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European regulatory networks in the telecommunications sector

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Abstract

- In 1997, the International Regulatory Group (IRG) was created, the first collaborative network between European National Regulatory Authorities (NRAs). The IRG has an informal atmosphere and serves as a forum in which the NRAs share information and best practices.
- Five years later, in 2002, the first regulatory framework at EU level for the single telecommunications market was approved. This regulatory framework is based on a package of five directives and one regulation which were adopted between 2002 and 2009.
- Together with the approval of the first regulatory framework in 2002, the EC promoted the creation of the European Regulatory Group (ERG), which brought together NRAs in the EU; its mission was to act as a body that would assist and advise the EC in the development of an internal market.
- In 2007, the EC decided to create a new regulatory body that would be more hierarchical in its operation. Thus, the EC proposed the establishment of the European Electronic Communication Market Authority (EECMA), an independent authority that would work with the NRAs and advise the EC with the aim of strengthening the internal market, while making the application of the regulatory framework more consistent.
- Pressure from the NRAs succeeded in preventing the proposal of the EECMA from being approved, and a new negotiation process began between the EC and the NRAs to reform the telecommunications market regulation system, raising the profile of the ERG, but without affecting the control or the power held by the NRAs.

- The final agreement was the Body of European Regulators for Electronic Communications (BEREC), which is halfway between the ERG and the EECMA. The mission of the BEREC is to foster co-operation and co-ordination between the NRAs in order to promote the development of the internal market.
- In 2009, Article 7 of the regulatory framework was amended to give the EC greater power over the NRAs that were failing to comply with the agreements established in the regulatory framework.
- At the same time, the IRG continues to function as a forum in which the NRAs can meet without the EC being present.

European regulatory networks in the telecommunications sector.

The beginning of the regulatory network

In 1997, thirty-three European National Regulatory Authorities (NRAs) created the International Regulatory Group (IRG), in order to share experiences, points of view and best practices on issues related with the regulation and development of the telecommunications market. The members include the Member States of the European Union (EU), but also Member States of the European Free Trade Association (EFTA) and candidate States for accession to the EU. It is worth highlighting that this network was established outside the European Commission (EC), and this situation has been maintained to the present day.

The main characteristics of the IRG are its informal nature and its predisposition to serve the NRAs as a body of reflection and debate. Within the IRG, the NRAs work together to identify appropriate instruments of regulation, with a view to promoting greater harmonisation in the telecommunications market and to

fostering the exchange of information, collaboration and mutual assistance between the NRAs, and between the NRAs and the EC.

At an organisational level, the IRG has a General Assembly (the principal forum for discussion) which monitors the activities of the network. As a general rule, decisions are taken by consensus, although if a consensus is not reached, they can be taken on the basis of a two-thirds majority or a simple majority vote.

The Commission joins the network

The European Regulatory Group (ERG) was created by Decision No 2002/627/EC of the EC in order to develop an internal telecommunications market and services, and to ensure the due application of the regulatory framework for telecommunications of 2002. The regulatory framework aimed to develop the internal market, promote free and fair competition, and create a stronger telecommunications industry, which would represent an improvement for the economy of the EU and, specifically, for those sectors directly or indirectly related with telecommunications.

Unlike the members of the IRG, the constituent members of the ERG with full rights had to be EU Member States, while members of EFTA and candidates for accession to the EU were relegated to the status of observers. It is worth highlighting that the decision-making process within the ERG remained in the hands of the NRAs, who were obliged to approve each proposal by consensus. Although the EC was present at the plenary sessions of the General Assembly, where the decisions were taken, it only had a voice, that is to say, it did not have a vote.

The ERG should be understood as a step towards the formalisation of the network. In this respect, the following objectives were assigned to it: to promote competition, to develop the internal market and to ensure that the Member States apply the regulatory framework correctly. Furthermore, the ERG also had the responsibility of advising the EC on various matters of interest for the telecommunications market and of promoting competition between the NRAs

and key stakeholders. In spite of the efforts to institutionalise a regulatory network with more powers than the IRG, the ERG continued to be a network focused on sharing information between the NRAs. As a result of the collegial atmosphere among NRAs and the decision making mainly based on consensus, the ERG was unable to apply pressure on the NRAs to harmonise the regulations. This led the EC to launch the proposal to create the EECMA.

The European Commission's proposal: Hierarchical organisation

In an attempt to increase its control and promote the liberalisation of the market within the EU, and to put an end to the inconsistencies in the implementation of the regulatory framework, as well as some inefficient co-ordination mechanisms and some decision making processes by consensus, in 2007 the EC launched a proposal to create the European Electronic Communications Market Authority (EECMA).

In this new framework, the NRAs would lose part of their control over the telecommunications market, since much of their influence in the decision making of the EECMA would be lost to the EC. In short, the EC proposed the creation of an authority at EU level with powers and potential control over the NRAs; the NRAs would lose influence in decision making, ending the network governance system of the ERG.

