

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 II

NETWORKS

TITLE I

MARKET ENTRY AND DEPLOYMENT

CHAPTER I

Fees

Article 42

Fees for rights of use for radio spectrum and rights to install facilities

1 Member States may allow the competent authority to impose fees for the rights of use for radio spectrum or rights to install facilities on, over or under public or private property that are used for the provision of electronic communications networks or services and associated facilities which ensure the optimal use of those resources. Member States shall ensure that such fees are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the general objectives of this Directive.

2 With respect to rights of use for radio spectrum, Member States shall seek to ensure that applicable fees are set at a level which ensures efficient assignment and use of radio spectrum, including by:

- a setting reserve prices as minimum fees for rights of use for radio spectrum by having regard to the value of those rights in their possible alternative uses;
- b taking into account costs entailed by conditions attached to those rights; and
- c applying, to the extent possible, payment arrangements linked to the actual availability for use of the radio spectrum.

CHAPTER II

Access to land

Article 43

Rights of way

1 Member States shall ensure that, when a competent authority considers an application for the granting of rights:

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- to install facilities on, over or under public or private property to an undertaking authorised to provide public electronic communications networks, or
- to install facilities on, over or under public property to an undertaking authorised to provide electronic communications networks other than to the public,

that competent authority:

- (a) acts on the basis of simple, efficient, transparent and publicly available procedures, applied without discrimination and without delay, and in any event makes its decision within six months of the application, except in the case of expropriation; and
- (b) follows the principles of transparency and non-discrimination in attaching conditions to any such rights.

The procedures referred to in points (a) and (b) may differ depending on whether the applicant is providing public electronic communications networks or not.

2 Member States shall ensure that, where public or local authorities retain ownership or control of undertakings providing public electronic communications networks or publicly available electronic communications services, there is an effective structural separation of the function responsible for granting the rights referred to in paragraph 1 from the activities associated with ownership or control.

Article 44

Co-location and sharing of network elements and associated facilities for providers of electronic communications networks

1 Where an operator has exercised the right under national law to install facilities on, over or under public or private property, or has taken advantage of a procedure for the expropriation or use of property, competent authorities may impose co-location and sharing of the network elements and associated facilities installed on that basis, in order to protect the environment, public health, public security or to meet town- and country-planning objectives.

Co-location or sharing of network elements and facilities installed and sharing of property may be imposed only after an appropriate period of public consultation, during which all interested parties shall be given an opportunity to express their views and only in the specific areas where such sharing is considered to be necessary with a view to pursuing the objectives provided in the first subparagraph. Competent authorities may impose the sharing of such facilities or property, including land, buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets or measures facilitating the coordination of public works. Where necessary, a Member State may designate a national regulatory or other competent authority for one or more of the following tasks:

- a coordinating the process provided for in this Article;
- b acting as a single information point;
- c setting down rules for apportioning the costs of facility or property sharing and of civil works coordination.

2 Measures taken by a competent authority in accordance with this Article shall be objective, transparent, non-discriminatory, and proportionate. Where relevant, these measures shall be carried out in coordination with the national regulatory authorities.

CHAPTER III

Access to radio spectrum

Section 1

Authorisations

Article 45

Management of radio spectrum

1 Taking due account of the fact that radio spectrum is a public good that has an important social, cultural and economic value, Member States shall ensure the effective management of radio spectrum for electronic communications networks and services in their territory in accordance with Articles 3 and 4. They shall ensure that the allocation of, the issuing of general authorisations in respect of, and the granting of individual rights of use for radio spectrum for electronic communications networks and services by competent authorities are based on objective, transparent, pro-competitive, non-discriminatory and proportionate criteria.

In applying this Article, Member States shall respect relevant international agreements, including the ITU Radio Regulations and other agreements adopted in the framework of the ITU applicable to radio spectrum, such as the agreement reached at the Regional Radiocommunications Conference of 2006, and may take public policy considerations into account.

