

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 IV

INTERNAL MARKET PROCEDURES

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.

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;

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- 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).

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.