

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 PSRC, Public Services Regulatory Commission of the Republic of Armenia

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 BEREC member NRAs, the BAG chair and one expert from BEREC Office.

Eligibility assessment

The ad hoc group analysed 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 (Law of Armenia on electronic communications [untitled \(arlis.am\) – unofficial translation](#)), [PUBLIC SERVICES REGULATORY COMMISSION OF THE REPUBLIC OF ARMENIA \(psrc.am\)](#)) the provision of electronic communications services in Armenia is regulated by the Law of Electronic Communications (hereinafter “the EC

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>.

Law”). The EC Law was adopted on 8 July 2005, as amended, last amendments were identified of November 2021.

Initially the regulatory authority - the Public Services Regulatory Commission of the Republic of Armenia (PSRC) was established in 1997 by the Resolution of the President of the Republic of Armenia as the Energy Commission of the Republic of Armenia with further amendments and renaming - ([Armenia Law on Public Utility Regulatory Body PSRC eng.d– \(fao.org\) – unofficial translation](#)). Starting from 1 January 2006, PSRC shall be obliged to carry out all the regulatory functions in the electronic communications sector².

The rules governing PSRC – are set:

- i) In sections 3 to 4 of the **Law on the Regulatory Body for Public Services** which designate PSRC as the authority empowered to regulate electricity, natural gas, district heating, water, wastewater, telecommunication (electronic communication), post and railway sectors.

Article 6 (1) reads as follows: “*Regulation in the Public Utility Sector shall be carried out by the Public Service Regulatory Commission of the Republic of Armenia (hereafter referred to as the “Commission”), **acting independently** within the jurisdiction vested in it by this Law, the branch-specific laws and other laws.*”

Article 7 (1) reads as follows: “*The Commission consists of five members: the Chairman, the Deputy Chairman and three Commissioners. At least one of the three Commissioners must have legal and one economic education*”.

Article 7 (2) reads as follows: “*The Commissioners are appointed by the President of the Republic of Armenia, upon nomination by the Prime Minister, according to an annual rotation principle (each year one Commissioner is appointed), with an office period of five years, except for the cases described in item 6 of this Article. Upon the recommendation of the Prime Minister, the President of the Republic of Armenia³ assigns the Chairman and the Deputy Chairman of the Commission.*”

Comment to Article 7 (2): the Law does not provide requirements for open selection process for Chairman of the PSRC.

² See Article 66 of the EC Law.

³ In the EU4Digital **Insights report on independence of National Regulatory Authorities in Eastern partner countries**

(<https://eufordigital.eu/wp-content/uploads/2021/05/Insights-report-on-independence-of-National-Regulatory-Authorities-in-Eastern-partner-countries.pdf>) stated: “Government may serve as nominating authority and nominate a candidate for the position of the Chairman, while approval rests with the Parliament”.

Article 14 reads as follows: “Each year, the Commission shall: a) Present before the National Assembly of the Republic of Armenia, before 1 October, its Operation Plan for the coming year to be made public within the National Assembly; b) Publish in the printed press its Operation Report for the previous year, before 1 May.”

Articles 15-18 (summary): PSRC is financed from the **national budget**, approved by the Parliament. The budget is mainly composed of regulatory fees, where “annual sum of the regulatory obligatory fees cannot be less than the budget for maintenance costs of the Commission for each year”. The budget of the PSRC is approved each year by the Law on the State Budget of the given year.

Article 19 reads as follows: “Each year, the Commission shall submit a financial statement to the body authorized by the Government of Armenia, which may decide to perform an audit of the Commission” financial operation to verify the accuracy of the above reporting. The Commission shall be required to support the conduct of such audit”.

- ii) Article 5 of **the EC Law** provides for list of PSRC obligations, in particular to: ensure the competition and regulate the sector of public ECS/ECNs; allocate, with respect to radiocommunications, radio frequencies for specific purposes; adopt reasoned, fair and transparent decisions and establish procedures etc.

Conclusion: considering the abovementioned, **PSRC seems to be in line mostly with the EU regulatory framework⁴, being the regulatory authority with primary responsibility in the field of electronic communications in Armenia. Therefore, it has to be concluded that the applicant satisfies the first criterion.**

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

The European Union-Armenia Comprehensive and Enhanced Partnership Agreement⁵ (hereinafter – “CEPA”) entered into force entered into force on 1 March 2021. This Agreement provides a framework for the EU and Armenia to work together in a wide range of areas, incl. the field of information society.

CEPA stipulates that:

⁴ This conclusion was made taking into account the EU4Digital **Insights report on independence of National Regulatory Authorities in Eastern partner countries** (<https://eufordigital.eu/wp-content/uploads/2021/05/Insights-report-on-independence-of-National-Regulatory-Authorities-in-Eastern-partner-countries.pdf>)

⁵ [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22018A0126\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22018A0126(01))

Article 64: “*The Parties shall promote cooperation between the regulators from the European Union and national regulator of the Republic of Armenia in the field of electronic communications.*”;

ANNEX V to Chapter 8: “*The Republic of Armenia undertakes to gradually approximate its legislation to the following legislation of the European Union within the stipulated timeframes:*

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) Timetable: certain provisions of Directive 2002/21/EC shall be implemented within 5 years of the entry into force of this Agreement.

Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)

Timetable: the timeline for implementation of Directive 2002/20/EC will be decided by the Partnership Council after the entry into force of this Agreement.

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)

Timetable: certain provisions of Directive 2002/19/EC shall be implemented within 5 years of the entry into force of this Agreement.

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)” etc.

Timetable: certain provisions of Directive 2002/22/EC shall be implemented within 5 years of the entry into force of this Agreement.

BEREC activities include regular cooperation with the Eastern Partnership Electronic Communications Regulators Network (EaPeReg) of which the national regulator of the Republic of Armenia is a member.

However, contrary to other types of agreements (e.g. Stabilisation and Association Agreements), the degree of engagement with the Union of the CEPA agreement between the Union and the Republic of Armenia is not sufficient to qualify for the participation in BEREC's work. Conclusion: considering the abovementioned, differently from the association **agreements, the agreement which is in place between the Union and the Republic of Armenia is a partnership and cooperation agreement which does not**

provide for participation of the applicant in BEREC's work. Therefore, it has to be concluded that the applicant does not satisfy the second criterion.

Thus, PSRC cannot (yet) be invited to become a member without voting rights.

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 PSRC has not cumulatively fulfilled both criteria set out in Chapter 2 Paragraph 3 of the Annex I of the BEREC Decision No. BoR/2024/01 and is therefore ineligible 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 rejecting the Applicant's request as ineligible
- inform the European Commission of the negative outcome of the assessment.