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COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(2008) 720 final

2007/0249 (COD)

Amended proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the European Electronic Communications Market Authority**

(presented by the Commission pursuant to Article 250(2) of the EC Treaty)

Amended proposal for a

## **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

establishing the European Electronic Communications Market Authority

**(Text with EEA relevance)**

### **1. PROCEDURAL STAGES**

The proposal — COM(2007) 699 final — was adopted by the Commission on 13 November 2007 and was sent to the European Parliament and to the Council on 15 November 2007.

The European Economic and Social Committee adopted its opinion on the Commission's proposal on 29 May 2008.

The Committee of the Regions adopted its opinion on the Commission's proposal on 18 June 2008.

The European Parliament adopted 164 amendments at first reading on 24 September 2008.

### **2. OBJECTIVE OF THE PROPOSAL**

The proposal to establish a European Electronic Communications Market Authority is part of the EU regulatory package for electronic communications proposed by the Commission with the aim of simplifying and improving the quality of the regulatory environment, completing the single market and ensuring that consumers can reap the full benefit of a dynamic and increasingly borderless communications market.

The objective of the proposed Regulation is to establish a specialised and independent expert body to assist the Commission and the national regulatory authorities in the implementation of the EU regulatory framework for electronic communications.

The Authority would complement at European level the regulatory tasks performed at national level by the regulatory authorities, in particular by providing: a framework for national regulatory authorities to cooperate; regulatory oversight of market definitions; analysis and implementation of remedies; definition of transnational markets; advice on radio frequency issues; decisions on numbering administration and advice on number portability; advice on network and information security issues; and general informational and advisory functions on issues related to the electronic communications sector.

### **3. OBJECTIVE OF THE AMENDED PROPOSAL**

The amended proposal adapts the original proposal on a number of points as suggested by the European Parliament.

## 4. OBSERVATIONS ON THE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

### 4.1. Amendments accepted by the Commission

The Commission can accept amendments 6, 8, 9, 10, 11, 14, 15, 17, 20, 21, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 42, 43, 44, 47, 48, 50, 54, 57, 59, 60, 62, 65, 66, 68, 69, 73, 77, 78, 79, 85, 87, 89, 91, 92, 94, 97, 98, 100, 101, 103, 104, 105, 106, 115, 117, 120, 125, 133, 136, 140, 141, 143, 144, 145, 146, 147, 149, 152, 153, 156, 163, 166.

### 4.2. Amendments accepted by the Commission in part or subject to rewording

Amendments 12, 22, 49, 53, 61, 63, 70, 81, 83, 88, 99, 102, 107, 108, 109, 110, 111, 114, 116, 118, 119, 121, 122, 123, 124, 129, 130, 131, 159, 160, 161 and 168.

The Commission can accept in principle that a body should be established which departs from the Authority as originally proposed, and therefore accepts all amendments which relate to the change of name. The Commission proposes to create the Body of European Telecoms Regulators ("the Body").

– Amendment 12

The Commission accepts the establishment of a new body called "Body of European Telecoms Regulators" and inserts some new drafting underlying the importance of reinforcing the cooperation between national regulatory authorities. The Commission can accept the insertion of '(hereinafter "NRAs"))' at the end of the first sentence.

Recital 12:

"This calls for **the reinforcement of the cooperation of the national regulatory authorities at European level through the** establishment of a new **Body, the Body of European Telecoms Regulators (hereinafter "the Body")**. ~~BERT~~ **The Body** would make an effective contribution to furthering the completion of the internal market through the assistance it provides to the Commission and the national regulatory authorities (*hereinafter "NRAs"*). It would operate as a point of reference 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 the tasks assigned to it."

– Amendment 22

The Commission can accept this new recital. However, while some markets may inherently have cross-border characteristics, the Commission has so far not recognised any such global market (contrary to what is stated in the text proposed by the European Parliament). Besides, the role of the Body should rather be to assist in developing a common regulatory approach. Finally, the term 'global telecommunications services', which is not defined anywhere in the regulatory framework, should be replaced by 'cross-border business services'.

