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*Mr Giorgos Lillikas
Chairman of the Standing Committee
for Foreign and European Affairs
CY – 1402 NICOSIA*

*cc. Mr Demetris Syllouris
President of the Vouli ton Antiprosopon
CY – 1402 NICOSIA*

Dear Chair,

The Commission would like to thank the Vouli ton Antiprosopon for its Opinion on the Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code {COM(2016) 590 final/2} ('the Code') and on the Proposal for a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications (BEREC) {COM(2016) 591 final}.

These proposals form part of an ambitious package of European Union telecoms rules designed to meet the growing connectivity needs of European citizens and businesses and boost Europe's competitiveness¹. In proposing these measures, the Commission is following up on its commitment, stated in its Communication of May 2015 'A Digital Single Market Strategy for Europe'² to present an ambitious overhaul of the regulatory framework for electronic communications to make the telecom rules fit for purpose as part of the creation of the right conditions for the Digital Single Market.

The Commission welcomes the support of the Vouli ton Antiprosopon on the harmonisation of the minimum tasks for National Regulatory Authorities. However, it notes its doubts relating (i) to the use of implementing acts to coordinate certain aspects of spectrum assignment and numbering, (ii) the vesting of the Commission with a veto right on draft regulatory remedies (provided that the Body of European Regulators for Electronic Communications is of the same opinion) and (iii) the transformation of the Body of European Regulators for Electronic Communications into a European Union agency.

¹ http://europa.eu/rapid/press-release_IP-16-3008_en.htm.

² COM(2015) 192 final.

The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposals and trusts that these will allay the concerns expressed by the Vouilton Antiprosopon.

With regard to the possibility for the Commission to adopt implementing acts regarding spectrum, most of the limited number of such acts would be confined to spectrum the harmonisation of which would already have been agreed among Member States. Furthermore, the possibility for the Commission to adopt such acts would be limited to setting out a common framework of action rather than actual individual decision making on spectrum assignments. It would also be confined in a double way. First in the conception of the measures, Member States would be able to make a proposal in the Radio Spectrum Policy Group on the specific issues.

Secondly, Member States would be involved during the adoption process, as any decision would be subject to the opinion of the responsible comitology committee under the examination procedure.

The Commission takes note of the disagreement with the so called "double lock" veto mechanism. On the other hand, the proposal foresees a decision concerning proposed regulatory obligations only in cases where the Body of European Regulators for Electronic Communications shares the serious doubts raised by the Commission, at the end of an in depth investigation by both parties. Such decision would therefore only arise in situations where the collective wisdom of the regulatory community agrees that a particular approach would create an internal market barrier, or would be incompatible with Union law.

With regard to the Body of European Regulators for Electronic Communications, the Commission would like to point out that an efficient governance of modernised institutions is essential in order to make the new regulatory framework for electronic communications function efficiently and be implemented in a timely manner across the European Union. As signalled by many stakeholders during the public consultation, the current institutional set-up of the Body of European Regulators for Electronic Communications often results in opting for greater flexibility or the lowest common denominator instead of focusing on a more harmonised approach for the single market. This perspective has also been recognised by the European Parliament in its Resolution 'Towards a Digital Single Market Act' of 19 January 2016 which called on the Commission to integrate further the Digital Single Market by ensuring that a more efficient institutional framework is in place.

Furthermore, during the preparatory work for the proposed measures, the Commission identified the need to streamline the current structure of the Body of European Regulators for Electronic Communications, which currently encompasses two parallel Boards, and to progress towards an alignment with the structures and functions of modern European Union agencies with reinforced tasks and accountability. The objective is to establish a governance set-up fit for purpose for the growing challenges taking into account the significantly increased role and future tasks which the future Body of European Regulators for Electronic Communications will perform to enhance consistent regulation across the European Union.

This should aim at streamlining processes, designing an appropriate and balanced governance structure which will allow better decision-making process and enhanced accountability and legal certainty.

The Opinion of the Vouli ton Antiprosopon has been made available to the Commission's representatives in the ongoing negotiations with the co-legislators and will inform these discussions.

The points made in this reply are based on the initial proposals presented by the Commission which are currently in the legislative process involving both the European Parliament and the Council.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Vouli ton Antiprosopon and looks forward to continuing the political dialogue in the future.

Yours sincerely,

*Frans Timmermans
First Vice-President*

*Andrus Ansip
Vice-President*