At an organisational and a decision making level, the EECMA made provision for an Administrative Board composed of 12 members who would take decisions on the basis of a two-thirds majority. This would be the truly powerful body of the authority, in which the NRAs would not have a presence. Furthermore, for technical regulation matters, the EECMA would have a Board of Regulators with the 27 NRAs, but in contrast to the ERG, decisions would be taken by simple majority. With regard to the budget, the proposal to create the EECMA established that the authority would be financed by EC subsidies. The estimated budget for the first year was 10 million euros, but from the third year onwards it would rise to 28 million euros. This is a key difference, not only with respect to the sum of money to be administered by the authority, but also due to

the fact that the EC would provide the majority of the funds, not the various NRAs, as was the case with the ERG.

The transfer and assignment of significant responsibilities to the EECMA, such as supervising the market and analysing and implementing regulations for example, led to the mobilisation of the NRAs, which wanted to maintain the power and control they held in the management of the network. This mobilisation focused on applying pressure on both the European Parliament and the EU Council so that they would not approve the proposal to create the EECMA, which would have resulted in the NRAs losing power and autonomy to the European authority.

On the other hand, the NRAs undertook to raise the profile of the ERG and to strengthen this group, in order to demonstrate a more committed position with respect to the harmonisation and the regulation of the market. These intentions materialised in the creation of a joint secretariat of the ERG and the IRG in Brussels.

The final agreement: a compromise

Two years of negotiations were required before an agreement was reached and the Body of European Regulators for Electronic Communications (BEREC) was created. This body replaced the ERG and is designed to act as a forum of co-operation between the NRAs and the EC, without being an EC agency and without having any legal status.

The Regulation that created the BEREC emphasises that both the EC and the NRAs must take full account of the opinions, recommendations, directives and guidelines approved by the BEREC¹. In short, although the objective of the BEREC remains similar to that of the ERG, it would appear that the decisions taken by the BEREC will have greater implications compared with those of its predecessor.

¹ Regulation No 1211/2009 of the European Parliament and the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.

Unlike the EECMA, the BEREC took the form of a network, not of a European regulatory authority. While the main decision making body of the EECMA was due to be an Administrative Board without the presence of the NRAs, the BEREC established a Board of Regulators composed of the 27 NRAs plus the EC, which is only assigned one vote among 28. This Board of Regulators must take decisions on the basis of a two thirds majority. Furthermore, the BEREC has an office established by the EC with its own legal status, and it is managed by the Board of Regulators. The office must provide the BEREC with professional and administrative support services, compile and exchange information between the NRAs, and promote good practices between others.

Another area in which a difference between the BEREC and the EECMA can be seen is the budget. To be specific, the annual budget established by the BEREC is around 4 million euros, to be provided by both the EC and the individual contributions of the 27 NRAs.

With respect to the regulatory framework, it should be pointed out that in 2009 an amendment was made, which modified Article 7 of the 2002 framework². This article refers to the procedure for application of remedies (regulations correcting monopolistic positions), and the amendment of 2009 specifies that the EC shall play a more active and relevant role in the application of remedies, since over the course of time the NRAs have not been seen to meet this objective. In this respect, a procedure is established whereby both the CE and the BEREC will have an active role, together with the NRAs, in the application of remedies, adopting opinions on draft measures proposed by the NRAs.

Finally, it should be noted that the IRG continues to operate as a group in which the NRAs meet without the EC being present. Nevertheless, the IRG and the BEREC share the same president and the same annual plan of action. The fact that the IRG continues to exist is a mark of the desire and interest on the part of the NRAs to continue to have a forum for dialogue outside the EC. There are

² Directive 2009/140/EC amending the Directive (2002/21/EC) on a common regulatory framework as amended by Directive 2009/140/EC ("Better Regulation Directive")

certain fields and issues that the NRAs can identify in advance and on which they can offer some good advice to the EC; nevertheless, in order to do this, they must be able to discuss and consider the matter in question without the EC being present.

European regulatory governance						
	Co-ordination	Principal decision making body	Members of the decision making body	Taking of decisions by decision making body	Principal function	Financing
IRG (-2007)	Decentralised between members	General Assembly	NRAs	Consensus	Exchange of information	NRAs
IRG (2007-)	Centralised in Secretariat	General Assembly	NRAs	Consensus	Exchange of information	EC & NRAs
ERG (-2007)	Decentralised between members	General Assembly	NRAs with vote, EC without vote	Consensus	Exchange of information	NRAs
ERG (2007-2010)	Centralised in Secretariat	General Assembly	NRAs with vote, EC without vote	Consensus	Exchange of information	EC & NRAs
EECMA [proposal]	Centralised in Agency	Administrative Board	Representatives chosen by EC, EU Parliament, EU Council	Simple majority	Evaluate regulations of the NRAs	EC
BEREC	Centralised in Secretariat	Board of Regulators	NRAs with vote, EC without vote	2/3 majority	Evaluate regulations of the NRAs	EC & NRAs

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