Recital 22a (new):

***'Cross-border business services are a particular case where harmonising conditions of authorisation might be necessary. It is generally recognised that these services, consisting of managed business data and voice services for multinational companies with locations in different countries, and often different continents, are inherently cross-border and, within Europe, pan-European. ~~BERT~~ The Body should assist in developing a common regulatory approach so that the economic benefits of integrated, seamless services can accrue to all***

*parts of Europe.’*

– Amendment 49

The Commission can accept the insertion of the new paragraph, which improves the Commission’s proposal by clarifying the role of the Body vis-à-vis the national regulatory authorities and suggests referring to organisational support for describing the role of the Body. However, the phrase ‘it shall adopt common positions and comments’ should be deleted as it is redundant and already covered by Article 3 of the proposal.

Article 1, paragraph 3:

**~~‘BERT~~ The Body** shall carry out its tasks in cooperation with the *NRAs* and the Commission.

**~~‘BERT~~ The Body shall serve as a means for the exchange of information and the adoption of consistent decisions by NRAs. It shall provide an the organisational basis support for the decision-making of NRAs. It shall adopt common positions and comments. Furthermore, it shall advise the Commission and assist the NRAs in all matters within the scope of the tasks assigned to the NRAs by the Framework Directive and the Specific Directives.’**

– Amendment 53

The Commission considers in a positive light the idea of making clear the Body’s role in increasing consistency in the imposition of remedies. However, while monitoring of general developments within the meaning of Article 21 of the Regulation is acceptable, the monitoring of implementation is a task for the Commission, and cannot be accepted. Furthermore, ‘common positions’ should be replaced by ‘common approaches’, since the former is a term of art in Community and EU law.

Article 3 - point aa (new):

**~~‘develop common positions~~ approaches, guidelines and best practices for the imposition of regulatory remedies at the national level and monitor their implementation across Member States;’**

– Amendment 61

This amendment emphasises an important aspect of the Body’s work in regard to cross-border services. However the provision needs some redrafting, in particular to avoid the term ‘*global telecommunications services*’, which is not defined in the regulatory framework and remains unclear. Moreover, it would be more appropriate to refer to the rules governing the provision of services across borders as ‘common rules’. Finally, ‘common positions’ should be replaced by ‘common approaches’ since the former is a term of art in Community and EU law.

Article 3, point ia (new):

**~~‘develop common positions~~ approaches on cross-border pan-European issues such as GTSs in order to increase regulatory consistency and promote a single pan-European market and common pan-European rules.’**

– Amendment 63

The Commission can accept some of the redrafting in the first sentence but considers the imposition of an obligation on the Commission to consult the Body to be excessive. The

Commission welcomes the insertion of the last sentence, since assistance to the European Parliament in particular with legislative action could improve the process and the quality of the act in question.

Article 4, paragraph 2:

***‘In order to promote the harmonised application of the provisions of the Framework Directive and the Specific Directives, the Commission ~~shall~~ may also ~~request the assistance of BERT the Body~~ in the preparation of recommendations or decisions to be adopted by the Commission in accordance with Article 19 of Directive 2002/21/EC (Framework Directive). The European Parliament may also request such assistance from ~~BERT the Body~~ as it may reasonably require in relation to any enquiry pursuant to Article 193 of the Treaty or any legislation within the scope of the ~~BERT the Body~~’s functions.’***

– Amendment 70

The Commission can accept this amendment, which must be read in conjunction with the new point 3(ia) on the promotion of cross-border services. However, this provision needs some redrafting: it would be more appropriate to refer to the rules governing the provision of services across borders as ‘common rules’ and to designate the providers of ‘global telecommunications services’ as providers of ‘cross-border services’.

Article 4, paragraph 3, point pa (new):

***‘measures to ensure the development of common ~~pan-European~~ rules and requirements for GTS providers of cross-border business services.’***

– Amendment 81

The Commission can accept the idea of the Body advising the Commission and working in close cooperation with the RSPG in matters within its responsibility relating to spectrum. However, it cannot accept the Body advising the RSPG and RSC, since giving advice to an advisory group and a committee is not appropriate. The Commission can accept the deletion of the references to studies and reviews and the insertion of ‘as appropriate... affected by’, on the understanding that the new body will have a reduced role on spectrum matters.

