

Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (Text with EEA relevance)

PART I

FRAMEWORK (GENERAL RULES FOR THE ORGANISATION OF THE SECTOR)

TITLE I

SCOPE, AIM AND OBJECTIVES, DEFINITIONS

CHAPTER I

Subject matter, aim and definitions

Article 1

Subject matter, scope and aims

1 This Directive establishes a harmonised framework for the regulation of electronic communications networks, electronic communications services, associated facilities and associated services, and certain aspects of terminal equipment. It lays down tasks of national regulatory authorities and, where applicable, of other competent authorities, and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Union.

2 The aims of this Directive are to:

- a implement an internal market in electronic communications networks and services that results in the deployment and take-up of very high capacity networks, sustainable competition, interoperability of electronic communications services, accessibility, security of networks and services and end-user benefits; and
- b ensure the provision throughout the Union of good quality, affordable, publicly available services through effective competition and choice, to deal with circumstances in which the needs of end-users, including those with disabilities in order to access the services on an equal basis with others, are not satisfactorily met by the market and to lay down the necessary end-user rights.

3 This Directive is without prejudice to:

- a obligations imposed by national law in accordance with Union law or by Union law in respect of services provided using electronic communications networks and services;
- b measures taken at Union or national level, in accordance with Union law, to pursue general interest objectives, in particular relating to the protection of personal data and privacy, content regulation and audiovisual policy;
- c actions taken by Member States for public order and public security purposes and for defence;
- d Regulations (EU) No 531/2012 and (EU) 2015/2120 and Directive 2014/53/EU.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

4 The Commission, the Body of European Regulators for Electronic Communications ('BEREC') and the authorities concerned shall ensure compliance of their processing of personal data with Union data protection rules.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'electronic communications network' means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;
- (2) 'very high capacity network' means either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation; network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point;
- (3) 'transnational markets' means markets identified in accordance with Article 65, which cover the Union or a substantial part thereof located in more than one Member State;
- (4) 'electronic communications service' means a service normally provided for remuneration via electronic communications networks, which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of services:
 - (a) 'internet access service' as defined in point (2) of the second paragraph of Article 2 of Regulation (EU) 2015/2120;
 - (b) interpersonal communications service; and
 - (c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting;
- (5) 'interpersonal communications service' means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s) and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;

- (6) ‘number-based interpersonal communications service’ means an interpersonal communications service which connects with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which enables communication with a number or numbers in national or international numbering plans;
- (7) ‘number-independent interpersonal communications service’ means an interpersonal communications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication with a number or numbers in national or international numbering plans;
- (8) ‘public electronic communications network’ means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services which support the transfer of information between network termination points;
- (9) ‘network termination point’ means the physical point at which an end-user is provided with access to a public electronic communications network, and which, in the case of networks involving switching or routing, is identified by means of a specific network address, which may be linked to an end-user’s number or name;
- (10) ‘associated facilities’ means associated services, physical infrastructures and other facilities or elements associated with an electronic communications network or an electronic communications service which enable or support the provision of services via that network or service, or have the potential to do so, and include buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;
- (11) ‘associated service’ means a service associated with an electronic communications network or an electronic communications service which enables or supports the provision, self-provision or automated-provision of services via that network or service, or has the potential to do so, and includes number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides (EPGs), as well as other services such as identity, location and presence service;
- (12) ‘conditional access system’ means any technical measure, authentication system and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or another form of prior individual authorisation;
- (13) ‘user’ means a natural or legal person using or requesting a publicly available electronic communications service;
- (14) ‘end-user’ means a user not providing public electronic communications networks or publicly available electronic communications services;
- (15) ‘consumer’ means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business, craft or profession;
- (16) ‘provision of an electronic communications network’ means the establishment, operation, control or making available of such a network;

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (17) ‘enhanced digital television equipment’ means set-top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;
- (18) ‘application programming interface’ or ‘API’ means the software interface between applications, made available by broadcasters or service providers, and the resources in the enhanced digital television equipment for digital television and radio services;
- (19) ‘radio spectrum allocation’ means the designation of a given radio spectrum band for use by one or more types of radio communications services, where appropriate, under specified conditions;
- (20) ‘harmful interference’ means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable international, Union or national regulations;
- (21) ‘security of networks and services’ means the ability of electronic communications networks and services to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of those networks and services, of stored or transmitted or processed data, or of the related services offered by, or accessible via, those electronic communications networks or services;
- (22) ‘general authorisation’ means a legal framework established by a Member State ensuring rights for the provision of electronic communications networks or services and laying down sector-specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive;
- (23) ‘small-area wireless access point’ means low-power wireless network access equipment of a small size operating within a small range, using licenced radio spectrum or licence-exempt radio spectrum or a combination thereof, which may be used as part of a public electronic communications network, which may be equipped with one or more low visual impact antennae, and which allows wireless access by users to electronic communications networks regardless of the underlying network topology, be it mobile or fixed;
- (24) ‘radio local area network’ or ‘RLAN’ means low-power wireless access system, operating within a small range, with a low risk of interference with other such systems deployed in close proximity by other users, using, on a non-exclusive basis, harmonised radio spectrum;
- (25) ‘harmonised radio spectrum’ means radio spectrum for which harmonised conditions relating to its availability and efficient use have been established by way of technical implementing measures in accordance with Article 4 of Decision No 676/2002/EC;
- (26) ‘shared use of radio spectrum’ means access by two or more users to use the same radio spectrum bands under a defined sharing arrangement, authorised on the basis of a general authorisation, individual rights of use for radio spectrum or a combination thereof, including regulatory approaches such as licensed shared access aiming to facilitate the shared use of a radio spectrum band, subject to a binding agreement of all parties involved, in accordance with sharing rules as included in their rights of use for radio spectrum in order to guarantee to all users predictable and reliable sharing arrangements, and without prejudice to the application of competition law;

- (27) ‘access’ means the making available of facilities or services to another undertaking, under defined conditions, either on an exclusive or a non-exclusive basis, for the purpose of providing electronic communications services, including when they are used for the delivery of information society services or broadcast content services; it covers, inter alia: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services and access to virtual network services;
- (28) ‘interconnection’ means a specific type of access implemented between public network operators by means of the physical and logical linking of public electronic communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking where such services are provided by the parties involved or other parties who have access to the network;
- (29) ‘operator’ means an undertaking providing or authorised to provide a public electronic communications network or an associated facility;
- (30) ‘local loop’ means the physical path used by electronic communications signals connecting the network termination point to a distribution frame or equivalent facility in the fixed public electronic communications network;
- (31) ‘call’ means a connection established by means of a publicly available interpersonal communications service allowing two-way voice communication;
- (32) ‘voice communications service’ means a publicly available electronic communications service for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international numbering plan;
- (33) ‘geographic number’ means a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point;
- (34) ‘non-geographic number’ means a number from the national numbering plan that is not a geographic number, such as mobile, freephone and premium-rate numbers;
- (35) ‘total conversation service’ means a multimedia real time conversation service that provides bidirectional symmetric real time transfer of motion video, real time text and voice between users in two or more locations;
- (36) ‘public safety answering point’ or ‘PSAP’ means a physical location where an emergency communication is first received under the responsibility of a public authority or a private organisation recognised by the Member State;
- (37) ‘most appropriate PSAP’ means a PSAP established by responsible authorities to cover emergency communications from a certain area or for emergency communications of a certain type;

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (38) ‘emergency communication’ means communication by means of interpersonal communications services between an end-user and the PSAP with the goal to request and receive emergency relief from emergency services;
- (39) ‘emergency service’ means a service, recognised as such by the Member State, that provides immediate and rapid assistance in situations where there is, in particular, a direct risk to life or limb, to individual or public health or safety, to private or public property, or to the environment, in accordance with national law;
- (40) ‘caller location information’ means, in a public mobile network, the data processed, derived from network infrastructure or handsets, indicating the geographic position of an end-user’s mobile terminal equipment, and, in a public fixed network, the data about the physical address of the network termination point;
- (41) ‘terminal equipment’ means terminal equipment as defined in point (1) of Article 1 of Commission Directive 2008/63/EC⁽¹⁾;
- (42) ‘security incident’ means an event having an actual adverse effect on the security of electronic communications networks or services.

CHAPTER II

Objectives

Article 3

General objectives

1 Member States shall ensure that in carrying out the regulatory tasks specified in this Directive, the national regulatory and other competent authorities take all reasonable measures which are necessary and proportionate for achieving the objectives set out in paragraph 2. Member States, the Commission, the Radio Spectrum Policy Group (‘RSPG’), and BEREC shall also contribute to the achievement of those objectives.

