

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 15-6511

26 November 2015  
1 Annex

### SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

#### EEA EFTA Comment

#### **on the public consultation on the evaluation and review of the regulatory framework for electronic communications networks and services**

1. The EEA EFTA States welcome the European Commission's public consultation, published on 11 September 2015, which focuses on the original instruments for the telecoms regulatory framework including Regulation (EC) No 1211/2009 establishing the Body of European Regulators for Electronic Communications (BEREC).
2. The EEA EFTA States would like to use this opportunity to reiterate their concern regarding the participation of the EEA EFTA national regulatory authorities (NRAs) in BEREC.
3. To ensure harmonised implementation of the sector's regulatory framework across the EEA there is an urgent need to amend Article 4 of Regulation (EC) No 1211/2009<sup>1</sup> on BEREC.
4. Article 4(3) states that "NRAs from European Economic Area (EEA) States and from those States that are candidates for accession to the European Union shall have observer status..." The justification to amend this article is firstly that the reference to the EEA States includes de facto both the EU Member States and the EEA EFTA States and must therefore clearly be an oversight, and secondly, as the EEA EFTA States are already part of the Single Market and are expected to implement the framework to ensure the goals of the Single Market, observer status in BEREC is not sufficient to ensure a harmonised market throughout the EEA. Although, seemingly, there are no formal grounds why the EEA EFTA States have not been able to negotiate participation in BEREC in line with the standard provision on participation in a number of EU acts, the word "observer" obstructed the 2009 review of the regulatory framework from being incorporated into the EEA Agreement and hindered the EEA EFTA States' implementation of the revised framework in their national legislations.

---

<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0001:0010:EN:PDF>

5. In order to address these concerns, the EEA EFTA States would like to urge the legislator to amend Article 4(3), (4) and (5) of Regulation (EC) No 1211/2009 on BEREC and replace the current text with the proposed text in Annex I.

---

**Proposal for an amendment to Regulation (EC) No 1211/2009**

Article 4 is amended as follows:

(a) Paragraphs 3 and 4 are replaced by the following:

‘3. NRAs from those States that are candidates for accession to the European Union shall have observer status and shall be represented at an appropriate level. BEREC may invite other experts and observers to attend its meetings.

4. BEREC shall be open to the participation of countries which have concluded agreements with the European Union by virtue of which they have adopted and apply Union legislation in the field covered by this Regulation.

Arrangements shall be made under the relevant provisions of those agreements, specifying in particular the nature, extent and manner in which these countries will participate in BEREC’s work, including provisions relating to financial contributions and staff.’

(b) Paragraph 5 is deleted.

**Justification**

The proposed new text of Art. 4(4) of Regulation (EC) No 1211/2009 is based on the standard provision on participation contained in a number of EU acts, such as Art. 24 of Regulation (EC) No 460/2004 and Art. 49 of Regulation (EC) No 178/2002. The current Art. 4(3) of Regulation (EC) No 1211/2009 is not in line with this practice, and has prevented the EEA EFTA States from taking part in BEREC, to the detriment of the homogeneity of the Internal Market. The new text reflects that the EEA EFTA States are an integral part of the Internal Market and that, in accordance with the EEA Agreement, the terms of their participation are to be negotiated and set out therein. Given their full financial contribution, the EEA EFTA States normally have full participation rights in EU bodies, except for the right to vote.