

Decision No BoR/2019/07

of the Board of Regulators of the Body of European Regulators for Electronic Communications (BEREC) laying down rules on preventing and managing conflicts of interest concerning the members of the Board of Regulators

The Board of Regulators;

Having regard to Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009, and in particular art. 42 thereof.

Having regard to the Decision BoR (19) 58 of the Board of Regulators the Body of European Regulators for Electronic Communications laying down the rules of procedure of the Board of Regulators, and in particular Art.19 thereof addressing 'Conflict of interest'.

Having regard to the Special Report of the European Court of Auditors (ECA) on the 'Management of conflict of interest in selected EU Agencies' of (date), and in particular the recommendations 1, 2, 4, 5, 6, 7, 8 and 9 thereof.

Having regard to the European Parliament decision of 26 March 2019 on discharge in respect of the implementation of the budget of the Office of the Body of European Regulators for Electronic Communications (BEREC) for the financial year 2017 (2018/2206(DEC), and in particular paragraphs 15 and 16 thereof addressing 'Conflict of interest'.

Having regard to the adoption of a resolution by the European Parliament approving a Code of Good Administrative Behaviour which European Union institutions and bodies, their administrations and their officials should respect in their relations with the public (6 September 2001) (<http://www.ombudsman.europa.eu/resources/code.faces>)

Whereas:

- (1) BEREC acts as a forum for cooperation among NRAs and between NRAs and the Commission in the exercise of the full range of their responsibilities under the Union regulatory framework.
- (2) BEREC was established to provide expertise and to act independently and transparently. BEREC should provide expertise and establish confidence by virtue of its independence, the quality of its advice and information, the transparency of its procedures and methods of operation, and its diligence in carrying out its tasks.
- (3) BEREC should be able to act in the interests of the Union, independently from any external intervention, including political pressure or commercial interference. It is therefore important to

ensure that the persons appointed to the Board of Regulators enjoy the highest guarantees of personal and functional independence. The head of an NRA, a member of its collegiate body, or the replacement of either of them, enjoy such a level of personal and functional independence. More specifically, they should act independently and objectively, should not seek or take instructions in the exercise of their functions, and should be protected against arbitrary dismissal.

(4) The Board of Regulators recognises the sensitivity of the tasks to be performed and the need to comply with Art.42, paragraph 3 of the BEREC Regulation by laying down rules for the prevention and management of conflicts of interests of its members.

(5) BEREC should avoid any conflict of interest in the implementation of its activities. Integrity and high standards of professional conduct by all those involved in the tasks and activities of BEREC are crucial for the independence and reputation of the BEREC.

In the light of the aforementioned, the Board of Regulators decided to adopt a Policy with the purpose of defining the concept of conflict of interest and laying down practical arrangements and proportionate measures for avoiding or managing apparent, potential and real conflicts of interest (referred as “conflict of interest” in the rest of the document) of the Board of Regulators of the Body of European Regulators of Electronic Communications.

Article 1

1. The Policy on conflict of interest, as annexed to this Decision, is adopted.

Article 2

Final provisions

This Decision shall take effect on the day of its adoption.

Done at Crete, on 4 October 2019

For the Board of Regulators

Board of Regulators Chair 2019

Annex I – policy on preventing and managing conflicts of interest of the members of the Board of Regulators of the Body of European Regulators for Electronic Communications (BEREC)

ANNEX I

**Policy for preventing and managing
conflicts of interest of the members of the
Board of Regulators (BoR) of the Body of
European Regulators for Electronic
Communications (BEREC)**

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Article 1. General context

- 1) The prevention and management of conflict of interests is crucial to ensure the BEREC's independence and transparency, and to maintain the trust of stakeholders and citizens in the BEREC's integrity.
- 2) In the regulatory practice among national regulatory authorities of the telecommunication market (NRAs), the highest level of integrity is required to ensure the quality and credibility of any BEREC's opinion, recommendation, guideline or best practice.
- 3) Conflicts of interest, actual or perceived, may put integrity of the decision-making process into question and also represent a reputational risk.
- 4) The risks of actual or perceived conflicts of interests should therefore be identified and correctly managed, on the basis of a coherent and comprehensive policy for the prevention and management of conflicts of interests of the members of the Board of Regulators of the Body of European Regulators for Electronic Communications (BEREC).

Article 2 - Purpose

- 1) The purpose of this Policy is to establish the principles governing impartiality and independence of the members and alternates of the Board of Regulators of BEREC and define the measures to ensure their practical application in order to prevent and mitigate the risk that past, current or future interests might improperly influence their impartiality and independence during the performance of their duties.
- 2) Furthermore, it defines types of conflict of interest and procedure for identifying and handling it.
- 3) It should be noted that this Policy is based on the principle that interests declared in a transparent way are not per se considered to represent conflicts of interest. So this Policy is not to ban or sanction the holding of interests by members of the Board of Regulators but to facilitate in a transparent and consistent manner the handling of situations where conflicts of interest may arise.
- 4) It must be stressed that this document describes the main principles which apply and is not intended to be exhaustive but rather to provide examples of relevant interests and potential conflict of interest situations.
- 5) This Policy may need to be updated in the light of the experience gained by the members of the Board of Regulators.

