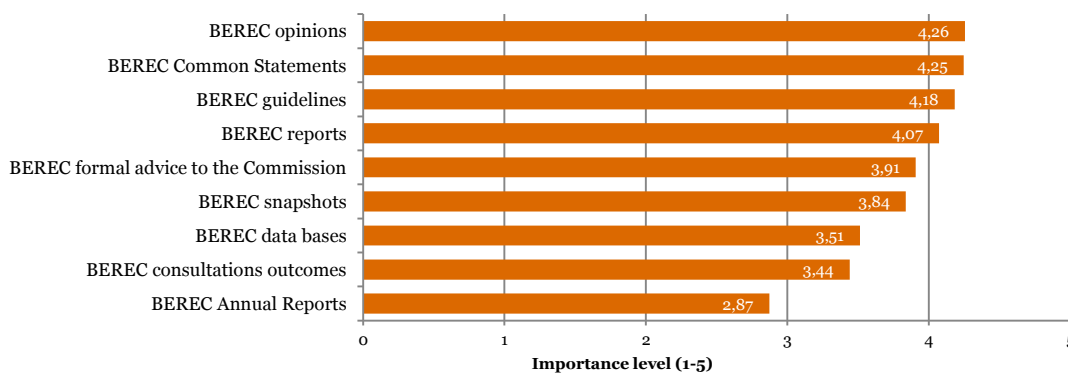
- Pan-EU business services.

When considering BEREC documents, a clear hierarchy raises. Interviewees and participants to the online survey stated that BEREC prioritise its contributions in the following order:

- Opinions related to Article 7/7a procedure;
- Common Statements;
- Reports and advice to EU institutions and NRAs;
- Benchmarks, snapshots and statistical data.

The Figure below illustrates the results from the online survey on the influence of BEREC contributions.

**Figure 23: Influence of BEREC contributions on decision/actions**



Source: PwC

More precisely and according to the interviews, the following documents are the most impactful and best facilitate the work of NRAs: **Common Positions, reports, snapshots, benchmarks, guidelines and hearings**. All in all, the platform supports them by driving harmonisation and helps them in discussing regulatory issues in their respective countries.

When considering all stakeholders, BEREC's documents provide facts for discussion between key actors: NRAs, companies and national governments. Companies use BEREC's outcomes to interpret and challenge national regulations. In addition it provides overviews and benchmarks at the EU-level on each topic addressed. On the other hand, external stakeholders wonder if they impact BEREC and if their viewpoints given in public consultations are taken into consideration. This situation occurs despite the transparency of BEREC on public consultations and more specifically the delivery of documents presenting the outcomes of these consultations. However, BEREC illustrates more and more the impact of public consultations and how they intend to use them in their contributions later on. This is illustrated in the report on consultation on the report on co-investments and SMP in NGA networks (BoR(12) 40) which states how BEREC modified or not its report according to the outcomes of the consultation.

BEREC's achievements and added value - IMPACT	
Positive elements	Elements to improve
<ul style="list-style-type: none"> <li>• A clear hierarchy exists in the use and impact of BEREC documents.</li> <li>• BEREC has a clear impact on key topics for the sector.</li> <li>• BEREC's documents are used by all stakeholders to better understand the market and interpret regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• The substance of the advisory role of BEREC remains unclear.</li> <li>• Evidence that BEREC takes public consultations' outcomes into consideration need to be put forward.</li> </ul>
Main findings	
<ul style="list-style-type: none"> <li>• Most of the stakeholders agree on the topics BEREC should have as priorities.</li> <li>• Most of the stakeholders agree on the documents having the greatest impact on the market, NRAs and consumers.</li> <li>• BEREC's documents are mostly used for national purposes (discussions between national actors) or for comparisons between countries.</li> </ul>	
Main recommendations	
<ul style="list-style-type: none"> <li>• The advisory role of BEREC should be clarified, with BEREC identifying emerging issues within its advisory remit and proposing a commonly discussed vision on these issues. BEREC should also better communicate on this agreed vision.</li> <li>• BEREC should focus on a few priorities, take them into consideration for the future Work Programme and align them with the Mid-Term Strategy.</li> </ul>	

### 3.1.6. Coherence, Complementarity and Synergy

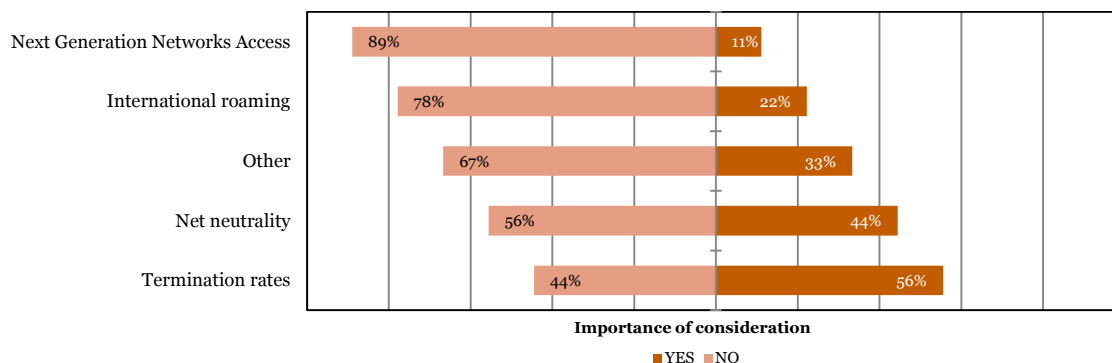
Even though the topics addressed by BEREC are not yet fully prioritised, they form a **coherent agenda** covering interrelated issues. In addition, BEREC takes account of external opinions through public consultation. To a certain extent, this coherence is ensured by NRAs themselves which serve as filter to the agenda-setting of BEREC. Also, because the BEREC Work Programme is very wide, the platform provides the Commission with in-depth information, proposals and studies. For instance, regarding the roaming regulation, price-setting was based on a BEREC evaluation of the underlying costs. BEREC contributes also to the achievement of the Single Market aims through its implementation of the new regulatory framework; particularly thanks to Common Positions and its role in the Article 7/7a procedure.

However, **synergies between BEREC's work and EU policies not directly related to BEREC Regulation** are more difficult to estimate. The reasons for that are the lack of prioritisation and BEREC's obligation to work on *ad hoc* requests. For instance, BEREC Regulation does not mention the Digital Agenda while the Mid-Term Strategy places it at the core. For that reason, it is complicated to estimate the extent to which BEREC should intervene to support the DAE policy in the framework of the remits established by the BEREC Regulation. Following that, even if NRAs try to avoid it, BEREC experiences a lack of strategic direction and does not obviously know how it can/should be involved in or support the implementation of other EU policies.

Another aspect of coherence to consider is the extent to which BEREC work brings complementary elements to the own work of market players, and *vice versa*. As already mentioned, industry representatives mostly use BEREC work as a support for discussion with individual NRAs. A second element to take into consideration derives from the public consultation conducted by BEREC towards industry representatives: *does BEREC really take into consideration the opinion of market players?*

When asking this question, answers of the market players are mostly negative. The Figure below illustrates the extent to which industry representatives perceive that their view is taken into consideration by BEREC.

**Figure 24: Extent to which BEREC takes into account industry contributions issued during public consultation<sup>83</sup>**



Source: PwC

Apart from the case of termination rates, industry representatives have the feeling that their voice is not heard by BEREC. This is largely due to BEREC draft documents submitted for public consultation adopting few of the industry representatives’ comments in their final version. Furthermore, industry representatives are disappointed that they receive little in the way of feedback regarding why their comments have not been taken into consideration by BEREC. Thus, by explaining in the public consultation report why comments are discarded or upheld (like in the BoR(12) 40 report), BEREC would improve its communication with industry representatives.

The Figure above also presents a situation that contrasts with the importance given by BEREC to transparency and dialogue with all stakeholders evolving in the sector. For instance, BEREC initiated a strategic dialogue in Spring 2012 to better communicate and discuss with industrials. It is nowadays too soon to consider whether this strategic dialogue has an impact or improve complementarities between BEREC and industrials’ work, but it illustrates that this situation has been identified and that BEREC intends to improve it.

The Figure above and the launch of the strategic dialogue also illustrate that BEREC has to take into consideration many different views and mitigate them so as to favour, in the end, the internal market, EU consumers and support to NRAs. It also shows the extent to which coherence of BEREC work is a challenge that its members have already acknowledged and look for solutions to smooth dialogue with all sector players.

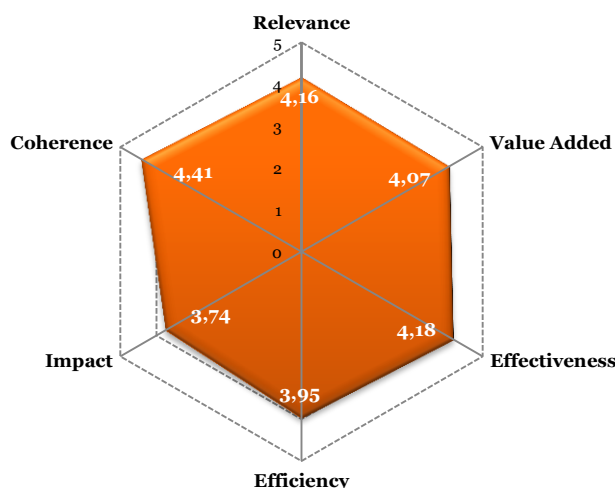
<sup>83</sup> This question was only asked to the stakeholder group including industry and consumer representatives.

<b>BEREC's achievements and added value - COHERENCE, COMPLEMENTARITY, SYNERGY</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>• BEREC's tasks are coherent and comprehensive.</li> <li>• BEREC contributes to reinforcing the Single Market by ensuring discussion between stakeholders, providing Common Positions and participating in the assessment of NRAs' regulatory decisions and regulatory measures through the Article 7/7a procedure.</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of prioritisation leads to lack of clear vision and strategy of BEREC.</li> <li>• Synergies with EU policies not directly mentioned in BEREC Regulation should be more clearly defined.</li> <li>• Industry representatives feel that their opinion is not taken into consideration by BEREC; despite public consultations.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>• Covering all topics related to electronic communications is a clear objective of BEREC (comprehensiveness), even though this choice can lead to lack of clarity.</li> <li>• Creating synergies with other EU policies should be part of BEREC strategy (as is the case of the Mid-Term Strategy despite the latter having no clear enforcement, meaning no clear deployment/allocation of objectives and tasks to each year of the multi-annual strategy).</li> </ul>	
<b>Main recommendations</b>	
<ul style="list-style-type: none"> <li>• Clear communication and prioritisation of topics will clear the view stakeholders have on BEREC.</li> <li>• Increase transparency with industry representatives could improve their vision concerning their involvement in BEREC work and foster complementarities between the two spheres of interests.</li> <li>• Explain more systematically why BEREC discards or upholds a comment from the industry provided during a public consultation.</li> </ul>	

### 3.1.7. General profile of the achievements and added value of BEREC

Hereafter is a general profile of the achievements and value added of BEREC according to the results of the online survey.

**Figure 25 : BEREC general profile - Achievements & Value-Added**



Source: PwC

### 3.2. Evaluation of the governance, organisational structure and management of BEREC

This evaluation of BEREC's governance structure has revealed the following trends:

- The three levels of competences - Board of Regulators (BoR), Contact Network (CN) and Expert Working Groups (EWGs) - are considered as relevant and well-defined. In parallel, the ladder process in the decision-making based on these levels of competence is considered as efficient.
- The troika is a relevant working method that ensures continuity in BEREC work and smooth transitions between Chairs. Leadership of the Chair of the BoR is also considered as important. That is why BEREC requires clear communication among Heads of NRAs to define the actions and decisions the Chair can make.
- The CN level is the main level for improving the organisation of BEREC: thanks to a clear vision of both technical and strategic aspects it can provide elements to solve operational issues and define BEREC strategy.
- The functioning of the Expert Working Groups is generally considered to be satisfactory but some groups are more effective than others. The experience and vision of EWG Chairs makes a significant difference in terms of organisation and outputs. The industry representatives would like to know more about the work of EWGs.
- Nearly all stakeholders agree on the significant improvement of the governance methods of BEREC compared to those of the ERG. Nevertheless, only NRAs really know how BEREC is functioning in actuality. This aspect is of less interest to industry representatives.
- The *raison d'être* and internal functioning of EWGs could be considered every year: some EWGs are considered as more useful than others and based on the functioning of the Article 7/7a working groups, EWGs could be built on task forces using the competences and knowledge of NRAs experts. These task forces could be defined according to the outputs to draft and the topics to follow-up.
- Indeed, BEREC suffers from a lack of flexibility and NRAs have difficulties reducing and revising this workload by mid-year. Also, even though BEREC has fulfilled all its tasks so far, its heavy and increasing workload might raise issues in the future to allow the platform to sufficiently fulfil all the points of the Work Programme.
- If BEREC is able to identify and define emerging issues thanks to NRAs experts, EU institutions are expecting more recommendations, including within own-initiative reports.
- BEREC needs to organise its work stream more efficiently: make all opinions and reports more coherent, consistent and with a common high level of quality. All meeting participants should also receive these documents on time so as to increase preparation time for the meetings.
- BEREC also needs to improve the flow of information at the preparatory phase of the working documents and especially between the three levels of the structure: EWG, CN and the BoR. BEREC should be able to set up task forces and *ad hoc* EWGs as soon as it receives the *ad hoc* request or decides to issue a report from its own initiative and the CN should be more involved in monitoring the drafting of outputs and their setting-up on the agenda of BoR Plenary Meetings (enforcing the "A/B items" system more systematically).
- That is why BEREC also requires a top-down approach in its decision-making. BEREC has currently a tendency to follow a bottom-up approach: EWGs raise issues and propose documents to the CN and the BoR. In addition to this technical and operational approach, BEREC also needs a top-down approach based on discussion and prioritisation done at the BoR level.
- Many NRAs may already face or will face in the future difficulties to participate to BEREC because of the downsizing of their resources occurring while BEREC agenda gets denser. That is why the BoR of BEREC needs to clearly prioritise the issues to tackle in order to reach its objectives with high standards.

- The BEREC Office could be better used, especially when supporting EWGs in their everyday work. Coordination between Chairs of EWGs and the BEREC Office should be improved. For instance, clarification is needed to determine the extent to which members of the BEREC Office can provide expertise support to EWGs when the latter do not have sufficient resources and time. The Office could also support EWGs in coordination and improve the quality of the deliverables (e.g. increase consistency and English proofreading).
- Industry and consumer representatives are disappointed by the use of their comments given during public consultation: they do not see how their comments are reflected in BEREC reports or how the platform analysed them before issuing reports. This is despite BEREC willingness to be very transparent on its processes. This element seemed to have been identified by BEREC which now explains how comments impacted its own report. No external stakeholder reacted on this change. Time is still needed to consider the impact and further needs.

### 3.2.1. Relevance

Considering the relevance of the governance of BEREC implies to consider three levels of competences:

- The Board of Regulators (BoR) and the Chair;
- The Contact Network (CN);
- The Expert Working Groups (EWGs) and their Chairs.

Within the BEREC platform, these three levels of competences are clearly defined and aim at ensuring a ladder process in the decision-making: technical issues are firstly discussed at the EWG level before being discussed and filtered by the CN and, if needed, put on the agenda of the Plenary Meetings of the BoR.

**The BoR is the central organisation of BEREC.** It is composed of the Head of each NRA - or a high-level representative of the NRA - and takes decisions in the name of BEREC. It is in charge of leading the platform: define the priorities, establish and vote the Annual Work Programme, vote with a 2/3 majority. To do so it meets four times a year during Plenary Meetings and use electronic voting all year long. The BoR is at the very core of BEREC's role in the new regulatory framework<sup>84</sup> and has never been questioned during the survey.

Among the Heads of NRAs, a Chair is designated every year to chair the BoR. The current 2012 Chair is the Head of the Austrian NRA, George Serentschy. The role of the Chair is also detailed in the BEREC Regulation<sup>85</sup>. According to all stakeholders, the role of Chair is key. All interviews underlined the importance of leadership within BEREC and the need for clear decisions regarding resources allocation, priorities, topics to be addressed and internal functioning.

One concern on the role of the Chair emerged from the interviews and the online survey: the **communication of BEREC and the role the Chair** should play in it. It is not always clear whether the Chair speaks on behalf of BEREC or in the name of his or her own NRA. In addition, the Chair's leeway for decision-taking and action is not clearly defined. For instance, according to some interviewees, the Chair has several times acted on its own initiative without formally asking for approval or informing its peers. It decided for example to organise a strategic dialogue with CEOs from some EU fixed, mobile and cable operators, including incumbents and alternative operators as well as investors. This strategic dialogue was not discussed with NRAs and NRAs were not invited to participate to the summit with CEOs and invertors. In that matter, while most of the stakeholders agreed on the fact that the Chair must show leadership, take initiatives and communicate in the name of BEREC, approval from the BoR for external communication and action during emergencies is a common request from many NRAs. It would appear that internal and external communication and transparency between the Chair and NRAs, and the

<sup>84</sup> More specifically Articles 4 & 5 of the BEREC Regulation.

<sup>85</sup> More specifically Articles 4 & 5 of the BEREC Regulation.



Chair and third parties should be improved so as to define the appropriate scope of independence in decision-making for the Chair as well as protocols for external communication.

The current **Chair's visit once a month in Brussels** to discuss issues with EU institutions and external stakeholders (if needed) is highly appreciated. Whenever it comes to dialogue (workshops, public hearing, debriefing, etc.), events are always organised in Brussels. Industry stakeholders do not clearly understand what the role and responsibility of the BEREC Office is and how the BEREC Office could facilitate an on-going dialogue. To facilitate dialogue and working processes, a BEREC presence in Brussels has been approved during a BEREC Plenary Meeting in Dubrovnik on May 24-25<sup>th</sup>, 2012. This presence will consist of a *Bureau de passage* to enhance contact with EU institutions, stakeholders and the media. It will also constitute a meeting place to hold EWG meetings in Brussels.

To support the Chair, the BoR also elects Vice-Chairs. Among them, there is the previous Chair and the future Chair. This results from BEREC Rules of Procedure. **The three Chairs together form the troika.** This troika has for objective to smooth the transition from one year to the next, enabling also best practice exchanges and a proper reflection and implementation of the multi-annual plan defined in the Mid-Term Strategy, an innovation from the previous and the current Chairs. Discussions among Chairs aim at supporting BEREC in completing each Annual Work Programme while incorporating at the right moment new topics to address, resulting from market and trends analysis. By doing so, each topic to be tackled the coming year has been discussed and passed the troika's filter. In short, as BEREC chairmanship lasts one year, the troika aims at ensuring continuity in the work as well as guaranteeing that all NRAs can become Chair. This is mainly due to the fact that the **rotation principle** is clearly established in the BEREC Regulation. This troika principle is considered as very relevant and appreciated by all stakeholders, even if it relies on the one-year mandate that each Chair has. In other words, ensuring that three Chairs work together for three years in a row is not questioned, but some NRAs and representatives of the European Commission consider that the mandate of the Chair could last longer. This point is addressed in the Section focusing on the effectiveness of the BEREC organisational structure (*see also Case Study 2 in Section 5 below*).

Apart from the troika and its two Vice-Chairs, there might be other Vice Chairs. For instance, the current BoR has four Vice-Chairs: the future Greek 2013 Chair and two other Vice-Chairs. This is due to the fact that the former Dutch 2011 Chair became the Head of the Dutch National Competition Authority but should have been BoR Vice-Chair in 2012.

All stakeholders also agreed on the relevance and usefulness of the **Contact Network**. It allows an exchange of views and communication with respective Heads of NRAs, in consideration of the fact that all Heads cannot follow all topics addressed by BEREC. Following that, the CN aims at connecting EWGs - and their technical and operational issues - with the BoR – and its strategic perspective. The CN also sets priorities for the BoR when it meets before Plenary Meetings. Some stakeholders - from NRAs and EU institutions - would like to increase the responsibility of the CN, because of its ability to guarantee continuity of process, coordination and prioritisation. Furthermore, better coordination at the CN level would improve the harmonisation of BEREC's outputs and ensure quality.

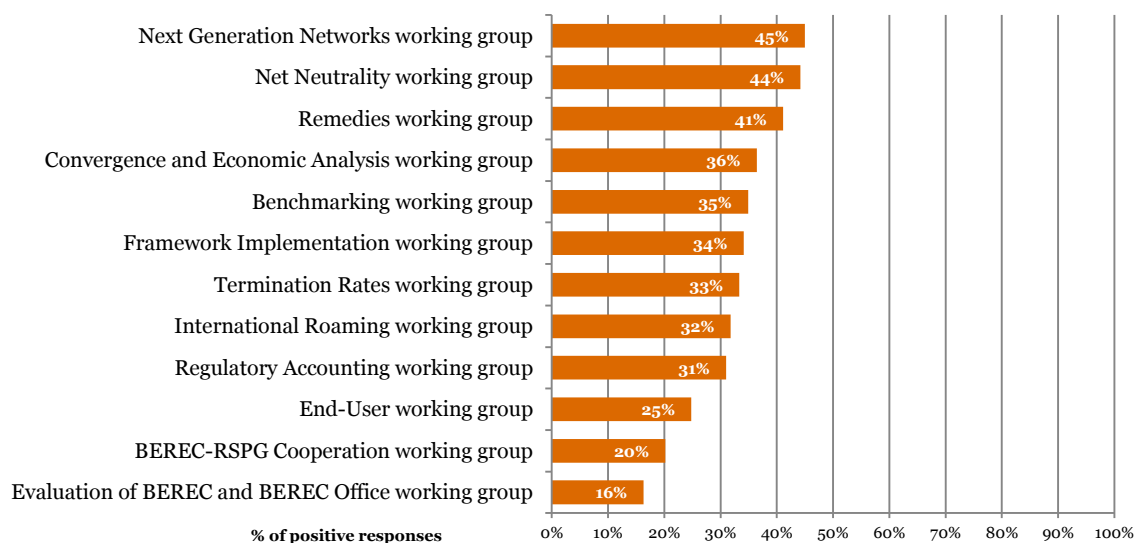
The last level of competence is composed of the **Expert Working Groups**. These groups are composed of national experts from NRAs, gathered according to their competences to develop BEREC deliverables, such as: reports, guidelines and opinions. There are two kinds of working groups: the twelve "established" working groups defined at the beginning of the year and *ad hoc* working groups set up by the BoR with the support of the BEREC Office when the platform receives *ad hoc* requests from EU institutions or when it is called upon to assess an NRA's draft regulatory decision or remedy under the Article 7/7a procedure. This organisation in EWGs is at the core of BEREC and constitutes one of its best strengths: the EU platform leverages existing competences and knowledge from all over the EU (and even from outside the EU) to address existing challenges and emerging issues in the telecoms sector.

However, if the relevance of EWGs as such is not questioned, some groups are more crucial than others for the present and future of BEREC. As illustrated in the Figure below, while some



groups are considered as particularly relevant (not surprisingly groups providing elements on hot topics), others are considered as less relevant and could be disbanded.

**Figure 26: Prioritisation of Expert Working Groups**



Source: PwC

In addition, as illustrated in the Case Study 2 presented in *Section 5* below, the Next Generation Networks working group appears to have worked particularly well and been very active. That may also explain partly why it is considered today as the most relevant EWGs within BEREC.

Considering that BEREC looks for means to better prioritise its action, a first step would be to review every year the relevance of the working groups needed to accomplish the Work Programme, implement the Mid-Term Strategy and anticipate *ad hoc* requests from EU institutions. Reducing the number of EWGs, redefining their scope and enabling margins for manoeuvre for *ad hoc* working groups is a first step for more impact of BEREC work, towards the EU institutions, as well as NRAs.

Each EWG is chaired by one or several national experts. According to all stakeholders, **the role of the Chair within an EWG** makes a difference. This is particularly due to the fact that the internal organisation of each EWG is defined by its Chair who decides who, when, how and how often gather the national experts. As a consequence, the motivation and vision of some EWG Chairs make a difference in terms of organisation and outputs. In addition and according to many stakeholders - from NRAs and EU institutions - there is a **significant quality difference between EWGs** and this could be improved by prioritising EWGs, as well as giving clear instruction and motivation to the Chair of the EWGs; as well as common guidelines based on best practices.

To do so, internal evaluations and peer review might be developed among EWGs. Moreover, the internal organisation of EWGs could be adapted and based on task forces to reduce the pressure on the Chairs. This would be particularly relevant if many national experts participate to the EWG and if the Chair has to handle many outputs at the same time. The organisational structure of EWGs in task forces is detailed later on in the Section focusing on Effectiveness. One could also argue that more involvement of the Office in the work of the EWGs would ensure more consistency among EWG working methods and deliverables.

<b>Governance, organisational structure and management of BEREC - RELEVANCE</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>• The three levels of competence (BoR, CN and EWGs) are universally considered as relevant and useful for BEREC.</li> <li>• Quarterly meetings for the Contact Network and the BoR are useful.</li> <li>• The presence of the BoR Chair once a month in Brussels is valued.</li> <li>• Best practice examples among EWGs and their related Chairs already exist.</li> </ul>	<ul style="list-style-type: none"> <li>• Clear consensus in the communication of BEREC and the role the Chair should play.</li> <li>• Not all EWGs are considered relevant to fulfil BEREC's objectives.</li> <li>• There is a significant difference between the outputs of the EWGs, which is mainly due to the involvement and experience of the Chair of the EWG.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>• Having a BoR Chair with strong communication and management skills is key.</li> <li>• The troika is a relevant working method that ensures continuity in BEREC work and smooth transitions between Chairs.</li> <li>• The CN level is the main level for improving the organisation of BEREC: a clear vision of both technical and strategic aspects can provide elements to solve operational issues and define BEREC strategy.</li> <li>• The experience and vision of EWG Chairs makes a significant difference in terms of organisation and outputs.</li> </ul>	
<b>Main recommendations</b>	
<ul style="list-style-type: none"> <li>• Develop a guideline for external/internal communication between the Chair and the rest of the BoR to improve BEREC communication transparency towards third parties.</li> <li>• Give more responsibility to the CN in order to improve processes, coordination, output and quality of BEREC documents<sup>86</sup>.</li> <li>• Reduce the number of EWGs, define their scope every year, prioritise some of them according to the Annual Work Programme and the Mid-Term Strategy and ensure margins for the set-up of <i>ad hoc</i> working groups.</li> <li>• Emphasise the role of the EWG Chair. If it is needed, request feedback to identify areas of improvement (in case the EWG is not efficient enough or where positive changes can be initiated).</li> <li>• Introduce internal evaluation and peer review among EWGs; for instance, with feedback on EWGs' working methods. More involvement of the BEREC Office in the work of the EWGs would also ensure more consistency.</li> <li>• Develop common guidelines based on best practices for EWGs.</li> </ul>	

### 3.2.2. Added value

When considering the added value of BEREC organisation, we might consider three different viewpoints:

1. The value added brought by NRAs to BEREC: *what value do the different NRAs bring to BEREC?*
2. The value added by BEREC in comparison with the ERG: *what value does BEREC bring in comparison with the ERG?*

<sup>86</sup> This aspect is more detailed in the Section on the effectiveness of the BEREC organisational structure.

3. The value added by the interaction of BEREC with EU institutions and market players: *what value do these interactions bring to BEREC work?*

Gathering pan-European expertise inside the **Expert Working Groups** appears to be the most valuable aspect of BEREC's current organisation. It allows some Member States (MS) to tackle new issues such as net neutrality and more specifically Traffic Management Investigation (TMI), which are two topics that no NRA tackled on its own before but that they all currently address in common. In that sense, collective work has provided value to both the Commission - as BEREC's opinions on EC requests - and to NRAs.

**The structures offered by BEREC allow more systematic work** than *ad hoc* working methods under the ERG. Thanks to a legal status, a defined role in the regulatory framework and a more structured and formal organisation, BEREC brings more value than the ERG. BEREC has also at disposal a data base of experts to call when needed for *ad hoc* requests and Article 7/7a procedures. All stakeholders also agreed upon the fact that a more centralised EU-wide regulatory authority would not add more value at this stage. However, it was also stated that BEREC should pay more attention to the quality of its outputs and should make more use of the BEREC Office.

**Cooperation between BEREC and the European Commission** is more frequent and has clearly improved, especially in case of Article 7/7a procedures. This aspect is further analysed in Case Study 1 in *Section 4* below. The organisation also benefits from the fact that the European Commission and NRAs have to take utmost account of BEREC's opinions and has to consult BEREC on their regulatory proposals. As mentioned by a CN representative this change in the framework regulation "*impacts the way both parties (the EC and BEREC) seek to contribute to such working relation*". The EC also more consistently and regularly attends BEREC working groups. As stated by another CN representative, "*relations between the Commission and BEREC are positive, professional and mutually respectful*". This approach of BEREC relations with the European Commission is mostly shared by all stakeholders interviewed or targeted in the online survey.

**Public consultations** are considered by all stakeholders as one of the most positive elements of the BEREC organisational structure as it helps the platform to identify key trends and emerging issues. However, at the present stage, they do not seem to add substantial value. To some extent, this process even jeopardises BEREC's added value *vis-à-vis* the industry representatives questioned. In that sense, most of the representatives of the industry were not sure that their opinion was taken into account, even though BEREC intends to be very transparent by delivering papers on the outcomes of public consultations. Industry representatives are wondering whether their inputs are reflected in the final BEREC documentation and if they are used as basis for analysis as such. Nowadays, BEREC provides outcomes of public consultations but does not analyse the comments or explain how the latter will reflect in its reports. In addition, BEREC launches numerous consultations (for instance, three consultations were launched on net neutrality). This is mostly due to the large Work Programme BEREC has to fulfil. Most of the stakeholders consider that public consultations should be less numerous, more focused and better leveraged by BEREC. Some consultations might also require more time to participate. BEREC should consider a longer time frame for answering the consultation in case of large report (currently four weeks). That would also increase the response rate and provide more impact to the report itself: more stakeholders would participate and the report would be better substantiated with their comments.

Another aspect to consider is related to the fact that industry and consumer representatives consulted have very diverse views. By better explaining how BEREC analyses and uses the outcomes of the consultation, the platform could consequently better explain why it favours one vision compared to other possibilities. By doing so, BEREC would also improve the impact to its reports and Work Programmes.

In line with that, BEREC started to indicate how a public consultation influenced its reports. The Consultation report on the draft BEREC report on co-investment and SMP in NGA networks (BoR(12) 40) explains precisely how BEREC used this comments to amend its report. As explained in the introduction of the document: "*the following documents summarise the main comments received by BEREC, as well as the subsequent amendments to the draft report*

*BEREC made taking the utmost account of the respondents' views".* This is an example to follow to better communicate with market stakeholders and increase their participation to such consultation. To do so, we might also consider a more intensive role of the BEREC Office. It could follow-up the consultation process and handle the relationship with participants, along with the EWG in charge, if appropriate.

In addition to public consultation, BEREC has initiated public workshops twice a year to create and improve contact with industry representatives and discuss strategic issues of the market.

This current perception regarding public consultation also explains why industry representatives are willing to have direct contact and bilateral meetings with EWGs and the Chair of the BoR.

<b>Governance, organisational structure and management of BEREC - ADDED VALUE</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>Structures offered by BEREC allow more systematic work, compare to the ERG structures.</li> <li>Clear evidence of more cooperative relationships between BEREC and the European Commission, especially during Article 7/7a procedures.</li> <li>More explanations on the use of public consultations by BEREC.</li> <li>Public workshops twice a year on strategic issues.</li> </ul>	<ul style="list-style-type: none"> <li>Increase the added value of public consultations by showing more how the platform uses the outcomes of the consultation and by paying more attention to communication with third parties and participants.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>The pan-European expertise inside Expert Working Groups appears to be the most valuable aspects of BEREC's current organisational structure.</li> <li>Relationships between BEREC and the European Commission improved in comparison with the ERG.</li> <li>Industry and consumer representatives are disappointed by the use of their comments given during public consultation: they do not see how their comments reflect in BEREC reports or how the platform analysed them before issuing the report. This is despite BEREC willingness to be very transparent on its processes. Also, this element seemed to have been identified by BEREC since it recently provided more elements on how it amended a report after a public consultation. No market player reacted on this change. Time is still needed to consider the impact of this new procedure and if there are further needs.</li> </ul>	
<b>Main recommendations</b>	
<ul style="list-style-type: none"> <li>Show the attention given to public consultations in order to increase transparency and positive relations with third parties: explain how the outcomes of the consultation are used and why the platform favoured one approach compared to others.</li> <li>Extend the time period for consultation might be useful when considering large reports.</li> <li>Following the fact that BEREC should better communicate on public consultation, the BEREC Office could follow-up the consultation process and handle the relationship with participants, along with the EWG in charge (if appropriate).</li> </ul>	

### 3.2.3. Effectiveness

The effectiveness of BEREC governance structure requires to be considered from both an internal and an external point of view:

- *Is the current functioning of BEREC effective to achieve its objectives?*
- *Does BEREC show and communicate on its achievements in an effectively manner?*

When considering the internal functioning of BEREC, it is important to consider the three levels of decision: the BoR, the CN and the EWGs. Indeed, a key element of BEREC's internal process concerns the so called "**ladder process**" in decision-making: each document drafted by an EWG has to be approved by the working group before being submitted to the Contact Network and each document submitted to vote at the Plenary Meeting of the BoR has to be approved by the CN before. By doing so, all NRAs have the opportunity to know all documents and approve them, even if they are not part of the EWG.

We first consider the effectiveness of the **Board of Regulators**.

Four **Plenary Meetings** (PM) in a year appear to be sufficient to fulfil BEREC's role. Moreover, BEREC can organise extraordinary PMs as it did in the times of ERG and during the review of the regulatory framework. However increasing the effectiveness of EWG and CN meetings can increase the effectiveness of Plenary Meetings as well. Another way of increasing effectiveness - according to suggestions from interviewees - is to decrease the number of documents to be read before CN and Plenary meetings, and/or prepare the documents and circulate them more than 24 hours before the meeting starts. If the vast majority of documents are diffused 10 days in advance to CN and Plenary meetings to allow amendments from NRAs<sup>87</sup>, some documents circulate at the last minute. Nevertheless, all NRAs do their best to cover the topics addressed. According to our current information, between 60% and 100% of documents are read by NRAs before CN and PM meetings. This situation means that some NRAs vote without fully knowing the documents and/or that some abstain because of lack of time to study the document in detail. Most of the interviewees in this situation explained it because of the large number of documents to cover and the short amount of time to consider them in detail.

The **voting system and the 2/3 majority** appears to be a good compromise as it provides a clear preferred option and so far has not obstructed any processes. The voting system also guarantees a democratic process thanks to the possibility to use secret ballots. The question of whether BEREC should use more electronic voting has only had positive answers, which may suggest that electronic voting would improve the voting process. NRAs propose using more electronic voting in order to avoid having too many topics on the agenda of the Contact Network and Plenary meetings.

As already mentioned in the Section on the relevance of BEREC organisation, the **rotation of the Chairs and Vice-Chairs** seems to be an effective governance method as long as it keeps the troika structure. The current Chair has also created an "executive Board" within the Board of Regulators. This informal Board should be composed of the troika (the three Chairs: the Dutch 2011 Chair, the Austrian 2012 Chair and the future Greek 2013 Chair) and other Vice-Chairs (considering that previous and future Chairs are Vice-Chairs). However, there are currently four Vice-Chairs because the former Chair could not be Vice-Chair in 2012. The current informal executive Board is consequently composed of 5 members. The Austrian Chair also appointed each member with a specific agenda and annual objectives. All stakeholders aware of this situation are satisfied with the creation and definition of specific objectives for Vice-Chairs. This informal Board has however no legal status and cannot take decisions without the full approval of the BoR. That is why a clear scope and definition of tasks should be established to clarify what is expected from the informal Board. In that manner, the Board would be able to propose recommendations to the BoR without blurring the frontier between the two organisations.

<sup>87</sup> Article 6, BoR (11) 23, Rules of procedures of the Board of regulators, As revised in May 2011.



Considering the **one year (non-renewable) term of the Chair**, NRAs and external stakeholders underlined the visibility that comes with the mandate. In that sense, the term of the Chair is the result of a trade-off between the willingness that all NRAs might be Chair and the need for effectiveness and continuity. In addition, the number of topics to tackle makes it unrealistic that only one Chair could address all topics in one year. That is why the **troika governance** is particularly useful to smooth the transition between Chairs. The troika system is inherited from the ERG that BEREC continues to apply. When considering only BEREC, this governance method will nevertheless only be fully implemented next year because the 2011 Dutch Chair is not part of the troika in 2012 and the 2010 Irish Chair was also not part of the troika in 2011. If many stakeholders consider that one Chair could be appointed for two years (or more) if the BoR considers it effectively achieved its objectives and that an additional year would be beneficial for BEREC (especially when considering topics with medium-long term time horizons such as NGA; *see further Case Study 2 in Section 5*), it is important to remind that rotation is crucial for a smooth functioning of the platform. For that reason, the troika system appears to be an appropriate compromise between the need for consistency and the willingness that all NRAs may become Chair.

Assessing the effectiveness of the BoR also requires considering the ability of BEREC to deliver. Nowadays, the heavy workload of BEREC does not allow to properly cover all topics present within the **Annual Work Programme**. Suggested ways to address this workload are to focus on fewer topics, prioritise certain topics over others, or have the ability to revise or even drop topics during the year. This aspect is to consider in line with our recommendation<sup>88</sup> to reduce the number of EWGs, define their scope every year and keep on having a multi-annual approach of topics to delay deliverables if needed.

Indeed, many stakeholders from different backgrounds (NRAs, EU institutions, telecoms sector) would prefer that BEREC focuses on 2 to 3 topics a year and retains the **availability to act on emerging issues**. The underlining issue related to this situation is a **need for flexibility** that BEREC currently may not have. For example, providing comments within one working day on every draft opinion under the Article 7/7a procedure is not realistic for all NRAs (*see further Case Study 1 in Section 4*). In that sense, governance structures and methods do not allow for effective responses to emergencies. On the other side, NRAs understand that asking the Commission to predict all its future requests is unrealistic, because most EC requests are currently given at very short notice. In that sense, **BEREC needs to improve or change its approach to its workload management**.

A **semi-annual review of BEREC Work Programme** takes place in July. NRAs discuss which tasks to fulfil with regards to available resources and time. NRAs also consider if they should allocate more resources to BEREC for more urgent or significant tasks.

The effectiveness of BEREC and the BoR can also be examined through the **ability of the platform to identify, define and propose solutions to emerging issues**. In that respect, BEREC has worked on several emerging issues: net neutrality, NGA, challenges for and resulting from new internet players. To do so, BEREC heavily leveraged on NRAs' expertise to identify and collect relevant data, clarify issues and discuss. As already mentioned and as an illustration of the care BEREC gives to deal with emerging issues, the platform set up a strategic dialogue in Spring 2012 with industry representatives and has decided to hold, every year, two public workshops on long-term issues having strategic importance to the sector. However, the way BEREC tackles the subjects and is able to propose solutions could be improved: interviewees and participants to the online survey raised concerns on the ability of BEREC to treat information and propose clear recommendations for the EC. This aspect is, again, very much linked with the Work Programme and the time available for the BoR during PM to discuss trends and new topics to study in the next months or years. One should also stress that these emerging issues (NGA, cloud computing, regulation of the Internet, regulation of new media) constitute elements that evolve in a blurred environment for all actors: the EU, Member States and diverse National agencies (not only NRAs focusing on telecoms) might intervene. There is sometimes no clear identification of organisations responsible at the national level. Emerging issues should also be raised to adapt the Work Programme and found the next Mid-Term Strategy.

<sup>88</sup> This recommendation is formulated in the Section relative to the relevance of BEREC organisation.

To do so, BEREC needs to be more flexible. Indeed, **flexibility** is one of the key challenges of BEREC. For instance, between January and May 2012, BEREC received between 10 and 12 new *ad hoc* requests which had not been originally planned in the Work Programme. As a consequence, 30 to 50% of BEREC's work does not result from the Work Programme as initially defined. Closer coordination with EU institutions to predict, as far as possible, future *ad hoc* requests and Article 7/7a investigations could help manage the workload. *Ad hoc* requests, by their nature, will be more difficult to deal with but could be subject to lengthier turnaround times.

The BoR is also responsible for the **internal communication** within BEREC. In that sense, some members of the BoR and EWGs raised concerns regarding the lack of feedback and validation from the Chair and Vice-Chairs on strategic issues involving meetings with the EC, Parliament hearings and discussion with industry representatives

We secondly consider the functioning of the **Contact Network**.

As already mentioned, the Contact Network level is key to connect the strategic approach of the BoR and the technical expertise of the EWGs. Its meetings are also the occasion for NRAs to discuss the agenda of Plenary Meetings and resolve issues that should not be addressed during Plenary Meetings because of minder importance.

In short, the CN is a filter between EWGs and the BoR. It also enables the flexibility and prioritisation needed by BEREC. In that matter, if the relevance of the CN is not questioned, many stakeholders (NRAs and EU institutions) expect a more effective work. In that sense, the CN should have for objective to enable more strategic discussion at the BoR level, reduce PM agendas and prioritise the topics to address during BoR's meetings.

We finally consider the functioning of the **Expert Working Groups**.

NRAs are generally satisfied with the **internal functioning of EWGs**: they are considered to be effective in terms of available expertise, number of people and working methods used. EWGs are also considered as very effective when it comes to exchanging views and gathering and disseminating information. Most of the NRAs try to be present in all of the working groups (this factor very much depends on the size and number of personnel within the NRA), or at the very least select those in which they have the resources for and to which they have the most interest in participating.

As already stated concerning the relevance of EWGs, the effective functioning of an EWG very much depends on the capacity and the amount of responsibility taken by the **Chair of EWG** in question; chairing an EWG requires a lot of time and can involve significant pressure and responsibilities over and above simple participation. Chairmanship of an EWG also requires experience and a historical/political background in the topics addressed. That is also why some EWGs have two Chairs. The role of Chairs of EWGs is for instance crucial during the Project Requirements Definition (PRD) process<sup>89</sup>. A PRD is the operational deployment of a work item assigned to the EWG. It clarifies the purpose and scope of this item, defines the format of the deliverables, the timeline and milestones, as well as the experts contributing to the drafting of BEREC's deliverable. These drafters are the main contributors to EWG's deliverables and the Chair of the EWG seeks to ensure proper coordination and contact with them, through emails or meetings.

Since the effectiveness of EWGs depends on the experience and involvement of the Chairs, it could be relevant to define guidelines on the management of the groups, based on best practices exchanges among groups. Many stakeholders also shed the light on the effective team gathering for *ad hoc* requests and Article 7/7a procedures. In that sense, **EWGs could be structured with task forces** defined at the beginning of the year according to the priorities set up the Work Programme and aligned with the Mid-Term Strategy. That would permit the

<sup>89</sup> Article 15, BoR(11) 23, Rules of procedures of the Board of regulators, As revised in May 2011.



harmonisation of EWGs' internal work and ensure consistency and the general quality of BEREC outputs. To do so:

1. Each EWG would define and delimit the tasks to be achieved during the year according the Annual Work Programme and aligned with the Mid-Term Strategy;
2. Specific task forces would then be defined with clear roles and scopes of actions within the EWG;
3. The Chair would then name the NRAs and experts to participate in each task force according to their respective expertise and the needs identified in the task force.

This process could happen:

- At the beginning of each year for tasks that can be planned and that need to be tackled according to the Annual Work Programme;
- As soon as an *ad hoc* request is transmitted to BEREC and involve the EWG.

These task forces would leverage the existing EWG drafting teams and Project Requirements Documents. They would complement the existing system since the task forces would be based on outputs to draft as well as topics of interest to follow or even reports that BEREC would decide to develop on its own initiative. The institutionalisation and systematisation of these task forces as well as the use of best practices among EWGs to define their functioning would also enable more consistency in BEREC outputs and EWG Chairs' management.

Apart from improving the internal functioning of EWGs, BEREC work could be increased through a better use of the **BEREC Office**: currently, all NRAs recognise that the Office is composed of knowledgeable people who could be effectively called upon but this is not the case. In that sense, EWGs could ask the BEREC Office to provide expertise support when they do not have sufficient resources and/or time. The BEREC Office could also be better utilised for coordination between EWGs, their internal organisation and even for improving quality of the outputs by ensuring consistency of the documentation and proofreading deliverables.

As each group works according to its own standards, **transparency of EWGs towards other NRAs** is also questionable. BEREC reports are anonymous and even NRAs who have not participated in the actual writing of the reports may not know which countries have been used as examples<sup>90</sup>. In order to improve information and exchange of views, the transparency of EWGs could be increased. This concern is shared by some NRAs, concerned by the level of anonymity of documents issued and leaves more time for the NRAs to assess the draft documents and to comment. It should however be reminded that complete transparency could impact on the frankness of discussions.

Furthermore, what was already stated regarding the scepticism of market players about whether their opinion, concerns and advice were fully taken into consideration in BEREC outputs should be still handled with caution. While external stakeholders acknowledge that EWGs cannot be fully transparent, they also currently believe that a public consultation alone without detail feedbacks is not a sufficient method to interact with BEREC. By developing public workshops and **detailing how consultation comments impact on BEREC documents**, the platform shows that it acknowledged that this situation could be improved and defined means to improve it.

Some NRAs would also like better **coordination between the European Commission and EWGs**. For instance, when asking for a study, the European Commission could express its need for data in advance so as to allow the relevant EWGs in charge sufficient time to start data collection. In that respect, the Case Study 2 presented in *Section 5* illustrates how the NGN EWG operates both internally and in respect of its relationship with the Commission. Considering Article 7/7a working groups, NRAs recognise that the setting-up of EWGs is complicated even though all groups have always delivered their opinions on time.

<sup>90</sup> As illustrated in the conclusions of the Plenary Meeting of May 2012 - BoR (12) 64 and MC (12) 29, 25 May 2012 – this aspect of lack of transparency might change since BEREC outputs now indicate the NRA in charge of each topic.

Moreover, in view of the time constraints for delivering BEREC's opinion established by the regulatory framework, the time frame can be challenging as the working group has only 15 working days (Article 7 procedure) or 25 working days (Article 7a procedure) to write the opinion and NRAs not involved in the *ad hoc* working group have no more than 24 hours to comment and approve it. Coordination can also be further improved by utilising the BEREC Office more effectively (*see further Case Study 1 in Section 4*). At the present time, there are two dedicated experts working at the BEREC Office, fully in charge of the Article 7/7a procedures.

Apart for the internal functioning of BEREC and as already mentioned, **external communication** is also a challenge for BEREC. Nowadays, most of the interviewees and participants to the online survey consider that it can be improved. This is particularly true when it comes to new initiatives that intend to increase the awareness of BEREC work; such as public workshops and the strategic dialogue with industry representatives. BEREC needs to be very careful in the message it intends to diffuse, and coordinate its messages with other actors (the EC and NRAs). For instance, BEREC recently launched three public consultations on net neutrality for three different reports; while a common consultation was feasible. Another aspect already mentioned and to improve is the website used by BEREC to inform external parties on BEREC work. Improving the external communication was one of the objectives of the recent launch of BEREC website (August 2012). The assessment of the impact of this new website could not be conducted for the present evaluation study.

As a whole, when considering the effectiveness of the organisational structure of BEREC, its governance requires two different approaches to handle at the same time:

- A bottom-up approach - from EWGs to the BoR: this approach is to apply to technical issues that require the full involvement of EWGs on very specific aspects. It is built on the expertise, knowledge and competence of national experts and strengthens the credibility of BEREC *vis-à-vis* the EC and NRAs.
- A top-down approach - from the BoR to EWGs: this approach is to apply to strategic topics to be discussed. It concerns emerging issues to tackle, Work Programmes to vote, Mid-Term Strategies to adapt, the Chair mandate, and relations to develop with the EC and industry representatives.

To increase its effectiveness, BEREC has to develop both of these approaches and favour each one according to its needs.

## Governance, organisational structure and management of BEREC - EFFECTIVENESS

### Positive elements

- The “**ladder process**” in decision-making functions smoothly and is not questioned: the role of each level is clearly defined.
- The current voting system and the 2/3 majority appear to be good compromises (using more electronic voting could even be useful).
- Internal functioning of EWGs is smooth but could be improved to increase consistency and quality of deliverables thanks to exchange of best practices.
- Coordination between the European Commission and EWGs has improved, especially in case of Article 7/7a procedures, but there is still room for improvement, especially in planning and prioritising *ad hoc* requests.

### Elements to improve

- Due to the lack of time and sometimes receipt of documents at short notice, some NRAs vote without fully knowing the subject under discussion. Some abstain because they have no time to study the underlying documents in detail.
- EWGs internal functioning could be improved.
- Transparency of EWGs’ internal work could be improved towards NRAs without questioning the independence of BEREC.
- Industry representatives would like to have detailed feedback from BEREC after public consultation: knowing the extent to which their comments have impacted BEREC final outputs.

