

## I

(Legislative acts)

## REGULATIONS

**REGULATION (EU) 2018/1971 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 11 December 2018****establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Directive (EU) 2018/1972 of the European Parliament and of the Council <sup>(3)</sup> aims to create an internal market for electronic communications within the Union while ensuring a high level of investment, innovation and consumer protection through enhanced competition. That Directive also establishes a significant number of new tasks for the Body of European Regulators for Electronic Communications ('BEREC') such as issuing guidelines on several topics, reporting on technical matters, keeping registers, lists or databases and delivering opinions on internal market procedures for draft national measures on market regulation.
- (2) Regulation (EU) No 531/2012 of the European Parliament and of the Council <sup>(4)</sup> complements and supports, in so far as Union-wide roaming is concerned, the rules provided for by the regulatory framework for electronic communications and lays down certain tasks for BEREC.

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<sup>(1)</sup> OJ C 125, 21.4.2017, p. 65.

<sup>(2)</sup> Position of the European Parliament of 14 November 2018 (not yet published in the Official Journal) and decision of the Council of 4 December 2018.

<sup>(3)</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (see page 36 of this Official Journal).

<sup>(4)</sup> Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10).

- (3) Regulation (EU) 2015/2120 of the European Parliament and of the Council <sup>(1)</sup> lays down additional tasks for BEREC in relation to open internet access. Moreover, the BEREC Guidelines of 30 August 2016 on the Implementation by National Regulators of European Net Neutrality Rules have been welcomed as providing a valuable clarification of the guarantee of a strong, free and open internet by ensuring the consistent application of the rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights.
- (4) In view of the need to ensure the development of consistent regulatory practice and the consistent application of the Union's regulatory framework for electronic communications, the Commission established, by Commission Decision 2002/627/EC <sup>(2)</sup>, the European Regulators Group for Electronic Communications Networks and Services (ERG) to advise and assist the Commission in consolidating the internal market for electronic communications networks and services and, more generally, to provide an interface between national regulatory authorities (NRAs) and the Commission.
- (5) BEREC and the Office were established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council <sup>(3)</sup>. BEREC replaced the ERG and was intended to contribute, on one hand, to the development and, on the other, to the better functioning, of the internal market for electronic communications networks and services by aiming to ensure the consistent implementation of the regulatory framework for electronic communications. BEREC acts as a forum for cooperation among NRAs and between NRAs and the Commission in the exercise of the full range of their responsibilities under the Union regulatory framework. BEREC was established to provide expertise and to act independently and transparently.
- (6) BEREC also serves as a body for reflection, debate and advice for the European Parliament, the Council and the Commission in the field of electronic communications.
- (7) The Office was established as a Community body with legal personality to carry out the tasks referred to in Regulation (EC) No 1211/2009, in particular the provision of professional and administrative support services to BEREC. In order to support BEREC efficiently, the Office was given legal, administrative and financial autonomy.
- (8) By Decision 2010/349/EU <sup>(4)</sup>, the Representatives of the Governments of the Member States decided that the Office would have its seat in Riga. The Seat Agreement between the Government of the Republic of Latvia and the Office entered into force on 5 August 2011.
- (9) In its communication of 6 May 2015 entitled 'A Digital Single Market Strategy for Europe', the Commission envisaged presenting proposals in 2016 for an ambitious overhaul of the regulatory framework for electronic communications focusing, inter alia, on a more effective regulatory institutional framework in order to make the rules on electronic communications fit for purpose as part of the creation of the right conditions for the digital single market. Those include the deployment of very high capacity networks, more coordinated management of radio spectrum for wireless networks and creating a level playing field for advanced digital networks and innovative services. That communication pointed out that the changing market and technological environment make it necessary to strengthen the institutional framework by enhancing the role of BEREC.
- (10) In its resolution of 19 January 2016 entitled 'Towards a Digital Single Market Act', the European Parliament called on the Commission to integrate the digital single market further by ensuring that a more efficient institutional framework is in place.

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<sup>(1)</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1).

<sup>(2)</sup> Commission Decision 2002/627/EC of 29 July 2002 establishing the European Regulators Group for Electronic Communications Networks and Services (OJ L 200, 30.7.2002, p. 38).

<sup>(3)</sup> Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (OJ L 337, 18.12.2009, p. 1).

<sup>(4)</sup> Decision taken by common accord between the Representatives of the Governments of the Member States of 31 May 2010 on the location of the seat of the Office of the Body of European Regulators for Electronic Communications (BEREC) (2010/349/EU) (OJ L 156, 23.6.2010, p. 12).

- (11) BEREC and the Office have made a positive contribution towards the consistent implementation of the regulatory framework for electronic communications. However, there are still significant disparities between Member States as regards regulatory practice, which affects companies engaged in cross-border business or active in a significant number of Member States, including where BEREC guidelines exist, but could be further developed. In order to further contribute to the development of the internal market for electronic communications throughout the Union as well as to the promotion of access to, and take-up of, very high capacity networks, competition in the provision of electronic communications networks, services and associated facilities and the interests of the citizens of the Union, this Regulation aims to strengthen the role of BEREC. Such a strengthened role would complement the enhanced role played by BEREC following Regulations (EU) No 531/2012 and (EU) 2015/2120 and Directive (EU) 2018/1972.
- (12) In light of market and technological developments, which often entail an increased cross-border dimension, and of the experience gained so far in seeking to ensure the consistent implementation in the field of electronic communications, it is necessary to build on the work of BEREC and the Office. Their governance and activities should be streamlined and adapted to the tasks that they are to carry out. Taking into account settled procedures and the new set of tasks assigned to BEREC and to the Office and in order to strengthen their effectiveness, additional stability for their management should be provided for and the decision-making process should be simplified.
- (13) 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 carrying out its tasks. BEREC's independence should not prevent its Board of Regulators from deliberating on the basis of drafts prepared by working groups.
- (14) The new official name of the Office should be 'Agency for Support for BEREC' (the 'BEREC Office'). The designation 'BEREC Office' should be used as the Agency's short name. The BEREC Office should enjoy legal, administrative and financial autonomy. To that end, it is necessary and appropriate that the BEREC Office should be a body of the Union with legal personality that exercises the powers conferred upon it. As a Union decentralised agency, the BEREC Office should operate within its mandate and the existing institutional framework. It should not be seen as representing a Union position to an outside audience or as committing the Union to legal obligations.
- (15) Moreover, the rules on the governance and operation of the BEREC Office should, where appropriate, be aligned with the principles of the Joint Statement of the European Parliament, the Council and the European Commission of 19 July 2012 on decentralised agencies.
- (16) The Union institutions and the NRAs should benefit from BEREC's assistance and advice, including on the relevant regulatory impact of any issue concerning the overall dynamics of digital markets or with regard to their relationship, discussions and exchanges with, and the dissemination of regulatory best practices to, third parties. In addition to its contribution to the Commission's public consultation, BEREC should, when requested, advise the Commission in the preparation of legislative proposals. BEREC should also be able to provide advice to the European Parliament and to the Council, on their request or on its own initiative.
- (17) BEREC, as a technical body with expertise on electronic communications and composed of representatives from NRAs and the Commission, is best placed to be entrusted with tasks such as contributing to efficient internal market procedures for draft national measures as regards market regulation, providing the necessary guidelines to NRAs and other competent authorities in order to ensure common criteria and a consistent regulatory approach, and keeping certain registries, databases and lists at Union level. This is without prejudice to the tasks established for NRAs, which are closest to the electronic communications markets and their local conditions.
- (18) In order to carry out its tasks, BEREC should continue to pool expertise from NRAs. BEREC should aim to ensure the participation of all NRAs in the fulfilment of its regulatory tasks and its functioning. To strengthen BEREC, make it more representative and safeguard its expertise, experience and knowledge of the specific situation in the full range of national markets, each Member State should ensure that its NRA has adequate financial and human resources required to participate fully in the work of BEREC.

- (19) In light of the increasing convergence between the sectors providing electronic communications services, and the horizontal dimension of regulatory issues related to their development, BEREC and the BEREC Office should be allowed to cooperate with, and without prejudice to the role of, NRAs, other Union bodies, offices, agencies and advisory groups, in particular the Radio Spectrum Policy Group established by Commission Decision 2002/622/EC<sup>(1)</sup>, the European Data Protection Supervisor established by Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>(2)</sup>, the European Data Protection Board established by Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>(3)</sup>, the European Regulators Group for Audiovisual Media Services established by the Directive 2010/13/EU of the European Parliament and the Council<sup>(4)</sup>, the European Union Agency for Network and Information Security established by Regulation (EU) No 526/2013 of the European Parliament and of the Council<sup>(5)</sup>, the European GNSS Agency established by Regulation (EU) No 912/2010 of the European Parliament and of the Council<sup>(6)</sup>, the Consumer Protection Cooperation Network established pursuant to Regulation (EC) No 2006/2004 of the European Parliament and the Council<sup>(7)</sup>, the European Competition Network and European standardisation organisations, as well as with existing committees (such as the Communications Committee and the Radio Spectrum Committee). BEREC and the BEREC Office should also be able to cooperate with relevant competent authorities of Member States responsible for competition, consumer protection and data protection, and with the competent authorities of third countries, in particular, regulatory authorities competent in the field of electronic communications or groups of those authorities, as well as with international organisations when necessary for the carrying out of their tasks. BEREC should also be able to consult interested parties by means of public consultation.
- (20) BEREC should be entitled to establish working arrangements with competent Union bodies, offices, agencies and advisory groups, with competent authorities of third countries and with international organisations, which should not create legal obligations. The goal of such working arrangements could be, for instance, to develop cooperative relationships and exchange views on regulatory issues. The Commission should ensure that the necessary working arrangements are consistent with Union policy and priorities, and that BEREC operates within its mandate and the existing institutional framework and is not seen as representing the Union position to an outside audience or as committing the Union to international obligations.
- (21) BEREC should be composed of the Board of Regulators and working groups. The rotation of the role of Chair of the Board of Regulators is intended to ensure continuity of BEREC's work. A rotation of the roles of Vice-Chairs representing various NRAs is also promoted.
- (22) BEREC should be able to act in the interests of the Union, independently from any external intervention, including political pressure or commercial interference. It is therefore important to ensure that the persons appointed to the Board of Regulators enjoy the highest guarantees of personal and functional independence. The head of an NRA, a member of its collegiate body, or the replacement of either of them, enjoy such a level of personal and functional independence. More specifically, they should act independently and objectively, should not seek or take instructions

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<sup>(1)</sup> Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group (OJ L 198, 27.7.2002, p. 49).