2 Member States shall promote the harmonisation of use of radio spectrum by electronic communications networks and services across the Union, consistent with the need to ensure effective and efficient use thereof and in pursuit of benefits for the consumer such as competition, economies of scale and interoperability of networks and services. In so doing, they shall act in accordance with Article 4 of this Directive and with Decision No 676/2002/EC, *inter alia*, by:

- a pursuing wireless broadband coverage of their national territory and population at high quality and speed, as well as coverage of major national and European transport paths, including trans-European transport network as referred to in Regulation (EU) No 1315/2013 of the European Parliament and of the Council⁽¹⁾;
- b facilitating the rapid development in the Union of new wireless communications technologies and applications, including, where appropriate, in a cross-sectoral approach;
- c ensuring predictability and consistency in the granting, renewal, amendment, restriction and withdrawal of rights of use for radio spectrum in order to promote long-term investments;
- d ensuring the prevention of cross-border or national harmful interference in accordance with Articles 28 and 46 respectively, and taking appropriate pre-emptive and remedial measures to that end;
- e promoting the shared use of radio spectrum between similar or different uses of radio spectrum in accordance with competition law;
- f applying the most appropriate and least onerous authorisation system possible in accordance with Article 46 in such a way as to maximise flexibility, sharing and efficiency in the use of radio spectrum;

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- g applying rules for the granting, transfer, renewal, modification and withdrawal of rights of use for radio spectrum that are clearly and transparently laid down in order to guarantee regulatory certainty, consistency and predictability;
- h pursuing consistency and predictability throughout the Union regarding the way the use of radio spectrum is authorised in protecting public health taking into account Recommendation 1999/519/EC.

For the purpose of the first subparagraph, and in the context of the development of technical implementing measures for a radio spectrum band under Decision No 676/2002/EC, the Commission may request the RSPG to issue an opinion recommending the most appropriate authorisation regimes for the use of radio spectrum in that band or parts thereof. Where appropriate and taking utmost account of such opinion, the Commission may adopt a recommendation with a view to promoting a consistent approach in the Union with regard to the authorisation regimes for the use of that band.

Where the Commission is considering the adoption of measures in accordance with Article 39(1), (4), (5) and (6), it may request the opinion of the RSPG with regard to the implications of any such standard or specification for the coordination, harmonisation and availability of radio spectrum. The Commission shall take utmost account of the RSPG's opinion in taking any subsequent steps.

3 In the case of a national or regional lack of market demand for the use of a band in the harmonised radio spectrum, Member States may allow an alternative use of all or part of that band, including the existing use, in accordance with paragraphs 4 and 5 of this Article, provided that:

- a the finding of a lack of market demand for the use of such a band is based on a public consultation in accordance with Article 23, including a forward-looking assessment of market demand;
- b such alternative use does not prevent or hinder the availability or the use of such a band in other Member States; and
- c the Member State concerned takes due account of the long-term availability or use of such a band in the Union and the economies of scale for equipment resulting from using the harmonised radio spectrum in the Union.

Any decision to allow alternative use on an exceptional basis shall be subject to a regular review and shall in any event be reviewed promptly upon a duly justified request by a prospective user to the competent authority for use of the band in accordance with the technical implementing measure. The Member State shall inform the Commission and the other Member States of the decision taken, together with the reasons therefor, as well as of the outcome of any review.

4 Without prejudice to the second subparagraph, Member States shall ensure that all types of technology used for the provision of electronic communications networks or services may be used in the radio spectrum declared available for electronic communications services in their National Frequency Allocation Plan in accordance with Union law.

Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to:

- a avoid harmful interference;
- b protect public health against electromagnetic fields, taking utmost account of Recommendation 1999/519/EC;
- c ensure technical quality of service;
- d ensure maximisation of radio spectrum sharing;

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- e safeguard efficient use of radio spectrum; or
- f ensure the fulfilment of a general interest objective in accordance with paragraph 5.

5 Without prejudice to the second subparagraph, Member States shall ensure that all types of electronic communications services may be provided in the radio spectrum declared available for electronic communications services in their National Frequency Allocation Plan in accordance with Union law. Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, including, where necessary, to fulfil a requirement under the ITU Radio Regulations.