### Main findings

- Four Plenary Meetings (PM) in a year appear to be sufficient to fulfil BEREC’s role.
- The rotation of the Chairs and Vice-Chairs is an effective governance method as long as the troika structure is complete. The one year term of the Chair should not be increased due to the extra time and work the Chair has to do during the appointed year and to allow all MS to become Chair.
- Even though BEREC has fulfilled all its tasks so far, its heavy and increasing workload might raise issues in the future to allow the platform to sufficiently fulfil all the points of the Work Programme.
- Flexibility is one of the key challenges of BEREC. Governance structures and methods do not allow for the effective answering of emergencies.
- Chairmanship of an EWG requires experience as well as historical/political knowledge of the topics. It also requires time and resources that all NRAs may not have.
- Coordination between Chairs of EWGs and the BEREC Office should be improved to best make use of the support Office. For instance, clarification is needed to determine the extent to which members of the BEREC Office can provide expertise support to EWGs when the latter do not have sufficient resources and time. The BEREC Office could be better utilised for coordination between EWGs, their organisation and even for improving quality of the outputs (e.g. increase consistency and English proofreading).
- The introduction of public workshops with industry representatives is an illustration of BEREC’s approach to be transparent and pedagogic on its working methods. The impact of these workshops on the vision that industry representatives have *vis-à-vis* BEREC will have to be assessed in the future.

### Main recommendations

- Spare more time for strategic discussion on new trends and emerging issues at the BoR level to increase its focus on key topics, adapt the Annual Work Programmes and found the next Mid-Term Strategies. This would be done thanks to a more active role of the CN as a filter.
- Organise EWGs in task forces would allow a better harmonisation of their internal work, ensure consistency and better quality of BEREC outputs, as well as make working groups more flexible.
- Improve internal transparency by submitting documents well on time and ensuring better participation of all NRAs.
- Concerning the European Commission: involve BEREC sometimes sooner, diffuse earlier documents when asking for BEREC's opinion and proactively inform BEREC representatives on *ad hoc* requests.
- Develop two mutually supporting approaches:
  - A bottom-up approach - from EWGs to the BoR – for technical issues to be solved.
  - A top-down approach - from the BoR to EWGs – on strategic topics to be discussed.
- As already recommended for increasing the relevance of BEREC organisation:
  - Give more responsibility to the CN in order to improve processes, coordination, output and quality of BEREC documents.
  - Emphasise the role of EWG Chairs. If it is needed, request feedback to identify areas of improvement (in case the EWG is not efficient enough or where positive changes can be initiated).
  - Introduce internal evaluation and peer review among EWGs; for instance, with feedback on EWGs' working methods and with more involvement of the BEREC Office in the work of the EWGs to ensure better consistency.
  - Develop common guidelines based on best practices for EWGs.

### 3.2.4. Efficiency

The main challenge regarding efficiency within BEREC is the **management of its work stream** and how to better improve **information flows** between EWGs, CN and the BoR. The aim is threefold:

1. To make all opinions and reports coherent, consistent and with the same level of quality and delivered on time;
2. To reduce the length of presentations' during meetings and favour strategic debate;
3. To ensure that all NRAs have sufficient resources to participate to BEREC and better utilise the resources of the BEREC Office.

The **consistency and quality of reports** are challenges already discussed in the present Final Study Report; particularly in the Sections relative to the effectiveness of BEREC achievements and the effectiveness of the platform organisation.

Considering more specifically the issues related to the efficiency of BEREC in delivering good reports, a few participants to the online survey raised the issue of time allocated to prepare opinions on EC policy initiatives and Article 7/7a Phase II cases. In case of controversial debates, these opinions require sometimes considering diverse elements that national experts may not know from the beginning: national regulations, jurisprudence, benchmarks. In that sense,

allocating more time to such in-depth research would not be wasted and could increase the impact of deliverables. These constraints are further considered in Case Study 1 in *Section 4*.

In addition, many NRAs regret not to receive documents to review on time. Since BEREC may deliver long, dense and technical reports, ensuring that all NRAs receive the documents ten days in advance for revision is an appropriate compromise.

Challenges relative to the short period of time allocated to **strategic debate** during PM in comparison with the length of presentations has also been tackled in the present Final Study Report; particularly in the Section relative to the effectiveness of BEREC organisation.

Considering more specifically the efficiency aspects of these challenges, we could emphasise the need to leverage the Mid-Term Strategy and the troika organisation to enable better prioritisation, develop a running agenda, carry-over some topics from one year to another and make, if needed, several Chairs responsible for the delivery of a report.

Improving strategic debate at the BoR level also implies that all NRAs have the elements at hands to make a decision. That is why the timeframe given to Heads to vote electronically during Article 7/7a procedures (currently one day), should be extended to ensure that CN and EWGs representatives from the NRA can deliver recommendations to their Head (*see Case Study 1 in Section 4*). In that sense, given the legal timeframes for delivering BEREC's opinion, a smooth flow of information between EWGs, the CN and the BoR during the preparatory phase of the working documents is crucial.

BEREC also introduced in 2010 the definition of “A items” during PM. These items are adopted in Plenary Meetings without discussion. They result from in-depth discussions at the EWG and CN levels and do not require further discussion at the BoR level. By doing so, Heads of NRAs have more time to allocate to discuss other subjects.

Challenges related to **BEREC resources require considering NRAs' own resources and the use of the BEREC Office**. As BEREC is composed of NRAs' representatives, assessing the efficiency of its structure involves considering whether NRAs put at disposal enough resources to comply with the obligation to participate to BEREC<sup>91</sup>. If all NRAs do their best to participate to all EWGs and get involved in all voting processes, the agenda of the Work Programme, *ad hoc* requests, and Article 7/7a procedures put pressure on NRAs to deliver. In addition, many NRAs are confronted with downsizing of financial and human resources (mainly due to the current financial crisis and budgetary austerity). As stated by a member of the Contact Network, an NRA needs between eight and ten people to follow BEREC work: *“To follow properly all BEREC activities, it is important to participate as drafter in almost all EWGs (at least about 6 experts with differentiated backgrounds: legal, economic and technical expertise) and 2/3 full time experts to follow the EWG at a higher level, the MC documents, Board proposals, article 7 voting, etc.”* One of the solutions would be to use more the BEREC Office for providing professional support: that would reduce the burden on NRAs when contributing to BEREC's work.

In parallel, NRAs cannot hire experts with knowledge of specific regulatory aspects (while training of experts in telecoms takes time). This situation heavily differs from one NRA to another and might not be sustainable: while many do not shed the light on their resources allocated for BEREC, some highlight their need for support (especially coming from the BEREC Office). This is a crucial point because it is closely linked to NRAs' autonomy and ability to participate to BEREC and consequently have a voice. This situation has been brought to the attention of the European Commission but many NRAs consider that it requires a careful monitoring to guarantee the future of BEREC. That is also why considering a more focused agenda, reduce the number of Expert Working Groups (and reconsider this number at the beginning of every year) and emphasise the multi-annual planning might be helpful.

The efficiency of BEREC is also very much linked to the involvement and **coordination with the BEREC Office**. According to interviewees and participants to the online survey, the BEREC

<sup>91</sup> This obligation is indicated in the Article 3 of the Framework Directive.

Office is organising meetings efficiently. **Plenary Meetings** are sufficient (four times a year), nevertheless, some NRAs suggest organising them for three days instead of two to align with the heavy agenda. The same recommendation has been made for **CN meetings** (as mentioned before, to increase the efficiency of the Plenary Meetings, more responsibility could be given at the CN level). Concerning **EWG meetings**, their organisation and frequency highly depends on the decision of each Chair. For that reason, some EWGs meet every quarter while others meet only once a year. EWGs mostly work through conference calls and emails in addition to meetings. However this is not the most valuable approach considering that EWGs' working method is driven by discussion and exchange of views, requiring sometimes to physically meet the other national experts. That is why building closest relations between EWGs (and more specifically their Chairs) and the BEREC Office could increase the efficiency of the groups and - as already mentioned - harmonise the quality and consistency of BEREC deliverables.

<b>Governance, organisational structure and management of BEREC - EFFICIENCY</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>NRAs are fully involved in BEREC work and do their best to maximise the use of their resources and the time allocated to deliver quality.</li> <li>BEREC is already aware of its main challenges related to efficiency and the best use of its resources and time; it has developed the Mid-Term Strategy and "A items" adopted in PM with no discussion.</li> <li>The BEREC Office efficiently organises meetings.</li> </ul>	<ul style="list-style-type: none"> <li>Management of BEREC work stream and information flow should be more efficient.</li> <li>More time may be needed to tackle some subjects efficiently.</li> <li>Some NRAs may lack of resources to fully participate to BEREC from time to time. The BEREC Office could be more used to reduce the burden on NRAs when contributing to BEREC's work.</li> <li>Coordination between EWGs and the BEREC Office could also be improved to harmonise the group work.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>The first main challenge of BEREC is to organise its work stream more efficiently: make all opinions and reports more coherent, consistent and with a common high level of quality. All meeting participants should consistently receive these documents on time (10 days before) so as to increase preparation time for the meetings.</li> <li>The second main challenge is to improve the flow of information at the preparatory phase of the working documents and especially between the three levels of the structure: EWG, the CN and the BoR.</li> <li>Many NRAs may already face or will face in the future difficulties to participate to BEREC because of the downsizing of their resources occurring while BEREC agenda gets denser.</li> <li>The BEREC Office might not be used as fully as it could, especially when supporting EWGs in their everyday work.</li> </ul>	



### Main recommendations

- Allocate more time for in-depth research in case of controversial debates would increase the impact of BEREC deliverables.
- Leverage the Mid-Term Strategy, the use of “A items” and the troika organisation to prioritise topics and allocate resources at best.
- Extend the time allocated to vote for Article 7/7a Phase II procedures (two or three days).
- Prepare and diffuse documents on time to ease the work stream of the CN and the BoR.
- Improve the coordination between EWGs and the BEREC Office. For instance, when some NRAs require punctual support due to resource constraints.

### 3.2.5. Impact

To estimate whether BEREC organisation has a clear impact on its final work we consider the role of the Chair and the transparency procedures of BEREC.

Even if the role of the Chair is defined in the BEREC Regulation and BEREC Rules of Procedures, it remains flexible and differs according to the definition each Chair decides to give. In that sense, the impact of each Chair depends on his/her personality. That is also why we can consider that the **role of the Chair of the BoR is to a certain extent unclear**. For instance, a member of BoR explained in the online survey that: *“the Chair has at times been seen to go beyond his mandate. In any organisation there will be a tension between the need to stick to a mandate between meetings/decision-making opportunities, and the need to be flexible and take advantage of opportunities/take executive decisions. Whether this balance is appropriately struck will be down to the individual in question, and there are bound to be differences in perception among NRAs in any given year. The primary means of mitigating this risk and helping to achieve this balance is communication between the Chair and other BoR members - improvements could be made in this area”*.

This situation impacts the whole BEREC organisation. That is why the Chair of BEREC has to communicate transparently with NRAs and with the Administrative Manager of the BEREC Office. As mentioned before, the Chair, in its **communication**, has to clearly distinguish when it speaks on behalf of BEREC and when it talks in the name of his/her own NRA. A clear definition of the Chair’s role in communication towards third parties and a clear voting process regarding external communication could be added to the already existing mandate of the Chair. A Chair which does not follow these rules would be compelled to explain his/her reasons.

The impact of BEREC also depends on its **transparency**, both internally and externally. Internally BEREC should find ways to ease information flows within the organisation and between its three key levels of governance (EWGs, CN and the BoR). As already mentioned, some NRAs regret that some EWGs remain “black boxes”, even towards other national experts. Externally, BEREC must communicate efficiently with market players to show its added value and to increase the relevance, value and positive perception of the participation of third parties. Increased transparency in this area could yield greater positive impacts. BEREC also acknowledges that communication between Expert Working Groups and industry stakeholders could support the achievement of BEREC’s objectives. Following that, BEREC could have a greater impact by explaining its internal processes to market players. By doing so the platform would illustrate that it is not a “black box”, that opinions are taken based on an extensive discussion among experts from all over the EU and that BEREC is keen to present its results and discuss them. The external communication of BEREC could also easily and heavily be supported by a presentation of the internal processes of BEREC diffused to market players.



<b>Governance, organisational structure and management of BEREC - IMPACT</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>• Current organisational structure has the means to improve its impact.</li> <li>• NRAs have a clear vision of the challenges related to the impact of BEREC. They are mainly related to communication within the BoR.</li> </ul>	<ul style="list-style-type: none"> <li>• The BoR Chair does not have a clear mandate regarding communication.</li> <li>• Lack of transparency internally and towards external parties.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>• BEREC needs both a Chair with leadership and clear communication among Heads of NRAs to define the actions and decisions the Chair can make.</li> <li>• Concerning external communication: impact of BEREC communication highly depends on whether stakeholders feel that BEREC has one voice. In that case, transparency and communication have a positive impact.</li> </ul>	
<b>Main recommendations</b>	
<ul style="list-style-type: none"> <li>• Define a clear role and responsibilities for the Chair regarding communication. The Chair's margins of manoeuvre should be clarified in its mandate.</li> <li>• Diffuse to market players a presentation on the internal processes of BEREC to explain how opinions are made and how reports are written.</li> </ul>	

### 3.2.6. Coherence, Complementarity and Synergy

Synergies resulting from the BEREC organisation can be considered at three levels:

1. Coherence with NRAs' work;
2. Coherence with the work of the European Commission;
3. Complementarity with the expectations of industry and consumer representatives.

Coherence with the work of **NRAs** is straightforward to consider but needs to be detailed. Indeed, as BEREC topics to address and work to deliver are achieved by NRAs themselves, we can consider that by fulfilling BEREC tasks, NRAs also achieve their own objectives. In that matter, BEREC platform is a powerful tool for NRAs to collect and compare national challenges and situations. In that matter, most of NRAs are positive and confident about the working relationships between NRAs. Considering BEREC working methods, EWGs are organised to favour discussion and view exchanges. Following that, the organisation of the platform enables BEREC and NRAs' objectives to be mutually achieved. In parallel, BEREC is a powerful instrument for the development of NRAs' agendas since new trends and emerging issues are discussed within the platform. However, BEREC has also specific objectives related to the Single Market. Following that, if NRAs are considered the best experts to understand emerging challenges in the telecoms sector and if the current BEREC organisational structure is considered the best system to report and provide advice to face these challenges, the EU institutions also expect from BEREC an EU-wide approach towards the telecoms sector. Acquiring this EU approach might require time. That is why BEREC may still be considered in a learning curve in that respect.

All stakeholders agree that the **European Commission** has better relations with BEREC than it had with the ERG. Most of NRAs are satisfied about the working relationships with the Commission and the European Parliament. BEREC has not had the opportunity to work directly with the Council yet. Also, as the EC is a BEREC observer, it participates to BoR, CN and EWGs work which enables direct contact and alignment of agendas. Room for improvement concerning synergies in their respective working methods lies in the time allocated to BEREC to answer its *ad hoc* requests. As already mentioned, better coordination and communication on that matter

could be made by the Commission; enabling working groups to anticipate, gather information, start discussing and deliver quality.

BEREC work is also known by **industry and consumer representatives**; even if many participants of the online survey consider that the awareness of BEREC work should be improved. Coherence between the two spheres also leverages transparency actions initiated by BEREC: public consultations, public workshops, oral feedback, debriefing sessions, the strategic dialogue, effort to prepare the PRDs in line with industry concerns. BEREC is also an opportunity for all market players to be heard equally, BEREC being impartial. The main challenge concerning relations with industry representatives is that BEREC should not duplicate the existing work of each NRA in its respective country. Finally, BEREC willingness to be transparent and impartial does not illustrate the extent to which the platform supports market players to better evolve in the sector.

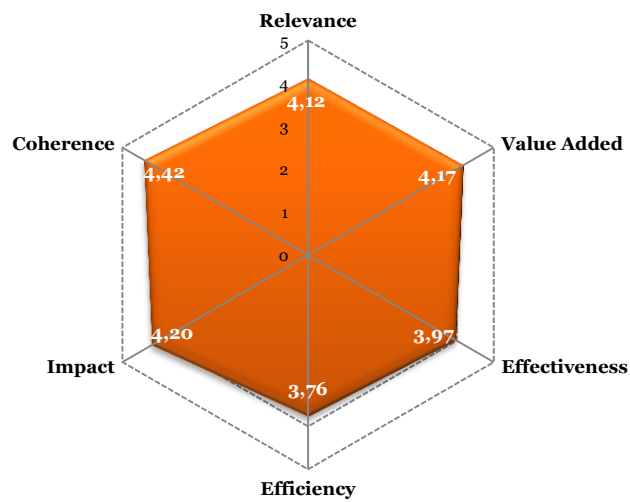
Indeed, it is important to remind that building relations and cooperative working methods is a continuous (and long) process. That is why it is too soon to have a definitive opinion on BEREC's complementarity with market players or with NRAs' work towards third parties, such as industry representatives and non-EU regulatory authorities. This is mostly due to the relatively short period of its operation to date.

<b>Governance, organisational structure and management of BEREC - COHERENCE, COMPLEMENTARITY, SYNERGY</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>• BEREC organisation supports NRAs' work and NRAs provide BEREC with different views and suggestions.</li> <li>• The European Commission has better relations with BEREC than it had with ERG.</li> <li>• Industry and consumer representatives are aware of BEREC work, even though its specificities might remain unclear.</li> </ul>	<ul style="list-style-type: none"> <li>• Improve transparency toward third parties.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>• NRAs are positive and confident about the working relationships with the Commission, other EU institutions and between NRAs.</li> <li>• Complementarity with the work of market players will require more time to be established. Nowadays the main elements concern BEREC willingness to incorporate external views in their process, but this does not illustrate synergies as such.</li> </ul>	
<b>Main recommendations</b>	
<ul style="list-style-type: none"> <li>• As already recommended: set up guidelines for external communication and a presentation on the internal processes of BEREC.</li> </ul>	

### 3.2.7. General profile of the governance, organisational structure and management of BEREC

Hereafter is a general profile of the governance, organisational structure and management of BEREC according to the results of the online survey.

**Figure 27 : BEREC general profile - Governance, organisational structure and management**



Source: PwC

### 3.3. External evaluation of the structure and working methods of the BEREC Office

What we call “external evaluation” means the evaluation of the BEREC Office deriving from views and opinions of people mainly not working within the Office. Most of them are from NRAs - and as some of them are Heads of their regulatory authorities, they are part of the Management Committee of the BEREC Office - but do not work at the BEREC Office in Riga. The internal evaluation presented in the next Chapter derives from our field visit in Riga and focuses more on the internal processes of the BEREC Office.

This external evaluation of BEREC Office’s structure and working methods has revealed the following trends:

- The optimal use of the BEREC Office is one of the most questioned topics of the entire BEREC system.
- The general structure of the BEREC Office - composed of the MC, the AM and the staff - convenes to all stakeholders. Creating synergies between the two working processes nonetheless implies to align two organisations that do not have the same experience. That is why more time might be needed to evaluate the full added value and impact of the BEREC Office.
- The main issue relative to the working methods of the BEREC Office concerns the definition and use of the Office as a professional support. In that matter, all stakeholders do not share the same view. Following that, there is nowadays no optimal use of the BEREC Office staff: little involvement in the substance of BEREC documents in comparison to the time and resources devoted to comply with administrative requirements. That is why BEREC should clarify what it needs from the BEREC Office staff.
- The most effective activity of the BEREC Office is its involvement in Phase II cases of Article 7/7a procedures.
- The Management Committee is mostly considered as an administrative body. That is why it fulfils its tasks as such, in order to leave more room to MC members – also BoR members – to discuss important topics during PM.
- The Administrative Manager is perceived as efficient on the administrative tasks. He nonetheless needs to discuss more with the BoR on key topics, especially to better align BEREC WP and BEREC Office WP.
- The presence of the BEREC Office in Riga obliges it to focus on activities that do not require physical meetings with BEREC members. That situation makes it difficult for BEREC Office staff to participate to EWGs and BEREC members to use the Office at best.
- To synthesise, we could quote a CN member answering an online question on the relevance of the BEREC Office structure: “*structure is less relevant to reach objectives than the motivation of BEREC’s members to participate and make the most of it [BEREC Office]*”.

#### 3.3.1. Relevance

Assessing the relevance of the BEREC Office’s structures and working methods implies to consider the relevance of its composition and its role towards the BEREC platform itself.

**The BEREC Office is composed of three layers:**

1. The Management Committee composed of the Heads of NRAs (and having the same composition, Chairs and Vice-Chairs as the BoR of BEREC);
2. The Administrative Manager in charge of implementing the BEREC Office tasks, and
3. The BEREC Office staff, in charge of providing the administrative and professional support to BEREC.

This composition illustrates an appropriate balance between the representation of NRAs, the link between the whole BEREC organisation and the EU institutions, as well as the necessary competences to support the EWGs if needed. More precisely, the adequacy between the Management Committee and the Board of Regulators makes sense - as well as for the Chairs and Vice-Chairs - since BEREC Office role is intrinsically linked to BEREC's objectives. Moreover, the role of the Administrative Manager appears to be clearly defined and his term (3 years) is appropriate. The results of the online survey revealed more questionings on the selection process of the staff but this element has been solved<sup>92</sup> and the Office continues to recruit in order to attain its final size of 28 people by October 2012.

Considering the relevance of the **role of the BEREC Office vis-à-vis BEREC** raises the question of the definition of the “administrative and professional support”<sup>93</sup> that the Office should provide to BEREC. All members of BEREC do not share the same view on that topic, raising issues on the *raison d'être* of the Office.

As stated by the participants of the online survey:

- “*The Office could be more proactive on certain issues (and have less of an administrative mindset)*” (CN member);
- “*Instead of administrative activities, they should concentrate on substance*” (another CN member);
- “*Interface for co-operation with individual NRAs is not developed*” (BoR member).

These comments show the extent to which some gap exists between what some NRAs expect from the BEREC Office and what happens since its full independence in September 2011. This gap is nonetheless not shared by all NRAs. Indeed, while some CN members consider that there is “*no need to change*” others believe that “*there is a need for changing the structure and working methods of the BEREC Office, in order to make it more relevant to our work*”. In other words, some NRAs - and the European Commission - consider that the BEREC Office would be more relevant if it were more active in supporting EWGs with substance, while other regulators consider that it is only NRAs' task to deal with the content of BEREC outputs.

The main questions relative to the very relevance of the BEREC Office have already been raised (*see the evaluations of the achievements and organisation of BEREC in the two previous Chapters*) and concern:

- The involvement of the Office in the substance of BEREC deliverables. This involvement currently does not exist. Even if the Office is today very involved in the Article 7/7a procedures, its role in the drafting and delivery of reports and other documentation is milder.
- Coordination with EWGs and most specifically the Chairs. The Office today intervenes more for data gathering while it could bring value with preliminary analysis and writing support to EWG work.
- Its role to improve the consistency and language quality of BEREC documents.
- BEREC Office presence in Riga. This implies for BEREC Office staff to travel to Brussels to meet EWGs, while NRAs do not often travel to Riga.

Nonetheless, most of the NRAs consider that BEREC needs the Office. Following that, one of the BoR members clearly synthesized the rationale behind the working methods of the BEREC Office: “*the spirit of the Office should be to act as a facilitator for NRAs, building upon their expertise in a constructive and collective way*”. In that matter, it needs to be reminded that the

<sup>92</sup> European Court of Auditors, *Preliminary observations with a view to a report on the annual accounts of the Office of the Body of European Regulators for Electronic Communications for the financial year 2011*, Adopted by Chamber IV, 12 June 2012. And the reply of the BEREC Office to these observations.

<sup>93</sup> Article 4(11), BEREC Regulation.

Office is a new structure, working with a platform inherited from the ERG and that consequently, time is needed to build trust and improve coordination between the two entities.

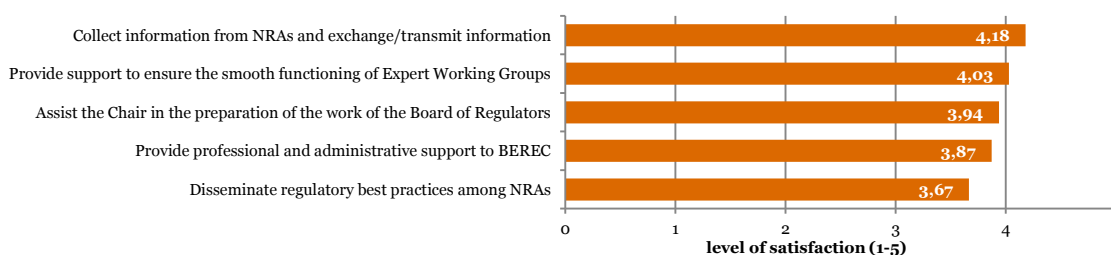
External evaluation of the structure and working methods of the BEREC Office - RELEVANCE	
Positive elements	Elements to improve
<ul style="list-style-type: none"> <li>The three level structure (MC, AM and staff member) is relevant and aligned with BEREC needs.</li> </ul>	<ul style="list-style-type: none"> <li>Members of the BEREC platform do not agree on the role the BEREC Office should play towards BEREC, especially regarding the professional support the Office should provide.</li> </ul>
Main findings	
<ul style="list-style-type: none"> <li>The general structure of the BEREC Office convenes to all stakeholders.</li> <li>Main questions relative to the relevance of BEREC working methods concern the definition and use of the Office as a professional support. In that matter, all stakeholders do not share the same view.</li> </ul>	
Main recommendations	
<ul style="list-style-type: none"> <li>BEREC members should agree on how to use the BEREC Office at its full potential.</li> </ul>	

### 3.3.2. Added value

The value added of BEREC Office’s working methods can be considered according to two perspectives: firstly the value added brought by the activities of the Office towards BEREC, secondly the value added of the BEREC Office in the everyday work of NRAs. Indeed, since the BEREC Office is in charge of collecting and disseminating information to all NRAs, it is important to know whether these tasks bring value to the addressed regulators.

As presented in the Figure below, the activities of the BEREC Office adding the most value concern administrative support: collection and transmission of information, support in the functioning of the EWGs and support to the Chair of the BoR. On these different tasks, BEREC members (EWGs, CN, BoR and the Chair of the BoR) had very positive remarks on the BEREC Office.

**Figure 28: Value added of the activities of the BEREC Office**

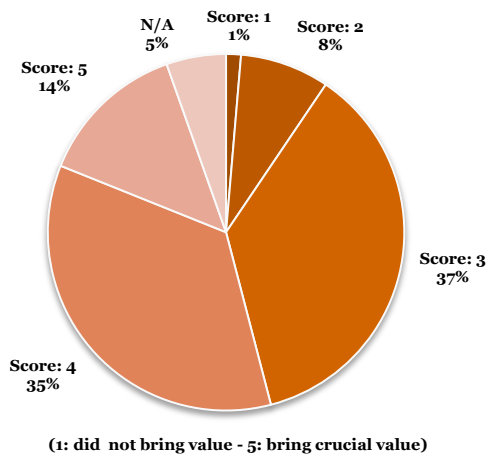


Source: PwC

Results concerning the value added by the administrative and professional support to BEREC need to be mitigated by the divergent definitions NRAs and EU institutions have concerning the professional support the BEREC Office should provide to the platform. In that sense, many NRAs consider that the BEREC Office should not intervene in the writing process of BEREC deliverables while others are asking for it. Finally, some NRAs and the European Commission appeared more sceptical about the ability of the BEREC Office to diffuse best practices. This is an activity that requires experience so as to define best practices and disseminate them efficiently. It also takes more time to bring value in comparison with data collection and administrative support.

In addition to the value added by its activities, one might also consider what value the BEREC Office brings to the CNs and the EWGs when they meet and draft BEREC outputs. As illustrated in the Figure below, the added value of the Office towards the CN and EWG levels are very high: 49% of NRAs' representatives consider that the Office has a very positive value, this score even attains up to 86% when it includes people considering that the value added by the Office is noticeable.

**Figure 29: Extent to which the BEREC Office brings value to the day-to-day work of CN and EWGs**

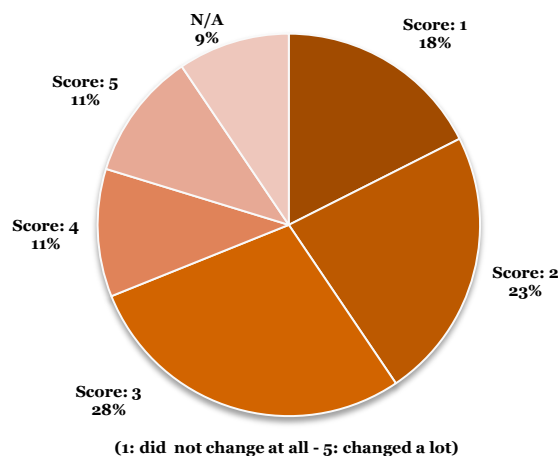


Source: PwC

These scores are very high but need to be mitigated with the feeling of distrust that seems to exist between the EWGs and the BEREC Office (*see previously the evaluation on BEREC governance*). In that sense, BEREC as a whole knows that the Office is a tool that can be effectively leveraged and bring value to its work but - mostly due to its recent full existence – is not used. Relation-building requires time.

Since the BEREC Office is functional since recently, the online survey also asked NRAs representatives whether the BEREC Office modified their everyday work. Hereafter are presented the results.

**Figure 30: Extent to which the concrete establishment of the BEREC Office modified day-to-day work of NRAs' representatives**



Source: PwC

Not surprisingly, a large majority of respondents did not consider that the BEREC Office modified their day-to-day work: 78% of NRAs' respondents did not estimate that the BEREC Office modifies their everyday work in an obvious way. This element illustrates the extent to



which the BEREC Office today makes a clear difference between BEREC and the NRAs that compose it. When considering this element with the two previous Figures, we realise that the Office adds more value when supporting EWGs than when diffusing information or best practices to NRAs, elements that would impact their everyday work. It also shows the extent to which the objectives and tasks of the BEREC platform differ from NRAs' goals and activities.

In sum, the main mission of the Office is to provide professional and administrative support to BEREC. In that matter, the Office is already providing administrative support while it is not providing professional support.

Considering the administrative support, the Office is considered to add value in the collection of information but could do better in the dissemination of this information and best practices. This is mostly due to the fact that the BEREC Office has no website to transmit data and inform NRAs (this is despite the recent launch of the new BEREC website in August 2012 currently used for external communication). The Office also highly supports the Chair in the preparation of the documents for the BoR. During their interviews, the former and current Chairs insisted on the need of regular contact between the Chair and the Office in that matter.

The professional support of the BEREC Office raises more questions. To begin with, the Office is new, the EWGs need time to consider how to use it at best when drafting documents. In addition, this decision requires a common understanding of all NRAs and all levels of responsibilities in the platform. It is nonetheless necessary to clearly define where BEREC wants the Office to add value: diffuse information, propose benchmarks, develop guidelines for report drafting, proofread the documentation, and/or support NRAs having difficulties to provide experts occasionally.

As a whole, the added value of the BEREC Office is mitigated. If some national experts consider its support as "*excellent*", many underline that the Office could do more and be more proactive in the coordination with EWGs.

<b>External evaluation of the structure and working methods of the BEREC Office - ADDED VALUE</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>The three levels of competences of BEREC are satisfied with the administrative support of the BEREC Office.</li> </ul>	<ul style="list-style-type: none"> <li>The added value of the BEREC Office concerning the professional support did not appear during the evaluation (apart on the Article 7/7a procedures, as already mentioned).</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>Despite its new creation, the BEREC Office has already brought value to the BEREC platform.</li> <li>The BEREC Office adds most of its value in administrative support; especially data collection and information diffusion.</li> <li>Value added to individual NRAs is more questionable: diffusion of best practices is not the most developed activities of the BEREC Office.</li> </ul>	
<b>Main recommendations</b>	
<ul style="list-style-type: none"> <li>Agree on a clear definition of professional support and the topics on which BEREC wants the Office to add value.</li> </ul>	

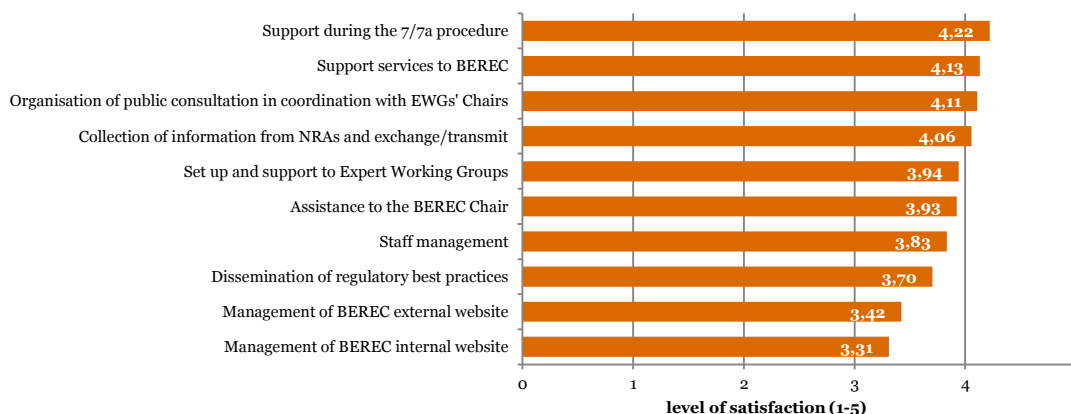
### 3.3.3. Effectiveness

The effectiveness of three different entities is considered in the following paragraphs<sup>94</sup>:

1. The BEREC Office as a whole;
2. The Management Committee;
3. The Administrative Manager.

Following the results obtained concerning its added value, the BEREC Office is considered particularly efficient for administrative activities; as illustrated in the Figure below.

**Figure 31: Activities where BEREC Office is judged as effective**



Source: PwC

The Figure above also illustrates the Office's difficulties in communicating with EWGs, partly due to its lack of IT tools (internal and external websites). This happens despite the clear definition of roles and tasks within the Office. Also and as already mentioned, staff management is another issue that the Office is currently solving: it modified its staff recruitment process following initial remarks and completes its team.

Furthermore, some experts underlined in the online survey that the Office could improve very basic tasks related to its administrative support to BEREC:

- Improve the format of the presentations given during PMs;
- Clarify the PM agenda and detail the names of speakers of each presentation.

In parallel, the Figure above illustrates that the most effective activity of the BEREC Office is its involvement in the Article 7/7a procedure. In that matter, a member of an EWG established that *"the Office is proving very important in the context of managing Phase II cases on the BEREC side, where it plays a key role in setting up the EWGs and in defining the main steps of the relevant activities, as well as in providing professional support to experts"*.

Considering the **prioritisation of issues** in the Annual Work Programme of the BEREC Office, many stakeholders acknowledged that the Office has limited means to prioritise its topics. Indeed, it appears nowadays that the Office should focus on communication and coordination with all three levels of governance of BEREC. A BoR member also stated that *"the fact that the timeframe for approving BEREC's Annual Work Programme and the timeframe for approving*

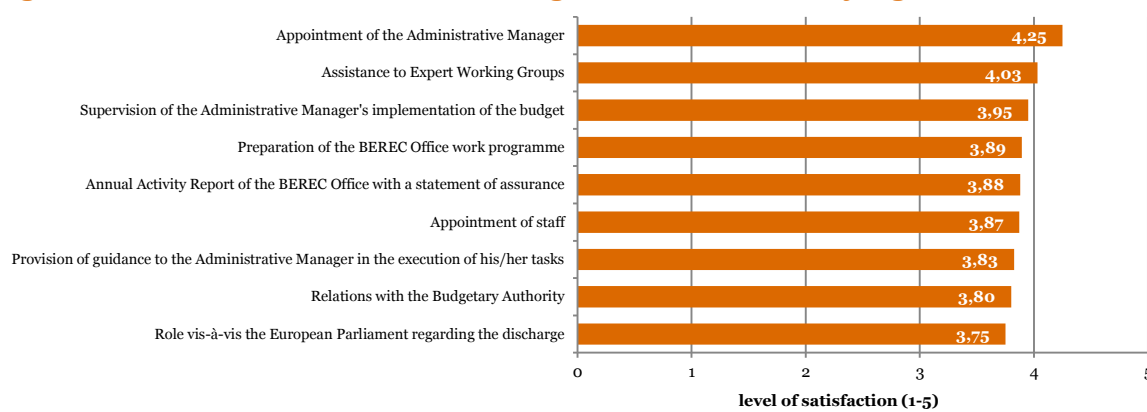
<sup>94</sup> Concerning the next three Figures illustrating the effectiveness of the BEREC Office, of the Management Committee and of the Administrative Manager, we would like to stress that the level of N/A (not applicable) answers was higher than for the rest of the online survey. Indeed, 28% of respondents to the questions related to the BEREC Office answers N/A, while they were 55% for the Management Committee and 44% for the Administrative Manager. Following that, we may assume that the questions relative to the effectiveness of the BEREC Office is a subject that only a few people are aware of.

*the BEREC Office's Annual Work Programme are not aligned is unfortunate and inconvenient*" (BoR member). Following that, we should consider that both Annual WPs should be drafted in parallel to ensure consistency and delimitate where the Office could be the more valuable. In that sense, the Annual WP of the Office would also benefit from the internal discussion of the BoR, the feedback from market players on BEREC Annual WP and would consider various criteria at the same time, including a criterion that we may call "Office value added", defining where the Office would add particular value (data collection, preliminary analysis, proof reading, definition of writing guidelines, participation in the writing phase of the delivery).

Finally, as explained by an EWG member: *"as any recent organisation, the BEREC Office's effectiveness is expected to evolve overtime"*.

When considering the effectiveness of the Management Committee, we realise that the effectiveness of its activities is mainly considered as neutral; as illustrated in the Figure below.

**Figure 32: Activities where BEREC Management Committee is judged as effective**



Source: PwC

Apart from the appointment of the Administrative Manager, most of the activities of the MC are very administrative and, because fulfilled by the BoR members, are considered less crucial in comparison to the need to focus on hot topics when they meet as the BoR. In other words, apart from the coordination with the Administrative Manager, the role of the MC is very administrative and is effectively fulfilled as such<sup>95</sup>.

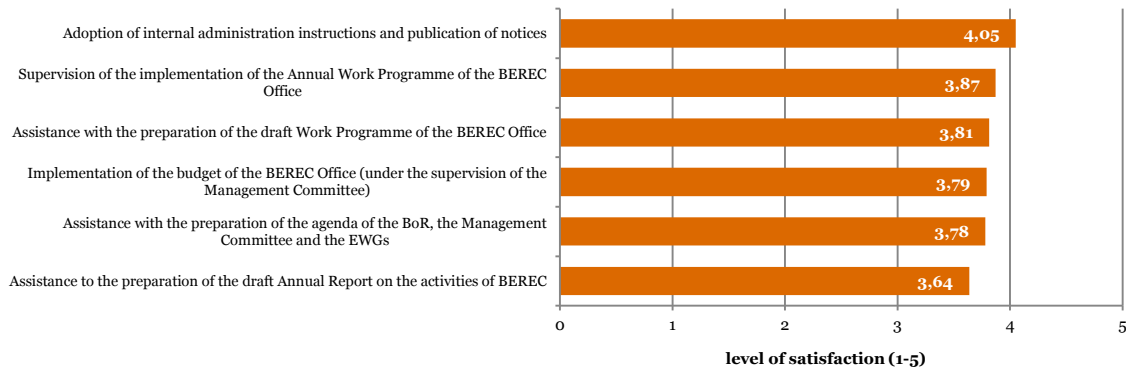
Following that, the main elements to consider are the appointment of the AM (with the provision of guidance for his/her tasks) and of the staff. If the first one seems satisfactory (even though appeared challenging and required time), it is less the case for the staff (which is still an on-going process). Reasons for that are:

- Many BEREC Office staff members are recruited for their competences but do not participate to the substance of BEREC documents. Following that, it is difficult to assess whether their appointment was effective. An exception concerns the BEREC Office people in charge of following the Phase II cases of Article 7/7a procedures: the online survey revealed only positive feedback.
- The location of the Office in Riga may be a limitation to recruitment.

When considering the effectiveness of the Administrative Manager, we realise that the effectiveness of his activities is also mainly considered as neutral; as illustrated in the Figure below. Two activities appear more clearly: the adoption of internal instructions and the preparation of the draft Annual Report of BEREC.

<sup>95</sup> This conclusion is aligned with the high rate of N/A answers to this question (55%), illustrating that the majority of the respondents did not have the elements to provide a clear answer. The internal effectiveness of the Management Committee is a topic that a few people tackle and handle within BEREC and that is mostly administrative.

**Figure 33: Activities where BEREC Administrative Manager is judged as effective**



Source: PwC

As illustrated in the Figure above, the Administrative Manager is perceived more effective on administrative activities - such as the adoption of internal instructions - than on tasks requiring more involvement in the substance of BEREC documents - such as BEREC draft Annual Report - implying more in-depth discussion and dialog with the BoR on hot topics<sup>96</sup>.

External evaluation of the structure and working methods of the BEREC Office - EFFECTIVENESS	
Positive elements	Elements to improve
<ul style="list-style-type: none"> <li>The BEREC Office, the Management Committee and the Administrative Manager are perceived efficient in administrative activities.</li> </ul>	<ul style="list-style-type: none"> <li>The Office could improve very basic tasks related to its administrative support.</li> <li>The BEREC Office experiences difficulties in communicating with EWGs and providing professional support.</li> </ul>
Main findings	
<ul style="list-style-type: none"> <li>The most effective activity of the BEREC Office is its involvement in Phase II cases of Article 7/7a procedures.</li> <li>Considering the Management Committee: this entity is very administrative and fulfils its tasks as such to leave more room to MC members – also BoR members – to discuss important topics during PM.</li> <li>Considering the Administrative Manager: he is perceived as efficient on the administrative tasks and needs to more discuss with the BoR on key topics, especially to better align BEREC WP and BEREC Office WP.</li> </ul>	
Main recommendations	
<ul style="list-style-type: none"> <li>The two Annual WPs should be drafted in parallel to ensure consistency and delimitate where the Office could be the more valuable. BEREC Office WP would consequently benefit from the internal discussion of the BoR and the feedback from market players on BEREC Annual WP.</li> <li>BEREC Office WP should include a criterion that may be called “Office value added” to prioritise tasks in which the BEREC Office will add particular value.</li> <li>More communication is desirable between the Administrative Manager and the BoR.</li> </ul>	

<sup>96</sup> As for the results on the effectiveness of the Management Committee, the high rate of N/A answers to this question (44%) illustrates that a large part of the respondents did not have the elements to provide a clear answer. Conclusions on the effectiveness of the Administrative Manager should than be taken carefully, especially when considering that Ando Rehema, the Administrative Manager, was selected in May 2010 and took up his duties in October 2010.

### 3.3.4. Efficiency

Four aspects of the efficiency of the BEREC Office were considered:

- Its administrative processes;
- Its time management;
- Its staff;
- Its budget management.

The first two aspects - processes and time management - are generally satisfactory. Two limitations nonetheless exist.

Regarding the **Office processes**, its presence in Riga might not be sufficiently efficient for the smooth functioning of the BEREC platform. As stated by a BoR member, BEREC Office's presence in Riga is an issue *“for the holding of EWG meetings (travel to Riga for meetings is inconvenient and expensive for almost every BEREC member and requires 3 days out of the office, instead of 1 or 2 [for Brussels]), as well as for engagement with the EU institutions, our primary interlocutors, and stakeholders and trade associations, who more often than not have a Brussels presence. As a result, for as long as it is in Riga, it [the BEREC Office] will be limited to providing remote support to BEREC's activities”*. That is why the BEREC Office needs to first focus on its activities that do not require physical meetings with BEREC members.

The second limitation concerns **time management**: some BoR and CN members as well as EC representatives regret that BEREC documentation is sometimes diffused late. This problem can however be easily fixed (first with a proper intranet to diffuse it) and the BEREC Office mostly needs time adapt and align with BEREC needs.

The last two aspects - staff and budget - are more questioned by stakeholders.

To begin with, NRAs do not share the same view on the level of qualification required by **BEREC Office staff**. For instance, a CN member stated in the online survey that *“many of the [Office] staff are SNEs [Seconded National Experts] which have a good knowledge of regulatory issues”* while another CN member stated that *“the professional level of expert staff is not satisfactory”*. These comments are to be considered with the core issue related to the BEREC Office: its involvement in the substance of BEREC documents and, following that, the time and resources BEREC Office staff devote to comply with administrative requirements. In that matter, a CN member considered that the Office has a *“disproportionate number of staff involved in compliance with EU rules and regulations”* when another CN member estimated that *“BEREC Office members are overqualified for their actual tasks”*. That is why assessing the qualification of BEREC Office staff members, requires first to know what BEREC expects from its Office. In that matter, and as already mentioned, the definition of the professional support BEREC really wishes to ask to the Office is unclear. BEREC should therefore define the extent to which the Office should be involved to coordinate EWGs' work, diffuse information with preliminary analysis and/or act proactively to raise emerging issues that BEREC should tackle in the future, and, if considered needed and relevant, be actively involved in the substance of BEREC deliverables.

The presence of the BEREC Office in Riga has also an impact on its staff: competition in staff selection may be perceived as more difficult and attracting/retaining high-qualified staff members may be challenging. In that respect, BEREC members have a presence in Brussels.

Considering the Office **budget**, it must be reminded that resources of the BEREC Office are crucial for the platform since some NRAs might suffer from resource downsizing. As explained by a CN member: *“support by the BEREC Office is essential to alleviate resources constraints on NRAs”*. This is why many BoR, CN and EC representatives are expecting the Office to increase its efficiency in documentation and best practices diffusion (with a new internet website and intranet). The Office is also currently not using a part of its budget devoted to call for consultancy

services, while it could. More elements on the use of the BEREC Office budget are detailed in the next Chapter devoted to the internal evaluation of the BEREC Office.

Furthermore, since the administrative requirements applied to the BEREC Office are identical to those applied to all EU agencies, a few stakeholders propose that some administrative activities of the BEREC Office - such as management of public procurement, requests for consultancy services or IT tools - are merged with other EU agencies or organisations close to Riga. Indeed, the BEREC Office is a relatively small structure but faces the same level of requirements asked to big EU organisations. Merging some activities would increase its efficiency and improve the use of its available resources.

<b>External evaluation of the structure and working methods of the BEREC Office - EFFICIENCY</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>Processes and time management are currently satisfactory even though room for improvement exists.</li> </ul>	<ul style="list-style-type: none"> <li>Staff management raise issues since the definition of the tasks devoted to them is currently unclear. In addition, the administrative requirements asked to the Office reduce its time and resources to provide professional support.</li> <li>The Office budget is crucial when considering the resource downsizing of some NRAs; however the Office is not spending money on key basic elements that could support its work: BEREC website is very new, there is no intranet and the BEREC Office does not ask for consultancy services.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>The presence of the BEREC Office in Riga obliges it to focus on activities that do not require physical presence in Brussels.</li> <li>The main issue of the BEREC Office concerns the use of its staff: little involvement in the substance of BEREC documents in comparison to the time and resources devoted to comply with administrative requirements.</li> </ul>	
<b>Main recommendations</b>	
<ul style="list-style-type: none"> <li>Improve tasks that can be done from Riga and that do not require physical presence in Brussels: data collection and diffusion (with proper IT tools). The BEREC Office could also give more professional support to the EWGs while only meeting national experts during EWG meetings, like the NRAs do.</li> <li>Consider merging some BEREC Office's services with another EU organisation for cost efficiency, cost optimisation and a better use of existing EU entities in other cities close to Riga.</li> <li>BEREC should clarify what it needs from the BEREC Office staff.</li> </ul>	

### 3.3.5. Impact

The impact of the BEREC Office is one of the most questionable elements of the Office. When asking in the online survey “do you think the BEREC Office has a positive impact on BEREC’s activities and objectives?”, most of NRAs answered “yes” but a few NRAs as well as representatives of the European Commission and of the BEREC Office explained that the Office has today no impact on BEREC work. In that sense, they do not consider that the Office fully supports the platform since there is currently no clear professional support, apart from its



support in Phase II cases of the Article 7/7a procedures. This is mostly due to the time needed by EWGs and their Chairs to consider the extent to which the Office can bring value to their own work and consequently impact BEREC outputs. In that sense, one of the CN members stated that the “*BEREC Office does not provide appropriate professional support to BEREC*”.

Following that, the very high satisfaction rate of the impact of the BEREC Office (95.6%<sup>97</sup>) needs to be considered towards the future of the BEREC Office. Most of NRAs consider that the Office will have a positive impact in the future.

Assessing the impact of the Office also requires considering the three objectives of BEREC itself: (1) the development of the internal market, (2) support to NRAs and (3) EU consumer empowerment. The different viewpoints on the impact of the BEREC Office follow these perspectives: NRAs willing to have at disposal benchmarks and information from all over the EU will consider that the BEREC Office has a great impact since it diffuses this information. On the other side, EU institutions, the BEREC Office and some other NRAs more focusing on the internal market perspective and EU consumers would consider that the BEREC Office has to “provide an EU vision to BEREC work”. Since it is not doing so nowadays the Office has currently no impact when it should. A last perspective is given by NRAs that are not willing to see the BEREC Office intervene in BEREC work. The latter would also estimate that the Office has already too much impact on the platform.