<sup>(2)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>(3)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(4)</sup> Directive 2010/13/EU of the European Parliament and the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation and administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

<sup>(5)</sup> Regulation (EU) No 526/2013 of the European Parliament and of the Council of 21 May 2013 concerning the European Union Agency for Network and Information Security (ENISA) and repealing Regulation (EC) No 460/2004 (OJ L 165, 18.6.2013, p. 41).

<sup>(6)</sup> Regulation (EU) No 912/2010 of the European Parliament and of the Council of 22 September 2010 setting up the European GNSS Agency, repealing Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio navigation programmes and amending Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 276, 20.10.2010, p. 11).

<sup>(7)</sup> Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (OJ L 364, 9.12.2004, p. 1).

in the exercise of their functions, and should be protected against arbitrary dismissal. The function of the alternate on the Board of Regulators could also be performed by the head of the NRA, a member of its collegiate body, the replacement of either of them, or by another member of staff of the NRA, who acts on behalf of, and in accordance with the scope of the mandate of, the member of the Board of Regulators replaced.

- (23) Experience has shown that most of BEREC's tasks are better carried out through working groups, which should always ensure equal consideration of all NRAs' views and contributions. The Board of Regulators should therefore set up working groups and appoint their Chairs. NRAs should promptly respond to nomination requests in order to ensure the quick establishment of working groups, in particular those related to procedures with time-limits. The working groups should be open to the participation of experts from the Commission. The staff of the BEREC Office should support and contribute to the working groups' activities.
- (24) If necessary, and on a case-by-case basis, the Board of Regulators and the Management Board should be able to invite any person whose opinion may be of interest to participate in their meetings as an observer.
- (25) Where appropriate and depending on the allocation of tasks to authorities in each Member State, the views of other competent authorities should be taken into consideration in the relevant working group, for example through consultation at national level or by inviting those other authorities to the relevant meetings where their expertise is needed. In any event, the independence of BEREC should be maintained.
- (26) The Board of Regulators and the Management Board should operate in parallel, with the former deciding mainly on regulatory matters and the latter on administrative matters such as the budget, staff and audits. In principle and in addition to the representatives of the Commission, the representatives of the NRAs on the Management Board should be the same persons as those appointed to the Board of Regulators, but NRAs should be able to appoint other representatives fulfilling the same requirements.
- (27) The appointing authority powers were previously exercised by the Vice-Chair of the Management Committee of the Office. This Regulation provides for the Management Board to delegate relevant appointing authority powers to the Director, who is authorised to sub-delegate those powers. This is intended to contribute to the efficient management of the staff of the BEREC Office.
- (28) The Board of Regulators and the Management Board should hold at least two ordinary meetings a year. In light of past experience and the enhanced role of BEREC, the Board of Regulators or the Management Board may need to hold additional meetings.
- (29) The Director should remain the representative of the BEREC Office with regard to legal and administrative matters. The Management Board should appoint the Director following an open and transparent selection procedure in order to guarantee a rigorous evaluation of the candidates and a high level of independence. The term of office of the Administrative Manager of the Office was previously three years. It is necessary that the Director has a sufficiently long mandate in order to ensure stability and delivery of a long-term strategy for the BEREC Office.
- (30) Commission Delegated Regulation (EU) No 1271/2013 <sup>(1)</sup> should apply to the BEREC Office.
- (31) The BEREC Office should provide all necessary professional and administrative support for the work of BEREC, including financial, organisational and logistical support, and should contribute to BEREC's regulatory work.
- (32) In order to guarantee the BEREC Office's autonomy and independence, and in order to provide support to the work of BEREC, the BEREC Office should have its own budget, most of which should derive from a contribution from the Union. The budget should be adequate and should reflect the additional tasks assigned and the enhanced role of BEREC and the BEREC Office. The financing of the BEREC Office should be subject to an agreement by the budgetary authority as set out in point 31 of the Inter-institutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management <sup>(2)</sup>.

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<sup>(1)</sup> Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

<sup>(2)</sup> OJ C 373, 20.12.2013, p. 1.

- (33) The BEREC Office should be adequately staffed for the purpose of carrying out its duties. All tasks assigned to the BEREC Office, including professional and administrative services supporting BEREC in carrying out its regulatory tasks, together with compliance with the financial, staff and other applicable regulations, and the increased weight of operational tasks required of the BEREC Office vis-à-vis administrative ones should be duly assessed and reflected in the resource programming.
- (34) In order to further extend the consistent implementation of the regulatory framework for electronic communications, the Board of Regulators, the working groups and the Management Board should be open to the participation of regulatory authorities of third countries competent in the field of electronic communications where those third countries have entered into agreements with the Union to that effect, such as EEA EFTA States and candidate countries.
- (35) In line with the principle of transparency, BEREC and the BEREC Office should, where relevant, publish information on their work on their webpage. In particular, BEREC should make public any final documents issued in carrying out its tasks, such as opinions, guidelines, reports, recommendations, common positions and best practices, as well as any study which is commissioned to support its tasks. BEREC and the BEREC Office should also make public up-to-date lists of their tasks and up-to-date lists of members, alternates and other participants in the meetings of their organisational bodies, and the declarations of interests made by the members of the Board of Regulators, the members of the Management Board and the Director.
- (36) BEREC, supported by the BEREC Office, should be able to engage in communication activities within its field of competence, which are not detrimental to BEREC's core tasks. The content and implementation of the BEREC's communication strategy should be consistent, objective, relevant and coordinated with the strategies and activities of the Commission and the other institutions in order to take into consideration the broader image of the Union. The BEREC Office's communication activities should be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board.
- (37) In order to carry out their tasks effectively, BEREC and the BEREC Office should have the right to request all necessary information from the Commission, the NRAs, and, as a last resort, other authorities and undertakings. Requests for information should provide reasons, should be proportionate and should not impose an undue burden on the addressees. NRAs should cooperate with BEREC and the BEREC Office and should provide them with timely and accurate information to ensure that BEREC and the BEREC Office are able to fulfil their tasks. BEREC and the BEREC Office should also, pursuant to the principle of sincere cooperation, share with the Commission, the NRAs and other competent authorities all necessary information. Where relevant, the confidentiality of information should be ensured. When assessing if a request is duly justified, BEREC should take into consideration if the information requested is related to the carrying out of tasks exclusively attributed to the relevant authorities.
- (38) The BEREC Office should establish a common information and communication system to avoid duplication of information requests and facilitate communications between all authorities involved.
- (39) In order to ensure a high level of confidentiality and to avoid conflicts of interests, the rules on those matters applying to members of the organisational bodies of BEREC and the BEREC Office should apply to their alternates.
- (40) Since this Regulation confers new tasks on BEREC and the BEREC Office and other Union legal acts may confer additional tasks, the Commission should carry out a regular evaluation of the operation of BEREC and the BEREC Office and the effectiveness of their institutional structure in a changing digital environment. If, as the outcome of that evaluation, the Commission finds that the institutional structure is not suited to the carrying out of BEREC's and the BEREC Office's tasks, and, in particular, to ensure the consistent implementation of the regulatory framework for electronic communications, it should explore all possible options for improving that structure.
- (41) The Office which was established as a Community body with legal personality by Regulation (EC) No 1211/2009, is succeeded by the BEREC Office established by this Regulation as regards all ownership, agreements, including the Seat Agreement, legal obligations, employment contracts, financial commitments and liabilities. The BEREC Office should take over the staff of the Office whose rights and obligations should not be affected. In order to ensure continuity in the work of BEREC and the Office, their representatives, namely the Chair and Vice-Chairs of the Board of Regulators, the Management Committee and the Administrative Manager, should continue in office until the end of their term of office.

- (42) A significant number of consumers in most Member States continue to rely on traditional international communications such as telephony calls and SMS messages, despite an increasing number of consumers having access to number-independent interpersonal communications services for their international calling needs at lower charges than traditional services or without monetary payment.
- (43) In 2013 the Commission proposed an impact-assessed Regulation which included a provision with regulatory measures applicable to intra-EU communications. Additional data on the intra-EU communications market was collected from 2017 to 2018 by BEREC and by the Commission through a Commission study and the Eurobarometer. As shown by that data, significant price differences continue to prevail, for both fixed and mobile communications, between domestic voice and SMS communications and those terminating in another Member State in a context of substantial variations of prices between countries, providers and tariff packages, and between mobile and fixed voice communications. Providers of publicly available number-based interpersonal communications services often charge consumption based intra-EU communications prices that largely exceed the prices for domestic tariffs plus additional costs. On average, the standard price of a fixed or mobile intra-EU call tends to be three times higher than the standard price of a domestic call and the standard price of an intra-EU SMS message more than twice as expensive as a domestic one. However, those arithmetic averages hide significant differences across Member States. In some cases the standard price of an intra-EU call can be up to eight times higher than the standard price for domestic calls. As a consequence, customers in several Member States are exposed to very high prices for intra-EU communications. Those high prices mainly affect consumers, in particular those placing such communications infrequently or having a low volume of consumption, which represent the vast majority of the consumers using intra-EU communications. At the same time, several providers propose special offers particularly attractive for business customers and consumers with a significant consumption of intra-EU communications. Such offers are often not charged based on actual consumption and may consist in a certain number of intra-EU call minutes or SMS messages for a fixed monthly fee (add-on offers) or in the inclusion of a certain number of intra-EU call minutes or SMS messages in the monthly allowance of call minutes or SMS messages, either without any surcharge or with a small surcharge. However, the terms of those offers are often not attractive for consumers with only occasional, unpredictable or relatively low volumes of intra-EU communications. Consequently, those consumers risk paying excessive prices for their intra-EU communications and should be protected.
- (44) Moreover, high prices for intra-EU communications represent a barrier to the functioning of the internal market as they discourage seeking and purchasing goods and services from a provider located in another Member State. It is hence necessary to set specific and proportionate limits to the price that providers of publicly available number-based interpersonal communications services may charge consumers for intra-EU communications in order to eliminate such high prices.
- (45) When providers of publicly available number-based interpersonal communications services charge their consumers for intra-EU communications at rates wholly or partly based on the consumption of such services, including in cases of consumption-based deduction from a monthly or prepaid allowance for such services, those rates should not exceed EUR 0,19 per minute for calls and EUR 0,06 per SMS message. Those caps correspond to the maximum prices which currently apply, respectively, to regulated roaming calls and SMS messages. When roaming in the Union, consumers benefit from the protection of the euro-voice tariff and the euro-SMS tariff that have been progressively replaced by roaming 'like at home'. Those caps are also considered to be a suitable benchmark for setting the maximum rate for regulated intra-EU communications for five years starting from 15 May 2019. The current level of the cap represents a simple, transparent and proven safety-net for protection against high prices and is suitable as a cap for retail prices of all regulated intra-EU communications. Both roaming calls within the Union and intra-EU calls share a similar cost structure.
- (46) The caps should allow the providers of publicly available number-based interpersonal communications services to recoup their costs, thus ensuring a proportionate intervention on both the mobile and fixed calls market. The caps will apply directly only to rates based on actual consumption. They should have a disciplining effect also on those

