

DECISION No MC/2016/13

of the Management Committee (MC) of the Office of the Body of European Regulators for Electronic Communications (BEREC Office) on a financing decision for the purchase of a study on Net Neutrality

The Management Committee of the BEREC Office,

Having regard to Regulation (EC) No 1211/2009 of 25 November 2009 of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office¹;

Having regard to the BEREC Office Work Programme for 2016 MC (15) 84 and in particular its Chapter 3.1;

Having regard to Decision No MC/2014/1 of the Management Committee of the BEREC Office on the financial regulation applicable to the BEREC Office;

Whereas:

- (1) The BEREC Office, in accordance with article 6.2 of the BEREC Regulation, shall in particular provide administrative and professional support services to BEREC and set up Expert Working Groups, upon request of the Board of Regulators, and provide support to ensure the smooth functioning of those groups.
- (2) The BEREC Office, in accordance with article 3.1 of the BEREC Office Work Programme 2016, shall support the implementation of the BEREC Work Programme.
- (3) The BEREC Office, in accordance with article 3.1.1 of the BEREC Office Work Programme 2016, shall set up EWGs and provide them with the appropriate administrative, professional and logistical support. The BEREC Office shall manage public consultations and procurement procedures for workshops and research studies.
- (4) By promoting a consistent regulatory approach, the BEREC Office facilitates the exchange of information on BEREC's role and tasks. In accordance with article 3.1.2 of the BEREC Office Work Programme 2016, the BEREC Office shall promote also the exchange of best practices and the dissemination of expertise among NRAs. BEREC Office shall provide administrative support to EWGs in the organisation of public workshops including the management of procurement procedures.
- (5) The BoR has agreed that procuring such a study would contribute to the proper implementation of the net neutrality rules and contribute to the delivery of BEREC Work Programme.

¹ OJ L 337, 18.12.2009, p. 1

(6) Since the procurement procedure was not specified in the BEREC Work Programme 2016 and not included in the BEREC Office Work Programme either at the moment of its adoption, a Management Committee Decision is now needed.

HAS ADOPTED THIS DECISION:

Article 1

The Financing Decision, as presented in the Annexes I, II, shall be adopted.

Article 2

The Financing Decision shall enter into force on the day of its adoption.

Done at Vilnius on 7 October 2016.

For the Management Committee

(s)

Wilhelm Eschweiler

BEREC Chair 2016

Annex-I

Financing Decision to launch a low value negotiated procurement procedure with at least three candidates to purchase a study on Net Neutrality.

Title	Purchase of a study on Net Neutrality	
Short description and Objectives	<p><u>OBJECTIVE</u></p> <p>The objective of the tendering procedure is to purchase a study on net neutrality with the purpose of supporting the delivery of BEREC Work Programme.</p> <p>The net neutrality debate has had a strong transnational dimension. As a result of this intense debate, regulations and decisions regarding net neutrality have been issued by public authorities in different regions of the world. The study shall focus on a list of examples of net neutrality regulations adopted in different parts of the world and on their subsequent implementation.</p> <p><u>DESCRIPTION</u></p> <p>The tendering procedure should ensure the purchase of a high quality study, which satisfies the objectives listed above.</p>	
Reference to the Annual Work Programme	Item 3.1 “Setting up Expert Working Groups and provide support”; Sub-Item 3.1.1.2.e “manage procurement procedures for workshops and studies”	
Budget Line / Commitment	BERO-B2016-B03003-C1-BEREC	
Contract value for the budgetary year	MAXIMUM =	€ 60 000,00 (sixty thousands EUR) for purchase
Indicative number and type of contracts envisaged Duration of tasks (including possible renewal)	A single direct supply contract to purchase the study is planned. The signing of the contract is planned before the end of 2016. The duration of the contract is envisaged for six months. The delivery of the study is planned to cover the first half of 2017.	
Procurement Procedure/ method of implementation	Up to a maximum of € 60 000, 00 it is possible to launch a low value negotiated procedure for the purchase of a study by inviting at least three candidates, without publication of a contract notice in the Official Journal.	
Indicative timeframe for launching the procedure	Beginning of Q4 2016 for the launch of the negotiated procurement procedure with at least three candidates and Q4 2016 for the decision on the provider. Kick off of the project in envisaged only for the end of Q4 2016 after internal BEREC agreement.	

Terms of Reference: Technical specifications for a comparative Study on Net Neutrality Regulation

1) Scope and objectives of the proposed study

From the beginning, the net neutrality debate has had a strong transnational dimension and has regularly sprung from one continent to the other. As a result of this intense debate, regulations and decisions regarding net neutrality have been issued by public authorities in different regions of the world.

Now that these newly issued net neutrality rules have to be applied and enforced in their respective legal environment, observers will most likely continue to draw comparisons between the various NN regulations. There is a risk that such comparisons, if not based on a thorough understanding of the specificities of the legal and institutional context in which these regulations have been adopted and will be implemented, would lead to misinterpretations and erroneous conclusions. Moreover, BEREC believes it would be pointless to try to determine whether it is the US or EU framework, which have both just been adopted after extensive public debates, which is the more “neutral”, or more “pro-operator”. But BEREC is confident that a study would, on the contrary, provide an impartial approach that could both contribute to an informed public debate and constitute a precious source of information for NRAs and BEREC in the course of the implementation of the EU regulation 2015/2120 complemented by the guidelines that will soon be issued by BEREC.

2) Main topics covered by the proposed study

Such study could focus on a list of examples of NN regulation adopted in different parts of the world, including in particular: the US, India, and a south-American country (Brazil or Chile).

After an introduction that would give a proper and common understanding of the legal regimes that stakeholders are subject to, the study would provide an international approach regarding practical aspects of the operational implementation processes in the various legal frameworks at stake.

The technical and commercial practices to be observed carefully by public authorities are of a great diversity and enforcement mechanisms imply different levels of action by the concerned public authority: information gathering, technical analysis, sanctions, etc. Among these, information gathering in particular may be of primary importance, given the fact that operators as a whole will generally have little incentive to spontaneously help the regulator to overcome the asymmetry of information between itself and the industry.

Taking into account these diversities of possible infringements and enforcement methods, European authorities would take great benefit from an analysis of how competent authorities

outside the EU use available traffic management detection tools, which can be based on technical solutions (e.g. probes, network tests) or crowdsourcing abilities (e.g. user generated complaint platforms, distributed network test applications), as well as tools designed for the verification of QoS transparency requirements.

Moreover, the study would analyze (in countries where it is relevant) the method and grid of analysis according to which commercial practices implemented by ISPs, and specialised services provided through their network, are assessed (ex ante or ex post, economical or technical analysis, relation to competition law, etc.) by competent authorities outside the EU.

This would help BEREC and NRAs to better define their options and identify the requirements and challenges they may face in the future.