Article 10, paragraph 1:

***‘Upon request, ~~BERT the Body~~ shall provide advice to the Commission, and work in close cooperation with ~~to the Radio Spectrum Policy Group (hereinafter ‘RSPG’)~~ ~~or the Radio Spectrum Committee (hereinafter ‘RSC’)~~, as appropriate, in relation to matters within the scope of its functions which affect or are affected by the use of radio frequencies for electronic communications in the Community. ~~It shall work in close cooperation with the RSPG and the RSC as appropriate.~~’***

– Amendment 83

The Commission can accept that the Body can contribute to the reports published by the Commission but rejects the reference to RSPG and RSC because the RSPG and RSC do not produce reports. The reference to ‘any other relevant body’ cannot be accepted because it is too general.

Article 10, paragraph 4

~~***‘BERT***~~ ***The Body*** shall *contribute to reports published by the Commission, ~~the RSPG, the RSC or any other relevant body, as appropriate,~~* on prospective frequencies developments in the electronic communications sector and policies in which it shall identify the potential needs and challenges.

– Amendment 88

The Commission can accept the redrafting of the first phrase in the first sentence but the proposed setting, with the Body advising an advisory group (RSPG) and a committee (RSC), is not appropriate. The Commission considers that there is still a need to clarify the role of the Body in relation to the common selection procedure for rights of use for spectrum / numbers.

Article 13, subparagraph 1:

***~~‘The Commission may request BERT~~*** ***the Body*** *to deliver an opinion to the Commission ~~the RSPG or the RSC~~ on the withdrawal of rights of use issued under the common procedures provided for in Article 6b of Directive 2002/20/EC (Authorisation Directive).*

– Amendment 99

The Commission can accept the deletion of the reference to management of the spectrum register, on the understanding that the new body will have a reduced role in spectrum matters. However the Commission cannot accept the deletion of the reference to management of a roaming database. The Roaming Regulation is part of the regulatory framework and the Body’s aim is to assist the Commission and NRAs in implementing that framework. The Body is particularly well placed to undertake this task. Deletion would deprive the Commission, NRAs and consumers of a readily usable tool to help implement the regulatory framework in relation to roaming.

Article 20:

**~~‘Management of the spectrum information register and of the mobile roaming database~~**

**The Body shall be responsible for the management and publication of a database on the pricing of voice and data services for mobile customers when roaming within the Community, including, where appropriate, the specific costs related to roaming calls made and received in the outermost regions of the Community. It shall monitor developments in such prices and publish an annual report.’**

– Amendment 102

The Commission can accept the insertion of the first phrase in the first sentence and the insertion of the last sentence. The Commission cannot accept moving the phrase ‘in conjunction with the publication of the annual report’, and considers that it should be kept as in the original proposal.

Article 21, paragraph 3:

***~~‘The Commission may request BERT~~*** ***the Body, in conjunction with the publication of the annual report,*** *to deliver an opinion on the measures that could be taken to overcome the problems identified in assessing the issues referred to in paragraph 1, ~~in conjunction with the~~*

~~publication of the annual report. This opinion shall be presented to the European Parliament.'~~

– Amendment 107

While the Commission can accept the deletion of (d), (e) and (f), it cannot accept the deletion of the reference to the Administrative Board. The approach taken by Parliament so far raises a number of legal, institutional and budgetary concerns. Further consideration is needed regarding the precise structure envisaged by the Parliament, in particular to safeguard the Community competence and the role of the Commission, while ensuring the independence of NRAs.

Article 24:

'Bodies of ~~BERT~~ the Body

~~BERT~~ The Body shall comprise:

(a) an Administrative Board of Regulators

(b) a Board of Regulators

(c) a *Managing* Director.'

– Amendment 108

The Commission cannot accept the deletion of the reference to the Administrative Board, which ensures a 'Community approach'. The precise structure of the Body needs to be designed in such way as to safeguard the Community competence and the role of the Commission, while ensuring the independence of NRAs.

