

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 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 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

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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.

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.