offers where a certain volume of intra-EU communications is included without being charged separately as consumers have the choice to switch to a consumption-based tariff for their intra-EU communications. Intra-EU communication volumes which go beyond those included in a bundle and are charged separately should be subject to the caps. The measure should ensure, in a proportionate manner, that consumers with a low level of consumption of intra-EU communications are protected against high prices and should, at the same time, have only a moderate impact on providers.

- (47) Providers of publicly available number-based interpersonal communications services should be able to propose to their consumers alternative tariff offers for international communications with different rates for regulated intra-EU communications and consumers should be free to opt for such offers expressly, and to switch back any time and free of charge, even for offers to which consumers subscribed before the entry into force of such provisions. Only alternative offers for international communications, such as those covering all or some third countries, should, where accepted by a consumer, be able to free a provider from its obligation not to exceed the caps for regulated intra-EU communications. Other advantages, such as subsidised terminal equipment or discounts on other electronic communications services, offered by providers to consumers are a normal part of competitive interaction and should not affect the applicability of the price caps for regulated intra-EU communications.
- (48) Some providers of publicly available number-based interpersonal communications services may be significantly more affected than the majority of other providers in the Union by a price cap for regulated intra-EU communications. This could, in particular, be the case for those providers which generate a particularly high share of their revenues or operational profits with intra-EU communications or whose domestic margins are low compared to industry benchmarks. As a consequence of margin compression as regards regulated intra-EU communications, a provider might not be able to sustain its domestic pricing model. Such scenarios are highly unlikely to occur because the maximum prices are clearly above the costs for providing intra-EU communications. Nevertheless, in order to address such very exceptional scenarios in a proportionate manner, NRAs should be able to grant a derogation upon the request of such provider in justified and exceptional cases.
- (49) Any derogation should be granted only where a provider can demonstrate, against a relevant benchmark established by BEREC, that it is significantly more affected than most other providers in the Union and that that impact would significantly weaken that provider's capacity to maintain its charging model for domestic communications. Where an NRA grants a derogation, it should determine the maximum price level that a provider could apply for regulated intra-EU communications and which would enable it to maintain a competitive price level for domestic communications. Any such derogation should be limited to one year and be renewable if the provider demonstrates that the conditions for a derogation continue to be fulfilled.
- (50) In light of the principle of proportionality, the applicability of the price caps for regulated intra-EU communications should be limited in time and should expire five years after its entry into force. Such a limited duration should allow proper assessment of the effects of the measures and evaluation to what extent there is an ongoing need to protect consumers.
- (51) In order to ensure Union-wide, consistent, timely and most effective protection of consumers negatively affected by the significant price differences of intra-EU communications, such provisions should be directly applicable and enshrined in a regulation. The most suitable regulation for that purpose is Regulation (EU) 2015/2120, which was adopted after an impact assessment which proposed, inter alia, a provision on intra-EU communications as a necessary means by which to complete the internal market for electronic communications. The likely impacts on providers' revenues generated by the provision of intra-EU communications are further mitigated by the application



of the roaming euro-voice tariff and euro-SMS tariff as caps to both fixed and mobile communications, which serve as a safety mechanism; and by evidence, provided by BEREC's 2018 analysis, of a considerable decline in relevant volumes of fixed traffic affected by the measure in the intervening period. Those provisions should therefore be introduced as an amendment to Regulation (EU) 2015/2120, which should also be adapted to ensure that Member States adopt rules on penalties for the infringement of such provisions.

- (52) Since the objectives of this Regulation, namely to ensure the consistent implementation of the regulatory framework for electronic communications, in particular in relation to cross-border aspects and through efficient internal market procedures for draft national measures, and to ensure that consumers are not charged excessive prices for making number-based interpersonal communications originating in the Member State of the consumer's domestic provider and terminating at any fixed or mobile number in another Member State, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (53) This Regulation amends and extends the scope of Regulation (EC) No 1211/2009. Since the amendments to be made are of a substantial nature, that act should, in the interests of clarity, be repealed. References to the repealed regulation should be construed as references to this Regulation,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

#### SUBJECT MATTER AND SCOPE

##### *Article 1*

#### **Subject matter and scope**

1. This Regulation establishes the Body of European Regulators for Electronic Communications ('BEREC') and the Agency for Support for BEREC (the 'BEREC Office').
2. BEREC and the BEREC Office shall, respectively, replace and succeed the Body of European Regulators for Electronic Communications and the Office, which were established by Regulation (EC) No 1211/2009.

##### *Article 2*

#### **Legal personality of the BEREC Office**

1. The BEREC Office shall be a body of the Union. It shall have legal personality.
2. In each Member State the BEREC Office shall enjoy the most extensive legal capacity accorded to legal persons under national law. It shall, in particular, be capable of acquiring and disposing of movable and immovable property and being party to legal proceedings.
3. The BEREC Office shall be represented by its Director.
4. The BEREC Office shall have sole responsibility for the tasks assigned to and the powers conferred on it.
5. The BEREC Office shall have its seat in Riga.

CHAPTER II  
**OBJECTIVES AND TASKS OF BEREC**

*Article 3*

**Objectives of BEREC**

1. BEREC shall act within the scope of Regulations (EU) No 531/2012 and (EU) 2015/2120 and Directive (EU) 2018/1972.
2. BEREC shall pursue the objectives set out in Article 3 of Directive (EU) 2018/1972. In particular, BEREC shall aim to ensure the consistent implementation of the regulatory framework for electronic communications within the scope referred to in paragraph 1 of this Article.
3. BEREC shall carry out its tasks independently, impartially, transparently and in a timely manner.
4. BEREC shall draw upon the expertise available in the national regulatory authorities (NRAs).
5. In accordance with Article 9(3) of Directive (EU) 2018/1972, each Member State shall ensure that its NRAs are able to participate fully in the work of organisational bodies of BEREC.
6. In Member States where there is more than one NRA responsible under Directive (EU) 2018/1972, those NRAs shall coordinate with each other as necessary.

*Article 4*

**Regulatory tasks of BEREC**

1. BEREC shall have the following regulatory tasks:
  - (a) to assist and advise the NRAs, the European Parliament, the Council and the Commission, and cooperate with the NRAs and the Commission, upon request or on its own initiative, on any technical matter regarding electronic communications within its competence;
  - (b) to assist and advise the Commission, upon request, in relation to the preparation of legislative proposals in the field of electronic communications, including on any proposed amendment of this Regulation or of Directive (EU) 2018/1972;
  - (c) to issue opinions as referred to in Regulation (EU) No 531/2012 and Directive (EU) 2018/1972, in particular on:
    - (i) the resolution of cross-border disputes, in accordance with Article 27 of Directive (EU) 2018/1972;
    - (ii) draft national measures related to the internal market procedures for market regulation, in accordance with Articles 32, 33 and 68 of Directive (EU) 2018/1972;
    - (iii) draft decisions and recommendations on harmonisation, in accordance with Articles 38 and 93 of Directive (EU) 2018/1972;
    - (iv) end-to-end connectivity between end-users, in accordance with Article 61(2) of Directive (EU) 2018/1972;
    - (v) the determination of a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate, in accordance with Article 75 of Directive (EU) 2018/1972;
    - (vi) the contract summary template, in accordance with Article 102 of Directive (EU) 2018/1972;