Article 25, paragraph 1

'The Administrative Board of Regulators shall be composed of twelve members. Six shall be appointed by the Commission, and six by the Council from among ~~one member per Member State who shall be the Heads or nominated high-level representatives of the independent NRAs with responsibility for day-to-day application of the regulatory framework in that Member States. The NRAs shall nominate one alternate per Member State. The Commission shall attend as an observer with the prior agreement of the Board of Regulators~~

– Amendments 109, 110, 111, 116, 118, 119, 122, 123 and 124

The structure envisaged by the Parliament and in particular the deletion of the reference to the Administrative Board in amendments 109, 110, 111, 116, 118, 119, 122, 123 and 124, and its replacement by the Board of Regulators, cannot be accepted by the Commission. The references to the Board of Regulators in amendments 109, 110, 111, 116, 118, 119, 122, 123 and 124 should be changed to references to the Administrative Board.

- Amendment 114

The Commission cannot accept the deletion of the reference to the Administrative Board. It is, however, appropriate to strengthen the Board of Regulators' role in the appointment of the Managing Director.



Article 26, paragraph 1

‘The Administrative Board ~~of Regulators~~ shall, after consulting the Board of Regulators and giving it the opportunity to confirm or not the list of candidates referred to in Article 29(2) and to indicate its preferred candidate, appoint the *Managing* Director in accordance with that provision~~[Article 26(13b)]~~. ~~The Board of Regulators shall take all decisions relating to the performance of BERT’s functions as listed in Article 3.~~’

– Amendment 121

Since the Commission notes that Council and Parliament agree to keep ENISA separate from this new body, the deletion of the reference to the Chief Network Security Officer and its replacement by a reference to the Managing Director is accepted. However, the Commission cannot accept the deletion of the reference to the Administrative Board, which ensures a Community approach.

Article 26, paragraph 8:

‘The Administrative Board ~~of Regulators~~ shall exercise disciplinary authority over the *Managing Director*.’

– Amendments 129 and 130

The structure envisaged by the Parliament cannot be accepted by the Commission. The Administrative Board must be kept to safeguard the Community interest. Therefore, amendments 129 and 130 cannot be accepted and Articles 27 and 28 referring to the Board of Regulators must be reinstated.

– Amendment 131

The Commission proposes some redrafting to keep in the text the idea of a ‘Managing’ Director who does not accept any instructions from any Member State or any private or public interest.

Article 29, paragraph 1:

‘~~BERT~~The Body shall be managed by its *Managing* Director, who shall ~~be accountable to and act under the instructions of guidance of the Board of Regulators~~ in the performance of his/her functions. The Managing Director shall not *otherwise* seek or accept any instruction from any government or from any body.’

- Amendment 132

It is appropriate to refer to the amended mechanism whereby the Board of Regulators has an opportunity to confirm the list of candidates for the post of Managing Director and to indicate its preferred candidate.

Article 29, paragraph 2

‘After consulting the Board of Regulators pursuant to Article 26(1), the Managing Director shall be appointed by the Administrative Board ~~of Regulators~~ on the basis of merit, ~~and the~~ skills and experience relevant for electronic communications networks and services, from a list of at least two candidates proposed by the Commission. Before appointment, ~~the suitability of~~ the candidate selected by the Administrative Board ~~of Regulators~~ may be ~~subject to a non-binding opinion of the European Parliament and the Commission. To this~~

~~end, the candidate shall be~~ invited to make a statement before the ~~responsible~~ **competent** committee of the European Parliament and answer questions put by its members.’

– Amendment 159

The Commission can accept the simplification proposed by the European Parliament, but the reference to the Administrative Board needs to be reinstated. Further consideration is needed on the precise structure envisaged by the Parliament, in particular to safeguard the Community competence and the role of the Commission, while ensuring the independence of NRAs.

