

Institution: University of Bristol
Unit of Assessment: 20 - Law
Title of case study: Improving the co-ordinated regulation of telecoms markets across the EU: Shaping cross-border markets and their regulators
1. Summary of the impact (indicative maximum 100 words) <p>Boeger has co-produced a highly influential body of collaborative work on telecommunications regulation which had direct impact across the EU. It has led to: substantial reform of Body of European Regulators for Electronic Communications (“BEREC”) and its Office’s working methods; dialogue shaping across the EU Commission, European Parliament, and Member States; influenced an EU Parliament report; and has been the driver of inter-institutional pressure on BEREC and its office. In summary, the research kick-started and directly shaped the substantial changes to BEREC and its office both now and for the future, and is a key reference point. The overall aim is to improve the co-ordinated regulation of telecoms markets across the EU.</p>
2. Underpinning research (indicative maximum 500 words) <p>Drawing on an AHRC early career grant awarded to them jointly in 2011 (completed in June 2013), Nina Boeger (appointed to Bristol, 2004) and Joseph Corkin (Middlesex) have produced a highly significant and original body of socio-legal research investigating the recent negotiations over reform to the governance of telecoms in the EU, as a test case for evaluating the explanatory potential of an innovative endogenous account of EU institutional change ([1]-[5]). Their research exposes the influence of national regulators in the creation of the current European regulatory body BEREC and its secretariat, the BEREC Office. They used archival work as well as over 40 face-to-face interviews conducted in 2011 and 2012 with key figures in the Commission, European Parliament and Member States (regulators, ministries and the national permanent representatives to the EU)([2]-[5]).</p> <p>As a direct consequence of this research, both researchers were asked by the EU Commission (DG CONNECT) to evaluate governance aspects of the functioning of the EU telecoms regulatory framework, BEREC and its Office, for the Commission [1]. Bringing their entire body of research to bear on this report, and drawing on an additional empirical dataset (an e-survey and eight further elite interviews), they examine whether BEREC and its Office were effective in performing one of their key functions, namely the coordination and review of national market-regulatory decisions (known as the “Article 7/7a Procedure” in reference to the relevant provision in EU legislation, [1], ch 4). They conclude that the procedure has been reasonably successful and has led to more consistent regulation across the EU. But they also make a compelling case, and offer detailed recommendations, for implementing a number of far-reaching improvements to BEREC’s working methods, including: profound changes to timing, forward-planning and calendaring of review procedures, ensuring their procedural consistency and effective monitoring; optimising the selection and management of those experts who bear direct impact on the quality of BEREC’s role in reviewing market-relevant regulatory decisions, including the administration of an expert database; and proposals to review regularly the co-operation between BEREC, the BEREC Office and the Commission so as to optimise their respective roles, commit BEREC to detail and reinforce the Office’s support functions (including language and translation support) and manage resources more efficiently.</p> <p>Boeger and Corkin jointly (50/50) developed the theoretical framework that is showcased in this research, including framing the research questions and methodology. Boeger then took sole responsibility for the empirical execution of the project, refining and developing the research framework and methodology as the research progressed. Boeger was responsible for collating and evaluating the entire empirical dataset, including the conduct of interviews and for writing up the analysis of collected data. She also took the lead (80/20) in organising the project dissemination workshop, bringing together senior policy-makers and academic experts, on 21 June 2013 in London. Corkin contributed (50/50) to an expansive literature review and then concentrated on seeking avenues to broaden out the theoretical research framework into other sectors.</p>

3. References to the research (indicative maximum of six references)

Outputs

[1] N. Boeger, J. Corkin, S. Simpson, K. Szenci, S. Hanssens, P. Pierre, *Study BEREC and the BEREC Office*, Final Report prepared for the European Commission DG Communications Networks, Content & Technology (The Publications Office of the European Union, 2012), <http://ec.europa.eu/digital-agenda/en/news/study-evaluation-berec-and-berec-office>, Reviewed and adopted by EU Commission; and reviewed by BEREC.

[2] N. Boeger and J. Corkin, 'The Resilience of Sector-Specific Regulation in the Liberalized Sectors: Structural Necessities or Institutional Inertias?', in C. Heide-Jorgensen et. al. (eds), *The Aims and Values of Competition Law* (Djoef Publishing, 2013), Peer reviewed, specialist EU law publisher. Can be supplied on request.

[3] N. Boeger and J. Corkin, 'Are Expert Networks driving the Trend towards Soft Transnational Coordination?', in P. Kjaer et al (eds.), *Regulatory Hybridisation in the Transnational Sphere* (Brill Publishing, 2013), Peer-reviewed publication. Can be supplied on request.

[4] N. Boeger and J. Corkin, 'How Regulatory Networks shaped institutional reform under the EU Telecoms Framework', in C Barnard (ed), *Cambridge Yearbook of European Legal Studies 2012-13* (Hart Publishing, 2013), Listed in REF 2.

Grant

[5] N. Boeger and J. Corkin, 'Making Europe in their Image: Communities of expertise and the shaping of transnational governance', AHRC Early Career Grant, grant reference AH/I020306/1, October 2011 – June 2013 (£88,000).