National regulatory and other competent authorities shall contribute within their competence to ensuring the implementation of policies aimed at the promotion of freedom of expression and information, cultural and linguistic diversity, as well as media pluralism.

2 In the context of this Directive, the national regulatory and other competent authorities as well as BEREC, the Commission and the Member States shall pursue each of the following general objectives, which are not listed in order of priority:

- a promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks, by all citizens and businesses of the Union;
- b promote competition in the provision of electronic communications networks and associated facilities, including efficient infrastructure-based competition, and in the provision of electronic communications services and associated services;
- c contribute to the development of the internal market by removing remaining obstacles to, and facilitating convergent conditions for, investment in, and the provision of, electronic communications networks, electronic communications services, associated facilities and associated services, throughout the Union, by developing common rules and predictable regulatory approaches, by favouring the effective, efficient and

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

coordinated use of radio spectrum, open innovation, the establishment and development of trans-European networks, the provision, availability and interoperability of pan-European services, and end-to-end connectivity;

- d promote the interests of the citizens of the Union, by ensuring connectivity and the widespread availability and take-up of very high capacity networks, including fixed, mobile and wireless networks, and of electronic communications services, by enabling maximum benefits in terms of choice, price and quality on the basis of effective competition, by maintaining the security of networks and services, by ensuring a high and common level of protection for end-users through the necessary sector-specific rules and by addressing the needs, such as affordable prices, of specific social groups, in particular end-users with disabilities, elderly end-users and end-users with special social needs, and choice and equivalent access for end-users with disabilities.

3 Where the Commission establishes benchmarks and reports on the effectiveness of Member States' measures towards achieving the objectives referred to in paragraph 2, the Commission shall, where necessary, be assisted by Member States, national regulatory authorities, BEREC and the RSPG.

4 The national regulatory and other competent authorities shall, in pursuit of the policy objectives referred to in paragraph 2 and specified in this paragraph, inter alia:

- a promote regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods and through cooperation with each other, with BEREC, with the RSPG and with the Commission;
- b ensure that, in similar circumstances, there is no discrimination in the treatment of providers of electronic communications networks and services;
- c apply Union law in a technologically neutral fashion, to the extent that this is consistent with the achievement of the objectives set out in paragraph 2;
- d promote efficient investment and innovation in new and enhanced infrastructures, including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, while ensuring that competition in the market and the principle of non-discrimination are preserved;
- e take due account of the variety of conditions relating to infrastructure, competition, the circumstances of end-users and, in particular, consumers in the various geographic areas within a Member State, including local infrastructure managed by natural persons on a not-for-profit basis;
- f impose ex ante regulatory obligations only to the extent necessary to secure effective and sustainable competition in the interest of end-users and relax or lift such obligations as soon as that condition is fulfilled.

Member States shall ensure that the national regulatory and other competent authorities act impartially, objectively, transparently and in a non-discriminatory and proportionate manner.

Article 4

Strategic planning and coordination of radio spectrum policy

1 Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the Union in accordance with Union policies for the establishment and functioning of the internal market in electronic communications. To that end, they shall take into consideration, inter alia, the

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of Union policies, as well as the various interests of radio spectrum user communities, with the aim of optimising the use of radio spectrum and avoiding harmful interference.

2 By cooperating with each other and with the Commission, Member States shall promote the coordination of radio spectrum policy approaches in the Union and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in electronic communications.

3 Member States shall, through the RSPG, cooperate with each other and with the Commission in accordance with paragraph 1, and upon their request with the European Parliament and with the Council, in support of the strategic planning and coordination of radio spectrum policy approaches in the Union, by:

- a developing best practices on radio spectrum related matters, with a view to implementing this Directive;
- b facilitating the coordination between Member States with a view to implementing this Directive and other Union law and to contributing to the development of the internal market;
- c coordinating their approaches to the assignment and authorisation of use of radio spectrum and publishing reports or opinions on radio spectrum related matters.

BEREC shall participate on issues concerning its competence relating to market regulation and competition related to radio spectrum.

4 The Commission, taking utmost account of the opinion of the RSPG, may submit legislative proposals to the European Parliament and to the Council for the purpose of establishing multiannual radio spectrum policy programmes, setting out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with this Directive, as well as for the purpose of releasing harmonised radio spectrum for shared use or for use not subject to individual rights.

TITLE II

INSTITUTIONAL SET-UP AND GOVERNANCE

CHAPTER I

National regulatory and other competent authorities

Article 5

National regulatory and other competent authorities

1 Member States shall ensure that each of the tasks laid down in this Directive is undertaken by a competent authority.

Within the scope of this Directive, the national regulatory authorities shall be responsible at least for the following tasks:

- a implementing ex ante market regulation, including the imposition of access and interconnection obligations;

- b ensuring the resolution of disputes between undertakings;
- c carrying out radio spectrum management and decisions or, where those tasks are assigned to other competent authorities, providing advice regarding the market-shaping and competition elements of national processes related to the rights of use for radio spectrum for electronic communications networks and services;
- d contributing to the protection of end-user rights in the electronic communications sector, in coordination, where relevant, with other competent authorities;
- e assessing and monitoring closely market-shaping and competition issues regarding open internet access;
- f assessing the unfair burden and calculating the net cost of the provision of universal service;
- g ensuring number portability between providers;
- h performing any other task that this Directive reserves to national regulatory authorities.

Member States may assign other tasks provided for in this Directive and other Union law to national regulatory authorities, in particular, those related to market competition or market entry, such as general authorisation, and those related to any role conferred on BEREC. Where those tasks related to market competition or market entry are assigned to other competent authorities, they shall seek to consult the national regulatory authority before taking a decision. For the purposes of contributing to BEREC's tasks, national regulatory authorities shall be entitled to collect necessary data and other information from market participants.

Member States may also assign to national regulatory authorities other tasks on the basis of national law, including national law implementing Union law.

Member States shall, in particular, promote stability of competences of the national regulatory authorities when transposing this Directive with regard to the attribution of tasks resulting from the Union electronic communications regulatory framework as amended in 2009.

2 National regulatory and other competent authorities of the same Member State or of different Member States shall, where necessary, enter into cooperative arrangements with each other to foster regulatory cooperation.

3 Member States shall publish the tasks to be undertaken by national regulatory and other competent authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities, and between those authorities and national authorities entrusted with the implementation of competition law or consumer law, on matters of common interest. Where more than one authority has competence to address such matters, Member States shall ensure that the respective tasks of each authority are published in an easily accessible form.

4 Member States shall notify to the Commission all national regulatory and other competent authorities that are assigned tasks under this Directive, and their respective responsibilities, as well as any change thereof.

Article 6

Independence of national regulatory and other competent authorities

1 Member States shall guarantee the independence of national regulatory authorities and of other competent authorities by ensuring that they are legally distinct from, and functionally independent of, any natural or legal person providing electronic communications networks,

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2 Member States shall ensure that national regulatory and other competent authorities exercise their powers impartially, transparently and in a timely manner. Member States shall ensure that they have adequate technical, financial and human resources to carry out the tasks assigned to them.

Article 7

Appointment and dismissal of members of national regulatory authorities

1 The head of a national regulatory authority, or, where applicable, the members of the collegiate body fulfilling that function within a national regulatory authority or their alternates, shall be appointed for a term of office of at least three years from among persons of recognised standing and professional experience, on the basis of merit, skills, knowledge and experience and following an open and transparent selection procedure. Member States shall ensure continuity of decision-making.

2 Member States shall ensure that the head of a national regulatory authority, or where applicable, members of the collegiate body fulfilling that function within a national regulatory authority or their alternates may be dismissed during their term only if they no longer fulfil the conditions required for the performance of their duties which are laid down in national law before their appointment.

3 The decision to dismiss the head of the national regulatory authority concerned, or where applicable members of the collegiate body fulfilling that function, shall be made public at the time of dismissal. The dismissed head of the national regulatory authority or, where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons. In the event that the statement of reasons is not published, it shall be published upon that person's request. Member States shall ensure that this decision is subject to review by a court, on points of fact as well as on points of law.

Article 8

Political independence and accountability of the national regulatory authorities

1 Without prejudice to Article 10, national regulatory authorities shall act independently and objectively, including in the development of internal procedures and the organisation of staff, shall operate in a transparent and accountable manner in accordance with Union law, and shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 31 shall have the power to suspend or overturn decisions of the national regulatory authorities.