Article 3 - Scope

- 1) As regards the obligation to make an initial declaration in writing upon appointment as Board member(s) and alternate(s), the present policy shall be applicable to (Hereinafter referred to as "Board member(s)"):
 - Voting members: heads, members of the collegiate body, and replacements of either of them, of each Member State's national regulatory authority ("NRA") of the telecommunication market and/or their alternates.
 - Participants without voting rights: heads or their appointed high-level representatives of the independent regulatory authorities competent in the field of electronic communications of third countries with whom working arrangements have been established in accordance with Article 35(2) of the BEREC Regulation and/or their alternates.
- 2) As regards the obligation to make a specific declaration of interests in context of a meeting of the Board of Regulators and/or a working group meeting, the present policy shall be applicable to:
 - Members and alternates of the Board of Regulators
 - Participants without voting rights
 - Members of the BEREC Contact Network (CN)
 - Members and other participants to the Working Groups (WG)
- 3) This policy does not cover BEREC Office staff members that are subjects to the provisions of the EU staff Regulation and Conditions of Employment of Other Servants of the European Union, which includes the Director of the BEREC Office.

Article 4 - Conflict of interest

- 1) A conflict of interest is an apparent, potential or real conflict between the public duty and personal or vested interests of a Board member, in which the Board member has direct or indirect interests which could improperly influence the performance of their official duties and responsibilities.
- 2) Personal and vested interests may be of financial or non-financial nature and may concern a personal or family relationship or professional affiliations (including additional employment, "outside" appointments or former employments or appointments).
- 3) Interests can be direct or indirect depending on their likely or potential impact on the individual's behaviour at a given point in time. Direct interests are interests of personal benefit to the individual at the time of declaration, likely to influence or give the appearance of influencing his behaviour. Indirect interests should be considered as other interests that may have some influence over the individual's behaviour and therefore have to be neutralised.

- 4) In this context, the conflict of interest can also be actual or apparent, which can be said to exist where the impartiality and objectivity of a decision of the Board of Regulators is or might in the public perception be compromised by an interest held by, or entrusted to, a Board member.
- 5) A conflict of interest can create an appearance of impropriety that can undermine confidence in the person, profession, or the organisation.
- 6) A conflict of interest may exist even if no unethical or improper act results from it. On the other hand, the holding of interests does not automatically give rise to a conflict of interest, if the independence and objectivity of decisions are not at risk.
- 7) It is recognized that it is often difficult to objectively assess whether a conflict of interest situation exists.

Article 5 - General principles of declarations

- 1) Individuals identified under Article 3 shall undertake to act independently in the public interest and they shall not be guided by personal interest or any outside influences of whatever kind.
- 2) They shall make their best efforts to refrain from involving themselves in any activity that would result in a conflict of interest with the BEREC activities and abstain from handling matters which involve his or her own interest, or those of his or her family and relatives.
- 3) The primary responsibility for declaring any possible conflict of interest is on the individual concerned who is also directly responsible for updating his/her declaration of interest whenever his/her situation changes in respect of the interests declared.
- 4) Without prejudice to the abovementioned individual responsibility, the Board of Regulators may, if deemed necessary, request that its members and alternates, submit an updated declaration of interest.

Article 6 - Initial Declaration of interests

- 1) Upon their appointment, Board members shall declare on the basis of the Declaration of Interests (Annex 2 to the rules of procedure of the Board of Regulators) any interest that creates a Conflict of Interest as defined in Article 4 with respect to all activities in which such persons are involved or have been involved during the three years preceding the submission of the Declaration of Interest and which fall under scope of action of BEREC (as defined in Art 4 of the BEREC Regulation).
- 2) Details on the name of body or organisation of relevance for each declared interest shall be given. This is to be interpreted as meaning the full name, location of the seat (town and country) and nature (private or public).

- 3) Details on the subject matter of each interest shall be given, indicating the domain in which the activity is, or was, carried out and clarifying the interest and role of the concerned body or organisation in the matter and the role of the concerned person.
- 4) Declarations of interest shall be submitted to the Director of the BEREC Office.

Article 7 - Specific declaration of interest (meeting)

- 1) Where a situation of a conflict of interest, not covered by an initial Declaration of Interest already submitted, arises, the persons identified in Art.3.2 shall each accurately and completely declare, at the latest at the start of each meeting, any interest which might be considered to be prejudicial to their independence in relation to the items on the agenda.
- 2) The individual declaring a conflict of interest shall abstain from participating in the discussion and/or the voting on, such points.
- 3) Interests need to be declared up to three years after which the interest ceases to exist.
- 4) Interests declared during meetings should be fully disclosed and recorded in the minutes of the meeting where the conflict of interest arises.

Article 8 - Declaration of commitment and confidentiality and CVs

- 1) Upon their appointment, Board members shall make a declaration in writing concerning commitment and confidentiality in accordance with the templates provided in Annex I and III of the Board of Regulators rules of procedures.
- 2) In addition to the declaration of interests and to the declarations of commitment and confidentiality, the Board members shall submit a CV and whenever necessary an updated version thereof.
- 3) The Director of the BEREC Office is responsible for requesting the submission of the abovementioned documents and authorising their publication on the BEREC website.

