



BEREC PROCEDURES FOR PUBLIC CONSULTATIONS HELD BY BEREC

The Board of Regulators,

HAVING REGARD TO Regulation n°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 and, in particular, article 17 and 18 thereof;

HAVING REGARD TO the “ *Rules of Procedure of the Board of Regulators*” (document BoR (10) 03) and, in particular, Article 16.1 - which establishes that “*public consultations shall be organized in such cases where the input and comments of stakeholders is required*”, and Article 16.2 which provides that “*the Board of Regulators shall agree on a case-by-case basis whether to organize a public consultation by a written procedure, and/or a public hearing, to gather either comments on a draft document and/or opinions in a preliminary phase of analysis*”;

WHEREAS it is necessary to adopt general rules regarding procedures for carrying out consultations of draft BEREC documents;

Has adopted the following Procedures:

Article 1 – Objective and scope

1. The present Procedures prescribe arrangements under which public consultations of draft BEREC documents shall be carried out.
2. The consultation modalities hereby defined shall apply to all draft BEREC documents setting out provisions of general or regulatory content, such as opinions, regulatory best practice or reports, which the Board of Regulators might consider appropriate to submit to public consultation.
3. The Office shall be responsible for launching public consultations and calling for public hearings, following the request of the Board of Regulators in accordance with Article 2. Notice of the launch of the public consultation and/or the call of a public hearing shall be published on the BEREC website, specifying deadlines and contact details for submitting contributions.

4. The document to be consulted may take the shape of a draft version of the final document but could also be in the form of a questionnaire or any other format.

Article 2 -Initial phase of the public consultation

1. The Board of Regulators shall decide whether a written consultation rather than a public hearing is needed or if both are needed, based on considerations such as the nature of the subject at stake, possible alternatives to consultation, confidentiality issues, the interests of third parties and the urgency of the matter.

2. In the event that the Board of Regulators decides to organize a written consultation, the text to be consulted shall be made public, together with a note related to the possibility to send contributions and comments, by means of publication on the BEREC website.

3. In such case, templates may be used so as to facilitate the final assessment of contributions by the Board of Regulators.

4. In the event that the Board of Regulators decides to organize a public hearing, the text to be consulted shall be made public, together with the invitation to the public hearing by means of publication on the BEREC website.

Article 3 -Submission of contributions

1. Pursuant to Article 16.3 of the Board of Regulators' Rules of Procedure, in the event of a written procedure, the consultation shall in principle be limited to one round of written comments, unless specific circumstances - to be evaluated by the Board of Regulators - require otherwise.

2. Comments by the stakeholders shall be addressed in written form - preferably by e-mail - to the BEREC Office within the deadline set in the published notice;

3. The period granted shall be normally 20 working days of the date of publication. Receipt of contributions shall be acknowledged by the BEREC Office.

4. The Board of Regulators may agree on different deadlines for the consultation period.

Article 4 -End of the consultation

1. BEREC shall publish a summary of all contributions received and an explanation as to how the views expressed were taken into account in the final position, taking into account confidentiality requests submitted. All contributions shall also be published on the BEREC website, unless specified otherwise by the author in accordance with Article 5.

2. If stakeholders request to keep their identity confidential, in order to ensure transparency of interests, the category of the author will be mentioned.

Article 5 -Confidentiality

Stakeholders taking part in the public consultation, who intend to request confidentiality of all or part of the documents submitted, shall indicate this upon submission of the materials.

EXPLANATORY NOTE TO THE BEREC PROCEDURES FOR PUBLIC CONSULTATIONS HELD BY THE BEREC

1. Introduction

The Regulation n°1211/2009, establishing the BEREC, lays down the general principles regarding public consultations. In particular, article 17 sets the obligation on BEREC to consult interested parties, where appropriate, before adopting opinions, regulatory best practice or reports. Such general rules need to be developed through detailed rules on how to handle public consultations.

2. Reference provisions on public consultation

The BEREC Regulation lays down the general principles regarding public consultations. In particular, article 17 sets the obligation on BEREC to consult interested parties, where appropriate, before adopting opinions, regulatory best practice or reports: ***“Where appropriate, BEREC shall, before adopting opinions, regulatory best practice or reports, consult interested parties and give them the opportunity to comment within a reasonable period. BEREC shall, without prejudice to Article 20 (Confidentiality), make the results of the consultation procedure publicly available.”***

This obligation is not detailed in other articles of the BEREC Regulation, with the exception of the mention to the BEREC annual work programme (article 5.4): ***“The Board of Regulators shall, after consulting interested parties in accordance with Article 17, adopt the annual work programme of BEREC before the end of each year preceding that to which the work programme relates”***.

The Rules of Procedure (RoPs) of the Board of Regulators (BoR), in particular article 16, define criteria under which the Board of Regulators shall decide to launch public consultations, leaving it up to the BoR itself to decide on a case-by-case basis about the need to consult interested parties:

“1. Public consultations shall be organised in such cases where the input and comments of stakeholders is required.

2. Subject to Article 16.3 of these Rules of Procedure, the Board of Regulators shall agree on a case-by-case basis, whether to organise a public consultation, by a written procedure, and/or a public hearing, to gather either comments on a draft document and/or opinions in a preliminary phase of analysis”.

In terms of consultation modalities laid down by the Rules of Procedure of the Board of Regulators, article 16 provides that the Board of Regulators shall decide on the

modalities (written procedure or public hearing) as well as on the duration of the consultation, the timescale for responses being of 15-20 working days in principle.