2 National regulatory authorities shall report annually, inter alia, on the state of the electronic communications market, on the decisions they issue, on their human and financial resources and how those resources are attributed, as well as on future plans. Their reports shall be made public.

Article 9

Regulatory capacity of national regulatory authorities

1 Member States shall ensure that national regulatory authorities have separate annual budgets and have autonomy in the implementation of the allocated budget. Those budgets shall be made public.

2 Without prejudice to the obligation to ensure that national regulatory authorities have adequate financial and human resources to carry out the task assigned to them, financial autonomy shall not prevent supervision or control in accordance with national constitutional law. Any control on the budget of the national regulatory authorities shall be exercised in a transparent manner and made public.

3 Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to actively participate in and contribute to BEREC.

Article 10

Participation of national regulatory authorities in BEREC

1 Member States shall ensure that the goals of BEREC of promoting greater regulatory coordination and consistency are actively supported by their respective national regulatory authorities.

2 Member States shall ensure that national regulatory authorities take utmost account of guidelines, opinions, recommendations, common positions, best practices and methodologies adopted by BEREC when adopting their own decisions for their national markets.

Article 11

Cooperation with national authorities

National regulatory authorities, other competent authorities under this Directive, and national competition authorities shall provide each other with the information necessary for the application of this Directive. In respect of the information exchanged, Union data protection rules shall apply, and the receiving authority shall ensure the same level of confidentiality as that of the originating authority.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

CHAPTER II

General authorisation

Section 1

General part

Article 12

General authorisation of electronic communications networks and services

1 Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article 52(1) TFEU. Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned and shall be notified to the Commission.

2 The provision of electronic communications networks or services, other than number-independent interpersonal communications services, may, without prejudice to the specific obligations referred to in Article 13(2) or rights of use referred to in Articles 46 and 94, be subject only to a general authorisation.

3 Where a Member State considers that a notification requirement is justified for undertakings subject to a general authorisation, that Member State may require such undertakings only to submit a notification to the national regulatory or other competent authority. The Member State shall not require such undertakings to obtain an explicit decision or any other administrative act by such authority or by any other authority before exercising the rights derived from the general authorisation.

Upon notification, when required, an undertaking may start the activity, where necessary subject to the provisions on the rights of use under this Directive.

4 The notification referred to in paragraph 3 shall not entail more than a declaration by a natural or legal person to the national regulatory or other competent authority of the intention to start the provision of electronic communications networks or services and the submission of the minimal information which is required to allow BEREC and that authority to keep a register or list of providers of electronic communications networks and services. That information shall be limited to:

- a the name of the provider;
- b the provider's legal status, form and registration number, where the provider is registered in a trade or other similar public register in the Union;
- c the geographical address of the provider's main establishment in the Union, if any, and, where applicable, any secondary branch in a Member State;
- d the provider's website address, where applicable, associated with the provision of electronic communications networks or services;
- e a contact person and contact details;
- f a short description of the networks or services intended to be provided;
- g the Member States concerned; and
- h an estimated date for starting the activity.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Member States shall not impose any additional or separate notification requirements. In order to approximate notification requirements, BEREC shall publish guidelines for the notification template and maintain a Union database of the notifications transmitted to the competent authorities. To that end, the competent authorities shall, by electronic means, forward each notification received to BEREC without undue delay. Notifications made to the competent authorities before 21 December 2020 shall be forwarded to BEREC by 21 December 2021.

Article 13

Conditions attached to the general authorisation and to the rights of use for radio spectrum and for numbering resources, and specific obligations

1 The general authorisation for the provision of electronic communications networks or services and the rights of use for radio spectrum and rights of use for numbering resources may be subject only to the conditions listed in Annex I. Such conditions shall be non-discriminatory, proportionate and transparent. In the case of rights of use for radio spectrum, such conditions shall ensure the effective and efficient use thereof and be in accordance with Articles 45 and 51, and, in the case of rights of use for numbering resources, shall be in accordance with Article 94.

2 Specific obligations which may be imposed on undertakings providing electronic communications networks and services under Article 61(1) and (5) and Articles 62, 68 and 83 or on those designated to provide universal service under this Directive shall be legally separate from the rights and obligations under the general authorisation. In order to achieve transparency, the criteria and procedures for imposing such specific obligations on individual undertakings shall be referred to in the general authorisation.

3 The general authorisation shall contain only conditions which are specific for that sector and are set out in Parts A, B and C of Annex I and shall not duplicate conditions which are applicable to undertakings by virtue of other national law.

4 Member States shall not duplicate the conditions of the general authorisation where they grant the right of use for radio spectrum or for numbering resources.

Article 14

Declarations to facilitate the exercise of rights to install facilities and rights of interconnection

Competent authorities shall, within one week of the request of an undertaking, issue standardised declarations confirming, where applicable, that the undertaking has submitted a notification under Article 12(3). Those declarations shall detail the circumstances under which any undertaking providing electronic communications networks or services under the general authorisation has the right to apply for rights to install facilities, negotiate interconnection, and obtain access or interconnection, in order to facilitate the exercise of those rights, for instance at other levels of government or in relation to other undertakings. Where appropriate, such declarations may also be issued as an automatic reply following the notification referred to in Article 12(3).

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Section 2

General authorisation rights and obligations

Article 15

Minimum list of rights derived from the general authorisation

- 1 Undertakings subject to the general authorisation pursuant to Article 12, shall have the right to:
 - a provide electronic communications networks and services;
 - b have their application for the necessary rights to install facilities considered in accordance with Article 43;
 - c use, subject to Articles 13, 46 and 55, radio spectrum in relation to electronic communications networks and services;
 - d have their application for the necessary rights of use for numbering resources considered in accordance with Article 94.
- 2 Where such undertakings provide electronic communications networks or services to the public, the general authorisation shall give them the right to:
 - a negotiate interconnection with and, where applicable, obtain access to, or interconnection from, other providers of public electronic communications networks or publicly available electronic communications services covered by a general authorisation in the Union in accordance with this Directive;
 - b be given an opportunity to be designated to provide different elements of the universal service or to cover different parts of the national territory in accordance with Article 86 or 87.

Article 16

Administrative charges

- 1 Any administrative charges imposed on undertakings providing electronic communications networks or services under the general authorisation or to which a right of use has been granted shall:
 - a cover, in total, only the administrative costs incurred in the management, control and enforcement of the general authorisation system and of the rights of use and of specific obligations as referred to in Article 13(2), which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection; and
 - b be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and associated charges.

Member States may choose not to apply administrative charges to undertakings the turnover of which is below a certain threshold or the activities of which do not reach a minimum market share or have a very limited territorial scope.

- 2 Where national regulatory or other competent authorities impose administrative charges, they shall publish an annual overview of their administrative costs and of the total sum

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

of the charges collected. Where there is a difference between the total sum of the charges and the administrative costs, appropriate adjustments shall be made.

Article 17

Accounting separation and financial reports

1 Member States shall require undertakings providing public electronic communications networks or publicly available electronic communications services which have special or exclusive rights for the provision of services in other sectors in the same or another Member State to:

- a keep separate accounts for the activities associated with the provision of electronic communications networks or services, to the extent that would be required if those activities were carried out by legally independent entities, in order to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to such activities, including an itemised breakdown of fixed assets and structural costs; or
- b have structural separation for the activities associated with the provision of electronic communications networks or services.

Member States may choose not to apply the requirements referred to in the first subparagraph to undertakings which have an annual turnover of less than EUR 50 million in activities associated with electronic communications networks or services in the Union.

2 Where undertakings providing public electronic communications networks or publicly available electronic communications services are not subject to the requirements of company law and do not satisfy the small and medium-sized enterprise criteria of Union law accounting rules, their financial reports shall be drawn up and submitted to independent audit and published. The audit shall be carried out in accordance with the relevant Union and national rules.

The first subparagraph of this paragraph shall also apply to the separate accounts required under point (a) of the first subparagraph of paragraph 1.

Section 3

Amendment and withdrawal

Article 18

Amendment of rights and obligations

1 Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use for radio spectrum or for numbering resources or rights to install facilities may be amended only in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio spectrum or for numbering resources.

2 Except where proposed amendments are minor and have been agreed with the holder of the rights or of the general authorisation, notice shall be given in an appropriate manner of the intention to make such amendments. Interested parties, including users and consumers, shall

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

be allowed a sufficient period of time to express their views on the proposed amendments. That period shall be no less than four weeks except in exceptional circumstances.

Amendments shall be published, together with the reasons therefor.

