

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 I

National regulatory and other competent authorities

Article 5

National regulatory and other competent authorities

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

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

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

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

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regulatory authorities shall be entitled to collect necessary data and other information from market participants.

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

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

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

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

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

Article 6

Independence of national regulatory and other competent authorities

1 Member States shall guarantee the independence of national regulatory authorities and of other competent authorities by ensuring that they are legally distinct from, and functionally independent of, any natural or legal person providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

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

Article 7

Appointment and dismissal of members of national regulatory authorities

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

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

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

Article 8

Political independence and accountability of the national regulatory authorities

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

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

Article 9

Regulatory capacity of national regulatory authorities

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

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

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

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Article 10

Participation of national regulatory authorities in BEREC

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

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

Article 11

Cooperation with national authorities

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