

**THE BODY OF EUROPEAN REGULATORS FOR ELECTRONIC  
COMMUNICATIONS AND ITS INFLUENCE ON POLISH  
TELECOMMUNICATIONS LAW**

*Renata Maria Pal\**

ABSTRACT

The aim of the present paper is to analyse the position in the system and the actions of the Body of European Regulators for Electronic Communications in order to answer the question concerning its influence on the shape of normative solutions in Poland and actions taken by the President of Office of Communications in Poland. The Body of European Regulators for Electronic Communications was constituted in the EU's legal order by regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications and the Office. The EU legislator chose the capital of Latvia – Riga for the seat of the newly created Agency.

The analysis conducted in the article leads to the conclusion that BEREC's impact on Polish telecommunications law is primarily visible in the sphere of the application of the law, which makes it functional in character – it is an impact on the functioning of Polish regulator, i.e. the President of the Office of Electronic Communications. Through implementation of the principle of subsidiarity BEREC does not assume the tasks of national regulators and acts as a kind of consultative and advisory entity. Such solution allows BEREC to conduct a unified regulatory policy in all countries of the European Union. It should also be noted that although the European Union legislator has provided BEREC with soft (because consultative) instruments of influence, its activity has a great impact on the practice of regulatory authorities. Taking Poland as an example, it is especially

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\* Associate Professor, PhD, Department of European Union Law, Faculty of Law, Canon Law and Administration, John Paul II Catholic University of Lublin.

visible in the activity of the President of the Office of Electronic Communications in the sphere of telecommunications market regulation.

**Key words:** Body of European Regulators for Electronic Communications, President of Office of Communications, Polish telecommunications law.

#### GENERAL REMARKS

The aim of the present paper is to analyse the position in the system and the actions of the Body of European Regulators for Electronic Communications together with its influence on the shape of normative solutions in Poland.

Methods used in the article were the method of exegesis of legal texts and the legal-comparative method.

Polish accession to the European Union was the point of key importance for the introduction of the currently functioning model of statutory solutions concerning electronic communications in the territory of Poland. The evolution that took place in this sphere after 1 May 2004 on the one hand gained normative dimension, i.e. it results from legal regulations included in legal acts issued by the institutions of the European Union, and on the other hand, which is seldom reflected in the discussions on the doctrine, it is visible through the actions of a specialized body of the European Union in the area of electronic communications, i.e. the Body of European Regulators for Electronic Communications. Therefore it seems purposeful to analyse this body in two aspects: systemic (position, place in the structure of the EU) and functional, i.e. concerning its competence and its influence on legal systems of the EU Member States, including Poland<sup>1</sup>.

While analysing the issue from the historical point of view one may observe that the way the regulations on electronic communications have gone was determined from the very beginning by technological development and changes in the telecommunications markets. The gradual release

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<sup>1</sup> About regulatory bodies in the EU see: Inga Kawka, *Telekomunikacyjne Organy Regulacyjne w Unii Europejskiej, Problematyka Prawna (Bodies Regulating Telecommunications in the European Union, Legal Issues)*, Zakamycze 2006.

of the market caused by the transition from state monopoly to provide telecommunications services to the free market economy based on the principles of competition resulted in a complete change in the area of legal regulations. The specificity of the electronic communications sector consists in substantial secondary character of legal solutions in relation to the development of technology and telecommunications markets. The element that seems especially important in this context is the phenomenon of convergence, i.e. merging of different transmission technologies and blurring the boundaries between them, which was crucial for the formation of the current regulatory order in the electronic communications sector<sup>2</sup>. Convergence essentially means gradual integration of information technology, telecommunications and electronic media<sup>3</sup>. It may be considered in terms of technology, market, services and regulations. From this perspective, it seems advisable to subject these concepts to a synthesized analysis.

The technological aspect of convergence refers to the unification of media used to send the telecommunications signal. It means that thanks to new technologies there is a possibility to send different categories of signals in the digital form through one common medium, for example fibre-optic cable, mobile or radio network<sup>4</sup>.