These divergent perspectives and expectations on the BEREC Office are difficult to conciliate. That is why changes should occur if stakeholders wish that the BEREC Office has a clear positive impact (most of these changes were already presented in the Chapter devoted to the evaluation of the organisation of BEREC):

- Increase cooperation between EWGs and the Office based on mutual trust;
- Implement effective IT tools to collect and disseminate information and best practices to the platform;
- Favour discussion between the Administrative Manager and the members of the BoR to define the agenda of PMs and the definition of emerging issues.

### External evaluation of the structure and working methods of the BEREC Office - IMPACT

#### Positive elements

- The BEREC Office already has a clear positive impact considering the administrative support it provides to BEREC.

#### Elements to improve

- The impact of the professional support provided by the BEREC Office is nowadays difficult to evaluate because there is no clear professional support today. Nevertheless, the Office is already considered to provide positive support during Phase II cases in Article 7/7a procedures.

#### Main findings

- Impact results of the BEREC Office depend on what BEREC and EC representatives expect from the BEREC Office. Since these expectations might differ, the impact of the BEREC Office might be considered as very positive or very negative. This situation is emphasised by the fact that BEREC has different objectives - all supported by the BEREC Office - and that each NRA might prioritise these objectives differently.

<sup>97</sup> This percentage corresponds to the rate of “yes” answers to the question considered above: *do you think the BEREC Office has a positive impact on BEREC’s activities and objectives?* It is a very high rate that also explains the high value given the impact criteria in *Figure 34 : General profile of the BEREC Office – External evaluation of the structure and working methods.*



### Main recommendations

- Clarify what BEREC expects and requires from the Office. This clarification does not require a change in the regulation since “administrative and professional support” may cover very diverse elements.

### 3.3.6. Coherence, Complementarity and Synergy

**Coherence between BEREC and its Office** is one of the success factors of the whole organisation. According to a majority of participants to the online survey, the BEREC Office is able to create synergies between the two working processes. However, challenges remain. For instance, synergies between BEREC and the Office imply to align two organisations that do not have the same experience; as explained by a CN member: “*a subtlety is that the Plenary and the EWGs carry the legacy of ERG while the BEREC Office is a brand new structure. Synchronising the two is a challenging task, which however has not introduced major problems so far*”.

In addition, many stakeholders consider that the Office suffers from rigid administrative constraints. That is why a few stakeholders propose that some administrative activities of the BEREC Office could be merged with other EU agencies or organisations close to Riga.

To ensure better complementarity between the two structures, it is key to clearly define priorities and align both Annual Work Programmes. A clear definition of “professional support” is also needed to enable the BEREC Office to allocate its staff appropriately. As stated by a CN member: “*the mandate of the BEREC Office as to the support to EWGs could be clarified in some aspects*”. Following that, several members of the BoR propose to always team up NRAs representatives with BEREC Office members to elevate synergies; including on organisational issues. For instance, NRAs and the BEREC Office could reflect together on how to improve their interactions, while it seems that there is no clear discussion on these challenges today. As stated by a BoR representative, the BEREC Office is a “*facilitator*”, but to do so, more discussion and coordination on the working methods of the two organisations is needed. In that sense, NRAs should define what they expect from the Office and the Office should clarify how it could support EWGs, the CN and the BoR on issues that are not already covered and not only concerning current regulatory matters, meaning governance challenges and definition of future topics to tackle. A consequence of this would be a more collective work between the two structures and mutual presentations during PMs.

### External evaluation of the structure and working methods of the BEREC Office - COHERENCE, COMPLEMENTARITY, SYNERGY

#### Positive elements

- Most of the stakeholders consider that both entities are able to create synergies.

#### Elements to improve

- The BEREC Office faces heavy administrative constraints in comparison to its small structure.

#### Main findings

- Creating synergies between the two working processes of BEREC and its Office implies to align two organisations that do not have the same experience: BEREC derives from the ERG when the BEREC Office is a “brand new” structure (*dixit* a CN member).

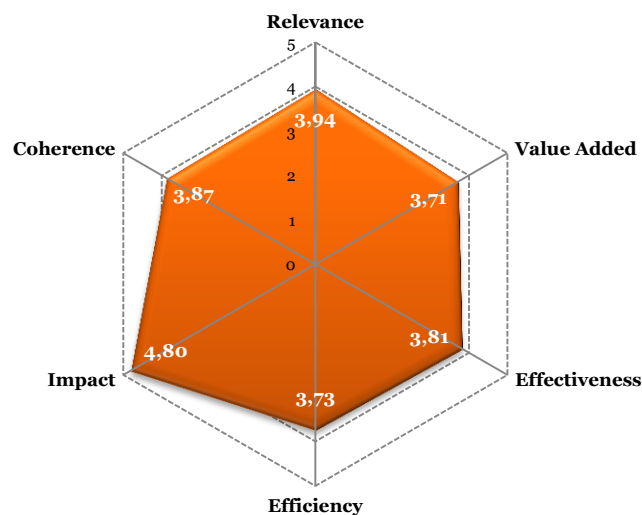
#### Main recommendations

- Clarify the professional support that the Office has to provide to BEREC.
- NRAs and the BEREC Office should reflect together on how to improve their interactions, organisations and topics to tackle.

### 3.3.7. General profile of the external evaluation of the structure and working methods of the BEREC Office

Hereafter is a general profile of the structure and working methods of the BEREC Office from an external point of view. It is based on the results of the online survey.

**Figure 34 : General profile of the BEREC Office – External evaluation of the structure and working methods**



Source: PwC

A few elements need to be stated to mitigate the very high level of satisfaction illustrated in the Figure above and the room for improvement our Evaluation Team has revealed regarding the involvement of the BEREC Office in BEREC work:

- Most of the respondents of this specific set of questions are NRAs. Most of them, even if they might have a mitigated view of the Office support its existence and know that the BEREC Office is crucial for the current existence and future development of BEREC itself.
- The BEREC Office is very new and need time to prove its value. A large part of the impact of the Office will occur in the next few years. Survey participants are aware of this situation and support the Office.
- Views on the BEREC Office might be very diverse. According to our interviews and the results of the online survey, the BEREC Office is among the main topics of discussion surrounding BEREC. The Figure above illustrates a synthetic profile of BEREC and does not show this divergence of viewpoints. That is why these points of view are developed in the analysis above.
- Some calculation of criteria are based on several questions – open and closed questions – while other criteria are funded on few questions, often open questions (See the questionnaire in *Appendix D. - Questionnaire for the online survey*). This factor also influences the calculation and the final figures.

### 3.4. Internal evaluation of the structure and working methods of the BEREC Office

What we call “internal evaluation” means the evaluation of the BEREC Office’s structure and working methods deriving from our field visit in Riga and based on a second questionnaire presented in *Appendix E. - Questionnaire for the internal evaluation of the BEREC Office*. In comparison with the external evaluation presented in the Section above, the following paragraphs focus more on the internal processes of the BEREC Office.

This internal evaluation of the BEREC Office’s structure and working methods has revealed the following trends<sup>98</sup>:

#### The challenges BEREC Office is facing concerning the interview outside the Office:

##### **Relevance**

The exact **role and scope of the BEREC Office** is still under continuous discussion by BEREC (especially by the NRAs and external stakeholders). The creation of the Office results from a balanced decision, but the exact role and implication that BEREC Office’s representatives should play in relation to the EWGs and with regards to the substance of topics addressed by BEREC is still being debated. These elements were already mentioned in the Sections relative to the evaluations of BEREC organisation and the external evaluation of the BEREC Office.

There is a clear understanding that BEREC could not work without the BEREC Office (as well as the other way around), while some interviewees think that the lack of confidence expressed in the BEREC Office may reduce its relevance.

According to the interviews in the Office, the current division of Office workload between BEREC and the BEREC Office is approximately two-third to one-third.

##### **Added value**

A few interviewees consider that the BEREC Office **should be more proactive to fulfil its objective and annual Work Programme**. However, the current regulation states in Article 6(2) of the Regulation<sup>99</sup>, that the Office primarily tasks under the guidance of the Board of Regulators are (1) **providing professional and administrative support services to BEREC**, (2) collecting and exchange of information from NRAs in relation to all BEREC tasks set out in Articles 2(a) and 3; (3) disseminating regulatory best practices among NRAs; (4) assisting the Chair in the preparation of the work of the Board of Regulators; (5) setting up Expert Working Groups, upon request of the Board of Regulators, providing them with the support needed in order to ensure their smooth functioning. Following these tasks the question is whether BEREC Office is mandated to be more proactive in areas beyond supporting roles (administrative, legal and logistical support) focusing also on the professional and technical support. As already mentioned, the views on BEREC as a policy adviser still differ from one NRA to the other, and, therefore their expectations towards the BEREC Office differ in large scale. Moreover, for EWGs, the added value of the BEREC Office is difficult to evaluate as the working groups do not have clear visibility on how the Office should be working.

<sup>98</sup> We present this overview of the internal evaluation of the BEREC Office with the same criteria used for the three previous Sections for coherence and comprehensiveness purposes. The rest of the Section is however founded on different criteria. These specific criteria are explained in the following paragraphs.

<sup>99</sup> Article 6(2), BEREC Regulation.

According to the interviews conducted, the BEREC Office **adds value in especially two areas:**

- In facilitating the work of the Chair;
- In providing organisational and professional input to Phase II cases within the Article 7/7a procedures.

In both cases, the NRAs and the Chairman emphasised that the BEREC Office supports them effectively and provides added value. Without the Office, it could be much more difficult to face the heavy workload of BEREC.

**When considering facilitating the work of the Chair:** according to Articles 4(11) and 6(2) of BEREC Regulation, the BEREC Office provides administrative and professional support services to BEREC, including assisting the Chair in the preparation of the work of the Board of Regulators. These tasks are detailed in 2012 BEREC WP:

- Preparing all documents for organising the procedure for election of the Chairs and Vice Chairs of the Board of Regulators and the Management Committee for 2013;
- Providing assistance to the Chair of the Board of Regulators and the Management Committee when needed. It would be to organise an electronic vote, summarising the results from the electronic vote and in case of significant divergences of the opinions, supporting the Chair in resolving the open issues;
- Providing support to the Chair of the Board of Regulators and the Management Committee in representing BEREC and BEREC Office in international or other representative events.

These activities are mainly administrative activities, which BEREC Office is considered to fulfil sufficiently.

**When considering support during Article 7/7a procedures<sup>100</sup>:** the tasks and responsibilities of the BEREC Office under this work stream are very specific in the way that in addition to administrative support (e.g. keeping track of all Framework Directive Art. 7 notifications from NRAs and keeping an internal record of all notifications under the Art. 7 Framework Directive), the BEREC Office takes also proactively part in EWG work by establishing and coordinating Art. 7/7a *ad hoc* Expert Working Groups for the purpose of preparing BEREC's opinions, and upon request of the Board of Regulators reporting the outcome of Article 7 cases, as well as the observations on the notified national measures in a manner, that will be agreed with the Board of Regulators.

### ***Effectiveness***

The BEREC Office is only fully operational since September 2011. Therefore it is hard to measure its effectiveness during its start-up phase; which is still occurring. During the past year, the BEREC Office was involved in recruiting the team, buying work tools (ICT, furniture), preparing the office premises and facilities, putting in place the administrative and financial systems. The BEREC Office is still recruiting and, besides of still lacking some staff members, it is also lacking some supporting tools/infrastructure to be fully operational.

During the evaluation, we analysed the **BEREC Office objectives** according to Article 9(3) of BEREC Regulation. The Office should follow its annual Work Programme, which is has to be prepared and submitted to the Management Committee by 30 June and approved by the Management Committee by 30 September. The Work Programme of the Office is equivalent to a financing decision for the activities it covers and it usually comprises the objectives and performance indicators to be achieved by

<sup>100</sup> The separate Case Study 1 in *Section 4* deals with these elements in more detail.

the Office. The 2012 Annual Work Programme of the BEREC Office has to undertake the following actions:

- to collect the necessary data from NRAs for implementing the BEREC Work Programme on request by BEREC or its Expert Working Groups;
- to collect information from NRAs about new regulatory decisions and conformity with BEREC Common Positions;
- to analyse the remedies proposed by NRAs and concerns of the European Commission expressed in its comments letters;
- to analyse developments of emerging challenges;
- to provide support in contacting external stakeholders and other third parties;
- to conduct studies that would build up expertise and to organise workshops;
- to provide support to the Expert Working Groups;
- to ensure exchange of best practices and technical expertise with other third parties;
- to maintain the BEREC web page.

The aim of the external evaluation in the previous part was to analyse these activities from different stakeholders' perspective. During the interviews at BEREC Office premises, we were more focusing on organisational and procedural issues, analysing how the BEREC Office itself is able to fulfil its own obligations and considering what sort of Key Performance Indicators (KPI) were set up to monitor its activities. Results from our interviews showed that reporting and monitoring of KPIs need further improvement.

As already mentioned, the **physical presence of the BEREC Office in Riga** is also questioned by most of the interviewees; even though it is difficult to define whether it affects its core effectiveness for the present time.

### ***Efficiency***

Some interviewees consider the BEREC Office as too **costly**. In addition, some interviewees perceive the BEREC Office to be too **bureaucratic**, due to the high number of BEREC employees working on administrative tasks. The BEREC Office is considered to be a "small and medium size" office<sup>101</sup>, which needs to have next to its main purpose - "Programme management" - its own support functions (such as IT, HR, finance, legal, etc.) and administrative support (see *Figure 35* later on). Nowadays, 11 people out of the 28 employees are working on administrative support for the BEREC Office itself. As a consequence, only seven to twelve people are really available to support the Chair and the NRAs/EWGs. This may be an acceptable ratio if the Office were expanding rapidly. Indeed, according to the Administrative Manager of the BEREC Office, when the set-up of activities is finished and the Office is in full operational format, the share of BEREC support should increase: it will be more focussed on BEREC procurements vs. Office set-up procurements, more resource for legal advice will be available, better executive support to BEREC as internal processes will be defined and implemented.

Similarly, the coordination between the Office and NRAs - and more specifically with EWGs - should be addressed, both in terms of present and future development.

<sup>101</sup> BEREC Regulation preamble (11): "In order to provide BEREC with professional and administrative support, the Office should be established as a Community body with legal personality and should exercise the tasks conferred on it by this Regulation. In order to efficiently support BEREC, the Office should have legal, administrative and financial autonomy. The Office should comprise a Management Committee and an Administrative Manager".

**Impact**

Impact of the BEREC Office appears at two levels:

- At the Chair level. According to the current Chair, he relies on the Office in a daily basis (calls the Office several times a day). Following that, the coordination between the Chair and the Office is key.
- During Article 7/7a procedures. This procedure is analysed more in depth in our Case Study 1 presented in *Section 4*.

**Coherence, Complementarity and Synergy**

It seems that coherence and synergy between BEREC and BEREC Office has to improve significantly: the main task of BEREC Office is to support BEREC. Most of the NRAs are still not aware of how and when to appropriately use the BEREC Office for support.

The **European Court of Auditors (ECA)** travelled to Riga a week before our Evaluation Team conducted the interviews with the Office. The ECA focused on financial management, correctness of accounts and procurement and recruitment procedures in 2011 (actually Q4 2011 after Office autonomy). Indeed, since the Commission granted the BEREC Office with financial autonomy on 12<sup>th</sup> September 2011, the audit period of the ECA run only for 4 months in 2011. 2012 will be the first year for a full audit year of ECA on the BEREC Office.

The primary observations of the ECA on the 12<sup>th</sup> June 2012 were the following<sup>102</sup>:

- Opinion on the “reliability of the account”: satisfactory;
- Opinion on the “legality and regularity of the transactions” underlying the account: satisfactory;
- Comments on “budgetary and financial management”: needs to be improved (e.g. all commitments must be legally binding);
- Comments on “key controls of the Office Supervisory and Control System”: needs to be improved (e.g. adopt all control standards);
- Others: recruitment procedures need to be more transparent.

BEREC Office’s response to the ECA observations was that all the necessary changes will be implemented and improved as from year 2012 in order to meet ECA standards.

Under this evaluation our Evaluation Team focused more on organisational and procedural issues. To do so, we conducted several interviews with BEREC Office staff members on 4-5<sup>th</sup> June 2012 to understand their viewpoints regarding their own challenges. Interviews were conducted within 3 dimensions: (1) Processes; (2) Organisation and Human Resources; and (3) Infrastructures & Information System; as illustrated in the Table below:

<sup>102</sup> European Court of Auditors, *Preliminary observations with a view to a report on the annual accounts of the Office of the Body of European Regulators for Electronic Communications for the financial year 2011*, Adopted by Chamber IV, 12 June 2012. For further details, please see the ECA report.



Evaluation dimensions for BEREC Office internal processes
<b>1) Processes</b>
Strategic planning & budgeting
Performance management & reporting
Risk management & internal control (BEREC Office IC Standards, Business Continuity Plan/Disaster Recovery Plan, Confidentiality): <ul style="list-style-type: none"> <li>• Risk management framework &amp; Internal environment</li> <li>• Risk analysis</li> <li>• Internal controls</li> <li>• Reporting and Monitoring</li> </ul>
Procurement, Budgetary & Financial Management (inc. Procurement & Contract management for research studies, knowledge organizations) <ul style="list-style-type: none"> <li>• Procurement, Contract Management, Expenditure execution (revenue execution)</li> <li>• Accounting &amp; payments</li> </ul>
Quality management
Operational processes
<b>2) Organisation &amp; Human Resources</b>
Recruitment, Ethical values & Organisational culture, competence management, mission management
<b>3) Infrastructures &amp; Information System</b>

The following paragraphs summarize our main findings under these three dimensions:

### 3.4.1. Dimension 1: Processes

#### 3.4.1.1. Strategic planning and budgeting

The **strategic planning meeting** was held for the whole BEREC Office team in January 2012. It included brainstorming regarding the mission statement and core values of the Office. During this meeting, there was a discussion on BEREC Office Work Programme 2012 (Office WP)<sup>103</sup> with the whole team focussing on top priorities and the perceived impact on Unit Work Plans (Unit WPs). The Unit WPs derive from the overall Office WP, but are more detailed, with individual objectives for each Unit. According to the Administrative Manager the aim is to discuss from the overall objectives to individual objectives on an annual basis (as foreseen, this will always occur at the beginning of the calendar year). The purpose of this meeting is to discuss and review the mission and core values of the BEREC Office as well as to align with BEREC Strategy<sup>104</sup>.

**Annual objectives and their procedures** are also defined in the Annual Work Programme. The same applies for the **general objectives**, which are also defined in the Office WP and based partly on the annual objectives described in BEREC WP. More **specific objectives** (e.g. in Training or Procurement) are also linked to Unit WPs. While more basic objectives have been defined, there is not yet a sufficient overview regarding the execution and functioning of each of them.

<sup>103</sup> MC (11) 25, BEREC Office Work Programme 2012, 30 September 2011.

<sup>104</sup> The new BEREC strategy is under discussion by BEREC. The 'BEREC medium term strategy outlook' was adopted in 23<sup>rd</sup> February 2012: BoR(12) 09, BEREC Medium Term Strategy Outlook, 23 February 2012.



On-going monitoring would also be required in the future, especially on **Key Performance Indicators (KPIs) and their deadlines** which are defined in Unit WPs<sup>105</sup> for all levels. Most of the deadlines are indicated as “ongoing” and do not mention any particular date; therefore they need to be regularly reviewed by the management as well as by the related working unit to be able to fulfil the necessary results and deliverables.

Moreover, it is too early to estimate whether the **Establishment Plan**, with its defined and planned resources at BEREC Office is sufficient for BEREC to achieve its objectives. Recruitment is currently in progress and the scope of work routines and responsibilities divided between BEREC and the BEREC Office is evolving.

Currently more regular reviews beyond the **annual planning of the BEREC Office Work Programme** are not scheduled with the Management Committee. Until now, the Office reviews the WP every six months. Procurement plans are reviewed on a monthly basis while the Training Plan is reviewed quarterly.

Two units are currently taking care of **budgeting, planning and forecasting**. The Administration and Finance unit has the primarily responsibility for the operational work: gathering the information from the Administrative Manager and from the Heads of Units for each cost items described in budget lines. The Administrative Manager approves the budget.

Recruitment of an additional Financial Assistant is still in progress. The **budget is prepared manually** with spreadsheets and no need for greater sophistication in this activity is currently perceived as necessary for an organisation of 28 persons. The Office is using part traditional (rent, utilities) and part activity-based (missions, workshops) budget preparation techniques. The approval cycle starts in the Office with the draft budget, which, after the amendments from DG BUDG, has to be approved a second time to be accepted as the final budget. Manual and spreadsheet-based reviews occur at management level. Query based status reports are also available regularly, but there is no evidence that real time data updates occur or are needed at this level of frequency. Monthly reviews are performed and variances are analysed against the planned budget. However, as a single full financial year has not concluded, budget management is currently ongoing.

**The centrally defined budgeting policy** follows the EU financial regulations and BEREC Office financial regulations. Further policies have not yet been defined, but the practice of budget forecasting, planning and implementation is currently evolving from yearly planning exercises to monthly budget reviews.

<b>Processes - Strategic planning &amp; budgeting</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>• General objectives and annual objectives are defined in the annual Work Programme. The strategic planning meeting was held in January 2012.</li> <li>• Budget approval is efficiently done within 2 cycles.</li> </ul>	<ul style="list-style-type: none"> <li>• Individual objectives have to be clearly defined and regularly reviewed.</li> <li>• KPIs need regular monitoring.</li> <li>• Budget management is still currently on a learning curve.</li> <li>• Data reporting is not 100% done in real time.</li> </ul>

<sup>105</sup> BEREC Office Work programme 2012: Table 1. ‘Summary of BEREC Office main activities in 2012’: MC (11) 25, BEREC Office Work Programme 2012, 30 September 2011

### Main findings

- Objectives are defined for all levels of responsibilities, but they have to be sufficiently linked to function all together.
- KPIs have been set up in the Office WP, but the BEREC Office has not yet fulfilled most of the indicators due to its recent existence.
- Recruitment is currently in progress. The scope of work and division of responsibilities between BEREC and BEREC Office is also evolving<sup>106</sup>.
- Until now, the Office reviews the WP every six months. The procurement plan is reviewed currently on a monthly basis, and training plans are reviewed quarterly.
- Centrally defined budgeting policy follows the EU financial regulations and BEREC Office financial regulations.
- The budget is prepared manually with spreadsheets.
- The Office is using part traditional (rent, utilities) and part activity-based (missions, workshops) budget preparation techniques.
- Manual/spreadsheet-based reviews occur at management level. Query-based status reports are available regularly.
- Monthly reviews are performed and variances are analysed against planned budget.

### Main recommendations

- The revision and modification of the Office WP should occur more often in the future, especially in line with the monitoring of KPIs and their deadlines.
- Budget management needs to be improved with qualified staff and infrastructure (if needed).

### 3.4.1.2. Performance management & reporting

The BEREC Office KPIs are defined at three levels: (1) Office, (2) unit and (3) individual level. Each Unit WP is aligned with the Office WP. **KPIs are used for operational measurement criteria** (indicators including economy, efficiency and effectiveness metrics) for their activities and projects. Timeliness, quality and stakeholder satisfaction are the most common KPIs. The data collection on KPIs is planned at the end of the year period (e.g. including the feedback from BEREC stakeholders on quality and their satisfaction). Therefore, awareness of the personnel regarding the selected KPIs has not yet been reviewed. The KPI monitoring method must be implemented and a more frequent monitoring and rating of some indications should be planned. As the Office and its responsibilities grow, there should be scope to introduce more “sophisticated” indicators (more detailed indicators with deadlines and a monitoring manual with rating system must be developed). The Office WP and Unit WPs presented and discussed at the beginning of the year as well as their reiterations should be monitored more regularly, at least every six months (or could even be monitored on a quarterly basis at the beginning of the start-up phase) to increase the awareness of the working staff. Until now, no shortfalls against objectives have been identified.

**Monthly management information could be further improved.** Results of the interviews show the scoring of BEREC Office employees in a range between low, medium and high on the different following types of activities:

- *Measures of financial and operational performance*: medium score;
- *Concise - provides insight*: low score;
- *Highlights issues and exceptions*: medium score;
- *Forward looking*: medium score;

<sup>106</sup> This element has to be considered in parallel with the lack of clear definition of “professional support”. This point was already mentioned and analysed in the previous Sections of the present report.

- *There is a common look and feel for all Management Information:* low score;
- *Use of visuals and trends:* low score.

Financial performance is often reviewed and currently receives the most attention, while operational performance should be improved through more regular checks (including more balance with financial information). Currently no sophisticated reporting tool exists.

The **annual accounts and annual report of the financial year** are prepared and published on a timely basis. The BEREC Office was able to provide all the information required by the ECA. The opinion of the ECA report was satisfactory both in “reliability of the account” and the “legality and regularity of the transactions” underlying the account. However, both the ECA and the BEREC Office are aware that most of the operational and procedural manuals are not yet finalised and that several tools are missing; considering that these tools would be needed for the everyday functioning of the Office (e.g. more sophisticated software for reporting and monitoring).

A **basic register** is used for awarded contracts published according to public procurement rules, which could be improved. The BEREC Office is currently **not using a synthetic report/dashboard** to manage performance, although according to the Administrative Manager, no urgent need has been currently identified to use a more sophisticated system. The Office is still in the process of setting up the basic reporting mechanism, which is still in a learning process. Implementation of further operational tools (document management, HR management) is planned later in 2012 and 2013. The Office has just started to use Business objects reporting.

The financial reports provide **key financial information for decision-making** (budget execution, use of resources etc.). On the other hand, non-financial and activity indicators (e.g. indicators on the progress of management plan) are still not in place. Improvement in the WP reporting is nonetheless planned for the second half of the year 2012. Finally, key performance measures are currently checked every six months, but should be done more frequently in the future, as concluded before.

<b>Processes - Performance management &amp; reporting</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>• The annual accounts and annual report of the financial year are prepared and published on a timely basis.</li> </ul>	<ul style="list-style-type: none"> <li>• The reporting is still done manually and focuses mainly on financial reporting. Activity-based reporting (related to operational and management) is still missing.</li> <li>• The monitoring process on objectives has not been verified for a long time and can definitely be improved.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>• KPIs are used for operational measurement criteria at Office, unit and individual levels. The Unit WPs are aligned with the Office WP.</li> <li>• KPI awareness is currently not achieved among the employees (most of them are answered that they do not follow them, since there is no regular review on these KPIS).</li> <li>• Until now, no shortfall against objectives has been identified.</li> <li>• The monthly management of information mostly concentrates on the financial performance rather than on operational performance.</li> <li>• The financial reports provide key financial information for decision-making. Concerning non-financial/activity indicators (progress of management plan), indicators have not been defined yet.</li> </ul>	

- A basic register is used to archive awarding contracts published according to public procurement rules, which needs to be improved.
- The Office is in process of setting up the basic reporting requirements.
- Implementation of further operational tools (Document management, HR management) is planned for the second half of 2012 or 2013.

#### Main recommendations

- Data collection and on-going monitoring of KPIs is needed.
- Shortfalls against objectives should be checked more regularly.
- Reiteration of the Office WP at all levels is needed in conjunction with the introduction of a six-month review (or more frequently during the start-up phase, if needed).
- Improvement on WP reporting, both on financial and operational activities, is needed.
- Implementation of further operational tools is needed for the sufficient functioning of the Office.

### 3.4.1.3. Risk management & internal control

According to 2012 Office WP, the Administration and Finance Unit will enhance the quality of services available, the compliance with internal control standards and will put in place measures to mitigate the risks in order to ensure business continuity. Furthermore, several internal regulations and internal procedures and routines will be developed or adopted by the end of 2012. During our field visit in Riga in June 2012, many of the internal control standards were still not in place (not to mention many of the internal procedures). This was one of the major concerns of the ECA as well.

The BEREC Office has not yet appointed a dedicated person to be the **Risk Manager**, or to fulfil a similar function. Responsibilities are currently divided between the Administrative Manager and the Head of Administration and Finance Manager. Responsibilities in this area are divided between Heads of Units, who are taking care of the delivery of the Work Programme and at the same time risk management on a day-to-day basis. According to the Administrative Manager, a dedicated Risk Manager is not planned.

No **Risk activity** is currently performed. These activities include: (1) complete risk identification and assessment performed for the BEREC Office as a whole; (2) risks documented in a single risk register, which is accessible to all relevant personnel across the organisation; (3) specific risk analysis carried out for the Business Continuity; and (4) define impact and probability scales for consistently assessing the importance of the risks.

The first internal audit of the Commission is planned for 2012<sup>107</sup>. The BEREC Office planned to prepare the *Risk Management Plan* together with the *Internal Audit Service* (IAS) until this visit.

An **Internal Control Standards (ICS) framework** is defined, and approved by the Management Committee. Proposals resulting from the ECA visit in June 2012 have been taken into account since. The framework should also be further developed in the future. BEREC Office staff members are also not trained on ICS. The current Implementation Plan for ICS defines the implementation deadlines for different standards during the period from November 2011 until January 2013. The registration of invoices and the recording of exceptions are implemented since June 18<sup>th</sup>, 2012 with impact on further registrations in 2012. Preparation of relevant Administrative Instructions is in progress.

<sup>107</sup> The internal auditing function of the Office shall be performed by the Commission's Internal Auditor in accordance with Article 14 of BEREC Regulation and applying all relevant requirements for ICS 16.

The **Head of Control** function has not yet become dedicated within the Office, and the implementation of IC linked with the Office and Unit WPs can be found in the *IC Implementation plan* (responsibilities, activities and deadlines defined in Unit WPs). The BEREC Office should define strategies and related corrective actions or controls for mitigating significant risks. There are no separate controls documented yet, such as risk manual or control check-lists.

<b>Processes – Risk management &amp; internal control</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
	<ul style="list-style-type: none"> <li>• No Risk activity within the Office.</li> <li>• No “Risk Manager”, whose responsibility would be to coordinate risk management activities. No “Head of Control” either.</li> <li>• There is no manual or check-list existing on how to manage and control risk.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>• Dedicated Risk Manager or Head of Control are not identified.</li> <li>• Internal Control Standards (ICS) are defined, and approved by the MC. They nonetheless have to be further developed in the future. IC framework has been communicated, but with no dedicated training for staff.</li> <li>• Controls were monitored as part of the WP review. Corrective actions based on the Risk Management Plan are not yet available.</li> </ul>	
<b>Main recommendations</b>	
<ul style="list-style-type: none"> <li>• Internal Control Standards (ICS) will have to be improved after the audit conducted by the Internal Audit Service. The definition of a Risk Management Plan will be based on the audit. The preparation of relevant Administrative Instructions also needs to be completed (e.g. preparation of a Risk Management Plan and control check-list).</li> <li>• Risk activities need to be established: (1) complete risk identification and assessment performed for the BEREC Office as a whole; (2) document risks in a single risk register which is accessible to all relevant personnel across the organisation; (3) analyse specific risks carried out for business continuity; and (4) define impact and probability scales for consistently assessing the importance of the risks.</li> </ul>	

#### 3.4.1.4. Procurement, Budgetary & Financial Management

According to 2012 Office WP, **procurement** of several services, which have been initially contracted in 2011 for 12 months, will be re-launched in 2012 (e.g. internet IP-phone connection, security service, cleaning service). Instead of simpler procurement tenders in 2011, longer term framework contracts will be prepared. Administrative support will be provided to BEREC EWGs and the Office Programme Management Unit will be preparing public tenders to call for third parties' research studies and/or public tenders for concluding agreements with relevant knowledge organisations.

The BEREC Office currently follows the **procurement procedures** defined in the general principles detailed in the Commission instructions and policies. Later on, the BEREC Office will have its own procurement processes (e.g. exact receipt of offers), which is still under preparation. It is planned to be finalised by the end of 2012. Roles are defined within the procurement procedure, but better documentation and communication is required. There is currently no contract manager function as such. Financial actors and responsibilities are fully defined: cost or budget “owners” are named and made responsible for planned procurement, tender request,

specification of potential providers and assessment of maximum price. Administrative and Finance Manager are responsible for tender documentation and managing the tender procedure.

The Office developed with a **small number of suppliers providing the majority of goods and services** (especially during the first round of procurements covering most of the items needed). The BEREC Office is still on a learning curve to specify best providers on the market. Supplier relationships are regularly reviewed, but this is not an established procedure yet. The ECA found some discrepancies in the procurement process, especially in case of carry over items. In its answer to the ECA, the BEREC Office specified that it already subdivided the 2012 budget into articles and items. The budget will be approved by the Management Committee at this detailed level and will be published on BEREC website<sup>108</sup>.

The BEREC Office is gathering experience from other EU Agencies as well. The purchase order was created and approved in the *ABAC accounting system*<sup>109</sup> based on an approved financial actor's matrix. **Inventory management has not yet been automated.** All the documents are electronically sent and paper invoices archived. All invoices are scanned in-house and captured in ABAC. All the expenditures planned are checked against appropriations availability before initiating commitment and all commitments verified before legal commitment.

Appropriate **travel and mission's policies are in place.** Mission and travel receipts are processed by the European Commission's *Pay Master Office* (PMO) and the others done internally. The Office is not yet in a position to negotiate discounts on travelling, but plans to do so in the future.

The only **revenue for the Office** are coming from EC appropriations and potential contributions from National Regulators (the latter is theoretical and not yet practiced). The master file is ensured by the European Commission (DG BUDG LEF-BAF team).

**An integrated accounting system** has been implemented in all units. Users have been trained and responsibilities (financial roles) have been defined. There is a standard/common Chart of Account in the organisation.

<b>Processes - Procurement, Budgetary &amp; Financial Management</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>• The creation/modification/deletion of new general ledger accounts is strictly regulated and controlled.</li> <li>• There are centralised and closely controlled processes to control expenses (and revenues if needed).</li> <li>• The organisation is successful in paying invoices to terms, leveraging discounts where financially appropriate and minimising late payment penalties with suppliers.</li> <li>• Processes are in place to ensure no duplicate payments.</li> </ul>	<ul style="list-style-type: none"> <li>• No Contract Manager was appointed.</li> <li>• Supplier relationships are not regularly reviewed.</li> <li>• There is no fixed assets register that records all relevant details. The "ABAC Assets" tools is planned to be implemented in September/October 2012. A formal process to immediately tag all newly acquired fixed assets and to record the necessary details in the fixed assets register should be implemented.</li> <li>• Payments are made according to their due date (not before). This derives from the system that sets payment terms, in order to provide visibility of cash outflows. It is shared with the appropriate parties.</li> </ul>

<sup>108</sup> The BEREC Office specified it would put the detailed budget on BEREC website by September 2012. This document was not available when the present Final Study Report was diffused.

<sup>109</sup> The Budget accounts are managed with the ABAC system and the general accounts are maintained in SAP system, which has a direct interface with the general accounting system of the European Commission. The various budgetary and financial reports are produced using the Business Object System.



- Fixed assets management policies and procedures followed by the Commission are in place. European Commission rules are applied “by analogy” with the full procedure to be defined.
- Financial transactions are recorded in a timely manner and according to budgetary accounting rules.
- Annual accounts are prepared in a timely manner.
- Dispute management processes should be in place.
- A disproportionate effort and overtime is required to meet the existing accounting close timetable.

#### Main findings

- Specific details for the procurement procedure of the BEREC Office (e.g. exact receipt of offer in Office premises) are in preparation. They will be finalised during the second half of 2012. Until now, the Commission instructions and policies have been followed.
- There is no Contract Manager as such. Administrative and Finance Managers are responsible for tender documentation and managing the tender procedure.
- Purchase orders are created and approved in an ABAC system, based on an approved financial actor’s matrix.
- Inventory management is not yet automated. Paper invoices are electronically sent and archived. All invoices are scanned in-house and captured in the ABAC system.
- All the expenditures are planned and checked against appropriation availability before initiating commitment. All commitments are verified before legal commitment. Appropriate travel and mission policies are in place. Mission and travel receipts are processed by the Commission PMO unit, the rest is done internally by the BEREC Office.
- During its external audit, the European Court of Auditor checked all the revenues and expenditures of the Office. The only revenue are EC appropriations and potential contributions from National Regulators (the latter are theoretical and not yet practiced).

#### Main recommendations

- Better documentation and communication is required during the procurement procedure.
- Ensure clear and consistent data about the suppliers in the master file.
- Inventory management needs to be automated.
- ABAC Assets has to be implemented (planned for September/October 2012).

### 3.4.1.5. Quality Management

There is a registration of **incoming external info requests** (saving e-mails) but feedback to BEREC on external info requests has not yet been implemented. A questionnaire is planned for measuring stakeholder’s satisfaction and acting on the results. Until now, all stakeholders’ feedbacks have been registered (saving e-mails) and responded to within a given timeframe.

Several **processes and implementing rules** were approved and implemented. Some others are still in the development process (e.g. covering systems and procurements). As already mentioned, there is a planned review and analysis of the Office WP every six months, which should be more regular in the future. The BEREC Office also performs root-cause analysis for identifying the source of potential deficiencies and waste within the processes in IT. The BEREC Office did not define regular improvement plans which are based on the evaluation of the processes and activities but few processes have been revised and improved so far. Action plans have been implemented and monitored, but not regularly.



<b>Processes - Quality Management</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>The BEREC Office registers incoming external info requests and feedback from the stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>Formal process for gathering and understanding “customer - member - stakeholder” is missing.</li> <li>The BEREC Office did not define regular improvement plans yet. These plans should be based on the evaluation of processes and activities.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>Process and implementing rules are still not in place.</li> <li>Questionnaire is planned for measuring “stakeholder” satisfaction and acting on the results.</li> </ul>	
<b>Main recommendations</b>	
<ul style="list-style-type: none"> <li>Develop a formal process for gathering and understanding “customer - member - stakeholder” needs and expectations (a questionnaire initiative could be one of the method).</li> <li>An action plan - with priorities and improvement areas - should be set up and regularly monitored.</li> </ul>	

### 3.4.1.6. Operational Process

**The concrete establishment of the Office eased the day-to-day operation of BEREC**, according to the interviews from the Office employees. The latter consider that several tasks (e.g the Article 7/7a procedures) would not be manageable without the Office permanent staff and that the BEREC Office brings value to the everyday work of the Expert Working Groups as well as for the Chair. One of the most important activities of the BEREC Office is to support EWGs. Some Chairs of the EWG are already seeing the added value of the Office and some are not (as already analysed and concluded in the previous Sections of this evaluation). BEREC is still on a learning curve in terms of understanding how to utilise the BEREC Office to its fullest potential. The logistical support to EWGs could be improved (including for instance premises and equipment), but since the Office is in Riga and the EWGs are mainly meeting in Brussels, it is hard to measure the potential value. The Administrative Manager would still like to improve the use of Riga facilities, which, for instance, would need more flexibility for managing premises in other locations.

Until now, the Administrative Manager is satisfied with the work of the **Programme Management Unit** (working as contact unit for EWGs), given current resources and availability. The BEREC Office brings value when collecting and processing data from NRAs, but the cooperation between the Office and NRAs could be further improved. The administrative and executive support of BEREC operations altogether needs however to be strengthened. The work achieved by the BEREC Office, regarding the assistance in the preparation of the work of the Board of Regulators and the preparation of the agenda and meetings of the BoR and the MC is satisfactory, but there is room for improvement. The work achieved by the BEREC Office is considered as effective, regarding the support during the Article 7/7a procedure, further learning and improvement of processes is in progress. The Office values this achievement very satisfactory within the communication between the Commission and the NRAs. The other main added value brought by the Office is that it is doing effective work, regarding the exchange/transmission of market data. The report preparation process is coordinated by the EWG Chair and is not executed by the BEREC Office. The public consultation method is not chosen by the BEREC Office, although the Office thinks that it could be more effective and better managed.

There is **no cooperation between the Office and knowledge organisations** yet due to strict procurement requirements which have not yet been addressed. The budget is however already planned for it. The Office is currently not working with external experts on horizontal studies, reports or on any operational/procedure activities for its own purpose (external consultants are only involved in providing basic training for the Office). However, potential *ad hoc* requests for studies from EWGs are both planned in the Office WP and in the budget.

According to its staff, **the BEREC Office provides sufficient transparency**. Registries and principle document management measures are in place and the documents are published. The management of request provided by Member States and the European Commission needs to be strengthened. The BEREC Office has also been in charge of developing the public website for BEREC and the BEREC Office. As already mentioned, the new BEREC website was launched in August 2012 (the former website was managed by the Commission). The Administrative Manager is also willing to invest time and resources to significantly improve the new website. This website has been designed to enable easier and more efficient publishing and retrieving of documents. The Office will assist BEREC in ensuring that its activities are fully transparent, making information available to all members in an efficient manner and in accordance with the provisions of the Rules of Procedures.

<b>Processes - Operational Process</b>	
<b>Positive elements</b>	<b>Elements to improve</b>
<ul style="list-style-type: none"> <li>• The concrete establishment of the Office eased the day-to-day operation of BEREC.</li> <li>• The BEREC Office brings value to the everyday work of the Expert Working Groups.</li> <li>• Article 7/7a procedures are the activities in which the Office provides the most value added for the EWGs. The Office adds also value in other areas, such as the exchange/transmit of market data.</li> <li>• Support to the Chair on a daily basis is also satisfactory.</li> </ul>	<ul style="list-style-type: none"> <li>• The logistical support to EWGs could be improved; including premises and equipments at disposal.</li> <li>• The dissemination of regulatory best practices and technical expertise is currently only partly addressed.</li> </ul>
<b>Main findings</b>	
<ul style="list-style-type: none"> <li>• Several tasks (mostly Phase II cases of Article 7/7a procedures) would not be manageable without the Office permanent staff.</li> <li>• Some Chairs of the EWGs are already seeing the added value of the Office and use it, some do not.</li> <li>• The BEREC Office brings value when collecting and processing data from NRAs, but the cooperation between the Office and NRAs could be further improved.</li> <li>• The work achieved by the BEREC Office is perceived as effective when considering its support during the Article 7/7a procedure: Further learning and improvement of process is in progress. The other main domain in which the BEREC Office adds value is by coordinating the exchange/transmit of market data.</li> <li>• The report preparation process is handled by each EWG Chair and not mastered by the BEREC Office.</li> <li>• Administrative and executive support of BEREC operations altogether needs strengthening.</li> <li>• Registries and principles of their management are in place, documents are published. A new public website was launched in August 2012 in order to enable easier and more efficient publishing and retrieving of documents.</li> </ul>	

### Main recommendations

- Increase the communication between the NRAs and the BEREC Office.
- To strengthen the administrative and executive support it provides, the BEREC Office should point out what is missing and what/where further improvements have to be initiated.
- Management and handling of requests from Member States and the European Commission need strengthening.

### 3.4.2. Dimension 2: Organisation & Human Resources

According to the 2012 Office WP the **recruitment of the Office staff** started in 2010, which planned to be completed by the end of 2012 with the recruitment of 28 staff in total. All the policies and methodologies relating to human resources management will have to be in place, such as payroll and determination of individual rights, absence, leave and missions' management, training, performance evaluation and career development.

The **composition and organisation of the BEREC Office** is relevant to reach its objectives. Some modifications are still in progress and recruitment is still ongoing. Until now, there is no sign of inefficiency due to apparent duplication. On the other hand, some tasks are duplicated between different roles to guarantee back-ups in case a staff member is absent. Critical roles are identified and regularly assessed; more specifically: management, IT, and Finance.

**Figure 35 : Organisational chart of the BEREC Office with responsibilities**

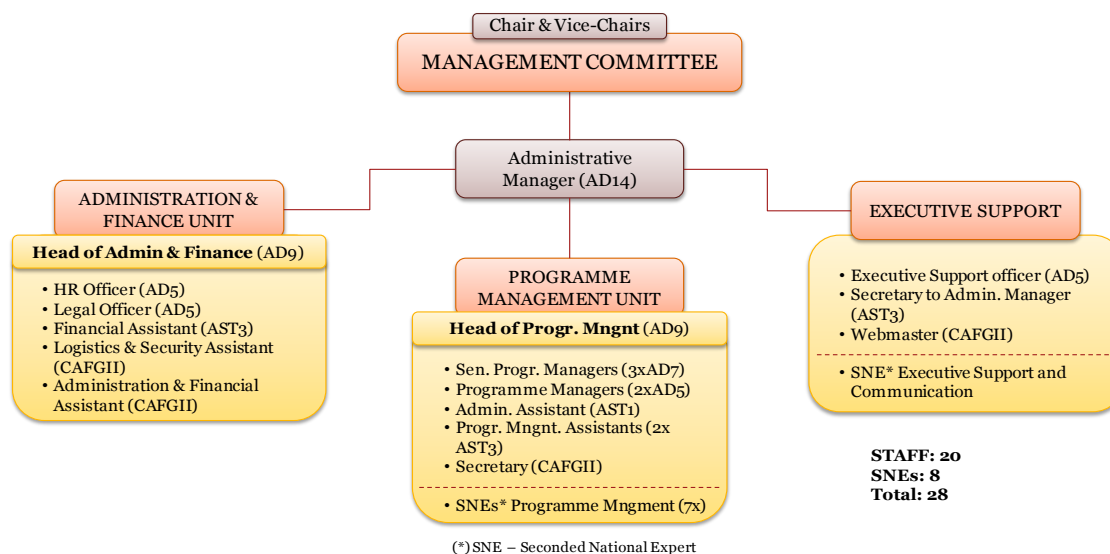


Source: BEREC Office revised by PwC

The **mandate of the Administrative Manager** is also aligned with BEREC Office objectives. The term of office of the Administrative Manager (3 years) is appropriate, although, for the start-up phase, 5+3 years would have been optimal for transmitting acquired experiences to the organisation and BEREC.

Figure 36 below shows the **organisational chart of the BEREC Office** with all the employees (including those who are under recruitment). Current job descriptions for all positions are available and standardised for everyone (some also include assessment documents). Moreover, job descriptions include the skills and competences required for the function. The staff competencies and performance are regularly assessed. The BEREC Office defined a training plan for its staff and there are regular trainings provided. Training requests have been prioritised in the training plan and trainings are provided according to priorities within the given budget. At the current stage, training on financial management, procurement and core skills corresponding to a specific position are of first priority. Individual development and team development are of secondary priority.

**Figure 36 : Organisational chart of the BEREC Office with staff**



Source: BEREC Office revised by PwC

The main finding of ECA audit concerned recruitments: the latter needing to be more transparent. As expressed in its answer to the ECA, the BEREC Office had already modified and updated its **Guidelines for recruitment procedures** before the ECA audit, following first concerns on its recruitment procedure. Moreover, filling positions has currently not been a problem. This is despite the current environment (financial crisis) and the fact that national experts are less available than before, and they are only willing to commit for short-term. BEREC Office welcomes national experts and relies on their technical knowledge, but it is very hard to plan on them (almost 40% of the staff in the Programme Management Unit - the core contributor to BEREC work - are national experts). Furthermore, there was no delay in recruitment until now. That is why planned actions and milestones are needed for continuing in this way. Job descriptions, as well as planning for recruitment and training have improved significantly through the efforts of the HR Officer and the efforts at the unit level. With only 3-year contracts for all temporary/contract staff, BEREC Office still does not have any plan for career development nor for encouraging its staff to stay at least for another term of office; nevertheless contracts for temporary staff are renewable and can become indefinite. In this respect, the Office might benefit from external assistance.

**Staff development and knowledge sharing are still weak.** Elementary induction principles for new staff are in place, but there is no mentoring policy yet. E-learning is planned in the training plan, and the development of databases for knowledge sharing is also planned. There is also no performance succession plan embraced at the leadership level.

Organisation & Human Resources	
Positive elements	Elements to improve
<ul style="list-style-type: none"> <li>There is no duplication in positions, but in case of absence there is a back-up for each person.</li> <li>The BEREC Office defined a training plan for its staff and there are regular trainings provided.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure that NRAs will continue to provide experts to the BEREC Office.</li> <li>Staff development and knowledge sharing is still weak.</li> <li>Performance succession plan has to be embraced at the leadership level.</li> </ul>

**Main findings**

- The composition and organisation of the BEREC Office is relevant to reach its objectives.
- The mandate of the Administrative Manager is aligned with BEREC Office objectives. More responsibilities in HR area would enable more flexibility.
- The term of office of the Administrative Manager (3 years) is appropriate, although especially for the start-up phase 5+3 years would have enabled better leverage of knowledge and experience building in the Office and with the platform. Another option, 3+3 is also possible for making new and fresh ideas/approaches emerge.
- There is a clear organisational chart of the BEREC Office with all the employees. This chart also presents the positions that are currently under recruitment.
- Current job descriptions are available and standardised for all positions. Some job descriptions also include assessment documents.
- Critical roles are identified and regularly assessed to ensure action when someone is absent. This process is especially developed for management, IT, and financial positions.

**Main recommendations**

- Monitor objectives more regularly to ensure a detailed assessment every year.
- Propose an individual development plan and a team development plan to motivate employees.
- 29% of BEREC Office staff is composed of national experts. For that reason, continuity and knowledge sharing are very important. In that context, there should be a plan detailing how to phase-in and phase-out a national expert.