- (vii) the national implementation and functioning of the general authorisation, and their impact on the functioning of the internal market, in accordance with Article 122(3) of Directive (EU) 2018/1972;
  - (viii) where relevant, the market and technological developments regarding the different types of electronic communications services and their impact on the application of Title III of Part III of Directive (EU) 2018/1972, in accordance with Article 123(1) of that Directive;
- (d) to issue guidelines on the implementation of the Union regulatory framework for electronic communications, in particular, as referred to in Regulations (EU) No 531/2012 and (EU) 2015/2120 and Directive (EU) 2018/1972, on:
- (i) the notification template, in accordance with Article 12 of Directive (EU) 2018/1972;
  - (ii) the consistent implementation of obligations as regards geographical surveys and forecasts, in accordance with Article 22 of Directive (EU) 2018/1972;
  - (iii) relevant criteria to foster the consistent application of Article 61(3) of Directive (EU) 2018/1972;
  - (iv) common approaches to the identification of the network termination point in different network topologies, in accordance with Article 61(7) of Directive (EU) 2018/1972;
  - (v) common approaches to meet transnational end-user demand, in accordance with Article 66 of Directive (EU) 2018/1972;
  - (vi) minimum criteria for a reference offer, in accordance with Article 69 of Directive (EU) 2018/1972;
  - (vii) the fostering of the consistent application by NRAs of the conditions set out in Article 76(1) of, and the criteria set out in Annex IV to, Directive (EU) 2018/1972;
  - (viii) criteria for a network to be considered a very high capacity network, in accordance with Article 82 of Directive (EU) 2018/1972;
  - (ix) common criteria for the assessment of the ability to manage numbering resources and of the risk of exhaustion of numbering resources, in accordance with Article 93 of Directive (EU) 2018/1972;
  - (x) relevant quality of service parameters, the applicable measurement methods, the content and format of publication of the information, and quality certification mechanisms, in accordance with Article 104 of Directive (EU) 2018/1972;
  - (xi) how to assess whether the effectiveness of public warning systems under Article 110(2) of Directive (EU) 2018/1972 is equivalent to the effectiveness of those under paragraph 1 of that Article;
  - (xii) wholesale roaming access, in accordance with Article 3(8) of Regulation (EU) No 531/2012;
  - (xiii) the implementation of NRAs' obligations as regards open internet access, in accordance with Article 5(3) of Regulation (EU) 2015/2120;
  - (xiv) the parameters to be taken into account by NRAs in their assessment of the sustainability of the domestic charging model, in accordance with Article 5a(6) of Regulation (EU) 2015/2120;
- (e) to issue other guidelines ensuring the consistent implementation of the regulatory framework for electronic communications and consistent regulatory decisions by the NRAs, on its own initiative or upon the request of an NRA, the European Parliament, the Council or the Commission, in particular for regulatory issues affecting a significant number of Member States or with a cross-border element;

- (f) where relevant, to participate in the Peer Review Forum on draft measures on selection procedures, in accordance with Article 35 of Directive (EU) 2018/1972;
- (g) to participate on issues concerning its competence relating to market regulation and competition related to radio spectrum, in accordance with Article 4 of Directive (EU) 2018/1972;
- (h) to conduct analyses of potential transnational markets in accordance with Article 65 of Directive (EU) 2018/1972 and of transnational end-user demand, in accordance with Article 66 of that Directive;
- (i) to monitor and collect information and, where relevant, make up-to-date information publicly available on the application of Regulation (EU) No 531/2012, in accordance with Articles 16 and 19 thereof;
- (j) to report on technical matters within its competence, in particular on:
  - (i) the practical application of the opinions and guidelines referred to in points (c), (d) and (e);
  - (ii) Member States' best practices to support the defining of adequate broadband internet access service, in accordance with Article 84 of Directive (EU) 2018/1972;
  - (iii) the evolution of pricing and consumption patterns both for domestic and roaming services, the evolution of actual wholesale roaming rates for unbalanced traffic, the relationship between retail prices, wholesale charges and wholesale costs for roaming services as well as on transparency and comparability of tariffs, in accordance with Article 19 of Regulation (EU) No 531/2012;
  - (iv) the outcomes of the annual reports that NRAs shall provide in accordance with Article 5 of Regulation (EU) 2015/2120, through the publication of an annual synthesis report;
  - (v) the market developments in the electronic communications sector, on an annual basis;
- (k) to issue recommendations and common positions, and disseminate regulatory best practices addressed to the NRAs in order to encourage the consistent and better implementation of the regulatory framework for electronic communications;
- (l) to establish and maintain a database of:
  - (i) the notifications transmitted to the competent authorities by undertakings subject to general authorisation, in accordance with Article 12 of Directive (EU) 2018/1972;
  - (ii) the numbering resources with a right of extraterritorial use within the Union, in accordance with the fourth subparagraph of Article 93(4) of Directive (EU) 2018/1972;
  - (iii) where relevant, E.164 numbers of Member State emergency services, in accordance with the third subparagraph of Article 109(8) of Directive (EU) 2018/1972;
- (m) to evaluate the needs for regulatory innovation and coordinate actions between NRAs to enable the development of new innovative electronic communications;
- (n) to promote the modernisation, coordination and standardisation of the collection of data by NRAs, such data being made available to the public in an open, reusable and machine-readable format on the BEREC website and the European data portal, without prejudice to intellectual property rights, personal data protection rules and the required level of confidentiality;
- (o) to carry out other tasks assigned to it by legal acts of the Union, in particular by Regulations (EU) No 531/2012 and (EU) 2015/2120 and Directive (EU) 2018/1972.

2. BEREC shall make public its regulatory tasks and shall update that information when new tasks are assigned to it.
3. BEREC shall make public all of its final opinions, guidelines, reports, recommendations, common positions and best practices, and any commissioned studies, as well as the relevant draft documents for the purpose of the public consultations referred to in paragraph 5.
4. Without prejudice to compliance with relevant Union law, NRAs and the Commission 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 within the scope referred to in Article 3(1).

Where an NRA deviates from the guidelines referred to in point (e) of paragraph 1, it shall provide the reasons therefor.

5. BEREC shall, where appropriate, consult interested parties and give them the opportunity to comment within a reasonable period having regard to the complexity of the matter. Save in exceptional circumstances, that period shall not be shorter than 30 days. BEREC shall, without prejudice to Article 38, make the results of such public consultations publicly available. Such consultations shall take place as early as possible in the decision-making process.
6. BEREC may, where appropriate, consult and cooperate with relevant national authorities, such as those competent in the fields of competition, consumer protection and data protection.
7. BEREC may, where appropriate, cooperate with competent Union bodies, offices, agencies and advisory groups, as well as with the competent authorities of third countries and with international organisations, in accordance with Article 35(1).

### CHAPTER III

#### TASKS OF THE BEREC OFFICE

##### *Article 5*

#### **Tasks of the BEREC Office**

The BEREC Office shall have the following tasks:

- (a) to provide professional and administrative support services to BEREC, in particular in fulfilling its regulatory tasks pursuant to Article 4;
- (b) to collect information from NRAs and to exchange and transmit information in relation to the regulatory tasks assigned to BEREC pursuant to Article 4;
- (c) to produce, on the basis of the information referred to in point (b), regular draft reports on specific aspects of developments in the European electronic communications market, such as roaming and benchmarking reports, to be submitted to BEREC;
- (d) to disseminate regulatory best practices among NRAs, in accordance with point (k) of Article 4(1);
- (e) to assist BEREC in establishing and maintaining registries and databases, in accordance with point (l) of Article 4(1);
- (f) to assist BEREC in establishing and managing an information and communications system, in accordance with Article 41;
- (g) to assist BEREC in conducting public consultations, in accordance with Article 4(5);

- (h) to assist in the preparation of the work and provide other administrative and content-related support to ensure the smooth functioning of the Board of Regulators;
- (i) to assist in setting up working groups, upon the request of the Board of Regulators, contribute to the regulatory work and provide administrative support to ensure the smooth functioning of those groups;
- (j) to carry out other tasks assigned to it by this Regulation or by other legal acts of the Union.

#### CHAPTER IV

### ORGANISATION OF BEREC

#### *Article 6*

### **Organisational structure of BEREC**

BEREC shall comprise:

- (a) a Board of Regulators;
- (b) working groups.

#### *Article 7*

### **Composition of the Board of Regulators**

1. The Board of Regulators shall be composed of one member from each Member State. Each member shall have the right to vote.

Each member shall be appointed by the NRA that has primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services under Directive (EU) 2018/1972. The member shall be appointed from among the head of the NRA, a member of its collegiate body, or the replacement of either of them.

2. Each member of the Board of Regulators shall have an alternate, appointed by the NRA. The alternate shall represent the member in his or her absence. The alternate shall be appointed from among the head of the NRA, a member of its collegiate body, the replacement of either of them, or the staff of the NRA.

3. Members of the Board of Regulators and their alternates shall be appointed in light of their knowledge in the field of electronic communications, taking into account relevant managerial, administrative and budgetary skills. In order to ensure continuity of the work of the Board of Regulators, all appointing NRAs shall make efforts to limit the turnover of their members and, where possible, also of their alternates, and shall aim to achieve a balanced representation between men and women.

4. The Commission shall participate in all deliberations of the Board of Regulators without the right to vote and shall be represented at an appropriately high level.

5. An up-to-date list of members of the Board of Regulators and their alternates, together with their declarations of interest, shall be made public.

#### *Article 8*

### **Independence of the Board of Regulators**

1. When carrying out the tasks conferred upon it and without prejudice to its members acting on behalf of their respective NRA, the Board of Regulators shall act independently and objectively in the interests of the Union, regardless of any particular national or personal interests.

2. Without prejudice to coordination as referred to in Article 3(6), the members of the Board of Regulators and their alternates shall neither seek nor take instructions from any government, institution, person or body.

*Article 9***Functions of the Board of Regulators**

The Board of Regulators shall have the following functions:

- (a) to fulfil the regulatory tasks of BEREC set out in Article 4, namely to adopt the opinions, guidelines, reports, recommendations and common positions and disseminate best practices referred to in that Article, relying, in doing so, on the preparatory work carried out by the working groups;
- (b) to take administrative decisions relating to the organisation of BEREC's work;
- (c) to adopt BEREC's annual work programme as referred to in Article 21;
- (d) to adopt BEREC's annual report on its activities as referred to in Article 22;
- (e) to adopt rules for the prevention and management of conflicts of interests as referred to in Article 42, as well as in respect of members of the working groups;
- (f) to adopt detailed rules on the right of access to documents held by BEREC in accordance with Article 36;
- (g) to adopt and regularly update the communication and dissemination plans as referred to in Article 37(2), based on an analysis of needs;
- (h) to adopt, acting by a two-thirds majority of its members, and make public, its rules of procedure;
- (i) to authorise, together with the Director, the conclusion of working arrangements with competent Union bodies, offices, agencies and advisory groups and with competent authorities of third countries and with international organisations in accordance with Article 35;
- (j) to set up working groups and appoint their Chairs;
- (k) to provide the Director of the BEREC Office with guidance with regard to the carrying out of the tasks of the BEREC Office.