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<sup>2</sup> Compare: Michał Goliński, *Globalizacja, teleinformatyka a suwerenność* (Globalisation, Information and Communications Technology Versus Sovereignty), *Law and Economy in Telecommunications* 4/2002, pp. 50-57, Wolf Sauter, *EU regulation for the Convergence of Media, Telecommunications, and Information Technology: Arguments for a Constitutional Approach*, ZERP-Diskussionspapier. 1/98, Stephan Gauch, Knut Blind-Technological convergence and the absorptive capacity of standardization, *Technological Forecasting and Social Change*, Volume 91, February 2015, pp. 236–249.

<sup>3</sup> Compare: Michael L. Katz, *Remarks on the Economic Implications of Convergence*, *Oxford Journals, Industrial and Corporate Change* 1996, Volume 5, Issue 4, pp. 1079-1095.

<sup>4</sup> W. Borecki, W. Hołubowicz, Cz. Jędrzejek, B. Czajkowski, J. Figurki, M. Gawrach, F. Michalak, K. Samp, A. Turowiec, *Konwergencja telefonii stałej, telefonii komórkowej, sieci internetowych i telewizji kablowej a rynek w Polsce* (Convergence of Fixed Telephony, Mobile Communications, Internet Networks and Cable Television and the Market in Poland), W. Brodecki ed., *Raport Monograficzny* (Monographic Report) ITTI – 1/2000, Poznań 2000, item 1.2.3. (1-5). About the fibre-optic network see P. Maksimczuk, *Światłowodowa sieć* (Fibre-Optic Network), *Telenet Forum* 8/2001, pp. 60-61 and M. Dziekan, *Światłowodowy kabel przyszłości* (Fibre-Optic Cable of the Future), *Telenet Forum*

Market convergence consists in the integration of entrepreneurs so far engaged in their activities in separate telecommunications markets. Within its framework a specific functional extension of a market entity's activity takes place and it involves the addition of new services to their offer, e.g. access to the Internet, data transmission or integration of services provided in a fixed location with those provided in a mobile location, which may often be observed in the telecommunications markets<sup>5</sup>.

As part of the convergence of services three phenomena may be observed: service migration, shared services, and network substitution services<sup>6</sup>. Service migration means a specific movement of services related to a given technology to markets where different, often new technologies operate<sup>7</sup>. Shared services, on the other hand, involve combining common services available under the new converged networks and technologies as part of the provider's activity, e.g. providing opportunities for making calls over the wireless network in the absence of mobile network access (Wi-Fi call)<sup>8</sup>. Network substitution relating to services, however, consists in cross-network assimilation with the use of a package of convergent services<sup>9</sup>.

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9/2001, pp. 68-69, S. Godula, Telenet, Podmorskie światłowody (Submarine Fibre-Optic Cables), Forum 9/2001, pp. 46-48.

<sup>5</sup> Such activity was started by the Telekomunikacja Polska S.A. through the creation of the TP Internet that provides Internet services.

<sup>6</sup> For more see: P. Maksimczuk, W jedności siła (Unity Is Strength), Telenet Forum 5/2001, pp. 58-61.

<sup>7</sup> For more see: M. Bromirski, Ewolucja aplikacji usługowych (The Evolution of Service Applications), Telenet Forum 6-7/2001, pp. 50-53.

<sup>8</sup> On this topic see: P. Maksimczuk, Stacjonarne przez komórkę (Landline through a Cell Phone), Telenet Forum, 11/2001, pp. 50-51. Compare G. Pachniewski, Krótka historia telefonii ruchomej w Polsce (A Brief History of Mobile Communications in Poland), URTiP Bulletin, June 2004, pp. 9-21, M. Jakubowski, Telefonacja komórkowa w Polsce – preferencje konsumentów (Mobile Communications in Poland – Customers' Preferences), URTiP Bulletin, March 2005, pp. 9-17.

<sup>9</sup> Compare: A. Płachecki, Rynek telefonii mobilnej w Polsce i regulacje wspierające jego rozwój (The Market of Mobile Communications in Poland and Regulations Supporting Its Development), PiEwT 2/2005, pp. 14-21. J. Kubasik, Czy polski rynek telefonii komórkowej jest wystarczająco konkurencyjny? (Is Polish Mobile Communications Market Competitive Enough?), Prawo i Ekonomia w Telekomunikacji (Law and Economy in Telecommunications) 2/2005, pp. 22-28.