**3.4.3. Dimension 3: Information system & infrastructure**

This is one of the most problematic areas, since the Office is only using the financial (accounting) system from the Commission, when many other operational systems are not in place yet. There is no multi-year strategy for the information system. Immediate needs are identified in the Annual WP and implemented accordingly. The Office has relatively basic systems architecture, with SLAs<sup>110</sup> for Internet connection, VPN<sup>111</sup>, e-mail service, and IP-telephony in place. Moreover, the accounting system of the BEREC Office is ABAC. The BEREC Office has no database yet. Access controls, firewalls, virus protection, and intrusion detection are in place. Software licences were renewed in March 2012 for a three-year duration. A review is planned accordingly.

All supporting systems are for finance/accounting (ABAC). Implementation of other operation systems (documentation management, Human Resources management) is planned and in progress. The preparation of Contingency Plans is also in progress. Regular SLA reviews and performance assessments are not yet performed.

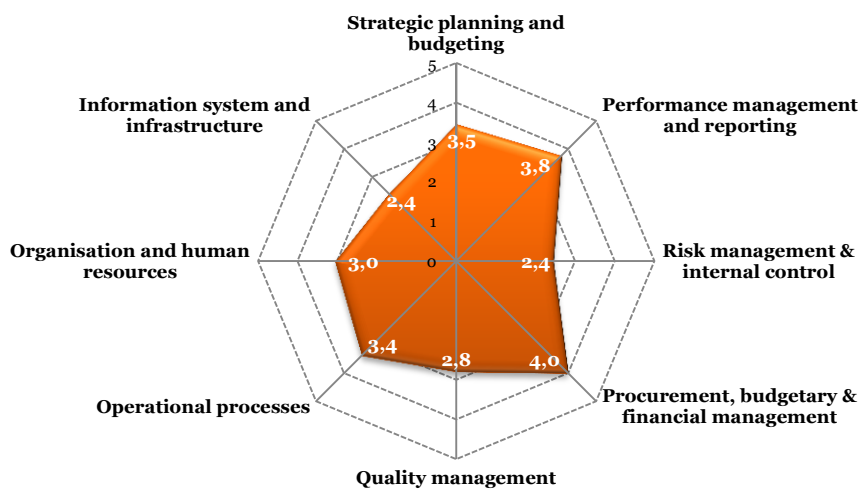
<sup>110</sup> Service Level Agreement.

<sup>111</sup> Virtual Private Network.

Information system & infrastructure	
Positive elements	Elements to improve
	<ul style="list-style-type: none"> <li>• There is no multi-year strategy for information system.</li> <li>• There is no Contingency Plan.</li> </ul>
Main findings	
<ul style="list-style-type: none"> <li>• The BEREC Office has a relatively basic information systems architecture.</li> <li>• The financial information system is in place, but operational information systems have to be improved.</li> <li>• Financial/accounting data are in the ABAC system, managed by the Commission. There is no other significant database at the BEREC Office.</li> </ul>	
Main recommendations	
<ul style="list-style-type: none"> <li>• Develop a multi-year strategy for information system. This would avoid the current <i>ad hoc</i> management: identification of immediate needs in Annual WPs and <i>ad hoc</i> implementation.</li> <li>• Develop and pay more attention to operational information systems.</li> </ul>	

Hereafter is the general profile of the BEREC Office according to our interviews in Riga. This Figure clearly shows is that the Office members are missing some adequate tools for their everyday work, such as IT tools.

**Figure 37 : General profile of the BEREC Office – Internal evaluation of the structure and working methods**



Source: PwC

The Figure above needs to be considered with the general profile of the BEREC Office deriving from our external evaluation and presented in Figure 34 at the end of Section 3.3.





## 4. Case study 1 – The Article 7/7a procedure

### 4.1. Introduction

Crucial to understanding the role of BEREC and the BEREC Office in promoting consistent regulatory practice across the EU are the tasks assigned to them under the new notification and consultation procedures in Articles 7 and 7a of the Framework Directive. We evaluate the operation of these procedures and particularly their capacity to induce regulatory consistency by drawing on the responses of stakeholders to the e-survey, elite interviews with key stakeholders, primary source documentation and a detailed case study of cases NL/2012/1298<sup>112</sup> and NL/2012/1299<sup>113</sup>.

In this cases study, BEREC disagreed, at least partially, with the serious doubts expressed by the Commission on the draft regulatory decisions notified to them by the Dutch National Regulatory Authority (NRA), *Onafhankelijke Post en Telecommunicatie Autoriteit* (OPTA). This difference in approach makes the case study unusual because BEREC has tended to endorse serious doubts raised by the Commission, though sometimes applying different reasoning. As such, it raises the issue of whether BEREC acts appropriately as a counter-weight to the Commission, safeguarding a margin of appreciation for NRAs in their regulatory practice, so that they might reflect the particularities of their national telecoms markets. It is also interesting because it proved procedurally testing for BEREC and the BEREC Office; both because they faced difficulties gathering together the NRA experts to contribute to the peer review and because they had to coordinate parallel proceedings brought under Articles 7 and 7a on a factually-interrelated matter.

The evaluation proceeds as follows: first, we provide an overview of the technical operation of Articles 7 and 7a and a summary of the case study. Second, we set out the methodology for evaluating the case study, relevant primary documentation and the stakeholder interviews and e-survey responses. Third, we detail our findings under the sub-headings, Relevance, Added Value and Governance. Fourth, we draw conclusions from those findings, identifying successful dimensions of the involvement of BEREC and its Office in the Article 7 and 7a procedures, as well as dimensions that might be improved. Fifth, we set out a number of specific recommendations that might make the involvement of BEREC and its Office's in these procedures more efficient and effective.

Broadly speaking, we find that BEREC and its Office are contributing effectively to improving consistent regulation across the EU through their Article 7 and 7a roles, particularly as the systematic involvement of the NRAs in the peer review process serves to promote mutual learning and the diffusion of regulatory practice among them. Since the new procedures came into operation in May 2011, BEREC has successfully provided timely opinions of good quality despite considerable pressure on resources. Nevertheless, the efficiency of BEREC and its Office's involvement in the Article 7 and 7a procedures might be improved through a number of (largely procedural) tweaks, which we sub-divide into: forward-planning, expert database improvements, procedural alignment, time limits, rapporteurs, selecting Expert Working Groups (EWGs), cooperation between the BEREC Office and the Commission, monitoring and consistency, language and drafting, resources, location and regularised procedural reviews. Much to their credit, BEREC and its Office have of their own volition sought to assess and improve their procedures<sup>114</sup>.

<sup>112</sup> Phase II investigation pursuant to Article 7 concerning Market Analysis on Unbundled Access to Corporate Fibre-Optic Network (ODF Access FttO): Submarket to market 4 in the Netherlands.

<sup>113</sup> Phase II investigation pursuant to Article 7a concerning Wholesale Broadband Access (Market 5) and Wholesale Terminating Segments of Leased Lines (Market 6) in the Netherlands.

<sup>114</sup> E.g. Conclusions of the 11<sup>th</sup> Meeting of the BEREC Board of Regulators, Dubrovnik, 24-25 May 2012, available at [http://berec.europa.eu/files/document\\_register/2012/7/20120705173057\\_bor\\_12\\_\\_64\\_conclusions\\_dubrovnik.pdf](http://berec.europa.eu/files/document_register/2012/7/20120705173057_bor_12__64_conclusions_dubrovnik.pdf)

## 4.2. Articles 7 and 7a

The Regulatory Framework obliges NRAs to carry out analyses of a range of telecoms markets that potentially require *ex ante* regulation. If an NRA considers that a market lacks effective competition, it is required to impose regulatory obligations. The starting point for an NRA's market analysis is the Commission's recommendation on relevant markets and the guidelines on market analysis and assessment of Significant Market Power (SMP). If an NRA concludes from its market analysis that a given market is not effectively competitive it must impose appropriate regulatory obligations on the dominant undertakings in accordance with the universal service and market access provisions.

Alongside other measures to guarantee effective competition for the benefit of consumers, NRAs must consult on their definition and analysis of relevant markets as well as on any proposed impositions or removals of regulatory remedies on any providers of telecoms networks or services. These EU consultations, the so-called Article 7 procedures, are aimed at contributing to the development of a Single Market in telecoms (a consistent and transparent application of the Framework Directives throughout the EU) by ensuring cooperation among NRAs, and between NRAs and the Commission. The Commission can comment on the proposed regulatory remedy and may require that an NRA withdraw its market definition and/or the finding of SMP if it considers they are incompatible with the Community law or would create a barrier to the Single Market.

The 2009 Framework Directive and the BEREC Regulation introduces new elements to the Article 7 consultation procedure, inserting the new Article 7a procedure in relation to draft regulatory remedies. NRAs are now required to notify their definition of the boundaries of the relevant market and/or their assessment of an operator's SMP, and any draft regulatory remedy, to their NRA counterparts in other Member States, to the Commission and to BEREC<sup>115</sup>. Whenever the Commission expresses "serious doubts" about the regulatory decisions of an NRA (whether that is its market definitions, SMP designations, or its imposition of regulatory remedies) BEREC provides an advisory opinion, of which the Commission and NRAs are to take "utmost account". Under Phase I of the procedure, the other NRAs, BEREC and the Commission have one month in which they may comment on the draft decision<sup>116</sup>. Where applicable, Phase II of the procedure applies. It follows two different routes.

**Assessing market definitions and SMP findings (Article 7):** If the Commission considers that an NRA's definition of the relevant market or its SMP designation may create a barrier to the Single Market, or has serious doubts about its compatibility with EU law, it may open up a Phase II investigation that extends the process by two months<sup>117</sup>, during which BEREC (acting on a simple majority basis) issues an Opinion on whether it shares the Commission's doubts. The Commission, taking "utmost account" of that Opinion, though not bound by it, then decides whether to require the NRA to amend or withdraw the proposed measure, or whether to withdraw its serious doubts<sup>118</sup>. If required to do so, the NRA must amend or withdraw its measure within six months, taking "utmost account" of the comments from other NRAs, BEREC and the Commission<sup>119</sup>.

**Assessing regulatory remedies (Article 7a):** As of 25 May 2011, the Commission can also extend its investigation to the appropriateness of an NRA's proposed regulatory remedy and issue a recommendation that requires that NRA to amend or withdraw the measure. If the Commission considers that the proposed remedy creates a barrier to the Single Market, or has serious doubts about its compatibility with EU law, it may open up a Phase II investigation that extends the process by three months<sup>120</sup>, during which the Commission, BEREC and the

<sup>115</sup> Article 7(3), Framework Directive.

<sup>116</sup> Article 7(3) and Article 7a(1), Framework Directive.

<sup>117</sup> Article 7(4), Framework Directive.

<sup>118</sup> Article 7(5), Framework Directive.

<sup>119</sup> Article 7(6), (7), Framework Directive.

<sup>120</sup> Article 7a(1), Framework Directive.

notifying NRA are expected to “cooperate closely”, take into account “the views of market participants” and agree on what they consider to be the most appropriate and effective measure<sup>121</sup>. Within six weeks of the initiation of Phase II, BEREC (acting on a simple majority basis) publicly issues a reasoned Opinion on whether it considers the NRA should amend or withdraw its draft measure<sup>122</sup>. If BEREC shares the Commission’s serious doubts, it is expected to “cooperate closely” with the NRA concerned to identify the most appropriate and effective measure<sup>123</sup>. Where BEREC does not agree with the Commission’s position or does not issue an Opinion, or where the NRA amends or decide to maintain its draft measure, the Commission, having taken “utmost account” of BEREC, may, within one month of the initial three months period, issue a “recommendation requiring” the NRA to amend or withdraw its measure and suggesting amendments<sup>124</sup>. The NRA then has one month to communicate its adopted final measure to the Commission and BEREC<sup>125</sup>. If the NRA decides not to follow the Commission’s recommendation, it must provide a reasoned justification for failing to do so<sup>126</sup>.

Articles 7 and 7a require cooperation between the NRAs, the Commission and BEREC. They also involve NRAs in a peer review exercise, supported by the BEREC Office, which has compiled a list of experts from every NRA who can be called on to assess notified analyses and regulatory remedies. As soon as a BEREC Opinion is requested under the Article 7 or 7a procedure, the BEREC Office works on forming an EWG of 5 to 7 experts from the list. They then have 15 working days (under Article 7) or 25 working days (under Article 7a) to assess the documents and draft an Opinion for the approval of BEREC’s Board of Regulators<sup>127</sup>. The NRA whose draft decision is under investigation is not involved, but discussions are of “the most sensitive kind” given that peers are making potentially negative public judgments about the decisions of their colleagues<sup>128</sup>.

In the first 12 months of these new procedures, since they came into operation on 25 May 2011, BEREC and its Office have participated in fourteen investigations under Articles 7 and 7a, of which eight were already successfully concluded<sup>129</sup>.

### 4.3. The case study

Cases NL/2012/1298<sup>130</sup> and NL/2012/1299<sup>131</sup> concerned a set of draft decisions relating to markets in the Netherlands in wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location (Market 4), wholesale broadband access (Market 5) and wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity (Market 6). OPTA notified these draft decisions to the Commission on 21 February 2012. The Commission issued two serious doubts letters and opened two separate Phase II proceedings on 21 March 2012.

**NL/2012/1298** was brought under Article 7 and concerned OPTA’s draft decision to define the market for unbundled access to fibre-to-the-office networks as a

<sup>121</sup> Article 7a(2), Framework Directive.

<sup>122</sup> Article 7a(3), Framework Directive.

<sup>123</sup> Article 7a(4), Framework Directive.

<sup>124</sup> Article 7a(5), Framework Directive.

<sup>125</sup> Article 7a(6), Framework Directive.

<sup>126</sup> Article 7a(7), Framework Directive.

<sup>127</sup> Article 13, BoR (11) 23, Rules of procedures of the Board of regulators, As revised in May 2011.

<sup>128</sup> C. Fonteijn, Communications and Competition law Conference of the International Bar Association, 16 May 2011 (Vienna).

<sup>129</sup> BEREC, Dubrovnik plenary meeting debriefing, May 2012, available at:

[http://berec.mp.bi.lv/files/news/20120531\\_debriefing\\_plenary\\_2\\_Brussels\\_120530vSG.pdf](http://berec.mp.bi.lv/files/news/20120531_debriefing_plenary_2_Brussels_120530vSG.pdf). See also BEREC’s latest opinions (July 2012) on cases FI/2012/1328-29 and CZ/2012/1322.

<sup>130</sup> Phase II investigation pursuant to Article 7 concerning Market Analysis on Unbundled Access to Corporate Fibre-Optic Network (ODF Access FttO): Submarket to market 4 in the Netherlands.

<sup>131</sup> Phase II investigation pursuant to Article 7a concerning Wholesale Broadband Access (Market 5) and Wholesale Terminating Segments of Leased Lines (Market 6) in the Netherlands.

submarket of Market 4 of the Commission’s recommendation on relevant markets, as well as OPTA’s determination that the operator, KPN, did not have SMP on this submarket. OPTA justified its market definition by producing evidence that, on the Dutch market, unbundled copper network access and unbundled access to fibre-to-the-office networks, as well as unbundled access to fibre-to-the-home networks and unbundled access to fibre-to-the-office networks, were not substitutable. In relation to KPN’s market position, OPTA reasoned that, while this operator had some advantages over its competitors on the relevant submarket, it was not in a position to act independently from them and therefore did not have SMP.

**NL/2012/1299** followed the procedure in Article 7a and related to OPTA’s decision not to impose access obligations on KPN’s fibre network in the market for high quality Wholesale Broadband Access (HQ WBA). Although it considered copper and fibre-based infrastructure to be part of the same market, OPTA reasoned that copper-based HQ WBA still represented a significant part of the market and even if KPN refused to give access to its fibre-based HQ WBA, others could still compete with KPN on the basis of regulated copper access, access to the fibre of other operators and/or their own fibre infrastructure. OPTA also considered that the upgraded copper-based infrastructure (offering symmetric data transfers above 20 Mbps) was a substitute for fibre-based connections.

BEREC issued an Opinion in Case 1298 on 24 April 2012 and an Opinion on Case 1299 on 27 April 2012. In 1298, BEREC agreed with the Commission’s serious doubts as to OPTA’s decision not to class KPN as a SMP operator, but considered the Commission’s doubts relating to the market definition “may not be justified”<sup>132</sup>. In 1299, BEREC regarded the Commission’s serious doubts concerning the non-imposition of an effective access obligation to be “mostly justified” and concluded that the existing limitation on the scope of the access obligation could create a potential barrier to the Single Market<sup>133</sup>. As a consequence of the Commission’s proceedings and the BEREC Opinions, OPTA withdrew their notification of all decisions on 4 May 2012.

#### 4.4. Methodology

We evaluate the operation of BEREC and its Office using the following criteria:

1. **Relevance:** The extent to which the peer review provided by BEREC pursuant to Articles 7 and 7a has achieved more consistent regulation among NRAs across the EU so as to promote a single market in electronic communications.
2. **Added value:** The extent to which the activities of BEREC and the BEREC Office pursuant to Articles 7 and 7a add value, compared to the old Article 7 procedure involving its predecessor, the European Regulators Group (ERG).
3. **Governance:** the efficiency and effectiveness of the organisational structures and working methods of BEREC and its Office in performing their Article 7 and 7a functions.

This evaluation draws on the stakeholder responses to the e-survey, primary source documentation as well as individual elite interviews with key stakeholders who were selected for their knowledge of cases 1298 and 1299 and/or their direct experience of Article 7 and 7a more generally. Those interviewees were:

- Mr. Antonio Manganelli of BEREC Office, rapporteur on case NL/2012/1298;
- Mr. Alain Maton of the Belgian regulator BIPT, rapporteur on case NL/2012/1299;
- Mr. Andrea Coscelli of the UK regulator Ofcom, rapporteur on cases NL/2012/1284 and 1285;
- Mr. Dirk Walpuski of the BEREC Office;
- Mr. Jim Niblett, formerly of the UK regulator Ofcom;

<sup>132</sup> BEREC Opinion BoR (12) 27.

<sup>133</sup> BEREC Opinion BoR (12) 26.

- Mrs. Lara Stoimenova of the UK regulator Ofcom, Chair of the BEREC Remedies Monitoring Working Group;
- Mr. Guido Pouillon of the Belgian regulator BIPT, formerly responsible for the co-ordination of Article 7 procedures under the previous situation involving E/IRG;
- Mrs. Marianne Kracht of the Dutch regulator OPTA, Chair of the BEREC Evaluation Working Group;
- Mrs. Ellen Optmann of the Dutch regulator OPTA, responsible for cases NL/2012/1298 and 1299 on behalf of OPTA;
- Mr. Martijn Wolthoff of the Dutch regulator OPTA, responsible for cases NL/2012/1298 and 1299 on behalf of OPTA.

The bulk of the responses to the e-survey were from NRAs. Similarly, most face-to-face or telephone interviews were with experts (or former experts) from NRAs. There was limited input into the e-survey from the BEREC Office, including its Management Board, but some members of its staff did provide useful commentary in telephone interviews. A few telecoms operators and representative associations responded to the e-survey, but they indicated that they found it difficult to assess BEREC’s working methods from the outside and their responses tended to be brief and general. The Commission was invited to comment by way of the e-survey. Its response was brief and did not raise any specific concerns, from which we infer that the Commission is broadly happy with the functioning of Articles 7 and 7a.

## 4.5. Findings

### 4.5.1. Relevance

Though some stakeholders thought it too early to assess the role of BEREC and its Office in Articles 7 and 7a in great detail, most considered BEREC performs the role well, contributing thereby to the consistent application of the Regulatory Framework throughout the EU and therefore to the promotion of a Single Market in telecoms. Achieving regulatory consistency is fundamental to BEREC and EWG discussions when drafting Article 7 and 7a Opinions. There is considerable admiration for BEREC’s commitment to the task and a recognition that it has sought, wherever possible, to improve its working methods, becoming faster and more concrete in its Opinions as it learns from experience. This aligns with BEREC’s own assessment of its performance in the eight Article 7 and 7a Phase II cases concluded within the first year of the operation of these new procedures<sup>134</sup>. BEREC expresses satisfaction at its own smooth and timely functioning, as well as that of its EWGs, and sees its Opinions as representing a respected standpoint and a reliable basis for deciding future cases.

Many stakeholders complimented BEREC on the high quality of its Opinions, which were variously described as in-depth, independent and as revealing both a detailed understanding of the market analyses and the proposed remedies under consideration, as well as appropriate sensitivity towards the particularities of the national markets concerned. Moreover, there was much admiration for the fact that it had managed to achieve this in spite of its limited resources and the tight deadlines that Articles 7 and 7a impose. Some interviewees highlighting the fact that it has managed to provide an Opinion, on time, in every Phase II case to date. Typical comments were, “an unquestionable success story”, “remarkable” or simply “a good job”.

BEREC has almost always agreed with the conclusions of the Commission, even if its reasoning sometimes differs. This generally contributes to the consistent application of the Regulatory Framework by lending further strength and credibility to the Commission’s conclusions. But some NRAs see BEREC more as a counter-weight to the Commission than as an advisor to it. On this interpretation, the Commission provides a Single Market perspective and strives for consistency in NRA market analyses, whereas BEREC provides a national perspective and serves to disseminate the knowledge that is developed in the course of investigating Article 7 and 7a

<sup>134</sup> [http://bereg.mp.bi.lv/files/news/20120531\\_debriefing\\_plenary\\_2\\_Brussels\\_120530vSG.pdf](http://bereg.mp.bi.lv/files/news/20120531_debriefing_plenary_2_Brussels_120530vSG.pdf).



cases. Certainly BEREC’s focus seems to be on whether an NRA’s market definition, designation of SMP or regulatory remedy is suited to the national market, rather than on any considerations of their wider impact on the Single Market in telecoms, which is generally secondary. To that effect, NRAs are sometimes cautious not to offer the Commission a “hostage to fortune” that it might then use against them in subsequent cases. In Case 1298, for example, BEREC even incorporated a caveat into its Opinion to the effect that it only addressed the very specific circumstances of the Dutch market and was not therefore of direct application to their own markets.

That said, BEREC does not disregard Single Market considerations and they came to the fore in Case 1299 even if it disagreed with the Commission’s analysis. Crudely put, its working assumption is that the Single Market is promoted most effectively by ensuring maximally effective regulation at the national level, but this need not mean that the same regulatory remedies must be applied in every Member State, only that similar regulatory problems ought to be tackled in similar ways.

The independence of BEREC from the Commission is only in doubt if BEREC (and by extension its NRA members) really were disinclined to disagree with the Commission for fear of provoking it into proposing reforms to the Regulatory Framework that would see the NRAs lose power to it in the future. There is no robust evidence to suggest that this is the case. BEREC steers a path between the Commission and the NRAs and is a mouthpiece for neither.

On occasions, BEREC can act as a useful buffer between the Commission and an NRA that faces complex legal obligations at home. This happened in Cases NL/20121/1284 and 1285, as well as in Case 1298 of our case study in which OPTA’s market analysis was subject to an existing national court ruling that covered an earlier regulatory decision on the same market, on which the Commission had already expressed an Opinion. OPTA re-regulated in the light of that court ruling, its discretion limited, but the Commission expressed serious doubts about this revised decision. BEREC was more circumspect. While the key part of its analysis focused on the Commission’s serious doubts, it also acknowledged the awkward legal position that OPTA found itself in. At the same time, it also considered the importance both of ensuring the highest degree of regulatory coherence and of the Single Market perspective that was advanced by the Commission. The detail in its explanation of why it disagreed with the Commission’s serious doubts in relation to OPTA’s market analysis ought to improve OPTA’s analysis in the re-notification expected in November 2012. Indeed, OPTA informed us that the BEREC Opinion will play an important role in its decision about what measures to re-notify. It also played an important role in OPTA’s decision to withdraw its decisions the first time around because, although BEREC disagreed with the Commission’s serious doubts about OPTA’s market analysis, it could always have used its veto power to impose its view anyway, which meant OPTA had to decide whether to push things this far.

Several respondents stressed that the duty of cooperation plays a significant role in fostering regulatory coherence. One NRA expert described their individual experience thus:

*“All actors involved, notably the experts of the EWGs, the rapporteurs, the coordinators, the [Contact Network] members following the case, as well as the members of the Board of Regulators, have amply demonstrated in all cases their commitment to the development of the internal market, the development of consistent regulatory practices and the consistent application of remedies”.*

Others emphasised that BEREC encourages a common approach to regulatory issues, not only through the immediate impact of its Opinions on notifying NRAs, but also through ensuring NRAs engage with and learn from one another on a continual basis, especially through their participation in EWGs. This improves the quality of their market analyses and decision-making generally by encouraging the dissemination of information among NRAs, some of which describe referring to EWG reports when dealing with specific market analyses at home or when addressing issues raised by stakeholders. One commentator thought that, if nothing else, EWGs ensure their members are familiar with other notifications, especially in Phase II cases. BEREC’s role in Article 7 and 7a procedures has encouraged debates among the NRAs with regard to

particular regulatory problems, thereby enriching BEREC activities more generally. As one NRA expert observed:

*“The experience of dissecting our peers’ notifications has also been very useful to the NRAs participating in the Article 7 Expert Working Groups, giving us a real insight into how others have tackled problems similar to the ones experienced in our markets. We continually learn from our engagement with our peers, and I believe this improves the quality of our national analysis and decision-making”.*

BEREC Opinions are seen as helpful to the notifying NRA as well as useful guides for other NRAs that are conducting market analyses and imposing regulatory obligations in similar circumstances. A Commission official described BEREC’s impact on the consistent application of remedies as significant, but also observed that it remains to be seen whether individual NRAs will follow the approaches set out in previous Article 7 or 7a opinions in subsequent similar cases. BEREC does strive to reinforce those opinions by incorporating them into its work on the dissemination of best practice. So, for instance, the Remedies Monitoring Working Group, chaired by Lara Stoimenova, is currently drawing, amongst other things, on BEREC Opinions under Article 7a in its review of the Common Position on Remedies, which will help NRAs to follow similar regulatory practices in similar cases when implementing the Regulatory Framework. BEREC then produces its own reports that assess whether NRAs are indeed following these Common Positions.

Some respondents thought BEREC could on occasions provide more detail in the suggestions it makes in its Opinions, but recognised that the need to reach agreement within EWGs might make this more difficult. There was, on the other hand, some concern that NRAs occasionally use their involvement in an EWG to incorporate their own regulatory analyses and solutions into BEREC Opinions.

#### 4.5.2. Added value

Previously, the E/IRG conducted informal peer reviews of NRA market definitions and SMP designations that were then forwarded to the Committee of Communications (Cocom) which was formally responsible for advising the Commission. There is broad agreement amongst commentators that BEREC is more effective than the E/IRG in organising this peer review process, promoting consistent regulatory practice and in diffusing best regulatory practice. One commentator suggested that in terms of quality, the Opinions of BEREC are not markedly better than those of its predecessor, but what has changed is the speed with which they are produced, facilitated by the BEREC Office that provides more comprehensive support than the single NRA coordinator possibly could under the old Article 7 procedure. Moreover, the new Article 7 and 7a procedures put more pressure on NRAs to make experts available for EWGs than was the case under the old Article 7. While the old procedure worked well in general, its reliance on *ad hoc* arrangements with individual rapporteurs would never have withstood the volume of cases arising under the new Article 7 and 7a procedures.

#### 4.5.3. Governance

##### 4.5.3.1. Workload

BEREC, supported by its Office, has responded well to the challenge of dealing with a significantly increased case load when compared to that handled by its predecessor, the E/IRG under the old Article 7 procedure. There has been a high volume of Phase II cases in the first year of the new procedures’ operation. Many cases are brought under the new Article 7a and tend to involve markets in which a Commission recommendation is in place (notably Markets 4 and 5, as well as 7 on voice call termination on individual mobile networks). For some, the key question is whether, given the various restrictions (especially time), BEREC will be capable of addressing particularly controversial cases that require extensive analysis and lengthy discussion within both the EWG and the Board of Regulators.



It may be that BEREC and Commission opinions under Articles 7 and 7a will assume a degree of precedential value and that fewer cases will need to be taken up in the future if NRAs learn from these existing opinions, whether or not they were the notifying NRA. In the short-term, however, resources remain stretched as a result of the ongoing workload.

#### 4.5.3.2. Resources

NRAs, the BEREC Office and the Commission expend considerable resources conducting investigations pursuant to Articles 7 and 7a. BEREC's success in Article 7 and 7a cases depends in particular on NRAs committing adequate resources to the EWGs, and the burden of that commitment must not be underestimated, especially when many NRAs face significant pressures already. It should be noted, however, that it is *not* the case that the "usual suspects" always put themselves forward for EWGs. That said, given the complexity of most cases and the very short time that the Board of Regulators has to review draft Opinions generated by EWGs, some less well-resourced NRAs find themselves unable to vote and therefore abstain. Some NRAs suggested that things might be improved were the Commission to enforce the obligation on Member States to ensure that NRAs are adequately resourced to meet their obligations to BEREC<sup>135</sup>.

As a positive aspect of the process it was noted that the BEREC Office budget allows for compensation for NRAs participating in EWGs, and this works particularly to the benefit of less well resourced NRAs.

#### 4.5.3.3. Time limits

EWGs have always delivered their Opinions on time and with the requisite majority of NRAs on board, despite problems caused by "extremely tight" deadlines. This is a "remarkable achievement", especially in cases involving complex national markets in which the EWG must also provide reasoned opinions on the serious doubts expressed by the Commission. Both the tight deadlines and the horizontal nature of BEREC's operation make the timely delivery of Article 7 and 7a Opinions a significant challenge, especially in relation to more problematic cases. Some NRAs suggested that one reason for the short time frame for BEREC's consideration of Article 7 and 7a cases is the Commission's internal procedures.

In the case study, BEREC struggled with the strict time limits which were compounded by the difficulty of (a) not immediately finding a rapporteur, so that it had to rely on staff from the BEREC Office and (b) struggling to coordinate the two procedures under Article 7 and 7a, with their two different timeframes and two sets of EWG experts. The case study raises the question of whether it makes sense to assimilate the time limits in Article 7 to those in Article 7a in which the EWG has 25 working days to respond. As things stand, under Article 7 EWGs have 15 working days to produce a draft Opinion which effectively forces them to form an Opinion directly after their first meeting, after which they then have only about a week to reflect on it. According to some NRAs, an extra week would make considerable difference and allow for in-depth discussion and reflection before they began drafting. Set against this, however, is the balance that must be achieved because a tight timetable is necessary to minimise regulatory uncertainty.

#### 4.5.3.4. Cooperation

There is considerable agreement that cooperation between the Commission, BEREC and the NRAs functions well, whether gathering information, during EWG proceedings or in the tripartite meetings that follow Phase II proceedings under Article 7a. In every case, BEREC has invited the notifying NRA to meet the EWG to explain its notification further. In case 1298, for example, the EWG conducted a conference call with OPTA to collect further information and OPTA answered written questions. The EWG also communicated with the Commission to ask for clarification of its serious doubts letter.

<sup>135</sup> Article 3, Framework Directive.

There is some concern that for Article 7/7a Phase II cases, the Commission enjoys a significant advantage over BEREC and the BEREC Office (better information) in accessing information at an early stage through the pre-notification meetings with NRAs, at which it generally requests extensive information, and the analysis it has carried out in the Phase I procedure. BEREC and the BEREC Office only get that information when the Commission passes it onto them - once the Phase II procedure has been launched - at which point they have less time to process it.

The Commission has not had to issue a veto or recommendation in any of the Phase II cases under Article 7 and 7a. They were resolved, following each BEREC Opinion, either by withdrawal of the notified draft decision or by way of tripartite cooperation between the NRA, BEREC and the Commission. For example, in cases PL/2011/1255-1258 and PL/2011/1260 tripartite cooperation facilitated a consensus on the procedure to follow after Phase II, whilst in cases NL/2012/1284 and 1285, the tripartite meeting addressed controversial issues between OPTA, BEREC and the Commission.

Closer alignment of the Article 7 and 7a procedures might be appropriate, potentially including tripartite meetings at the end of Article 7 Phase II cases as a matter of course or upon the request of one of the parties (as happened in Case 1298, at which point OPTA withdrew its notification). Case 1298 was under Article 7, so there was no formal tripartite meeting, but the Commission requested one anyway, which it used to advance clarifications on the BEREC Opinion. The EWG was uncomfortable expressing an opinion on “further steps” because there was no legal basis for doing so under Article 7 (unlike Article 7a). So, when the Commission and OPTA started discussing further steps at the meeting, the EWG (having sought guidance from the Framework Implementation Working Group chaired by Antonio De Tommaso) assumed a low profile and did little more than observe and clarify its own opinion when necessary. Clearly the NRAs were anxious not to set a precedent that would blur the boundaries between the distinct procedures in Articles 7 and 7a for the time being.

#### *4.5.3.5. Selection of Expert Working Groups (EWG)*

One bottleneck in the Article 7 and 7a process is putting together EWGs. Though this is now routine, it still relies heavily on NRA engagement with the process and the “significant coordinating role” of the BEREC Office. The selection process for EWGs is not systematic enough and too time-consuming. Some NRAs have clearly demonstrated a strong commitment to this engagement and the EWG’s internally-defined (and very strict) timetables, but in some cases (including the case study) staff from the BEREC Office had to step in to serve on EWGs because NRA experts were not (made) available and the resources that NRAs committed were limited. To date, the BEREC Office has had to commit two substantive experts and one rapporteur to various EWGs. In the case study, the BEREC Office failed to identify a rapporteur from among the NRA experts and was forced to provide a member of their own staff. In case 1298, the rapporteur was Antonio Manganelli from the BEREC Office, supported by one of his colleagues. The BEREC Office additionally allocated, as is usual, one administrative coordinator to the EWG. In Case 1299, a member of staff from the BEREC Office worked on the EWG as a substantive expert and another was responsible for secretarial tasks.

The BEREC Office attempts to allocate a good cross-section of NRAs to EWGs, with experts at different levels and with relevant expertise. It also seeks to involve NRAs that have not worked on the specific market before, so as to distribute work more evenly. Ideally, membership is evenly split between lawyers, economists and engineers, but this is a problem of resources. Were the BEREC Office to receive more information about a case before it started to put together an EWG, it might select appropriate experts (currently, it works primarily on the basis of the contents of the Commission’s serious doubts letter).

The BEREC Office is responsible for maintaining one database for potential NRA experts and another for rapporteurs, but has indicated that only eight NRAs have signed up to supply rapporteurs, which involves more work. Currently, NRA members who are not on the database are approached to be rapporteurs when gaps need filling (e.g. the rapporteur in case 1299 was Alain Maton of the Belgian NRA, BIPT, who was not on the database but was approached on the basis of previous experience). The BEREC Office updates the expert databases by writing to NRAs to ask them who should be on the lists (those who have agreed to be an expert in the past

stay on the list) but these updates need to be more systematic and comprehensive. The informal practice of selecting experts from neighbouring countries' NRAs with close working relationships with the notifying NRA and therefore a sound understanding of the neighbouring market is commendable on the basis that it improves cooperation and frequently avoids language problems. In Case 1299, this worked reasonably well because the Belgian NRA, BIPT, had some experience of the Dutch market and a close relationship with OPTA (although the Belgian rapporteur was French-speaking).

#### *4.5.3.6. EWG proceedings*

According to NRAs, the time frame is too short to allow a thorough investigation and sufficiently detailed discussion within the EWG. The process is time-consuming for individual experts and especially for the rapporteur, but also for the coordinator from the BEREC Office who assists in the drafting and language work but who does not contribute to the substance of the draft report. The operation of EWGs depends on the individual commitment of their members to producing a thorough analysis.

Overall the EWGs are insufficiently systematic. It would be useful if the role of the rapporteur were more clearly defined because they have frequently had to take the lead in coordinating between EWG members and the BEREC Office. Moreover, the experts involved have different levels of expertise, interest and/or resources at their disposal (though the level of involvement does not always accord with the size of an NRA and some smaller NRAs, including the Latvian NRA, have been very active). In Case 1298 for example, the division of labour between NRA experts in the EWG was not always balanced and depended significantly on the level of expertise of the individuals concerned.

There remain concerns, therefore, that some NRA experts might be inclined to use their EWG membership to advance the national interest or to push their own pet projects, or that some of the better resourced and/or more experienced NRAs might use their involvement to impose their own regulatory views. Some suggested that the Rules of Procedures should define the role of EWGs more clearly to ensure they are independent of the Commission. The fact that these rules are currently under review was welcomed. Some thought it would have been better if the Commission were part of the review process because this might help to ensure a better understanding between it and BEREC. Others took the view that, as an observer in BEREC, the Commission had ample opportunity to comment (e.g. the Commission is included in mailing lists and can also be an observer to EWG meetings).

There have been disagreements among EWG members, but so far they have never prevented an EWG from producing a report, or the Board of Regulators from endorsing that report as a formal BEREC Opinion. In Case 1298, initial differences in opinion were overcome and all NRA experts agreed on the final report.

The case study involved parallel proceedings that concerned different markets (Case 1298 concerned Market 4 and Case 1299 concerned Markets 5 and 6) but they were interrelated factually (both concerned the decision whether or not to regulate fibre access on the relevant markets). The BEREC Office successfully coordinated the two EWGs so that difficulties arising from the procedural differences between the Article 7 basis of Case 1298 and the Article 7a basis of Case 1299 (e.g. different time limits) were minimised. The EWG in case 1299 sought to understand the approach taken by the EWG in case 1298. They exchanged and participated in each others' work and attended conference calls. This went some way to ensuring that their reports were consistent with one another, but coordination between them might have been improved further. This raises the issue whether it should be possible to handle more than one Article 7 and/or 7a case within a single EWG or, alternatively, whether an overlapping membership between two EWGs might be appropriate in some circumstances. To its credit, BEREC itself took the initiative in cases PL/2011/1255-1258 and PL/2011/1260 (all under Article 7a procedure) to set up one joint EWG with two rapporteurs.

### 4.5.3.7. Consultation and Voting

Many NRAs thought the single working day that the Board of Regulators has to comment on the draft Opinion of an EWG<sup>136</sup> insufficient. To provide meaningful input, comments have to be considered at senior level by those with already busy schedules. Some bottlenecks therefore exist at NRA level. Advance planning and calendaring would help, but it might also be appropriate to extend the period by a few working days (this problem is apparently now under discussion within BEREC). It is worrying that, apparently, currently up to a quarter of the NRAs fail regularly to participate in the voting process. That said, the Framework Implementation Working Group's recent assessment concluded that the voting procedure for adopting BEREC Opinions under Articles 7 and 7a had proven effective<sup>137</sup>.

Rapporteurs take the comments of the Board of Regulators into account when revising EWG reports before resubmission to the Board for a final vote. So, in case 1298, the rapporteur inserted the caveat limiting the draft Opinion to the specific circumstances of the Dutch market. BEREC nonetheless recognises that it has to be careful with national caveats in its Opinions since there is no clear view on the impact of an increasing number of these caveats. Moreover, even if these changes are not then subject to further consultation and review by the Board, this has not apparently impacted negatively on the quality of BEREC Opinions (yet). And, although the two working days that the rapporteur has to make the revisions are limited<sup>138</sup>, this has proven sufficient because the rapporteur will have had dedicated working time set aside to perform the task.

### 4.5.3.8. Planning and procedure

The challenge that the high volume of Phase II cases presents for BEREC and the BEREC Office is partly the result of the lack of advanced notice of impending notifications and/or Phase II procedures. Not every NRA notifies the BEREC Office at the same time as it notifies the Commission and there is no mechanism to ensure that NRA notifications and their future schedules are shared amongst BEREC members. This issue was identified at the BEREC Plenary Meeting in May 2012 and a process is currently being put into place to address it, coordinated by the BEREC Office. NRAs will be asked to provide the BEREC Office with an indicative calendar of notifications for the year ahead, which they will be asked to update as necessary on a monthly basis. It will be circulated monthly to BEREC members to enable them to plan their own resources in such a way as to increase their chances of being available for the Phase II EWGs in which they have the relevant expertise.

The monitoring and periodic update of the internal procedures for the functioning of Article 7 and 7a Phase II cases appears to work reasonably well and is ongoing. For example, a protocol to improve cooperation between the BEREC Office and the Commission, covering in particular the timely provision of information to the Office, with a view to speeding up the process of setting up EWGs, is being prepared. Article 13 of the BEREC Rules of Procedure, revised in May 2011, sets out the rules governing the establishment and ongoing operation of EWGs in Phase II cases, including their voting procedures<sup>139</sup>. Further procedural details are set out in an internal document<sup>140</sup> that, according to the BEREC Office, is being revised and introduces some marked improvements (e.g. how to deal with divergent views in EWGs). The Framework Implementation Working Group recently assessed the voting procedure under Article 7 and 7a and in May 2012 and the BEREC Office also reported to the BEREC Board of Regulators its conclusions on Article 7 and 7a Phase II cases<sup>141</sup>.

<sup>136</sup> Article 13, BoR (11) 23, Rules of procedures of the Board of regulators, As revised in May 2011.

<sup>137</sup> BoR (12) 45 as reported in the Conclusions of the 11<sup>th</sup> Meeting of the BEREC Board of Regulators, Dubrovnik, 24-25 May 2012, available at:

[http://berec.europa.eu/files/document\\_register/2012/7/20120705173057\\_bor\\_12\\_\\_64\\_conclusions\\_dubrovnik.pdf](http://berec.europa.eu/files/document_register/2012/7/20120705173057_bor_12__64_conclusions_dubrovnik.pdf)

<sup>138</sup> Article 13, BoR (11) 23, Rules of procedures of the Board of regulators, As revised in May 2011.

<sup>139</sup> BoR (11) 23, Rules of procedures of the Board of regulators, As revised in May 2011.

<sup>140</sup> BoR (10) 61 Rev1, (not accessible on BEREC website).

<sup>141</sup> BoR (12) 45 and BoR (12) 37 as reported in the Conclusions of the 11<sup>th</sup> Meeting of the BEREC Board of Regulators, Dubrovnik, 24-25 May 2012, available at

### 4.5.3.9. *BEREC Office*

According to the responses to the e-survey and interviews, the BEREC Office fulfils its functions under Article 7 and 7a effectively and professionally, including the setting up of meetings between the Commission, BEREC and the NRA; gathering case-relevant information; setting up EWGs and coordinating their work; ensuring that deadlines are met; stepping in to provide EWG experts and rapporteurs where no NRA experts are available; and providing language and drafting support.

There was some room for improvement identified in other areas, including:

- Further support for the translations of documents, which is not always timely. The Commission produces some unofficial translations, but this can be subject to delay. The previous system, where NRAs provided their own translations, is less feasible now, given time and resource constraints. A properly resourced BEREC Office is generally better positioned to supply these services centrally. There is too little time to contract work to external interpreters.
- More support with English language corrections and proof reading, especially given the limited number of people available at NRA level to do this.
- At the drafting stage, the Office could provide further support with elaborating general sections of the documents (background, summary of serious doubts, etc).
- Ensuring consistency of BEREC Opinions. The BEREC Office has now produced a structural template which it circulates to experts. As a rule, Opinions are more or less consistent in terms of their structure, but this does not ensure consistency in their quality.
- More effective and efficient control of the databases of available experts and rapporteurs (so as to help timely formation of EWGs) and more systematic updating.
- The BEREC Office is insufficiently rigorous in requesting that NRAs share their notification plans for the coming year. While there is inevitably an element of uncertainty about what cases will reach Phase II and some NRAs will change their plans at short notice, maintaining pressure on NRAs to be structured, predictable and transparent in their planning would secure time savings at later stages.
- The BEREC Office struggles in some cases to access confidential information from NRAs.
- The focus must remain BEREC's core functions, never forgetting that the procedures are only the means to this end.
- Although the Office still has limited staff available to work on Articles 7 and 7a, the responses did not highlight staffing a key problem. It is more a matter of deploying existing resources better, alongside more systematic planning and the improvement of internal procedures.

## 4.6. *Conclusions*

BEREC and its Office have demonstrated a strong commitment to their Article 7 and 7a roles and have sought, whenever possible, to improve their working methods. BEREC performs its Article 7 and 7a roles well, contributing to the consistent application of the Regulatory Framework throughout the EU and, consequently, to the promotion of a single market in telecoms. It issues high quality Opinions revealing both a detailed understanding of the market analyses and proposed remedies under consideration as well as appropriate sensitivity towards the particularities of the national market concerned. It has managed to provide an Opinion, on time, in every Phase II case to date, despite its limited resources and the tight deadlines imposed by Articles 7 and 7a. BEREC exerts considerable peer pressure on NRAs through its Opinions in Article 7 and 7a cases and generally endorses the serious doubts raised by the Commission (though sometimes applying different reasoning).

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[http://berec.europa.eu/files/document\\_register/2012/7/20120705173057\\_bor\\_12\\_\\_64\\_conclusions\\_dubrovnik.pdf](http://berec.europa.eu/files/document_register/2012/7/20120705173057_bor_12__64_conclusions_dubrovnik.pdf)



BEREC is more effective than its predecessor, the E/IRG, in diffusing best practice and applying peer pressure on NRAs under Article 7 and 7a. While the old Article 7 procedure worked well, it would not have withstood the volume of cases arising under the new Article 7 and 7a procedures. The opinions of BEREC are of comparable quality to those that were issued by the E/IRG, but the speed with which they are produced has improved markedly. The BEREC Office provides more comprehensive support than the single NRA coordinator possibly could under the previous regime.

BEREC encourages a common approach to regulatory issues, not only through the immediate impact of its Opinions on the notifying NRAs, but also through ensuring NRAs engage with and learn from one another on a continual basis and especially in the EWGs. BEREC Opinions are helpful to the notifying NRA, but also a useful guide for other NRAs when conducting market analyses and imposing regulatory obligations in similar circumstances. BEREC's role in Article 7 and 7a procedures has therefore encouraged wider debates among NRAs over individual regulatory problems, enriching BEREC activities more generally.

BEREC and the BEREC Office are still on a learning curve. For example, the case study raises serious questions about whether it makes sense to have different time limits for Article 7 and 7a procedures. A key question more generally is whether, given the various restrictions (especially time) BEREC will be able to address particularly controversial cases that require extensive analysis and lengthy discussion within both the EWG and the Board of Regulators. The Commission has opened more Phase II cases than expected under the new procedures and, in the short-term at least, resources will remain stretched, increasing the need to ensure effective and efficient working methods.

The selection of EWG experts and rapporteurs, for example, is still not systematic enough and tends to be time-consuming. Some NRAs are clearly committed to contributing to EWGs despite their internally-defined (and very strict) timetables, but in some cases (including the case study) staff from the BEREC Office had to step in to serve on EWGs because NRA experts were not (made) available and/or the resources that NRAs committed were too limited. Other potential areas for improvement include: ensuring advanced notice of impending notifications and/or Phase II cases, so as to facilitate better resource and time management within NRAs; revising time limits so as to allow more time for preparation of draft Opinions in EWGs and consultation prior to the Board of Regulator's vote; better cooperation between the Commission and the BEREC Office, e.g. by means of a protocol; and clarifications on the role of the BEREC Office and EWG rapporteurs.

## 4.7. Recommendations

### Forward-planning:

- A key to improving BEREC's and the Office's ability to cope with workload, timeframes and stretched resources is to put in place a mechanism to ensure that NRA notifications and their future schedules are shared among BEREC Members. This should be coordinated and enforced by the Office.
- NRAs already provide the Office with an indicative calendar of notifications for the year ahead, updated on a monthly basis and circulated to all BEREC members, but the NRAs might be asked to use this to pre-commit experts to relevant EWGs, should a notification proceed to Phase II, thereby speeding up the selection process.
- This forward-planning exercise might also include NRAs communicating to BEREC the information at the pre-notification stage and allow NRA experts to become involved at this stage so that they might build up a good idea of the relevant issues and gather case-sensitive information early on. However, this would need to be balanced against potential drawbacks; e.g. it could lead to inefficiency for BEREC if subsequently the NRA decides not to notify or to withdraw its notification. Moreover, in advance of the Commission's serious doubts letter, BEREC might find it difficult to select the most suitable experts to address relevant issues. There could also be confidentiality concerns.

- This exercise might also reduce the number of cases that make it to Phase II because NRA experts might be able to address problems informally at an early stage.

#### **Improvements to the Expert Database:**

- Key to effective forward-planning is the rigorous maintenance of the database for NRA experts and rapporteurs.
- The BEREC Office is already committed to monitoring the database and to reporting periodically to the Board of Regulators to evaluate the work of EWGs, but these commitments could be further strengthened.
- The BEREC Office might put further pressure on NRAs to comply with their commitment to placing *at least* one expert and one potential rapporteur for each market on the database and should encourage NRAs to name as many experts as possible, including more experienced and senior staff, as well as a spread of lawyers, economists and engineers.
- The BEREC Office should take responsibility for updating the database more systematically and for communicating effectively with BEREC members following each review/update to indicate where gaps exist. NRAs should also ensure the provision of experts upon the BEREC Office's request.
- Where an NRA falls short, they might be asked formally to justify why they have failed to fill a gap on the database that was notified to them.
- The BEREC Office should ensure greatest possible transparency in the database, revealing the background of experts and including their field and level of expertise.
- It would be advisable for the database to include a general list of experts who may be selected at short notice in case those experts listed for individual markets are unavailable.

