

Recommendations

according to BEREC Procedures to address requests of NRAs of third countries to participate in the work of BEREC and the BEREC Office - BoR (24) 04 - Chapter 2 Paragraph 4

on request of ANRCETI, National regulatory authority for electronic communications and information technology of the Republic of Moldova

According to Chapter 2 of the Annex I of the BEREC Decision No BoR/2024/01 of the Board of Regulators to establish a Procedure to address requests of NRAs of third countries to participate in the work of the Body of European Regulators for Electronic Communications (BEREC)¹, BEREC ad hoc group shall carry out an eligibility analysis of the received applications, namely to analyse whether the regulatory authority of a third country (hereinafter “the Applicant”) is eligible to participate in the work of BEREC and the BEREC Office.

The ad hoc group providing this eligibility assessment and recommendation to BoR was established on 26 April 2024 consisting of experts from four BEREC member NRAs, the BAG chair and one expert from BEREC Office.

Eligibility assessment

The ad hoc group analyzed whether the Applicant was eligible to participate in the work of BEREC and the BEREC Office, pursuant to Regulation 2018/1971, based on the following cumulative criteria:

1) The Applicant is the regulatory authority with primary responsibility in the field of electronic communications in the country concerned;

According to the information submitted by the Applicant, and according to publicly available information (see <https://en.anrceti.md/fileupload/1>) the provision of electronic communications services in the Republic of Moldova is regulated by Electronic Communications Act no. 241-XVI of 15 November 2007 (hereinafter “EC Act”).

The rules governing the regulatory authority - the National Regulatory Agency for Electronic Communications and Information Technology (ANRCETI) – are set in Articles 8 to 14 of the EC Act which designate ANRCETI as the authority empowered to regulate the electronic communications market.

Article 8 (2) reads as follows: “*The Agency is a **central public regulatory authority meant to regulate the electronic communications and information technology service market, being founded in compliance with this Act, operating in compliance with the legislation in force, under the status of a legal person with an independent budget, being independent of network and/or service providers, electronic communications equipment manufacturers and the Government, (except otherwise stipulated in section (7) of this Article, Art.9 (1) d) and Art.11 (3)).***”

¹ <https://www.berec.europa.eu/en/document-categories/berec/berec-decisions/decision-no-bor202401-of-the-board-of-regulators-to-establish-a-procedure-to-address-requests-of-nras-of-third-countries-to-participate-in-the-work-of-the-body-of-european-regulators-for-electronic-communications>

Article 8 (7) reads as follows: *“The Agency shall perform its duties and powers based on its Regulations, drawn up in compliance with this Act and approved by the Government”*.

Article 11 (3) reads as follows: *“The Director and Deputy Directors are appointed by the Government for four years”*.

Article 12 (1-6) states that the ANRCETI has an autonomous budget, which is based on the independent sources of income, i.a. annual regulatory and monitoring payments and payments for the assigned numbering resources. Its administration is being verified by an independent audit and the report is being presented to the Government (Article 12 (1)). In addition, Article 12 (5) clearly defines that the ANRCETI has the exclusive right to use the funds from its account. As this Article states furthermore: (...) *Funds unused during the current financial year shall be carried over to the next year budget. In case of a budget deficit during the current financial year, the Agency shall be entitled to offset it from the next year budget, adjusting respective regulatory and monitoring fees. To support the current expenses, which cannot be covered from the collected regulatory and monitoring fees, the Agency shall be entitled to contract bank loans at reasonable interest rates. The Agency shall reimburse such loans from subsequent regulatory and monitoring fees.* Last but not least, the Article 12 (6) provides for the transparency of ANRCETI’s expenses by reading as follows: *On yearly basis, by March 1, the Agency shall submit to the Government an financial report, which shall be published in the central press.*

EC Act (Articles 8 and 9) provides for a wide list of competences which confirms that ANRCETI tasked and empowered to perform duties of a national regulatory authority in the field of electronic communications. These include market analyses and SMP regulation (Art. 9(1) k-n), regulation of access and interconnection (Art.9 (1) f), resolution of disputes between undertakings (Art.9(1) q), supervision on electronic communications markets, end-user protection (Art.8(6) and 9(1)r) or universal service management (Art.8(6) and 9(1)p).

Considering the afore mentioned provisions, the ad hoc group concluded that **applicant is the regulatory authority with primary responsibility in the field of electronic communications in Moldova.**

Although the examination of legal and factual independence of the applicant from the Government falls outside of the mandate of the ad hoc group, it nevertheless has to be noted that the applicant enjoys prima facie operational independence in the decision making from the Government, except in certain limited cases.

Therefore, it has to be concluded that the applicant satisfies the first criteria.

2) The agreement in place between the Union and the relevant third country covers cooperation on the EU electronic communications framework.

The applicant is the national regulatory authority of the Republic of Moldova. The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part entered into force on 1 July 2016 (hereinafter “Association Agreement”).

On 6 October 2023 entered into force a Decision No 1/2023 of the EU-Republic of Moldova Association Committee in Trade Configuration which amended Annex XXVIII-B (Rules applicable to telecommunication services) to the Association Agreement.

In the Annex I of the Decision it is stipulated that:

*“The national regulatory authority of Moldova with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services **shall participate fully in the work of the Board of Regulators of BEREC, the working groups of BEREC and the Management Board of the BEREC Office**: the national regulatory authority of Moldova shall have the same rights and obligations as the national regulatory authorities of the EU Member States, except for the right to vote and for the Chairmanship of the Board of Regulators and of the Management Board.*

In light thereof, the national regulatory authority of Moldova shall be represented at an appropriate level in accordance with the provisions of the BEREC Regulation. In accordance with the relevant rules of the EU regulations mentioned above, BEREC and the BEREC Office shall, as the case may be, assist the national regulatory authority of Moldova in the performance of its tasks.

The national regulatory authority of Moldova shall take the utmost account of any guideline, opinion, recommendation, common position and best practices adopted by BEREC with the aim of ensuring the consistent implementation of the regulatory framework for electronic communications.”

From the mentioned provisions it is clear that there is the agreement in place between the Union and the Republic of Moldova. which covers cooperation on the EU electronic communications framework. Moreover. the Association Agreement explicitly provides for participation of the applicant in the BEREC’s work. **Therefore, it has to be concluded that the applicant satisfies the second criteria.**

Conclusion and recommendations

On the basis of the facts mentioned above and on the eligibility assessment carried out, the BEREC ad hoc group concluded that ANRCETI fulfills both the criteria set out in Chapter 2 Paragraph 3 of the Annex I of the BEREC Decision No. BoR/2024/01 and is eligible to participate in the work of BEREC and BEREC Office.

Upon this conclusion the ad hoc group hereby recommends to the BEREC Board of Regulators and the Management Board to:

- adopt a decision accepting the Applicant’s request as eligible
- inform the European Commission of the positive outcome of the assessment
- propose to the Applicant to enter into working arrangements with BEREC and BEREC Office