

Decision No BoR/2018/03
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 05 February 2018 concerning Net Neutrality Expert Working Group documents. The Applicant asked to be granted access to the documentation of the full year of 2017 Net Neutrality meetings;
- 2) The reply to the initial application was notified to the Applicant on 19 March 2018 and partial access was given to the documents relating to the NN meetings of 2017;
- 3) A confirmatory application was submitted by the Applicant on 19 March 2018 (registered on 20 March 2018) by which the Applicant confirmed his insistence on getting full access to the 2017 NN documents;
- 4) In accordance with the Regulation 1049/2001 access was granted to the documents to the fullest extent without disclosing information based on Article 4 of the Regulation No 1049/2001. The requested additional information only contains personal data and

opinions for internal use as part of deliberations and preliminary consultations. These passages have been redacted on a twofold legal basis:

- on the basis of Article 4(1) point (b) 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;
- on the basis of Article 4(3) second indent of Regulation 1049/2001 as, for some of the requested documents, full disclosure would seriously undermine BEREC's decision-making process since 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, disclosing the removed parts would seriously undermine BEREC's decision making process.

- 5) Consequently, the Board of Regulators decides to refuse the application submitted by the Applicant;

Has adopted the following Decision:

Article 1

The confirmatory application submitted on 19 March 2018 is refused.

Article 2

The reply will be sent to the Applicant by the BEREC Office by 13 April 2018.

Article 3

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

Done in Riga, on 12 April 2018.

For the Board of Regulators

(s)

**Johannes Gungl
BEREC Chair 2018**