#### **Procedural Alignment:**

- There are advantages in aligning the procedures under Article 7 and 7a more closely<sup>142</sup>.
- The tripartite meetings provided for under Article 7a have, to date, proven successful in ensuring far-reaching cooperation between the notifying NRA, BEREC and the Commission. Case 1298 in particular suggests that introducing a similar meeting for the Article 7 procedure, either as a matter of course or at the request of the NRA, or of the Commission, might add value.
- There are occasions when it might make sense to establish a joint EWG responsible for handling parallel Article 7 and 7a cases, even if they concern different markets, particularly where the facts are heavily interrelated.
- The time limits should also be aligned so as to extend the time limit of an Article 7 EWG to deliver its report (*see below*).

#### **Time limits:**

- The first year of BEREC's operation demonstrates a need to adjust the time limits of the Article 7 and 7a procedures to ensure BEREC can maintain the quality of its Opinions in the light of its workload and resources, but also recognising the need to keep the 7/7a procedures as short as possible to minimise regulatory uncertainty.
- Extending the time available to EWGs to produce an initial draft Opinion under Article 7 so as to align the time limit under Article 7 to the one under Article 7a (currently 25 working days) would be positive, even though account must be taken for the current stage to the time limits imposed by the regulatory framework.
- . Extending the time for EWGs (under Article 7) to draft their reports should ensure that the information they contain is as extensive and meaningful as possible and that the Board of Regulators is then fully informed when the opportunity to comment on the draft report

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<sup>142</sup> This would require a change in the regulatory framework.



comes. This might alleviate the problem that, particular for less well-resourced NRAs, voting can be about little more than rubber stamping the draft EWG's draft Opinion.

- The consultation procedure allowing the Board of Regulators to comment on the draft Opinion prior to voting should provide a quality and consistency check and needs therefore to be thoroughly conducted and meaningful. The current time limit of a single working day is too short. Two working days for comment are the minimum required, but a more elaborate procedure, allowing for up to five working days might be more appropriate. At this stage, the Board of Regulators might be allowed to indicate how they intend to vote, on which basis it might then be appropriate to go for another round of consultations before the final vote.
- Two working days for the rapporteur to revise draft an Opinion and resubmit to the Board of Regulators is acceptable, as is a single working day allocated for voting, especially if the forward-planning exercise (*see above*) is implemented effectively to help to block time so that senior staff are available when they are required.

### **Rapporteurs:**

- It would be useful to define the role of rapporteurs more clearly, so as to leave as little as possible to how much the individual decides to commit to the process.
- When finalising a draft Opinion in the light of the Board of Regulator's comments, the rapporteurs could be obliged to explain why they chose not to follow certain comments, if applicable.
- Rapporteurs should be chosen from among NRA experts. Given their central role in the process (especially towards the end) it is inappropriate that they are provided by the BEREC Office, except in exceptional circumstances.

### **Selecting the EWG:**

- The BEREC Office should make every effort to expedite the selection of experts to an EWG, ideally before the internal deadline of five working days. This would be aided by effective forward-planning (*see above*).
- The selection should ensure a cross-section of experts and NRAs should be rotated to work on different markets.
- It is appropriate to give preference to experts and rapporteurs from NRAs in Member States neighbouring the notifying NRA where there is a close existing working relationship, a good understanding of the market and often no language problems. That said, the approach should be flexible enough so as to allow other (non-neighbouring) NRAs that might have an equally deep understanding of the market in question to be involved.
- Including experts from the BEREC Office in EWGs on an *ad hoc* basis is unsustainable. Either the BEREC Office has to be properly resourced to provide this service, or the list of experts from NRAs has to be expanded and the selection process made more systematic. It is important that the NRAs recognise that, particularly in key policy areas, some senior-level experts will need to be involved in the EWGs and commit the necessary time to this task. Results could be improved with more resources, particularly with the participation of senior and more experienced staff from across all the NRAs.

### **Cooperation between the BEREC Office and the Commission:**

- A protocol to improve information-exchange and cooperation between the BEREC Office and the Commission is to be welcomed and ought to be in place as soon as possible.
- The objective should be to align the information each of these institutions receives to the greatest extent possible and at the earlier stage possible.
- The protocol could also clarify responsibilities for translation of documents.
- There is a need to address the issue of the BEREC Office accessing confidential information, which has so far proven difficult on occasions. There should be reassurance for NRAs that the

same legal protection that applies to confidential information passed between NRAs and the Commission, extends to information passed between the NRA and the BEREC Office.

- It is important for BEREC, the BEREC Office and the Commission to be part of the review process that will lead to the setting up of a protocol.

#### **Monitoring and consistency:**

- We suggest putting in place a procedure to monitor on a regular basis whether NRAs (beyond the notifying NRA) are following the approaches set out in Article 7 and 7a cases when similar situations arise.
- The BEREC Office is well-placed to conduct this monitoring exercise, in for example BEREC Annual Report. Individual assessment reports of the work of EWGs or a similar mechanism would also appear to be suitable instruments to conduct the exercise.
- The BEREC Office might also address whether BEREC Opinions issued under Articles 7 and 7a may feed into other BEREC documents, when relevant.
- BEREC should be committed, by way of its internal Rules of Procedure, to provide more detail in the suggestions and recommendations it makes in its Opinions, so as to further improve regulatory consistency, clarity and the dissemination of best practice.

#### **Language, Drafting and Translations:**

- BEREC's internal Rules of Procedure should specify more emphatically that the BEREC Office is committed to provide support on proof reading of draft Opinions. If necessary, BEREC Office staff needs to be given adequate training to commit to these tasks effectively.
- There should be systematic provision of English translations of relevant documents at the time of notification and the protocol between the Commission and the BEREC Office should specify responsibility for this. Currently, the Commission provides its working translation, which is not official and subject to confidentiality clearance by the notifying NRA.
- It should not fall on individual NRAs to provide translations, as this is a support function that the BEREC Office is better placed to take responsibility for. The Commission currently appears to have the best resources at hand to take on the practical responsibility.

#### **Resources:**

- The Commission ought to rigorously enforce the obligation<sup>143</sup> on Member States to ensure NRAs are adequately resourced to meet their obligations with to BEREC.
- Rather than force an NRA to go through the whole notification process again after a Commission decision and BEREC Opinion expressing serious doubts, it might be allowed to the NRA to simply amend its market definition, designation of SMP and/or regulatory remedy before the finalisation of the process. This would make the delays associated with Articles 7 and 7a more manageable.
- The role of the BEREC Office still needs to be more clearly defined, emphasising its coordination functions. This will help applying its resources more effectively and efficiently. As things stand, the BEREC Office's functions are in danger of becoming blurred because the BEREC Office has, on occasions, had to supply expert capacity due to a lack of available NRA experts.

#### **Location:**

- As the resource-intensive travel to Riga continues to pose problems, there should be ongoing discussion about how best to organise EWG meetings without having to meet in Riga. The compensation that the BEREC Office allows for NRAs to participate in EWGs only partially alleviates this problem.

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<sup>143</sup> Article 3, Framework Directive.

**Regularising Procedural Reviews:**

- BEREC and the BEREC Office have committed to improving their internal procedures by reviewing them, but they could be more explicit about the regularity of these reviews.



## 5. Case Study 2 - Next Generation Access Networks and BEREC

### 5.1. Preamble

This case study focuses on BEREC's work to date on the regulatory governance of next generation access networks across the EU. The creation of Next Generation Networks - and in particular the upgrading of the local part of the telecommunications network to establish next generation access (NGA) networks - is seen by the EU as being a key enabler of the internal market and as such an essential driver of economic and social progress in the coming decade and beyond. Yet NGA networks is currently one of the most complex, burgeoning, incompletely understood, and (thus) disputed, topics in the telecommunications regulatory canon. How to deliver the effective roll out of NGA networks sits at the core of debates on how new electronic communications networks in Europe should be delivered, operated and regulated. The topic of NGA networks crystallises a whole series of telecommunications policy matters, most importantly:

- The role of regulated competition and specifically the provision of appropriate network access to industry players, well established and new entrants alike;
- The possible role of public provision, specifically state aid, in securing the roll out of new networks through which advanced electronic communications will be delivered;
- The relationship between regulatory authorities and other public bodies (e.g. States, regional and local authorities, National Competition Authorities, State Aid Granting Authorities) in the evolution of the telecommunication system; and
- The extent to which harmonised approaches to the creation and functioning of NGAs can be developed across the EU to contribute to the creation of the internal market in electronic communications.

Given the broad policy and societal significance of NGA networks, the complex raft of governance matters associated with them, and their pan-EU significance, NGA has been an important part of the business of the European Regulators Group (ERG) and, thereafter, BEREC itself. Providing an exhaustive account of the involvement of BEREC in policies and regulation of NGA networks goes beyond the scope of this case study. The aim of the study is to provide an analysis of the significance of BEREC, since its inception, in the NGA field, and to make recommendations as to how this might be further developed in the short to medium term.

The case study places its focus on two key areas of activity with which BEREC has concerned itself in the NGA network field. First, it explores BEREC's role in contributing to policy and regulatory understandings of the ways in which European level approaches to the roll out of successful NGA networks across the EU might be achieved through the process of regulated competition. The precise focus here has two constituent elements. The first of these is BEREC's influence on the development of the European Commission's draft Recommendation on NGA access networks. This will allow an assessment of the extent to which BEREC has been able to influence the process of important *policy formation* on NGA. Second, the case study focuses on BEREC's 2011 assessment of the implementation of the European Commission's Recommendation on NGA. In this way, the study aims to provide analysis of the extent to which BEREC has been able to undertake at the European level important evaluation of the *implementation* of (albeit non-mandatory) EU telecommunications policy in the vital arena of NGA networks.

The second part of the case study provides an assessment of the contribution which BEREC has made to work on the use of state aid measures to deliver the roll out of NGA networks in selected cases across the EU. This part of the case study will allow a determination of the degree to which BEREC has been able to exercise influence in an alternative policy approach to the realisation of NGA networks through the selective use of public funding.

In undertaking this analysis, the case study aims to contribute to the following core concerns which underpin the broader evaluation of BEREC and the BEREC Office undertaken in this project:

- The extent to which there is evidence that BEREC's work in NGA network policy is influencing NRA level thinking on NGA in the direction of achieving greater consistency in regulation and fostering of the internal market; and
- The extent to which BEREC's work on NGA networks has been accountable and provided value added to the European Union telecommunications policy environment.

There are three sources of evidence for this case study:

- Primary source documentation produced by BEREC and the EU in respect of Next Generation Access policy and regulation;
- Open ended questionnaire responses from key stakeholders in the NGA community (NRAs, individual and peak level representative industry players; European Commission and BEREC officials); and
- Semi-structured interview evidence.

## 5.2. Introduction and context

Although much of the trunk telecommunications network has been upgraded, the vast and complex copper communication nexus between users' homes or premises (or close to them) and nearest local switching centre has proven exceptionally time consuming and costly to refurbish<sup>144</sup>. Thus, the creation of this local, NGA network remains a major telecommunications policy goal across most of the EU. According to the European Commission, NGA networks consist "*wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics*" (European Commission 2009: 19).

Fixed-network broadband communication has become increasingly prevalent across the EU in the last decade. However, back in 2008 the European Commission calculated that the average fixed-network broadband penetration rate, measured as the number of broadband lines per 100 of the population, was still only 21.7% (European Commission 2008: 6)<sup>145</sup>. In terms of information download speeds, merely 12.8% of broadband lines delivered speeds beyond a very modest 10Mbps. Since 2006, growth in the number of new broadband lines installed across the EU had actually fallen. Broadband lines were present in greatest number in the most populous and strongest of the EU's economies: Germany (20.1%), the UK (15.5%), France (15.4%) and Italy (10%) (European Commission 2008: 10). The fixed broadband line market showed less evidence of incumbent domination than traditional fixed-link networks. However, in 2008, on average across the EU, incumbent ex-PTTs still accounted for 45.6% of fixed broadband access lines, which rose to 52.1% if resale lines in the ownership of these companies are taken into account. Although this figure had been falling since 2003 (from 58.7%), evidence suggested that the rate of market-share reduction had been flattening out since 2005. Though the percentage of Digital Subscriber Lines (DSL) provided by incumbents had fallen from 77.9% in 2003 to 55.9% in 2008, the rate had barely decreased since 2006. However, incumbent fixed broadband access lines domination varied considerably across the EU, from 22% to 83% in 2008 (European Commission 2008: 13f).

It was in this context that the European Commission in a consultation document on state aid to broadband, highlighted the seriousness with which it viewed the development of NGAs, noting that whilst "*a number of operators, both 'incumbent and alternative', have launched large-scale roll-outs of new broadband infrastructure [...] Europe appears to be still lagging behind other economies, notably the United States and Japan*" (European Commission 2008: 2). The

<sup>144</sup> Fibre To The Home (FTTH) and Fibre To The Building (FTTB) in the case of direct access; Fibre To The Node (FTTN) or Fibre To The Cabinet (FTTC) in the case of what the Commission describes as 'an intermediary concentration point' (European Commission 2009: 1).

<sup>145</sup> The range stretches from only 9.5% in Bulgaria to 37.4% in Denmark.



Commission's approach to NGA access has at its basis the desire to ensure EU-wide lowest cost, most flexible levels of access based on the assumption that this will incentivise competitive entry into the market thereby ensuring timely, low-cost, high-quality roll-out of new networks and (by association) new services (Simpson 2012). In terms of pursuing a harmonised approach to NGA networks, the former Information Society and Media Commissioner, Viviane Reding, expressed the concern that "*uncoordinated or even contradictory action of national regulators as regards Next Generation Networks could seriously damage competition and undermine Europe's single market*" (European Commission 2008: 1).

### **Creation and functioning of NGAs through regulated competition - Delivering appropriate arrangements for competitive access to NGA**

The nurturing of EU Single Market in telecommunications through harmonized, regulated competition since the mid-1980s has set a path in which the context for NGA policy-making is the use of regulated competition to achieve policy goals. In 2008, the European Commission produced a draft Recommendation which approached NGA networks from two closely related angles. First, there was a strongly perceived need to incentivise those market players with enough investment capacity - essentially former telecommunications incumbents - to create them. Second, in tandem with this, the Commission sought to stimulate an environment in which access to these core infrastructures could be afforded to the competitors of the incumbents which would have invested in upgrading their networks to NGA network specifications.

The problem faced by the EU and Member States alike centres on undertaking successfully a fine balancing act to realise each of these objectives. The Commission has argued that delivering an NGA environment commensurate with the goals of the Single Market, should entail the provision of a strong regulatory system with:

- as lowest level access (in this case to the incumbent's network ducts) to afford competitors the facility of installing their own fibre;
- access to unused fibre of the incumbent, as well as to its "live" bitstream capacity (European Commission 2008).

Overall, this essentially amounted to a system of asymmetric regulation aimed at mitigating the potentially excessive power of incumbents in NGA network environments.

In September 2010, as part of its strategy for the realisation of the *Digital Agenda for Europe*, the Commission published final Recommendations for regulated access to NGA networks. Reflecting the fact that little, if anything, had changed in its thinking, the Commission noted at the outset that it wished to promote "*efficient investment in new and enhanced infrastructure, taking due account of the risks incurred by all investing undertakings and the need to maintain effective competition*" (European Commission 2010: 35).

Focusing its attention on two particular markets - respectively for wholesale network infrastructure access and wholesale broadband access - the Commission argued that NRAs should *inter alia*: provide, through mandated regulatory measures, access to existing civil engineering infrastructure at prices reflective of costs; ensure where legally permissible that the incumbent operators when building civil engineering infrastructure create space to allow alternative operators to use the facilities in question; mandate access to the terminating element of the incumbent's access network at cost oriented prices; encourage or, if legally possible, mandate incumbent operators to employ multiple fibre lines in the terminating part of the NGA; mandate, in principle, unbundled cost oriented access to the fibre loop of incumbent operators plus co-location and back-haul measures (European Commission 2010: 41-42). With respect to wholesale broadband access, the Commission recommended that incumbent operators be obliged to make new wholesale broadband access products available to competitors at least six months in advance of the incumbent offering its own services, unless other clear ways were available to ensure non-discrimination. These products should be regulated to mandate cost orientation in their pricing (European Commission 2010: 42-43). As noted below, BEREC's work on NGA has contributed to a deeper understanding of the complexities of applying asymmetric or by contrast symmetric regulation in the NGA field.

Given the economics of NGA network and NGN creation, there is little scope for creating much more than duopolistic network competition and significant arguments exist against doing so in the current economic climate. The policy alternatives for NGA are, thus, relatively few in this respect. The most obvious - heavily engineered regulatory access competition - can often amount to a political struggle between what the regulator wishes to impose and what the incumbent regulatee is capable of resisting (Simpson 2011). At this stage in the evolution of NGA, an optimal regulatory strategy for the creation and functioning of NGA across the EU is far from clear. The task of creating it is nevertheless extremely important to engage with. There is clear evidence that this is something BEREC has embraced since its inception (and before in the shape of its predecessor European Regulators Group).

### **NGA network creation through use of State Aid to broadband**

The Commission's State Aid Action Plan (European Commission 2005) has highlighted the role that state-aid intervention can play in eradicating market failures and improving the functioning of markets and competitiveness. The Commission has also more recently claimed that "*where markets provide efficient outcomes but these are deemed unsatisfactory from a societal point of view, state aid may be used to obtain a more desirable, equitable market outcome*" (European Commission 2009b: 2). The presence or otherwise of state aid is assessed within the meaning of article 87(1) of the EC Treaty and its compatibility determined under the stipulations of article 87(3). There are four cumulative conditions that have to be met for a measure to qualify as state aid:

- it must come from state resources;
- it must confer an economic advantage on the beneficiary/ies;
- it must be selective and distorting or potentially distorting of competition;
- it must affect intra-Community trade (European Commission 2009b: 3).

In investigations of state aid undertaken by the Commission in specific respect of article 87, state aid must be found to be well justified in terms of pursuit of social or economic development or as a rectifying measure for clear market failure. The measure in question must be proportionate to its objective/s and have a demonstrably positive effect on welfare and competition. It is also possible for the state to get involved in equity participation and capital injection into a company that might be involved in broadband deployment, and the EU Court of Justice has ruled that direct or indirect activity of this nature is permissible as long as normal market conditions are found to pertain (Simpson, 2012).

Key indicators of abnormal market conditions, thus calling forth an aid compatibility assessment under article 87, would be situations where there was no medium- to long-term possibility of profitability from a venture and where private participants in a venture do not assume the same risk as public participants. This so-called principle of the market economy private investor has been illustrated in the case of broadband in the Amsterdam decision (2007). It is also possible to consider the provision of broadband networks and services as Services of General Economic Interest (SGEI) or public services as defined by article 86(2) of the EC Treaty. Here four so-called Altmark criteria must be met to ensure that the measure in question falls outside the scope of article 87(1). These are:

- the recipient of state funding must be formally entrusted with the service, whose obligations must be clearly articulated;
- the means of calculating compensation for providing an SGEI must be established before the act and must be transparent and objective;
- the compensation must not be excessive;
- where not chosen through a public procurement procedure, the level of compensation must be determined through an analysis of the typical costs to a company of providing the service while ensuring a reasonable profit.

The Commission has argued that for NGAs, "*Member States may decide to invest themselves or provide financial support to private operators in order to obtain NGA network connectivity, or*

*to obtain connectivity earlier than anticipated*” (European Commission 2009c: 20). The Commission has noted that, as in the case of state aid to broadband networks, the market-economy investor principle, public service compensation and Altmark criteria also apply in the analysis of state aid to NGAs. It is important to note, however, that some crucial work required in the deployment of NGAs can be undertaken by the state without it being considered as state aid. This refers to public or civil works such as digging and cable laying. However, this activity, if conducted by the state, would need to be of a non-sector-specific nature and could provide facility to other types of utility providers beyond electronic communication (Simpson 2012).

In its assessment of state aid to NGAs, the Commission used a refined version of the white, grey and black areas approach adopted earlier for designation of broadband areas in respect of considerations of state aid. White NGA areas are defined as those where NGAs do not exist currently and are not likely to be created through market investment in the near future. NGA “grey” areas are those where only one such network is currently in place or is likely to be deployed by the private sector in the near future. This area may be without basic broadband infrastructure beyond that available through the NGA or it may be an area in which one or more basic broadband providers are operational, i.e. a traditional grey or black area (European Commission 2009a: 22). In determining whether a particular measure is compatible, the Commission has stated that it will consider the effects of the proposed aid on existing broadband networks (given current levels of service substitutability) as well as the elements of the balancing test (*see earlier*). In respect of white NGAs where one basic broadband network already exists, states must demonstrate that broadband services already provided “*are not sufficient to satisfy the needs of citizens and business users*” (European Commission 2009a: 22) and that the intended goals cannot be achieved by other means, notably *ex ante* sector-specific regulation.

In respect of NGA grey areas, the Commission concluded in its guidelines that for state aid for the purpose of creating another NGA to be sanctionable the state would have to show that the existing or planned NGA network is insufficient to satisfy business and private-user needs. The Commission further qualified its view by asserting that less distorting means to address user requirements may exist than sanctioning state aid. This refers explicitly to the role of *ex ante* regulation and competition policy in ensuring attractive and effective access conditions under network monopoly circumstances.

In the case of NGA black areas, where more than one NGA network is in existence, the Commission argued in its guidelines that any state aid to provide a new NGA network would have unacceptably distorting consequences on competition. The Commission focused on the process of migration of competitively ordered broadband black areas to NGA black areas. Here, there is potential for state intervention in circumstances where broadband investors do not plan to invest in NGAs in the near future. Thus, states can demonstrate that “*the historical pattern of the investments made by the existing network investors [...] in upgrading their broadband infrastructures to provide higher speeds in response to users’ demands was not satisfactory*” (European Commission 2009a: 23). In these cases, the compatibility test would have to be undertaken. In addition, the beneficiaries of aid must make wholesale access to their network available to competitors for at least seven years, the access conditions to be set in conjunction with the relevant communications NRA. On top of this, the NGA network architecture benefiting from state aid “should support effective and full unbundling” and “multiple fibre” architecture, (European Commission 2009a: 24). This would seem to indicate that the Commission’s preference is for open-access infrastructure. However, the extent to which state aid would be enough to make private companies invest in return for having to provide medium-term open access is a moot point (Simpson 2012).

## 5.3. Analysis

### 5.3.1. BEREC and Regulated Access to Next Generation Networks

The European Regulators Group since 2007, and since 2010, BEREC, have been exploring various aspects of NGA roll out from the perspective of regulated access. The core areas of activity in which the ERG and now BEREC have been involved in are highlighted in the following regulatory work:

#### ERG's work:

- ERG Opinion on NGA roll out (2007). This affirmed the principle of trying to stimulate competition at the deepest level of the network possible as well as endorsing the “ladder of investment” concept for newer entrants. However, the economics of NGA place particular emphasis on the most suitable access points for promoting competition in the network and this may change as network evolution and investments occur. It will also differ between Member States. This was something of a landmark regulatory document on NGA at European level and was well received in the regulatory and commercial communities (authors’ interview). It set the ground for subsequent ERG and thence, BEREC, work in the field of NGA policy.
- ERG (2008), *ERG statement on the development of NGA access*.
- ERG/BEREC provided responses to the three iterations of the Commission’s draft Recommendation on Regulated Access to NGAs (these were in October 2008, July 2009 and May 2010).
- ERG (2009), *NGA Report on Economic Analysis and Regulatory Principles*.

#### BEREC's work:

- BEREC (2010), *Report on NGA wholesale products*.
- BEREC (2010), *Report on the Impact of Bundled Offers in Retail and Wholesale Market Definition*.
- BEREC (2010), *Report on NGA access - Implementation Issues and Wholesale Products*.
- BEREC (2012), *Review of the Common Positions on Wholesale Unbundled Access, Wholesale Broadband Access and Wholesale Leased Lines (2012)*. The 2011 report also has a section on NGA.
- BEREC (2010), *Common Statement on NGN Future Charging Mechanisms - Long Term Termination Issues*.
- BEREC (2011), *Report on NGA - Collection of Factual Information and New Issues of NGA rollout*.
- BEREC (2011), *Draft Report on Co-Investment and SMP in NGA networks*.
- BEREC (2010), *Consultation Report to the Common Statement ‘NGNs Future Charging Mechanisms/Long Term Termination Issues’*.
- BEREC (2012), *Broadband Promotion Report* (and previous years).
- BEREC (2010), *Report on Convergence Issues*.

In setting out its agenda on the topic of the delivery of NGA networks through regulated competition, BEREC has put forward the baseline argument that the application of the EU’s Electronic Communications Regulatory Framework by NRAs “*has proved to be an effective tool in promoting competition*” (BEREC 2011: 5). Since 2010, in addition to its coverage of a range of other regulatory matters, BEREC has undertaken a relatively high volume of work in the NGA field compared to its predecessor. The number of reports produced and made publicly available

by BEREC on NGA has created a significant degree of transparency to other sectoral stakeholders regarding its activities and its developing perspectives on NGA networks.

### **BEREC and the Commission Recommendation on Regulated Access to NGA Networks**

In May 2010, BEREC issued an Opinion on the Commission's Draft Recommendation on Regulated Access to NGA Networks (BEREC 2010a). This was done in accordance with article 19 of the Framework Directive of the Electronic Communications Regulatory Framework of the EU. At this point, BEREC noted that it had been positively engaged with the Commission on "*various revisions made to the Draft NGA Recommendation of June 2009*" produced by the Commission, though as noted above the ERG had made significant interventions on the NGA topic prior to the inception of BEREC. Here, the ERG had recommended deletion of Annex III and the relevant articles 23-25, 26, 37-39, 42 and adjustment of Recitals 29, 30, 32 and 46. This was done by the Commission in its subsequent iteration of the Draft Recommendation on which BEREC commented.

BEREC noted in its Opinion that whilst the 2010 iteration of the document emphasised the role of effective competition in securing the creation of NGA investment, this message could have been even stronger. BEREC asked for explicit mention to occur in the final version of the NGA Recommendation that the "ladder of investment" principle should be maintained and applied in cases of any regulatory remedies imposed in respect of securing NGA investment and functioning. BEREC noted that this was stated by the Commission in its Staff Working Document on the matter but that such a statement was not in the Draft Recommendation. BEREC also welcomed the fact that the ERG's suggestion that symmetric regulatory measures might be used as an option to complement Significant Market Power Regulation in specific cases through the creation of a new Article 7 was adopted. BEREC also welcomed the taking on board by the Commission of the ERG's suggestions regarding criteria to be used in the calculation of risk premia associated with NGA network investments. BEREC's opined that rather than include an a priori risk classification system, it would be better to assess uncertainties in any investment on a case by case basis. BEREC recommended an inclusion to this effect. This provides an important example of the broader principle that BEREC has driven in its consideration of the regulation of NGA across the EU, namely that a "one size fits all" approach, whilst possibly heuristically and politically desirable, should be avoided because of its impracticality. This important theme holds significant implications for the pursuit of a harmonised approach to NGA regulation across the EU (*see Recommendations section*).

BEREC also explicitly set out a series of areas for further improvement. Here it argued that the recommendation was too prescriptive in respect of the outcome of market analysis and the choice and implementation of remedies. Instead, it advocated the adoption of the clear line by the European Commission that a case by case analysis would occur to prevent infringement of the 'principle of proportionality' (page 2) and the risk of inconsistency between the Recommendation in respect of the communications regulatory framework and underpinning competition law principles.

BEREC also quite forthrightly criticised instances of inconsistency and places where there was room for multiple interpretations to be taken in the draft Recommendation. Key issues are:

- flexibility to deal with case by case issues;
- removal of potential for inconsistency;
- the need to ensure that the Recommendation chimes with Framework legislation and underpinning principles of Single Market competition.

Here, BEREC cautioned against the EU taking an overly prescriptive approach in the draft Recommendation, particularly in respect of regulatory remedies related to NGA promotion in designated markets 4 and 5. It cited the inconsistency of this with recital 58 of the 2009 Better Regulation directive which explicitly refers to the 2002 Communications Framework Directive noting how any Commission decision under the latter is supposed to "*be limited to regulatory principles, approaches and methodologies*" and "*should not prescribe detail which will*



*normally need to reflect national circumstances, and it should not prohibit alternative approaches which can reasonably be expected to have equivalent effect”.*

BEREC also made specific critical comment on the draft Recommendation’s reference to the imposition of cost orientation for all wholesale services related to NGA. Doing this, BEREC argued, could result in neglect of the specific circumstances of a particular case without a clear reference to the result of market analysis. Legally, it could well infringe article 8(4) of the Access Directive, risking incompatibility between the NGA Recommendation and the regulatory framework, thus heightening the danger that NRA decisions might not pass judicial review. Recital 20 of the Access directive notes that cost recovery should be appropriate to the circumstances in question and BEREC concluded that “NRAs need flexibility to decide on appropriate methodologies for price control measures” (BEREC 2010: 4).

BEREC welcomed the incorporation in this Draft iteration of the Recommendation of an earlier ERG suggestion that the imposition of remedies in respect of NGA network decisions should not be dependent on forecast market demand. It suggested a change of wording in respect of the imposition of a reference offer in all cases (duct access, access to the terminating segment, access to the fibre loop, unbundled access to the sub-loop and bitstream). BEREC recommended that a valid option might be in cases of uncertain demand, “to impose access without detailed terms in a reference offer”. BEREC called for more open and flexible wording in respect of timescales referred to in article 32 of the draft Recommendation, because of the unpredictability of the market. It also criticised the intention to allow incumbent’s competitors an early market entry opportunity, requiring the SMP provider to wait several months before it could launch a competing product. BEREC argued that this could stifle innovation and increase time to market. It put forward the suggested alternative of a clause allowing competitors to launch rival products at the same time as the retail arm of the SMP operator.

### **BEREC’s Report on the Implementation of the Commission’s NGA Network Recommendation**

The Commission’s Recommendation on NGA network came into force in Member States in September 2010. In October 2011, BEREC undertook an important evaluation of the implementation of the Commission’s NGA Recommendation. In this period, 13 Member States had notified the Commission of remedies exercised in respect of market 4. Ten Member States notified remedies in respect of market 5. Very significantly and echoing a recurrent theme, BEREC noted that different NGA deployment strategies were in operation in the Member States. This was determined by: population densities, geography; costs of deployment (influenced by availability of ducts, access to the sewerage system); demand; willingness to pay for higher bandwidth; competition conditions (interplatform (with cable); intra-platform; penetration achievable; speed of migration. This provides important evidence of the limited extent to which BEREC has promoted the idea of a common approach to NGA roll out and regulation being possible in Member States. BEREC noted that the current state of deployment is reflective of the developmental history in question (particularly market developments and incidence of use of remedies). Specifically, States which are well experienced in Local Loop Unbundling (LLU) are most likely to want to create NGA network routes through a local loop unbundling approach. BEREC argued that the costs of NGA deployment compared to the costs of current broadband deployment (for example the opportunity cost of no longer having to fund LLU) impacts on roll out incentives for incumbents and new entrants. It also noted that prices for current generation services are geographically averaged and questioned whether this would be appropriate in the future for NGA services. It noted the problem that a regulator would face in ensuring consistency of wholesale access prices across the value chain and conducting margin squeeze tests.

BEREC commented that in the implementation phase of its Recommendation, the European Commission had “followed a wide interpretation of the application of the NGA recommendation to mandate access to specific wholesale products reflecting the variety in national circumstances and acknowledging that these circumstances vary too much to be treated in a completely identical manner” (BEREC 2011: 96). In line with this, BEREC highlighted the very early state of knowledge on the effects of certain kinds of remedies in investment incentives and competition in NGA (it is currently not clear whether LLU, duct access, or more active remedy types will be appropriate). Saliiently, BEREC noted that “it is

*currently difficult to already find best regulatory practices*” (BEREC 2011: 96), though if NGA is to be rolled out effectively this is something that will have to be addressed by BEREC.

A particularly important focus for BEREC was wholesale products for NGA networks. In respect of duct access, BEREC claimed that the access obligation in the Recommendation should be defined either by placing the burden of proof on the incumbent or by imposing dark fibre access when no ducts are available. It also recommended definition of rules for allocating limited space to optimise use of ducts. BEREC also made recommendations regarding allocating costs for cost-oriented prices for ducts; as well as noting that the reference offer for ducts should be accompanied by appropriate IT system management and engineering rules to manage duct space; service level agreements for internal and external provision and fault management; key performance indicators to be measured regularly and reported to the NRA and competitors.

BEREC argued that where feasible the SMP operator should create a database of civil infrastructure. This remedy it deemed to be *“essential for the usage of access to civil infrastructure”* (BEREC 2011: 97). Regarding access to the terminating segment in respect of Fibre To The Home (FTTH), BEREC noted that 10 Member States have imposed either FTTH unbundling or access to the terminating segment. BEREC also provided commentary on access obligations in the case of Fibre To The Node (FTTN) and made fairly tentative recommendations. For example, it cautioned against decisions that might require operators who switch to new fibre unbundling technologies in the future to have to re-install co-location facilities that they have de-installed at an earlier point. It rightly pointed out that this would represent a significant barrier to investment.

BEREC made important comments on the use of backhaul dark fibre (passive fibre infrastructure without any active equipment attached) in the case of FTTN, broadly considering it *“a relevant regulated wholesale product also in combination with other access products as it is used to reach the PoP of an alternative operator deeper in the network”*. (BEREC 2011: 101). BEREC also made commentary on wholesale broadband access and pricing principles and risk related to network migration. In its analysis, BEREC provided a number of important general observations. Important among these are that it is more complicated to regulate incumbents since NGA wholesale access products need to be designed and adjusted to different NGA network architectures, once again propounding its key theme that a “one size fits all” approach should be eschewed. BEREC noted an NRA preference for regulatory intervention at the deepest level possible, i.e. one that is constituted by passive remedies, though BEREC questioned whether this will be considered feasible across the EU. On the whole, standards should remain compatible with the principle of third party access (particularly to allow unbundling). Very importantly, BEREC pointed out the uncertainty of a number of factors in the roll out of NGA, notably demand, willingness to pay, penetration, and technological developments. This is a crucial contribution - the journey to full NGA roll out has barely commenced and will require major concerted effort over the next decade. BEREC noted that since corporate roll out strategies are subject to change by major investors, this can call forth change in the regulatory decisions taken by NRAs. This is understandable, though BEREC cautioned that frequent changes of regulatory decisions stands against the long term goal of regulatory certainty that industry players are looking for in the Single Market.

BEREC noted that NGA markets are developing in an increasingly fragmented fashion between geographical areas and also between densely populated and less densely populated areas. This affects issues such as: determination of the concentration point and NGA wholesale product pricing across regions with different population density. Market fragmentation may also be due to lack of one uniform infrastructure. Local fibre networks rolled out by municipalities/local authorities are gaining in importance and BEREC argued that different business cases may exist for these. There will be an increased number of actors at the wholesale level, possibly including incumbents themselves.

Looking to the future, BEREC noted that given the increased number of players at the wholesale level, it might be possible to develop voluntary wholesale access. However, at this early stage in the evolution of NGA network, BEREC underscored the Kroes CEO roundtable finding that it is difficult to get beyond statements of a general nature regarding the willingness to offer non-discriminatory access.



Finally, BEREC noted its concern about the possible emergence of local monopolies in the future and how regulators should respond to this. The answer might be more geographically differentiated markets or more symmetric regulation. Highlighting the complexity of NGA regulation BEREC argued that “*Preventing local monopolies may require different forms of measures such as regulatory remedies both SMP and symmetric, State Aid and competition law which need to be fitted together consistently*” (BEREC 2011: 106).

### 5.3.2. BEREC’s involvement in the debate on State Aid and NGA Networks

In October 2011, BEREC provided its views on a questionnaire produced by the Commission on possible revision to the current State Aid to Broadband Guidelines. BEREC also published, in February 2011, a report on Open Access which focused on possible interpretations and implications of open access in the area of public funding of communications networks and its particular relationship to the Electronic Communications Regulatory Framework. Both these documents represent a significant value added input from a European level regulatory authority into the debate on state aid to broadband and NGA networks.

#### BEREC Report on Open Access

Noting the policy urgency with which Member States were approaching the roll out of NGA, the purpose of this study was to explore the concept of open access in respect of the key measures being employed by states to stimulate the roll out of broadband and NGA networks: legislation, regulation and rules governing the application of state aid. Part of the process of producing the report on open access involved the presentation of a questionnaire to Member States on key aspects of open access and state aid in the context of the roll out of broadband services. This suggests a very important European wide role for BEREC, similar to that played by the Commission in the past.

The specific purpose of the report was to explore “*the nature of ‘open access’ obligations arising from the State Aid guidelines, and how those obligations relate to measures derived from the other legislative provisions (regulated access, national legislation, competition law)*” (BEREC 2011b: 6). Open access was explored in terms of its contexts; interpretation; consistency of interpretation; and the role of NRAs and other stakeholders in open access related issues. This is undoubtedly important work and sits at the core of the future evolution of telecommunications networks and services in Europe. There would certainly appear to be a case for considerable value added being generated as a result of BEREC taking on a task like this (i.e. regulatory expertise exploring issues at a pan-EU level).

The report considered open access in terms of three key areas: State Aid; national legislation and competition law, after having set out the main forms of mandated access which pertain to telecommunications. These are:

- Open access - related to the State Aid guidelines;
- Regulated Access - related to the Electronic Communications Regulatory Framework;
- National legislation;
- Competition law - The Treaty on the Functioning of the EU and EC Merger Guidelines.

BEREC noted that open access is not defined in any legal document but is understood as “*referring to a form of wholesale access whereby operators are offered transparent and non-discriminatory wholesale access, thereby enhancing competition at the retail level*” (BEREC 2011b: 8). In terms of networks created with state aid, this would mean effective, transparent and non-discriminatory wholesale access to the subsidised network in question. BEREC considers that this should cover both passive and active access products. The Open Access report produced some important findings. In many Member States, the NRA does not have legal authority to comment formally or decide on access conditions related to state aid despite the stipulation in the state aid guidelines that the Member State should consult with the NRA in

respect of state aid applications. BEREC found no consistency of approach across Member States to NRA participation in state aid cases, partly due to differences in national legislation. BEREC argued that the extent to which State Aid Granting Authorities (SAGA) take the views of the NRA into account in State Aid decisions is unclear. Beyond this, BEREC made the important point that NRAs may not be well enough resourced to get involved in monitoring state aid to broadband developments, and may not be informed of them in the first place. A key issue is the relationship between access obligations introduced as a result of the contract conditions of a state aid measure and access remedies that might be imposed by an NRA under the state aid framework. Here, BEREC made the important point that access remedies imposed by the NRA must not necessarily replicate the open access obligation under state aid requirements principally since the NRA must assess whether or not an operator has SMP. This is a key area which relevant stakeholders are recommended to resolve going forward.

BEREC made stipulations regarding the wholesale products that providers of SGEI should make available in the case of DSL and NGA networks (dark fibre, bitstream, and sub-loop unbundling). It noted that *“NGA deployments benefiting from state aid should support effective and full unbundling and satisfy all different types of network access that third party operators may seek”*. BEREC acknowledged concerns about imposing all forms of access conditions in so-called white areas where there is an SGEI operator. This would also apply in principle to State Aid operators. Very significantly, BEREC highlighted “touch points” between the competencies of NRAs and National Competition Authorities, particularly where there are SMP operators. How Member States deal with this differs.

### **BEREC’s responses to the Commission survey on possible revision of State Aid Guidelines**

In October 2011, BEREC made an important contribution to a Commission fact finding exercise related to possible revision of the state aid to broadband guidelines.

Despite stipulations of the State Aid Guidelines that Member States should consult with their NRAs in relation to state aid applications, BEREC noted that only in some States did this occur prior to the Commission being notified since, in many States, NRAs lack the legal basis to provide views and/or decisions of this kind. Thus, there is a lack of consistency. In its analysis, BEREC noted that state aid *“could play an important role to extend basic broadband and NGA coverage to areas where operators are unlikely to invest on commercial terms in the near future”* but that *“this should, however, not be taken to imply that state aid should necessarily be used in all Member States”*. Instead, *“emphasis should primarily be on reaching the targets set in the Digital Agenda through a market based approach to broadband and NGA roll-out”* (BEREC 2011c: 4). BEREC noted that *“the effects of the Guidelines are not easy for BEREC to assess, since many NRAs do not have sufficient visibility of the State Aid granting process and the outcome of the subsidies that have been granted”* (*ibid*).

BEREC noted the problem of market demand. Customers may resist paying for high speed services if they can run applications on networks with much lower BPS (Bits Per Second) download speeds - currently applications which require speeds of even 50 Mbps do not exist. BEREC argued that *“considering the lack of a clear cut distinction between basic broadband and NGA it would be beneficial if the Commission outlined the approach that it might take to ambiguous situations”*. BEREC made the important distinction between state aid to traditional broadband for purposes of increasing social inclusion and state aid to NGAs which for the most part do not currently exist, the latter amounting to a modernisation of the state agenda. This kind of argument has been made in telecommunications policy circles in the past in respect of the debate on whether and how to extend universal service obligations.

In respect of wholesale pricing, BEREC noted that in a situation where regulatory prices are changed after a state aid contract has been awarded, a consistency problem may arise between national regulated prices based on SMP regulation and prices which factored in the state aid subsidy (*ibid*: 12). This is an important point and highlights a potential contradiction between the state aid approach and the regulated competition approach. It also points up another layer of complexity in regulating NGAs.

BEREC noted that currently the term “open access” to subsidised networks, like much of NGA regulation across the EU, is not understood fully or clearly. Access obligations can arise from a number of sources, such as state aid guidelines, the regulatory framework, national legislation, the Treaty on the EU, and EC Merger Guidelines. It again reiterated that open access is not defined in any legal document though is “*generally understood as referring to a form of wholesale access whereby operators provide transparent and non-discriminatory wholesale access, thereby enhancing competition at the retail level*” (*ibid*: 13). BEREC made the useful recommendation to the Commission that in its State aid guidelines, the Commission replaces the term “open access” with “mandatory wholesale access” (*ibid*).

BEREC noted that although the current state aid to broadband guidelines refers to the role of the NRAs within the state aid process, they do not clearly specify it. It made the important point that in disputes which involve networks built through state aid “*if the access conditions imposed as a counterpart of the State Aid were found not to be met during a dispute before the NRA, the NRA may lack the legal basis to enforce access conditions not set under the framework [...] BEREC considers that the responsibility for dispute settlement should be linked to the responsibility to enforce the access obligations on the subsidised network. Consequently, the authority that is supposed to enforce the access conditions should equally take a primary role in the process of dispute settlement*” (*ibid*: 20-21).

BEREC’s report on open access provides an extensive treatment of key issues in the relationship between state aid and NGA roll out. In respect of public ownership of NGA infrastructure, BEREC argued that “*public ownership might hold a significant risk to market based deployment of broadband infrastructure [...] public ownership should be considered for passive infrastructure elements that have been publicly financed or deployed*” (*ibid*: 23). During the duration of the state aid contract, the obligations which the subsidised sector is subject to, as a result of the state aid process, coexist independently from any regulatory obligations which have been applied through the regulatory process. BEREC argued that “*the relationship between access obligations imposed under State Aid rules and SMP access obligations following a market analysis [...] will likely be focused more in the upcoming revision of the State Aid guidelines*” (*ibid*: 25). BEREC argued that it should be made clear to SMP operators benefiting from state aid that they have to replicate SMP obligations at the new access points created and that the subsidy is intended indirectly to benefit third party operators to preserve current third party investments and create the incentive for further competition in the retail market.

#### **5.4. Conclusions: the significance of BEREC in the evolution of regulatory policy for NGA in the EU**

NGA is a very new topic with many regulatory uncertainties. It will exercise the minds of engineers, economists, political scientists, policy makers and regulators across the EU for the next five years and probably beyond. BEREC too is a new, unique body and is itself on a learning curve. In a relatively short period of time, BEREC has made significant contributions to the consideration of NGA roll out and regulation, which can be summarised under the following headings:

##### **BEREC’s general contribution to the NGA regulatory environment**

- BEREC’s involvement in NGA stretches back to the days of its predecessor body, the European Regulators Group. A cornerstone moment in the development of European level regulatory consideration of NGA occurred with the production by the ERG of its 2007 Opinion on the Commission draft Recommendation on NGA. BEREC has consistently argued that, at present, a “one size fits all” approach to regulation across the EU towards NGA is inappropriate.
- BEREC has used its European level position to illustrate how EU level requirements may not easily match national level conditions. This approach merely highlights the current and future challenge of overcoming such diversity to achieve a common enough NGA network environment to make a major contribution to the functioning of the internal market.
- In the debate on state aid to broadband BEREC has defended the idea of proportionality in any decisions on the granting of state aid to broadband. Specifically, BEREC argued that it

might not be necessary to mandate maximum access for competitors to the infrastructure of a recipient of state aid as a rule. Rather, this should be considered on a case by case basis.

- BEREC's work on NGA policy and regulation to date, as well as empirical evidence from stakeholders gathered in this study, suggest that BEREC is developing a distinctive, separate character and role from the European Commission and NRAs. Whilst it is very early days, signs of such independence in its development are particularly important.
- BEREC's work on NGA networks evidences the emergence of a new degree of transparency in EU level electronic communications regulation. The requirement placed on BEREC to arrive at, and publish, concerted policy statements has challenged BEREC to try to develop clearly affirmed positions, rather than potentially more vague statements of what might be possible. However, in the NGA case, getting to this position is still a work in progress.

### **BEREC's developing relationship with the European Commission**

- A key element of the role and position of BEREC is that the European Commission is required to take "utmost account" of the views of BEREC.
- In its work on state aid to broadband, BEREC initiated a highly valuable dialogue with the Commission over state aid to broadband matters. This was important in a number of respects. It allowed BEREC to make a significant input into the debate on state aid to NGA. Such engagement also provides evidence of regulatory cooperation and learning at the EU level which should be further pursued.
- BEREC has made particularly useful progress at "day-to-day" working level in respect of its interaction with the Commission. An innovative feature in the NGA policy context has been the formation of "working coalitions" of regulators to request changes from the Commission at the working staff level which illustrates how behaviour modification has occurred among NRAs in the light of BEREC's stimulus and influence.
- BEREC's report on the implementation of the NGA Recommendation is one of its most important pieces of work to date on policy implementation. BEREC was asked to consider the development of regulatory best practices for NGA. However, instead, it put forward a picture of the current state of play of NGA policy by highlighting the diverse positions currently pertaining in national markets. This has provided the Commission with important evidence and highlights future policy challenges for itself and BEREC. A key finding of BEREC's Report was that symmetric regulation might be used as a supplement to Significant Market Power Regulation to assist NGA development.
- Evidence gathered in this project suggests that BEREC's input into the European Commission's NGA Recommendation has been highly regarded by a considerable number of stakeholders. The dialogue which BEREC developed with the European Commission has been considered "*very relevant*" not least in respect of BEREC's criticism of the "*excessive level of detail of the Recommendation*" (author's survey 2012). Evidence suggests that both parties have benefited from the interaction.
- There is also evidence that the Commission and BEREC have developed an important mutual understanding of key aspects of the debate on state aid to NGA roll out. An NRA stakeholder noted that "*BEREC shares the Commission's view that State Aid - public funding - could play an important role to extend basic broadband and NGA coverage to areas where operators are unlikely to invest on commercial terms in the near future and to achieve the above - mentioned goal*" but that "*State Aid should not necessarily be used in all Member States*". (authors' survey 2012).

### **BEREC's contribution to European level regulatory expertise in NGA networks**

- There is evidence that BEREC is developing a strong epistemic regulatory community at the European level in the NGA field. The BEREC Expert Working Group on NGA possesses very detailed technical expertise. Evidence from the work produced on regulated access to NGAs and State Aid to NGA suggests that the group has developed into a strong regulatory learning environment and possesses considerable capacity to develop this further. The EWG on NGA was the first BEREC EWG to introduce an important innovation which resulted in the



creation of a series of drafting teams within the group to deal with specific work areas. The teams are drawn from the EWG and meet separately to produce draft reports which then go to the general EWG for comments. There is evidence that this organisational innovation (drafting teams) has improved the quality of the work of the EWG. This pertains particularly to the BEREC report on Open Access. Both the technical expertise in BEREC EWGs, as well as this working practice innovation, made an important contribution to European regulatory expertise in the NGA field.

- In its work, BEREC has been able to provide a body of in-depth expert knowledge on national markets that was useful in its engagement with the Commission over the latter's NGA Recommendation, something acknowledged by a Commission stakeholder. A particularly useful consequence was BEREC's ability to situate current evidence of NGA development with the policy ambitions of the EU. An NRA stakeholder surveyed noted that the Commission "*has taken long-run approach whilst, [the] NRA had to start from real national situation*" (authors' survey 2012).
- In respect of state aid to NGAs, BEREC too has been able to assist the Commission's understanding of national markets and conditions. This has been particularly important in respect of issues such as the legal basis for aid, staffing of State Aid Granting Authorities, proportionality of measures, and the role of the NRA in State Aid cases.
- BEREC's work on NGA networks has also benefited NRAs in understanding key issues. There is also some evidence from this group of acknowledgement of BEREC's efforts to draw together and represent common views whilst making clear the existence of national variety.
- BEREC's ability to recognise the inter-linkages between regulatory obligations and state aid obligations has been recognised as important by NRAs. It has also been claimed that the Commission "*took very seriously the BEREC input on this issue [...] BEREC's input on the practical problems faced by NRAs has been very useful for the Commission*" (authors' survey 2012). Generally, BEREC's provision of regulatory insights on Open Access in the NGA context has drawn praise.

