

29th Ordinary Plenary Meeting of the Board of Regulators
Hosted by German Federal Network Agency (BNetzA)

Conclusions

Chair: Wilhelm Eschweiler
Vice-President of
Bundesnetzagentur (BNetzA)

8 - 9 December 2016 (Berlin, Germany)

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Main Results of the 29th Meeting of the BEREC Board of Regulators

The BEREC Board of Regulators (BoR) held its 29th ordinary plenary meeting on 8 - 9 December 2016 in Berlin, Germany.

During the meeting the BoR discussed and/or approved the following documents:

1. Documents approved for publication:

1.1 As A items

- [Summary of the 4th BEREC Stakeholder Forum](#)
- [BEREC Report on Transparency and Comparability of International Roaming Tariffs;](#)
- [BEREC Report on Termination rates at European level \(July 2016\);](#)
- [BEREC Report “Monitoring implementation of the BEREC Common Positions on Wholesale Local Access \(WLA\), Wholesale Central Access \(WCA\) and Wholesale High Quality Access at a Fixed Location \(WHQAFL\): Phase 3”](#)

1.2 As regular items

- [BoR Decision on the Expert Working Group Co-Chairs for 2017-2018;](#)
- [BEREC Opinion on the European Commission’s proposals for a review of the electronic communications Framework;](#)
- [BEREC Report on the outcome of the public consultation on draft BEREC Work Programme 2017;](#)
- [BEREC Work Programme 2017;](#)

2. Documents approved for internal use:

2.1 As A items:

- PRDs for the deliverables of the WP 2017

2.2 As regular items:

- BEREC Communication Plan 2017;
- BEREC Report on the Review of the Internal Guidelines for the elaboration of BEREC Opinions in Article 7/7a Phase II cases
- BEREC Internal Guidelines on the elaboration of BEREC Opinions in Article 7 and 7a Phase II cases;
- BEREC Report on a review of the cross-border regulatory cooperation process within the scope of Art 28(2) of the USD;
- Report on the workshop on the BEREC/OECD expert workshop on IP-interconnection;
- Outline of BEREC Annual Reports 2016.

3. Discussion on topics of strategic importance

- Exchange of experience between BEREC and FCC

4. Documents submitted for information and/or consideration

The BoR took note of the information provided in the following Reports:

- Information on the electronic voting procedures since the last plenary meeting;
- 2016 BEREC Work Programme status update;
- BEREC Chair interventions/meetings since the Vilnius Plenary meeting;

5. Oral up-date on important topics

The BoR was briefed in relation to several other important topics, as follows:

- BEREC International activities

6. Next meeting

The next ordinary meeting of the BoR will take place on **23 and 24 February 2017 in Paris (France)** and will be hosted by the French [Autorité de Régulation des Communications Electroniques et des Postes](#) (ARCEP).

Introduction and participation

The BEREC Board of Regulators (BoR) held its 29th ordinary plenary meeting on 8-9 December 2016 in Berlin, Germany.

The meeting was attended by the Heads and/or high-level representatives of the NRAs established in each EU Member State which have primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services. Heads and high-level representatives of the NRAs from the EFTA States and the States that are candidates for accession to the EU, the Commission and the EFTA Surveillance Authority also took part in the meeting.

List of documents

The list of final documents approved by the meeting for publication in compliance with the BEREC Regulation and the BoR transparency rules is presented in Annex to the Conclusions.

Items discussed

A short overview of the information presented under each agenda item, a summary record of the proceedings and a record of the conclusions reached by the BoR under each agenda item is each presented below.

1. Opening of the meeting and adoption of the agenda

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|------------------------------|---|
| Document(s) | BoR (16) 211 Draft BEREC Agenda |
| Introduction by | BEREC Chair (BNetzA) |
| Information presented | The BEREC Chair opened the meeting and presented the draft agenda for approval by the BoR meeting. The BoR was invited to suggest any additional issues to be presented under “Any other business” (AOB). |
| Conclusions | The draft agenda was approved without changes. |

2. Election of Chair 2018 and Vice-Chairs for 2017

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|------------------------------|---|
| Document(s) | No documents |
| Introduction by | BEREC Chair (BNetzA) |
| Information presented | <p>The BEREC Chair recalled the election at the MC morning session. He also asked the BoR for the endorsement and confirmation of the election outcomes. He recalled the outcomes of the elections:</p> <ul style="list-style-type: none"> - BEREC Chair 2018 and Vice-Chair 2017 - Mr Johannes Gungl (RTR), Austria; - BEREC Vice-Chair 2017 - Mrs Alejandra de Iturriaga Gandini (CNMC) Spain; - BEREC Vice-Chair 2017 - Mr Stephen Unger (OFCOM) United Kingdom. <p>The BoR endorsed the outcome of the election.</p> |
| Conclusions | It was agreed to endorse the outcome of the MC election and nominate the elected persons as BoR Chair 2018 and Vice-Chairs 2017. |