Measures that require an electronic communications service to be provided in a specific band available for electronic communications services shall be justified in order to ensure the fulfilment of a general interest objective as laid down by the Member States in accordance with Union law, including, but not limited to:

- a safety of life;
- b the promotion of social, regional or territorial cohesion;
- c the avoidance of inefficient use of radio spectrum; or
- d the promotion of cultural and linguistic diversity and media pluralism, for example the provision of radio and television broadcasting services.

A measure which prohibits the provision of any other electronic communications service in a specific band may be provided for only where justified by the need to protect the safety of life services. Member States may, on an exceptional basis, also extend such a measure in order to fulfil other general interest objectives as laid down by the Member States in accordance with Union law.

6 Member States shall regularly review the necessity of the restrictions referred to in paragraphs 4 and 5, and shall make the results of those reviews public.

7 Restrictions established prior to 25 May 2011 shall comply with paragraphs 4 and 5 by 20 December 2018.

Article 46

Authorisation of the use of radio spectrum

1 Member States shall facilitate the use of radio spectrum, including shared use, under general authorisations and limit the granting of individual rights of use for radio spectrum to situations where such rights are necessary to maximise efficient use in light of demand and taking into account the criteria set out in the second subparagraph. In all other cases, they shall set out the conditions for the use of radio spectrum in a general authorisation.

To that end, Member States shall decide on the most appropriate regime for authorising the use of radio spectrum, taking account of:

- a the specific characteristics of the radio spectrum concerned;
- b the need to protect against harmful interference;
- c the development of reliable conditions for radio spectrum sharing, where appropriate;
- d the need to ensure technical quality of communications or service;
- e objectives of general interest as laid down by Member States in accordance with Union law;
- f the need to safeguard efficient use of radio spectrum.

When considering whether to issue general authorisations or to grant individual rights of use for the harmonised radio spectrum, taking into account technical

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implementing measures adopted in accordance with Article 4 of Decision No 676/2002/EC, Member States shall seek to minimise problems of harmful interference, including in cases of shared use of radio spectrum on the basis of a combination of general authorisation and individual rights of use.

Where appropriate, Member States shall consider the possibility to authorise the use of radio spectrum based on a combination of general authorisation and individual rights of use, taking into account the likely effects of different combinations of general authorisations and individual rights of use and of gradual transfers from one category to the other on competition, innovation and market entry.

Member States shall seek to minimise restrictions on the use of radio spectrum by taking appropriate account of technological solutions for managing harmful interference in order to impose the least onerous authorisation regime possible.

2 When taking a decision pursuant to paragraph 1 with a view to facilitating the shared use of radio spectrum, the competent authorities shall ensure that the conditions for the shared use of radio spectrum are clearly set out. Such conditions shall facilitate efficient use of radio spectrum, competition and innovation.

Article 47

Conditions attached to individual rights of use for radio spectrum

1 Competent authorities shall attach conditions to individual rights of use for radio spectrum in accordance with Article 13(1) in such a way as to ensure optimal and the most effective and efficient use of radio spectrum. They shall, before the assignment or renewal of such rights, clearly establish any such conditions, including the level of use required and the possibility to fulfil that requirement through trading or leasing, in order to ensure the implementation of those conditions in accordance with Article 30. Conditions attached to renewals of right of use for radio spectrum shall not provide undue advantages to existing holders of those rights.

Such conditions shall specify the applicable parameters, including any deadline for exercising the rights of use, the non-fulfilment of which would entitle the competent authority to withdraw the right of use or impose other measures.

Competent authorities shall, in a timely and transparent manner, consult and inform interested parties regarding conditions attached to individual rights of use before their imposition. They shall determine in advance and inform interested parties, in a transparent manner, of the criteria for the assessment of the fulfilment of those conditions.

2 When attaching conditions to individual rights of use for radio spectrum, competent authorities may, in particular with a view to ensuring effective and efficient use of radio spectrum or promoting coverage, provide for the following possibilities:

- a sharing passive or active infrastructure which relies on radio spectrum or radio spectrum;
- b commercial roaming access agreements;
- c joint roll-out of infrastructures for the provision of networks or services which rely on the use of radio spectrum.

Competent authorities shall not prevent the sharing of radio spectrum in the conditions attached to the rights of use for radio spectrum. Implementation by undertakings of conditions attached pursuant to this paragraph shall remain subject to competition law.