### **BEREC's contribution to regulatory value-added at the European level**

- BEREC's work on the formulation and implementation of the NGA Recommendation provides important evidence of the value added of the new regulatory procedure, as well as the existence of BEREC as an EU level regulatory body. This is succinctly captured in the view of one NRA surveyed, who argued that "*this was the first case where BEREC provided an official Opinion according to Art. 19, which the Commission had to take into utmost account*".
- BEREC was particularly successful in asserting its influence in securing the changes to the draft NGA Recommendation related to the factors of uncertainly influencing risk in NGA investment calculations, the deletion of Annex III from the first version of the draft NGA Recommendation and inclusion of uncertainty when assessing investment risks.
- There is some evidence that the activity of BEREC in analysing the implementation of the NGA Recommendation has promoted a greater degree of regulatory certainty with sectoral stakeholders. A BEREC NGA Expert Working Group member argued that BEREC's work "*is contributing, in great extent, to give certainty to NRAs and stakeholders on best practices*" (authors' survey 2012). BEREC's ability to collect EU-wide regulatory information as well as to disseminate regulatory knowledge has been noted by NRAs. This has the potential to deliver the expected future contribution of NGAs to the internal market in electronic communications, though much work remains to be done.
- The ability of BEREC to contribute to the creation of an informed debate on NGA and to exercise influence with the Commission has been considered important by industry players surveyed. This has been declared particularly significant for players interested in making investment decisions.
- The same pertains for NRAs, one of whom has argued that "*one of the advantages in BEREC taking on a monitoring/fact finding role in the case of the implementation of the NGA Recommendation is that BEREC is more sensitive to the local specific environment, within*

*which each NRA is implementing this recommendation ... [which] ... contributes to the creation of certainty required for the stimulation of investment in NGA” (authors’ survey 2012).*

- Overall, BEREC’s input into the Commission’s consideration of the revision of state aid rules to broadband has been considered highly significant by NRAs, the Commission, and some industry players.

#### **Areas where BEREC’s performance could have been stronger**

- Whilst BEREC’s work programme in the NGA field since its inception has been large and significant, there is some evidence that the agenda it set itself was too large in the time available. This stemmed to some degree from the external expectations generated around BEREC that it should be seen to be a highly active regulator.
- Whilst their relationship has developed significantly, some evidence gathered suggests dissatisfaction that better interaction between BEREC and the European Commission could have occurred. Several NRA stakeholders also claimed that BEREC’s input had not been sufficiently taken into account in the final NGA Recommendation.
- Whilst there is considerable evidence of good quality working relations between the two bodies, a senior BEREC figure also noted that there might be disjuncture and tension between the Commission’s political agenda and regulators’ technical agenda. It was argued that regulators are best placed to provide evidence of the impact of Commission’s decisions since they are “*designing, implementing, and monitoring the effectiveness of regulation on a daily basis*” (authors’ survey 2012).
- Whilst most evidence suggests the view among stakeholders that BEREC has contributed to regulatory certainty in NGA, views gathered from industry players have been more critical, with claims that it has had only limited or no contribution to an environment regulatory certainty on NGA. Some NRAs views on BEREC’s contribution to regulatory certainty suggest room for improvement.

## **5.5. Recommendations**

### **Development of a common approach to EU-wide NGAs**

- This case study has highlighted BEREC’s work in demonstrating the variety existing in NGA strategies at the national level across the EU and its finding that, currently, a one size fits all approach to EU NGA is inappropriate. This calls forth two further areas of work. The first is the challenge to move forward and set out clearly the elements of a harmonised approach to NGA across the EU in the short to medium term future. Once these elements are in place, BEREC should be able to define an EU vision for full NGA deployment, something which to date it has not achieved.
- Within this vision, the pursuit of the internal market should be at the forefront of regulatory thinking, both as a means and an end. First, BEREC can utilise progress already made at creating harmonisation in the current telecommunications regulatory framework, as a route to the attainment of a common approach to new NGA networks. Second, the pursuit of an NGA environment at EU level which delivers a next generation electronic communications internal market should be a policy goal in itself.

### **Further Work in Key Aspects of the NGA Field**

- NGA requires complex regulatory solutions. Given the importance of NGA, BEREC should continue, together with the Commission, to develop detailed thinking in the short to medium term. BEREC should try to promote a common EU approach towards NGA networks.
- BEREC’s work to date has contributed to a deeper understanding of the complexities of applying symmetric and asymmetric regulation in the NGA field. This work should be continued as priority with particular consideration of the consequences of any regulatory



change for the development and performance of the internal market in electronic communications.

- The allocation of state aid to telecommunications operators to create and extend NGA networks in return for having to provide open access to competitors creates the important consideration of the extent to which this will prove a sufficient stimulus to investment. This is an area where BEREC could build on regulatory work done with NRAs, in particular. Throughout, it would be important to take stock of any potentially deleterious consequences for the delivery and functioning of the internal market in electronic communications of such state aid.
- The topic of imposition of regulation in respect of reference offers for access to incumbents' NGA networks is a topic to which BEREC has already made an important contribution. This work should be further developed since it sits at the heart of the creation of a functioning, harmonised NGA network across the EU in the future.
- BEREC's work which has highlighted factors influencing the *deployment* of NGA networks in Europe must continue as a priority. Undertaking this specific work will make a key contribution to the attainment of a shared vision for NGA creation across the EU.
- BEREC has already pointed up the danger of the possible re-emergence of local monopolies on the telecommunications landscape, this time in the context of NGA networks. In the future, BEREC should place particular focus in ensuring that knowledge is acquired on any tendencies in this direction such that appropriate NGA policies can be created to counteract and, if necessary, mitigate the consequences of such developments.
- The Reports that BEREC has produced on Open Access, including its associated questionnaire, provide important evidence of BEREC being able to work towards the harmonisation of the internal market. Assuming this part of the "regulatory burden" at EU level is something which BEREC, as an independent regulatory body, must develop further as a priority.
- BEREC has played an important role in providing key information to NRAs to assist their thinking on open access in NGA environments. Further development of this kind of activity, though resource intensive, would enhance further BEREC's provision of regulatory value added at the European level and is a key tool to promote harmonised approaches to NGA policy across the EU.
- BEREC should assist in whatever capacity possible to develop a satisfactory approach to the as yet unclear division of responsibilities between SAGAs and NRAs in considering issues of state aid to NGA roll out. Whilst the decision taking on this matter is not in the remit of a regulatory body, BEREC should assist wherever possible in providing regulatory know-how to political decision makers in their consideration of the role of NRAs, in particular, in the state aid to NGA networks process.
- BEREC's workload in NGA has been very large in a relatively short period of time. Given the complexities and uncertainties of NGA, it is recommended that BEREC undertakes a review of the accumulated position to date regarding NGA regulation. This is a time-consuming but necessary process. This will contribute to the establishment of the degree to which any long-term shared position on the future of NGA policy can be determined.
- A significant number of stakeholders from the telecommunications industry (individual and collective body) were of the opinion that BEREC did not take into account their opinion on NGA in developing its policy. If this is not the case, it is recommended that BEREC put in place information dissemination measures to let stakeholders know explicitly if, and if so how, the views put forward to them on NGA were incorporated.

### **Operational recommendations**

- The fact that the Commission must take utmost account of BEREC's Opinion on regulatory matters has set important ground for developing their relationship here in the future. Resources should be deployed to ensuring that relationship building and development between the two bodies can continue to occur effectively. The positive work already

undertaken in the NGA field can deliver further benefits through cooperative NGA policy that is characterised by flexibility, accommodation, knowledge sharing and policy learning.

- The achievement of common policy on NGAs will be challenging. In the future, BEREC should aim to avoid producing “soft” policy declarations and try to reach an agreement between NRAs on a particular matter.
- BEREC should be encouraged to pursue the highest levels of regulatory excellence. It should aim wherever possible, to pursue regulatory innovation in electronic communications. This may entail some degree of risk but the NGA policy field represents a key forum where existing regulatory thinking can be challenged and stretched to create innovative EU wide solutions.
- The technical expertise in BEREC EWG on NGA, as well as the working practice innovation of developing drafting teams, has provided value added in the regulatory process for NGA policy development at the European level. BEREC should be encouraged to devote resources to creating similar organisational innovations and, thereafter, to develop further its current internal best practice sharing activities.
- The BEREC EWG on NGA has proven to be a strong regulatory learning environment and possesses considerable capacity to develop this further. It is recommended that BEREC try to devote resources to facilitate and enhance this further.
- Given the breadth of coverage of the NGA network policy field, the role of BEREC Plenary Meetings could be further developed to create agreements in the NGA field.
- There is some evidence from this case study that BEREC Chairs employ different ways of dealing with the NGA working group. It would be useful to create a clearer more consistent handover mechanism between Chairs on the NGA matters.
- It is vital that the BEREC Office is staffed with appropriately qualified experts. The BEREC Office has been viewed as very bureaucratic and it has been suggested that cooperation between BEREC working groups - in this case the NGA Expert Working Group - and the BEREC Office could improve.
- The regular meetings of the BEREC NGA EWG in Brussels have proven to be very fruitful (authors’ interview, 2012). These meetings in Brussels should continue.



## 6. Conclusions

To conduct the evaluation, findings resulting from the survey were combined with the two case studies. These conclusions cover the overall assessment of BEREC and the BEREC Office.

**The structure of BEREC is overall relevant and efficient even though the everyday work of NRAs has not changed with the creation of BEREC by comparison with the ERG.** Indeed, *“the EU regulatory framework sets out objectives to be achieved and provides a framework for action by national regulatory authorities (NRAs), whilst granting them flexibility in certain areas to apply the rules in the light of national conditions”*<sup>146</sup>. In addition, BEREC appears nowadays the most adaptable and balanced organisational structure to regulate electronic communications in the EU: promoting the harmonisation of the Single Market and adapting BEREC outputs to each national market. Furthermore, when considering the effectiveness of the platform to achieve its requirements and objectives, BEREC may be considered, until now, a success. In this respect, the proposed structure of the BEREC platform is able to provide a more organised work by comparison to the ERG and brings added value to EU institutions and NRAs. Furthermore, the involvement of NRAs in the Expert Working Groups has permitted the EWGs to deliver contributions on time despite a heavy Work Programme and *ad hoc* requests that require the setting-up of *ad hoc* Expert Working Groups.

**The advisory role of BEREC is not sufficiently defined,** despite a clear statement in BEREC Regulation: *“BEREC shall advise the Commission, and upon request, the European Parliament and the Council”*<sup>147</sup>. The past year also showed clear evidence of the willingness of the European Commission and other EU institutions to employ BEREC as such. In addition, many of the large number of BEREC outputs are to a certain extent advisory documents, such as reports and opinions. However, many participants to the survey regret that BEREC does not shed enough light on emerging issues or propose recommendations and/or guidelines to face them. Since BEREC is also at the early stages of development and in a learning curve, it might be difficult to get affirmed positions - this is a work in progress for BEREC and will require a significant cultural change among NRAs. What we are essentially witnessing is the beginning of some kind of EU supranational regulation, though only of a qualified kind, i.e. the national level is still predominant. BEREC being a bottom-up regulatory model exemplifies in some cases more national considerations than a pure EU Single-Market driven approach. At the same time, the Single Market is a long-term project mainly served through the work NRAs achieve together and with the Commission to ensure the consistent application of regulation in all Member States and to increase the quality of regulation across national markets.

**The independence of BEREC could be improved.** As stated in BEREC Regulation: *“BEREC should provide expertise and establish confidence by virtue of its independence, the quality of its advice and information, the transparency of its procedures and methods of operation, and its diligence in performing its tasks”*<sup>148</sup>. To begin with, BEREC independence needs to be considered *vis-à-vis* two sets of stakeholders: (1) EU institutions and (2) NRAs. On the one hand, the EU institutions welcome BEREC’s independent advisory role and are willing to maintain its independence. On the other hand, independence towards NRAs, that is, whether BEREC assumes an EU vision rather than a nationally driven one, is more complex in the sense that NRAs intrinsically compose BEREC and strengthen BEREC thanks to their own knowledge and expertise at the national level. Even though, *“in all its activities BEREC shall pursue the same objectives as those of the national regulatory authorities”*<sup>149</sup>, BEREC outputs should illustrate an EU perspective and provide an EU-wide approach towards the issues addressed. In addition, as stated in BEREC Regulation, the aim of the platform is the *“further development of consistent regulatory practice through intensified cooperation and coordination among NRAs, and between NRAs and the Commission”*<sup>150</sup>. Following that, NRAs very much appreciate the sharing of knowledge and experience that the platform enables, but

<sup>146</sup> *Préambule* (3), BEREC Regulation.

<sup>147</sup> Article 1, BEREC Regulation.

<sup>148</sup> *Préambule* (6), BEREC Regulation.

<sup>149</sup> Article 1(3), BEREC Regulation.

<sup>150</sup> *Préambule* (14), BEREC Regulation.

BEREC, as a single entity, should be more focused on missions that concern the Single Market: harmonisation of the internal market and empowerment of EU consumers. The latter will also increase BEREC's prominence in the minds of the EU citizenry. In that sense, perceptions resulting from the Article 7/7a procedures and the work achieved on international roaming constitute good examples to follow for the future. Furthermore, BEREC should also be independent from any government or stakeholder<sup>151</sup> and, in order to achieve this, it is of utmost importance that at the national level, each NRA composing BEREC carries out its functions independently.

**The accountability of BEREC is complicated to consider.** According to BEREC Regulation, "*BEREC and the Office shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular in relation to the results of their work*"<sup>152</sup>. Since BEREC is independent from EU institutions and is composed of national entities, the first question concerning accountability that comes to mind - *towards which entity should BEREC be accountable?* - is difficult to answer, because BEREC is an independent body. On the other hand, we could consider another question related to accountability: *what BEREC should be accountable for?* This second question appears more significant. That is why if BEREC were able to express clearly the topics it considers as key, it could define priorities and could strengthen, first, its role of advisor to the EU institutions regarding the harmonisation of the Single Market and, second, its role played for NRAs regarding benchmarking, snapshots sharing and exchange of best practices. Finally, BEREC is not accountable to EU consumers or to commercial entities in the telecoms sector. This raises the issue of a raft of different accountability routes and development trajectories. As a whole, regulatory accountability at the European level is a hugely complex matter and one that is only being tackled in recent years.

**The scope and the regular review of the BEREC Work Programme could be enhanced.** BEREC implements different methods to manage its workload since its inception, such as: (1) a mid-annual revision of the Work Programme, (2) cooperation between Chairs to smoothen the transition, and (3) the definition of "A items" that are adopted in Plenary Meetings without discussion. Nevertheless, upcoming *ad hoc* requests and article 7/7a procedures require BEREC to deliver more documents than expected during the adoption of the Work Programme. It is very challenging for BEREC and NRAs to cover all Commission's requests on short notice, such as advice on: non-discrimination, costing, universal services and the cost of non-Europe. As a consequence, it seems that the BEREC Work Programme is difficult to accomplish considering in addition that BEREC is willing to pay more attention to *ad hoc* requests proposed by the Commission while some NRAs face staff and resource downsizing at the same time. Therefore, it is in the interest of both BEREC and the European Commission to have greater flexibility and to invest more time and effort to manage the BEREC Work Programme in order to avoid last-minute issues or a decrease in the quality of deliverables. In that perspective, BEREC has set up a Mid-Term Strategy and currently develop a strategy paper.

**The role of BEREC towards some topics should be clarified and BEREC should better prioritise its Work Programme.** For instance, although BEREC has no responsibility to assist the development of digital public policy, the Digital Agenda for Europe is part of the Mid-Term Strategy and also frequently discussed during Plenary Meetings. Moreover, since this policy initiative - and its current review - is high on the agenda of the European Commission and of NRAs, it also influences BEREC, which has nonetheless no official role in relation to it. Overall, this raises the issue of the borderline between regulation and policy-making. There is a strong view among certain regulators that they should not get involved in the latter to too great an extent, considering also that they might not have the resources to do so. Therefore, following the previous conclusion, since the BEREC Work Programme is already quite dense, the platform needs to pay more attention in prioritising the topics it addresses. That is why BEREC has developed a Mid-Term Strategy that defines a timeframe for Work Programmes. Also, since this Mid-Term Strategy has been developed in 2011 and 2012, it will need time to show visible effects in terms of prioritisation. A complementary way for better prioritisation would also to foster the existing communication with the Commission as well as with the external stakeholders at the

<sup>151</sup> Article 4(2), BEREC Regulation.

<sup>152</sup> Article 18, BEREC Regulation.

development stage of the Work Programme. In addition, even though each Work Programme is drafted by the incoming BoR Chair, the current practice is that the WP is highly dependent on the motivation and leadership of each EWG Chair. Therefore, it is highly recommended to have an on-going review of the topics, which might lead to dismantling some EWGs or merging some together and make this decision on a yearly basis (*see our Recommendations*).

**The quality of BEREC work varies according to the topic addressed.** Although, most of the documents are considered of good quality by stakeholders, some documents could be better drafted and consistency between documents could be improved. These issues are often linked to the number of documents to deliver, the political importance of the topic addressed, the time and national experts' availability to draft them as well as the internal work organisation chosen by the EWG Chair. That is why BEREC should adopt a more measured workload as it gains confidence. Organisation of EWGs is also not harmonised and is defined by each EWG Chair. That is why BEREC realised that to improve the consistency of its documents it needed to improve its editorial style (layout, format, and quality of English)<sup>153</sup>, while taking into consideration the particular approach that each topic requires. The BEREC Office might be in charge of ensuring the consistency of BEREC documents and implement the editorial style chosen.

**Resource and time management during the Article 7/7a procedure is challenging.** BEREC and the BEREC Office have so far fulfilled their functions under the Article 7/7a procedure successfully, but the workload has been higher than expected and resources are stretched. Nonetheless, BEREC has issued opinions on time in all cases so far. The cooperation between BEREC, the BEREC Office, the Commission and the notifying NRA appears to be well-functioning generally. The BEREC Office has fulfilled its role professionally and, on the whole, effectively, given the high workload and with limited resources.

There are a number of procedural challenges during this Article 7/7a procedure. NRAs have little time to make resources available, and the setting up of Article 7/7a EWG is still too time consuming and could be more systematic. The time-limit for the EWG to produce draft opinions is too short, and the time-limits for Article 7 and 7a respectively could be better aligned. The time provided for comments on draft opinions is considered too short. Furthermore, the cooperation between the Commission and the BEREC Office could be further improved, for example by way of protocol, to ensure smooth communication of case-relevant information. Translations into English are not always provided in a timely fashion, and it could be clearer who is responsible for providing translations. The BEREC Office still could improve the support it provides on proof-reading and English language revision. Finally, BEREC itself (at the Plenary Meeting in May 2012) has proposed that NRAs should be required to communicate to BEREC and to the Office any Article 7/7a notifications they plan to make in the calendar year, so as to allow for more effective forward-planning and improve resource management that might alleviate some of the time and resource constraints.

**Some of BEREC's tasks have not been conducted yet.** Since BEREC is still a new structure, some of its tasks - such as support to the European Parliament or the Council in relation with third parties - have not been fully conducted yet.

**Roles related to external communication should be clarified.** As BEREC is a complex structure, it is complicated for industry representatives to know whom to contact in case of questions or issues: the Chair, the Administrative Manager or EWG Chairs. Until now, the stakeholder engagement was for a long time mainly limited to post-Plenary debriefings and to public consultations. A highly welcomed initiative of the current Chair was to organise public workshops and provide regular consultation times in Brussels to enhance communication with third parties. Relations with the industry are a key area for improvement for BEREC going forward.

<sup>153</sup> BoR(12) 47, *Building BEREC's future: practical and strategic next steps*. BEREC working document, not published.



**The internal organisation of BEREC needs to be improved**, which has been identified by BEREC as well:

- The Board of Regulators should focus more on strategic issues, determine the emerging issues to tackle and define the future topics to address. To that extent, the mandate provided to the Chair in 2012 appeared to be more defined than in 2011. BEREC strategy paper currently under development proposes to organise two strategic workshops per year<sup>154</sup>.
- The Contact Network should enable the BoR to discuss and take strategic decisions. The introduction of “A items” during Plenary Meetings (items that are approved without discussion) and its increased use in the future may allow the BoR to discuss longer on more strategic topics. The CN should also keep on improving the prioritisation of the agenda of Plenary Meetings and coordinating/harmonising EWG work.
- The operation of EWGs lack consistency due to different working methods of each Chair. That is why guidelines could improve outcome consistency and delivery, while taking into consideration the particular approach required for each topic addressed. A process of regulatory learning could/should occur: although this is time consuming it could well be worth the effort. A harmonised internal organisation of all EWGs into task forces could also improve the effectiveness, efficiency and consistency of EWG work (*see our Recommendations*).

**The use of the BEREC Office needs to be clarified and improved.** Nowadays, a clear distinction is made between the administrative support that the Office has to provide and the professional support it should also provide. Considering the administrative support, the Office is in charge of diffusing information and documents to the EC and NRAs; as well as supporting the Chair to organise meetings. Although some stakeholders consider that this aspect should be improved, the required adaptation is not so challenging. Considering the professional support, the expertise of the Office staff is today not used for different reasons:

- Some NRAs consider that the BEREC Office has only a small professional support to provide since the expertise is at the EWG level, while other NRAs consider that the BEREC Office expertise at the EWG level should be enhanced;
- Some NRAs distrust the BEREC Office since the Office influences the setting-up of EWGs and diffuse information and regulatory best practices among NRAs, implying the involvement of an EU-level body in a platform composed of national entities;
- Some NRAs also distrust the BEREC Office because it creates a more bureaucratic environment;
- Some NRAs consider that the BEREC Office is too far to be fully used since it is located in Riga;
- The BEREC Office is not willing to impose its views since it exists as support and has no mean to intervene without a decision of the BoR/MC or upon an EWG request;
- There is also a concern that the BEREC Office is not staffed sufficiently with people with the appropriate level of expertise and/or experience.

The use of the BEREC Office firstly requires a change in mentality within BEREC. To begin with, more communication and trust is needed between the BEREC Office and the CN and EWGs. Moreover, the main question to answer is: *which role should the BEREC Office and its staff play when it comes to the substance/content of EWGs’ work?* NRAs as well as the European Commission do not have the same approach to this question and a clear change in BEREC Office’s role might involve a change in BEREC Regulation.

Indeed, one of the biggest challenges for BEREC concerns the appropriate use of the BEREC Office. While the Office will have at the end of 2012 its target size and set-up, the role that

<sup>154</sup> This strategy paper was presented during the BoR Plenary Meeting of May 2012 in Dubrovnik, Croatia.

BEREC - and so EWGs, their respective Chairs, the CN, the BoR and the Chair - would give to the BEREC Office will have greater influence. Two approaches exist:

- Either the BEREC Office only exists to provide administrative support in the sense that it diffuses information among NRAs and helps to set-up the EWGs. This option enables national experts to keep control of BEREC documents to deliver.
- Or the BEREC Office takes a greater place in the drafting and delivery of BEREC contributions by supporting the EWGs with their expertise and knowledge of the electronic communications market at the EU level. This approach could offer an EU dimension in the outputs delivered by BEREC, in addition to the national expertise provided by NRAs and resulting from their day-to-day regulatory practice in their respective national markets. Moreover, the BEREC Office is already providing stronger professional support in the Article 7/7a opinions.

According to the BEREC Regulation, the BEREC Office should provide administrative and professional support. The balance between the administrative and the professional support depends on the strategic direction chosen by the BoR, the BoR Chair and each EWG Chair.

To summarise our conclusions, we propose the following SWOT of BEREC<sup>155</sup>.

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<sup>155</sup> The method used to develop the SWOT analysis is provided in *Appendix B. - BEREC SWOT analysis*.

**Figure 38: BEREC SWOT analysis**

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>• <b>Knowledge and technical expertise</b> <ul style="list-style-type: none"> <li>– Knowledge of national environments</li> <li>– Rapid diffusion of information</li> </ul> </li> <li>• Solutions proposed are adapted to each <b>national market</b> (for instance on termination rates, the method used to calculate costs is adapted to each country)</li> <li>• <b>Economies of scale</b> and resource saving thanks to the use of existing expertise</li> <li>• <b>Strong mobilisation of people</b> and strong willingness to provide documents with high quality, sometimes in a very short timeframe</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Accountability</b> <ul style="list-style-type: none"> <li>– BEREC needs to clearly prioritise its objectives and focus more on the Single Market as such (and consequently be more accountable for its objectives related to the Single Market)</li> </ul> </li> <li>• <b>National thinking compared to harmonisation</b> <ul style="list-style-type: none"> <li>– Availability of resources depends on national interest for the topic addressed</li> <li>– Focus more on the national issues raised by the telecoms challenges addressed</li> </ul> </li> <li>• <b>Active participation concentrated on a few NRAs</b> (most of the time being the NRAs having the largest resources, personnel and experience; increasing differences among NRAs), despite the willingness of all NRAs to participate to all EWGs</li> <li>• <b>Decision-making process</b> <ul style="list-style-type: none"> <li>– Nowadays, the decision-making process is more bottom-up - depending on the EWG's Chair experience and management - while prioritisation and reduction of items on the agenda are needed: decision-making should be more top-down and follow BEREC's vision and strategy decided at the BoR level</li> <li>– Subjects can be put on the agenda by an NRA without a clear decision on: first, if the subject really had to be tackled, and second, its priority on the agenda (high/medium/low)</li> </ul> </li> <li>• <b>Internal organisation and communication</b> <ul style="list-style-type: none"> <li>– CN should act more as a filter between EWGs and the BoR</li> <li>– CN and BoR meetings' agenda are too long</li> <li>– Delivery of documents could be improved in terms of quality and on-time delivery</li> </ul> </li> <li>• <b>Role given to the BEREC Office</b> <ul style="list-style-type: none"> <li>– The role of the BEREC Office as professional support is not fully exploited</li> <li>– Distrust exists between NRAs and the BEREC Office</li> </ul> </li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>• <b>The BEREC Office</b> <ul style="list-style-type: none"> <li>– To be more developed as a support when expert analysis is needed</li> <li>– To become one of the points of contact in case of specific questions for external parties (even though it involves good communication between the BEREC Office and the BoR Chair, ultimately in charge of communication)</li> <li>– To mutualise its administration and procurement services with another EU organisation/agency close to Riga is an option</li> </ul> </li> <li>• <b>The Mid-Term Strategy</b> <ul style="list-style-type: none"> <li>– Sets priorities for the next 3 to 5 years</li> <li>– Proposes an approach and a prioritisation of subjects to tackle</li> <li>– Enables continuity between chairmanship</li> </ul> </li> <li>• <b>The Article 7/7a Procedure</b> <ul style="list-style-type: none"> <li>– Considered as one of the greatest added value of BEREC compared to ERG</li> <li>– Solutions are not imposed by the European Commission but result from a discussion between national experts: NRAs are responsible for the solution</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Number of EWGs and their internal governance</b> <ul style="list-style-type: none"> <li>– EWGs are too numerous, leading to a lack of prioritisation in the topics BEREC addresses</li> <li>– Governance of EWGs relies on the influence of the Chair and more consistency should be introduced</li> </ul> </li> <li>• <b>Search for consensus</b> <ul style="list-style-type: none"> <li>– Might result in minimum Common Positions reflecting lowest common denominator amongst BEREC members</li> <li>– Will not improve the harmonisation of the electronic communications market and the Single Market</li> <li>– Emphasises the imbalance between small and big NRAs (having more resources, personnel and experience)</li> </ul> </li> <li>• <b>The misuse or non-use of the BEREC Office</b> <ul style="list-style-type: none"> <li>– Trust and confidence lacking with NRAs</li> <li>– The Office is one of the main differences with the ERG but the latter has currently no impact or added value</li> </ul> </li> </ul>

## 7. Recommendations

BEREC has ambitious long-term goals set out in the regulatory framework: (1) contribute to the development of the internal market for electronic communications networks and services, (2) support NRAs in their own work, and (3) contribute to EU citizens protection and consumer empowerment.

Translating these challenging objectives into an institutional and operational setting might be difficult, especially within the complex structure of BEREC. Moreover, even though BEREC has ERG heritage, its current structure and organisation is new (the revised regulatory framework came into force in May 2011) and the tasks it must fulfil continuously evolve with a heavy Work Programme and *ad hoc* requests from the European Commission.

That is why to assist BEREC to bring more added value, act more efficiently, strengthen its processes and to provide better implementation of the regulatory framework, a defined roadmap could be envisaged.

The following paragraphs present elements that could feed into such a roadmap exercise through short-, medium- and long-term timelines.

- Short-term refers to drafting and implementing the 2013 Work Programme.
- Medium-term refers to the drafting of the 2014 Work Programme.
- Long-term refers to the drafting of the next Mid-Term Strategy.

### 7.1. Short-term recommendations

The recommendations our Evaluation Team proposes for the short-term are:

#### 1. Better define the tasks within the BEREC organisation and improve internal communication.

First of all, BEREC should emphasise the role of the BoR as the decision-making body of BEREC, focusing the discussion on key subjects and providing direction for the CN and EWGs. Following that, the CN level should take into greater consideration the reduction of the agenda of Plenary Meetings to ensure that topics discussed at Head level are priority and that the BoR can provide more strategic orientations to BEREC.

#### 2. Better prioritise the tasks to be conducted and reduce the number of EWGs, while ensuring that NRAs have sufficient resources to participate in BEREC.

Workload streamlining and prioritisation are key matters going forward. All stakeholders consider the Work Programme as too heavy and difficult to fulfil, especially when considering also *ad hoc* requests from the European Commission. Even though BEREC has developed initiatives to better prioritise its tasks, no clear reduction of the Work Programme is planned while many topics are considered of secondary importance compared to BEREC's long-term goals. That is why the Mid-Term Strategy should become a document of prime importance enabling an annual definition in each Work Programmes<sup>156</sup>. By doing so, BEREC would:

- Ensure consistency on the topics and issues addressed;
- Allow smooth transition from one Chair to another;
- Balance the work load from one year to another and enable task transfer if needed to guarantee good quality.

As a consequence, Work Programmes would be shorter and focusing on a few priorities. More time would also be given to *ad hoc* requests. The first consequence of this approach would also be a reduction in the number of Expert Working Groups. National experts could consequently

<sup>156</sup> This approach is currently adopted by BEREC to develop its 2013 Work Programme. Our Evaluation Team has nonetheless no access to this working document.

have more time for answering *ad hoc* requests and take part in the Article 7/7a procedures, lessening the number of NRAs who are voting on issues which they have had limited vision. Some NRAs might also have limited resources to adequately perform their tasks within BEREC. Since BEREC builds on NRA's expertise to deliver its work, it is essential to ensure that NRAs that contribute to BEREC are entrusted with the appropriate tasks and functions according to the regulatory framework and have enough resources to participate to BEREC's work<sup>157</sup>. The number of Expert Working Groups and their allocated tasks should be discussed every year by BEREC and the BEREC Office, together in charge of setting-up the Expert Working Groups, with regard to the priorities decided by the BoR for the coming year and aligned with the Mid-Term Strategy.

### **3. The European Commission should provide clearer visibility regarding *ad hoc* requests.**

The European Commission should proactively inform BEREC of the *ad hoc* requests it intends or reasonably expects to submit. This would impact and reduce BEREC Work Programme and so avoid issues for BEREC in delivery as well as improve time available for national experts and in doing so improve the quality of BEREC documents. It would also continue to improve the quality of the working relationship between BEREC and the European Commission. Developing BEREC's relations with the European Commission is crucial for the future.

### **4. Roles and responsibilities for external communication should be clarified.**

As illustrated in the use of public consultations, public hearings and the diffusion of outputs on the latter, BEREC is willing to be as transparent as possible towards third parties. However, BEREC could benefit from a clearer communication towards industry and consumer representatives. If BEREC has to ensure that EWGs work in private, it must also ensure that this has no negative impact on the need for a transparent communication strategy towards external stakeholders. In that perspective:

- A clearer mandate for communicating in the name of BEREC could be given to the Chair with an established mandate decided at the BoR level. The difference between speaking in the name of the NRA and in the name of BEREC should also be very clear;
- The internal BEREC procedures and methods of operation<sup>158</sup>, as well as the role of the BEREC Office could be explained and presented in a pedagogic way to prevent BEREC from being considered as a "black box".

It should be clearer for market stakeholders which BEREC internal stakeholder to contact in case of query or question, for instance: the BoR Chair, the appropriate EWG Chair, or their proper national NRA.

In addition, BEREC conducts many public consultations to gather industry representatives' views but the outcomes of these consultations are sometimes published with no analysis and no comment on how BEREC will further use this contribution<sup>159</sup>. If BEREC indicated how the consultation influenced its reports, Work Programme and recommendations that would better show the extent to which consulting market stakeholders is crucial for BEREC in its delivery process and substantiates BEREC recommendations. To do so, the BEREC Office could follow-up the consultation process and handle the relationship with participants, along with the EWG in charge, if appropriate.

<sup>157</sup> Article 3, Framework Directive.

<sup>158</sup> *Préambule* (6), BEREC Regulation.

<sup>159</sup> For instance, the consultation report on the draft BEREC report on co-investment and SMP in NGA networks (BoR(12) 40) explains precisely how BEREC used consultation comments to amend its report. As explained in the introduction of the document: "*the following documents summarise the main comments received by BEREC, as well as the subsequent amendments to the draft report BEREC made taking the utmost account of the respondents' views*". This is an example to follow to better communicate with market stakeholders and foster their participation to such consultation.

## 7.2. Medium-term recommendations

Hereafter are recommendations for BEREC in the medium-term:

### 1. The decision-making process should be more top-down and provide more room to the BoR to take strategic decisions.

At this stage, the technical work is done at the EWG level which also raises issues and forwards documents to the CN and the BoR. To that extent, BEREC is currently working with a bottom-up approach. Moreover, the heavy agenda of Plenary Meetings prevents the BoR members from discussing strategic issues and considering the future role of BEREC with regards to the evolution of the electronic communications market. For instance, BEREC's vision/mission statement and long-term strategy are not known by all national experts or third parties. That is why BEREC also requires a top-down approach in its decision-making, based on discussion and prioritisation done at the BoR level. EWGs should be considered as the operational bodies of BEREC while key decisions are made at the Head level. This would mean that:

- Fewer issues are addressed during BoR Plenary Meetings;
- More time is left for extensive discussion on the future of the telecoms market and the role BEREC should play in its development. BEREC proposes in its strategic paper to organise strategic workshops twice a year.

### 2. EWGs should be organised into task forces.

To harmonise the internal work of EWGs and ensure consistency as well as increase the general quality of BEREC outputs, EWGs should better work in task forces. By doing so:

- Each EWG would define the tasks to be achieved during the year according the Annual Work Programme and aligned with the Mid-Term Strategy;
- A specific task force would then be defined with a clear role and scope of actions within the EWG. When required, special attention would be given to ensure continuity with the former year in the framework of the Mid-Term Strategy;
- The Chair would then name the NRAs and experts to participate in each task force according to their respective expertise and the needs identified in the task force. The latter would have the full responsibility of producing the output required to the Expert Working Group.

This process could happen:

- At the beginning of each year for tasks that can be planned and that need to be tackled according to the Annual Work Programme (for established EWGs);
- As soon as an *ad hoc* request is transmitted to BEREC by the European Commission and involve an established EWG or call for the setting-up of an *ad hoc* EWG.

These task forces would leverage the existing EWG drafting teams and Project Requirements Documents (PRD) defined for every work stream. These task forces would also complement the existing situation since they would be based on outputs to draft as well as topics of interest to follow or even reports that BEREC would decide to develop on its own initiative. The institutionalisation and systematisation of these task forces as well as the use of best practices among EWGs to define their functioning would also enable more consistency in BEREC outputs and EWG Chairs' management.

### 3. Better ensure the accountability of BEREC towards its own objectives.

Accountability of BEREC is a complex aspect to consider. According to the regulatory framework, BEREC is independent from EU institutions<sup>160</sup>, and, by emphasising the role of adviser that BEREC should play regarding electronic communications in the EU, the EU institutions guarantee the independence of BEREC.

<sup>160</sup> Articles 2(3) & 4(2), BEREC Regulation.



In parallel to independence, accountability should be ensured when the platform recommends a particular regulatory approach (for example, on international roaming) or for the tasks it chooses to tackle by itself, meaning the tasks included in its Work Programmes and the Mid-Term Strategy.

In this regard it is important to stress that BEREC's increased accountability shall not be at the detriment of its capacity to take up additional tasks on emerging issues, on its own initiative or upon request of the EU institutions.

That is why, by better prioritising its tasks, better leveraging the Mid-Term Strategy and illustrating BEREC progress within the Mid-Term strategy as well as within each Work Programme, BEREC would be more accountable. To do so, BEREC could indicate in each Annual Work Programme the orientation chosen for the year and in each Annual Report what has been achieved towards very clear objectives, such as its long-term goals:

- Contribution to the development of the internal market for electronic communications networks and services;
- Support to NRAs in their own work;
- Contribution to EU citizens protection and consumer empowerment.

In that perspective, BEREC should reflect on Key Performance Indicators to assess its own progress, support its outputs by illustrating their impact and legitimate its choices for the future with regards to emerging issues. By doing so, BEREC would remain entirely independent - and so its role as advisor would be improved - while clarifying its priorities as well as guarantying a better accountability towards commonly agreed objectives.

#### **4. The BoR should agree on the balance between administrative and professional support that the Office has to provide to BEREC.**

By the end of 2012 the BEREC Office will have achieved its target size with the appropriate staff members able to provide professional and administrative support to BEREC. It is the responsibility of the whole BEREC platform to best utilise the BEREC Office for both administrative and professional purposes, taking into consideration the respective role of each entity: the BoR, the BoR Chair, the EWG Chair and the EWGs. In that perspective, BEREC should decide, together with the Office and in line with the regulation, on the Office's tasks. These tasks would include: supporting EWGs in collecting and diffusing information for preliminary work, output drafting, quality assurance and proofreading, and ensuring the quality control of the BEREC webpage. Defining these tasks mostly needs a change in BEREC's consideration for the Office. BEREC should also provide yearly feedback to the Office on its performance. This feedback would be the occasion for the two entities to discuss about how to better achieve their mutual objectives and work together. Also, in case the legal and regulatory framework limits BEREC, it should consider adapting the regulation for the benefit of the sector and to ensure the smooth functioning of BEREC.

Moreover, even though the location of the BEREC Office in Riga might be a problem in the everyday work of BEREC, it is today only half-way solved by the fact that BEREC can use its premises in Brussels. The location issue needs to be overcome by a clear definition of the role and responsibilities of each actor and by the definition of how the BEREC Office might take full part in the EWG work, in respect to the needs of the BoR, its Chair and EWG Chairs.

### **7.3. Long-term recommendations**

We propose that BEREC consider the following recommendations when drafting its next Mid-Term Strategy:

#### **1. Consider emerging issues and recommendations to face them.**

Within the remit of its advisory role (as defined by BEREC Regulation), BEREC should choose topics to tackle and recommend clear solutions to the EU institutions. For instance, in addressing the NGA issue as soon as 2006, the ERG showed its ability to work on emerging issues in a timely manner. Following that example, the EU institutions expect BEREC to provide

a clear EU vision on the future of the electronic communication market. By identifying and defining the next issues of the telecoms market BEREC would develop its advisory role, create synergies between NRA perspectives and leverage off their joint work.

**2. Leverage off progress data to define the future of BEREC.**

Based on the information in relation to its own work, BEREC should define its future objectives with regard to its mid-term and long-term strategies. BEREC should also take the advantage of the preparation phase of the new programming period 2014-2020 to reconsider its mission statement and/or vision statement and communicate on it both internally and externally. This is one of the reasons why BEREC proposes to start organising strategic workshop twice a year. The platform could also take into account best practices developed by other EU organisations/agencies to improve its governance and its efficiency; for instance, the Agency for the Cooperation for Energy Regulators (ACER) or the European Chemical Agency (ECHA).

**3. Another evaluation of BEREC and the BEREC Office should be planned in 2016.**

The next evaluation of BEREC and its Office should be planned after 5 years of effective existence of the organisation. This would imply that a second evaluation of the Body of European Regulators for Electronic Communications and its Office should take place in 2016.

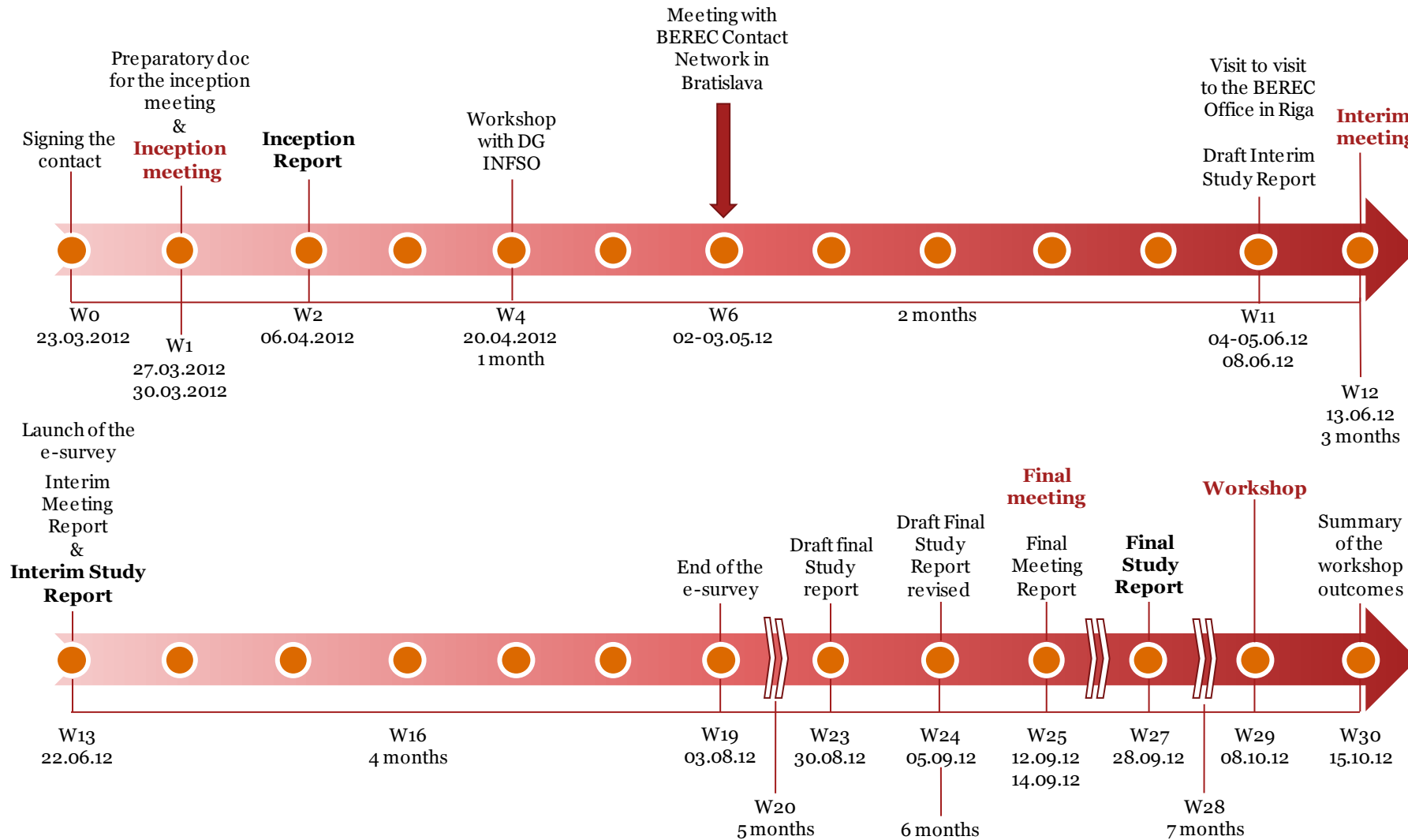


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## ***8. Study workplan***

*Figure 39 and Table 6* present the workplan defined and conducted during the evaluation study.

**Figure 39: Evaluation study planning**



Source: PwC

**Table 6: Planning of the evaluation study**

Phase	Deliverable	Meeting	Week	Due date	BEREC Agenda
<b>Signing the contract</b>				<b>23/03/2012</b>	
<b>Phase 1: Inception</b>					
	Preparatory documents for the inception meeting		W1	27/03/2012	
		<b>Inception meeting</b>	<b>W1</b>	<b>30/03/2012</b>	
	Inception Report		W2	06/04/2012	
<b>Phase 2: Data Collection and initial analysis</b>					
		Workshop with DG INFSO / DG CONNECT	W4	20/04/2012	
		Interviews with CN members	W6	2-3 May	<b>BEREC Contact Network Meeting</b> (Bratislava, Slovakia)
			W9	24-25 May	<b>BEREC Plenary Meeting</b> (Dubrovnik, Croatia)
		Interviews with the telecom companies	W10	31 May & 1 June	
		Visit to BEREC Office	W11	4-5 June	
	Draft Interim Study Report		W11 - 12	11/06/2012	
		<b>Interim meeting</b>	<b>W12</b>	<b>13/06/2012</b>	
	Interim meeting Report		W13	22/06/2012	
	Interim Study Report		W13	22/06/2012	
<b>Phase 3: Final analysis</b>					
		Workshop with DG INFSO / DG CONNECT	W16	09/07/2012	
<b>Phase 4: Reporting</b>					
	Draft Final Study Report		W23	30/08/2012	
	Draft Final Study Report revised		W24	05/09/2012	
		<b>Final meeting</b>	<b>W25</b>	<b>12/09/2012</b>	



Final meeting Report	W26	19/09/2012	
Final Study Report	W27	28/09/2012	
	W27	27-28 September	<b>BEREC Plenary Meeting</b> (Limassol, Cyprus)
<b>Phase 5: Presentation</b>			
Workshop	W29	08/10/2012	
Summary of the workshop outcomes	W30	15/10/2012	

# Appendix A. - Survey results

## A.1. Interviews

Our Evaluation Team has conducted a stakeholder consultation which consisted in:

- A first workshop with DG INFOS focusing on the questionnaire to be diffused to stakeholders, representatives (April 20<sup>th</sup>, Brussels);
- A second workshop with DG CONNECT focusing on BEREC SWOT analysis (July 9<sup>th</sup>, Brussels);
- 1 face-to-face interview with Robert Madelin, Director General for Communications Networks, Content and Technology (July 23<sup>rd</sup>, Brussels);
- 12 face-to-face interviews with Contact Network members during the Contact Network (May 2<sup>nd</sup> and 3<sup>rd</sup>, Bratislava);
- 1 face-to-face interview with George Serentschy, the Head of the Austrian NRA and 2012 Chair of the Board of Regulators (May 30<sup>th</sup>, Brussels);
- 2 phone interviews with Heads of NRAs, including Chris Fonteijn, the former BEREC Chair of the BoR and Head of the Dutch NRA, OPTA (July 19<sup>th</sup>);
- 4 face-to-face interviews and phone interviews made with industry representatives to complete the views of companies on BEREC's achievements and governance structure as well as on the support provided by the BEREC Office (May 30<sup>th</sup> and June 1<sup>st</sup>, Brussels);
- 4 face-to-face interviews with BEREC Office representatives during our visit to BEREC Office's premises (June 5<sup>th</sup> and 6<sup>th</sup>, Riga);
- 10 phone interviews related to the case study on the Article 7 procedure;
- 1 phone interview related to the case study on Next Generation Access.

In the following table we detail all the stakeholders we had face-to-face/phone interviews with.