Article 19

Restriction or withdrawal of rights

1 Without prejudice to Article 30(5) and (6), Member States shall not restrict or withdraw rights to install facilities or rights of use for radio spectrum or for numbering resources before the expiry of the period for which they were granted, except where justified pursuant to paragraph 2 of this Article, and, where applicable, in accordance with Annex I, and to relevant national provisions regarding compensation for the withdrawal of rights.

2 In line with the need to ensure the effective and efficient use of radio spectrum, or the implementation of the technical implementing measures adopted under Article 4 of Decision No 676/2002/EC, Member States may allow the restriction or withdrawal of rights of use for radio spectrum, including the rights referred to in Article 49 of this Directive, based on pre-established and clearly defined procedures, in accordance with the principles of proportionality and non-discrimination. In such cases, the holders of the rights may, where appropriate and in accordance with Union law and relevant national provisions, be compensated appropriately.

3 A modification in the use of radio spectrum as a result of the application of Article 45(4) or (5) shall not alone constitute grounds to justify the withdrawal of a right of use for radio spectrum.

4 Any intention to restrict or withdraw rights under the general authorisation or individual rights of use for radio spectrum or for numbering resources without the consent of the holder of the rights shall be subject to consultation of the interested parties in accordance with Article 23.

CHAPTER III

Provision of information, surveys and consultation mechanism

Article 20

Information request to undertakings

1 Member States shall ensure that undertakings providing electronic communications networks and services, associated facilities, or associated services, provide all the information, including financial information, necessary for national regulatory authorities, other competent authorities and BEREC to ensure conformity with the provisions of, or decisions or opinions adopted in accordance with, this Directive and Regulation (EU) 2018/1971 of the European Parliament and of the Council⁽²⁾. In particular, national regulatory authorities and, where necessary for performing their tasks, other competent authorities shall have the power to require those undertakings to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors, as well as information on electronic communications networks and associated facilities, which is disaggregated at local level and sufficiently detailed to enable the geographical survey and designation of areas in accordance with Article 22.

Where the information collected in accordance with the first subparagraph is insufficient for national regulatory authorities, other competent authorities and BEREC to carry out their regulatory tasks under Union law, such information may be inquired from other relevant undertakings active in the electronic communications or closely related sectors.

Undertakings designated as having significant market power on wholesale markets may also be required to submit accounting data on the retail markets that are associated with those wholesale markets.

National regulatory and other competent authorities may request information from the single information points established pursuant to Directive 2014/61/EU.

Any request for information shall be proportionate to the performance of the task and shall be reasoned.

Undertakings shall provide the information requested promptly and in accordance with the timescales and level of detail required.

2 Member States shall ensure that national regulatory and other competent authorities provide the Commission, after a reasoned request, with the information necessary for it to carry out its tasks under the TFEU. The information requested by the Commission shall be proportionate to the performance of those tasks. Where the information provided refers to information previously provided by undertakings at the request of the authority, such undertakings shall be informed thereof. To the extent necessary, and unless the authority that provides the information has made an explicit and reasoned request to the contrary, the Commission shall make the information provided available to another such authority in another Member State.

Subject to the requirements of paragraph 3, Member States shall ensure that the information submitted to one authority can be made available to another such authority in the same or different Member State and to BEREC, after a substantiated request, where necessary to allow either authority, or BEREC, to fulfil its responsibilities under Union law.

3 Where information gathered pursuant to paragraph 1, including information gathered in the context of a geographical survey, is considered to be confidential by a national regulatory or other competent authority in accordance with Union and national rules on commercial confidentiality, the Commission, BEREC and any other competent authorities concerned shall ensure such confidentiality. Such confidentiality shall not prevent the sharing of information between the competent authority, the Commission, BEREC and any other competent authorities concerned in a timely manner for the purposes of reviewing, monitoring and supervising the application of this Directive.

4 Member States shall ensure that, acting in accordance with national rules on public access to information and subject to Union and national rules on commercial confidentiality and protection of personal data, national regulatory and other competent authorities publish information that contributes to an open and competitive market.

5 National regulatory and other competent authorities shall publish the terms of public access to information as referred to in paragraph 4, including the procedures for obtaining such access.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Article 21

Information required with regard to the general authorisation, rights of use and specific obligations

1 Without prejudice to any information requested pursuant to Article 20 and information and reporting obligations under national law other than the general authorisation, national regulatory and other competent authorities may require undertakings to provide information with regard to the general authorisation, the rights of use or the specific obligations referred to in Article 13(2), which is proportionate and objectively justified in particular for the purposes of:

- a verifying, on a systematic or case-by-case basis, compliance with condition 1 of Part A, conditions 2 and 6 of Part D, and conditions 2 and 7 of Part E, of Annex I and of compliance with obligations as referred to in Article 13(2);
- b verifying, on a case-by-case basis, compliance with conditions as set out in Annex I where a complaint has been received or where the competent authority has other reasons to believe that a condition is not complied with or in the case of an investigation by the competent authority on its own initiative;
- c carrying out procedures for and the assessment of requests for granting rights of use;
- d publishing comparative overviews of quality and price of services for the benefit of consumers;
- e collating clearly defined statistics, reports or studies;
- f carrying out market analyses for the purposes of this Directive, including data on the downstream or retail markets associated with or related to the markets which are the subject of the market analysis;
- g safeguarding the efficient use and ensuring the effective management of radio spectrum and of numbering resources;
- h evaluating future network or service developments that could have an impact on wholesale services made available to competitors, on territorial coverage, on connectivity available to end-users or on the designation of areas pursuant to Article 22;
- i conducting geographical surveys;
- j responding to reasoned requests for information by BEREC.

The information referred to in points (a) and (b), and (d) to (j) of the first subparagraph shall not be required prior to, or as a condition for, market access.

BEREC may develop templates for information requests, where necessary, to facilitate consolidated presentation and analysis of the information obtained.

2 As regards the rights of use for radio spectrum, the information referred to in paragraph 1 shall refer in particular to the effective and efficient use of radio spectrum as well as to compliance with any coverage and quality of service obligations attached to the rights of use for radio spectrum and their verification.

3 Where national regulatory or other competent authorities require undertakings to provide information as referred to in paragraph 1, they shall inform them of the specific purpose for which this information is to be used.

4 National regulatory or other competent authorities shall not duplicate requests of information already made by BEREC pursuant to Article 40 of Regulation (EU) 2018/1971 where BEREC has made the information received available to those authorities.

Article 22

Geographical surveys of network deployments

1 National regulatory and/or other competent authorities shall conduct a geographical survey of the reach of electronic communications networks capable of delivering broadband ('broadband networks') by 21 December 2023 and shall update it at least every three years thereafter.

The geographical survey shall include a survey of the current geographic reach of broadband networks within their territory, as required for the tasks of national regulatory and/or other competent authorities under this Directive and for the surveys required for the application of State aid rules.

The geographical survey may also include a forecast for a period determined by the relevant authority of the reach of broadband networks, including very high capacity networks, within their territory.

Such forecast shall include all relevant information, including information on planned deployments by any undertaking or public authority, of very high capacity networks and significant upgrades or extensions of networks to at least 100 Mbps download speeds. For this purpose, national regulatory and/or other competent authorities shall request undertakings and public authorities to provide such information to the extent that it is available and can be provided with reasonable effort.

The national regulatory authority shall decide, with respect to tasks specifically attributed to it under this Directive, the extent to which it is appropriate to rely on all or part of the information gathered in the context of such forecast.

Where a geographical survey is not conducted by the national regulatory authority, it shall be done in cooperation with that authority to the extent it may be relevant for its tasks.

The information collected in the geographical survey shall be at an appropriate level of local detail and shall include sufficient information on the quality of service and parameters thereof and shall be treated in accordance with Article 20(3).

2 National regulatory and/or other competent authorities may designate an area with clear territorial boundaries where, on the basis of the information gathered and any forecast prepared pursuant to paragraph 1, it is determined that, for the duration of the relevant forecast period, no undertaking or public authority has deployed or is planning to deploy a very high capacity network or significantly upgrade or extend its network to a performance of at least 100 Mbps download speeds. National regulatory and/or other competent authorities shall publish the designated areas.

3 Within a designated area, the relevant authorities may invite undertakings and public authorities to declare their intention to deploy very high capacity networks over the duration of the relevant forecast period. Where this invitation results in a declaration by an undertaking or public authority of its intention to do so, the relevant authority may require other undertakings and public authorities to declare any intention to deploy very high capacity networks, or significantly upgrade or extend its network to a performance of at least 100 Mbps download speeds in this area. The relevant authority shall specify the information to be included in such submissions, in order to ensure at least a similar level of detail as that taken into consideration in any forecast pursuant to paragraph 1. It shall also inform any undertaking or public authority

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

expressing its interest whether the designated area is covered or likely to be covered by a next-generation access network offering download speeds below 100 Mbps on the basis of the information gathered pursuant to paragraph 1.