3. Expert Working Group Co-Chairs 2017-2018

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| Document(s) | BoR (16) 212 Draft BoR Decision on the Expert Working Group Co-Chairs for 2017-2018 |
| Introduction by | BEREC Chair (BNetzA) |
| Information presented | <p>Article 11 (1) of the BoR Rules of Procedure of the Board of Regulators provides that the BoR “may decide to create EWGs to assist with the performance of the tasks and functions of BEREC and request the Office to provide support. The Co-Chair of each EWG shall be designated by the Board of Regulators”.</p> <p>As the EWG Co-Chairs were appointed until 31 December 2016, the BEREC Chair therefore tabled a new draft BoR decision which establishes the EWGs and its Co-Chairs for the period of 2017-2018.</p> <p>The BEREC Chair informed the meeting about the RoP governing the nomination and selection procedure of the EWG Co-Chairs. He informed the meeting that there is only one nominated EWG Co-Chair for the End-User EWG and three for the new International Roaming/Mobile EWG, which, he highlighted, is a temporary situation due to the extended scope of the group.</p> |
| Conclusions | The document was approved for publication. |

4. Regulatory Framework

4.1 Draft BEREC Opinion on the European Commission’s proposals for a review of the electronic communications framework

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| Document(s) | BoR (16) 213 Draft BEREC high-level Opinion on the European Commission’s proposals for a review of the electronic communications framework |
| Introduction by | RF EWG Co-Chairs (AGCOM/NMHH) |
| Information presented | <p>The European Commission has launched a review the EU regulatory framework for electronic communications for the first time since 2009. A draft Directive establishing a European Electronic Communications Code (EECC) was published on 14 September 2016.</p> <p>The EWG Co-Chairs presented the draft opinion on the European Commission’s proposals for a review of the electronic communications framework.</p> <p>At the beginning the EWG Co-Chair presented the structure of the document. It starts with an introductory part serving as an “umbrella” giving a general opinion on the EECC. It highlights positive and negative aspects of the EC’s proposal.</p> <p>The following elements of the draft Code have received BEREC positive feedback:</p> <ul style="list-style-type: none"> - Code consolidating the existing Directives into a single one (the “Code”); - No prioritisation of one regulatory objectives over another; - Scope broadened in proportionate way; |

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| | <ul style="list-style-type: none"> - Member State flexibility in defining the scope of the Universal Services and US still as a "safety net"; - Harmonisation of minimum set of competences for independent NRAs. <p>In BEREC's view the following components of the draft Code have been considered as weaknesses:</p> <ul style="list-style-type: none"> - Complex set of conditions for NRAs to meet in order to be able to apply ex-ante regulation - Specific provisions restricting NRAs' ability to promote competition in the name of investment - Spectrum management unduly stiffened (e.g., by mandatory "peer review") - End-user protection: concerns in relation to the "full harmonisation" concept - Reduced flexibility as to US funding - BEREC's institutional set-up (Agency model). <p>Next, the document focuses on the assessment of key subjects:</p> <ul style="list-style-type: none"> - scope of the regulation, definition of the ECS and end user provisions; - access regulation (it focuses on three issues – competition and investments; unjustified constraints in the use of the regulatory measures; importance of regulatory certainty); - governance (main focus has been put on NRAs tasks; BEREC as an EU agency; regulatory harmonisation and single market). |
| Conclusions | The document was approved for publication. |

4.2 Oral up-date on the outcomes of the workshop on the Implementation of the Cost Reduction Directive

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| Document(s) | No document |
| Introduction by | RF EWG Co-Chairs (AGCOM/NMHH) |
| Information presented | <p>The Co-Chairs of the RF EWG informed the BoR on the outcomes of the Workshop on the Implementation of the Cost Reduction Directive (CRD).</p> <p>The workshop took place in Brussels on 13 October 2016. It was envisaged to exchange information and experience on the state of play of implementation of the Cost Reduction Directive and contribute to the development of best practices with a view to the enforcement of quality and of compliance with in-building physical infrastructure obligations. The objective was to highlight the lessons learned so far in the implementation process and the challenges member states are facing.</p> <p>The workshop was divided into sessions dedicated to different aspects of implementation of the CRD. It focused not only on implementation, but also on the ongoing national experience related to putting the rules into practice. In his introductory speech, the Commissioner described the rules and</p> |