**Table 7: Interviews with the different stakeholders**

Stakeholder groups	Stakeholders consulted
<b>DG CONNECT</b>	<ul style="list-style-type: none"> <li>• Robert Madelin, Director General for Communications Networks, Content and Technology</li> <li>• Vesa Terävä (interview, Workshop I and II)</li> <li>• Pilar De La Barcena Angulo (Workshop I and II)</li> <li>• Nicoletta Falcone (Workshop I and II)</li> </ul>
<b>BEREC Board of Regulators/ Management Committee &amp; observers</b>	<ul style="list-style-type: none"> <li>• George Serentschy, BEREC Chair and Head of the Austrian NRA, RTR</li> <li>• Chris Fonteijn, BEREC former Chair and Head of the Dutch NRA, OPTA</li> <li>• Asta Sihvonen-Punkka, Head of the Finish NRA, FICORA</li> </ul>
<b>BEREC Contact Network (CN)</b>	Face-to-face interview during the Contact Network Meeting: <ul style="list-style-type: none"> <li>• Anne Lenfant (ARCEP)</li> <li>• Annegret Groebel (BNetzA)</li> <li>• Antonio de Tommaso (AGCOM)</li> </ul>

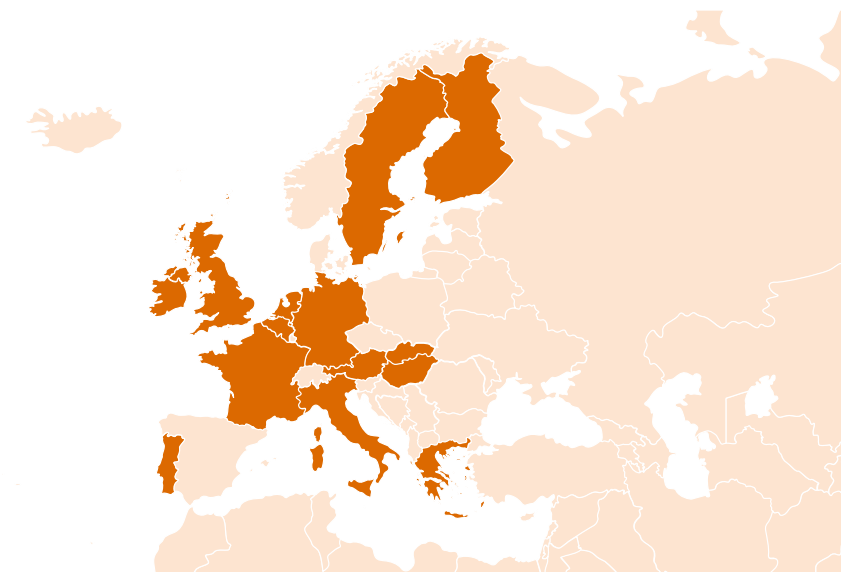
	<ul style="list-style-type: none"> <li>• Bobby Hannan (COMREG)</li> <li>• Guido Pouillon (BIPT). Also interviewed as the former responsible for the co-ordination of Article 7 procedures under the previous situation involving E/IRG</li> <li>• Dieter Staudacher (RTR)</li> <li>• Minas Karatzoglou (EETT)</li> <li>• Ola Bergstöm (PTS)</li> <li>• Päivi-Maria Virta (FICORA)</li> <li>• Pedro Ferreira (ANACOM)</li> <li>• Sven Gschweidl (RTR)</li> <li>• Viktória Jónás (TU SR) Phone interview a few days after the CN meeting</li> </ul>
<b>BEREC Expert Working Groups (EWGs)</b>	<ul style="list-style-type: none"> <li>• From Article 7/7a working groups: <ul style="list-style-type: none"> <li>– Alain Meton, Rapporteur on case NL/2012/1299, expert at BIPT (Belgium)</li> <li>– Andrea Coscelli, Rapporteur on cases NL/2012/1284 and NL/2012/1285, and economist at Ofcom (United Kingdom)</li> </ul> </li> <li>• From the Next Generation Networks working group: <ul style="list-style-type: none"> <li>– Cara Schwarz-Schilling, NGN-NGA Expert Working Group Chair for 2012, expert at BnetzA (Bundesnetzagentur) (Germany)</li> </ul> </li> <li>• From the Remedies Monitoring working group: <ul style="list-style-type: none"> <li>– Lara Stoimenova, Remedies Monitoring Working Group Chair for 2012, expert at Ofcom (UK)</li> </ul> </li> <li>• From the BEREC and BEREC Office Evaluation Working Group: <ul style="list-style-type: none"> <li>– Marianne Kracht, BEREC and BEREC Office Evaluation Working Group Chair for 2012, expert at OPTA (Netherlands)</li> </ul> </li> </ul>
<b>NRA experts on Article 7/7a Case Study</b>	<ul style="list-style-type: none"> <li>• Ellen Optmann, responsible for cases NL/2012/1298 and 1299 on behalf of OPTA, the Dutch regulator</li> <li>• Martijn Wolthoff, responsible for cases NL/2012/1298 and 1299 on behalf of OPTA, the Dutch regulator</li> <li>• Jim Niblett, formerly of the UK regulator Ofcom</li> </ul>
<b>BEREC Office</b>	<ul style="list-style-type: none"> <li>• Ando Rehema: Administrative Manager</li> <li>• Isaac Jimenez Carvajal: Head of Administration and Finance/Accounting Officer</li> <li>• Ritva Suurnäkki: Head of Programme Management Unit</li> <li>• Dr. Dirk Walpuski: Senior Programme Manager (main responsible for Article 7/7a procedures at the BEREC Office)</li> <li>• Antonio Manganelli, Rapporteur on case NL/2012/1298 at the BEREC Office</li> </ul>

**Representatives of the industry**

- British Telecom: Adrian Whitchurch, Vice President European Affairs, Head of Brussels BT Group (face-to-face interview)
- KPN: Jos Huigen, Director Regulatory and European Affairs (phone interview)
- Verizon: Fiona Taylor, Director, European Affairs and Global Internet Strategy and Rob Rosendaal, Director European Regulatory Affairs at Verizon Business (face-to-face interview)
- Vodafone: Eirini Zafeiratou, Head of EU Affairs (face-to-face interview)

As already mentioned, we interviewed representatives from 14 countries:

**Figure 40: Map of country representatives interviewed**



Source: PwC

## A.2. Online survey

### A.2.1. Methodology

Our Evaluation Team conducted an online survey between June 25<sup>th</sup> and August 3<sup>rd</sup>. A questionnaire was sent covering three different stakeholder groups. As a whole 227 questions were asked to participants, including 32 open questions (14.1% of the questions). Among these open questions, four questions were asked regarding the case study on the Article 7/7a procedure and four questions were asked relative to the case study on NGA.

The questionnaire was divided into four parts:

1. Evaluation of the achievements and added value of BEREC;
2. Evaluation of the governance, organisational structure and management of BEREC;
3. Evaluation of the structure and working methods of the BEREC Office;
4. Case studies:
  - The Article 7/7a procedure;
  - Next Generation Access Networks and BEREC.

Three stakeholder groups were addressed:

1. European Union Institutions representatives;
2. Members of NRAs and of the BEREC Office;
3. Industry and association representatives.

Each group had the opportunity to assess specific aspects of the evaluation in more depth.

A first wave of questionnaires was sent on June 25<sup>th</sup>. In order to ensure comparability of results, a second wave of emails was exclusively sent to CN and Heads members on July 17<sup>th</sup> asking them to ensure that three to four people in their respective NRA answer the questionnaire<sup>161</sup>. This second wave of emails resulted from an agreement between the European Commission and the Chair of the BoR to ensure consistency and relevance in the answers. In that respect, we obtained 129 answers with a very homogeneous number of answered questionnaires received from NRAs (see *Table 9* below).

Hereafter is presented the distribution of respondents according to their organisation of origin.

**Table 8: Distribution of respondents to the online survey**

Stakeholder Group	Number of people addressed	Respondents		Percentage compare to the total number of respondents (population: 129)
		Number	Percentage (population depends on the group)	
<b>EU institutions</b>	19	4	21.1%	3.1%
<b>BEREC Office and IRG members</b>	5	2	40.0%	1.6%
<b>NRAs</b>	140 <sup>162</sup>	112	80.0%	86.8%
<b>Industry and association representatives</b>	57	11	19.3%	8.5%

Source: PwC

<sup>161</sup> The second email sent to CN members mentioned: "A detailed list of participants has been provided by BEREC network to the Evaluation Team to reach as many people as possible working within BEREC or impacted by its work. Following the discussion on the questionnaire, a new agreement between the European Commission and the Chairman of BEREC's Board of Directors is that each Contact Network member will nominate 3 to 4 people within her/his National Regulatory Authority to fill in the questionnaire on-line (including the people who already filled it in). By doing so, each NRA will have an equal representation in the e-survey."

<sup>162</sup> 35 NRAs were addressed during the online survey (from the 27 EU Member States, plus Croatia, FYROM, Iceland, Liechtenstein, Montenegro, Norway, Switzerland and Turkey). If we consider that 4 people per NRA were addressed, a total of 140 people were addressed in NRAs.

When considering NRAs, 112 people answered the online questionnaire. Here is presented the distribution of respondents according to their country of origin.

**Table 9: Distribution of NRA respondents according to their country of origin**

NRA Country	Number of respondents	Percentage
Austria	2	1.8%
Belgium	1	0.9%
Bulgaria	5	4.5%
Croatia	1	0.9%
Cyprus	0	0.0%
Czech Republic	8	7.1%
Denmark	6	5.4%
Estonia	1	0.9%
Finland	1	0.9%
Former Yugoslav Republic of Macedonia	1	0.9%
France	7	6.3%
Germany	4	3.6%
Greece	3	2.7%
Hungary	5	4.5%
Iceland	1	0.9%
Ireland	4	3.6%
Italy	3	2.7%
Latvia	4	3.6%
Liechtenstein	3	2.7%
Lithuania	5	4.5%
Luxembourg	1	0.9%
Malta	2	1.8%
Montenegro	0	0.0%
Norway	3	2.7%
Poland	4	3.6%
Portugal	6	5.4%
Romania	3	2.7%
Slovak Republic	4	3.6%
Slovenia	3	2.7%
Spain	3	2.7%
Sweden	1	0.9%
Switzerland	1	0.9%
The Netherlands	6	5.4%
Turkey	7	6.3%
The United Kingdom	3	2.7%

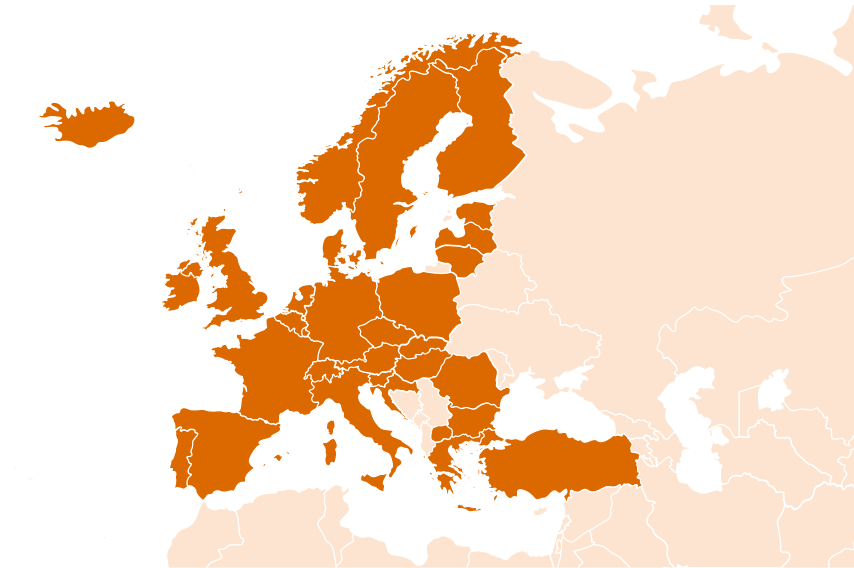
Population: 112

Source: PwC



In total, all EU-27 countries answered the online survey, except Cyprus.

**Figure 41: Map of country representatives who answered the online survey**



Source: PwC

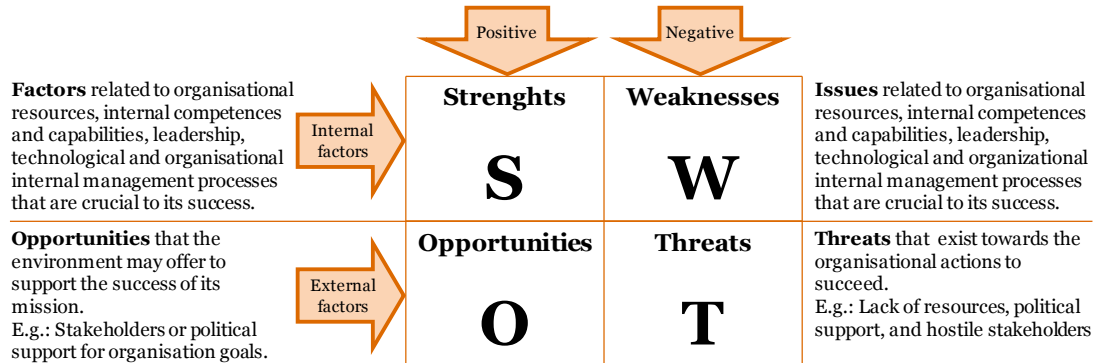
Furthermore, here is what we can derive from the results obtained by the online survey:

- On average, 3.4 people in each NRA answered the online questionnaire;
- 50% of NRAs answered less than 3 questionnaires and 50% of NRAs answered more than 3 questionnaire (in other words, the median of this sample is 3);
- 95% of NRAs answers between 1.9 and 4.9 questionnaires;
- The Cypriot NRA (OCECPR) is the only EU Member State that has answered no questionnaire (along with Montenegro which is not a EU Member State);
- The Czech NRA (CTU) has been the most responsive with 8 answers. The Turkish and French NRAs also highly answered with 7 answers each.
- Three NRAs provided 6 questionnaires, three other NRAs filled in 5 questionnaires, five NRAs answered 4 questionnaires, eight NRAs provided 3 questionnaires, two NRAs answered 2 questionnaires and nine NRAs fulfilled one questionnaire each.

## Appendix B. - BEREC SWOT analysis

SWOT is the analysis of an organisation's internal and external environment to identify its Strengths, Weaknesses, Opportunities and Threats for the success of strategic goals. It is a common approach to developing strategic planning after having agreed on vision and objectives. The Figure below illustrates ground elements of the SWOT analysis.

**Figure 42: SWOT Analysis - Principles**



Source: PwC

As a whole, the SWOT analysis ensures that priorities are accurate and complete. The main objectives in developing a BEREC SWOT analysis are:

1. To compile views and feedback on the work/added value provided by BEREC and its Office since their inception;
2. To formalise the interactions between BEREC and its Office.

The Figure hereafter presents the template we used to develop BEREC SWOT analysis. The SWOT analysis *per se* is presented in *Section 6. Conclusions*.

# Appendix C. - Logical frameworks

## C.1. The concept

A logical framework is a tool aimed at:

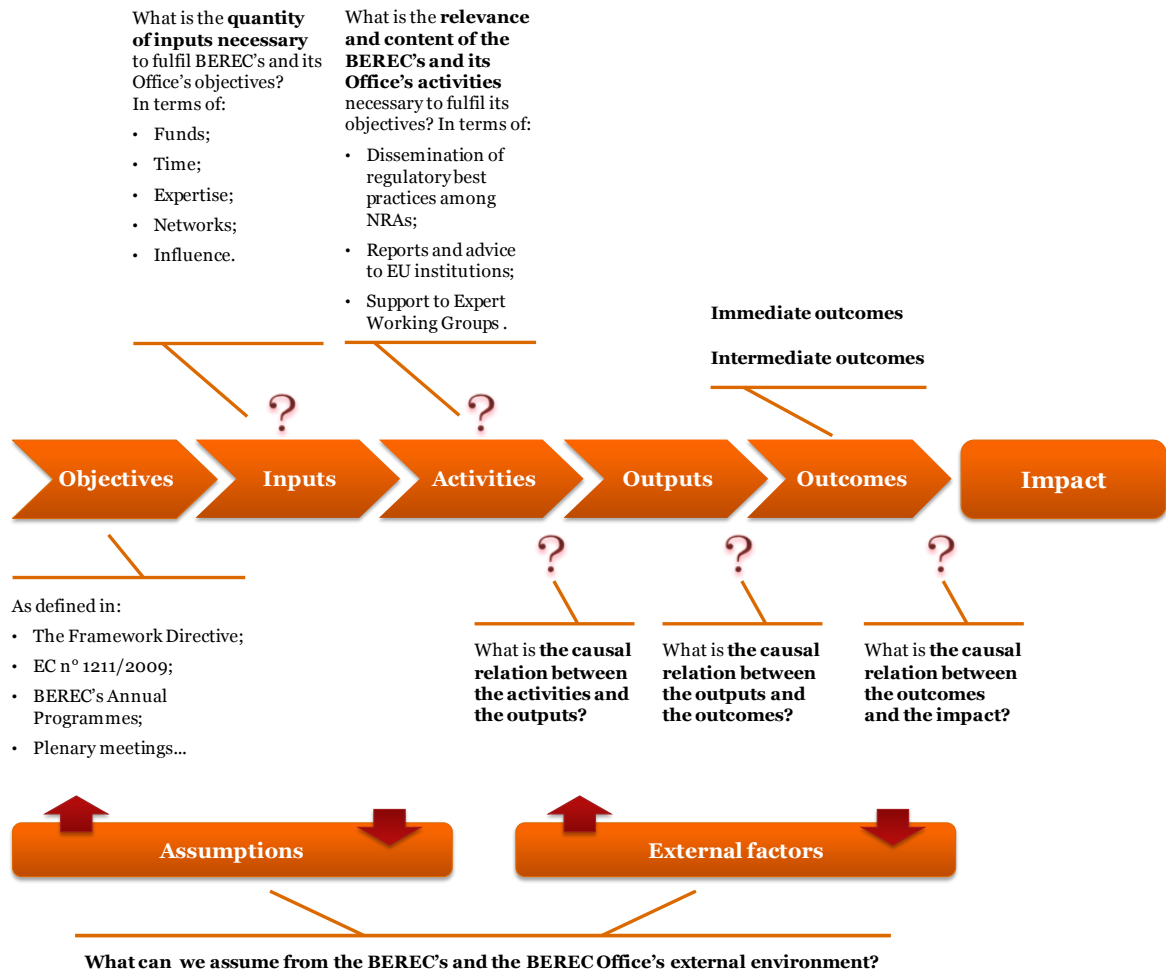
- Clarifying the causal relations between inputs, activities, outputs, outcomes and impacts;
- Presenting a hierarchy of objectives to achieve;
- Identifying the assumptions, impact of external factors and the associated risks;
- Illustrating the activities in a standard format that all stakeholders can agree on.

The logical framework specifies the inputs, activities, outputs, outcomes and impact of an organisation as well as the judgement criteria defined at all levels (inputs, activities, outputs, outcomes and impact). Drafting a logical framework involves questioning the activities and processes within the organisation:

- **Inputs:** what are the resources of BEREC and its Office?
- **Activities:** what are the key activities planned and implemented by BEREC and its Office?
- **Processes:** how is the organisation of BEREC structured and managed? What are its internal governance procedures? What are the BEREC Office working methods?
- **Output:** what does BEREC accomplish/produce?
- **Outcome:** what is the scope of the activities of BEREC and its Office (in terms of immediate and intermediate outcomes)?
- **Impact:** what are the overall achievements and added value of BEREC and its Office?
- **Target levels and indicators:** how can the success of the activities of BEREC and its Office be measured and evaluated?
- **Assumptions:** what are the key contextual factors external to the activities and working methods of BEREC and its Office, which are not under their control but could influence their success either positively or negatively?

The Figure below presents the main questions we addressed when developing the two logical frameworks that follow: the first one corresponds to BEREC's and the second one to the BEREC Office:

**Figure 43: Questions addressed when developing BEREC’s and BEREC Office’s logical frameworks**



Source: PwC

The two following logical frameworks BEREC derive from our literature review and our preliminary analysis of primary and secondary data collected.

## C.2. BEREC's logical framework

### Logical framework elements – BEREC

#### Ultimate Objectives

1. Create an internal market for electronic communications within the Community while ensuring a high level of investment, innovation and consumer protection through enhanced competition (BEREC Regulation)
2. Enhance legal certainty and promote investment, competition and innovation in the market in the transition to NGA networks (BEREC Annual Report 2010)
3. Ensure consistency in the application of EU regulatory framework (BEREC Regulation)
4. Facilitate cooperation among NRAs and between NRAs and the Commission (BEREC Regulation)
5. Provide reflection, expertise and advice to the European Parliament, the Council, and the Commission (BEREC Regulation)
6. Pursue the same objectives as those of NRAs (Framework Directive)
7. Promote competition and a harmonised approach to regulation (BEREC WP 2012)

#### Objectives

1. Harmonisation / consistent regulatory practice and application throughout the EU of the regulatory framework for electronic communications network and services
2. Develop and disseminate among NRAs best practice (BEREC Regulation, Art. 2), notably regulatory best practices on the implementation of the EU regulatory framework (BEREC WP 2012)
3. Provide assistance to NRAs on regulatory issues (BEREC Regulation, Art. 2)
4. Deliver opinions on Commission draft decisions, recommendations and guidelines (BEREC Regulation, Art. 2)
5. Issue reports and provide advice to the Commission and deliver opinions on electronic communications for the European Parliament and the Council upon request or by its own initiative (BEREC Regulation, Art. 2)
6. Assist the EP, the Council, the EC and the NRAs in relations, discussion and exchanges with third parties and assist in the dissemination of regulatory best practices to third parties (BEREC Regulation, Art. 2)
7. Strengthening transparency and consumer empowerment (Mid-Term strategy)
8. Contribute to the Digital Agenda (Mid-Term strategy)

#### Inputs

- Facilities available in Brussels
- Facilities provided by NRAs
- Facilities for events provided by the EC
- Data, knowledge, technical expertise and national experts provided by NRAs
- Administrative and professional support provided by the BEREC Office
- Procedures enabling the BEREC platform to function, such as the Article 7/7a procedure

#### Activities

1. Keep track of the actual market developments (BEREC WP 2012):
  - Capture EC concerns with comments letters
  - Capture remedies proposed by NRAs
  - Monitor the evolution of the international roaming market and the implementation of the corresponding regulation
2. Deliver opinions on (BEREC Regulation, Art. 3):
  - Draft measures of NRAs and cooperate with NRAs (Art 7-7a FD)
  - Draft recommendations and guidelines (Art 7b FD)

- Draft recommendations on product and service markets (Art 15 FD)
- Draft decisions on the identification of transnational markets (Art 15 FD)
- Draft decisions and recommendations on harmonisation (Art 19 FD)
- Cross-border disputes (Art 21 FD)
- Draft decisions authorising or preventing an NRA from taking exceptional measures (Art. 8 AD)
- The development of common rules and requirements for providers of cross-border business services

To do so BEREC consults interested parties and gives them the opportunity to comment within a reasonable period. BEREC makes the results of the consultation procedure public. (BEREC Regulation, Art. 17).

**3. Provide assistance to NRAs:**

- In the context of the analysis of the relevant market (Art 16 FD)
- On issues relating to fraud or the misuse of numbering resources.

**4. Be consulted on:**

- Draft measures relating to effective access to call number 112 (Art. 26 USD)
- Draft measures relating to the effective implementation of the 116 numbering range (Art. 27a USD)

**5. Assist the Commission with the updating of Annex II of the Access Directive (relative to the minimum list of items to be included in a reference offer for wholesale network infrastructure access)**

**6. Monitor and report on the electronic communications sector and publish an annual report**

**7. Decide unanimously to take any other specific tasks necessary to accomplish its role.**

**8. Cooperate with advisory bodies: RSPG (Radio Spectrum Policy Group) and ENISA (European Network and Information Security Agency)**

**9. Monitor conformity of NRA remedies with Common Position (CP)**

**The Chair:**

- Resolves differences between members of the BoR (BEREC Rules of procedure)

**Process**

- The Board of Regulators (one representative from the 27 NRAs) acts by a 2/3 majority
- Decision are made public
- Adopts the Annual Work Programme and the Annual Report on activities
- Receives information from the EC and NRAs (BEREC Regulation, Art. 19)
- Annual declaration of commitments and declaration of interest of members of the BoR, made public
- Coordination with OLAF (BEREC Regulation, Art. 16)
- Coordination with Ombudsman and the Court of Justice (BEREC Regulation, Art. 22 & 24)
- Documents are public (BEREC Regulation, Art. 22)
- Intends to review its Mid-Term Strategy outlook regularly and make amendments (Mid-Term Strategy)



### **Tools**

- Common Positions/best practices (no room for NRA, compliance monitoring by BEREC)
- Guidelines
- Sharing of best practices (quality and consistency)
- Monitoring and benchmarking (market development, input for decision-making)
- Article 7/7a procedures (meaningful and valuable assessments of NRA decisions, enhance internal market)

### **Outputs**

#### ***In general***

- Reports
- Opinions
- Formal advice to the Commission
- Common Statements
- Consultations (or public hearings in 2010 with debriefing events following each Plenary meeting)

#### ***As from BEREC Work Programme 2012***

- Advices
- Database with concerns and remedies related to art. 7/7a of the FD (ongoing)
- Opinions concerning serious doubts expressed by the EC (ongoing)
- Benchmark data report (relative to international roaming) (P1 & P4 2012)
- Guidelines to support implementation of any new roaming regulation (2012)
- Opinion on the EC proposal on universal service (depending on the timing of the EC)
- Guidelines on transparency (P2 2012)
- Guidelines on Quality of Services Requirements (P2 & P3 2012)
- Report on discriminatory issues (P3 2012)
- Report on IP interconnection (P3 2012)
- Inquiry results on traffic management practices (P1 2012)
- Analytic report on NGA models (P3 2012)
- Report on NGA remedies (P3 2012)
- Report on NGA co-investment and SMP (P2 2012)
- Revised Common Position on wholesale broadband access, wholesale local access and wholesale leased lines (resulting from a monitoring report and review of existing CPs) (P4 2012)
- Opinion on EC's recommendation on non-discrimination
- Report on regulatory accounting in practice: overview of the regulatory accounting frameworks used and assessment of the level of harmonisation achieved by NRAs (P3 2012)
- Opinion on the forthcoming draft recommendation on costing methodologies for key wholesale access prices (P3 2012)
- MTR snapshot (P2 & P4 2012) (Mobile Termination Rate?)
- SMS snapshot (P2 & P4 2012) (Fixed Termination Rate?)
- SMS snapshot (P4 2012) (Short Message Service)
- Report on a methodology for the benchmarking of mobile broadband prices (P2 2012)
- Report on different mechanisms towards the promotion of broadband (P1 2012)
- Report on special rate services: shared-cost, DQ-services (directory enquiry services),

<p>premium rate, freephone number services, premium SMS services (investigation, benchmark) (early 2012)</p> <ul style="list-style-type: none"> <li>• Report on the current accessibility of numbering resources (cross-border accessibility of numbers) (P2 2012)</li> <li>• Conditions for the attribution of the frequencies: economic and social value of spectrum (P1 2012)</li> <li>• Annual Report(P4 2012)</li> </ul> <p><b>BEREC Plenary meetings</b></p> <ul style="list-style-type: none"> <li>• 10<sup>th</sup> Plenary Meeting (Feb2012): <ul style="list-style-type: none"> <li>– Consultation document on principles of non-discrimination (first step in the updating of BEREC three broadband Common Positions)</li> <li>– Preliminary findings on net neutrality (final assessment in Spring 2012)</li> <li>– Final report on broadband promotion</li> <li>– Mid-term Strategy: high-speed broadband rollout, consumer empowerment/protection</li> </ul> </li> </ul> <p><b>BEREC Mid-Term Strategy</b></p> <ul style="list-style-type: none"> <li>• Strategic outlook for the next 3-5 years</li> <li>• Multi-annual programme with high-level principles that will be achieved on an annual basis</li> </ul> <p><b>BEREC website</b></p> <ul style="list-style-type: none"> <li>• Strategic dialogue with the sector (Europe's largest fixed, mobile and cable operators) for the next two years and initiated in March 2012</li> <li>• Consultation documents</li> </ul>
<p><b>Outcomes</b></p> <p><b>As from Work Programme 2012</b></p> <ul style="list-style-type: none"> <li>• Outcomes resulting from the BEREC report on the impact of administrative requirements on the provision of transnational business electronic communications services published during 2011</li> <li>• Outcomes from international cooperation, exchange of information and experience: twinning, TAIEX (Technical Assistance Information Exchange), groupings (Eastern Partnership, EMERG between Mediterranean countries, Regulatel in Latin America)</li> </ul>
<p><b>Impact</b></p> <ul style="list-style-type: none"> <li>• BEREC Reports are used by EU institutions to take decisions and propose revised regulations</li> <li>• Impact of BEREC activities and contributions depends on the topic and the place of the topic on the agenda of the EU institutions</li> <li>• Evaluate the impact of BEREC (in comparison with ERG) after more than one year of existence might be misleading as it requires to consider the revised regulation influenced by BEREC. But this can be a long process: for instance regarding international roaming on which BEREC was asked to participate, the new regulation is still a work in progress)</li> </ul>
<p><b>Assumptions</b></p> <ul style="list-style-type: none"> <li>• All stakeholders participate in a fair manner</li> <li>• BEREC Office is fully operational</li> </ul>
<p><b>External factors</b></p> <ul style="list-style-type: none"> <li>• Exclusive forum for cooperation among NRAs and between NRAs and the Commission</li> </ul>

- No legal personality
- Capacity to advise the EP, the Council and the EC on its own initiative

### C.3. BEREC Office's logical framework

#### Logical framework elements – BEREC Office

##### Ultimate Objectives

Support BEREC fulfilling its own ultimate objectives regarding Internal Market, relations with NRAs and other stakeholders, as well as consumer empowerment.

##### Objective

Provide professional and administrative support to BEREC (BEREC Regulation, Art. 6)

##### Inputs

- An Administrative Manager appointed by the Management Committee and responsible for heading the Office (BEREC Regulation)
- A Management Committee, with members: one member per MS (head of NRA) + one representative of the EC and observers: NRAs of EFTA and candidate countries (Presentation on BEREC Office structure)
- Staff / national experts from MS on secondment on the a temporary basis
- Budget:
  - Subsidy from the Community,
  - Financial contributions from MS or NRAs on a voluntary basis: to finance specific items according to an agreement between the Office and the MS/NRA
  - Revenues and expenditure must be in balance
  - The budgetary authority adopts the establishment plan for the Office. Budget is final after the final adoption of the general budget of the EU

##### Activities

**Activities of the Office** (BEREC Regulation, Art. 6 & ECA report on BEREC Office accounts for the financial year 2011)

- Provide professional and administrative support services to BEREC
- Collect information from NRAs and exchange/transmit this information
- Disseminate regulatory best practices among NRAs within the EU and to third parties
- Assist the Chair in the preparation of the work of the BoR and the MC of the Office
- Set up and support Expert Working Groups

##### Activities of the Management Committee

- Manages and approves the BEREC Office budget and Office WP
- Appraises the Administrative Manager of BEREC
- Appoints and manages BEREC Office staff
- Draws up the Annual Activity Report with an opinion on the final account

##### Activities of the Administrative Manager

- Assist the BoR, the MC and the Expert Working Groups (agenda, draft Work Programme, draft Annual Report on the activities of BEREC)
- Prepares the draft Office WP and submits it to the MC
- Supervise the implementation of the Annual Work Programme of the Office
- Implement the budget: Authorising Officer under the supervision of the MC, draws up the final accounts and transmits them to the MC
- Resolves differences between members of the MC (BEREC Rules of procedure)
- Develops organisational values and culture (Office WP 2012)

- Establishes and manages operational planning and performance assessment: regular monthly budgetary reviews and bimonthly Work Plan reviews with Office units (Office WP 2012)
- Assists the BoR with the draft Annual Report on the activities of BEREC (Office WP 2012)
- Prepares the draft Office WP and submits it to MC (Office WP 2012)
- Establishes the risk management processes and plans with auditing bodies (Commission Internal Audit Service and European Court of Auditors)

The Management Committee and the Administrative Manager “*share between themselves all administrative and financial responsibilities, including the responsibilities for the staff. However, only the Management Committee is responsible for appointment of staff (Art. 7(4)) [BEREC Regulation]*” (ECA report on BEREC Office accounts for the financial year 2011)

**As from BEREC Office Work Programme 2012 (Office WP 2012)**

As stated in the official document, “the Office WP 2012 is the first annual work plan of a fully operational organisation”. The activities described in it concern:

- Support to implementation of the BEREC Work Programme:
  - Support to EWGs:
    - Support to EWGs: improving harmonisation, emerging challenges, implementation of reviewed framework for electronic communication
    - Setting-up of EWGs: information collection on resources allocated by NRAs and assistance to EWG Chairs
    - Administrative, legal and logistical support to BEREC EWGs: agenda setting, circulation of documents, minutes drafting, facilities management
    - Data collection from NRAs according to the Project Requirements: access point for data gathering
    - Assistance to the EWGs in preparation of BEREC reports, CPs and other measures
    - Management of public consultation and public procurement procedures
  - Activities related to Art. 7 / 7a FD (BoR Rules of procedures, Art. 13):
    - Keep track of notifications
    - Establish and coordinate Art. 7 / 7a EWGs
    - Report the outcome of Art. 7 cases
  - Collection and exchange of information and best practices:
    - Collect market data (benchmark, monitoring of compliance with CPs, )
    - Specific data collection related to BEREC WP 2012: regulatory accounting, roaming benchmark, monitoring of conformity of national decisions with CPs, SMS/MTR/FTR benchmark
    - Exchange of best practices and cooperation with knowledge organizations: workshops, meetings, events, call for tenders management
- Horizontal Activities:
  - Assistance to the Chair of the BoR and MC during: elections, electronic vote, representative events, drafting BEREC WP
  - Assistance for Plenary and Contact Network meetings: agenda, attendance list, press release
  - Ensuring transparency and accountability of the work of BEREC and the BEREC Office: maintain public registers, maintain the BEREC Internet website and intranet, make information available
  - Support to international activities of BEREC
  - Management of requests on advice and assistance
  - Management of relations with stakeholders: EU institutions, industry, academic and consumer organizations, international institutions

- Administrative functions and activities of the BEREC Office: HR management, financial management, budget follow-up, reporting, legal assistance to the BoR, procurement procedures, relations with the Republic of Latvia

#### **Process**

- Coordination with EWGs (and more specifically Chairs of EWGs)
- Assistance to the BoR
- Coordination with MS and NRAs
- Coordination with the EC:
  - Between the Office accounting officer and the Commission accounting officer and the ECA
- Coordination with the EP and the Council
- Coordination with the Internal Auditor of the Commission, the ECA
- Coordination with OLAF (BEREC Regulation, Art. 16)
- Coordination with Ombudsman and the Court of Justice (BEREC Regulation, Art. 22 & 24)
- Annual declaration of commitments and declaration of interest made by: members of the MC, the Administrative Manager and the staff of the Office, made public
- Documents are public (BEREC Regulation, Art. 22)
- Internal process:
  - Operational planning and performance assessment: regular monthly budgetary reviews and bimonthly Work Plan reviews with Office units
- risk management processes and plans with auditing bodies

#### **Outputs**

- Agenda
- Draft BEREC Office Work Programme / BEREC Office Work Programme
- Draft BEREC Work Programme / BEREC Work Programme
- Draft Annual Report on the activities of BEREC / Annual Report on the activities
- Annual Activity Report
- Report on budgetary and financial management
- Regular budgetary reviews and bimonthly Work Plan reviews

#### **Outcomes**

Main BEREC Office's outcomes are also BEREC's outcomes: outcomes resulting from reports developed by BEREC and supported by the BEREC Office

#### **Impact**

- The BEREC Office provides support on administrative activities (agenda of meetings, diffusion of documents, coordination of Expert Working Groups)
- The professional support that the BEREC Office may provide to BEREC is currently not used
- Most of the industry representatives do not know the existence of the BEREC Office
- Evaluate the impact of the BEREC Office after less than one year of existence might be misleading as it requires considering the role of the BEREC Office throughout one full year (and even estimate differences from one year to another) and with different Chairs (to estimate how the impact of the BEREC Office differs according the use made by the BoR, the BoR Chair and EWG Chairs).

#### **Assumptions**

- Office WP is consistent with the work of BEREC even though BEREC WP is approved at a much later stage
- BEREC Office is fully operational and independent

**External factors**

- Community body with legal personality
- Managed by the Administrative Manager



# Appendix D. - Questionnaire for the online survey

The questionnaire below based our first wave of interviews with stakeholders. It will not be the final version. We are currently shortening it and including new questions relative to the two case studies we will conduct for the Final Study Report.

## D.1. Questionnaire – Introduction

### ABOUT YOU

#### 1. Which institution/organisation do you work for

BEREC Office		Council of the European Union	
European Commission		National Regulatory Authority	
European Parliament		Telecommunication company	
		Association related to electronic communications	
Other			

Note:

This e-survey will target three groups of stakeholders:

- 1) EU institutions representatives
- 2) NRAs and BEREC Office's representatives
- 3) Industry representatives (companies, associations, consumers' representatives)

#### 2. What position do you hold in your organisation

Member of the BEREC BoR		Member of BEREC Office staff	
Member of BEREC Contact Network		Head of organisation	
Member of BEREC Expert Working Groups		Head of Unit	
Member of the Management Committee of the BEREC Office		Member of Unit	
Other			

For closed questions, the suggested scale for evaluation of satisfaction level of a stakeholder is presented below:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree

## ***D.2. Evaluation Questions Set 1 - Achievements and value added of BEREC***

### ***D.2.1. Relevance***

<b>3.</b> To what extent BEREC ensures:	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<ul style="list-style-type: none"> <li>• A high level of investment, innovation and consumer protection through enhanced competition</li> </ul>						
<ul style="list-style-type: none"> <li>• Promote competition and promote the interests of the EU citizens following the Article 8 of the Framework Directive</li> </ul>						
<ul style="list-style-type: none"> <li>• Consistency in the application of EU regulatory framework</li> </ul>						
<ul style="list-style-type: none"> <li>• Transparency and consumer empowerment</li> </ul>						
<ul style="list-style-type: none"> <li>• Cooperation among NRAs and between NRAs and the Commission</li> </ul>						

<b>Questions</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>4.</b> To what extent BEREC contributes to the Digital Agenda?						
<b>5.</b> To what extent are the three themes of focus chosen by BEREC for its Mid-Term Strategy relevant to fulfil its objectives? : <ul style="list-style-type: none"> <li>◦ Infrastructure and next generation networks</li> <li>◦ Protection and empowerment of consumer</li> <li>◦ Boost of the internal market</li> </ul>						

Questions	1	2	3	4	5	N/A
<p><b>6.</b> To what extent are the three 'topics that matter' chosen by BEREC in its Mid-Term Strategy relevant to fulfil its objectives? :</p> <ul style="list-style-type: none"> <li>◦ Development of media services: wireless, IP technologies, new services offered by mobile devices</li> <li>◦ Protection and empowerment of consumer</li> <li>◦ Need for global approach through cooperation with other regulatory authorities / regional regulatory networks</li> </ul>						

Question	Policy-making	General understanding of the market	Research	Personal interest	Other
<p><b>7.</b> How do you use BEREC's contributions?</p>					

**8.** Please specify the extent to which you think that BEREC should fulfil other tasks.

**9.** Please specify the extent to which you think that BEREC has acquired an independent character.

- 10.** Please specify your opinion regarding how BEREC might improve in respect to any of the above.

### **D.2.2. VALUE ADDED**

<b>11.</b> To what extent the following activities of BEREC bring value to your work	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<ul style="list-style-type: none"> <li>Develop and disseminate among NRAs regulatory best practices, such as common approaches, methodologies or guidelines on the implementation of the EU regulatory framework</li> </ul>						
<ul style="list-style-type: none"> <li>On request, provide assistance to NRAs on regulatory issues</li> </ul>						
<ul style="list-style-type: none"> <li>Deliver opinions on the draft decisions, recommendations and guidelines of the Commission</li> </ul>						
<ul style="list-style-type: none"> <li>Issue reports and provide advice, upon a reasoned request of the Commission or on its own initiative, and deliver opinions to the European Parliament and the Council, upon a reasoned request or on its own initiative, on any matter regarding electronic communications within its competence</li> </ul>						
<ul style="list-style-type: none"> <li>On request, assist the European Parliament, the Council, the Commission and the NRAs in relations, discussions and exchanges with third parties (e.g. companies, associations, consumers' representatives) and assist the Commission and NRAs in the dissemination of regulatory best practices to third parties (e.g. companies, associations, consumers' representatives)</li> </ul>						

<b>12. Would you say that BEREC:</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<ul style="list-style-type: none"> <li>Provides new elements when analysing relevant markets for NRAs</li> </ul>						
<ul style="list-style-type: none"> <li>Brings added value and quality to develop the internal market by being a “platform of organisations” or an “exclusive forum”</li> </ul>						
<ul style="list-style-type: none"> <li>Contributes to your overall understanding of the electronic communications market</li> </ul>						
<ul style="list-style-type: none"> <li>Brings value when the EU institutions ask for advice or opinion</li> </ul>						
<ul style="list-style-type: none"> <li>Brings value when dealing with the industry that represents market parties which have a specific interest</li> </ul>						
<ul style="list-style-type: none"> <li>Sufficiently cooperates with advisory bodies such as RSPG (Radio Spectrum Policy Group), ENISA (European Network and Information Security Agency) and EPRA (European Platform of Regulatory Authorities)</li> </ul>						
<ul style="list-style-type: none"> <li>Sufficiently cooperates with other regulatory authorities and regional regulatory networks (such as EMERG, Regulatel) when considering BEREC’s global approach</li> </ul>						

<b>13. Are these contributions from BEREC of special interest for you?</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<ul style="list-style-type: none"> <li>Documents</li> </ul>						
<ul style="list-style-type: none"> <li>Advices and Opinions</li> </ul>						

Question	1-3	4-5	6-10	11-15	More than 15	N/A
14. How many contributions of BEREC do you read in a quarter?						

Question	2010	2011	2012	N/A
15. How many recommendations does your Expert Working Group make during a year?  (options to choose: 1-3, 4-5, 6-10, 11-15, or more than 15)				

16. If appropriate, name of your Expert Working Group:

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17. How valuable for you are BEREC's answers to 'other/ad hoc request':	1	2	3	4	5	N/A
• Hearing at the European Parliament						
• Feedback on draft working documents from European Commission DGs						

**18.** Please specify your opinion on BEREC’s answers to “other requests”?

<b>19.</b> Would you say that BEREC:	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
• Brings new issues relevant to your organisation to your attention						
• Helps stimulate policy debate on electronic communications						
• Provides useful material to feed the policy debate on electronic communications/for policymakers						

<b>20.</b> What is your assessment of the documents produced by BEREC?	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
• Contain a clear position						
• Contain a useful position						
• Help stimulate policy debate in various meetings						
• Are well and clearly drafted						
• Are of appropriate length						



- 21.** If appropriate, please specify the extent to which you are able to adopt BEREC's opinions in your national regulation

- 22.** Please specify the extent to which BEREC has become a richer institutional structure than the ERG for problem solving.

- 23.** Please specify, whether you consider that BEREC should be, in theory, a more centralised EU-wide regulatory authority for electronic communications (following the political debate questioning whether or not there should be a Euro-regulator)?

### ***D.2.3. EFFECTIVENESS***

<b>24.</b> Would you say that BEREC effectively delivers:	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
• Opinions on EC draft decisions						
• Opinions on EC recommendations						
• Opinions on EC guidelines						
• Opinions to the European Parliament and the Council in response to a request or by its own initiative						
• Assistance to the European Institutions in relations with third parties						

<ul style="list-style-type: none"> <li>• Assistance to the Commission in the dissemination of regulatory best practices to third parties</li> </ul>						
<ul style="list-style-type: none"> <li>• Meaningful and valuable assessments of NRA decisions in the framework of the Article 7/7a procedure</li> </ul>						

**25.** Please specify what progress BEREC has made in ensuring the consistent application of the Regulatory Framework through the Article 7/7a procedure.

**26.** Please specify the extent to which, in your view, the work of BEREC towards EU institutions should be changed in any way.

### *BEREC towards NRAs*

<b>27.</b> Would you say that BEREC	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<ul style="list-style-type: none"> <li>• Has objectives effectively aligned with NRAs' objectives</li> </ul>						
<ul style="list-style-type: none"> <li>• Effectively supports NRAs' actions when monitoring conformity of their remedies with Common Positions</li> </ul>						
<ul style="list-style-type: none"> <li>• Develops and disseminates effectively best practices among NRAs</li> </ul>						
<ul style="list-style-type: none"> <li>• Provides effective assistance to NRAs on regulatory issues (for instance, fraud or the misuse of numbering resources)</li> </ul>						

• Provides effective assistance to NRAs in relations with third parties						
• Provides effective assistance to NRAs in the dissemination of regulatory best practices to third parties						
• Provides effective assistance to NRAs when analysing the relevant market						

**28.** Please specify the extent to which, in your view, the work of BEREC towards NRAs should be changed in any way.

--

### *BEREC towards the electronic telecommunications market*

Questions	1	2	3	4	5	N/A
<b>29.</b> Would you say that BEREC effectively keeps track of the actual market developments? (comment letters for the Commission, remedies for NRAs, general monitoring)						
<b>30.</b> Do you think that BEREC efficiently achieved its requirements / objectives regarding the following topics? <ul style="list-style-type: none"> <li>◦ International roaming</li> <li>◦ Net neutrality</li> <li>◦ Next Generation Networks Access</li> <li>◦ Termination rates</li> <li>◦ Article 7 / 7a procedure</li> </ul>						

#### **D.2.4. EFFICIENCY**

- 31.** Please specify if, in your view, the timing of BEREC's deliverables should be changed in any way.

- 32.** Please specify the extent to which you take into account BEREC's recommendations when it provides regulatory best practices and guidance.

- 33.** The name of your NRA:

- 34.** Please specify how you apply the common decisions in your NRAs. Can you provide examples?

- 35.** The name of your EU institution service:

Questions	1	2	3	4	5	N/A
36. Would you say that BEREC opinions on Article 7 cases are taken into utmost account by the Commission?						

37. Would you consider that the following documents influence your decisions/actions in your organisation:	1	2	3	4	5	N/A
• BEREC reports						
• BEREC Annual Reports						
• BEREC opinions						
• BEREC formal advice to the Commission						
• BEREC Common Statements						
• BEREC consultations outcomes						
• BEREC data bases						
• BEREC guidelines						
• BEREC snapshots						
• BEREC outcomes resulting from international cooperation, exchange of information and experience						
• BEREC public hearings outcomes						
• BEREC Medium-Term Strategy						

38. Please specify your comments/suggestions on how BEREC could improve its outcomes.

**39.** Please specify the extent to which BEREC has prioritised the right issues in its annual Work Programmes.

<b>Questions</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>40.</b> Do you think BEREC carried out its Work Programmes effectively? : Please tick when you think that BEREC carried out its Work Programme effectively.						
<b>41.</b> Do you think that the mandates and tasks of BEREC are mutually supportive and non contradictory?						

## ***D.3. Evaluation Questions Set 2 – Governance, organisational structure and management of BEREC***

### ***D.3.1. RELEVANCE***

<b>42. Would you consider that:</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
• The composition and organisation of BEREC is relevant to reach its objectives						
• BEREC acts independently						
• The status of observers is relevant/useful to achieve BEREC's objectives						
• BEREC's organisation into 12 Expert Working Groups is relevant						
• The topics covered by the Expert Working Groups are relevant						
• Organising Plenary Meetings at least every quarter is relevant						

**43. How many Expert Working Groups do you currently participate in?**



**44.** Of the Working Groups in which you currently participate, how many do you deem relevant?

**45.** Of the Working Groups in which you currently participate, how many do you contribute to by drafting related documents?

<b>46.</b> Please specify which Expert Working Groups are relevant for you:	Relevant EWG
<ul style="list-style-type: none"> <li>• Benchmarking working group</li> <li>• BEREC-RSPG Cooperation working group</li> <li>• Convergence and Economic Analysis working group</li> <li>• Framework Implementation working group</li> <li>• End-User working group</li> <li>• International Roaming working group</li> <li>• Net Neutrality working group</li> <li>• Next Generation Networks working group</li> <li>• Remedies working group</li> <li>• Regulatory Accounting working group</li> <li>• Termination Rates working group</li> <li>• Evaluation of BEREC and BEREC Office working group</li> </ul>	

Question	1	2	3	4	5	N/A
47. How relevant would you consider the contribution of the BEREC Office towards the EWGs?						

48. Please specify if you think that the current election of Vice-Chairs is aligned with the needs of BEREC.

49. Please specify how large the gaps are, if any, compared to the expectations, in the governance of BEREC in order to better support the work of your organisation.

### *D.3.2. Organisational structure*

50. Would you consider that:	1	2	3	4	5	N/A
<ul style="list-style-type: none"> <li>The current organisational structure of BEREC adds value to the coordination of NRAs with regard to the regulation/supervision of the internal market for electronic communications networks and services</li> </ul>						
<ul style="list-style-type: none"> <li>The consultation method chosen by BEREC brings value to its deliverables</li> </ul>						
<ul style="list-style-type: none"> <li>The publicity of results of the consultation procedure brings value to your organisation</li> </ul>						
<ul style="list-style-type: none"> <li>The Contact Network brings value to BEREC decisions compare to other Expert Working Groups and to the BoR</li> </ul>						
<ul style="list-style-type: none"> <li>Project Requirement Definitions established by</li> </ul>						

Expert Working Groups bring value to their respective work						
<ul style="list-style-type: none"> <li>That the discussion between BEREC and an NRA in the Article 7/7a procedure helps to solve issues and develop remedies</li> </ul>						

**51.** Please specify your opinion about the public consultation (public hearing, written comments) organised for the BEREC Work Programme.

**52.** Please specify if there is any evidence of new kind of cooperative relations between BEREC and the European Commission that are qualitatively different from those that took place when the ERG existed. Why has this occurred?