Section 2

Rights of use

Article 48

Granting of individual rights of use for radio spectrum

1 Where it is necessary to grant individual rights of use for radio spectrum, Member States shall grant such rights, upon request, to any undertaking for the provision of electronic communications networks or services under the general authorisation referred to in Article 12, subject to Article 13, to point (c) of Article 21(1) and to Article 55 and to any other rules ensuring the efficient use of those resources in accordance with this Directive.

2 Without prejudice to specific criteria and procedures adopted by Member States to grant individual rights of use for radio spectrum to providers of radio or television broadcast content services with a view to pursuing general interest objectives in accordance with Union law, the individual rights of use for radio spectrum shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and in accordance with Article 45.

3 An exception to the requirement of open procedures may apply where the granting of individual rights of use for radio spectrum to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as laid down by Member States in accordance with Union law.

4 Competent authorities shall consider applications for individual rights of use for radio spectrum in the context of selection procedures pursuant to objective, transparent, proportionate and non-discriminatory eligibility criteria that are set out in advance and reflect the conditions to be attached to such rights. Competent authorities shall be able to request all necessary information from applicants in order to assess, on the basis of those criteria, their ability to comply with those conditions. Where the competent authority concludes that an applicant does not possess the required ability, it shall provide a duly reasoned decision to that effect.

5 When granting individual rights of use for radio spectrum, Member States shall specify whether those rights can be transferred or leased by the holder of the rights, and under which conditions. Articles 45 and 51 shall apply.

6 The competent authority shall take, communicate and make public the decisions on the granting of individual rights of use for radio spectrum as soon as possible after the receipt of the complete application and within six weeks in the case of radio spectrum declared available for electronic communications services in their National Frequency Allocation Plan. That time limit shall be without prejudice to Article 55(7) and to any applicable international agreements relating to the use of radio spectrum or of orbital positions.

Article 49

Duration of rights

1 Where Member States authorise the use of radio spectrum through individual rights of use for a limited period, they shall ensure that the right of use is granted for a period that is appropriate in light of the objectives pursued in accordance with Article 55(2), taking due account of the need to ensure competition, as well as, in particular, effective and efficient use

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of radio spectrum, and to promote innovation and efficient investments, including by allowing for an appropriate period for investment amortisation.

2 Where Member States grant individual rights of use for 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 services ('wireless broadband services') for a limited period, they shall ensure regulatory predictability for the holders of the rights over a period of at least 20 years regarding conditions for investment in infrastructure which relies on the use of such radio spectrum, taking account of the requirements referred to in paragraph 1 of this Article. This Article is subject, where relevant, to any modification of the conditions attached to those rights of use in accordance with Article 18.

To that end, Member States shall ensure that such rights are valid for a duration of at least 15 years and include, where necessary to comply with the first subparagraph, an adequate extension thereof, under the conditions laid down in this paragraph.

Member States shall make available the general criteria for an extension of the duration of rights of use, in a transparent manner, to all interested parties in advance of granting rights of use, as part of the conditions laid down under Article 55(3) and (6). Such general criteria shall relate to:

- a the need to ensure the effective and efficient use of the radio spectrum concerned, the objectives pursued in points (a) and (b) of Article 45(2), or the need to fulfil general interest objectives related to ensuring safety of life, public order, public security or defence; and
- b the need to ensure undistorted competition.

At the latest two years before the expiry of the initial duration of an individual right of use, the competent authority shall conduct an objective and forward-looking assessment of the general criteria laid down for extension of the duration of that right of use in light of point (c) of Article 45(2). Provided that the competent authority has not initiated enforcement action for non-compliance with the conditions of the rights of use pursuant to Article 30, it shall grant the extension of the duration of the right of use unless it concludes that such an extension would not comply with the general criteria laid down in point (a) or (b) of the third subparagraph of this paragraph.

On the basis of that assessment, the competent authority shall notify the holder of the right as to whether the extension of the duration of the right of use is to be granted.

If such extension is not to be granted, the competent authority shall apply Article 48 for granting rights of use for that specific radio spectrum band.

