

**Decision No BoR/2016/03**  
**of the Board of Regulators on confirmatory application for access to**  
**documents No BoR (16) 192**

**The Board of Regulators,**

HAVING REGARD TO Regulation No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (BEREC Regulation) and, in particular Article 4 and Article 22 thereof;

HAVING REGARD TO Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and in particular Article 4(3) and Article 4(1)(b) thereof;

HAVING REGARD TO Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data;

HAVING REGARD TO Decision BoR (10) 26 by the Board of Regulators of the Body of European Regulators for Electronic Communications (BEREC) concerning the transparency and access to documents at the BEREC, and in particular Article 4 thereof;

HAVING REGARD TO the Rules of Procedure of the Board of Regulators and, in particular Article 17 thereof;

Whereas,

- 1) An initial application for access to documents, registered under No BoR (16) 200, has been submitted by email by the Applicant to BEREC and the BEREC Office on 17 August 2016;
- 2) An extension of the time limit to process the initial application was notified by email to the Applicant on 6 September 2016 and the reply on the initial application was notified to the Applicant on 28 September 2016;
- 3) A confirmatory application, registered under No BoR (16) 192, has been submitted by email by the Applicant on 7 October 2016;
- 4) The documents requested by the Applicant either do not exist or contain opinions for internal use as part of deliberations and preliminary consultations within the BEREC. Therefore, in accordance with Article 4(3) subpara. 2 of Regulation 1049/2001, their access shall be refused even after the decision-making process has been completed as (i) disclosure of these documents would seriously undermine BEREC's decision-

making process and (ii) there is no overriding public interest in disclosure of the requested existing documents. The disclosure of the existing documents would seriously undermine BEREC's decision-making process as BEREC members are of the view that the disclosure of these draft and internal documents would deter them from expressing frank and complete views on the topics discussed and would therefore lead to self-censorship. In this respect, the Board of Regulators insists on the necessity to maintain working conditions allowing BEREC to take fully independent decisions and considers that disclosure of the requested documents would seriously undermine BEREC's ability to do so;

- 5) The existing documents requested by the Applicant also contain personal data in relation to which the Applicant failed to provide BEREC and the BEREC Office with express and legitimate justification or any convincing argument in order to demonstrate the necessity for those personal data to be transferred;
- 6) Consequently, the Board of Regulators decided to reject the confirmatory application submitted by the Applicant on 7 October 2016.

Has adopted the following Decision:

#### **Article 1**

The confirmatory application, registered under No BoR (16) 192, submitted by email on 7 October 2016 is rejected.

#### **Article 2**

The reply will be sent by email to the Applicant by the BEREC Office by 22 November 2016.

#### **Article 3**

This decision shall enter into force on the day of its adoption by the Board of Regulators.

Done on 17 November 2016.

**For the Board of Regulators**

**(s)**

**Wilhelm ESCHWEILER  
BEREC Chair 2016**