

**Decision No BoR/2018/02**  
**of the Board of Regulators on confirmatory application for access to Net**  
**Neutrality Expert Working Group documents**

**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 and 8(2) thereof;

HAVING REGARD TO Decision BoR (14) 213 by the Board of Regulators of the Body of European Regulators for Electronic Communications on the rules of procedure of the Board of Regulators and in particular Article 17 thereof;

HAVING REGARD TO Decision BoR (11) 37 by the Board of Regulators of the Body of European Regulators for Electronic Communications on the Establishment of a Public Register of the BEREC Documents;

Whereas,

- 1) An application for access to document was received on 31 October 2017 concerning Net Neutrality Expert Working Group documents. The Applicant asked to be granted access to the documentation of the 14 March 2017 Net Neutrality meeting and other BEREC Net Neutrality Working Group meetings;
- 2) The reply to the initial application was notified to the Applicant on 24 November 2017 and partial access was given to the documents relating to the meeting of 14 March 2017 while also asking for clarification of the scope of the application;
- 3) A confirmatory application was submitted by the Applicant on 13 December 2017 by which the Applicant confirmed the very wide scope of the application;
- 4) Due to the very large number of documents requested, the Applicant was contacted by the BEREC Office to narrow down the scope of the application. As a result, the Applicant agreed to reduce the scope of the application and to limit it to documents

relating to eight days of meetings. Four documents are covering these eight days as follows: Minutes of the NN Implementation and Supervision Drafters Meeting 15-16/02/2017, Minutes of the NN Implementation and Supervision Drafters Meeting 01-02/03/2017, Minutes of the Meeting of the NN QoS Drafters meeting 08-09/03/2017 and Minutes of the Meeting of the NN QoS Drafters meeting 05-06 /04/2017;

- 5) The documents requested contain some personal data and opinions for internal use as part of deliberations and preliminary consultations. These passages have thus been redacted in compliance with Article 4(1) point (b) and Article 4(3) second indent of Regulation 1049/2001, because the disclosure of some parts of the existing documents would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. Moreover, it would seriously undermine BEREC's decision-making process as BEREC members are of the view that the disclosure of these 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 removed parts would seriously undermine BEREC's ability to do so. The purpose of the regulation is to give the fullest possible effect to the right of public access to documents. Therefore, as a proportionate measure access to the remaining parts of the documents should be granted to the Applicant;
- 6) Consequently, the Board of Regulators decides to partially accept the confirmatory application submitted by the Applicant;

Has adopted the following Decision:

#### **Article 1**

The confirmatory application submitted on 13 December 2017 is partially accepted.

#### **Article 2**

The reply will be sent to the Applicant by the BEREC Office by 02 February 2018.

#### **Article 3**

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

Done in Riga, on 02 February 2018.

**For the Board of Regulators**

(s)

**Johannes Gungl  
BEREC Chair 2018**