

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

Ref. 17-1173

27 March 2017

SUBCOMMITTEE II ON FREE MOVEMENT OF SERVICES

EEA EFTA COMMENT

on the Proposal for a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications

1. The EEA EFTA States (Norway, Iceland and Liechtenstein) welcome the Commission proposal for a revision of the telecom regulatory framework (the “Connectivity Package”). A sound and future-proof regulatory framework is fundamental for the development of a true Digital Single Market in Europe. The EEA EFTA States therefore support the review and the need to update the regulatory framework, taking account of both technological developments and developments in markets for electronic communications and services in Europe and globally. The EEA EFTA States will follow the legislative process closely and may forward further comments on the various issues covered in packages that are of interest to them.
2. The proposed revision includes a new regulation establishing the Body of European Regulators for Electronic Communications (BEREC), repealing Regulation (EC) No 1211/2009. The EEA EFTA States welcome the changes proposed in the new BEREC Regulation regarding the participation of third countries, c.f. Article 26(2), where it is stated that “BEREC shall be open to the participation of regulatory authorities of third countries competent in the field of electronic communications that have entered into agreements with the Union to that effect”.
3. The proposed new wording by the Commission on the participation of third countries is in line with the standard provision on the participation of third countries in a number of EU acts, and meets the concerns previously raised by the EEA EFTA States.
4. The EEA EFTA States participate in the Internal Market through the EEA Agreement. The institutional and procedural setup of the EEA Agreement provides that the terms of incorporation of acts into the EEA Agreement and participation in EU agencies/bodies are to be negotiated and agreed upon in the EEA Joint Committee.
5. The EEA EFTA States have not been in a position to accept Article 4(3) of Regulation (EC) No 1211/2009 stating 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”, as observer status would not secure the EEA EFTA States’ participation in BEREC on an equal footing with the EU Member States. BEREC has an important role in harmonising the application of electronic communications legislation in the EEA (EU and EEA EFTA States). The current wording has prevented the EEA EFTA States from incorporating the BEREC Regulation into the EEA Agreement, to the detriment of the homogeneity of the Internal Market. In the current regulation, the EU side unilaterally decides upon the terms of participation in BEREC, precluding any negotiations on the need for an adaptation text.

6. Whilst welcoming the Commission’s proposed changes, the EEA EFTA States encourage the European Parliament and the Council to take the same position and secure that the new BEREC Regulation lays the groundwork for satisfactory participation by the EEA EFTA States in BEREC.
 7. On 1 March 2017, the rapporteur of the Committee on Industry, Research and Energy of the European Parliament issued a draft report on BEREC. The EEA EFTA States have concerns regarding the proposed wording of Article 26(2) (amendment 120), where the Article limits the negotiations on the participation of the EEA EFTA States to the BEREC Office. The Article should reflect the wording of Recital 23 (amendment 31), where “BEREC and the BEREC Office should be open to the participation of NRAs of third countries competent in the field of electronic communications”.
 8. The proposed amendment in Article 2b number 5 (amendment 62), where it is suggested that “[a]ny third-country regulatory authorities that are invited by the Board of Regulators shall have observer status and shall be represented at an appropriately high level”, raises further concerns. It is uncertain whether the rapporteur assumes that the participation of the EEA EFTA States should be negotiated between the two contracting parties, or if the participation of the EEA EFTA States depends on an invitation from the Board of Regulators and is limited to observer status. The same goes for the EEA EFTA States’ participation in the Management Board, cf. Article 4(1)a (amendment 81).
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