Apart from the specific reference to the annual work programme which shall be consulted according to article 5.4, the BEREC shall therefore decide which draft documents should be subject to public consultation as well as the relevant consultations' deadlines.

In order to provide some general indications to the stakeholders about when they will have the opportunity to provide their input to the BEREC documents, some BEREC reflections have been elaborated. These reflections provide only a tentative assessment of draft BEREC documents that might be subject to public consultation - based on an evaluation of their nature - with the ultimate decision to be taken by the Board of Regulators, pursuant to both the establishing Regulation and the Rules of Procedures of the Board of Regulators.

3. Time-scale for responses

The RoPs currently state that the time-scale for responses will in principle be a minimum of 15 working days and a maximum of 20 working days. Notwithstanding this provision in the RoPs, the period which will normally be granted to stakeholders for written comments will be 20 working days, leaving up to the Board of Regulators the flexibility to decide otherwise in all cases where a longer timescale might be considered reasonable. As a matter of practice, such flexibility will be exercised by the BoR by reference to the specific circumstances of the deliverable including the subject matter and any statutory deadline for completion. In addition, public hearings will be organised where these could supplement written consultations and in other cases where they are deemed to be useful (e.g. in case of urgency).

4. Types of documents produced by BEREC

Taking into account that decisions on public consultations need to be taken on a case by case basis by the BoR, the following section provides an outline of the documents that BEREC is expected to produce and their relevant general suitability for public consultation.

Although the BEREC Regulation makes reference to different BEREC deliverables, such as regulatory best practices, opinions or reports, it does not specifically address the question of what type of documents will be produced in the execution of its tasks. Therefore, in order to identify the categories of BEREC documents, it is worthwhile to thoroughly look for the articles of the Regulation. The following table shows the results of such investigation. It focuses on the different tasks of BEREC that are provided for in the Regulation, trying to associate them with a specific type of deliverable.

The table below constitutes a tentative assessment of what types of BEREC documents ¹ could be subject to public consultation, given their nature. However, the specific content and scope of the documents will drive each specific Board of Regulators' decision on whether to consult stakeholders and how long each consultation should last.

BEREC Deliverable	Scope	Obligation to take utmost account of?	Public consultation needed?	Publication needed?
BEREC Opinion²	<ul style="list-style-type: none"> • on draft decisions, recommendations and guidelines of the Commission (Article 2.c) (Article 3.b) (Article 3.c) (Article 3.d) (Article 3.f) • to the Commission on national draft measures of NRAs (Article 3.a) (Article 3.h) • to the EP and Council (upon a reasoned request or on its own initiative) (article 2.d) • to NRAs on cross-border disputes (Article 3.g) 	Yes	No	Yes
BEREC Report	<ul style="list-style-type: none"> • to the Commission (upon a reasoned request or on its own initiative) on any matter regarding electronic communications within its competence. (Article 2.d) 	No	<i>Depending on the subject</i>	Yes
	<ul style="list-style-type: none"> • general papers (at its own initiative) on issues not covered by the Regulation 	No	<i>Depending on the subject</i>	Yes

¹ The table reports only two types of BEREC documents explicitly identified by the BEREC Regulation; the same rules and principles for a case by case analysis apply to all BEREC deliverables (also those taking other forms not explicitly mentioned by the Regulation).

² Public consultation generally not appropriate as stakeholders will have had the opportunity to comment on the subject matter through consultation by other parties

BEREC Deliverable	Scope	Obligation to take utmost account of?	Public consultation needed?	Publication needed?
BEREC Regulatory Best Practices: <ul style="list-style-type: none"> - BEREC Common Approach (Common Position) - BEREC Guidelines - BEREC Methodology 	<ul style="list-style-type: none"> • on the implementation of the EU Regulatory Framework (Article 2.a) 	Yes	Yes	Yes
BEREC Advice³	<ul style="list-style-type: none"> • to the Commission (upon a reasoned request or on its own initiative) on any matter regarding electronic communications within its competence. (Article 2.d) 	No	No	Yes
	<ul style="list-style-type: none"> • input to the Commission in the context of comitology (Article 3.i) (Article 3.j) (Article 3.k) 	No	No	Yes
BEREC Advice⁴	<ul style="list-style-type: none"> • assistance to NRAs (Article 2.b) (Article 3.e) (Article 3.l) 	No	No	No
BEREC Annual Report on the development of the sector⁵	<ul style="list-style-type: none"> • (Article 3.n) 	n.a.	No	Yes
BEREC Rules of Procedure⁶	<ul style="list-style-type: none"> • (Article 4.10) 	n.a.	No	Yes
BEREC Work Programme	<ul style="list-style-type: none"> • (Article 5.4) 	n.a.	Yes	Yes

³ Public consultation generally not appropriate as there may be a parallel consultation being conducted by the Commission or a subsequent public consultation may arise and there may be time constraints in the case of comitology

⁴ Responsibility for matters rests with NRA and not with BEREC

⁵ Not appropriate to consult on an report of this nature

⁶ Not appropriate to consult on internal procedures

BEREC Deliverable	Scope	Obligation to take utmost account of?	Public consultation needed?	Publication needed?
BEREC Annual Report on the activities of the BEREC⁷	<ul style="list-style-type: none"> • (Article 5.5) 	n.a.	No	Yes

⁷ Not appropriate to consult on a report of this nature