The regulatory aspect of convergence may have two forms. Firstly, it refers to material sphere, i.e. the contents of regulations included in legal acts. Secondly, it refers to the activities of specialized bodies. It was this dimension of convergence that led to integration of many different entities dealing with widely understood regulation of the telecommunications markets into one specialized entity combining all competences in this field. In the United Kingdom this has led to unification of activities of five bodies into one super body, i.e. the Office of Communications. In Poland such integration occurred within the Office of Electronic Communications. In the EU, on the other hand, the currently operating body is the Body of European Regulators for Electronic Communications (BEREC).

This analysis leads to the conclusion that the technological aspect is primary, and the normative aspect is a kind of outcome, the response of the competent authorities to technological change and market processes.

The twenty-first century is a time of real revolution in terms of the so-called new media that has been initiated in the late twentieth century. Electronic communications services in the broad sense have become public services without which it is not possible to fully function in the modern society. Such situation requires a permanent adjustment of legal norms and actions taken by relevant bodies, particularly the Body of European Regulators for Electronic Communications, to the constantly changing technological and market realities. A well-constructed legal regulation corresponds to changes in technology and market requirements (not vice versa). This means that the activity of specialized bodies (at the EU level it is BEREC) is based on a balanced interference in market processes<sup>10</sup>.

The current EU law on electronic communications was shaped by package of directives issued in 2002, which was then reformed and adapted in 2009 to the changing market and technological realities<sup>11</sup>. It entered

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<sup>10</sup> Compare: Maciej Czaplowski, *Oddziaływanie regulacyjne Unii Europejskiej na rynek usług telekomunikacyjnych* (Regulatory Impact of the European Union on the Telecommunications Services Market), *Gospodarka narodowa*, 5(279) Rok LXXXV/XXVI September – October 2015, pp. 65–87.

<sup>11</sup> See: Franciszek Kamiński, *Reformy regulacyjne dla rynku komunikacji elektronicznej na wokandzie Parlamentu Europejskiego* (cz. 2) (Regulatory Reforms for the Electronic Communications Market in the Agenda of the European Parliament, pt. 2). *Biuletyn Informacyjny Instytutu Łączności*, 2008, no. 3, (on-line), <http://www.itl.waw>.

into force on 26 May 2011. The basic EU normative package on electronic communications includes:

- Framework Directive 2002/21/EC amended by Directive 2009/140/EC (better regulation);<sup>12</sup>
- Authorisation Directive 2002/20/EC amended by Directive 2009/140/EC (better regulation);<sup>13</sup>
- Access Directive 2002/19/EC amended by Directive 2009/140/EC (better regulation);<sup>14</sup>
- Universal Service Directive 2002/22/EC amended by Directive 2009/136/EC (civil rights);<sup>15</sup>
- Directive on privacy and electronic communications 2002/58/EC amended by Directive 2009/136/EC (civil rights)<sup>16</sup>.

The EU directives were implemented into Polish legal order with the Act on Telecommunications of 16 July 2004<sup>17</sup>. This Act incorporated solutions that assumed the unification of legal regulations concerning telecommunications markets in all Member States of the European Union.

The Act on Telecommunications has been amended many times. One of the most momentous reforms, from the perspective of the position of the national regulator known as the “velvet revolution”, took place in 2006, when the act of 29 December 2005 amending the Act on Telecommunications and the Civil Proceedings Code came into force<sup>18</sup>.

Under the amending law a new regulator of the telecommunications markets in Poland – the President of the Office of Electronic Communications – has been brought to life. This body replaced the President of

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pl/publ/biuletyn/, Franciszek Kamiński, Propozycje reform regulacyjnych 2007 w sektorze komunikacji elektronicznej Unii Europejskiej (Regulatory Reform Proposals of 2007 in the Electronic Communications Sector of the European Union), *Telekomunikacja i Techniki Informacyjne*, 2008, no. 1–2, pp. 20–50, About current situation on EU telecommunications markets see: European Commission, New report on state of EU Telecommunications markets, Press release, Brussels, 22 July 2014.

<sup>12</sup> Official Journal of the European Union L 108 of 24.4.2002, p. 33.

<sup>13</sup> Official Journal of the European Union L 108 of 24.4.2002, p. 21.

<sup>14</sup> Official Journal of the European Union L 108 of 24.04.2002, p. 7.

<sup>15</sup> Official Journal of the European Union L 108 of 24.04.2002, p. 51.

