

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 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

[<sup>XI</sup>b 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

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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 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.

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#### **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*.

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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.

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

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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, 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.

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### *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.

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)).

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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.