Any measure under this paragraph shall be proportionate, non-discriminatory, transparent and reasoned.

By way of derogation from Article 23, interested parties shall have the opportunity to comment on any draft measure pursuant to the third and the fourth subparagraphs of this paragraph for a period of at least three months.

This paragraph is without prejudice to the application of Articles 19 and 30.

When establishing fees for rights of use, Member States shall take account of the mechanism provided for under this paragraph.

3 Where duly justified, Member States may derogate from paragraph 2 of this Article in the following cases:

- a in limited geographical areas, where access to high-speed networks is severely deficient or absent and this is necessary to ensure achievement of the objectives of Article 45(2);
- b for specific short-term projects;

- c for experimental use;
- d for uses of radio spectrum which, in accordance with Article 45(4) and (5), can coexist with wireless broadband services; or
- e for alternative use of radio spectrum in accordance with Article 45(3).

4 Member States may adjust the duration of rights of use laid down in this Article to ensure the simultaneous expiry of the duration of rights in one or several bands.

Article 50

Renewal of individual rights of use for harmonised radio spectrum

1 National regulatory or other competent authorities shall take a decision on the renewal of individual rights of use for harmonised radio spectrum in a timely manner before the duration of those rights expired, except where, at the time of assignment, the possibility of renewal has been explicitly excluded. For that purpose, those authorities shall assess the need for such renewal at their own initiative or upon request by the holder of the right, in the latter case not earlier than five years prior to expiry of the duration of the rights concerned. This shall be without prejudice to renewal clauses applicable to existing rights.

2 In taking a decision pursuant to paragraph 1 of this Article, competent authorities shall consider, inter alia:

- a the fulfilment of the objectives set out in Article 3, Article 45(2) and Article 48(2), as well as public policy objectives under Union or national law;
- b the implementation of a technical implementing measure adopted in accordance with Article 4 of Decision No 676/2002/EC;
- c the review of the appropriate implementation of the conditions attached to the right concerned;
- d the need to promote, or avoid any distortion of, competition in line with Article 52;
- e the need to render the use of radio spectrum more efficient in light of technological or market evolution;
- f the need to avoid severe service disruption.

3 When considering possible renewal of individual rights of use for harmonised radio spectrum for which the number of rights of use is limited pursuant to paragraph 2 of this Article, competent authorities shall conduct an open, transparent and non-discriminatory procedure, and shall, inter alia:

- a give all interested parties the opportunity to express their views through a public consultation in accordance with Article 23; and
- b clearly state the reasons for such possible renewal.

The national regulatory or other competent authority shall take into account any evidence arising from the consultation pursuant to the first subparagraph of this paragraph of market demand from undertakings other than those holding rights of use for radio spectrum in the band concerned when deciding whether to renew the rights of use or to organise a new selection procedure in order to grant the rights of use pursuant to Article 55.

4 A decision to renew the individual rights of use for harmonised radio spectrum may be accompanied by a review of the fees as well as of the other terms and conditions attached thereto. Where appropriate, national regulatory or other competent authorities may adjust the fees for the rights of use in accordance with Article 42.

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Article 51

Transfer or lease of individual rights of use for radio spectrum

1 Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights of use for radio spectrum.

Member States may determine that this paragraph does not apply where the undertaking's individual right of use for radio spectrum was initially granted free of charge or assigned for broadcasting.

2 Member States shall ensure that an undertaking's intention to transfer or lease rights of use for radio spectrum, as well as the effective transfer thereof is notified in accordance with national procedures to the competent authority and is made public. In the case of harmonised radio spectrum, any such transfer shall comply with such harmonised use.

3 Member States shall allow the transfer or lease of rights of use for radio spectrum where the original conditions attached to the rights of use are maintained. Without prejudice to the need to ensure the absence of a distortion of competition, in particular in accordance with Article 52, Member States shall:

- a submit transfers and leases to the least onerous procedure possible;
- b not refuse the lease of rights of use for radio spectrum where the lessor undertakes to remain liable for meeting the original conditions attached to the rights of use;
- c not refuse the transfer of rights of use for radio spectrum unless there is a clear risk that the new holder is unable to meet the original conditions for the right of use.