4 Measures pursuant to paragraph 3 shall be taken in accordance with an efficient, objective, transparent and non-discriminatory procedure, whereby no undertaking is excluded a priori.

5 Member States shall ensure that national regulatory and other competent authorities, and local, regional and national authorities with responsibility for the allocation of public funds for the deployment of electronic communications networks, for the design of national broadband plans, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligations in their territory take into account the results of the geographical survey and of any designated areas pursuant to paragraphs 1, 2 and 3.

Member States shall ensure that the authorities conducting the geographical survey shall supply those results subject to the receiving authority ensuring the same level of confidentiality and protection of business secrets as the originating authority and inform the parties which provided the information. Those results shall also be made available to BEREC and the Commission upon their request and under the same conditions.

6 If the relevant information is not available on the market, competent authorities shall make data from the geographical surveys which are not subject to commercial confidentiality directly accessible in accordance with Directive 2003/98/EC to allow for its reuse. They shall also, where such tools are not available on the market, make available information tools enabling end-users to determine the availability of connectivity in different areas, with a level of detail which is useful to support their choice of operator or service provider.

7 By 21 June 2020, in order to contribute to the consistent application of geographical surveys and forecasts, BEREC shall, after consulting stakeholders and in close cooperation with the Commission and relevant national authorities, issue guidelines to assist national regulatory and/or other competent authorities on the consistent implementation of their obligations under this Article.

Article 23

Consultation and transparency mechanism

1 Except in cases falling within Article 26 or 27 or Article 32(10), Member States shall ensure that, where national regulatory or other competent authorities intend to take measures in accordance with this Directive, or where they intend to provide for restrictions in accordance with Article 45(4) and (5), which have a significant impact on the relevant market, they give interested parties the opportunity to comment on the draft measure within a reasonable period, having regard to the complexity of the matter and, except in exceptional circumstances, in any event not shorter than 30 days.

2 For the purposes of Article 35, the competent authorities shall inform the RSPG at the moment of publication about any draft measure which falls within the scope of the comparative or competitive selection procedure pursuant to Article 55(2) and relates to the use of radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable its use for wireless broadband electronic communications networks and services ('wireless broadband networks and services').

3 National regulatory and other competent authorities shall publish their national consultation procedures.

Member States shall ensure the establishment of a single information point through which all current consultations can be accessed.

4 The results of the consultation procedure shall be made publicly available, except in the case of confidential information in accordance with Union and national rules on commercial confidentiality.

Article 24

Consultation of interested parties

1 Member States shall ensure, as appropriate, that competent authorities in coordination, where relevant, with national regulatory authorities take account of the views of end-users, in particular consumers, and end-users with disabilities, manufacturers and undertakings that provide electronic communications networks or services on issues related to all end-user and consumer rights, including equivalent access and choice for end-users with disabilities, concerning publicly available electronic communications services, in particular where they have a significant impact on the market.

Member States shall ensure that competent authorities in coordination, where relevant, with national regulatory authorities establish a consultation mechanism, accessible for end-users with disabilities, ensuring that in their decisions on issues related to end-user and consumer rights concerning publicly available electronic communications services, due consideration is given to consumer interests in electronic communications.

2 Interested parties may develop, with the guidance of competent authorities in coordination, where relevant, with national regulatory authorities, mechanisms, involving consumers, user groups and service providers, to improve the general quality of service provision by, inter alia, developing and monitoring codes of conduct and operating standards.

3 Without prejudice to national rules in accordance with Union law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, competent authorities in coordination, where relevant, with national regulatory authorities may promote cooperation between undertakings providing electronic communications networks or services and sectors interested in the promotion of lawful content in electronic communications networks and services. That cooperation may also include coordination of the public-interest information to be provided pursuant to Article 103(4).

Article 25

Out-of-court dispute resolution

1 Member States shall ensure that the national regulatory authority or another competent authority responsible for, or at least one independent body with proven expertise in, the application of Articles 102 to 107 and Article 115 of this Directive is listed as an alternative dispute resolution entity in accordance with Article 20(2) of Directive 2013/11/EU with a view to resolving disputes between providers and consumers arising under this Directive and relating to the performance of contracts. Member States may extend access to alternative dispute resolution procedures provided by that authority or body to end-users other than consumers, in particular microenterprises and small enterprises.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

2 Without prejudice to Directive 2013/11/EU, where such disputes involve parties in different Member States, Member States shall coordinate their efforts with a view to bringing about a resolution of the dispute.

Article 26

Dispute resolution between undertakings

1 In the event of a dispute arising in connection with existing obligations under this Directive between providers of electronic communications networks or services in a Member State, or between such undertakings and other undertakings in the Member State benefiting from obligations of access or interconnection or between providers of electronic communications networks or services in a Member State and providers of associated facilities, the national regulatory authority concerned shall, at the request of either party, and without prejudice to paragraph 2, issue a binding decision to resolve the dispute in the shortest possible time-frame on the basis of clear and efficient procedures, and in any case within four months except in exceptional circumstances. The Member State concerned shall require that all parties cooperate fully with the national regulatory authority.

2 Member States may make provision for national regulatory authorities to decline to resolve a dispute where other mechanisms, including mediation, exist that would better contribute to resolution of the dispute in a timely manner in accordance with the objectives set out in Article 3. The national regulatory authority shall inform the parties thereof without delay. If, after four months, the dispute is not resolved, and if the dispute has not been brought before the courts by the party seeking redress, the national regulatory authority shall issue, at the request of either party, a binding decision to resolve the dispute in the shortest possible time-frame and in any case within four months.

3 In resolving a dispute, the national regulatory authority shall take decisions aimed at achieving the objectives set out in Article 3. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall comply with this Directive.

4 The decision of the national regulatory authority shall be made available to the public, having regard to the requirements of commercial confidentiality. The national regulatory authority shall provide the parties concerned with a full statement of the reasons on which the decision is based.

5 The procedure referred to in paragraphs 1, 3 and 4 shall not preclude either party from bringing an action before the courts.

Article 27

Resolution of cross-border disputes

1 In the event of a dispute arising under this Directive between undertakings in different Member States, paragraphs 2, 3 and 4 of this Article shall apply. Those provisions shall not apply to disputes relating to radio spectrum coordination covered by Article 28.

2 Any party may refer the dispute to the national regulatory authority or authorities concerned. Where the dispute affects trade between Member States, the competent national regulatory authority or authorities shall notify the dispute to BEREC in order to bring about a consistent resolution of the dispute, in accordance with the objectives set out in Article 3.

3 Where such a notification has been made, BEREC shall issue an opinion inviting the national regulatory authority or authorities concerned to take specific action in order to resolve the dispute or to refrain from action, in the shortest possible time-frame, and in any case within four months except in exceptional circumstances.

4 The national regulatory authority or authorities concerned shall await BEREC's opinion before taking any action to resolve the dispute. In exceptional circumstances, where there is an urgent need to act, in order to safeguard competition or protect the interests of end-users, any of the competent national regulatory authorities may, either at the request of the parties or on its own initiative, adopt interim measures.

5 Any obligations imposed on an undertaking by the national regulatory authority as part of the resolution of the dispute shall comply with this Directive, take the utmost account of the opinion adopted by BEREC, and be adopted within one month of such opinion.

6 The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.

Article 28

Radio Spectrum Coordination among Member States

1 Member States and their competent authorities shall ensure that the use of radio spectrum is organised on their territory in a way that no other Member State is prevented from allowing on its territory the use of harmonised radio spectrum in accordance with Union law, especially due to cross-border harmful interference between Member States.

Member States shall take all necessary measures to this effect without prejudice to their obligations under international law and relevant international agreements such as the ITU Radio Regulations and the ITU Radio Regional Agreements.

2 Member States shall cooperate with each other, and, where appropriate, through the RSPG, in the cross-border coordination of the use of radio spectrum in order to:

- a ensure compliance with paragraph 1;
- b resolve any problem or dispute in relation to cross-border coordination or cross-border harmful interference between Member States, as well as with third countries, which prevent Member States from using the harmonised radio spectrum in their territory.

3 In order to ensure compliance with paragraph 1, any affected Member State may request the RSPG to use its good offices to address any problem or dispute in relation to cross-border coordination or cross-border harmful interference. Where appropriate, the RSPG may issue an opinion proposing a coordinated solution regarding such a problem or dispute.

