

**Explanatory Memorandum to  
Decision No BoR/2017/04 of the Board of Regulators on  
confirmatory application for access to documents BEREC  
Documents of BoR (16) 164 - Overview of the regulatory treatments  
of termination rates for voice calls originated outside the EEA and  
their impacts on cross-border traffic and settlements and  
BoR (16) 45 - PRD on regulatory treatment of termination rate for  
voice calls originated outside the EEA**

3 August 2017

According to 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](#) concerning the transparency and access to documents at the BEREC.

An application for access to document from DLA Piper concerning two documents was received on 15.05.2017: BoR (16) 164 - Overview of the regulatory treatments of termination rates for voice calls originated outside the EEA and their impacts on cross-border traffic and settlements and BoR (16) 45 - PRD on regulatory treatment of termination rate for voice calls originated outside the EEA.

The reply on the initial application rejecting the request for access was notified to the Applicant on 29.06.2017.

A confirmatory application has been submitted by the Applicant on 03.07.2017.

After thorough consideration, it has been considered that the request for granting access to the documents BoR (16) 164 and BoR (16) 45 should be denied as disclosure of these two documents would seriously undermine BEREC decision-making process. Furthermore, the disclosure of the document BoR (16) 164 would also harm commercial interests.

According to Article 4 of Decision BoR (10) 26 concerning access to documents, the BoR, assisted by the Office, shall take decisions regarding confirmatory applications.

In this respect, the BoR estimated that a refusal to grant access to the documents BoR (16) 164 and BoR (16) 45 is justified based on Art. 4(2) and 4(3) of Regulation 1049/2001.

Consequently, the Board of Regulators decided to reject the access to the requested documents and the corresponding confirmatory application.

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