Article 44:

***‘BERT’s The Body’s staff, the members of the Administrative Board, the members of the Board of Regulators and the Managing Director of BERT shall make an annual declaration of commitments and a declaration of interests indicating any direct or indirect interests; which might be considered prejudicial to their independence. Such declarations shall be made in writing.’***

– Amendment 160

The Commission can accept the simplification proposed by the European Parliament but the reference to the Administrative Board needs to be reinstated. Further consideration is needed on the precise structure envisaged by the Parliament, in particular to safeguard the Community competence and the role of the Commission, while ensuring the independence of NRAs.

Article 45, paragraph 2

***‘BERT The Body shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall also make public the declarations of interests made by the members of the Administrative Board, the members of the Board of Regulators and the Managing Director.***

– Amendment 161

The Commission can accept the simplification proposed by the European Parliament, but the reference to the Administrative Board needs to be reinstated. Further consideration is needed on the precise structure envisaged by the Parliament, in particular to safeguard the Community competence and the role of the Commission, while ensuring the independence of NRAs.

Article 46, paragraph 2

***‘Members of BERT the Body’s Administrative Board, the Board of Regulators, the Managing Director, external experts, and members of the staff of BERT the Body are shall be subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.’***

– Amendment 168

The Article must indicate all sources of income, so the Commission cannot accept the word ‘notably’. The Commission can accept points a) and b). A financial contribution from the national regulatory authorities can be accepted provided that such contributions are voluntary, as originally proposed by the Commission. Were these contributions to be made obligatory, some NRAs would find it difficult to contribute to the Body’s funding as their financial resources are meagre. Similarly, the Commission cannot accept point d), which makes it plain how long it would take to implement a form of compulsory national financing. The Commission finds that point c) is acceptable, although such a strict quota would in practice be unworkable since the Body must be able to allocate staff according to its needs. The Commission would suggest inserting point c) in a different paragraph.

Article 36, paragraph 1

‘1. The revenues *and resources* of ~~BERT~~ the Body shall consist ~~notably~~ of:

*(a) a subsidy from the Community, entered under the appropriate headings of the general budget of the European Union (Commission Section), as decided by the budgetary authority and in accordance with point 47 of the Interinstitutional Agreement on budgetary discipline and sound financial management;*

*(b) any ~~financial~~ voluntary contribution from the national regulatory authorities of the Member States. ~~each NRA. Each Member State shall ensure that NRAs have the adequate financial resources required to participate in the work of BERT;~~*

*~~2.-(c)~~ Up to half of the professional staff shall be made up of seconded national experts (SNEs) coming from the national authorities.*

*~~(d) the Board or Regulators shall agree, at the latest, six months after the entry into force of this Regulation, the level of the financial contribution to be made by each Member State under point (b);~~*

*~~(e) the appropriateness of the budgetary structure and Member States’ compliance shall be reviewed by 1 January 2014.’~~*

#### **4.3. Amendments not accepted by the Commission**

Amendments 4, 5, 7, 13, 16, 18, 19, 24, 37, 38, 39, 40, 41, 45, 46, 51, 52, 55, 56, 58, 64, 67, 71, 72, 74, 75, 76, 80, 82, 84, 86, 90, 93, 95, 96, 112, 113, 126, 127, 128, 134, 135, 137, 138, 139, 142, 148, 150, 151, 154, 155, 157, 158, 162, 164, 165, 167 cannot be accepted by the Commission.

#### **5. AMENDED PROPOSAL**

Having regard to Article 250(2) of the EC Treaty, the Commission amends its proposal as indicated above.

## **AMENDED LEGISLATIVE FINANCIAL STATEMENT**

### **1. NAME OF THE PROPOSAL:**

**AMENDED PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE EUROPEAN ELECTRONIC COMMUNICATIONS MARKET AUTHORITY**

### **2. ABM / ABB FRAMEWORK**

**Policy area: Information Society**

**Activity: Electronic Communications Policy**

### **3. BUDGET LINES**

#### **3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B..A lines)) including headings:**

New budget lines will be proposed for Titles 1 and 2 as well as for Title 3:

09.02.04.01 The Body of the European Telecoms Regulators - Subsidy under Titles 1 and 2

09.02.04.02 The Body of the European Telecoms Regulators - Subsidy under Title 3

#### **3.2. Duration of the action and of the financial impact:**

2010 – 2015

Any new appropriations after 2013 will have to be decided in the context of the new financial perspective by the budgetary authority.