4 Where the actions referred to in paragraph 2 or 3 have not resolved the problem or dispute, and at the request of any affected Member State, the Commission may, taking utmost account of any opinion of the RSPG recommending a coordinated solution pursuant to paragraph 3, adopt decisions addressed to the Member States concerned by the unresolved harmful interference issue by means of implementing acts to resolve cross-border harmful interference between two or more Member States which prevent them from using the harmonised radio spectrum in their territory.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 118(4).

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

5 The Union shall, upon the request of any affected Member State, provide legal, political and technical support to resolve radio spectrum coordination issues with countries neighbouring the Union, including candidate and acceding countries, in such a way that the Member States concerned can observe their obligations under Union law. In the provision of such assistance, the Union shall promote the implementation of Union policies.

TITLE III

IMPLEMENTATION

Article 29

Penalties

1 Member States shall lay down rules on penalties, including, where necessary, fines and non-criminal predetermined or periodic penalties, applicable to infringements of national provisions adopted pursuant to this Directive or of any binding decision adopted by the Commission, the national regulatory or other competent authority pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. Within the limits of national law, national regulatory and other competent authorities shall have the power to impose such penalties. The penalties provided for shall be appropriate, effective, proportionate and dissuasive.

2 Member States shall provide for penalties in the context of the procedure referred to in Article 22(3) only where an undertaking or public authority knowingly or grossly negligently provides misleading, erroneous or incomplete information.

When determining the amount of fines or periodic penalties imposed on an undertaking or public authority for knowingly or grossly negligently providing misleading, erroneous or incomplete information in the context of the procedure referred to in Article 22(3), regard shall be had, *inter alia*, to whether the behaviour of the undertaking or public authority has had a negative impact on competition and, in particular, whether, contrary to the information originally provided or any update thereof, the undertaking or public authority either has deployed, extended or upgraded a network, or has not deployed a network and has failed to provide an objective justification for that change of plan.

Article 30

Compliance with the conditions of the general authorisation or of rights of use for radio spectrum and for numbering resources and compliance with specific obligations

1 Member States shall ensure that their relevant competent authorities monitor and supervise compliance with the conditions of the general authorisation or of rights of use for radio spectrum and for numbering resources, with the specific obligations referred to in Article 13(2) and with the obligation to use radio spectrum effectively and efficiently in accordance with Article 4, Article 45(1) and Article 47.

Competent authorities shall have the power to require undertakings subject to the general authorisation or benefitting from rights of use for radio spectrum or for numbering resources to provide all information necessary to verify compliance with the conditions of the general authorisation or of rights of use for radio spectrum and

for numbering resources or with the specific obligations referred to in Article 13(2) or Article 47, in accordance with Article 21.

2 Where a competent authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation or of rights of use for radio spectrum and for numbering resources, or with the specific obligations referred to in Article 13(2), it shall notify the undertaking of those findings and give the undertaking the opportunity to state its views, within a reasonable time limit.

3 The competent authority shall have the power to require the cessation of the breach referred to in paragraph 2 either immediately or within a reasonable time limit and shall take appropriate and proportionate measures aimed at ensuring compliance.

In this regard, Member States shall empower the competent authorities to impose:

- a where appropriate, dissuasive financial penalties which may include periodic penalties with retroactive effect; and
- b orders to cease or delay provision of a service or bundle of services which, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with Article 67.

The competent authorities shall communicate the measures and the reasons on which they are based to the undertaking concerned without delay and shall stipulate a reasonable period for the undertaking to comply with the measures.

4 Notwithstanding paragraphs 2 and 3 of this Article, Member States shall empower the competent authority to impose, where appropriate, financial penalties on undertakings for failure to provide information, in accordance with the obligations imposed under point (a) or (b) of the first subparagraph of Article 21(1) and Article 69, within a reasonable period set by the competent authority.

5 In the case of a serious breach or repeated breaches of the conditions of the general authorisation or of the rights of use for radio spectrum and for numbering resources, or of the specific obligations referred to in Article 13(2) or Article 47(1) or (2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, Member States shall empower competent authorities to prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw those rights of use. Member States shall empower the competent authority to impose penalties which are effective, proportionate and dissuasive. Such penalties may be applied to cover the period of any breach, even if the breach has subsequently been rectified.

6 Notwithstanding paragraphs 2, 3 and 5 of this Article, the competent authority may take urgent interim measures to remedy the situation in advance of reaching a final decision, where it has evidence of a breach of the conditions of the general authorisation, of the rights of use for radio spectrum and for numbering resources, or of the specific obligations referred to in Article 13(2) or Article 47(1) or (2) which represents an immediate and serious threat to public safety, public security or public health or risks creating serious economic or operational problems for other providers or users of electronic communications networks or services or other users of the radio spectrum. The competent authority shall give the undertaking concerned a reasonable opportunity to state its views and propose any remedies. Where appropriate, the competent authority may confirm the interim measures, which shall be valid for a maximum of three months, but which may, in circumstances where enforcement procedures have not been completed, be extended for a further period of up to three months.

7 Undertakings shall have the right to appeal against measures taken under this Article in accordance with the procedure referred to in Article 31.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Article 31

Right of appeal

1 Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks or services or associated facilities who is affected by a decision of a competent authority has the right of appeal against that decision to an appeal body that is independent of the parties involved and of any external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. This body, which may be a court, shall have the appropriate expertise to enable it to carry out its functions effectively. Member States shall ensure that the merits of the case are duly taken into account.

Pending the outcome of the appeal, the decision of the competent authority shall stand, unless interim measures are granted in accordance with national law.

2 Where the appeal body referred to in paragraph 1 of this Article is not judicial in character, it shall always give written reasons for its decision. Furthermore, in such a case, its decision shall be subject to review by a court or a tribunal within the meaning of Article 267 TFEU.

Member States shall ensure that the appeal mechanism is effective.

3 Member States shall collect information on the general subject matter of appeals, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures. Member States shall provide such information, as well as the decisions or judgments, to the Commission and to BEREC upon their reasoned request.

TITLE IV

INTERNAL MARKET PROCEDURES

CHAPTER I

Article 32

Consolidating the internal market for electronic communications

1 In carrying out their tasks under this Directive, national regulatory authorities shall take the utmost account of the objectives set out in Article 3.

2 National regulatory authorities shall contribute to the development of the internal market by working with each other and with the Commission and BEREC, in a transparent manner, in order to ensure the consistent application, in all Member States, of this Directive. To this end, they shall, in particular, work with the Commission and BEREC to identify the types of instruments and remedies best suited to address particular types of situations in the market.

3 Except where otherwise provided in recommendations or guidelines adopted pursuant to Article 34 upon completion of the public consultation, if required under Article 23, where a national regulatory authority intends to take a measure which:

- a falls within the scope of Article 61, 64, 67, 68 or 83; and

b would affect trade between Member States, it shall publish the draft measure and communicate it to the Commission, to BEREC, and to the national regulatory authorities in other Member States, at the same time, stating the reasons for the measure, in accordance with Article 20(3). National regulatory authorities, BEREC and the Commission may comment on that draft measure within one month. The one-month period shall not be extended.

4 The draft measure referred to in paragraph 3 of this Article shall not be adopted for a further two months, where that measure aims to:

a define a relevant market which is different from those defined in the recommendation referred to in Article 64(1); or

[^Xb decide whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 67(3) or (4);]

and it would affect trade between Member States, and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the internal market or if it has serious doubts as to its compatibility with Union law and in particular the objectives referred to in Article 3. That two-month period shall not be extended. The Commission shall inform BEREC and national regulatory authorities of its reservations in such a case and simultaneously make them public.

5 BEREC shall publish an opinion on the Commission's reservations referred to in paragraph 4, indicating whether it considers that the draft measure should be maintained, amended or withdrawn and shall, where appropriate, provide specific proposals to that end.

6 Within the two-month period referred to in paragraph 4, the Commission may either:

a take a decision requiring the national regulatory authority concerned to withdraw the draft measure; or

b take a decision to lift its reservations referred to in paragraph 4.

The Commission shall take utmost account of the opinion of BEREC before taking a decision.

Decisions referred to in point (a) of the first subparagraph shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure is not to be adopted, together with specific proposals for amending it.

7 Where the Commission has adopted a decision in accordance with point (a) of the first subparagraph of paragraph 6 of this Article requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure within six months of the date of the Commission's decision. Where the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with Article 23, and shall notify the amended draft measure to the Commission in accordance with paragraph 3 of this Article.