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| | <p>the problems encountered in implementation. Then national experiences from Germany, Italy, Spain and Portugal were presented, focusing on legal obligations. Furthermore, the information collection systems put in place in Germany and Finland were discussed.</p> <p>The workshop facilitated identification of good practices and roles that NRA can pursue when implementing the CRD.</p> |
| Conclusions | The BoR took note of the information. |

5. BEREC Work Programme 2017

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| Document(s) | <p>BoR (16) 214 Draft BEREC Report on the outcome of the public consultation on draft BEREC Work Programme 2017</p> <p>BoR (16) 215 Draft BEREC Work Programme 2017</p> |
| Introduction by | Incoming BEREC Chair (ARCEP) |
| Information presented | <p>According to Article 5 (4) of BEREC Regulation, the BEREC Board of Regulators shall, after consulting interested parties, adopt the annual Work Programme of BEREC before the end of each year preceding that to which the Work Programme relates. The Board of Regulators shall transmit the annual Work Programme to the European Parliament, the Council and the European Commission as soon as it is adopted.</p> <p>The representative of the incoming BEREC Chair presented the process of preparation of the draft BEREC Work Programme 2017 (WP 2017) and its final results. The work on the draft BEREC WP 2017 had been initiated at the beginning of this year and it had been extensively discussed and consulted through the year with both NRAs and stakeholders.</p> <p>In the last BoR meeting in Vilnius, it was agreed that the draft BEREC WP 2017 would be the subject of public consultation. The public consultation on the draft BEREC WP 2017 ran from 7 October to 2 November. During the public consultation BEREC received 9 contributions, which have been taken into account to the extent possible. The representative of the incoming BEREC Chair gave an overview of the contributions received and of how they were taken into account in the final draft BEREC WP 2017. Then she informed the BoR on the amendments made after the public consultation and CN meeting in Jurmala.</p> |
| Conclusions | The BEREC WP 2017 was approved as submitted for publication and implementation and for submission to the European Parliament, the Council of the EU and the European Commission. |

6. FCC Chairman

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| Document(s) | No document |
| Introduction by | FCC Chairman |
| Information presented | The FCC Chairmen addressed the BoR on three issues that are of the utmost importance to the FCC at the moment: NN rules, privacy and 5G networks. |

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| | Concluding, he expressed the need for continuous, fruitful cooperation between BEREC and the FCC. |
| Conclusions | The BoR took note of the information provided by the FCC Chairman and the subsequent discussion. |

7. BEREC international cooperation

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| Document(s) | No document |
| Introduction by | BEREC Vice-Chair (ANACOM) |
| Information presented | <p>A representative of ANACOM reported on the following recent and planned BEREC international activities.</p> <ul style="list-style-type: none"> - Videoconference with FCC on the telecoms framework review on 13 October 2016 at the working level; - EMERG Technical Workshop on IoT in October 2016 – BEREC was present with a presentation; - ITU Telecom World on 14-17 November where BEREC was represented by ANACOM in the Leadership Summit; - EaPeReg Technical Workshop on International Roaming which took place in Bucharest on 21 November 2016; - BEREC participation in the REGULATEL Plenary meeting which took place in Chile on 28-29 November 2016 (BEREC was represented by ANCOM, CNMC and AGCOM); - BEREC-EMERG Joint workshop on International Roaming and Regulation of Voice in Brussels on 5-6 December; - EMERG Technical Workshop on Net Neutrality in Rome on 14-15 December. |
| Conclusions | The BoR took note of the information. |

8. Remedies

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| Document(s) | <p>BoR (16) 224 Draft BEREC Report on the Review of the Internal Guidelines for the elaboration of BEREC Opinions in Article 7/7a Phase II cases</p> <p>BoR (16) 225 Draft BEREC Internal Guidelines on the elaboration of BEREC Opinions in Article 7 and 7a Phase II cases</p> |
| Introduction by | REM EWG Co-Chairs/BEREC Office representative |
| Information presented | The EWG Co-Chair reported on the changes proposed to the BEREC Internal Guidelines on the elaboration of BEREC Opinions in Article 7 and 7a Phase II cases. |
| Conclusions | To amend the document as agreed during the meeting for internal use. |

9. Information from the Commission

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| Document(s) | No documents |
| Introduction by | Commission Representative |
| Information presented | <p>Broadband mapping and Broadband Competence Offices</p> <p>The representative of the EC informed the BoR about the letter and the MoU on data sharing which were sent to the NRAs on 16 November 2016</p> |