#### **3.3. Budgetary characteristics:**

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
09.02.04.01	Noncomp.	Diff	YES	YES	NO	No 1a
09.02.04.02	Noncomp.	Diff	YES	YES	NO	No 1a

## 4. SUMMARY OF RESOURCES

### 4.1. Financial Resources

#### 4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		2010	2011	2012	2013	Total
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09.02.04.02 The Body of the European Telecoms Regulators – Subsidy under Title 3

Commitment Appropriations (CA)	8.1.	a	0,900	1,410	1,440	1,460	<b>5,210</b>
Payment Appropriations (PA)		b	0,900	1,410	1,440	1,460	<b>5,210</b>

09.02.04.01 The Body of the European Telecoms Regulators – Subsidy under Titles 1 and 2

Human resources and associated expenditure (NDA)	8.2.4.	d	1,786	2,810	2,810	2,810	<b>10,216</b>
Administrative costs, other than human resources and associated costs	8.2.5.	e	0,784	1,220	1,220	1,220	<b>4,444</b>
<b>Total</b>			<b>2,570</b>	<b>4,030</b>	<b>4,030</b>	<b>4,030</b>	<b>14,660</b>

#### Total indicative financial cost of intervention

<b>TOTAL CA including cost of Human Resources</b>		a+d+e	<b>3,470</b>	<b>5,440</b>	<b>5,470</b>	<b>5,490</b>	<b>19,870</b>
<b>TOTAL PA including cost of Human Resources</b>		b+d+e	<b>3,470</b>	<b>5,440</b>	<b>5,470</b>	<b>5,490</b>	<b>19,870</b>

#### 4.1.2. Compatibility with Financial Programming

- ☒ Proposal is compatible with existing financial programming.
- ☐ Proposal will entail reprogramming of the relevant heading in the financial perspective.
- ☐ Proposal may require application of the provisions of the Inter-institutional Agreement<sup>1</sup> (i.e. flexibility instrument or revision of the financial perspective).

<sup>1</sup> See points 19 and 24 of the Interinstitutional Agreement.

#### 4.1.3. Financial impact on Revenue

- ☐ Proposal has no financial implications on revenue
- ☒ Proposal has financial impact. The following is a prudential estimate of the voluntary contributions from the Member States to be provided in accordance with the legal basis:

EUR million (to one decimal place)

		Prior to action 2009	Situation following action				
	Budget line	Revenue		2010	2011	2012	2013
		<i>a) Revenue in absolute terms</i>	0	0,2	0,4	0,5	0,5
		<i>b) Change in revenue</i>	<i>variation</i>	0,2	0,2	0,1	0

#### 4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	2010	2011	2012	2013
Total number of human resources	18	28	28	28

## 5. CHARACTERISTICS AND OBJECTIVES

### 5.1. Need to be met in the short or long term

The Body will, acting within the scope of the Framework Directive and the Specific Directives, contribute to the better functioning of the internal market for electronic communications networks and services, including in particular the development of cross-Community electronic communications. The Body will act as a centre of expertise for electronic communication networks and services at EU level, drawing upon the experience of the national regulatory authorities.

### 5.2. Added-value of Community involvement and coherence of the proposal with other financial instruments and possible synergy

Consistent application of the regulatory framework for electronic communications will improve competition and contribute to competitiveness.

The development of cross-border services can be hampered by the need to comply with different national conditions. The expertise of a Community body will contribute to reducing this obstacle and also reduce the administrative burden for enterprises.

### 5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

For activities related to the definition and analysis of national and trans-national markets, an appropriate indicator is the number of relevant opinions submitted to the Commission.

For the other tasks of the Body (advice on cross-border disputes, exchange, dissemination and collection of information, advice on regulatory issues, management of the mobile roaming database), the effectiveness of the measures will be directly visible through the use and performance of these services.