<sup>16</sup> Official Journal of the European Union L 201 of 31.07.2002, p. 37.

<sup>17</sup> Journal of Laws of 2004 no. 171 pos. 1800.

<sup>18</sup> Journal of Laws 2006 no. 12 pos. 66.

the Office of Telecommunications and Post Regulation who served as the regulatory body even before the introduction of the uniform EU model. The change made by the amendment of 2006 was important for the development of competition protection in telecommunications markets and for tailoring the functioning of the Polish regulator to the requirements of converged markets and the European Union law.

#### THE POSITION OF THE BODY OF EUROPEAN REGULATORS FOR ELECTRONIC COMMUNICATIONS

The Body of European Regulators for Electronic Communications was constituted in the EU's legal order by regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (hereinafter BEREC) and the Office<sup>19</sup>. The EU legislator chose the capital of Latvia – Riga for the seat of the newly created Agency<sup>20</sup>. The beginnings of the new entity in the organizational structure of the EU were not easy. BEREC only gained full power in the area of its competence in 2011<sup>21</sup>.

At this point it is worth mentioning that BEREC was not the first initiative of the EU concerning establishment of a specialized entity at the institutional level for activities in the sphere of electronic communications. The Body of European Regulators for Electronic Communications replaced the European Regulators Group (ERG), which had been an advi-

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<sup>19</sup> Official Journal of the European Union L 337 of 18.12.2009, p. 1 (hereinafter Directive on BEREC).

<sup>20</sup> Decision (2010/349/EU) taken by the representatives of the Governments of the Member States on 31 May 2010 on the location of the seat of the Office of the Body of European Regulators for Electronic Communications.

<sup>21</sup> See: Franciszek Kamiński, Nowelizacja pakietu regulacyjnego dla rynku komunikacji elektronicznej Unii Europejskiej – Organ Europejskich Regulatorów Łączności Elektronicznej (Wersja uaktualniona) (Amendment of the Regulatory Package for the Electronic Communications Market of the European Union – The Body of European Regulators for Electronic Communications (Updated Version)), Biuletyn Informacyjny Instytutu Łączności No. 1, 2009

sory committee operating at the EC<sup>22</sup>. The Group was a kind of discussion forum whose powers extended to all matters concerning the networks and electronic communications services<sup>23</sup>. The main task of the ERG was to promote the development of the internal market and the uniform application of regulations provided by the regulatory package of 2002<sup>24</sup>. The European Regulators Group was established by the decision of the European Commission dated 28 July 2002<sup>25</sup>. However, already in 2004 the European Commission issued a decision by which it amended its own decision issued in 2002 and reformed certain issues related to the structure of the ERG<sup>26</sup>. The European Regulators Group consisted of the heads of the national regulatory authorities of each Member State of the EU. This meant that the President of the Office of Electronic Communications was also a member<sup>27</sup>. Polish regulatory authority participated in the work of the Group since January 2003 and as a full member since Polish accession to the EU, namely since 1 May 2004<sup>28</sup>. The first official meeting of the ERG took place on 22 October 2002 in Brussels.

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<sup>22</sup> See: Document ERG (06) 03 Independent Regulators Group/European Regulators Group. A guide to who we are and what we do, available at [http://www.erg.eu.int/doc/publications/erg\\_06\\_03\\_manual.pdf](http://www.erg.eu.int/doc/publications/erg_06_03_manual.pdf) of 7 May 2006.

<sup>23</sup> Hereinafter ERG.

<sup>24</sup> The meetings within the ERG are not the only way for the regulatory bodies to exchange views. Cooperation with regulators from outside of the EU seems especially important. About this topic see more in J. Czajkowski, III Ogólnoświatowe Sympozjum dla Urzędów Regulacyjnych – Hong-Kong – grudzień 2002 (Third Global Symposium for Regulators Offices – Hong-Kong – December 2002), URTiP Bulletin, February 2003, pp. 19-20.

<sup>25</sup> European Commission Decision 2002/627 of 29 July 2002 establishing the European Regulators Group, Official Journal of the EC L 200/38 of 30 July 2002.

<sup>26</sup> European Commission Decision 2004/641 of 14 September 2004 amending Decision 2002/627/EC establishing the European Regulators Group, Official Journal of the EC L 293/3 of 16 September 2004.