*Article 10***Chair and Vice-Chairs of the Board of Regulators**

1. The Board of Regulators shall appoint, acting by a two-thirds majority of its members, a Chair and at least two Vice-Chairs from among its members.
2. One of the Vice-Chairs shall automatically assume the duties of the Chair if the latter is not in a position to perform those duties.
3. The term of office of the Chair shall be one year, renewable once. In order to ensure continuity of BEREC's work, the incoming Chair shall serve, where possible, one year as Vice-Chair before his or her term of office as Chair. The rules of procedure shall provide for a shorter term where it is not possible for the incoming Chair to serve as Vice-Chair one year before his or her term of office as Chair.
4. Without prejudice to the role of the Board of Regulators in relation to the Chair's tasks, the Chair shall neither seek nor take instruction from any government, institution, person or body.
5. The Chair shall report to the European Parliament and to the Council on the performance of BEREC's tasks when invited to do so.

*Article 11***Meetings of the Board of Regulators**

1. The Chair shall convene the meetings of the Board of Regulators and shall set the agendas for those meetings, which shall be made public.
2. The Board of Regulators shall hold at least two ordinary meetings a year.  
  
Extraordinary meetings shall be convened at the initiative of the Chair, upon the request of at least three of its members or upon the request of the Commission.
3. The Director of the BEREC Office shall take part in all deliberations without the right to vote.
4. The Board of Regulators may invite any person whose opinion may be of interest to it, to participate in its meetings as an observer.
5. The members and the alternates of the Board of Regulators may, subject to its rules of procedure, be assisted at the meetings by their advisers or other experts.
6. The BEREC Office shall provide the secretariat for the Board of Regulators.

*Article 12***Voting rules of the Board of Regulators**

1. The Board of Regulators shall take decisions by a simple majority of its members unless otherwise provided for in this Regulation or in another legal act of the Union.

A majority of two thirds of the members of the Board of Regulators shall be required for the opinions referred to in points (c)(ii) and (v) of Article 4(1) and the guidelines referred to in points (d)(i) to (iv), (vi), (vii) and (x) of Article 4(1).

Notwithstanding the second subparagraph of this paragraph, the Board of Regulators may decide, by a simple majority and on a case-by-case basis, to adopt opinions referred to in point (c)(ii) of Article 4(1) of this Regulation by simple majority, related to draft measures falling under Article 76(2) of Directive (EU) 2018/1972, that lead to the launching of the procedure under Article 33(5) of that Directive.

The decisions of the Board of Regulators shall be made public and shall indicate any reservations of any member upon his or her request.

2. Each member shall have one vote. In the absence of a member, the alternate shall be entitled to exercise that member's right to vote.

In the absence of a member and the alternate, the right to vote may be delegated to another member.

The Chair may delegate the right to vote in any event. The Chair shall take part in the voting unless he or she has delegated the right to vote.

3. The rules of procedure of the Board of Regulators shall set out in detail the arrangements governing voting, including the conditions under which one member may act on behalf of another member, the quorum, and the notification deadlines for meetings. Furthermore, the rules of procedure shall ensure that the members of the Board of Regulators are provided with full agendas and draft proposals in advance of each meeting so that they have the opportunity to propose amendments prior to the vote. The rules of procedure may, inter alia, set out a procedure for voting on urgent matters and other practical arrangements for the operation of the Board of Regulators.

*Article 13***Working groups**

1. Where justified and, in particular, in order to implement BEREC's annual work programme, the Board of Regulators may set up working groups.



2. The Board of Regulators shall appoint the Chairs of the working groups, representing, where possible, different NRAs.
3. The working groups shall be open to the participation of experts from all the NRAs participating in the work of BEREC and the Commission.

The working groups shall also be open to the participation of the staff of the BEREC Office, who shall contribute to the regulatory work of, and provide administrative support to, the working groups.

In the case of the working groups which are set up to carry out the tasks referred to in point (c)(ii) of Article 4(1), the experts from the Commission shall not participate.

In working groups which are set up to carry out the tasks referred to in points (c)(iv), (vi), (vii) and (viii), points (d)(i), (ii), (ix), (x) and (xi), point (j)(ii) and point (l), of Article 4(1) of this Regulation as well as, where relevant, point (c)(iii) and point (j)(i) of Article 4(1) thereof, the views of experts from other competent authorities notified pursuant to Article 5(4) of Directive (EU) 2018/1972 shall be taken into consideration.

The Board of Regulators or the Chairs of the working groups may invite individual experts recognised as competent in the relevant field to participate in the working group meetings if necessary on a case-by-case basis.

4. The Board of Regulators shall adopt rules of procedure laying down the practical arrangements for the operation of the working groups.

## CHAPTER V

### ORGANISATION OF THE BEREC OFFICE

#### Article 14

#### **Organisational structure of the BEREC Office**

The BEREC Office shall comprise:

- (a) a Management Board;
- (b) a Director.

#### Article 15

#### **Composition of the Management Board**

1. The Management Board shall be composed of the persons appointed as members of the Board of Regulators and of one high level representative of the Commission. Each member of the Management Board shall have the right to vote.

Each appointing NRA, as referred to in the second subparagraph of Article 7(1), may appoint a person other than the member of the Board of Regulators as member of the Management Board. That person shall be the head of the NRA, a member of its collegiate body, or the replacement of either of them.

2. Each member of the Management Board shall have an alternate who represents the member in his or her absence.

The alternates of each member shall be the persons appointed as alternates of the members of the Board of Regulators. The representative of the Commission shall also have an alternate.

Each appointing NRA, as referred to in the second subparagraph of Article 7(1), may appoint a person other than the alternate of the member of the Board of Regulators as the alternate of the member of the Management Board. That person shall be the head of the NRA, a member of its collegiate body, the replacement of either of them, or the staff of the NRA.

3. The members of the Management Board and their alternates shall neither seek nor take instructions from any government, institution, person or body.

4. An up-to-date list of members of the Management Board and their alternates, together with their declarations of interests, shall be made public.

#### Article 16

### Administrative Functions of the Management Board

1. The Management Board shall have the following administrative functions:
  - (a) to provide general orientations for the BEREC Office's activities and adopt, on an annual basis, the BEREC Office's single programming document by a majority of two thirds of its members, taking into account the opinion of the Commission and in accordance with Article 23;
  - (b) to adopt, by a majority of two thirds of its members, the annual budget of the BEREC Office and exercise other functions in respect of the BEREC Office's budget pursuant to Chapter VII;
  - (c) to adopt, make public and proceed with an assessment of the consolidated annual activity report on the BEREC Office's activities referred to in Article 27 and submit both the report and its assessment, by 1 July each year to the European Parliament, the Council, the Commission and the Court of Auditors;
  - (d) to adopt the financial rules applicable to the BEREC Office in accordance with Article 29;
  - (e) to adopt an anti-fraud strategy proportionate to fraud risks, taking into account the costs and benefits of the measures to be implemented;
  - (f) to ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-Fraud Office (OLAF);
  - (g) to adopt rules for the prevention and management of conflicts of interests as referred to in Article 42(3);
  - (h) to adopt and regularly update the communication and dissemination plans referred to in Article 37(2), based on an analysis of needs;
  - (i) to adopt its rules of procedure;
  - (j) to adopt implementing rules for giving effect to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union<sup>(1)</sup>, in accordance with Article 110 of the Staff Regulations;
  - (k) without prejudice to the decision referred to in the first subparagraph of paragraph 2, to exercise, with respect to the staff of the BEREC Office, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment (the 'appointing authority powers');
  - (l) to appoint the Director and, where relevant, extend his or her term of office or remove him or her from office in accordance with Article 32;
  - (m) to appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of Other Servants, who shall be wholly independent in the performance of his or her duties;
  - (n) to take all decisions on the establishment of the BEREC Office's internal structures and, where necessary, their modification, taking into consideration the BEREC Office's activity needs as well as having regard to sound budgetary management.

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<sup>(1)</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

With regard to point (m) of the first subparagraph, the BEREC Office may appoint the same Accounting Officer as another Union body or institution. In particular, the BEREC Office and the Commission may agree that the Commission's accounting officer shall also act as Accounting Officer of the BEREC Office.

2. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Director and specifying the conditions under which this delegation of powers can be suspended. The Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may, by way of a decision, temporarily suspend the delegation of the appointing authority powers to the Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a member of staff other than the Director.

#### *Article 17*

### **Chairperson and Deputy Chairpersons of the Management Board**

1. The Chairperson and the Deputy Chairpersons of the Management Board shall be the persons appointed as the Chair and Vice-Chairs of the Board of Regulators. The same term of office shall apply.

By derogation from the first subparagraph, the Management Board may, by a majority of two thirds of its members, elect other members of the Management Board as Chairperson or Deputy Chairperson(s) from among its members, representing Member States. Their term of office shall be the same as that of the Chair and Vice-Chairs of the Board of Regulators.

2. One of the Deputy Chairpersons shall automatically assume the duties of the Chairperson if the latter is not in a position to perform those duties.
3. The Chairperson of the Management Board shall report to the European Parliament and to the Council on the carrying out of the tasks of the BEREC Office when invited to do so.

#### *Article 18*

### **Meetings of the Management Board**

1. The Chairperson shall convene the meetings of the Management Board.
2. The Director of the BEREC Office shall take part in the deliberations, except those related to Article 32, without the right to vote.
3. The Management Board shall hold at least two ordinary meetings a year. In addition, the Chairperson shall convene extraordinary meetings on his or her own initiative, upon the request of the Commission, or of at least three of its members.
4. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.
5. The members of the Management Board and their alternates may, subject to its rules of procedure, be assisted at the meetings by advisers or experts.
6. The BEREC Office shall provide the secretariat for the Management Board.

#### *Article 19*

### **Voting rules of the Management Board**

1. The Management Board shall take decisions by a simple majority of its members, unless otherwise provided for in this Regulation.
2. Each member shall have one vote. In the absence of a member, the alternate shall be entitled to exercise the right to vote.

In the absence of a member and the alternate, the right to vote may be delegated to another member.

3. The Chairperson may delegate the right to vote in any event. He or she shall take part in the voting unless he or she has delegated the right to vote.

4. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the procedure for voting on urgent matters and the circumstances in which a member may act on behalf of another member.