4. Details of the impact (indicative maximum 750 words)

BEREC and its associated office are responsible for reviewing regulatory decision-making on telecoms markets across all 28 EU member states. The research [1] was published by The EU Commission, and included the specific contribution of Boeger and Corkin with associated recommendations for reform (under its own name, although Boeger and Corkin are named as co-authors on a separate page), formally adopting it as a Commission Working Document on 23 April 2013 ([a]). It has directly impacted on the ways in which BEREC and its office use the Article 7/7a Procedure in the following ways: substantial reform of BEREC and its Office's working methods; dialogue shaping across the EU Commission, European Parliament, and Member States; influenced an EU Parliament report; and has been the driver of inter-institutional pressure on BEREC and its office. In summary, the research kick-started and directly shaped the substantial changes to BEREC and its office both now and in the future, and is the key reference point.

Boeger has facilitated this impact through workshops. For example, on 8 October 2012, the Commission held an open workshop in Brussels where Boeger presented the report (alongside some of the other authors) to members of industry and their representative association, national telecoms regulators and representatives of the BEREC Office, including its Administrative Manager (who commended the quality of Boeger and Corkin's analysis, [f]). Senior representatives of several national telecoms regulators also offered highly positive feedback ([i], [j]). On 21 June 2013, Boeger co-organised a workshop attended by the key stakeholders in telecommunications regulation – EU and national regulators themselves, MEPs, EU commission members – at which there was a further drive to progress and discuss the reforms.

Substantial Reform of BEREC and its Office

BEREC and the BEREC Office are committed to implementing Boeger and Corkin's evaluation and associated recommendations. BEREC had already initiated several actions to improve aspects of the Article 7/7a procedure before the evaluation report was completed in 2012, but its published work programme for 2013 commits it formally to consider the report's recommendations in this internal review, describing the two processes as 'closely linked' ([d], p. 20). The Head of International Policy, AGCOM, and Chair of the BEREC 'Framework implementation' working group, responsible for overseeing the internal review, wrote ([i]):

The 'BEREC Evaluation Report is certainly a very useful reference tool that we are considering, within the [working group], for our ongoing work of reviewing the [BEREC rules of procedure], as well as any other internal guidelines and working methods (especially as

far as art.7-7a procedure is concerned).

The review is ongoing but BEREC has already implemented far-reaching improvements. The BEREC Office in particular has put in place (with further progress ongoing) comprehensive changes to its working methods under Article 7/7a. Describing the evaluation report as a ‘motivator’ in the process ([f]), the Administrative Manager of the BEREC Office discussed the following changes at the workshop organised by Boeger and Corkin on 21 June 2013: Extending time limits for national regulators to comment on BEREC draft opinions; Developing templates for BEREC opinions; Monitoring notifications of regulatory measures and potential early-warning “alerts”; Maintaining a register of regulatory experts and rapporteurs; Regular assessment reports about the work of Article 7/7a working groups; Committing national telecoms regulators to give the Article 7/7a procedure high priority; Clarification of definitions and detailed procedure for BEREC and its Office under Article 7/7a (including the role of rapporteurs); Improving language and translation support; Facilitating cooperation and tripartite meetings.

Some of the recommendations have directly prompted calls to tackle the shortcomings BEREC has so far been unable to address. The Head of International Policy at Ofcom and Chair of the BEREC ‘Evaluation’ offers perhaps the most comprehensive assessment of the far-reaching significance of Boeger and Corkin’s research in both the intra- and inter-institutional context ([j]):

‘I think the Article 7/7a case study in the BEREC evaluation report will come to be seen as a very important contribution to the (ongoing) debate over the appropriate institutional arrangements in Europe, in the telecoms sector. It was enormously useful to have a professional, independent and dispassionate account of how the Article 7/7a process has worked in its first 18 months (warts and all). On the one hand, it offered welcome validation and recognition of the real efforts that have been made by NRAs, BEREC and the BEREC Office, to make the system work. I expect this will spur our continued commitment going forward. On the other hand, the even-handed but frank (constructive) criticism in the case study should also serve to prevent any of the actors involved from becoming complacent, and the recommendations provide useful orientation on where and how we should deploy our resources.’

Dialogue shaping

The Commission is compelled to commission/produce this evaluation report pursuant to EU legislation. It is designed specifically to frame directly the published inter-institutional discussions, consultations and negotiations between the Commission, the European Parliament and the Member States (including ministries and telecoms regulators) in preparing the next review of the EU telecoms framework (five EU Directives and one EU Regulation). In this context, the document co-produced by Boeger and Corkin has acted as the primary point of reference for all their subsequent communications on the subject in a number of crucial respects.

