

BEREC: Unleashing its Potential to Promote Europe's Single Market



*Having adopted its amendments to the Commission's draft Connected Continent Regulation in early April, the European Parliament is now in the midst of elections, and EU's Council has begun to consider the Commission's proposals. **Camilla Bustani**, Head of International Policy at Ofcom argues that the Council should support Parliament's proposal to harmonise NRA competences, and so enhance the effectiveness of BEREC, the EU's telecoms regulators' network.*

BEREC (the Body of European Regulators in Electronic Communications) was created in 2009 by the **BEREC Regulation**, as an advisor to the European Commission and source and disseminator of best regulatory practice in electronic communications across Europe. Its important contribution to the promotion of the single market was recently acknowledged by the **European Commission** and its **consultants**, and by the **European Parliament**, during the group's first scheduled evaluation, as required under the BEREC Regulation. But, arguably, its potential hasn't yet been fully tapped.

An important role for Europe's regulators

The creation of BEREC was the culmination of a long political debate over the proper balance of powers between the Commission and national regulatory authorities (NRAs), both individually and through BEREC. The Commission is the institution responsible for the policy initiative and direction, charged with promoting the European vision including the single market. NRAs bring to the table their technical expertise and understanding of the practical impact of regulatory initiatives on the various and varied national markets that make up Europe.

BEREC's broadly clean bill of health suggests that the balance between them has been properly struck. Indeed, it has become clear that the pursuit of the single market is best served by increasing the quality of regulation across individual national markets. And the most robust and sustainable way of achieving this – ensuring that regulatory decisions are seen as having legitimacy within the national markets – is through the 'bottom up' approach represented by BEREC.

The European Commission's proposals for a **Connected Continent Regulation**, published last September, represent a tangible vote of confidence in BEREC's ability to fulfil this role. The draft Regulation itself covers a wide range of regulatory areas, ranging from market regulation, to international roaming, to consumer protection in the field of electronic communications. In all areas, the Commission proposes a role for BEREC, whether in the elaboration of best practice guidelines, the collection and publication of data, the monitoring of market developments, or the issuing of opinions. The European Parliament has endorsed and built upon this approach, led by MEPs Pilar del Castillo and Malcolm Harbour.

Ensuring NRAs and BEREC are fully equipped

So is BEREC up to the challenge? The commitment and will to deliver are certainly there – but the path to success might need a bit of clearing. As it happens, BEREC's objectives, role and specific tasks, together with its obligation to act independently, are defined very broadly in the **BEREC Regulation** by reference to "the consistent application of the EU regulatory framework for electronic communications" as a whole. However, the independence of its constituent



NRAs is only safeguarded with respect to NRAs' duties around market analysis and dispute resolution (Article 3(3a) of the **Framework Directive**, as amended in 2009).

This independence requirement effectively ensures that the functions covered by it are entrusted to the NRA and not placed elsewhere (either within the state, or within another regulatory body, neither of which would be a member of BEREC). Because of how this requirement was defined in 2009, some NRAs do not have all the functions that reflect the breadth of BEREC's objectives, role and tasks (e.g. duties in relation to consumer protection) – in some cases, functions assigned to NRAs under the Framework might actually sit within ministries. This could increase the risk of political interference in the activities of NRAs, but it also risks undermining NRAs' involvement in, and their ability to contribute to, the essential work of BEREC.

This, in turn, risks undermining BEREC's ability to fulfil its proper function as an effective engine of regulatory consistency in Europe.

Harmonising a minimum set of NRA competences

Mrs del Castillo MEP, the lead rapporteur on this Regulation, is aware of this risk. She recognised that in order to ensure that members are not limited in their participation in BEREC's work, it is important to ensure that the functions with which BEREC was entrusted by the European legislators sit within the NRA (and not another national body which is not a member of BEREC).

To that end, in her **report** adopted by the European Parliament on 3 April 2014, she proposed to extend the obligation that NRAs act independently to all those NRA functions which are covered by BEREC's wider purpose, namely to "contribute to the development and better functioning of the internal market for electronic communications networks and services, by aiming to ensure a consistent application of the EU regulatory framework for electronic communications" (Article 1(3) of the **BEREC Regulation**).

Sectoral regulation is only one of the large number of considerations that will affect the commercial decisions of operators (alongside demand, competition law, tax regimes, and wider administrative frameworks, for instance). It should therefore not be seen as singularly capable of promoting or enabling the 'completion' of the single market.

However, the proposal to harmonise a minimum set of competences for NRAs could make a significant contribution to the promotion of the single market. The regulatory system of which BEREC is a centrepiece relies on the pooling of experience, and the application of the resulting best practices across the Union. If NRAs lack the relevant competences, they will have less to pool, and limited or no powers to apply those best practices.

To the Council

While less tangible and admittedly not as high-profile as cheaper mobile roaming, the benefits of the proposal to harmonise a minimum set of NRA competences can be expected to be felt over time. It is now hoped that Member States will take the long view in their Council deliberations, and



Now the Council of the European Union should consider harmonizing the competencies of BEREC's members. Photo by Ines Saraiva CC BY-ND 2.0

support the fulfilment of BEREC's full potential in the future and, by extension, the potential of the European single market in electronic communications.

This post gives the views of the author, and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics.

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