

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

17 November 2016

According to the provisions of Article 22 [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), [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](#) applies to the documents held by BEREC and the BEREC Office. In order to ensure practical implementation of this provision as far as BEREC documents are concerned in 2010 the Board of Regulators adopted [Decision BoR \(10\) 26](#) by the Board of Regulators of BEREC concerning the transparency and access to documents at the BEREC.

In accordance with Article 4 of Decision BoR (10) 26, the Board of Regulators, assisted by the BEREC Office, shall take decisions regarding confirmatory applications for access to documents held by the BEREC and the BEREC Office.

On 17 August 2016 the BEREC Office received an initial application for access to documents to non-existing documents and documents containing opinions for internal use as part of deliberations and preliminary consultations within BEREC and/or personal data in relation to which the Applicant failed to provide 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. Therefore the BEREC Office denies access to these documents.

On 7 October 2016 the applicant filed a confirmatory application for access to these documents. The Board of Regulators examined the confirmatory request and concluded that some requested documents do not exist and 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.

Consequently, the Board of Regulators decided to reject the confirmatory application submitted by the Applicant on 7 October 2016.