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*Mr Luciano Busuttil  
Chairperson of the Standing  
Committee on Foreign and  
European Affairs of the  
House of Representatives  
The Palace  
MT – VALLETTA VLT 1115*

*cc: Mr Anġlu Farrugia  
President of the  
House of Representatives  
The Palace  
MT – VALLETTA VLT 1115*

*Dear Chair,*

*The Commission would like to thank the Kamra tad-Deputati for its Opinion 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} ('the BEREC proposal').*

*This proposal forms part of an ambitious package of EU telecoms rules designed to meet the growing connectivity needs of European citizens and businesses and boost Europe's competitiveness<sup>1</sup>. In proposing these measures, the Commission is delivering on the promise in its Communication of May 2015, A Digital Single Market Strategy for Europe<sup>2</sup>, to present an ambitious overhaul of the regulatory framework for electronic communications with the view to, inter alia, ensuring a more effective regulatory institutional framework to make the telecom rules fit for purpose as part of the creation of the right conditions for the Digital Single Market.*

*The proposed new European Electronic Communications Code {COM(2016) 590 final/2} entrusts BEREC with additional tasks that would help to ensure that the regulatory framework is implemented consistently and foster the development of the electronic communications market throughout the Union. This proposal, together with the BEREC proposal, aims to strengthen the institutional role of BEREC and enhance its governance structure by turning it into an agency in order to make it fit for the purpose of carrying out its future tasks.*

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<sup>1</sup> [http://europa.eu/rapid/press-release\\_IP-16-3008\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3008_en.htm).

<sup>2</sup> COM(2015) 192 final.

*The Commission welcomes the positive opinion of the Kamra tad-Deputati on the conformity of the proposal with the subsidiarity principle and its broad support for the aims of the package, in particular the need for sustaining cooperation and promoting a coordinated approach at Union level in the field of electronic communications. However, it notes its preference for introducing only minor adjustments to the current structure of BEREC as well as its doubts relating to the transformation of BEREC into an EU agency, its extension of powers, which it sees as being at the expense of the national regulatory authorities and the future role of the Commission within the newly established agency.*

*The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposal and trusts that these will allay the concerns expressed by the Kamra tad-Deputati.*

*As the Kamra tad-Deputati notes in its Opinion, the Commission Staff Working Document on the Evaluation Report of the Body of European Regulators for Electronic Communications (BEREC) and its office {SWD(2013) 152 final} concluded that BEREC is functioning rather well overall but there is still room for improvement in its set up.*

*However, as many stakeholder signalled during the public consultation of 2015, the current institutional set-up of BEREC results in limiting its ability to focus on a more harmonised approach for the single market. At a moment in time when it is critical to advance towards the Digital Single Market, the proposed measures should ensure that the agency will provide a platform for cooperation of all national regulatory authorities with the necessary European focus and strategic steer.*

*Furthermore, in its Resolution 'Towards a Digital Single Market Act' of 19 January 2016, the European Parliament called on the Commission to integrate further the Digital Single Market by ensuring that a more efficient institutional framework is in place. In particular, the European Parliament called on the Commission to ensure a more efficient institutional framework, to strengthen the role, capacity and decision-making process of BEREC, as well as to improve its financial and human resources and to further enhance its governance structure.*

*During the preparatory work for the proposed measures, the Commission also identified the need to streamline BEREC's current complex structure which currently encompasses two parallel Boards, in order to increase its efficiency and coherence and avoid duplication. The assessment of the current institutional set-up brought to light the challenges faced by the BEREC Office as the agency providing support to BEREC and raised with acuity the need to progress towards an integration of BEREC and the BEREC Office within the structures and functions of modern EU agencies with reinforced tasks and accountability, similar to the ones existing in other sectors (for example in energy and financial services)<sup>3</sup>. The objective is to establish a governance set-up fit for purpose for the growing challenges taking into account the significantly increased role and tasks which the future BEREC will perform to enhance consistent regulation across the EU. This should aim at streamlining processes, designing an*

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<sup>3</sup> SWD(2016) 313.

*appropriate and balanced governance structure which will allow for a better decision-making process and would be more efficient in terms of financial and human resources.*

*The current proposed measures would enhance BEREC's role in promoting the Digital Single Market and guarantee the independence and rootedness of the agency in NRAs' expertise, while the national regulatory authorities will continue to play a central role in the regulatory policy. The new institutional structure of BEREC would be in line with the common principles for EU decentralised agencies, agreed by the European Parliament, the Council and the Commission in 2012<sup>4</sup> while ensuring the continuity and the consistency of BEREC's action. These principles aim at ensuring that EU agencies function within the EU institutional framework in a coherent, effective, accountable and transparent manner.*

*BEREC will have a legal personality (currently only the BEREC Office has legal personality) and autonomy from the EU institutions and Member States, while still drawing on the experience and the expertise of the national regulatory authorities. In line with the Common Approach, the Commission will conduct for the Management Board the pre-selection procedure for an Executive Director. In order to ensure the autonomy of the agency, it is the Management Board that will appoint the Executive Director. The activities of BEREC will be subject to the inquiries of the European Ombudsman, investigations by the European Anti-fraud Office and audits by the European Court of Auditors. The Commission would ensure the lawful work of the agency.*

*The future tasks of BEREC would not centralise powers or be at the expense of those of the national regulatory authorities but, on the contrary, mirror them in the areas where an EU angle is necessary (cross-border dimension, need for internal market procedure such as the 'double-lock' mechanism for market remedies, etc.) and where BEREC can assist the national regulatory authorities in carrying out their tasks consistently. The role of the Commission within the structures of the new agency is to ensure an EU perspective.*

*In a nutshell, the proposed measures for enlarging the tasks and establishing an efficient governance structure should guarantee that BEREC is in a better position to help its constituent members and, together with the reinforced competences and independence of national regulatory authorities, ensure a consistent and predictable application of the rules throughout the Digital Single Market.*

*The Kamra tad-Deputati's Opinion 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 above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council.*

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<sup>4</sup> Cf. [https://europa.eu/european-union/about-eu/agencies/overhaul\\_en](https://europa.eu/european-union/about-eu/agencies/overhaul_en)

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Kamra tad-Deputati and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Andrus Ansip  
Vice-President*