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| | <p>inviting them to join the data collection exercise. The broadband mapping project requires NRAs to build national mapping tools that will help to get a better picture of broadband deployment across Europe. The EC representative informed the meeting about the workshop dedicated to this initiative for stakeholders and NRAs that will be held on 12/13 December 2016. He also reported that Broadband Competence Offices (BCOs) have been set up in member states with a view to fostering and improving EU funds absorption. Their main purpose is to facilitate the use of structural funds and provide support for local initiatives in the process of infrastructure development.</p> <p>Roaming</p> <p>The representative of the EC informed the BoR of the recent developments on the Review of the wholesale roaming market. EP and Council agreed their positions on 29 November 2016 and on 2 December 2016 respectively. The first trilogue between the EU institutions will take place on 14 December 2016.</p> <p>As for the Implementing Act on Roaming fair use and sustainability, the EC representative reported that a new text of the Act was circulated to CO-COM and is due to be voted at the next meeting on 12 December 2016. He highlighted increased interest by the general public and consumer organisations on the subject. The EC wants to meet the deadline of 15 December 2016.</p> <p>WiFi for EU</p> <p>The COREPER agreed on a general approach on WiFi for EU on 2 December 2016. Rapporteurs in the EP have been nominated. It is expected that the trilogue will start as soon as possible so as to start the implementation of the programme in the beginning of 2017.</p> <p>European Electronic Communication Code</p> <p>On the European Electronic Communication Code, the EC representative reported that the draft directive has been well received by the EP and Council. In the EP, the Code has been assigned to the EPP (Mrs Pillar del Castillo) and the BEREC Regulation to the ECR (Mr Evžen Tošenovský). He informed the meeting that the negotiations in the Council have entered into its substantive phase of exchange of views between the Member States with the discussions on the IA of the proposals.</p> |
| Conclusions | The BoR took note of the information. |

10. List of the 'A' items

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| Document(s) | <p><u>Approval for publication:</u></p> <p>BoR (16) 216 Draft summary of the 4th BEREC Stakeholder Forum</p> <p>BoR (16) 217 Draft BEREC Report on Transparency and Comparability of International Roaming Tariffs</p> |
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| | <p>BoR (16) 218 Draft BEREC Report on Termination rates at European level (July 2016)</p> <p>BoR (16) 219 Draft BEREC Report “Monitoring implementation of the BEREC Common Positions on Wholesale Local Access (WLA), Wholesale Central Access (WCA) and Wholesale High Quality Access at a Fixed Location (WHQAFL): Phase 3”</p> <p><u>For internal use:</u></p> <p>BoR (16) 220 (1-28) Draft PRDs for the deliverables of the WP 2017</p> |
| Introduction by | BEREC Chair (BNetzA) |
| Information presented | The Chair requested the BoR to approve the “A” items. |
| Conclusions | The list of ‘A’ items was approved. |

11. Information from Chair

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| Document(s) | No documents |
| Introduction by | BEREC Chair (BNetzA) |
| Information presented | <p>The BEREC Chair informed the meeting about his recent activities as BEREC Chair and key meetings with EU Institutions and stakeholders.</p> <p>Since last plenary meeting BEREC Chair participated or was represented in the following meetings/conferences:</p> <ul style="list-style-type: none"> - 12.10.2016 CERRE Executive Seminar - 13.10.2016 UBS Investors Meeting and POLITICO's 2nd Annual Data Summit - 17.10.2016 WIK Conference - 18.10.2016 Competition Law and Regulation Conference and Digital Regulation Round Table - 10.11.2016 ECTA Regulatory Conference - 14.11.2016 Broadband Award - 15.11.2016 B-Day Going Giga; BEREC-MEP Lunch and meetings with ITRE-Secretariat and the European Economic & Social Committee |
| Conclusions | The BoR took note of the information. |

12. Information from the BEREC Office

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| Document(s) | <p>BoR (16) 221 Information on the electronic voting procedures since the last plenary meeting</p> <p>BoR (16) 222 2016 BEREC Work Programme status update</p> |
| Introduction by | BEREC Office Representatives |
| Information presented | <p>The representative of BEREC Office reported on the outcome of the recent electronic voting procedures and the implementation status of the 2016 BEREC Work Programme. He briefly informed the BoR about the BEREC major projects that are currently underway (statistics on the use of the Information Sharing Portal, launch of the BEREC Training on regulatory aspects, subscription to the regulatory database for the needs of BEREC</p> |

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| | EWGs, Online Platform for Public Consultations and the study on the Effects of Mergers and Acquisitions). |
| Conclusions | The BoR took note of the information. |