Procedure for identifying and handling potential conflicts of interest (Initial Declaration)

Article 9 - Collection

- 1) The Director of the BEREC Office is responsible for requesting the initial Declaration of Interest from the members, the participants without voting rights and the alternates of the Board of Regulators of the Body of European Regulators for Electronic Communications.

- 2) The declarations are submitted by the individual to the Director of the BEREC Office at the moment of taking up responsibilities. Newly appointed members/participants without voting rights/alternates shall submit a Declaration of Interest immediately upon their appointment and at the latest before the start of each meeting.
- 3) The Director of the BEREC Office, with the assistance of its staff, is responsible for keeping the Register of Declarations.

Article 10 - Screening of the Declarations of Interest

- 1) The Mini Board with the assistance of the Director of the BEREC Office shall screen the declarations of interest in order to assess a conflict interest arising in any of the categories described in Article 4. The screening shall be performed according the criteria specified under Article 11.
- 2) If a conflict of interest involves a Mini Board member (Chair, Vice-Chair or representative of the participants without voting rights) the screening of the declaration shall be performed exclusive of the member concerned.
- 3) The Mini Board informs the Board of Regulators on the outcome of the screening, including a proposal for a preventive/resolution measure in case of an identified Conflict of Interest.
- 4) Based on the information provided by Mini Board and taking into account the general context in which that specific activity or interest is developed, and all particularities of the specific activity or interest at issue, the indicative level of a conflict of interest in question can be either adjusted or confirmed by the Board of Regulators, exclusive of the member concerned.

Article 11 - Criteria for assessment of the conflict of interest

- 1) In order to evaluate whether a declared interest constitutes a conflict the Board of Regulators with the assistance of the Director of the BEREC Office may seek additional background information with regard to the information that was declared.
- 2) Depending on the level of the exposure to the risk of conflict of interest, the conflict of interest of the concerned individual may be classified as follows:
 - a) A conflict of interest is “non-existent” if the declared interest cannot be expected to cause any conflict of interest.
 - b) A conflict of interest is “possible” if the declared interest poses a potential conflict of interest by default, for example because there might be a potential benefit to the individual arising from the respective decision of the Board of Regulator. Whether

a potential conflict of interest will result in a factual or perceived conflict of interest depends hereby on the nature of that particular potential conflict, the subject at issue, the behaviour of others, etc. A conflict of interest is also “possible” if a conflict of interest cannot be excluded.

- c) A conflict of interest is “existent” if the declared interest obviously implies a factual or perceived conflict.

Article - 12 Resolution measures

- 1) The decision on the nature of participation of an individual in a specific meeting shall be taken in consultation with all Board members not concerned on the basis of the level of conflict of interest. The consultation shall take place without the presence of the Board member concerned.
- 2) In order to resolve or manage the conflict positively the following resolution measures should be taken:
 - a) Conflict of interest is “non-existent”
Involvement in all activities is permitted.
 - b) Conflict of interest is “possible”
The individual concerned can be present to answer questions addressed specifically to him or her but he or she cannot actively participate in the final discussion and has no right to vote.
 - c) Conflict of interest is “existent”
The Board of Regulator examines specific items of its agenda concerned by the conflict in question without the presence of the Board member concerned.
- 3) If a confirmed conflict of interest is not resolved, the Board of Regulators may decide to request the competent Member State authority to withdraw and replace the member concerned.

Article 13 - Breach of this Policy

- 1) In case of an omission of relevant interests resulting in a conflict of interest, the Board of Regulators shall jointly evaluate whether it may be considered as a breach of this policy.
- 2) The Board of Regulators with the assistance of the Director of the BEREC Office may seek additional background information with regard to the information that was not declared. The following discussion shall take place without the presence of the member concerned.

- 3) When a breach is confirmed, and the concerned person was involved in a decision without having declared an interest, the Board of Regulators should undertake remedial actions, in particular to review or cancel that decision if seriously affected by the conflict of interest. This implies carrying out an ex post review of the person's activities and contributions to the Board of Regulators output.
- 4) In addition, the Board of Regulator should inform the competent Member State appointing authority of the Board member concerned.
- 5) The respective Appointing Authority is responsible for adopting any formal decision as a consequence of a conflict of interests or breach of trust, when being informed of a situation described above.
- 6) The Board member concerned shall be kept informed.

Article 14 - Transparency

The Director of the BEREC Office shall make public on the BEREC website the declarations of interest, the declarations of commitment and confidentiality and the CVs submitted by the members of the Board of Regulators.

Article 15 - Personal data protection

BEREC Office shall process all declarations of interest (DoI), declarations of confidentiality and commitment and CVs of the members of the Board of Regulators pursuant to Regulation (EU) 2018/1725¹.

Article 16 - Review

This Policy should be regularly assessed with regard to its effectiveness, in order to adapt it to possible new risks.

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.