The European Parliament is compelled by law to respond publicly to the Commission by commenting on the report (a plenary vote is scheduled for 12 Dec 2013). Therefore, their recommendations directly shape this published inter-institutional dialogue leading, eventually, to the Commission’s call-for-input for the next review (which is expected sometime in 2014). Exploiting their research fully as a platform to generate wider inter-institutional exchanges, Boeger and Corkin’s stakeholder workshop brought together academic experts alongside senior policy players in the formal process, including from the European Parliament, the Commission, national telecoms regulators and senior industry representatives, to exchange views on the institutional arrangements discussed in their study. At the workshop, Mr Sedó I Alabart MEP, Rapporteur on the Opinion dossier, remarked ([h]): *‘We have already analysed the Evaluation.... In our first reading of the Evaluation, we can agree on the major topics. ... [W]e can use this Evaluation to discuss the future of BEREC or a regulatory authority.’*

Direct influence on EU Parliament draft report

The evaluation has directly and significantly influenced a simultaneous parliamentary draft report evaluating the implementation of the entire EU telecoms framework. This report proposes that the conclusions reached by the research of Boeger and Corkin be addressed in the forthcoming framework review ([e], p. 5, pt. 4 (x)). The evaluation ([k]):

'clearly helped us with [the draft] report... It especially allowed us to "get to the point" when it came to raising difficulties related to the implementation of those Telco Package's provisions in which BEREC has a role, such as art 7/7a procedures.'

Inter-institutional pressure

The EU Commission is using Boeger's co-produced report to exert some inter-institutional pressure on BEREC and the BEREC Office to follow the line advocated by the researchers in their report. The Commission's strategic positioning means that even greater weight and visibility has been given to the evaluation report. The Commission has directly incorporated the report into its 'thinking process' in its recent and potentially far-reaching initiative on completing the single market in telecoms. Vice-President Kroes announced in Dec 2012 that she considered the report as *'comprehensive and balanced... a valuable input into our forthcoming reflections on how to deepen the internal market in this area.'* ([b]) Mr Vesa Terävä, Head of Unit at DG CONNECT ([g]): *'Regarding Art 7/7a case study [produced by Boeger and Corkin] it was our assessment (and I believe BEREC share this) that the study was sound and thorough and provided a very useful tool for assessing the effectiveness and efficiency of the BEREC platform to achieving its requirements and objectives. ... With regard to the single market initiative... [t]he evaluation report has played an important role in our thinking process.'*

BEREC and the Office have argued their position is broadly compliant with the approach in the report, as part of their negotiating position with the Commission ([c], pp. 3-4; [f]), again demonstrating the report's strategic significance.

5. Sources to corroborate the impact (indicative maximum of 10 references)

[a] European Commission Staff Working Document on the Evaluation Report of BEREC and its Office, SWD (2013) 152 final, 24 April 2013. *The Commission formally adopted and published the evaluation report in this document, giving it a strategically high-profile.*

[b] Letter from the EU Commission Vice-President to the European Parliament, 18 Dec 2012, ref. 1478779. *The report directly shaped the Commission's thinking on the single market in telecoms.*

[c] BEREC Input to the European Commission on the BEREC and BEREC Office Evaluation Exercise, BoR(12) 118. *BEREC directly addressed Boeger and Corkin's research to strategically position itself in inter-institutional negotiations (p 3/4).*

[d] BEREC Work Programme 2013, BoR (12) 142, 7 Dec 2012. *BEREC is formally committed to address Boeger and Corkin's recommendations.* (http://berec.europa.eu/eng/document_register/subject_matter/berec/annual_work_programmes/1147-berec-work-programme-2013)

[e] European Parliament, Draft Implementation Report on the regulatory framework for electronic communications (2013/2080 (INI)), 19 June 2013, Rapporteur: Catherine Trautmann MEP. *Boeger and Corkin's research shapes crucial aspects of the European Parliament's assessment of the EU framework, and its positioning in the preparation of the next framework review (p. 20).*

[f] Administrative Manager, BEREC Office: email to Boeger, 24 July 2013; ppt. presentation at the dissemination workshop, 21 June 2013. *Assesses Boeger and Corkin's research as qualitatively very good and a motivator in the Office's efforts to improve BEREC procedures. The Office has made changes that implement their recommendations (some are ongoing).*

[g] Head of Unit, DG CONNECT B2, European Commission. *Boeger and Corkin's evaluation directly shaped the Commission's assessment of BEREC's functioning and their thinking process on the single market initiative.*

[h] Member of European Parliament, Rapporteur on the Opinion on the BEREC Evaluation: remarks at the workshop organised by Boeger and Corkin, 21 June 2013. *The report is the key reference point for Parliament in drafting its Opinion on the BEREC evaluation.*

[i] Director International Office, Autorità per le Garanzie nelle Comunicazioni (AGCOM) and Chair, BEREC 'Framework Implementation' working group: email to Boeger, 16 July 2013. *BEREC's review of its rules of procedures relies specifically on Boeger and Corkin's research as reference.*

[j] Head of International Policy, Ofcom and Chair (2012-13) of BEREC 'Evaluation' working group: email to Boeger dated 24 July 2013. *Boeger and Corkin's research contributes crucially to the ongoing inter-institutional debate on the appropriate institutional framework in Europe, in telecoms.*

[k] Accredited assistant to Catherine Trautmann MEP. *Boeger and Corkin's research directly shaped the European Parliament's assessment of the implementation of the telecoms framework.*