

**To:**

**Ms. Kirsten**

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Riga, 27<sup>th</sup> March 2019

Ref. Ares(2019)903046 – 14/02/2019

**Subject: Reply to your request of 14 February 2019**

**Dear Madam,**

I refer to your email of 14 February 2019, registered on 14 February 2019, by which you submitted an application for access to document in accordance with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ("Regulation 1049/2001").

1. Regarding your request referring to "all communication sent to and received from Members States and their National Regulatory Authorities to prepare the implementation report of the Regulation (EU) 2015/2120 (Open Internet Regulation) which is due on 30 April 2019", BEREC would like to clarify that the Report on the implementation of Regulation (EU) 2015/2120 and BEREC Net Neutrality Guidelines is referring to the period from 1st May 2018 to 30th April 2019 and is thus being drafted. This report will be published in October 2019 according to the BEREC work program 2019 (BoR (18) 240).

As the drafting process is ongoing, BEREC refuses access to the related documents in compliance with:

- Article 4(2) first indent of Regulation 1049/2001 as "disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property";
- Article 4(3) first paragraph of Regulation 1049/2001 as "disclosure of these opinions would seriously undermine BEREC's decision-making process".

However, BEREC can refer you to the following documents which are publicly available:

- BoR (17) 240 – BEREC Report on the implementation of Regulation (EU) 2015/2120 and BEREC Net Neutrality Guidelines:  
[https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/reports/7529](https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/7529)

[-bereg-report-on-the-implementation-of-regulation-eu-20152120-and-bereg-net-neutrality-guidelines](#)

- BoR (18) 170 – Report on the implementation of Regulation (EU) 2015/2120 and BEREC Net Neutrality Guidelines:  
[https://bereg.europa.eu/eng/document\\_register/subject\\_matter/bereg/reports/8256-report-on-the-implementation-of-regulation-eu-20152120-and-bereg-net-neutrality-guidelines](https://bereg.europa.eu/eng/document_register/subject_matter/bereg/reports/8256-report-on-the-implementation-of-regulation-eu-20152120-and-bereg-net-neutrality-guidelines)
2. Regarding your request referring to “all communication sent to and received from Member States and National Regulatory Authorities to follow upon annual reporting obligations under the Regulation (EU) 2015/2120 (Open Internet Regulation)”, BEREC would like to provide you with the following information:
- The BoR (17) 240 document states that “BEREC has gathered information from 30 NRAs via an internal questionnaire. NRAs also published in national reports on the first year of application of the Regulation. To this information, descriptions of publicly known net neutrality cases or investigations have been added. These cases arose between April 2016 and October 2017. Therefore, this report does not constitute an exhaustive account of the current actions in the field of net neutrality, as several ongoing cases and actions cannot be mentioned due to the confidentiality issues.”
  - The BoR (18) 170 document states that “[t]his report reflects the second year of the application of the Regulation, covering the period from 1 May 2017 to 30 April 2018. BEREC has gathered information from 29 NRAs via an internal questionnaire. NRAs also published in national reports on the second year of application of the Regulation. To this information, descriptions of publicly known net neutrality cases or investigations have been added. These cases arose throughout the 12-month reporting period. However, this report does not constitute an exhaustive description of the current actions in the field of net neutrality.”
- The final reports (BoR (17) 240 and BoR (18) 170) contain all the non-confidential results of the questionnaire supplemented by many publicly available information regarding net neutrality country cases and national reports. Based on the two different types of information the reports give a good overview of the progress of the implementation of the Regulation (EU) 2015/2120 and BEREC Net Neutrality Guidelines.
- Therefore, in accordance with Article 4(2) first indent of Regulation 1049/2001, no access is granted to the internal questionnaire as the disclosure of this document would undermine the protection of commercial interests of natural and legal persons.
3. Regarding your request referring to “communications with external stakeholders participating in or invited to internal net neutrality working group meetings, specifically those preparing the review of the BEREC guidelines BoR (16) 127”, BEREC did not

organise such events in 2018 and could hence not provide you with the relevant documents.

However, a public consultation related to the review of the BEREC Guidelines BoR (16) 127 had been organised in 2018. Please see below for the relevant documents:

- BoR (18) 245 – BEREC Report on the outcome of the consultation on the evaluation of the application of Regulation (EU) 2015/2120 and the BEREC Net Neutrality Guidelines:  
[https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/reports/8318-berec-report-on-the-outcome-of-the-consultation-on-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-berec-net-neutrality-guidelines](https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/8318-berec-report-on-the-outcome-of-the-consultation-on-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-berec-net-neutrality-guidelines)
  - BoR PC01 (18) 01 – BoR PC01 (18) 52: please note that some of the documents are not disclosed on BEREC's website due to confidentiality reasons. Therefore, BEREC refuses access to these documents in compliance with Article 4(2) first indent of Regulation 1049/2001 as “disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property”.
  - BoR (18) 244 – BEREC Opinion for the evaluation of the application of Regulation (EU) 2015/2120 and the BEREC Net Neutrality Guidelines:  
[https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/opinions/8317-berec-opinion-for-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-berec-net-neutrality-guidelines](https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/8317-berec-opinion-for-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-berec-net-neutrality-guidelines)
4. Regarding the information from internal net neutrality working group meetings discussing the review of the BEREC Guidelines BoR (16) 127, you will find attached the documents we can provide you with, namely:
- minutes of the NN Implementation & Evaluation Drafters' meetings: 04/01/2018, 01/03/2018, 04/04/2018, 02-03/05/2018, 30/05/2018, 27-28/06/2018, 23/08/2018, 30/08/2018, 11/10/2018 and 25/10/2018;
  - minutes of the NN Members' meetings: 16/01/2018, 15/05/2018, 29/08/2018 and 24/10/2018;
  - minutes of the OI Guidelines & Implementation Drafters' meetings in 2019: 09/01/2019, 30/01/2019, 21/02/2019, 14/03/2019 and 22/03/2019;
  - minutes of the OI Members' meeting: 20/02/2019.

Please note that some passages of the documents disclosed provided have been redacted for the following reasons:

First, the full version of the documents requested contain some personal data.

Therefore, some passages have been redacted in compliance with Article 4(1) point (b) of Regulation 1049/2001 as disclosure of the personal data would have otherwise

undermined the protection of privacy and the integrity of the individual, in particular in accordance with the EU legislation regarding the protection of personal data.

Second, the full version of some of the documents requested contain opinions for internal use as part of deliberations and preliminary consultations.

Therefore, some passages have been redacted in compliance with Article 4(3) second indent of Regulation 1049/2001 as disclosure of these opinions would have otherwise seriously undermined BEREC's decision-making process."

The present reply constitutes the final decision to your initial application. Please note that you may, within 15 working days, make a confirmatory application asking the BEREC Office to reconsider its position.

I look forward to hearing from you and I remain at your disposal for providing you with any additional information, if needed.

**Regards,**

**László IGNÉCZI**

Director  
BEREC Office

**Encl.: meeting minutes as stated above**