

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 II

INSTITUTIONAL SET-UP AND GOVERNANCE

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

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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.

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).

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.

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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 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 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

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the holder of the rights shall be subject to consultation of the interested parties in accordance with Article 23.