13. BEREC Communication Plan 2017

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| Document(s) | BoR (16) 223 Draft BEREC Communication Plan 2017 |
| Introduction by | Ad-hoc Group Co-Chair (ComReg) |
| Information presented | This document provides concrete information about the communication objectives of BEREC, focusing on deliverables, time-frames and evaluation criteria, thereby complementing the BEREC External Communication Strategy. |
| Conclusions | The document was approved for internal use. |

14. Review of the Art 28(2) of the USD

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| Document(s) | BoR (16) 226 Draft BEREC Report on a review of the cross-border regulatory cooperation process within the scope of Art 28(2) of the USD |
| Introduction by | End-Users EWG Co-Chair (ComReg) |
| Information presented | In March 2013, BEREC published a Report (BoR (13) 37) entitled “Article 28(2) USD Universal Service Directive: BEREC Guidance Paper” which outlined the BEREC process on cross border regulatory cooperation between the regulators or other relevant national authorities in cases of fraud or misuse. The Report included a commitment to monitor and review the process if necessary. The draft BEREC Report on a review of the cross-border regulatory cooperation process within the scope of Art 28(2) of the USD is the outcome of the above-mentioned review and is intended to highlight practical issues that arise when NRAs attempt to follow the process when requesting co-operation or responding to a request for co-operation from another NRA. The objective was to identify possible improvements to the process. |
| Conclusions | The document was approved for internal use. |

15. Next Generation Networks - Update on the workshop on the 3rd BEREC/OECD expert workshop on IP-interconnection

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|------------------------------|--|
| Document(s) | BoR (16) 243 Draft Report on the workshop on the BEREC/OECD expert workshop on IP-interconnection |
| Introduction by | NGN EWG Co-Chair (BNetzA) |
| Information presented | The NGN EWG Co-Chair reported on the outcomes of the 3 rd BEREC/OECD expert workshop on IP-interconnection which took place on 21 November 2016 in Brussels. The goal of the workshop was to bring experts from the IP-interconnection community into contact with experts on interconnection from national regulatory authorities; and to discuss future IP-interconnection in the light of |

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| | recent market developments and legislative initiatives such as the EU Regulation 2015/2120 including rules on Net Neutrality in the European Union and the FCC's Open Internet Order in the United States. |
| Conclusions | The document was approved for internal use. |

16. BEREC Annual Report 2016

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| Document(s) | BoR (16) 227 Draft outline of BEREC Annual Reports 2016 |
| Introduction by | BEREC Office Representative |
| Information presented | Representatives of the BEREC Office presented to the BoR information on the proposed outline of the BEREC annual activity report and the annual report on the developments in the electronic communications sector. Following the decision taken by the BoR in 2012, the reports will be prepared and published together. According to the proposed outline, part A of the Annual Report will describe the activities carried out by BEREC in 2016 and Part B will focus on the sector developments in 2016. NRAs were invited to provide inputs to the draft annual report. |
| Conclusions | The document was approved for internal use and further work. |

17. AOB

Information on the next plenary meetings (23-24 February 2017, Paris)

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| Document(s) | No documents |
| Introduction by | Representative of the meeting host (ARCEP) |
| Information presented | A representative of the meeting host, ARCEP, provided information on the logistics for the meeting as well as on the workshop that will take place before the Plenary meeting. |
| Conclusions | The BoR took note of the information. |

**List of documents approved for publication
at the 29thBoR plenary meeting**

| Document number | Document title/hyperlink |
|-----------------|---|
| | Final documents |
| BoR/2016/04 | <u>BoR Decision on the Expert Working Group Co-Chairs for 2017-2018</u> |
| BoR (16) 213 | <u>BEREC Opinion on the European Commission's proposals for a review of the electronic communications Framework</u> |
| BoR (16) 214 | <u>BEREC Report on the outcome of the public consultation on draft BEREC Work Programme 2017</u> |
| BoR (16) 215 | <u>BEREC Work Programme 2017</u> |
| BoR (16) 216 | <u>Summary of the 4th BEREC Stakeholder Forum</u> |
| BoR (16) 217 | <u>BEREC Report on Transparency and Comparability of International Roaming Tariffs</u> |
| BoR (16) 218 | <u>BEREC Report on Termination rates at European level (July 2016)</u> |
| BoR (16) 219 | <u>BEREC Report "Monitoring implementation of the BEREC Common Positions on Wholesale Local Access (WLA), Wholesale Central Access (WCA) and Wholesale High Quality Access at a Fixed Location (WHQAFL): Phase 3"</u> |