#### Article 20

### Responsibilities of the Director

1. The Director shall be in charge of the administrative management of the BEREC Office. The Director shall be accountable to the Management Board.

2. The Director shall assist the Chair of the Board of Regulators and the Chairperson of the Management Board in preparing the meetings of their respective bodies.

3. Without prejudice to the powers of the Board of Regulators, the Management Board and the Commission, the Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government, institution, person or body.

4. The Director shall report to the European Parliament and to the Council on the performance of his or her duties when invited to do so.

5. The Director shall be the legal representative of the BEREC Office.

6. The Director shall be responsible for the implementation of the BEREC Office's tasks and following the guidance provided by the Board of Regulators and the Management Board. In particular, the Director shall be responsible for:

- (a) the day-to-day administration of the BEREC Office;
- (b) implementing administrative decisions adopted by the Board of Regulators and the Management Board;
- (c) preparing, and submitting to the Management Board, the single programming document referred to in Article 23;
- (d) assisting the Board of Regulators in the preparation of BEREC's annual activity report as referred to in Article 22;
- (e) assisting the Board of Regulators in the preparation of BEREC's annual work programme as referred to in Article 21;
- (f) implementing the single programming document, and reporting to the Management Board on its implementation;
- (g) preparing the draft consolidated annual report on the BEREC Office's activities as referred to in Article 27 and presenting it to the Management Board for assessment and adoption;
- (h) preparing an action plan following-up conclusions of internal or external audit reports and evaluations, as well as investigations by the OLAF and reporting on progress at least once a year to the Management Board;
- (i) protecting the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by carrying out effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative measures, including financial penalties;
- (j) preparing an anti-fraud strategy for the BEREC Office and presenting it to the Management Board for approval;

- (k) preparing draft financial rules applicable to the BEREC Office;
- (l) preparing the BEREC Office's draft statement of estimates of revenue and expenditure and implementing its budget;
- (m) authorising, together with the Board of Regulators, the conclusion of working arrangements with competent Union bodies, offices, agencies and advisory groups and with competent authorities of third countries and with international organisations in accordance with Article 35.

7. The Director shall, under the supervision of the Management Board, take the necessary measures, in particular with regard to adopting internal administrative instructions and publishing notices, in order to ensure the functioning of the BEREC Office in accordance with this Regulation.

8. The Director shall, subject to the prior consent of the Commission, the Management Board and the Member States concerned, decide whether it is necessary for the purpose of carrying out the BEREC Office's tasks in an efficient and effective manner to locate one or more members of staff in one or more Member States. The decision shall specify the scope of the activities to be carried out in a manner that avoids unnecessary costs and duplication of administrative functions of the BEREC Office. Before such a decision is taken, its impact in terms of staff allocation and budget shall be set out in the multi-annual programming document referred to in Article 23(4).

## CHAPTER VI

### BEREC PROGRAMMING

#### *Article 21*

#### **Annual Work Programme of BEREC**

1. The Board of Regulators shall adopt the outline of the annual work programme by 31 January of the year preceding that to which the annual work programme relates. After consulting the European Parliament, the Council and the Commission on their priorities, as well as other interested parties in accordance with Article 4(5), the Board of Regulators shall adopt the final annual work programme by 31 December of that year.
2. The Board of Regulators shall transmit the annual work programme to the European Parliament, the Council and the Commission as soon as it is adopted.

#### *Article 22*

#### **Annual Activity Report of BEREC**

1. The Board of Regulators shall adopt the annual report on the activities of BEREC.
2. The Board of Regulators shall transmit the annual activity report to the European Parliament, the Council, the Commission and the European Economic and Social Committee by 15 June each year.

## CHAPTER VII

### BUDGET AND PROGRAMMING OF THE BEREC OFFICE

#### *Article 23*

#### **Annual and multi-annual programming**

1. Each year, the Director shall draw up a draft programming document containing annual and multiannual programming ('single programming document') in line with Article 32 of Delegated Regulation (EU) No 1271/2013, taking into account guidelines set by the Commission.

By 31 January each year, the Management Board shall adopt the draft single programming document and forward it to the Commission for it to provide its opinion. The draft single programming document shall also be submitted to the European Parliament and to the Council.

The Management Board shall subsequently adopt the single programming document, taking into account the opinion of the Commission. It shall submit the single programming document, as well as any subsequent updates, to the European Parliament, the Council and the Commission.

The single programming document shall become definitive after adoption of the general budget of the Union and, if necessary, shall be adjusted accordingly.

2. The annual programming document shall comprise detailed objectives and expected results, including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management, as referred to in Article 31. The annual programming document shall be consistent with the BEREC's outline of the annual work programme and the final annual work programme as referred to in Article 21 and with the multiannual programming document of the BEREC Office referred to in paragraph 4 of this Article. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year.

3. The Management Board shall, where necessary, amend the annual programming document after adoption of BEREC's final annual work programme referred to in Article 21 and where a new task is assigned to BEREC or to the BEREC Office.

Any substantial amendment to the annual programming document shall be adopted by the same procedure as that used to adopt the initial annual programming document. The Management Board may delegate the power to make non-substantial amendments to the annual programming document to the Director.

4. The multiannual programming document shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.

The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 48.

5. The single programming document of the BEREC Office shall include the implementation of BEREC's strategy for relations with competent Union bodies, offices, agencies and advisory groups, with competent authorities of third countries and with international organisations as referred to in Article 35(3), the actions linked to that strategy and the specification of associated resources.

#### *Article 24*

### **Establishment of the budget**

1. Each year, the Director shall draw up a provisional draft estimate of the BEREC Office's revenue and expenditure (the 'draft estimate') for the following financial year, including the establishment plan, and submit it to the Management Board.

The information contained in the draft estimate shall be consistent with the draft single programming document referred to in Article 23(1).

2. The Director shall submit the draft estimate to the Commission by 31 January each year.

3. The Commission shall submit the draft estimate to the budgetary authority together with the draft general budget of the Union.

4. On the basis of the draft estimate, the Commission shall enter in the draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 of the Treaty on the Functioning of the European Union (TFEU).

5. The budgetary authority shall authorise the appropriations for the contribution to the BEREC Office.

6. The budgetary authority shall adopt the BEREC Office's establishment plan.
7. The Management Board shall adopt the BEREC Office's budget. The budget shall become final following final adoption of the general budget of the Union. Where necessary, it shall be adjusted accordingly.
8. For any building project likely to have significant implications for the budget of the BEREC Office, Delegated Regulation (EU) No 1271/2013 shall apply.

#### Article 25

##### **Structure of the budget**

1. Estimates of all revenue and expenditure for the BEREC Office shall be prepared each financial year, corresponding to the calendar year, and shall be shown in the BEREC Office's budget.
2. The BEREC Office's budget shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, the BEREC Office's revenue shall comprise:
  - (a) a contribution from the Union;
  - (b) any voluntary financial contribution from the Member States or the NRAs;
  - (c) charges for publications and any other service provided by the BEREC Office;
  - (d) any contribution from third countries or the regulatory authorities competent in the field of electronic communications of third countries participating in the work of the BEREC Office, as provided for in Article 35.
4. The expenditure of the BEREC Office shall include staff remuneration, administrative and infrastructure expenses and operational expenditure.

#### Article 26

##### **Implementation of the budget**

1. The Director shall implement the BEREC Office's budget.
2. Each year the Director shall submit to the European Parliament and the Council all information relevant to the findings of evaluation procedures.

#### Article 27

##### **Consolidated Annual Activity Report**

The Management Board shall adopt consolidated annual activity reports in accordance with Article 47 of Delegated Regulation (EU) No 1271/2013, taking into account guidelines set by the Commission.

#### Article 28

##### **Presentation of accounts and discharge**

1. The BEREC Office's accounting officer shall submit the provisional accounts for the financial year to the Commission's Accounting Officer and to the Court of Auditors by 1 March of the following financial year.
2. The BEREC Office shall submit the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors by 31 March of the following financial year.
3. On receipt of the Court of Auditors' observations on the BEREC Office's provisional accounts, the BEREC Office's accounting officer shall draw up the BEREC Office's final accounts under his or her own responsibility. The Director shall submit the final accounts to the Management Board for an opinion.
4. The Management Board shall deliver an opinion on the BEREC Office's final accounts.

5. The Director shall submit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion by 1 July following each financial year.
6. The BEREC Office shall publish the final accounts in the Official Journal of the European Union by 15 November of the following year.
7. The Director shall submit to the Court of Auditors a reply to its observations by 30 September of the following financial year. The Director shall also submit that reply to the Management Board.
8. The Director shall submit to the European Parliament, upon the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 165(3) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>(1)</sup>.
9. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge to the Director in respect of the implementation of the budget for year N.

#### *Article 29*

### **Financial rules**

The financial rules applicable to the BEREC Office shall be adopted by the Management Board after consulting the Commission. They shall not diverge from Delegated Regulation (EU) No 1271/2013 unless such a divergence is required for the BEREC Office's operation and the Commission has given its prior consent.

#### CHAPTER VIII

### **STAFF OF THE BEREC OFFICE**

#### *Article 30*

### **General provision**

The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the BEREC Office.

#### *Article 31*

### **Number of staff of the BEREC Office**

1. In accordance with the principle of activity-based management of human resources, the BEREC Office shall have the staff required to carry out its duties.
2. The number of staff and corresponding financial resources shall be proposed in accordance with Article 23(2) and (4) and Article 24(1), taking account of point (a) of Article 5 and all other tasks assigned to the BEREC Office by this Regulation or by other Union legal acts, as well as the need for compliance with the regulations applicable to all Union decentralised agencies.

#### *Article 32*

### **Appointment of the Director**

1. The Director shall be engaged as a temporary agent of the BEREC Office in accordance with point (a) of Article 2 of the Conditions of Employment of Other Servants.
2. The Director shall be appointed by the Management Board, following an open and transparent selection procedure, on the basis of merit, management, administrative and budgetary skills and the skills and experience relevant to electronic communications networks and services.

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<sup>(1)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).