Any administrative charge imposed on undertakings in connection with processing an application for the transfer or lease of rights of use for radio spectrum shall comply with Article 16.

Points (a), (b) and (c) of the first subparagraph are without prejudice to the Member States' competence to enforce compliance with the conditions attached to the rights of use at any time, both with regard to the lessor and the lessee, in accordance with their national law.

Competent authorities shall facilitate the transfer or lease of rights of use for radio spectrum by giving consideration to any request to adapt the conditions attached to the rights in a timely manner and by ensuring that those rights or the relevant radio spectrum may to the best extent be partitioned or disaggregated.

In light of any transfer or lease of rights of use for radio spectrum, competent authorities shall make relevant details relating to tradable individual rights publicly available in a standardised electronic format when the rights are created and keep those details for as long as the rights exist.

The Commission may adopt implementing acts specifying those relevant details.

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

Article 52

Competition

1 National regulatory and other competent authorities shall promote effective competition and avoid distortions of competition in the internal market when deciding to grant,

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amend or renew rights of use for radio spectrum for electronic communications networks and services in accordance with this Directive.

2 When Member States grant, amend or renew rights of use for radio spectrum, their national regulatory or other competent authorities upon the advice provided by national regulatory authority may take appropriate measures such as:

- a limiting the amount of radio spectrum bands for which rights of use are granted to any undertaking, or, in justified circumstances, attaching conditions to such rights of use, such as the provision of wholesale access, national or regional roaming, in certain bands or in certain groups of bands with similar characteristics;
- b reserving, if appropriate and justified with regard to a specific situation in the national market, a certain part of a radio spectrum band or group of bands for assignment to new entrants;
- c refusing to grant new rights of use for radio spectrum or to allow new radio spectrum uses in certain bands, or attaching conditions to the grant of new rights of use for radio spectrum or to the authorisation of new uses of radio spectrum, in order to avoid the distortion of competition by any assignment, transfer or accumulation of rights of use;
- d including conditions prohibiting, or imposing conditions on, transfers of rights of use for radio spectrum, not subject to Union or national merger control, where such transfers are likely to result in significant harm to competition;
- e amending the existing rights in accordance with this Directive where this is necessary to remedy ex post a distortion of competition by any transfer or accumulation of rights of use for radio spectrum.

National regulatory and other competent authorities shall, taking into account market conditions and available benchmarks, base their decisions on an objective and forward-looking assessment of the market competitive conditions, of whether such measures are necessary to maintain or achieve effective competition, and of the likely effects of such measures on existing and future investments by market participants in particular for network roll-out. In doing so, they shall take into account the approach to market analysis as set out in Article 67(2).

3 When applying paragraph 2 of this Article, national regulatory and other competent authorities shall act in accordance with the procedures provided in Articles 18, 19, 23 and 35.

Section 3

Procedures

Article 53

Coordinated timing of assignments

1 Member States shall cooperate in order to coordinate the use of harmonised radio spectrum for electronic communications networks and services in the Union taking due account of the different national market situations. This may include identifying one, or, where appropriate, several common dates by which the use of specific harmonised radio spectrum is to be authorised.

2 Where harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable the radio spectrum use for wireless broadband networks and services, Member States shall allow the use of that radio spectrum, as

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soon as possible and at the latest 30 months after the adoption of that measure, or as soon as possible after the lifting of any decision to allow alternative use on an exceptional basis pursuant to Article 45(3) of this Directive. This is without prejudice to Decision (EU) 2017/899 and to the Commission's right of initiative to propose legislative acts.

3 A Member State may delay the deadline provided for in paragraph 2 of this Article for a specific band under the following circumstances:

- a to the extent justified by a restriction to the use of that band based on the general interest objective provided in point (a) or (d) of Article 45(5);
- b in the case of unresolved cross-border coordination issues resulting in harmful interference with third countries, provided the affected Member State has, where appropriate, requested Union assistance pursuant to Article 28(5);
- c safeguarding national security and defence; or
- d force majeure.

The Member State concerned shall review such a delay at least every two years.