8 The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, of BEREC and of the Commission and may, except in the cases covered by paragraph 4 and point (a) of paragraph 6, adopt the resulting draft measure and shall, where it does so, communicate it to the Commission.

9 The national regulatory authority shall communicate to the Commission and to BEREC all adopted final measures which fall under points (a) and (b) of paragraph 3.

10 In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, in order to safeguard competition and protect the interests of users, by way of derogation from the procedure set out in paragraphs 3 and 4, it may immediately adopt

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

proportionate and provisional measures. It shall, without delay, communicate those measures, with full reasons, to the Commission, to the other national regulatory authorities, and to BEREC. A decision of the national regulatory authority to render such measures permanent or extend the period for which they are applicable shall be subject to paragraphs 3 and 4.

11 A national regulatory authority may withdraw a draft measure at any time.

Editorial Information

X1 Substituted by [Corrigendum to Directive \(EU\) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code \(Official Journal of the European Union L 321 of 17 December 2018\)](#).

Article 33

Procedure for the consistent application of remedies

1 Where an intended measure covered by Article 32(3) aims to impose, amend or withdraw an obligation on an undertaking in application of Article 61 or 67 in conjunction with Articles 69 to 76 and Article 83, the Commission may, within the one-month period referred to in Article 32(3), notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the internal market or of its serious doubts as to its compatibility with Union law. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.

In the absence of such notification, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission, BEREC or any other national regulatory authority.

2 Within the three-month period referred to in paragraph 1 of this Article, the Commission, BEREC and the national regulatory authority concerned shall cooperate closely to identify the most appropriate and effective measure in light of the objectives laid down in Article 3, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

3 Within six weeks from the beginning of the three-month period referred to in paragraph 1, BEREC shall issue an opinion on the Commission's notification referred to in paragraph 1, indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, provide specific proposals to that end. That opinion shall provide reasons and be made public.

4 If in its opinion, BEREC shares the serious doubts of the Commission, it shall cooperate closely with the national regulatory authority concerned to identify the most appropriate and effective measure. Before the end of the three-month period referred to in paragraph 1, the national regulatory authority may either:

- a amend or withdraw its draft measure taking utmost account of the Commission's notification referred to in paragraph 1 and of BEREC's opinion; or
- b maintain its draft measure.

5 The Commission may, within one month following the end of the three-month period referred to in paragraph 1 and taking utmost account of the opinion of BEREC, if any:

- a issue a recommendation requiring the national regulatory authority concerned to amend or withdraw the draft measure, including specific proposals to that end and

providing reasons for its recommendation, in particular where BEREC does not share the Commission's serious doubts;

- b take a decision to lift its reservations indicated in accordance with paragraph 1; or
- c for draft measures falling under the second subparagraph of Article 61(3) or under Article 76(2), take a decision requiring the national regulatory authority concerned to withdraw the draft measure, where BEREC shares the serious doubts of the Commission, accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted, together with specific proposals for amending the draft measure, subject to the procedure referred to in Article 32(7), which shall apply *mutatis mutandis*.

6 Within one month of the Commission issuing the recommendation in accordance with point (a) of paragraph 5 or lifting its reservations in accordance with point (b) of paragraph 5, the national regulatory authority concerned shall communicate to the Commission and to BEREC the adopted final measure.

That period may be extended to allow the national regulatory authority to undertake a public consultation in accordance with Article 23.

7 Where the national regulatory authority decides not to amend or withdraw the draft measure on the basis of the recommendation issued under point (a) of paragraph 5, it shall provide reasons.

8 The national regulatory authority may withdraw the proposed draft measure at any stage of the procedure.

Article 34

Implementing provisions

After public consultation and after consulting the national regulatory authorities and taking utmost account of the opinion of BEREC, the Commission may adopt recommendations or guidelines in relation to Article 32 that lay down the form, content and level of detail to be given in the notifications required in accordance with Article 32(3), the circumstances in which notifications would not be required, and the calculation of the time-limits.

CHAPTER II

Consistent radio spectrum assignment

Article 35

Peer review process

1 Where the national regulatory or other competent authority intends to undertake a selection procedure in accordance with Article 55(2) in relation to radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable its use for wireless broadband networks and services, it shall, pursuant to Article 23, inform the RSPG about any draft measure which falls within the scope of the comparative or competitive selection procedure pursuant to Article 55(2) and indicate whether and when it is to request the RSPG to convene a Peer Review Forum.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

When requested to do so, the RSPG shall organise a Peer Review Forum in order to discuss and exchange views on the draft measures transmitted and shall facilitate the exchange of experiences and best practices on those draft measures.

The Peer Review Forum shall be composed of the members of the RSPG and organised and chaired by a representative of the RSPG.

2 At the latest during the public consultation conducted pursuant to Article 23, the RSPG may exceptionally take the initiative to convene a Peer Review Forum in accordance with the rules of procedure for organising it in order to exchange experiences and best practices on a draft measure relating to a selection procedure where it considers that the draft measure would significantly prejudice the ability of the national regulatory or other competent authority to achieve the objectives set in Articles 3, 45, 46 and 47.

3 The RSPG shall define in advance and make public the objective criteria for the exceptional convening of the Peer Review Forum.

4 During the Peer Review Forum, the national regulatory authority or other competent authority shall provide an explanation on how the draft measure:

- a promotes the development of the internal market, the cross-border provision of services, as well as competition, and maximises the benefits for the consumer, and overall achieves the objectives set in Articles 3, 45, 46 and 47 of this Directive, as well as in Decisions No 676/2002/EC and No 243/2012/EU;
- b ensures effective and efficient use of radio spectrum; and
- c ensures stable and predictable investment conditions for existing and prospective radio spectrum users when deploying networks for the provision of electronic communications services which rely on radio spectrum.

5 The Peer Review Forum shall be open to voluntary participation by experts from other competent authorities and from BEREC.

6 The Peer Review Forum shall be convened only once during the overall national preparation and consultation process of a single selection procedure concerning one or several radio spectrum bands, unless the national regulatory or other competent authority requests that it is reconvened.

7 At the request of the national regulatory or other competent authority that requested the meeting, the RSPG may adopt a report on how the draft measure achieves the objectives provided in paragraph 4, reflecting the views exchanged in the Peer Review Forum.

8 The RSPG shall publish in February each year a report concerning the draft measures discussed pursuant to paragraphs 1 and 2. The report shall indicate experiences and best practices noted.

9 Following the Peer Review Forum, at the request of the national regulatory or other competent authority that requested the meeting, the RSPG may adopt an opinion on the draft measure.

Article 36

Harmonised assignment of radio spectrum

Where the use of radio spectrum has been harmonised, access conditions and procedures have been agreed, and undertakings to which the radio spectrum shall be assigned have been selected in accordance with international agreements and Union rules,

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Member States shall grant the right of use for such radio spectrum in accordance therewith. Provided that all national conditions attached to the right to use the radio spectrum concerned have been satisfied in the case of a common selection procedure, Member States shall not impose any further conditions, additional criteria or procedures which would restrict, alter or delay the correct implementation of the common assignment of such radio spectrum.

Article 37

Joint authorisation process to grant individual rights of use for radio spectrum

Two or several Member States may cooperate with each other and with the RSPG, taking into account any interest expressed by market participants, by jointly establishing the common aspects of an authorisation process and, where appropriate, also jointly conducting the selection process to grant individual rights of use for radio spectrum.

When designing the joint authorisation process, Member States may take into consideration the following criteria:

- (a) the individual national authorisation processes shall be initiated and implemented by the competent authorities in accordance with a jointly agreed schedule;
- (b) it shall provide, where appropriate, for common conditions and procedures for the selection and granting of individual rights of use for radio spectrum among the Member States concerned;
- (c) it shall provide, where appropriate, for common or comparable conditions to be attached to the individual rights of use for radio spectrum among the Member States concerned, inter alia allowing users to be assigned similar radio spectrum blocks;
- (d) it shall be open at any time to other Member States until the joint authorisation process has been conducted.

Where, in spite of the interest expressed by market participants, Member States do not act jointly, they shall inform those market participants of the reasons explaining their decision.

CHAPTER III

Harmonisation procedures

Article 38

Harmonisation procedures

1 Where the Commission finds that divergences in the implementation by the national regulatory or other competent authorities of the regulatory tasks specified in this Directive could create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of BEREC or, where relevant, the RSPG, adopt recommendations or, subject to paragraph 3 of this Article, decisions by means of implementing acts to ensure the harmonised application of this Directive and in order to further the achievement of the objectives set out in Article 3.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

2 Member States shall ensure that national regulatory and other competent authorities take the utmost account of the recommendations referred to in paragraph 1 in carrying out their tasks. Where a national regulatory or other competent authority chooses not to follow a recommendation, it shall inform the Commission, giving the reasons for its position.

