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FINAL
CONCLUSIONS

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● ● 8 Final conclusions

At the end of the 2008 Regulation Report, it was explicitly stated that developments centred on NGN, the expansion of convergence and the increased alignment of the various regulatory approaches, which constitute the regulatory challenges of the future, would be the key issues.

The report which is now presented does not detract from this assertion, but rather builds upon it, specifically in the field of NGN/A, while it must be recognised that in 2009 there have been no significant breaks with the regulatory logic of the past, despite relevant developments, especially in terms of radio spectrum management, both in terms of new trials of its usage and, in particular, in the enhancement of its role in a convergent management of electronic communications.

The delay of the 2006 Review which finally saw conclusion in late 2009, as was clearly emphasized in previous reports, contributed greatly to this waiting period.

Immediately, it appears conclusive that the main challenge for 2010 will be the suitable and timely transposition of the "new" Regulatory Framework for Electronic Communications into Portuguese legislation, in which the key concern, in light of the principle of subsidiarity, which can never be put at risk, will be to balance European principles, which are undeniably common, with the specific characteristics of the Portuguese sector, respecting these characteristics without their discharacterisation.

This *desideratum* is not confined, however, to the legislative area, since the way in which the constitution of any internal market for electronic communications, the final design of European sector policy, becomes more comprehensive on a daily basis, will have a decisive influence on the achievement of this balance, which is so desired and so necessary.

The establishment of BEREC and its office, with all the vicissitudes and controversies generated as to its role and its governance, whether wanted or not, marks a step towards the creation of this single market, whereas the achievement or rupture of this balance depends on its actual functioning and governance.

As such, it becomes imperative and decisive to have competent and continuous participation from all European regulators, and participation from ICP-ANACOM in particular, not only in the first steps, but in all the developments of these new entities.

Recognition of this need is evidence of what may be seen as a clear dependence of national regulation regarding community decisions. However, this vision can be perverse and even irresponsible for National Regulatory Authorities. It is that this dependence need not be, and nor should it be, unilateral and it will depend fundamentally on how BEREC operates, not to mention, first of all, on how Community policy decisions are taken.

Since the Electronic Communications Sector is one which most deeply entwines Community and national decisions, it is important to guarantee that there is no clear dependence on one of the sides, with recognition, in this case, that precedence must be given to Community rules. However, such precedence will only bring true dependence if such rules do not result in the exercise of shared sovereignty but a dominance of some or, more likely, of a bureaucratic structure, which only happens if the participation by all is not ready, active and competent.

This is the great challenge for 2010 which will imply, certainly, a common learning exercise which must be conducted according to suitable governance, which, in turn, will surely comprise not negligible adjustments to the mode of organization of the inner workings of their own national bodies of regulation.

The concern of ICP-ANACOM to respond to this challenge is well reflected in the design of one of its key objectives outlined in this report - To participate in the development of the EU internal market, by improving internal performance.

But the challenge of improving internal performance must be reflected in the exercise of the shared search for common solutions, differentiated where justified, and this exercise must be driven by results in a timely manner, without identification of such precedence putting in question a coherent, useful and efficient development of regulatory measures at all levels.

In the Portuguese case, the delay in the development of national decisions on NGN/A, “refarming” (finally possible!) and Universal Service has been clear, as a result of the persistent uncertainties with respect to the preceding Community decisions.

But the most notable case is probably the delay in the 2006 Review. Its conclusion, only in 2009, as a consequence of discussion which resulted in a delay of three years, in which profound technological alterations took place which

were not taken into account, nor could have been, in the base proposal of 2006, led to a piece of legislation at risk of being unable to properly respond to the new challenges which emerge.

A demand has been made to regulators for regulatory certainty (not regulatory consistency in the universe of increasing uncertainty?) and also an innovative attitude (which is obviously compatible with consistency, but not with certainty, because innovation is unpredictable). More than ever this attitude, which entails obvious risks, must be part of the “toolbox” of ICP-ANACOM, particularly when regulatory measures in the strictest sense need to take into account an increasingly convergent whole, from spectrum management to content management, with the respect and promotion of the rights of the citizen, anchored and secured in the search of security, integrity and continuity of networks and the information carried thereon.