### 5.4. Method of Implementation (indicative)

☒ ***Centralised Management***

☐ directly by the Commission

☐ indirectly by delegation to:

☐ executive Agencies

☒ bodies set up by the Communities as referred to in Article 185 of the Financial Regulation

☐ national public-sector bodies/bodies with a public-service mission

☐ ***Shared or decentralised management***

☐ with Member states

☐ with Third countries

☐ ***Joint management with international organisations (please specify)***

## **6. MONITORING AND EVALUATION**

### **6.1. Monitoring system**

Each year, the work of the Body will be monitored and evaluated in the Body's annual general report (for the previous year) and the work programme (for the following year). These two documents are adopted by the Body's Administrative Board. The work programme would be sent to the European Parliament, the Council, the Commission, and the annual report would be transmitted to European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors.

### **6.2. Evaluation**

#### *6.2.1. Ex-ante evaluation*

The Commission's impact assessment accompanying this proposal covers the *ex ante* evaluation concerning the needs / problems, the objectives, the policy options (including the risks associated with them) and the economic and social impacts and monitoring arrangements associated with the Body. Furthermore, Annex III of the impact assessment provides cost-benefit analysis for the Body<sup>2</sup>.

The cost-benefit analysis found that under a conservative scenario, it can be estimated that in the policy areas where the Body would be active, it has the potential of bringing total economic benefits exceeding its budgetary costs by a factor of around 10-30 times (i.e. the order of magnitude of the benefits would be around € 250 – 800 million). The benefits can amount to between €550 and €1400 million if the more optimistic scenarios for the growth of pan-European markets are realised.

A major source of such benefit is the reduction in the regulatory risk which would be achieved through the contribution of the Body. Even a marginal reduction in the regulatory risk (of around 10%) across Europe, will be reflected in lower cost of capital for the industry. In addition, if implementation of major projects of this type can be brought forward by just one year, the economic benefits can be in the range of several hundred million euros.

There are other important qualitative considerations supporting the establishment of the Body that cannot be adequately quantified or monetised in a cost-benefit analysis. In the long run, enabling competition between different new technological platforms is likely to be one of most important economic benefits associated with the Body.

The Body could also substantially contribute to reduce the regulatory risks of R&D projects, which is likely to increase the tendency to invest in R&D and thereby contribute to bridge the gap between actual and socially desirable level of investments in a market-efficient way.

Most of the above benefits are not replicable by the current - or strengthened - coordination between the Member States (that was analysed as an alternative option

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<sup>2</sup> SEC(2007) 1472.



in the impact assessment) based on the loose co-ordination structure of the European Regulators Group (ERG). ERG's peer-review without any veto power cannot be considered equally credible mechanism to reduce the risk for regulatory error across Europe or to decrease perceived market uncertainty related to regulatory discretion factors.

Therefore, even by applying conservative scenarios on the potential benefits and related costs, the establishment of the Body is cost-effective and fully justifiable from the EU budgetary perspective.

#### 6.2.2. *Terms and frequency of future evaluation*

The Body, in line with its founding Regulation will have to produce every year a general report on its activities for the previous year which will be forwarded to the European Parliament, the Council, the Commission, the Economic and Social Committee and the Court of Auditors. This report will present all specific actions undertaken by the Body and will provide indications for the evaluation of the actions undertaken under the proposed revision of the Regulation.

An independent external evaluation of the implementation of the proposed regulation is to be carried out within five years from the effective start of the Body's operations. After this initial evaluation of the start-up phase the activities of the Body will be evaluated at least every five years.

### 7. **ANTI-FRAUD MEASURES**

In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 will apply without restriction to the Body, which will also accede to the Inter-Institutional Agreement of 25 May 1999 concerning internal investigations by OLAF. It will issue, without delay, the appropriate provisions to its staff.

## 8. DETAILS OF RESOURCES

It is estimated that the Body staff complement may expand to 28 FTE once fully established. The annual budget is estimated at 3,5 million Euros in the first year, rising to 5,5 million Euros from year 2 onwards.