<sup>27</sup> The catalogue of regulatory bodies represented in the ERG is included in the Annex to the decision 2004/641.

<sup>28</sup> Since January 2003 as an observer and from April 2003 to April 2004 as an active observer. Since 1 May 2004 until the December amendment of the Act on Telecommunications Poland was represented in the ERG by the President of the Office of Telecommunications and Post Regulation.



It should be emphasized that the establishment of the BEREC led to the creation of an independent entity, an agency specialized in regulating the widely understood sphere of electronic communications.

An interesting solution used by the Union's legislator when developing a new subjective model was the introduction of specific functional diversification through the establishment of two entities in the sphere of electronic communications. The first of them was the Body (BEREC), performing substantive functions, and the second was the Office, performing administrative and organizational functions. In accordance with the intention of the European legislator, the Office supports and assists BEREC. This allows the Body (BEREC) to focus its activities only on substantive and conceptual actions.

The organizational unit of BEREC is the Board of Regulators. It is a kind of body of a substantive character. In its functioning the Board is bound by the principle of independence. In the passive dimension it means that the Board cannot take any instructions from governments, the European Commission and public or private entities. In the active dimension the Board cannot apply for such instructions.

The Board consists of one representative from each EU Member State and they should be the head or senior appointed representative of a national regulatory body<sup>29</sup>. Regulatory bodies of individual Member States also appoint one deputy for each member of the Board. Representatives of the European Commission, national regulatory bodies of the European Economic Area (EEA) and national regulatory bodies of candidate countries for membership in the European Union have observer status in the Board. Invited experts and observers may also attend the meetings of the Board.

The basic responsibility of the Board of Regulators is to perform tasks entrusted to it by the BEREC EU legislator. As part of this competence, the Board has the power to make all the necessary decisions.

President elected from among its members leads the Board of Regulators. The term of office of the President is one year. The Board also appoints Vice-Presidents. Both the President and the Vice-Presidents perform their functions independently.

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<sup>29</sup> See: art. 4 of the Directive on BEREC.

The Board works in sessions. As part of regular sessions, meetings are held at least four times a year. An extraordinary meeting, on the other hand, may be called on the initiative of its President, at the request of the Commission or at the request of at least one third of the members of the Board.

According to the regulations contained in the Directive on BEREC (i.e. regulating the status of BEREC)<sup>30</sup> the Office, not the Body, is EU body with legal personality. This means that in all the Member States of the European Union it has legal capacity and capacity for acts in law corresponding in range to those granted by the state to national legal persons. The Office also has the capacity to act in court proceedings and as part of this capacity it has the right to sue and be sued in court proceedings, the right to acquire and dispose of movable and immovable property, which means broadly understood ability to engage in market processes. It should be noted that in this sphere the EU legislator applied the broadest possible formula for shaping the legal status of the Office in order to enable it to take all the necessary actions to accomplish the mission of BEREC.

From the formal point of view, the Office and not the Body (BEREC) is the entity empowered to enter into legally binding external action. It should be noted, however, that in its activity the Office is closely supervised by the Board of Regulators, i.e. a body within BEREC.

The primary activities of the Office include providing expertise and support for BEREC in the area of administration. It is a kind of technical-specialist support for the Body. The Office also appoints expert working groups at the request of the Board of Regulators and provides support for their efficient functioning.

The Office is also involved in gathering information from the national regulatory bodies and it exchanges and transmits information related to the role and tasks specified in art. 2 point a) and in art. 3.

With regard to regulating the telecommunications markets, the Office disseminates best regulatory solutions among the national regulatory bodies in accordance with art. 2 point a).

The Office is also required to assist its President in the preparation of activities of the Board of Regulators.

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<sup>30</sup> See: art. 6 of the Directive on BEREC.

The bodies of the Office are the Management Committee and Management Director. These units represent it and perform the powers entrusted to it.

The Management Director is a monocratic executive body. The Director's term of office is three years and it may be renewed once for no more than three years. In performing his functions, the Director is subordinate to the Management Committee.