<b>53.</b> Would you consider that:	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<ul style="list-style-type: none"> <li>The whole election process of the Chair is effective: 2/3 majority, secret ballot, occurrence during the last ordinary Plenary Meeting</li> </ul>						
<ul style="list-style-type: none"> <li>The rotation of Chairs and Vice-Chairs is an effective governance method</li> </ul>						
<ul style="list-style-type: none"> <li>The overall organisation of Plenary Meetings is effective: agenda, working documents, minutes, and quorum</li> </ul>						
<ul style="list-style-type: none"> <li>BEREC fulfils efficiently its responsibilities related to external relations</li> </ul>						

54. Would you say that :	1	2	3	4	5	N/A
• BEREC should use more electronic voting						
• The internal working process of the Expert Working Groups is effective						

Question	1	2	3	4	5	N/A
55. Would you say that the organisation of BEREC as a 'platform of organisations' or an 'exclusive forum' enables it to fulfil its mission effectively?						

56. Please specify the extent to which you consider that BEREC is prepared to confront emerging issues.

57. Would you consider that :	1	2	3	4	5	N/A
• The BEREC Office organises BEREC's meetings efficiently						
• You receive (preparatory) BEREC's documents on time						

58. Please specify the extent to which you think that NRAs have adequate/enough financial/human resources to comply with the obligation to participate in BEREC (Article 3 of the Framework Directive).

### ***D.3.3. IMPACT***

<b>59.</b> Has the BoR granted the Chair with a clearly defined mandate?	<b>Yes</b>	<b>No</b>
• In 2011		
• In 2012		

**60.** If yes, please specify the extent to which this mandate impacted the whole role of the Chair and its actions on a day-to-day basis.

### ***D.3.4. COHERENCE, COMPLEMENTARITY, SYNERGY***

**61.** Please specify the extent to which you would qualify BEREC's methods as transparent.

- 62.** Please specify the extent to which BEREC has succeeded in setting up coherent working relationships and achieving synergies with the Commission, other EU institutions, NRAs and third parties.

- 63.** Please specify the extent to which external stakeholders are aware and involved in the work of BEREC and in case they have questions to raise they know whom to contact.

## ***D.4. Evaluation Questions Set 3 – Structure and working methods of the BEREC Office***

### ***D.4.1. RELEVANCE***

<b>64. Would you consider that:</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
• The composition and organisation of the BEREC Office is relevant to reach its objectives						
• The status of observers is relevant/useful to achieve BEREC Office's objectives						
• The mandate of the Administrative Manager is aligned with BEREC Office objectives						
• The term of office of the Administrative Manager (3 years) is appropriate						
• Organising Plenary Meetings at least every quarter is relevant						

**65.** Please specify if, in your opinion, the structure and working methods of the BEREC Office should be changed in any way to make it more relevant to your work.

### ***D.4.2. VALUE ADDED***

<b>Questions</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>66.</b> Has the concrete establishment of the BEREC Office modified your day-to-day work?						
<b>67.</b> Would you say that the BEREC Office brings value to the everyday work of the Contact Network and the Expert Working Groups?						



68. Would you say that the BEREC Office brings value when:	1	2	3	4	5	N/A
• Providing professional and administrative support to BEREC						
• Collecting information from NRAs and exchanging and transmitting information						
• Disseminating regulatory best practices among NRAs						
• Assisting the Chair in the preparation of the work of the Board of Regulators						
• Providing support to ensure the smooth functioning of Expert Working Groups						

### D.4.3. *EFFECTIVENESS*

69. Would you consider that:	1	2	3	4	5	N/A
• BEREC's objectives and the objectives of the BEREC Office are effectively aligned						
• The whole election process of the Chair of the BEREC Office is effective: 2/3 majority, secret ballot, occurrence during the last ordinary Plenary Meeting						
• The rotation of Chairs and Vice-Chairs of the BEREC Office is an effective governance method						
• The duties of Chairs and Vice-Chairs of the BEREC Office fulfils efficiently its responsibilities related to external relations						
• The overall organisation of the BEREC Office meetings is effective						
• The public consultation method chosen by the BEREC Office is effective						

70. Would you consider the coordination between the BEREC Office and other EU institutions as effective:	1	2	3	4	5	N/A
• Coordination with OLAF						
• Coordination with the Ombudsman						
• Coordination with the Court of Justice						

71. Please specify the extent to which the working methods favoured by the BEREC Office contribute to the effectiveness of its activities and the achievement of its objectives.

*Regarding the BEREC Office*

72. Would you consider the work achieved by the BEREC Office as effective, regarding:	1	2	3	4	5	N/A
• Support services to BEREC						
• Collection of information from NRAs and exchange/transmit						
• Dissemination of regulatory best practices						
• Assistance to the BEREC Chair						
• Set up and support to Expert Working Groups						
• Staff management						
• Support during the 7/7a procedure						
• Organisation of public consultation in coordination with Expert Working Groups' Chairs						
• Management of BEREC internal website						
• Management of BEREC external website						

*Regarding the Administrative Manager*

73. Would you consider the work achieved by the Administrative Manager of the BEREC Office as effective, regarding:	1	2	3	4	5	N/A
<ul style="list-style-type: none"> <li>Assistance with the preparation of the agenda of the BoR, the MC and the EWGs</li> </ul>						
<ul style="list-style-type: none"> <li>Assistance with the preparation of the draft work programme of the BEREC Office for the following year</li> </ul>						
<ul style="list-style-type: none"> <li>Supervision of the implementation of the annual work programme of the BEREC Office</li> </ul>						
<ul style="list-style-type: none"> <li>Adoption of internal administration instructions and publication of notices to ensure the functioning of the BEREC Office</li> </ul>						
<ul style="list-style-type: none"> <li>Implementation of the budget of the BEREC Office under the supervision of the MC</li> </ul>						
<ul style="list-style-type: none"> <li>Assistance to the preparation of the draft Annual Report on the activities of BEREC</li> </ul>						

74. Please specify whether you consider that the BEREC Office has prioritised the right issues in its annual work programmes.

75. Please specify how effectively you think the BEREC Office has carried out its annual work programmes.

### *Regarding the Management Committee*

76. Would you consider the work achieved by the Management Committee as effective, regarding:	1	2	3	4	5	N/A
• The appointment of the Administrative Manager						
• The provision of guidance to the Administrative Manager in the execution of his/her tasks						
• The supervision the Administrative Manager's implementation of the budget						
• The appointment of staff						
• The adoption of measures in accordance with the Staff Regulation and national external experts						
• The proposition of the number of staff members for the BEREC Office						
• Its opinion on the final accounts of the BEREC Office						
• Its relations with the Budgetary Authority						
• Its role vis-à-vis the European Parliament regarding the discharge						
• The assistance to Expert Working Groups						
• The preparation of the BEREC Office work programme						
• The supervision of the Administrative Manager's role in adoption of internal administrative instructions						
• The Annual Activity Report of the BEREC Office with a statement of assurance						

77. Please specify if you would advise the BEREC Office to have a different organisation. If, yes, which one?

**D.4.4. EFFICIENCY**

78. Would you consider that the BEREC Office operates efficiently	1	2	3	4	5	N/A
• In terms of administrative process						
• In a timely manner						
• In terms of staffing						

79. Would you consider that	1	2	3	4	5	N/A
• The BEREC Office's resources are efficiently used						
• NRAs' means and resources put at BEREC Office's disposal are sufficient for BEREC to achieve its objectives						

**D.4.5. COHERENCE, COMPLEMENTARITY, SYNERGY**

**80.** Please specify the extent to which the mandates and tasks of BEREC and the BEREC Office, as well as their governance, structure, management and working practice are mutually supportive and non contradictory.

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Question	1	2	3	4	5	N/A
<b>81.</b> Do you think the BEREC Office has a positive impact on BEREC's activities and objectives?						

- 82.** Please specify the extent to which the objectives and activities of the BEREC Office support or contradict the EU policies for the Information Society, contribute to the achievement of their mutual objectives, and complement other related activities implemented at EU or national level.

## ***D.5. Case studies***

### ***D.5.1. FIRST CASE STUDY: THE ARTICLE 7/7a PROCEDURE***

- 83.** Since assuming its role in the new Articles 7 and 7a procedures, BEREC (Expert Working Group) has handled a considerable case load. Has it been able to respond effectively? What could be done to improve its effectiveness?

- 84.** Has it demonstrated a commitment to contributing to (1) development of the internal market, (2) promoting the development of consistent regulatory practice and in particular (3) consistent application of regulatory remedies?

- 85.** What examples are there of (a) effective tripartite co-operation between the Commission, BEREC and the NRA under investigation and (b) effective co-operation between the BEREC and the NRA under investigation, to identify most appropriate and effective measures? What could be done to improve their co-operation?

- 86.** Has the BEREC Office provided effective support in Articles 7 and 7a procedures? What could be done to improve its effectiveness?

### ***D.5.2. SECOND CASE STUDY: NEXT GENERATION ACCESS NETWORKS AND BEREC***

In May 2010, BEREC issued an opinion on the Commission's Draft Recommendation on Regulated Access to NGA Networks. This was done in accordance with article 19 of the Framework Directive. BEREC noted that it had been positively engaged with the Commission on



“various revisions made to the Draft NGA Recommendation of June 2009” produced by the Commission.

**87.** Did this (very early) case of dialogue between the Commission and BEREC assist in the development of the latter (and if so, how)?

**88.** Were there any problematic elements? Were these overcome? If not, why? If so, how and why?

**89.** Was it included in the final Commission Recommendation?

BEREC also explicitly set out a series of areas for further improvement:

**90.** What was the process and how has it shaped BEREC's relationship with the European Commission and other stakeholders (e.g. incumbents, newer entrants, NRAs, other EU institutions with an interest in NGA (EP for instance).

**91.** What was the Commission's reaction to this point made by BEREC?

**92.** To what extent were these recommended changes implemented?

*Case Example: BEREC's Report on the Implementation of the Commission's NGA network Recommendation*

- 93.** This activity of BEREC is reminiscent of the work that the Commission used to do in respect of the development of the telecommunications regulatory framework. To what extent is there a sense that BEREC has assumed at least some of the European level regulatory burden that fell to the Commission and which was beyond the scope and inclination of the ERG?

- 94.** To what extent has BEREC contributed to the creation of the kind of 'environment of certainty' which might stimulate investment on NGA?

*Case Example: NGA Network Creation Through Use of State Aid - Input Made to Date by BEREC*

**95.** Has it been recognised as helpful by the key stakeholders?

**96.** Has it been recognised as such by Member States? Is there any evidence that BEREC is exercising impact in terms of its work here?

**97.** What is the Commission's view of the quality of BEREC's response to this exercise (and to BEREC's earlier study on open access? Did the Commission take forward any specific recommendations made by BEREC? What were these and how is this being done (e.g. has there been follow up interaction between BEREC and the Commission on key matters?)

**98.** What is the Commission's view on the input which BEREC has made to the debate on state to NGA network roll-out?

**99.** Are there any particular issues which have caused debate between the Commission and BEREC? Or are the two bodies broadly in line in respect of their view on the contribution that state aid can make to NGA network roll out?

# Appendix E. - Questionnaire for the internal evaluation of the BEREC Office

## E.1. Questionnaire - Introduction

### ABOUT YOU

1. What position do you hold in your organisation?

Member of the Management Committee of the BEREC Office	
Member of BEREC Office staff	
Head of organisation	
Head of Unit	
Member of Unit	
Other	

2. Diagnostic questions for assessing the structure and working methods of the BEREC Office

Having the right operating model to support the delivery of BEREC Office services has a huge impact on the efficiency, effectiveness and value that the BEREC Office brings to BEREC and to the different stakeholders.

A number of dimensions / factors determine the optimum Operating Model for the BEREC Office. These include governance, administrative & financial and operational processes as well as organisational structure, human resources, infrastructures or Information System. There is no one size fits all but good practices are well established in these dimensions.

Through discussions, we will assist the BEREC Office representatives to assess their processes & Organisation against best practices or reference frameworks (i.e. BEREC Office regulations, Internal Control Standards,...). Concretely, BEREC Office staff will grade the responses to the following questions by checking the column that best indicates the response. Indicate N/A if the question is not applicable.

Structure & working methods of BEREC Office have been described in 3 dimensions (See. Below), that will be assessed according to different criteria:

1. Processes;
2. Organisation & Human Resources;
3. Infrastructures & Information System.

<b>Process dimension</b>
1. Strategic planning & budgeting
2. Performance management & reporting
3. Risk management & internal control (BEREC Office IC Standards, Business Continuity Plan / Disaster Recovery Plan, Confidentiality)
4. Budgetary & Financial Management (inc. Procurement & Contract management for research studies, knowledge organisations,...)
5. Quality management
6. Operational processes : <ul style="list-style-type: none"> <li>• EWG process : Provision of administrative support, collection of information from NRA's, dissemination regulatory best practices &amp; cooperation with knowledge organisation, assistance in the preparation of the work, setting up &amp; provision of logistical support to experts groups, management of public consultations</li> <li>• Horizontal process : Administrative &amp; Executive support of operations (BoR &amp; MC), Ensuring transparency by public information, management of requests</li> </ul>

<b>Resources dimensions</b>
1. Organisation & Human Resources (Recruitment, Ethical values & Organisational culture, competence mgt, mission mgt, ...)
2. Infrastructures & Information System

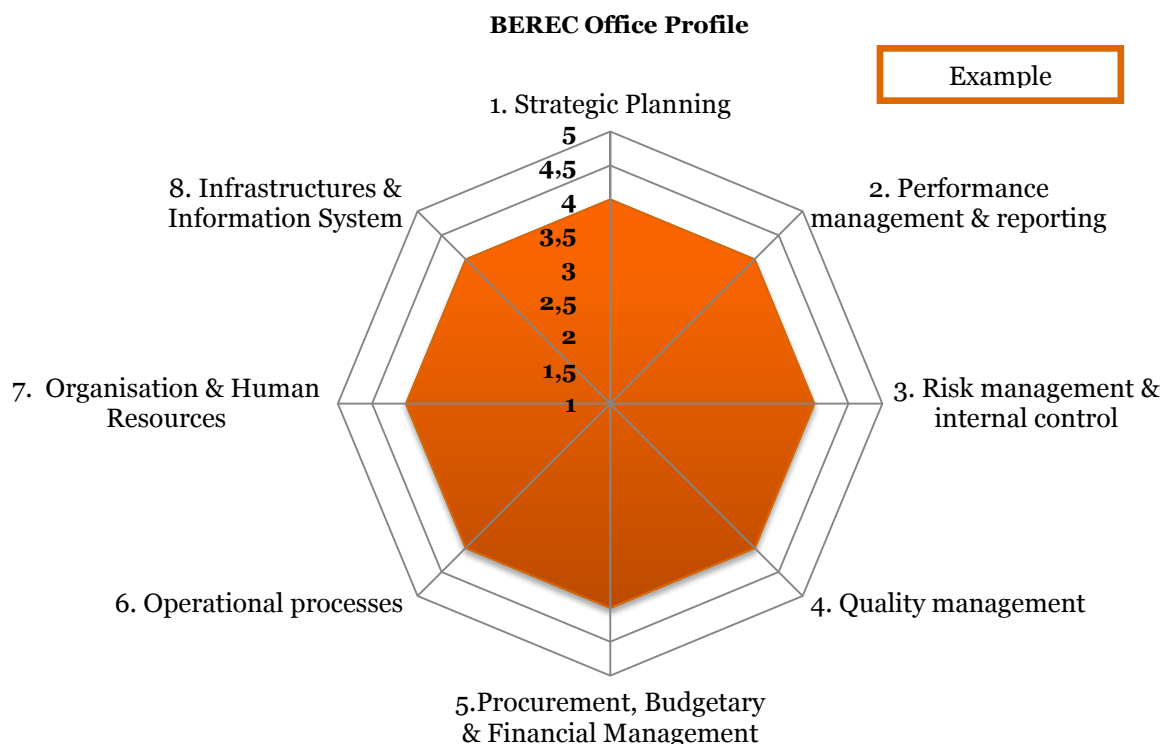
For closed questions, the suggested scale for evaluation of satisfaction / performance level of dimensions is presented below:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree

### **3. BEREC Office profile**

Based on interviews and using the average scores, an assessment of the state of the BEREC Office Organisation and Operating Model will be issued.

An example of illustration for the final presentation of the BEREC Office profile is presented below:

**Figure 44: Example of illustration for the final presentation of BEREC Office profile**

Source: PwC

## E.2. Strategic planning & Budgeting

Work Programme & Budget	1	2	3	4	5	N/A
4. Are strategic planning meetings regularly held within BEREC Office? (The aim of such meetings is to brainstorm the plan and the associated key strategic and other risks which may prevent the BEREC office from achieving its objectives)						
5. Are long-term and annual objectives defined by the office and approved by the Management committee?						
6. Are general objectives broken down into measurable departmental and activity level objectives over the short term and the long term?						
7. Are there Key Performance Indicators associated to objectives?						
8. Is the Establishment Plan defined and are planned resources put at BEREC Office's disposal sufficient for BEREC to achieve its objectives?						
9. Are subsequent revisions to the BEREC Office Work Program reviewed and approved by the Management committee?						
10. Are there dedicated resources and a department						

responsible for performing budgeting, planning and forecasting?						
<b>11.</b> Is there a centrally defined budgeting policy?						
<b>12.</b> Are both financial and non-financial performance measures included in the budget content?						
<p><b>13.</b> What is the total length of the budget preparation process i.e., from commencement to formal approval and release?</p> <p>Score 5 - If preparation currently takes a “World Class” total duration of &lt;1 month.</p> <p>Score 4 - If duration of total preparation approximately 2 months.</p> <p>Score 3 - If duration of total preparation approximately 3 months.</p> <p>Score 2 - If duration of total preparation approximately 4 months.</p> <p>Score 1 - If any worse i.e., &gt;4 months.</p>						
<p><b>14.</b> What tools are used for budget preparation and consolidation?</p> <p>Score 5 - For integrated consolidated budget preparation/planning/forecasting/simulation tools</p> <p>Score 4 - For sophisticated budget preparation/planning/forecasting/simulation tools</p> <p>Score 3 - For simple stand-alone budget preparation tools</p> <p>Score 2 - For manual/spreadsheet</p> <p>Score 1 - For manual</p>						
<p><b>15.</b> Which budget preparation techniques or combination of techniques are used?</p> <p>Score 5 - For full activity-based or full-rolling techniques used for preparation.</p> <p>Score 4 - If part traditional and part activity-based/part rolling-based techniques are used.</p> <p>Score 3 - If zero-based preparation.</p> <p>Score 2 - If traditional line-based preparation.</p> <p>Score 1 - If “last year plus X%.</p>						
<p><b>16.</b> How many formal review and approval cycles by senior management does the budget have to go through before it is finalised?</p> <p>Score 5 - For 1 cycle.</p> <p>Score 4 - For 2 cycles.</p> <p>Score 3 - For 3 cycles.</p> <p>Score 2 - For 4 cycles.</p> <p>Score 1 - For 5 or more cycles.</p>						
<b>17.</b> What budget reporting mechanisms are used during						



<p>the budget year? (actual versus budget)</p> <p>Score 5 - For real-time availability (e.g., Internet/intranet)</p> <p>Score 4 - For on-line query-based</p> <p>Score 3 - For only general-ledger-based</p> <p>Score 2 or 1 - For manual/spreadsheet-based</p>						
<p><b>18.</b> Is variance analysis performed on actual versus budgeted results?</p> <p>Score 3 - For variance analysis performed monthly with commentary on reasons behind the variances.</p> <p>Score 5 - For variance analysis performed monthly with value added insight provided into root causes of the variance and a formal process of an action plan and follow up with the business.</p>						

### ***E.3. Performance management & Reporting***

<b>Performance management</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<p><b>19.</b> Does the unit establish operational measurement criteria (indicators including economy, efficiency &amp; effectiveness metrics) for their activities/projects?</p>						
<p><b>20.</b> Are data regularly collected to feed the defined indicators?</p>						
<p><b>21.</b> What percentage of employees is aware of the organisation's key performance measures/indicators? (Ex: cascaded measures to the employee level, visual charts and notices to present current performance and leading indicators like time, daily output levels)</p> <p>Score 5 - 100%, Score 4 - 75%, Score 3 - 50%, Score 2 - 25%, Score 1 - 0%</p>						
<p><b>22.</b> Does unit take action to address any identified shortfall against objectives?</p>						
<p><b>23.</b> Would you consider that KPIs (Key Performance Indicators) can be produced easily?</p>						
<p><b>24.</b> Would you consider that the monthly management information is of high quality</p> <ul style="list-style-type: none"> <li>◦ Measures of financial and operational</li> </ul>						

<ul style="list-style-type: none"> <li>performance</li> <li>◦ Not dominated by budget indicators</li> <li>◦ Concise - provides insight</li> <li>◦ Highlights issues and exceptions</li> <li>◦ Forward looking</li> <li>◦ There is a common look and feel for all Management Information</li> <li>◦ Use of visuals and trends</li> </ul>						

<b>External &amp; internal reporting</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>25.</b> Are the annual accounts & annual report of the financial year prepared and published on a timely basis?						
<b>26.</b> Is there a register of awarded contracts published according to public procurement rules?						
<b>27.</b> Does BEREC transfer external reports to all stakeholders in a timely manner?						
<b>28.</b> Does BEREC have difficulties to answer to external inquiries of auditors, stakeholders, etc.?						
<b>29.</b> Does the BEREC office Management and especially the Management committee receive or use a synthetic report / dashboard to manage performance?						
<b>30.</b> Do the reports provide Key financial information for decision-making (budget execution, use of resources...) as well as non-financial/activity indicators (progress of management plan)?						
<b>31.</b> Does the Office effectively use technology to support the delivery / automation of the reports or dashboard?						
<b>32.</b> How frequently does the Office evaluate, and update its performance measures / issue its internal reports? Score 5 - For every 6 months or more frequent. Score 4 - For between 6 and 12 months. Score 3 - For annual review. Score 2 or 1 - For less than annual/very rarely.  Notes: Leading organisations realise that effective performance measurement systems are living programs, requiring regular care and maintenance to						

adapt to changing external conditions.						

#### ***E.4. Risk management & Internal control***

<b><i>Risk management framework &amp; Internal environment</i></b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<p><b>33.</b> Did the BEREC office appoint a dedicated person/body such as a “Risk manager” or a “Risk management Committee” whose responsibility is to coordinate the risk management?</p> <p>Score 1 - Risk management responsibility is neither formalised nor clearly defined.</p> <p>Score 5 - Head of risk management or Risk management Committee is in place with responsibilities clearly defined.</p>						
<p><b>34.</b> Are there a formal Risk management &amp; Internal Control framework / guidelines defined &amp; approved by the Management Committee?</p>						
<p><b>35.</b> Has the staff been trained on the Risk management &amp; IC framework?</p>						
<p><b>36.</b> Would you consider that requirements and expected behaviour patterns regarding confidentiality are effectively communicated to the staff?</p>						

<b><i>Risk analysis</i></b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<p><b>37.</b> Is a complete risk identification &amp; assessment performed for the BEREC Office as a whole? Risks can be financial, operational, legal, reputational, IT...</p>						
<p><b>38.</b> Are the risks documented in a single risk register which is accessible to all relevant personnel across the organisation</p>						
<p><b>39.</b> Is there a specific risk analysis carried out for the Business Continuity?</p>						
<p><b>40.</b> Has the BEREC Office define impact &amp; probability scales for consistently assessing the importance of the risks?</p>						

<b>Internal controls</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<p><b>41.</b> Did the BEREC office appoint a dedicated person/body such as a “Head of Controls” or a “Controls Committee” whose responsibility is to focus on implementing and improving business controls on a continuous basis?</p> <p>Score 1 - Controls responsibility is neither formalised nor clearly defined.</p> <p>Score 5 - Head of Controls or Controls Committee is in place with responsibilities clearly defined.</p>						
<p><b>42.</b> Does the BEREC Office define strategies and related corrective actions or controls for mitigating significant risks?</p>						
<p><b>43.</b> Are the controls documented in procedures manuals or check-lists?</p>						
<p><b>44.</b> Processes and controls have been automated wherever possible and practical.</p> <p>Score 1 - Controls are generally manual and the effectiveness of automated controls has not yet been assessed.</p> <p>Score 5 - Processes and controls have been automated wherever possible and practical.</p>						

<b>Information &amp; Reporting - Monitoring</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<p><b>45.</b> Are the main BEREC Office risks communicated to Top management &amp; Management Committee?</p>						
<p><b>46.</b> Is there an update of the risk analysis during the year?</p>						
<p><b>47.</b> Is the implementation of corrective actions or controls monitored?</p>						

## E.5. Procurement budgetary & Financial management

<b>Procurement, contract Management, Expenditure execution</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>48.</b> Is there a clear description of the procurement process, from the creation of a RFP, selection of supplier, purchase requisition (PR)/purchase order (PO) to the payment of the invoice?						
<b>49.</b> Are the roles & responsibilities of each actor defined with respect to the management and ownership of the Purchase to Pay process?						
<b>50.</b> Is there a central service/unit that is responsible for tendering / contract management?						
<b>51.</b> To what extent are agreements for the majority of goods and services developed with a fewer number of suppliers?						
<b>52.</b> Are controls established over the supplier master file including an agreed process for the creation of new suppliers and their review to ensure that clean, consistent data is held about the suppliers in the master file?						
<b>53.</b> Are supplier relationships regularly reviewed?						
<b>54.</b> Are system-based purchases orders created and approved using electronic workflow that is based upon an organisation hierarchical matrix?  Notes: Is there a fully maintained Delegation of Authorities matrix which sets authorisation limits? Does the financial system provide the functionality of setting approval authorities based on Finance hierarchy?						
<b>55.</b> Are system-based Goods Received Notes created by the user responsible for the physical receipt of the goods and then entered in a timely manner?						
<b>56.</b> Are services recorded in a timely manner as a service receipt or is the use of service confirmation workflow utilised?						
<b>57.</b> Are invoices received electronically where possible (e.g., by EDI or via a broker) and paper invoices converted to electronic format via in-house or outsourced data capture?						
<b>58.</b> Are invoices matched automatically to POs and Goods Received Notes in the ERP system with only discrepancies such as price variances and missing goods receipts requiring further action/approval?						

<b>59.</b> Are pre-numbered POs used for control purpose?						
<b>60.</b> Are invoices which are received without a PO (unless specifically exempt from requiring a PO) automatically returned to the vendor?						
<b>61.</b> Is workflow used extensively to reduce approval cycle times (for both non PO invoices and PO invoices with price variances) including an attached invoice image and use of automated escalation?						
<b>62.</b> Are all expenditures planned and checked against appropriations availability before initiating commitment						
<b>63.</b> Are all Commitments verified before legal commitment? (Operational & financial verification)						
<b>64.</b> Are appropriate travel and missions policies in place?						
<b>65.</b> Are receipts scanned and sent electronically to the processing team?						
<b>66.</b> Are negotiated discounts in place with preferred suppliers for high usage travel requirements?						
<b>67.</b> Is there a periodic sample audit of expense claims to provide a control over compliance to travel policy?						
<b>68.</b> Is payment generally made by electronic transfer with little or no availability of cash advances for staff?						

<b>Revenue Execution</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>69.</b> Is there a clear description of the revenue process?						
<b>70.</b> Are the roles & responsibilities of each actor defined with respect to the management and ownership of the revenue process?						
<b>71.</b> Is the members master file set up and managed from a central team with controls in place around data amendments?						
<b>72.</b> Are all amount receivable established & validated before issuing the recovery authorisation?						
<b>73.</b> Is there queries and disputes management in place?						

<b>Accounting &amp; payments</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>74.</b> To what extent has the organisation implemented integrated accounting systems across all units?						
<b>75.</b> Is there a standard/common Chart of Accounts across the organisation?						
<b>76.</b> Is the creation/modification/deletion of new general ledger accounts strictly regulated and controlled?						
<b>77.</b> Is there a centralised, closely controlled process to control the creation of cost centres and profit centres?						
<b>78.</b> Are payments made dependent on due date (not before), derived by system set payment terms, with the use of reporting to provide visibility of cash outflows which is shared with the appropriate parties?						
<b>79.</b> How successful is the organisation at paying invoices to terms, leveraging discounts where financially appropriate and minimising late payment penalties with suppliers?						
<b>80.</b> Is there a process in place to ensure that duplicate payments are not made?						
<b>81.</b> Is there a dispute management process in place?						
<b>82.</b> Are there formal fixed assets management policies and procedures? Notes: Includes such items as which assets are to be acquired, leased or rented; depreciation policies; revaluation approach, insurance valuations.						
<b>83.</b> Is there a current fixed assets register that records all relevant details? e.g., asset particulars, serial number, location, custodian, value, depreciation, etc.						
<b>84.</b> Score 5 - if there is a comprehensive single fixed assets computer system for all assets that includes several sets of depreciation books (e.g., for tax purposes, for management reporting purposes, for R&D grant purposes).						
<b>85.</b> Score 3 - If a basic computer system or if more than one fixed assets system.						
<b>86.</b> Score 2 - If a spreadsheet-based system.						
<b>87.</b> Score 1 - If manual records.						
<b>88.</b> Is there a formal process to immediately tag all newly acquired fixed assets and to record the necessary details in the fixed assets register?						
<b>89.</b> Are financial transactions recorded in a timely						



manner & according to budgetary accounting rules?						
<b>90.</b> Are financial transactions recorded in a timely manner & according to accrual accounting rules?						
<b>91.</b> Is there disproportionate effort and overtime required to meet the existing accounting close timetable?						
<b>92.</b> Score 5 - If no overtime/weekends required at each period close.						
<b>93.</b> Score 3 - If some overtime required at each period close.						
<b>94.</b> Score 2 or 1 - If overtime consistently required at each period close.						
<b>95.</b> Are the annual accounts prepared in a timely manner?						

## ***E.6. Quality management***

<b>Stakeholder/Member focus</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>96.</b> Is there a formal process for gathering and understanding “customer - member - stakeholder” needs and expectations?						
<b>97.</b> Are the needs & requirements of “customer” well communicated throughout the organization?						
<b>98.</b> Does BEREC Office use method & tool (surveys) for measuring “customer” satisfaction and acting on the results?						
<b>99.</b> Are the “customers” complaints or congratulations documented and handled?						

<b>Process &amp; System approach and continuous improvement</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>100.</b> Are BEREC Office processes clearly identified & documented? Are the interfaces between processes defined? Is there a manual of procedures?						
<b>101.</b> Is there a systematic analysing and measuring of the performance of key activities or processes (KPI's,...)?						
<b>102.</b> Does BEREC Office perform root-cause analysis for identifying the source of potential deficiencies or waste within the processes?						

<b>103.</b> Does BEREC Office define regular improvement plans which are based on the evaluation of the processes & activities?						
<b>104.</b> Are the action plans implemented & monitored?						

### *E.7. Operational processes*

<b>Support to implementation of BEREC Work Programme</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>105.</b> Has the concrete establishment of the BEREC Office eased the day-to-day work of BEREC?						
<b>106.</b> Would you say that the BEREC Office brings value to the everyday work of the Expert Working Groups?						
<b>107.</b> Would you say that the BEREC Office brings value when providing administrative & legal support to Expert Working Groups?						
<b>108.</b> Do you consider the logistical support to EWGs adequate (including premises, equipments,...)?						
<b>109.</b> How do you assess the availability & flexibility of the the members of the Office Programme Management Unit (contact person for the EWG)?						
<b>110.</b> Would you say that the BEREC Office brings value when collecting & processing data from NRAs?						
<b>111.</b> Is the process of report preparation mastered by the BEREC Office?						
<b>112.</b> Would you consider that the public consultation method chosen by the BEREC Office is effective and that the public consultations are adequately managed?						
<b>113.</b> Would you consider the work achieved by the BEREC Office as effective, regarding the support during the 7/7a procedure						
<b>114.</b> Would you consider the work achieved by the BEREC Office as effective and efficient, regarding the exchange/transmit of market data?						
<b>115.</b> Would you consider the work achieved by the BEREC Office as effective and efficient, regarding the dissemination of regulatory best practices & technical expertise?						
<b>116.</b> How do you assess the management of BEREC						

internal website?						
<b>117.</b> How do you assess the management of BEREC external website?						
<b>118.</b> Is the cooperation with knowledge organisations sufficient?						

<b>Administrative &amp; executive support of BEREC operations and other support</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>119.</b> Would you consider the work achieved by the BEREC Office as effective, regarding the assistance in the preparation of the work of the Board of Regulators?						
<b>120.</b> Would you consider the work achieved by the BEREC Office as effective, regarding the assistance with the preparation of the agenda & meetings of the BoR and the MC?						
<b>121.</b> Would you say that the BEREC Office ensures sufficient transparency by providing sufficient public access to its documents?						
<b>122.</b> Would you say that the BEREC Office brings value when providing support to international activities of BEREC?						
<b>123.</b> How do you assess the management and handling of requests from Member states, EC,...?						

## ***E.8. Organisation & Human resources***

<b>124. Would you consider that:</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
• The composition and organisation of the BEREC Office is relevant to reach its objectives						
• The status of observers is relevant/useful to achieve BEREC Office's objectives						
• The mandate of the Administrative Manager is aligned with BEREC Office objectives						
• The term of office of the Administrative Manager (3						

years) is appropriate						
<ul style="list-style-type: none"> <li>Organising Plenary Meetings at least every quarter is relevant</li> </ul>						

<b>Structure and roles</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>125.</b> Is there a clear organisation chart for the BEREC office?						
<b>126.</b> Are there are detailed and current job descriptions for all positions that include responsibilities definitions?						
<b>127.</b> In your opinion are there apparent duplications in roles or tasks?						

<b>Competencies</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>128.</b> Do the job descriptions include the skills & competences required for the function?						
<b>129.</b> Are the staff competencies & performance regularly assessed?						
<b>130.</b> Does the BEREC Office define a training plan for its staff and are there regular trainings provided?						
<b>131.</b> In your opinion, are the trainings adapted to required competencies?						

<b>Recruitment</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>132.</b> There is a competency-based approach to recruitment?						
<b>133.</b> There are vacant positions since a long period?						
<b>134.</b> There is a quick recruitment process?						

<b>Development and knowledge sharing</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>

<b>135.</b> There is a development curriculum in place for all the staff covering all core areas of the function?						
<b>136.</b> There are efficient coaching “parrain” or tutoring systems?						
<b>137.</b> The BEREC office uses e-learning or a knowledge base?						

<b>Career and succession planning</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>138.</b> There is a performant succession plan embraced at the leadership level?						
<b>139.</b> Critical roles are identified and regularly assessed to ensure actions are in place where no successors are ready?						
<b>140.</b> Back-up staff has been identified and trained accordingly?						
<b>141.</b> Critical knowledge is captured for key activities during times of staff and/or process transition (i.e documentation of procedures)?						

### ***E.9. Information system & Infrastructure***

<b>Finance / Business systems - Efficiency</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>142.</b> Is there an articulated multi-year strategy for Information systems (Financial & Business systems)? Does this strategy support the BEREC Office & BEREC strategy?						
<b>143.</b> Is IT represented at Top-management level and involved in strategic decision making?						
<b>144.</b> Is there clear and enforced governance for applications and data (IT policies, guidelines,...)?						
<b>145.</b> Are all critical systems operational resilience and availability addressed through such means as: <ul style="list-style-type: none"> <li>◦ Signed Service Level Agreements for availability with formal measures?</li> <li>◦ Predefined availability and downtime (e.g., for backups)?</li> <li>◦ Security controls (e.g., access controls, firewalls, virus protection, intrusion detection monitoring)?</li> </ul>						

<b>146.</b> Is a software license review of all software performed on a periodic basis? Were there any exceptions reported in the last review performed? Were these exceptions resolved as per the agreed timelines?						
<b>147.</b> Are financial / operational system owners identified? Have the responsibilities of the system owners clearly defined?						
<b>148.</b> Are there Business Contingency Plans and Disaster Plans for all of the critical processes and systems? Are these plans shared and owned by all relevant parties such as IT, AF Unit, PM Unit, ES Unit, etc?						

<b>Finance / Business systems - Efficiency</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<b>149.</b> Are all of the BEREC processes supported and enabled by systems/ERPs (as opposed to spreadsheets and standalone databases)?						
<b>150.</b> How consolidated and standardised are the systems? Are there a large number of disparate systems? For example, are the reports driven from a small number of systems? Score 5 - One system providing reporting. Score 1 - Reliance on numerous spreadsheets for reports.						
<b>151.</b> Are all of the BEREC staff fully aware of systems functionality? Have they received training to increase their awareness of systems functionality in the last 12 months? Score 5 - Selected staff attend regular user groups. Score 1- No training received.						
<b>152.</b> Does the systems perform / automate recurring tasks e.g., preparation of reports or is there a demanding need for manual preparation?						
<b>153.</b> How difficult is it to change systems configurations such as workflows, user set-ups and reports?						
<b>154.</b> Is the integration between the systems streamlined and automated? Score 5 - Automated integration using a tool such as Extract, Transfer, Load software or middleware. Score 1 - Manual interfacing.						
<b>155.</b> Are there sufficiently trained staff (technically as well as for functionality) to provide support to systems on a day-to-day basis?						
<b>156.</b> Are all system user manuals current and available?						

<p><b>157.</b> Are a large number of external suppliers being used to support the systems? Score 1 - Number of supplier equal or larger to number of systems. Score 5 - Very small number of supplies.</p>						
<p><b>158.</b> Are there strong Service level agreements in place, with external IT providers? Is there process for review, performance assessment and amendment?</p>						

<b>Finance / Business systems - Projects and Data Quality</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>N/A</b>
<p><b>159.</b> Are full requirements specification documents prepared and signed off before selection, design and implementation?</p>						
<p><b>160.</b> How effectively are the planned and unplanned benefits of a project/programme captured?</p>						
<p><b>161.</b> Are projects being put on hold due to resource constraints? Are these projects business critical?</p>						
<p><b>162.</b> Are a minimum of three environments present when actioning change requests - development, test and production? Score 5 - Three environments. Score 3 - Two environments. Score 1 - One environment.</p>						
<p><b>163.</b> Are there formal Data Quality Management Policies available to the Finance Function which include such items as: Data quality and standards definitions? Data management roles and responsibilities? Data Classification rules (see Helpful hints)? Data compliance (e.g., privacy compliance)? Data retention? Data security? Notes: See Helpful Hints for the Dimensions of Data Management diagram that shows the various other data issues to be addressed in addition to Existence, Consistency, Integrity, Accuracy and Accessibility.</p>						
<p><b>164.</b> Are data files regularly assessed using specialist data tools to maintain data quality by looking for areas such as: Value and aggregation correlation? Duplication? Missing fields?</p>						



Invalid data? Inconsistent data? Incorrect relationships? Data not used?						
<b>165.</b> For all critical calculations and formulae: Are all formulae and data rules known, documented and agreed? Can all calculations be replicated manually to confirm accuracy? Can all mathematical precision and consistency be confirmed?						

# ***Appendix F. - List of abbreviations and definitions***

## ***F.1. List of abbreviations***

ACER	Agency for the Cooperation of Energy Regulators
AD	Access Directive
AM	Administrative Manager
AO	Authorising Officer
BEREC	Body of European Regulators for Electronic Communications
BoR	Board of Regulators
BPS	Bits Per Second
Cocom	Committee of Communications
CP	Common Position
DAE	Digital Agenda for Europe
DSL	Digital Subscriber Lines
DG INFSO	Information Society and Media Directorate General <sup>163</sup>
DG CONNECT	Directorate General for Communications Networks, Content and Technology
ECA	European Court of Auditors
ECHA	European Chemical Agency
EECMA	European Electronic Communications Markets Authority
EFTA	European Free Trade Association (Iceland, Norway, Liechtenstein and Switzerland)
ERG	European Regulators Group
EC	European Commission
ETNO	European Telecommunications Network Operators
EU	European Union
FD	Framework Directive
FTR	Fixed Termination Rates
FTTN	Fibre To The Node
FTTH	Fibre To The Home
HR	Human Resources
IAS	Internal Audit Service

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<sup>163</sup> As of July 1<sup>st</sup>, 2012, DG Information Society and Media will be known as the Directorate General for Communications Networks, Content and Technology.

IC	Internal Control
ICS framework	Internal Control Standards framework
IRG	Independent Regulators Group
IT	Information Technology
KPI	Key Performance Indicator
LLU	Local Loop Unbundling
MC	Management Committee
MS	Member State
MTR	Mobile Termination Rates
NGA	Next Generation Access ( - Networks)
NRA	National Regulatory Authority
PMO	Pay Master Office
PRD	Project Requirements Definition / Documents
SAGA	State Aid Granting Authorities
SMS	Short Message Service
SGEI	Services of General Economic Interest
TMI	Traffic Management Investigation
ToR	Terms of References
USD	Universal Service Directive
WP	Work Programme

## ***F.2. List of definitions***

<b>Added value</b>	The extent to which BEREC and its Office provide added value compared with the previous situation (ERG) and with possible alternative options for the regulation/supervision of the internal market for electronic communications networks and services (e.g. establishment of an EU-wide central regulatory authority, or action by national regulatory authorities only, etc.)
<b>Case study</b>	A specific set of hypothesis, questions and data collection activities aiming at examining a particular issue or activity undertaken by BEREC. It provides in-depth knowledge on the particular case as well as elements to complete the conclusions and recommendations of the whole evaluation study.
<b>Coherence, complementarity, synergy</b>	The extent to which the mandates and tasks of BEREC and its Office, as well as their governance, structure, management and working practices are mutually supportive and non contradictory; and the extent to which their objectives and activities support or contradict the EU policies for the Information Society, contribute to the achievement of their objectives, and complement other related activities implemented at EU or national level.
<b>Data collection</b>	Activities conducted to gather information for the evaluation and the case studies.
<b>Effectiveness</b>	The extent to which the objectives of BEREC and its Office are achieved or are expected to be achieved and the extent to which their existing governance, organisational structures and working methods contribute to the effectiveness of their activities.
<b>Efficiency</b>	The extent to which the outputs and/or results of BEREC and its Office are produced or obtained with the lowest possible use of resources/inputs (funds, expertise, time, administrative costs, etc.), and the extent to which their existing governance, organisational structures and working methods contribute to the efficiency of their activities.
<b>Impact</b>	The long-term effects produced by the activities of the BEREC and its Office (positive and negative, primary and secondary, direct and indirect, intended and unintended), and the extent to which they correspond to the market or regulatory needs they are meant to address.
<b>Population</b>	The individuals and/or groups addressed to collect information.
<b>Relevance</b>	The extent to which the objectives, mandates and tasks of BEREC and its Office, as defined in the BEREC Regulation, in their respective work programmes and in the BEREC plenary meetings, are relevant to the aim of contributing to the development and better functioning of the internal market for electronic communications networks and services.
<b>Survey</b>	A structured gathering of questions addressed to a particular population so as to collect views, examples, information and perceptions on a specific topic. The population addressed can be composed of individuals and/or defined groups. The means used can be diverse: face-to-face and/or phone interviews, online questionnaire, etc.

# ***Appendix G. - Integration of Steering Committee's comments***

Our Evaluation Team provided the Steering Committee with the draft Final Study Report on September 5<sup>th</sup> 2012, one week before the final meeting of the evaluation study. This final meeting was held on Wednesday, September 12<sup>th</sup> at DG CONNECT's premises in Brussels. During this meeting, the Steering Committee agreed to deliver comments on the draft Final Study Report by Tuesday, September 18<sup>th</sup>, 2012.

Members of the Steering Committee provided comments on the draft Final Study Report:

- BEREC sent a General Input on September 18<sup>th</sup> and sent detailed comments on September 19<sup>th</sup>.
- ECTA sent comments on September 18<sup>th</sup>.
- The European Commission had already provided comments on September 5<sup>th</sup> before the draft Final Study Report was sent to the Steering Committee.

Our Evaluation Team took these comments into account and provided the Steering Committee with the present Final Study Report on September 28<sup>th</sup>, 2012.

The Final report was then amended to integrate the outcomes resulting from the workshop presentation conducted in Brussels in October 2012. These outcomes are presented in *Appendix H. - Summary of the workshop outcomes*.

# Appendix H. - Summary of the workshop outcomes

## H.1. List of workshop attendees

In addition to the three DG CONNECT representatives hosting the workshop presentation, 38 people from different companies all over Europe subscribed to the workshop.

Name	Company
Barmueller Thomas	Mobile Manufacturers Forum (MMF)
Benvenuti Lodovico	Mediaset
Bergstrom Ola	Swedish Post and Telecom Authority (PTS)
Boeger Nina	Bristol University ( <i>speaker</i> )
Brunet Maël	Open Forum Europe
Doutriaux Aurélie	Orange France Telecom group
De Backer Frederick	TELEFONICA SA
De Pret Elinor	Lysios
Di Feliciantonio Lisa	Fastweb
Franklin Magnus	Mlex
Genna Innocenzo	AIIP
Gillis Dieter	Vlaamse Regulator voor de Media (Flemish Media Regulator)
Grassia Paolo	APCO Worldwide
Hanssens Serge	PwC ( <i>speaker</i> )
Hullen Nils	BITKOM e.V.
Jeans Tantely	ARCEP
Kauffmann Alain	PwC ( <i>speaker</i> )
Kracht Marianne	OPTA
Lanza Eduardo	TELEFONICA SA
Manganelli Antonio	BEREC Office
Martins Bruno	Alber & Geiger
Maton Alain	BIPT
Molander Gustaf	Stockholm Region EU Office
Nigge Ralf	Deutsche Telekom
Nivot Laurence	Cullen International
Overbeek Margot	PA Europe
Pierre Philippe	PwC
Rehema Ando	BEREC Office
Schraa Martin	Cullen International
Shortall Tony	Telage
Soriano Plancq Astrid	PA Europe
Stumpf Ulrich	WIK
Szenci Krisztina	PwC ( <i>speaker</i> )
Turowski Jacob	Belgacom
Volksona Elina	Permanent Representation of Latvia to the EU
Wendel Julia	Philipps-University Marburg
Whitchurch Adrian	BT
Wolfram Philipp	Telekom Austria Group

## ***H.2. Workshop outcomes***

The presentation of the workshop was drafted to provide a comprehensive vision of the evaluation study (objectives, methodology, data collection results and data analysis) as well as the findings, conclusions and recommendations of the evaluation. Particular attention was paid to the case study on the Article 7/7a procedure.

It was also designed to encourage the active involvement of industry representatives participating.

Workshop participants were raised questions on an array of topics, including:

- Relations between BEREC and telecoms industry stakeholders, during the Article 7/7a procedure as well as during public consultations;
- The quality, consistency and use of BEREC outputs for the industry representatives;
- BEREC interaction with the European Commission;
- BEREC's governance to make NRAs interact, reach common conclusions and adapt their approaches to national challenges;
- Issues related to the changing telecoms market in Europe and the role BEREC plays in it.

Presentation speakers answered the questions and DG CONNECT representatives closed the session by reminding attendees that the European Commission will present its report on the evaluation of BEREC and the BEREC Office to the European Parliament and the Council at the beginning of year 2013.



# ***Appendix I. - Bibliography and references***

## ***I.1. Regulation and BEREC / BEREC Office official documentation***

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- Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending the Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive);
- Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending the Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services (Authorisation Directive);
- Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending the Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);
- Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending the Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive);
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- BoR(12) 47, Building BEREC's future: practical and strategic next steps. BEREC working document, not published;
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- BoR(12) 19, 29 February 2012;
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- MC(12) 10, 29 February 2012;
- MC(11) 25, BEREC Office Work Programme 2012, 30 September 2011;
- MC(10) 26, Decision concerning the appraisal for the Administrative Manager of the BEREC Office, 3 December 2010;
- MC(10) 02 Rev1, Rules of procedures of the Management Committee of the BEREC Office.

## **I.2. Other EU documentation**

- European Court of Auditors, *Preliminary observations with a view to a report on the annual accounts of the Office of the Body of European Regulators for Electronic Communications for the financial year 2011*, Adopted by Chamber IV, 12 June 2012.

## **I.3. Academic papers**

- Dora Luz Gonzalez-Bañales and Manuel Rodenes Adam, *Web survey design and implementation: best practices for empirical research*, Proceedings of European and Mediterranean Conference on Information Systems, Polytechnic University of Valencia, Spain, June 24-26<sup>th</sup> 2007.

## **I.4. Bibliography for the case study on Next Generation Access Networks and BEREC**

- BEREC (2010a), 'BEREC Opinion to the Draft Recommendation on regulated access to Next Generation Access Networks (NGA) of 28 April 2010' 2010 BEREC BoR (10) 25 Rev1\_final1/8, 28 May;
- BEREC (2011a) 'Report on the Implementation of the NGA-Recommendation';
- BoR(11) 43, October 2011;
- BEREC (2011b) 'BEREC Report on "Open Access"', BoR (11) 05, February 2011;
- BEREC (2011c) 'BEREC Response to the EC Questionnaire on the Revision of the State Aid Guidelines', BoR (11) 42, October;
- European Commission (2005) 'State Aid Action Plan – Less and Better Targeted Aid: A Roadmap for State Aid Reform 2005–2009', SEC(2005)795, Com(2005)107, 7.6.2005;
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## **I.5. Figures, Tables & Boxes**

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