Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (Text with EEA relevance)

REGULATION (EU) 2018/1971 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 December 2018

establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Directive (EU) 2018/1972 of the European Parliament and of the Council[(3)] aims to create an internal market for electronic communications within the Union while ensuring a high level of investment, innovation and consumer protection through enhanced competition. That Directive also establishes a significant number of new tasks for the Body of European Regulators for Electronic Communications ('BEREC') such as issuing guidelines on several topics, reporting on technical matters, keeping registers, lists or databases and delivering opinions on internal market procedures for draft national measures on market regulation.

(2) Regulation (EU) No 531/2012 of the European Parliament and of the Council[(4)] complements and supports, in so far as Union-wide roaming is concerned, the rules provided for by the regulatory framework for electronic communications and lays down certain tasks for BEREC.

(3) Regulation (EU) 2015/2120 of the European Parliament and of the Council[(5)] lays down additional tasks for BEREC in relation to open internet access. Moreover, the BEREC Guidelines of 30 August 2016 on the Implementation by National Regulators

Changes to legislation: *Regulation (EU) 2018/1971 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 28 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

of European Net Neutrality Rules have been welcomed as providing a valuable clarification of the guarantee of a strong, free and open internet by ensuring the consistent application of the rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users' rights.

(4) In view of the need to ensure the development of consistent regulatory practice and the consistent application of the Union's regulatory framework for electronic communications, the Commission established, by Commission Decision 2002/627/EC[(6)], the European Regulators Group for Electronic Communications Networks and Services (ERG) to advise and assist the Commission in consolidating the internal market for electronic communications networks and services and, more generally, to provide an interface between national regulatory authorities (NRAs) and the Commission.

(5) BEREC and the Office were established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council[(7)]. BEREC replaced the ERG and was intended to contribute, on one hand, to the development and, on the other, to the better functioning, of the internal market for electronic communications networks and services by aiming to ensure the consistent implementation of the regulatory framework for electronic communications. BEREC acts as a forum for cooperation among NRAs and between NRAs and the Commission in the exercise of the full range of their responsibilities under the Union regulatory framework. BEREC was established to provide expertise and to act independently and transparently.

(6) BEREC also serves as a body for reflection, debate and advice for the European Parliament, the Council and the Commission in the field of electronic communications.

(7) The Office was established as a Community body with legal personality to carry out the tasks referred to in Regulation (EC) No 1211/2009, in particular the provision of professional and administrative support services to BEREC. In order to support BEREC efficiently, the Office was given legal, administrative and financial autonomy.

(8) By Decision 2010/349/EU[(8)], the Representatives of the Governments of the Member States decided that the Office would have its seat in Riga. The Seat Agreement between the Government of the Republic of Latvia and the Office entered into force on 5 August 2011.

(9) In its communication of 6 May 2015 entitled 'A Digital Single Market Strategy for Europe', the Commission envisaged presenting proposals in 2016 for an ambitious overhaul of the regulatory framework for electronic communications focusing, inter alia, on a more effective regulatory institutional framework in order to make the rules on electronic communications fit for purpose as part of the creation of the right conditions for the digital single market. Those include the deployment of very high capacity networks, more coordinated management of radio spectrum for wireless networks and creating a level playing field for advanced digital networks and innovative services. That communication pointed out that the changing market and technological environment make it necessary to strengthen the institutional framework by enhancing the role of BEREC.

***Changes to legislation:** Regulation (EU) 2018/1971 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 28 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(10) In its resolution of 19 January 2016 entitled 'Towards a Digital Single Market Act', the European Parliament called on the Commission to integrate the digital single market further by ensuring that a more efficient institutional framework is in place.

(11) BEREC and the Office have made a positive contribution towards the consistent implementation of the regulatory framework for electronic communications. However, there are still significant disparities between Member States as regards regulatory practice, which affects companies engaged in cross-border business or active in a significant number of Member States, including where BEREC guidelines exist, but could be further developed. In order to further contribute to the development of the internal market for electronic communications throughout the Union as well as to the promotion of access to, and take-up of, very high capacity networks, competition in the provision of electronic communications networks, services and associated facilities and the interests of the citizens of the Union, this Regulation aims to strengthen the role of BEREC. Such a strengthened role would complement the enhanced role played by BEREC following Regulations (EU) No 531/2012 and (EU) 2015/2120 and Directive (EU) 2018/1972.

(12) In light of market and technological developments, which often entail an increased cross-border dimension, and of the experience gained so far in seeking to ensure the consistent implementation in the field of electronic communications, it is necessary to build on the work of BEREC and the Office. Their governance and activities should be streamlined and adapted to the tasks that they are to carry out. Taking into account settled procedures and the new set of tasks assigned to BEREC and to the Office and in order to strengthen their effectiveness, additional stability for their management should be provided for and the decision-making process should be simplified.

(13) BEREC should provide expertise and establish confidence by virtue of its independence, the quality of its advice and information, the transparency of its procedures and methods of operation, and its diligence in carrying out its tasks. BEREC's independence should not prevent its Board of Regulators from deliberating on the basis of drafts prepared by working groups.

(14) The new official name of the Office should be 'Agency for Support for BEREC' (the 'BEREC Office'). The designation 'BEREC Office' should be used as the Agency's short name. The BEREC Office should enjoy legal, administrative and financial autonomy. To that end, it is necessary and appropriate that the BEREC Office should be a body of the Union with legal personality that exercises the powers conferred upon it. As a Union decentralised agency, the BEREC Office should operate within its mandate and the existing institutional framework. It should not be seen as representing a Union position to an outside audience or as committing the Union to legal obligations.