4 A Member State may delay the deadline provided for in paragraph 2 for a specific band to the extent necessary and up to 30 months in the case of:

- a unresolved cross-border coordination issues resulting in harmful interference between Member States, provided that the affected Member State takes all necessary measures in a timely manner pursuant to Article 28(3) and (4);
- b the need to ensure, and the complexity of ensuring, the technical migration of existing users of that band.

5 In the event of a delay under paragraph 3 or 4, the Member State concerned shall inform the other Member States and the Commission in a timely manner, stating the reasons.

Article 54

Coordinated timing of assignments for specific 5G bands

1 By 31 December 2020, for terrestrial systems capable of providing wireless broadband services, Member States shall, where necessary in order to facilitate the roll-out of 5G, take all appropriate measures to:

- a reorganise and allow the use of sufficiently large blocks of the 3,4-3,8 GHz band;
- b allow the use of at least 1 GHz of the 24,25-27,5 GHz band, provided that there is clear evidence of market demand and of the absence of significant constraints for migration of existing users or band clearance.

2 Member States may, however, extend the deadline laid down in paragraph 1 of this Article, where justified, in accordance with Article 45(3) or Article 53(2), (3) or (4).

3 Measures taken pursuant paragraph 1 of this Article shall comply with the harmonised conditions set by technical implementing measures in accordance with Article 4 of Decision No 676/2002/EC.

Article 55

Procedure for limiting the number of rights of use to be granted for radio spectrum

1 Without prejudice to Article 53, where a Member State concludes that a right to use radio spectrum cannot be subject to a general authorisation and where it considers whether to limit the number of rights of use to be granted for radio spectrum, it shall, inter alia:

- a clearly state the reasons for limiting the rights of use, in particular by giving due weight to the need to maximise benefits for users and to facilitate the development of competition, and review, as appropriate, the limitation at regular intervals or at the reasonable request of affected undertakings;
- b give all interested parties, including users and consumers, the opportunity to express their views on any limitation through a public consultation in accordance with Article 23.

2 When a Member State concludes that the number of rights of use is to be limited, it shall clearly establish, and give reasons for, the objectives pursued by means of a competitive or comparative selection procedure under this Article, and where possible quantify them, giving due weight to the need to fulfil national and internal market objectives. The objectives that the Member State may set out with a view to designing the specific selection procedure shall, in addition to promoting competition, be limited to one or more of the following:

- a promoting coverage;
- b ensuring the required quality of service;
- c promoting efficient use of radio spectrum, including by taking into account the conditions attached to the rights of use and the level of fees;
- d promoting innovation and business development.

The national regulatory or other competent authority shall clearly define and justify the choice of the selection procedure, including any preliminary phase to access the selection procedure. It shall also clearly state the outcome of any related assessment of the competitive, technical and economic situation of the market and provide reasons for the possible use and choice of measures pursuant to Article 35.

3 Member States shall publish any decision on the selection procedure chosen and the related rules, clearly stating the reasons therefor. It shall also publish the conditions that are to be attached to the rights of use.

4 After having determined the selection procedure, the Member State shall invite applications for rights of use.

5 Where a Member State concludes that additional rights of use for radio spectrum or a combination of general authorisation and individual rights of use can be granted, it shall publish that conclusion and initiate the process of granting such rights.

6 Where the granting of rights of use for radio spectrum needs to be limited, Member States shall grant such rights on the basis of selection criteria and a selection procedure which are objective, transparent, non-discriminatory and proportionate. Any such selection criteria shall give due weight to the achievement of the objectives and requirements of Articles 3, 4, 28 and 45.

7 Where competitive or comparative selection procedures are to be used, Member States may extend the maximum period of six weeks referred to in Article 48(6) for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties,

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but by no longer than eight months, subject to any specific timetable established pursuant to Article 53.

Those time limits shall be without prejudice to any applicable international agreements relating to the use of radio spectrum and satellite coordination.

8 This Article is without prejudice to the transfer of rights of use for radio spectrum in accordance with Article 51.

CHAPTER IV

Deployment and use of wireless network equipment

Article 56

Access to radio local area networks

1 Competent authorities shall allow the provision of access through RLANs to a public electronic communications network, as well as the use of the harmonised radio spectrum for that provision, subject only to applicable general authorisation conditions relating to radio spectrum use as referred to in Article 46(1).