The list of candidates shall not be proposed by the Chairperson or by a Deputy Chairperson alone. The rules of procedure of the Management Board shall set out in detail the arrangements governing a procedure to shortlist the number of eligible candidates and a voting procedure.

3. For the purpose of concluding the contract with the Director, the BEREC Office shall be represented by the Chairperson of the Management Board.
4. Before appointment, the candidate selected by the Management Board shall be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.
5. The term of office of the Director shall be five years. By the end of that period, the Chairperson of the Management Board shall carry out an assessment that takes into account an evaluation of the Director's performance and the BEREC Office's tasks and challenges. That assessment shall be submitted to the European Parliament and to the Council.
6. The Management Board, taking into account the assessment referred to in paragraph 5, may extend the Director's term of office once, for no more than five years.
7. The Management Board shall inform the European Parliament if it intends to extend the Director's term of office. Within one month before any such extension, the Director may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.
8. A Director whose term of office has been extended shall not participate in another selection procedure for the same post after the end of the cumulative period.
9. Where the term of office is not extended, the Director shall, upon a decision of the Management Board, remain in office beyond the expiry of the initial term of office until the appointment of a successor.
10. The Director may be removed from office only upon a decision of the Management Board acting on a proposal from a member.
11. The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the Director on the basis of a vote of a two-thirds majority of its members.

#### *Article 33*

### **Seconded national experts and other staff**

1. The BEREC Office may make use of seconded national experts or other staff not employed by it. The Staff Regulations and the Conditions of Employment of Other Servants shall not apply to such staff.
2. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the BEREC Office.

#### CHAPTER IX

### **GENERAL PROVISIONS**

#### *Article 34*

### **Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Union shall apply to the BEREC Office and its staff.

#### *Article 35*

### **Cooperation with Union bodies, third countries and international organisations**

1. In so far as necessary in order to achieve the objectives set out in this Regulation and carry out its tasks, and without prejudice to the competences of the Member States and the institutions of the Union, BEREC and the BEREC Office may cooperate with competent Union bodies, offices, agencies and advisory groups, with competent authorities of third countries and with international organisations.

To that end, BEREC and the BEREC Office may, subject to prior approval by the Commission, establish working arrangements. Those arrangements shall not create legal obligations.

2. The Board of Regulators, the working groups and the Management Board shall be open to the participation of regulatory authorities of third countries with primary responsibility in the field of electronic communications, where those third countries have entered into agreements with the Union to that effect.

Under the relevant provisions of those agreements, working arrangements shall be developed specifying, in particular, the nature, extent and manner in which the regulatory authorities of the third countries concerned will participate without the right to vote in the work of BEREC and of the BEREC Office, including provisions relating to participation in the initiatives carried out by BEREC, financial contributions and staff to the BEREC Office. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations.

3. As part of the annual work programme referred to in Article 21, the Board of Regulators shall adopt BEREC's strategy for relations with competent Union bodies, offices, agencies and advisory groups, with competent authorities of third countries and with international organisations concerning matters for which BEREC is competent. The Commission, BEREC and the BEREC Office shall conclude an appropriate working arrangement for the purpose of ensuring that BEREC and the BEREC Office operate within their mandate and the existing institutional framework.

#### *Article 36*

### **Access to documents and data protection**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council <sup>(1)</sup> shall apply to documents held by BEREC and the BEREC Office.

2. The Board of Regulators and the Management Board shall, by 21 June 2019, adopt detailed rules for applying Regulation (EC) No 1049/2001.

3. The processing of personal data by BEREC and the BEREC Office shall be subject to Regulation (EU) 2018/1725.

4. The Board of Regulators and the Management Board shall, by 21 June 2019, establish measures for the application of Regulation (EU) 2018/1725 by BEREC and the BEREC Office, including those concerning the appointment of a Data Protection Officer of the BEREC Office. Those measures shall be established after consulting the European Data Protection Supervisor.

#### *Article 37*

### **Transparency and communication**

1. BEREC and the BEREC Office shall carry out their activities with a high level of transparency. BEREC and the BEREC Office shall ensure that the public and any interested parties are given appropriate, objective, reliable and easily accessible information, in particular in relation to their tasks and the results of their work.

2. BEREC, supported by the BEREC Office, may engage in communication activities on its own initiative within its field of competence in accordance with relevant communication and dissemination plans adopted by the Board of Regulators. The allocation of resources for such support for communication activities within the BEREC Office's budget shall not be detrimental to the effective exercise of BEREC's tasks as referred to in Article 4 or the BEREC Office's tasks as referred to in Article 5.

Communication activities of the BEREC Office shall be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board.

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<sup>(1)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

*Article 38***Confidentiality**

1. Without prejudice to Article 36(1) and Article 40(2), BEREC and the BEREC Office shall not disclose to third parties information that they process or receive in relation to which a reasoned request for confidential treatment has been made in whole or in part.
2. Members and other participants at the meetings of the Board of Regulators, the Management Board and the working groups, the Director, seconded national experts and other staff not employed by the BEREC Office shall comply with the confidentiality requirements under Article 339 TFEU, even after their duties have ceased.
3. The Board of Regulators and the Management Board shall lay down the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

*Article 39***Security rules on the protection of classified and sensitive non-classified information**

BEREC and the BEREC Office shall adopt their own security rules equivalent to the Commission's security rules for protecting European Union Classified Information and sensitive non-classified information, inter alia, provisions for the exchange, processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443 <sup>(1)</sup> and (EU, Euratom) 2015/444 <sup>(2)</sup>. Alternatively, BEREC or the BEREC Office may adopt a decision applying the Commission's rules *mutatis mutandis*.

*Article 40***Exchange of information**

1. Upon the reasoned request of BEREC or the BEREC Office, the Commission and the NRAs represented in the Board of Regulators and other competent authorities shall provide BEREC or the BEREC Office with all the necessary information, in a timely and accurate manner, to carry out their tasks, provided that they have legal access to the relevant information and that the request for information is necessary in relation to the nature of the task in question.

BEREC or the BEREC Office may also request such information to be provided at regular intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats.

2. Upon the reasoned request of the Commission or an NRA, BEREC or the BEREC Office shall provide, in a timely and accurate manner, any information that is necessary to enable the Commission, the NRA or other competent authority, to carry out their tasks, pursuant to the principle of sincere cooperation. Where BEREC or the BEREC Office considers information to be confidential, the Commission, the NRA or the other competent authority shall ensure such confidentiality in accordance with Union and national law, including Regulation (EC) No 1049/2001. Business confidentiality shall not prevent the timely sharing of information.
3. Before requesting information in accordance with this Article and in order to avoid the duplication of reporting obligations, BEREC or the BEREC Office shall take account of any relevant existing information publicly available.
4. Where information is not made available by the NRAs in a timely manner, BEREC or the BEREC Office may address a reasoned request either to other NRAs and other competent authorities of the Member State concerned, or directly to the relevant undertakings providing electronic communications networks, services and associated facilities.

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<sup>(1)</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>(2)</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

BEREC or the BEREC Office shall notify the NRAs that have failed to provide the information of requests in accordance with the first subparagraph.

Upon the request of BEREC or the BEREC Office, the NRAs shall assist BEREC in collecting the information.

5. Member States shall ensure that NRAs and other competent authorities have the power to require other responsible national authorities or undertakings providing electronic communications networks and services, associated facilities, or associated services to submit all information necessary to carry out their tasks referred to in this Article.

Other responsible national authorities or undertakings as referred to in the first subparagraph shall provide such information promptly upon request and in accordance with the timescales and level of detail required.

Member States shall ensure that NRAs and other competent authorities are empowered to enforce such information requests by imposing penalties that are appropriate, effective, proportionate and dissuasive.

#### *Article 41*

### **Information and communication system**

1. The BEREC Office shall establish and manage an information and communication system with at least the following functions:

- (a) a common platform for the exchange of information, providing BEREC, the Commission and NRAs with the necessary information for the consistent implementation of the Union regulatory framework for electronic communications;
- (b) a dedicated interface for requests for information and notification of those requests as referred to in Article 40, for access by BEREC, the BEREC Office, the Commission and NRAs;
- (c) a platform for early identification of the need for coordination between NRAs.

2. The Management Board shall adopt the technical and functional specifications for the purpose of establishing the information and communication system referred to in paragraph 1. That system shall be subject to intellectual property rights and the required confidentiality level.

3. The information and communication system shall be operational by 21 June 2020.

#### *Article 42*

### **Declarations of interests**

1. Members of the Board of Regulators and the Management Board, the Director, seconded national experts and other staff not employed by the BEREC Office shall each make a written declaration indicating their commitments and the absence or presence of any direct or indirect interests that might be considered to prejudice their independence.

Such declarations shall be made at the time of taking up responsibilities, shall be accurate and complete, and shall be updated where there is a risk of there being any direct or indirect interest that might be considered to prejudice the independence of the person making the declaration.

The declarations made by the members of the Board of Regulators, the members of the Management Board and the Director shall be made public.

2. Members of the Board of Regulators, the Management Board and the working groups, and other participants in their meetings, the Director, seconded national experts and other staff not employed by the BEREC Office shall each accurately and completely declare, at the latest at the start of each meeting, any interest which might be considered to be prejudicial to their independence in relation to the items on the agenda, and shall abstain from participating in the discussion and the voting on, such points.

3. The Board of Regulators and the Management Board shall lay down the rules for the prevention and management of conflicts of interests and, in particular, for the practical arrangements for the application of paragraphs 1 and 2.

#### Article 43

### Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council <sup>(1)</sup>, by 21 June 2019, the BEREC Office shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) <sup>(2)</sup> and adopt appropriate provisions applicable to all staff of the BEREC Office using the template set out in the Annex to that Agreement.

2. The Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot inspections, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the BEREC Office.

3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96 <sup>(3)</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded by the BEREC Office.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their respective competences.

#### Article 44

### Liability

1. The BEREC Office's contractual liability shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Union (Court of Justice) shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the BEREC Office.