The Management Director is appointed by the Management Committee in an open competition among the candidates with the skills, achievements and experience in the field of networks and electronic communication services. The Director's tasks include managing the Office<sup>31</sup> (footnote for art. 6), representing it during activities performed by the Board of Regulators, the Management Committee and the expert working groups, assisting in preparing the documents of BEREC (e.g. Annual report on the activities of BEREC), supervising the implementation of the decisions of BEREC, ensuring efficient functioning of the Office and implementation of the budget<sup>32</sup>.

One of the basic principles determining the activities of the Management Director is the principle of independence. Like the Board of Regulators and the Management Committee, the Director performs his tasks independently and autonomously. This independence has two dimensions, active and passive. The active dimension means that the Director cannot seek any instructions concerning his activity from the Member States, national regulatory bodies, the European Commission or third parties. The passive dimension of the principle means that he cannot receive any instructions<sup>33</sup>.

The Management Committee is a collegial governing body. It consists of representatives of all Member States with the rank of supervisor or senior representative of the national regulatory body and the representative of the European Commission<sup>34</sup>. The head of the Management Committee is its President and he represents the body and prepares its activities. Each

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<sup>31</sup> See: art. 6 of the Directive on BEREC.

<sup>32</sup> See: art. 9 of the Directive on BEREC.

<sup>33</sup> See: art. 8 of the Directive on BEREC.

<sup>34</sup> See: art. 7 of the Directive on BEREC.

member of the Committee has one vote and decisions are taken by a two-thirds majority.

Competences of the Management Committee include appointing the Management Director, selection of staff of the Office and supporting the work of the expert working groups. Like the Management Director, also the Committee is determined by the principle of independence. It is therefore not possible to transfer or accept any instructions concerning the work of the Committee.

#### COMPETENCES OF BEREC AND ITS INFLUENCE ON POLISH TELECOMMUNICATIONS LAW

The impact of BEREC on Polish regulator and the Polish telecommunications law primarily concerns regulation of the telecommunications markets. The gradual withdrawal of public bodies from the electronic communications markets, their privatization and development have necessitated the constitution of the regulatory model that allows to maintain an adequate level of competition in this sphere. The European Union legislator has created a unified model of *ex ante* regulation of the telecommunications markets applicable in all EU Member States. The regulatory cycle resulting from the model consists of three stages. Firstly, auditable markets of high risk should be identified. Secondly, entrepreneurs operating in such markets should be verified from the point of view of the so-called significant market power held by them (which is equivalent to a dominant market position under competition law), and thirdly, regulatory obligations should be imposed on entities that hold such a position in order to give equal opportunity in the market (e.g. the obligation to grant access to the network to other entrepreneurs).

Market areas subject to *ex ante* regulation were defined at the EU level in the European Commission Recommendation of 9 October 2014 on relevant markets in the field of telecommunication products and services in the electronic communications sector subject to *ex ante* regulation in accordance with the Directive 2002/21 / EC of the European Parliament and of the Council on a common regulatory framework for electronic communications network and services (text relevant for the EEA) (2014/710

/EU). This means that the first defining of market areas takes place at the EU level, then the national regulator, under Polish law it is the President of the Office of Electronic Communications, determines markets that will be subject to the regulatory cycle in Polish conditions. Pre-defining at the EU level is therefore primary, compared with the defining at the national level.

Under the EU regulation (see: Framework Directive) BEREC is a unit watching over the shaping and development of common regulatory practices and the uniform application of the EU regulatory framework (Framework Directive (18)), therefore the national regulatory bodies, including the President of the Office of Electronic Communications, should cooperate with BEREC and support its actions. The European regulator thus functions as a kind of coordinator in this sphere.

Among the activities performed by BEREC, its consultative and advisory function is of primary importance. The Body of European Regulators for Electronic Communications delivers opinions on drafts prepared by national regulatory bodies on measures concerning market definition, designation of undertakings with significant market power and imposition of remedies.

The impact of BEREC on the Polish regulator is visible even in art. 18 of the Act on Telecommunications. According to this article, if decisions on determining the relevant market, its analysis and designation of telecommunications entrepreneurs with significant market power or telecommunications companies with collective significant position, or repeal of the decision in this case, the imposition, abolition, maintaining or amendment of regulatory obligations in relation to telecommunications entrepreneurs with significant market power or not having such a position, decisions on telecommunications access, may have impact on trade relations between the Member States, the President of the Office of Electronic Communications, immediately after the completion of consultations and consideration of stances of the parties to the proceedings, initiates consolidation proceedings and sends draft decisions and their rationale to the European Commission, the Body of European Regulators for Electronic Communications and regulatory bodies of other Member States.

