

Body of European Regulators for Electronic Communications (BEREC) and the Office. 'Telecoms Package'

2007/0249(COD) - 16/02/2009 - Council position

The Council adopted its common position with the aim of improving and bolstering existing structures, notably the European Regulators Group (ERG). The proposed new body is intended to replace the ERG and improve its functioning so as to ensure greater transparency and efficiency in the decision-making process. The Council has opted to give the ERG formal status in a Community regulation by laying down a more precise definition of its tasks, its functioning and its relations with the Community Institutions.

Although the Council has opted for a different type of legal act from that proposed by the Commission, the common position incorporates most of the European Parliament's first-reading amendments either in full, in part or in essence.

(1) Subject matter, scope and aims: the Council agrees with the Commission and the European Parliament that a new body should be created as part of the internal market for electronic communications networks and services. The new body would have an advisory role and should:

- assist the NRAs (national regulatory authorities) and help the Commission to carry out its tasks;
- serve as a body for reflection, debate and advice for the European Parliament, Council and Commission in the electronic communications field and advise them at their request or on its own initiative;
- continue the work of the ERG, promoting cooperation between national regulatory authorities and between those authorities and the Commission, so as to ensure the consistent application in all Member States of the regulatory framework for electronic communications networks and services, and thereby contribute to the development of the internal market.

The Council shares the view of the Commission and the European Parliament that the new body's activities should **come within the scope of the Framework Directive and the specific directives and should be clearly defined.**

Like the European Parliament, the Council considers that the Group of European Regulators in Telecoms (GERT) should also draw up and disseminate among NRAs **regulatory best practice**, such as common approaches, methodologies or guidelines on implementation of the regulatory framework. It further agrees with both institutions that ENISA (European Network and Information Security Agency) should not form part of the new body, which should have no competence at European level in matters concerning network and information security.

Unlike the European Parliament, the Council considers that the name GERT (Group of European Regulators in Telecoms) would be more appropriate for the new body than BERT (Body of the European Telecoms Regulators). It feels, however, that GERT **should neither have the characteristics of an agency nor legal personality.** Like the European Parliament, the Council considers that GERT would provide expertise and would establish confidence by virtue of its independence, the quality of the advice it delivers and the information it disseminates, the transparency of its procedures and methods of operation, and its diligence in performing tasks.

Regarding **GERT's assignments** the Council, unlike the European Parliament, feels that the Group should focus on matters concerning economic regulation of electronic communications markets and avoid pursuing tasks which have not been clearly defined in advance. The Council does not share the European Parliament's view that GERT should also provide advice for market players. The Council thinks it is right that the Group should seek to carry out its tasks in cooperation with existing groups and committees, but does not feel that it should advise them.

(2) Composition and operational arrangements: the Council agrees with the European Parliament that the new body should be composed of the heads or high-level representatives from the NRA established in each Member State with primary responsibility for overseeing the day-to-day operation of the market for electronic communications networks and services and that it should include one member per Member State. It also agrees that the Commission should have observer status and that the new body's Chairperson and Vice-Chairpersons should be elected from among its members.

The Council agrees with the European Parliament that the new body should **carry out its tasks independently, impartially and transparently** and take decisions on the basis of a two-thirds majority of the members. Like the European Parliament, the Council considers that the NRAs and the Commission should take the utmost account of opinions issued by GERT.

The Council agrees with the **simplification of the new body's structure and tasks** as proposed by the European Parliament, in particular compared with the structure proposed by the Commission and shares the European Parliament's opinion on some of the operational arrangements such as, for instance, adoption by the new body of rules of procedure or the convening of meetings. However, the Council favours a **financial and organisational structure that is less unwieldy and bureaucratic** than that proposed by the European Parliament. The Council does not consider it necessary to provide for a Board of Regulators or a Managing Director post.

The Council considers that, in order to ensure **GERT's independence**, it should not be funded either fully or partly from the Community budget. The Council considers that, in order to ensure application of the principles of subsidiarity and proportionality, to opt for the form of a Community agency is neither necessary for, nor proportionate to, the tasks assigned to GERT. Regarding the two-and-a-half-year terms of office of the Chairperson and of the Vice-Chairpersons, the Council considers a shorter, one-year term of office more appropriate.

(3) Transparency and confidentiality: like the European Parliament, the Council feels that, where appropriate, before issuing opinions, recommending better regulatory practice or drawing up reports, GERT should consult interested parties and give them the opportunity to comment within a reasonable period. In principle, the results of the consultation procedure should be made public and indicate any reservations issued by an NRA at its request. The Council agrees with the European Parliament that GERT should carry out its activities with a high level of transparency.