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*cc. Mr Stanisław KARCZEWSKI
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Dear President,

The Commission would like to thank the Senat 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 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 delivering on the promise in its Communication of May 2015, A Digital Single Market Strategy for Europe², 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.

The proposed new European Electronic Communications Code³ 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, aim 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.

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

² COM(2015) 192 final.

³ COM(2016) 590 final/2

The Commission welcomes the Senat's broad support for the aims of the package, in particular the measures aimed at enacting and implementing coherent and transparent regulations for the operation of the Digital Single Market, but notes its doubts relating to the merger and transformation of BEREC and the BEREC Office into an European Union agency as well as the extension of the powers of BEREC and the BEREC Office.

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 Senat.

In the Commission's view it is essential to ensure an efficient governance of the bodies involved in the implementation of the new regulatory framework for electronic communications so that the framework can function efficiently and be implemented in a timely manner across the European Union. In recent years, BEREC has made an increasingly important contribution to the efforts to develop a true single market for the telecoms sector. It has delivered valuable technical expertise and has been called upon by the co-legislators to play a stronger role, working closely with the Commission, in areas such as net neutrality and roaming.

However, as many stakeholders 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 strengthen the role, capacity and decision-making process of BEREC, as well as improve its financial and human resources and 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 secretariat 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 European Union agencies with reinforced tasks and accountability, similar to the ones existing in other sectors (such as in energy or financial services).

The objective of the BEREC proposal 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 BEREC will perform, to enhance consistent regulation across the European Union. The proposed balanced governance structure would allow for better decision-making processes and would be more efficient as regards 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 the national regulatory authorities' expertise, while the national regulatory authorities will continue to play a central role in the regulatory policy. The new structure of the BEREC Agency would be in line with the common principles for European Union decentralised agencies, agreed by the European Parliament, the Council and the Commission in 2012⁴ and at the same time ensure the continuity and the consistency of BEREC's action.

In particular, at national level the proposed European Electronic Communications Code aims at establishing a common harmonised minimum set of competences for national regulatory authorities to ensure that they are vested with competences in all the interacting market shaping aspects of the regulation of the electronic communications sector. As a direct consequence, national regulatory authorities' independence and regulatory capacity will also be reinforced.

The tasks of the BEREC Agency set out in the BEREC proposal would not be at the expense of those of the national regulatory authorities but, on the contrary, mirror them in the areas where an European Union angle is necessary (cross-border dimension, need for internal market procedures, etc.) and where BEREC can assist the national regulatory authorities in carrying out their tasks consistently.

In a nutshell, the proposed measures for enlarging the tasks and establishing an efficient governance structure should guarantee that the BEREC Agency 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 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.

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

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Andrus Ansip
Vice-President*

⁴ Cf. https://europa.eu/european-union/about-eu/agencies/overhaul_en