(15) Moreover, the rules on the governance and operation of the BEREC Office should, where appropriate, be aligned with the principles of the Joint Statement of the European Parliament, the Council and the European Commission of 19 July 2012 on decentralised agencies.

Changes to legislation: *Regulation (EU) 2018/1971 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 28 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(16) The Union institutions and the NRAs should benefit from BEREC's assistance and advice, including on the relevant regulatory impact of any issue concerning the overall dynamics of digital markets or with regard to their relationship, discussions and exchanges with, and the dissemination of regulatory best practices to, third parties. In addition to its contribution to the Commission's public consultation, BEREC should, when requested, advise the Commission in the preparation of legislative proposals. BEREC should also be able to provide advice to the European Parliament and to the Council, on their request or on its own initiative.

(17) BEREC, as a technical body with expertise on electronic communications and composed of representatives from NRAs and the Commission, is best placed to be entrusted with tasks such as contributing to efficient internal market procedures for draft national measures as regards market regulation, providing the necessary guidelines to NRAs and other competent authorities in order to ensure common criteria and a consistent regulatory approach, and keeping certain registries, databases and lists at Union level. This is without prejudice to the tasks established for NRAs, which are closest to the electronic communications markets and their local conditions.

(18) In order to carry out its tasks, BEREC should continue to pool expertise from NRAs. BEREC should aim to ensure the participation of all NRAs in the fulfilment of its regulatory tasks and its functioning. To strengthen BEREC, make it more representative and safeguard its expertise, experience and knowledge of the specific situation in the full range of national markets, each Member State should ensure that its NRA has adequate financial and human resources required to participate fully in the work of BEREC.

(19) In light of the increasing convergence between the sectors providing electronic communications services, and the horizontal dimension of regulatory issues related to their development, BEREC and the BEREC Office should be allowed to cooperate with, and without prejudice to the role of, NRAs, other Union bodies, offices, agencies and advisory groups, in particular the Radio Spectrum Policy Group established by Commission Decision 2002/622/EC[(9)], the European Data Protection Supervisor established by Regulation (EU) 2018/1725 of the European Parliament and of the Council[(10)], the European Data Protection Board established by Regulation (EU) 2016/679 of the European Parliament and of the Council[(11)], the European Regulators Group for Audiovisual Media Services established by the Directive 2010/13/EU of the European Parliament and the Council[(12)], the European Union Agency for Network and Information Security established by Regulation (EU) No 526/2013 of the European Parliament and of the Council[(13)], the European GNSS Agency established by Regulation (EU) No 912/2010 of the European Parliament and of the Council[(14)], the Consumer Protection Cooperation Network established pursuant to Regulation (EC) No 2006/2004 of the European Parliament and the Council[(15)], the European Competition Network and European standardisation organisations, as well as with existing committees (such as the Communications Committee and the Radio Spectrum Committee). BEREC and the BEREC Office should also be able to cooperate with relevant competent authorities of Member States responsible for competition, consumer protection and data protection, and with the competent authorities of third countries, in

***Changes to legislation:** Regulation (EU) 2018/1971 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 28 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

particular, regulatory authorities competent in the field of electronic communications or groups of those authorities, as well as with international organisations when necessary for the carrying out of their tasks. BEREC should also be able to consult interested parties by means of public consultation.

(20) BEREC should be entitled to establish working arrangements with competent Union bodies, offices, agencies and advisory groups, with competent authorities of third countries and with international organisations, which should not create legal obligations. The goal of such working arrangements could be, for instance, to develop cooperative relationships and exchange views on regulatory issues. The Commission should ensure that the necessary working arrangements are consistent with Union policy and priorities, and that BEREC operates within its mandate and the existing institutional framework and is not seen as representing the Union position to an outside audience or as committing the Union to international obligations.

(21) BEREC should be composed of the Board of Regulators and working groups. The rotation of the role of Chair of the Board of Regulators is intended to ensure continuity of BEREC's work. A rotation of the roles of Vice-Chairs representing various NRAs is also promoted.

(22) BEREC should be able to act in the interests of the Union, independently from any external intervention, including political pressure or commercial interference. It is therefore important to ensure that the persons appointed to the Board of Regulators enjoy the highest guarantees of personal and functional independence. The head of an NRA, a member of its collegiate body, or the replacement of either of them, enjoy such a level of personal and functional independence. More specifically, they should act independently and objectively, should not seek or take instructions in the exercise of their functions, and should be protected against arbitrary dismissal. The function of the alternate on the Board of Regulators could also be performed by the head of the NRA, a member of its collegiate body, the replacement of either of them, or by another member of staff of the NRA, who acts on behalf of, and in accordance with the scope of the mandate of, the member of the Board of Regulators replaced.

(23) Experience has shown that most of BEREC's tasks are better carried out through working groups, which should always ensure equal consideration of all NRAs' views and contributions. The Board of Regulators should therefore set up working groups and appoint their Chairs. NRAs should promptly respond to nomination requests in order to ensure the quick establishment of working groups, in particular those related to procedures with time-limits. The working groups should be open to the participation of experts from the Commission. The staff of the BEREC Office should support and contribute to the working groups' activities.

(24) If necessary, and on a case-by-case basis, the Board of Regulators and the Management Board should be able to invite any person whose opinion may be of interest to participate in their meetings as an observer.

(25) Where appropriate and depending on the allocation of tasks to authorities in each Member State, the views of other competent authorities should be taken into consideration in the relevant working group, for example through consultation at