3. In the case of non-contractual liability, the BEREC Office shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.

4. The Court of Justice shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.

5. The personal liability of its staff towards the BEREC Office shall be governed by the provisions laid down in the Staff Regulations or the Conditions of Employment of Other Servants applicable to them.

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<sup>(1)</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 15.

<sup>(3)</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

*Article 45***Administrative inquiries**

The activities of BEREC and of the BEREC Office shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 TFEU.

*Article 46***Language arrangements**

1. Regulation No 1 <sup>(1)</sup> shall apply to the BEREC Office.
2. The translation services required for the functioning of the BEREC Office shall be provided by the Translation Centre of the Bodies of the European Union.

## CHAPTER X

**FINAL PROVISIONS***Article 47***Headquarters Agreement and operating conditions**

1. The arrangements concerning the accommodation to be provided for the BEREC Office in the host Member State and the facilities to be made available by that Member State as well as the specific rules applicable in the host Member State to the Director, members of the Management Board, the BEREC Office staff and members of their families shall be laid down in a Headquarters Agreement between the BEREC Office and the host Member State, concluded after obtaining the approval of the Management Board and no later than 21 December 2020.
2. The host Member State shall provide the necessary conditions to ensure the smooth and efficient functioning of the BEREC Office, including multilingual, European-oriented schooling and appropriate transport connections.

*Article 48***Evaluation**

1. By 21 December 2023, and every five years thereafter, the Commission shall carry out an evaluation in compliance with the Commission guidelines to assess BEREC's and the BEREC Office's performance in relation to their objectives, mandate, tasks and location. The evaluation shall, in particular, address the possible need to modify the structure or mandate of BEREC and the BEREC Office, and the financial implications of any such modification.
2. Where the Commission considers that the continuation of BEREC or the BEREC Office is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this Regulation be amended or repealed accordingly.
3. The Commission shall report to the European Parliament, the Council and the Management Board on the findings of its evaluation and shall make those findings public.

*Article 49***Transitional Provisions**

1. The BEREC Office shall succeed the Office that was established by Regulation (EC) No 1211/2009 as regards all ownership, agreements, legal obligations, employment contracts, financial commitments and liabilities.

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<sup>(1)</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

In particular, this Regulation shall not affect the rights and obligations of the staff of the Office. Their contracts may be renewed under this Regulation in accordance with the Staff Regulations and the Conditions of Employment of Other Servants and in accordance with the budgetary constraints of the BEREC Office.

2. With effect from 20 December 2018, the Administrative Manager appointed on the basis of Regulation (EC) No 1211/2009 shall act as Director with the functions provided for in this Regulation. The other conditions of the Administrative Manager's contract shall remain unchanged.

3. The Management Board may decide to renew the term of office of the Director referred to in paragraph 2 of this Article for a further term. Article 32(5) and (6) shall apply *mutatis mutandis*. The cumulative term of office of the Director shall not exceed 10 years.

4. The Board of Regulators and the Management Board referred to in Articles 7 and 15 of this Regulation shall be composed of the members of the Board of Regulators and Management Committee referred to in Articles 4 and 7 of Regulation (EC) No 1211/2009, until new representatives are appointed.

5. The Chairs and the Vice-Chairs of the Board of Regulators and of the Management Committee who have been appointed on the basis of Regulation (EC) No 1211/2009, shall remain in office as Chair and Vice-Chairs of the Board of Regulators as referred to in Article 10 of this Regulation, and as Chairperson and Deputy Chairpersons of the Management Board as referred to in Article 17 of this Regulation for the remaining period of their one-year term. Appointments of the Chairs and Vice-Chairs of the Board of Regulators and of the Management Committee on the basis of Regulation (EC) No 1211/2009, which are made before 20 December 2018 but extend beyond that date, shall be respected.

6. The discharge procedure in respect of the budget approved on the basis of Article 11 of Regulation (EC) No 1211/2009 shall be carried out in accordance with the rules established by that Regulation.

#### Article 50

#### **Amendments to Regulation (EU) 2015/2120**

Regulation (EU) 2015/2120 is amended as follows:

(1) the title is replaced by the following:

'Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012';

(2) in Article 1, the following paragraph is added:

'3. This Regulation also lays down common rules to ensure that consumers are not charged excessive prices for making number-based interpersonal communications originating in the Member State of the consumer's domestic provider and terminating at any fixed or mobile number in another Member State.';

(3) in the second paragraph of Article 2, the following points are added:

'(3) "regulated intra-EU communications" means any number-based interpersonal communications service originating in the Member State of the consumer's domestic provider and terminating at any fixed or mobile number of the national numbering plan of another Member State, and which is charged wholly or partly based on actual consumption;

(4) “number-based interpersonal communications service” means number-based interpersonal communications service as defined in point (6) of Article 2 of Directive (EU) 2018/1972 of the European Parliament and of the Council (\*).

(\*) Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).;

(4) the following Article is inserted:

*Article 5a*

#### **Retail charges for regulated intra-EU communications**

1. From 15 May 2019, any retail price (excluding VAT) charged to consumers for regulated intra-EU communications shall not exceed EUR 0,19 per minute for calls and EUR 0,06 per SMS message.

2. Notwithstanding the obligations laid down in paragraph 1, providers of regulated intra-EU communications may additionally offer, and consumers may expressly choose, a tariff for international communications including regulated intra-EU communications different from that set in accordance with paragraph 1, by virtue of which consumers benefit from a different tariff for regulated intra-EU communications than they would have been accorded in the absence of such a choice. Before consumers choose such a different tariff, the provider of regulated intra-EU communications shall inform them of the nature of the advantages which would thereby be lost.

3. Where a tariff for regulated intra-EU communications as referred to in paragraph 2 exceeds the caps laid down in paragraph 1, consumers who have not confirmed or expressed, within a period of two months from 15 May 2019, a choice for any tariff as referred to in paragraph 2, shall automatically be provided with the tariffs laid down in paragraph 1.

4. Consumers may switch from or back to the tariffs laid down in paragraph 1 within one working day of receipt of the request by the provider, free of charge and providers shall ensure that such a switch does not entail conditions or restrictions with regard to elements of the subscriptions other than regulated intra-EU communications.

5. Where the maximum prices referred to in paragraph 1 are denominated in a currency other than the euro, the initial limits shall be determined in those currencies by applying the average of the reference exchange rates published on 15 January, 15 February and 15 March 2019 by the European Central Bank in the Official Journal of the European Union. The limits in currencies other than the euro shall be revised annually from 2020. The annually revised limits in those currencies shall apply from 15 May using the average of the reference exchange rates published on 15 January, 15 February and 15 March of the same year.

6. National regulatory authorities shall monitor the market and price developments for regulated intra-EU communications and shall report to the Commission.

Where a provider of regulated intra-EU communications establishes that, due to specific and exceptional circumstances distinguishing it from most other Union providers, the application of the cap referred to in paragraph 1 would have significant impact on that provider's capacity to sustain its existing prices for domestic communications, a national regulatory authority may, upon that provider's request, grant a derogation from paragraph 1 only to the extent necessary and for a renewable period of one year. The assessment of the sustainability of the domestic charging model shall be based on relevant objective factors specific to the provider of regulated intra-EU communications, as well as the level of domestic prices and revenues.



Where the applicant provider has discharged the applicable evidentiary burden, the national regulatory authority shall determine the maximum price level in excess of one or both of the caps set out in paragraph 1 which would be indispensable in order to ensure the sustainability of the provider's domestic charging model. BEREC shall publish guidelines on the parameters to be taken into account by national regulatory authorities in their assessments.;

(5) in Article 6, the following paragraph is added:

'Member States shall lay down the rules on penalties applicable to infringements of Article 5a and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of the rules and measures laid down to ensure the implementation of Article 5a by 15 May 2019 and shall notify the Commission without delay of any subsequent amendment affecting them.;

(6) in Article 10, the following paragraph is added:

'5. Article 5a shall expire on 14 May 2024.'

#### *Article 51*

#### **Repeal**

Regulation (EC) No 1211/2009 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

#### *Article 52*

#### **Entry into force**

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 11 December 2018.

*For the European Parliament*

*The President*

.A. TAJANI

*For the Council*

*The President*

J. BOGNER-STRAUSS

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## ANNEX

**Correlation table**

Regulation (EC) No 1211/2009	This Regulation
Article 1(1)	Article 1
Article 1(2)	Article 3(1)
Article 1(3)	Article 3(2) and (3)
Article 1(4)	Article 3(4) and points (a) and (b) of Article 4(1)
Article 2	Article 4
Article 3	Article 4
Article 4(1)	Article 6
Article 4(2)	Article 7(1), (2) and (4), Article 8(1) and (2)
Article 4(3)	Article 11(4) and (5) and Article 36
Article 4(4)	Article 10(1), (2) and (3)
Article 4(5)	Article 10(4)
Article 4(6)	Article 11
Article 4(7)	Article 13
Article 4(8)	Article 7(4)
Article 4(9)	Article 12(1) and (2)
Article 4(10)	Article 12(3)
Article 4(11)	Article 5
Article 5	Article 4
Article 6(1)	Article 2(1)
Article 6(2)	Article 5
Article 6(3)	Article 14(1)
Article 6(4)	Article 2(2)
Article 6(5)	Articles 20 and 31
Article 7(1)	Article 15(1)
Article 7(2)	Article 32
Article 7(3)	Article 20(6)
Article 7(4)	Point (k) of Article 16(1)
Article 7(5)	Article 13
Article 8	Article 32
Article 9	Article 20
Article 10(1)	Articles 30 and 34
Article 10(2)	Point (j) of Article 16(1)
Article 10(3)	Article 16(2)
Article 10(4)	Article 33

Regulation (EC) No 1211/2009	This Regulation
Article 11	Article 25
Article 12	Article 24
Article 13	Article 26
Article 14	—
Article 15	Article 29
Article 16	Article 43
Article 17	Article 4(5)
Article 18	Article 37
Article 19	Articles 39 and 40
Article 20	Article 38
Article 21	Article 42
Article 22	Article 36
Article 23	Article 34
Article 24	Article 44
Article 25	Article 48
Article 26	Article 52