

**Decision by the Management Committee of the Body of European Regulators for
Electronic Communications (BEREC)**

**concerning the transparency and access to documents
at the BEREC Office**

The Management Committee of the Body of European Regulators for Electronic Communications (BEREC),

HAVING REGARD TO the Treaty on the functioning of the European Union as amended by the Treaty of Lisbon and in particular Article 15.3 thereof;

HAVING REGARD TO Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009¹ establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office and in particular Articles 18 and 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 documents²;

WHEREAS it is necessary to establish rules for implementing Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to the documents held by the BEREC and the Office of the BEREC,

Has adopted this Decision.

Done in Helsinki on 27 May 2010.

Article 1 - Objective and Scope

1. This decision prescribes the arrangements under which the public, within the meaning of Article 2 (1) and 2 (2) of Regulation 1049/2001, shall be granted access to documents held by the Office of the BEREC, (hereinafter referred to as "the Office"), in implementation of Regulation 1049/2001.

Article 2 - Applications for Access to Documents

Applications for access to a document shall be sent to the Office, by electronic mail, by post or by fax in the manner prescribed by Article 6 of Regulation 1049/2001. The relevant contact details will be provided and updated periodically on the BEREC Office website.

¹ OJ L 337/18.12.2009

² OJ L 145, 31.5.2001, p. 43-48

Article 3 - Processing of Initial Applications

1. The Office shall respond to initial applications within fifteen working days from the date of registration of the application.

2. In the case of complex or bulky applications, the deadline may be extended by a further fifteen working days.

Reasons must be given for any extension of the deadline and any such extension must be notified to the applicant prior to expiry of the original deadline.

If the complexity of the request, in view of the length of the documents or the number of documents involved makes a timely response difficult, a fair solution shall be sought with the applicant.

3. If an application is imprecise, as defined in Article 6(2) of Regulation 1049/2001, the Office shall invite the applicant to provide additional information to clarify the application.

The deadline for the Office to respond to the application shall be fifteen working days from receiving the information necessary to identify the document in question.

4. The acknowledgement of receipt and the answer shall be sent in writing and, where appropriate, by electronic means.

5. Where the document requested is directly accessible as defined in Article 12 of Regulation 1049/2001, the applicant shall be notified as such together with details of how to retrieve the document in question.

6. Applications relating to documents which are not directly accessible shall be acknowledged by the Office pending an answer unless this answer can be processed and responded to by return post.

7. The Office shall inform the applicant of the decision with respect to the initial application.

8. Any decision to deny access to a document or part of a document shall state the reason for the refusal and will inform the applicant that he/she may, within 15 working days of receiving the Office's reply, make a confirmatory application asking the Office to reconsider its position.

9. Failure by the Office to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

Article 4 - Processing of Confirmatory Applications

1. The Office shall respond to confirmatory applications within fifteen working days from the date of registration of the application.

2. The Management Committee, assisted by the Office, shall take decisions regarding confirmatory applications.

3. The decision shall be notified to the applicant in writing, where appropriate by electronic means.

4. Any decision to deny access to a document or part of a document after a confirmatory application, shall state the reason for the refusal. The applicant shall be informed of the remedies available to him or her.

Article 5 - Third Party Documents

1. Where the Office receives an application for access to a document which it holds but which originates from a third party, it shall check whether one of the exceptions provided for under Article 4 of Regulation 1049/2001 applies.
2. If, after that examination, the Office considers that access to it must be refused under one of these exceptions, the negative answer shall be sent to the applicant without consultation of the third party author.
3. The Office shall grant access without consulting the third party author where the document requested has already been disclosed either by its author or under Regulation 1049/2001 or similar provisions.
4. In all other cases, the third party author shall be consulted. In particular, if an application for access concerns a document originating from an EU Institution, a Member State or a national regulatory authority, the Office shall consult the originating authority.
5. The third party consulted shall be given a deadline for reply which shall allow the Office to respect its own deadline to reply to the applicant. In the absence of an answer within the prescribed period, or in those cases where the third party is untraceable or unidentifiable, the Office shall reach a decision in accordance with the criteria set out in article 4 of Regulation 1049/2001, taking into account legitimate interests of the third party on the basis of the information at its disposal.
6. If the Office intends to give access to a document against the explicit opinion of the author, it shall inform the author of its intention to disclose the document after a ten-working day period and shall draw his or her attention to the remedies available to him or her to oppose disclosure.

Article 6 - Exercise of the Right of Access

1. When access is granted, applicants shall have such access either by receiving a copy sent by mail, fax or, if available, by e-mail.

If the document has already been published, the answer shall consist of the publication references or, for documents available on the BEREC website or other websites, the appropriate Uniform Resource Locator (URL).

The applicant has the choice of consulting the specific documents at the location where they are kept.

2. If documents are voluminous or difficult to handle, the applicant may be invited to consult the documents at the Office's premises. This consultation shall be free of charge.
3. Without prejudice to the Regulation in force relating to fees and charges payable to the Office, if the volume of the documents requested exceeds twenty pages, the applicant may be charged a fee of EUR 0,10 per page plus carriage costs for making the necessary copies³.

Direct Access in electronic form shall be free of charge.

³ Such fee is provided taking inspiration from Article 7 of the Annex to Commission Decision n. 2001/937/EC of 5 December 2001 amending Commission's Rules of Procedure

Article 7 - Measures Facilitating Access to Documents

1. In order to make the right of access effective, the Office shall provide access to a register of documents as soon as possible.

The register shall be accessible in electronic form.

2. The register of documents shall cover the categories of the documents issued by the Management Committee and may be updated periodically by a decision of the Management Committee.

3. A help page shall be provided to assist the public in finding specific documents.

4. The register shall contain the title of the document (in the languages in which it is available), its reference number, a brief description of the contents, an indication of the author (Management Committee or third party), the date of its creation or adoption and the date of entry in the register.

5. For documents which are directly accessible, the register shall include a hyperlink to the document in question.

6. For documents which are not directly accessible, the register will provide details of how to request access.

Article 8 - Documents Directly Accessible to the Public

1. The following documents shall be made directly accessible by electronic means:

- (a) Brochures and other documents meant for the general public issued by the Office and any document adopted by the Management Committee for publication as foreseen by the annual work programme of the Office;
- (b) All press releases issued by the Management Committee and the Office;
- (c) The annual budget of the Office;
- (d) The work program of the Office;
- (e) Agendas and conclusions of the Management Committee and Contact Network meetings.

2. As far as possible the following documents shall be made directly accessible by electronic means:

- (a) Documents originating from third parties, which have already been disclosed by their author or with his or her consent.
- (b) Documents already disclosed following a previous application (but not originating from third parties).

3. The Management Committee may add to the list of documents in paragraphs 1 and 2 as appropriate.

Article 9 - Internal Organisation

1. The Administrative Manager shall ensure coordination and uniform implementation of these rules by the Office staff. To this end, he or she shall provide all the necessary advice and guidelines.

Article 10 – Reports

1. Pursuant to article 17(1) of Regulation 1049/2001, a report shall be annexed to the Office's annual report including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.

Article 11 – Transitional provision

Until the Administrative Manager of the Office is in place, the duties related to this decision will be performed by the Chair of the Management Committee.

Article 12 - Entry into force

This Decision shall enter into force following the publication on the BEREC website, at latest 10 days after the adoption date.

Done in Helsinki on 27 May 2010

For the Management Committee
The Chairman