### 8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

09.02.04.02 The Body of the European Telecoms Regulators - Subsidy under Title 3	2010	2011	2012	2013	TOTAL
<b>OPERATIONAL OBJECTIVE:</b> Strengthening the Internal market					
Economic Regulation, Market Analysis, Cooperation, Best practices & Technical Expertise	0,900	1,410	1,440	1,460	<b>5,210</b>
<b>TOTAL COST</b>	<b>0,900</b>	<b>1,410</b>	<b>1,440</b>	<b>1,460</b>	<b>5,210</b>

The operational expenditure will be covered by a Community subsidy to the Body's budget.

### 8.2. Administrative Expenditure of the Body

The administrative expenditure will be covered from the budget of the Body, which will be financed by a Community subsidy to the Body's budget (budget line 09.02.04.01 The Body of the European Telecoms Regulators – Subsidy under Titles 1 and 2).

#### 8.2.1. Number and type of human resources

The table shows the staff allocated to the Body.

Types of post		Staff to be assigned to management of the action using existing and/or additional resources ( <b>number of posts/FTEs</b> )			
		2010	2011	2012	2013
Temporary agents	AD	7	11	11	11
	AST	3	5	5	5
External Staff	CA	2	2	2	2
	END	6	10	10	10
<b>TOTAL</b>		<b>18</b>	<b>28</b>	<b>28</b>	<b>28</b>

### 8.2.2. Description of tasks deriving from the action

The allocation of staff to the tasks of the Body, when it is fully operational, is shown in the table below. As regards the figures given for ENDs and CAs, the corresponding posts should only be filled when they are actually required due to the development of the workload of the Body. If all END positions are filled, there would be a maximum 20 Full Time equivalent on AD level (plus the Director), of which up to half should be Seconded National Experts from the NRAs.

		AD	AST	END	Contractual	Total
Director		1	1	1	-	3
Operations: Economic Regulation, Market Analysis, Cooperation, Best practices & Technical Expertise		9	3	9	2	23
Administration and Support		1	1	-	-	2
<b>Total</b>		<b>11</b>	<b>5</b>	<b>10</b>	<b>2</b>	<b>28</b>

### 8.2.3. Sources of human resources (statutory)

The creation of the Body will have no impact on the number of posts (statutory staff) of the Commission (see also section 8.3 below).

- ☐ Posts pre-allocated within the APS/PDB exercise for year n
- ☐ Posts to be requested in the APS/PDB procedures.
- ☐ Posts to be redeployed using existing resources within the managing service (internal redeployment)
- ☐ Posts required for year n although not foreseen in the APS/PDB exercise for the year in question

### 8.2.4. Financial cost of human resources and associated costs

EUR million (to 3 decimal places)

Type of human resources	2010	2011	2012	2013
Temporary agents	1,220	1,952	1,952	1,952
External Staff (END, contract staff, etc.)	0,566	0,858	0,858	0,858
<b>Total cost of Human Resources and associated costs</b>	<b>1,786</b>	<b>2,810</b>	<b>2,810</b>	<b>2,810</b>

The average annual costs are assumed to be EUR 122 000 for temporary staff, EUR 73 000 for ENDs and EUR 64 000 for other employees.

### 8.2.5. Other administrative expenditure

The table below shows a breakdown of the administrative expenditure, which will be covered by a Community subsidy to the Body's budget (Budget line 09.02.04.01 The Body of the European Telecoms Regulators – Subsidy under Titles 1 and 2).

EUR million (to 3 decimal places).

	2010	2011	2012	2013	TOTAL
Infrastructure (Buildings and related expenses), equipment, consumables, communication, IT, etc.	0,290	0,450	0,450	0,450	<b>1,640</b>
Missions and Meetings	0,214	0,336	0,336	0,336	<b>1,222</b>
Administrative services (translation, studies, consulting, etc.)	0,280	0,434	0,434	0,434	<b>1,582</b>
<b>Total Other Management Expenditure</b>	<b>0,784</b>	<b>1,220</b>	<b>1,220</b>	<b>1,220</b>	<b>4,444</b>

### 8.3. Administrative Expenditure of the Commission

The other Commission tasks related to monitoring and management of the Body will not require additional posts and expenditure beyond the resources currently used for coordination with the ERG. The responsible DG may temporarily redistribute existing resources if need be.