A significant package of rights of BEREC focuses on cooperation and collaboration with national regulatory bodies, including the President of Office of Electronic Communications. As part of this cooperation,

exchange of information and experience necessary to constantly improve the quality of legal regulations and practices in the area of electronic communications takes place.

It should be emphasized that national regulatory bodies are bound by the opinions, recommendations, guidelines, advice and best regulatory practices defined by BEREC.

The tasks of BEREC also include giving its opinion on draft decisions on authorizing or refusal to authorize the application of exceptional measures by national regulatory bodies.

BEREC's consulting activities also include issuing opinions on draft decisions and recommendations on harmonization and cross-border disputes, as well as opinions on all matters related to the access, emergency number and numbering range "116".

Reporting and monitoring tasks of BEREC include reporting on the electronic communications sector and publishing annual reports on developments in this sector.

The competences of BEREC also include its impact on the functioning of the institutions of the European Union in the area of electronic communications. The Body of European Regulators for Electronic Communications delivers opinions on draft recommendations, guidelines and decisions of the European Commission, advises and prepares reports (at a reasoned request from the Commission or on its own initiative) and issues opinions for the European Parliament and the Council of the European Union (at a reasoned request or on its own initiative) on any matter concerning electronic communications within the scope of its competence. The Body of European Regulators for Electronic Communications also supports the European Parliament, the EU Council, the European Commission and national regulatory bodies in relations, discussions and exchange with third parties (at their request).

The activities of BEREC indicated above in fact include the impact on the shape of EU's normative solutions in the electronic communications.

An interesting solution used by the Union's legislator was to entrust BEREC with a creative function within the framework of the basic tasks, because BEREC may, at a reasoned request from the Commission, decide unanimously to adopt other specific tasks necessary to fulfil its mission.

Summing up the activities and powers of the Body of European Regulators for Electronic Communications, it should be noted that separation of the Office as an independent entity, legal person and a host of organizational and administrative competence was a good solution that enabled the Body, being a strictly substantive entity, to focus on the implementation of tasks and missions within the sphere of the EU electronic communications markets. Through implementation of the principle of subsidiarity BEREC does not assume the tasks of national regulators, including the President of the Office of Electronic Communications, and acts as a kind of consultative and advisory entity. Such solution allows BEREC to conduct a unified regulatory policy in all countries of the European Union. It should also be noted that although the European Union legislator has provided BEREC with soft (because consultative) instruments of influence, its activity has great impact on the practice of regulatory authorities. Taking Poland as an example, it is especially visible in the activity of the President of the Office of Electronic Communications in the sphere of telecommunications market regulation, which is also reflected in the jurisprudence of Polish administrative courts<sup>35</sup>.

BEREC's impact on Polish telecommunications law is primarily visible in the sphere of the application of the law, which makes it functional in character – it is an impact on the functioning of Polish regulator, i.e. the President of the Office of Electronic Communications. The Body of European Regulators for Electronic Communications is an entity whose participation in the decision-making processes concerning Polish markets for electronic communications is essential. This necessity has its justification in the pursuit of a uniform market for electronic communications across the European Union. The EU regulator plays an essential role in achieving and constantly coordinating this unification. It should also be noted that the above-mentioned regulatory cooperation between BEREC and the President of the Office of Electronic Communications is proper and fruitful, which in a broader perspective contributes to the continuous

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<sup>35</sup> See: II SAB/Wa 382/14, I OSK 2770/13, I OSK 2320/13, II SAB/Wa 724/13, II SAB/Wa 331/13, I OSK 1075/13, II SAB/Wa 382/13.

improvement of the competitiveness of the Polish and EU telecommunications markets<sup>36</sup>.

Although there are voices assuming the application of the model of transfer of regulatory powers from national bodies to the EU level (to the level of the EU regulator), it should be stated that the model assuming unification of legal regulations in the EU Member States with coordination of regulatory actions at the EU level through the use of soft instruments of influence by BEREC is an efficient system. As practice shows, regulatory activities at the EU level performed until now have led (through the use of a unified regulatory model) to limitation of monopolistic practices and continuous increase of competitiveness in telecommunications markets.

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