3 The decisions adopted pursuant to paragraph 1 shall include only the identification of a harmonised or coordinated approach for the purpose of addressing the following matters:

- a the inconsistent implementation of general regulatory approaches by national regulatory authorities on the regulation of electronic communications markets in the application of Articles 64 and 67, where it creates a barrier to the internal market; such decisions shall not refer to specific notifications issued by the national regulatory authorities pursuant to Article 32; in such a case, the Commission shall propose a draft decision only:
 - (i) after at least two years following the adoption of a Commission recommendation dealing with the same matter; and
 - (ii) taking utmost account of an opinion from BEREC on the case for adoption of such a decision, which shall be provided by BEREC within three months of the Commission's request;
- b numbering, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to emergency services through the single European emergency number '112'.

4 The implementing acts referred to in paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 118(4).

5 BEREC may, on its own initiative, advise the Commission on whether a measure should be adopted pursuant to paragraph 1.

6 If the Commission has not adopted a recommendation or a decision within one year from the date of adoption of an opinion by BEREC indicating the existence of divergences in the implementation by the national regulatory or other competent authorities of the regulatory tasks specified in this Directive that could create a barrier to the internal market, it shall inform the European Parliament and the Council of its reasons for not doing so, and make those reasons public.

Where the Commission has adopted a recommendation in accordance with paragraph 1, but the inconsistent implementation creating barriers to the internal market persists for two years thereafter, the Commission shall, subject to paragraph 3, adopt a decision by means of implementing acts in accordance with paragraph 4.

Where the Commission has not adopted a decision within a further year from any recommendation adopted pursuant to the second subparagraph, it shall inform the European Parliament and the Council of its reasons for not doing so, and make those reasons public.

Article 39

Standardisation

1 The Commission shall draw up and publish in the Official Journal of the European Union a list of non-compulsory standards or specifications to serve as a basis for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities and associated services. Where necessary, the Commission may, following consultation of the Committee established by Directive

(EU) 2015/1535, request that standards be drawn up by the European standardisation organisations (European Committee for Standardisation (CEN), European Committee for Electrotechnical Standardisation (Cenelec), and European Telecommunications Standards Institute (ETSI)).

2 Member States shall encourage the use of the standards or specifications referred to in paragraph 1 for the provision of services, technical interfaces or network functions, to the extent strictly necessary to ensure interoperability of services, end-to-end connectivity, facilitation of provider switching and portability of numbers and identifiers, and to improve freedom of choice for users.

In the absence of publication of standards or specifications in accordance with paragraph 1, Member States shall encourage the implementation of standards or specifications adopted by the European standardisation organisations.

In the absence of such standards or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (IEC).

Where international standards exist, Member States shall encourage the European standardisation organisations to use them, or the relevant parts of them, as a basis for the standards they develop, except where such international standards or relevant parts would be ineffective.

Any standards or specifications referred to in paragraph 1 or in this paragraph shall not prevent access as may be required under this Directive, where feasible.

3 If the standards or specifications referred to in paragraph 1 have not been adequately implemented so that interoperability of services in one or more Member States cannot be ensured, the implementation of such standards or specifications may be made compulsory under the procedure laid down in paragraph 4, to the extent strictly necessary to ensure such interoperability and to improve freedom of choice for users.

4 Where the Commission intends to make the implementation of certain standards or specifications compulsory, it shall publish a notice in the Official Journal of the European Union and invite public comment by all parties concerned. The Commission shall, by means of implementing acts, make implementation of the relevant standards compulsory by making reference to them as compulsory standards in the list of standards or specifications published in the Official Journal of the European Union.

5 Where the Commission considers that the standards or specifications referred to in paragraph 1 no longer contribute to the provision of harmonised electronic communications services, no longer meet consumers' needs or hamper technological development, it shall remove them from the list of standards or specifications referred to in paragraph 1.

6 Where the Commission considers that the standards or specifications referred to in paragraph 4 no longer contribute to the provision of harmonised electronic communications services, no longer meet consumers' needs, or hamper technological development, it shall, by means of implementing acts, remove those standards or specifications from the list of standards or specifications referred to in paragraph 1.

7 The implementing acts referred to in paragraphs 4 and 6 of this Article shall be adopted in accordance with the examination procedure referred to in Article 118(4).

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

8 This Article does not apply in respect of any of the essential requirements, interface specifications or harmonised standards to which Directive 2014/53/EU applies.

TITLE V

SECURITY

Article 40

Security of networks and services

1 Member States shall ensure that providers of public electronic communications networks or of publicly available electronic communications services take appropriate and proportionate technical and organisational measures to appropriately manage the risks posed to the security of networks and services. Having regard to the state of the art, those measures shall ensure a level of security appropriate to the risk presented. In particular, measures, including encryption where appropriate, shall be taken to prevent and minimise the impact of security incidents on users and on other networks and services.

The European Union Agency for Network and Information Security ('ENISA') shall facilitate, in accordance with Regulation (EU) No 526/2013 of the European Parliament and of the Council⁽³⁾, the coordination of Member States to avoid diverging national requirements that may create security risks and barriers to the internal market.

2 Member States shall ensure that providers of public electronic communications networks or of publicly available electronic communications services notify without undue delay the competent authority of a security incident that has had a significant impact on the operation of networks or services.

In order to determine the significance of the impact of a security incident, where available the following parameters shall, in particular, be taken into account:

- a the number of users affected by the security incident;
- b the duration of the security incident;
- c the geographical spread of the area affected by the security incident;
- d the extent to which the functioning of the network or service is affected;
- e the extent of impact on economic and societal activities.

Where appropriate, the competent authority concerned shall inform the competent authorities in other Member States and ENISA. The competent authority concerned may inform the public or require the providers to do so, where it determines that disclosure of the security incident is in the public interest.

Once a year, the competent authority concerned shall submit a summary report to the Commission and to ENISA on the notifications received and the action taken in accordance with this paragraph.

3 Member States shall ensure that in the case of a particular and significant threat of a security incident in public electronic communications networks or publicly available electronic communications services, providers of such networks or services shall inform their users potentially affected by such a threat of any possible protective measures or remedies which can be taken by the users. Where appropriate, providers shall also inform their users of the threat itself.

4 This Article is without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC.

5 The Commission, taking utmost account of ENISA's opinion, may adopt implementing acts detailing the technical and organisational measures referred to in paragraph 1, as well as the circumstances, format and procedures applicable to notification requirements pursuant to paragraph 2. They shall be based on European and international standards to the greatest extent possible, and shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraph 1.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 118(4).

Article 41

Implementation and enforcement

1 Member States shall ensure that, in order to implement Article 40, the competent authorities have the power to issue binding instructions, including those regarding the measures required to remedy a security incident or prevent one from occurring when a significant threat has been identified and time-limits for implementation, to providers of public electronic communications networks or publicly available electronic communications services.

2 Member States shall ensure that competent authorities have the power to require providers of public electronic communications networks or publicly available electronic communications services to:

- a provide information needed to assess the security of their networks and services, including documented security policies; and
- b submit to a security audit carried out by a qualified independent body or a competent authority and make the results thereof available to the competent authority; the cost of the audit shall be paid by the provider.

3 Member States shall ensure that the competent authorities have all the powers necessary to investigate cases of non-compliance and the effects thereof on the security of the networks and services.

4 Member States shall ensure that, in order to implement Article 40, the competent authorities have the power to obtain the assistance of a Computer Security Incident Response Team ('CSIRT') designated pursuant to Article 9 of Directive (EU) 2016/1148 in relation to issues falling within the tasks of the CSIRTs pursuant to point 2 of Annex I to that Directive.

5 The competent authorities shall, where appropriate and in accordance with national law, consult and cooperate with the relevant national law enforcement authorities, the competent authorities within the meaning of Article 8(1) of Directive (EU) 2016/1148 and the national data protection authorities.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (1) Commission Directive 2008/63/EC of 20 June 2008 on competition in the markets in telecommunications terminal equipment ([OJ L 162, 21.6.2008, p. 20](#)).
- (2) 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 (see page 1 of this Official Journal).
- (3) Regulation (EU) No 526/2013 of the European Parliament and of the Council of 21 May 2013 concerning the European Union Agency for Network and Information Security (ENISA) and repealing Regulation (EC) No 460/2004 ([OJ L 165, 18.6.2013, p. 41](#)).