Where that provision is not part of an economic activity or is ancillary to an economic activity or a public service which is not dependent on the conveyance of signals on those networks, any undertaking, public authority or end-user providing such access shall not be subject to any general authorisation for the provision of electronic communications networks or services pursuant to Article 12, to obligations regarding end-users rights pursuant to Title II of Part III, or to obligations to interconnect their networks pursuant to Article 61(1).

2 Article 12 of Directive 2000/31/EC shall apply.

3 Competent authorities shall not prevent providers of public electronic communications networks or publicly available electronic communications services from allowing access to their networks to the public, through RLANs, which may be located at an end-user's premises, subject to compliance with the applicable general authorisation conditions and the prior informed agreement of the end-user.

4 In accordance in particular with Article 3(1) of Regulation (EU) 2015/2120, competent authorities shall ensure that providers of public electronic communications networks or publicly available electronic communications services do not unilaterally restrict or prevent end-users from:

- a accessing RLANs of their choice provided by third parties; or
- b allowing reciprocally or, more generally, accessing the networks of such providers by other end-users through RLANs, including on the basis of third-party initiatives which aggregate and make publicly accessible the RLANs of different end-users.

5 Competent authorities shall not limit or prevent end-users from allowing access, reciprocally or otherwise, to their RLANs by other end-users, including on the basis of third-party initiatives which aggregate and make the RLANs of different end-users publicly accessible.

6 Competent authorities shall not unduly restrict the provision of access to RLANs to the public:

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- a by public sector bodies or in public spaces close to premises occupied by such public sector bodies, when that provision is ancillary to the public services provided on those premises;
- b by initiatives of non-governmental organisations or public sector bodies to aggregate and make reciprocally or more generally accessible the RLANs of different end-users, including, where applicable, the RLANs to which public access is provided in accordance with point (a).

Article 57

Deployment and operation of small-area wireless access points

1 Competent authorities shall not unduly restrict the deployment of small-area wireless access points. Member States shall seek to ensure that any rules governing the deployment of small-area wireless access points are nationally consistent. Such rules shall be published in advance of their application.

In particular, competent authorities shall not subject the deployment of small-area wireless access points complying with the characteristics laid down pursuant to paragraph 2 to any individual town planning permit or other individual prior permits.

By way of derogation from the second subparagraph of this paragraph, competent authorities may require permits for the deployment of small-area wireless access points on buildings or sites of architectural, historical or natural value protected in accordance with national law or where necessary for public safety reasons. Article 7 of Directive 2014/61/EU shall apply to the granting of those permits.

2 The Commission shall, by means of implementing acts, specify the physical and technical characteristics, such as maximum size, weight, and where appropriate emission power of small-area wireless access points.

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

The first such implementing act shall be adopted by 30 June 2020.

3 This Article is without prejudice to the essential requirements laid down in Directive 2014/53/EU and to the authorisation regime applicable for the use of the relevant radio spectrum.

4 Member States shall, by applying, where relevant, the procedures adopted in accordance with Directive 2014/61/EU, ensure that operators have the right to access any physical infrastructure controlled by national, regional or local public authorities, which is technically suitable to host small-area wireless access points or which is necessary to connect such access points to a backbone network, including street furniture, such as light poles, street signs, traffic lights, billboards, bus and tramway stops and metro stations. Public authorities shall meet all reasonable requests for access on fair, reasonable, transparent and non-discriminatory terms and conditions, which shall be made public at a single information point.

5 Without prejudice to any commercial agreements, the deployment of small-area wireless access points shall not be subject to any fees or charges going beyond the administrative charges in accordance with Article 16.

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Article 58

Technical regulations on electromagnetic fields

The procedures laid down in Directive (EU) 2015/1535 shall apply with respect to any draft measure by a Member State that would impose on the deployment of small-area wireless access points different requirements with respect to electromagnetic fields than those provided for in Recommendation 1999/519/EC.

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- (1) Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU ([OJ L 348 20.12.2013, p. 1](#)).