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From:	Presidency
To:	Delegations
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Subject:	Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) - Examination of the Presidency text (Institutional)

Introduction

1. Following the discussion in WP TELE of 5 July and written comments from Member States **the Presidency intends to hold in WP TELE of 6 September and/or 12 September a discussion of the Institutional section of the Code.** The discussion will focus on the changes set out below, but comments are welcome on all parts of the text.
2. For ease of reading, the amendments in Annex A have been made to the Commission text as distributed for written comments in April. Changes to this text are underlined. Changes to the Commission recast are in **bold** and ~~striketrough~~. *Italics* represent text from the current framework that has been moved or reintroduced.

3. This text reflects discussions on these issues in the Working Party during the Maltese and Estonian Presidencies, as well as the progress report and guidance received during the TTE Council of 9 June.
4. This text introduces a limited number of changes outlined in the note below. The most significant changes entail a clearer distinction between those functions that must be undertaken by an NRA, and those which may be undertaken by a Competent Authority and amendments ensuring that NRAs continue to have the lead role in general authorisation.
5. The Presidency aims to reach a General Approach for this file in October. With a view to this objective, **at the Working Party the Presidency will ask Member States to indicate, for each of the Articles in this section, if they could not support the proposed compromise texts.**

Subject matter, aim and definitions (Articles 1-3 and Recitals 1-29, 193 and 254)

6. **Recital 5** has been simplified to avoid duplication with Recital 6.
7. **Recitals 17 and 18** have been updated to improve clarity and to align with changes made previously to Article 2.
8. **Article 3(1)** now includes references to the RSPG and the Commission. **Article 3(2)** has been clarified by specifying that it concerns the activities of competent authorities and BEREC only in respect of the activities relating to the code (as these bodies may also have other functions). The clarity of points (a) and (b) has also been improved. **Article 3(3)** now includes reference to the RSPG.

National regulatory and other competent authorities (Articles 5-11 and Recitals 33-38)

9. **Article 5(1)** has been revised substantially in order to make a clear distinction between those activities which must be performed by an NRA, and those activities which an NRA may perform, but which may equally be undertaken by a Competent Authority having consulted with an NRA. This has been reflected in and amended **Recital 34**.
10. The responsibility for numbering is in square brackets as this issue is due to be discussed in the Working Party concerning services.

11. The amount of detail in **Article 7** concerning the necessary structures of an NRA has been reduced so that it now focuses on the most important factors for ensuring the independence of NRAs. Some details have been moved from this article to **Recital 36**.
12. The required independence of NRAs has been further specified in **Article 8**.
13. While no changes have been made to **Article 9**, **Recital 37** has been amended to make clear that the intention is not to preclude additional reporting, where necessary.

General Authorisation (Articles 12-18, Recitals 39-54 and Annex I)

14. The proposed compromise for General Authorisation in **Article 12** is to return to the text of the current framework, which allows NRAs to receive notification, but with the addition of BEREC maintaining a database. Changes to this effect have been introduced throughout the Article. **Article 14 and Recitals 40, 41 and 50** have been brought into line with this approach.
15. Changes to this Article do not affect the basis of the conditions applied under general authorisation as set out in Annex I.
16. The other amendments to **Article 12** are the removal of 'notification' from paragraph 1 to avoid any possible confusion with the notification regime itself, the scope of paragraph 3 has been clarified and the introduction to the list in paragraph 4 has been changed so it is no longer a limitation.
17. Transcription errors in **Articles 13, 14 and 16** have been corrected.
18. The addition of text referring to Article 35 has been removed from **Article 18**.
19. **Annex I** has been updated to reflect the changes made to the Services text, permitting sectoral funding of the USO obligations.

Provision of Information and Consultation (Articles 20-21, 23-24 and Recitals 55-59, 62-63)

20. The power of national regulatory authorities to require the provision of information is expanded in **Article 20(1)** to also include organisations other than network or service providers. This is intended to ensure that regulators have access to the information necessary for the fulfilment of their functions. **Recital 55** has been expanded to explain this addition.

21. The reference to NRAs in **Article 20(1)** regarding geographic surveys has been put in square brackets as this is subject to further discussions on Access.
22. The wording in **Article 20(3)** has been updated to align it with the wording concerning business confidentiality in the Mobile Roaming Regulation. This also avoids conflating the issues of business confidentiality and personal data.
23. **Article 21(2)** has been amended to account for the fact that there may not necessarily be coverage and quality of service obligations attached to the rights of use for radio spectrum.
24. **Article 21(4)** has been amended to ensure it is not an obstacle to an NRA accessing the necessary information.

Dispute Resolution (Articles 25-27 and Recitals 64-66 and 69)

25. **Article 25(1)** has replaced the term 'national regulatory authority' with 'competent authority'.
26. The scope of **Article 27** has not been revised. However, the role of BEREC in cross border disputes is made dependent on a request from a national regulatory authority in the revised text and the nature of the opinion is more clearly specified.

Penalties, Compliance, Appeals and Harmonisation (Articles 29-31, 38-39 and Recitals 70-71, 87-89)

27. **Article 29** has been clarified.
28. The term 'competent authority' has been consistently applied throughout **Article 30**.
29. **Article 31** has been amended to take into account that the NRA may affect undertakings providing associated facilities. The word 'completely' has been removed to improve clarity.
30. **Recital 70** has been amended to improve clarity.

Adaption of Annexes and Final Provisions (Articles 108-118, Recitals 272-284 and Annexes XI-XII)

31. These Articles and Recitals are procedural. A small number of changes have been made primarily to reflect changes elsewhere in the Code. References may need to be updated further in light of subsequent amendments to other parts of the Code.
32. The nature of the Commission's power has been clarified in **Article 108**.
33. The deletions in **Article 109 and 110** reflect the removal of implementing decisions and the delegated power in the spectrum text. This is also reflected in **Recital 276**.
34. References have been corrected in **Articles 112 and 113**.
35. The need to take into account developments in technical standards has been included in **Recital 275**.

↓ 2002/19/EC (adapted)

2016/0288 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

~~on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)~~ ☒ establishing the European Electronic Communications Code ☒

(Recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing the European Community~~ ☒ on the Functioning of the European Union ☒, and in particular Article ~~95~~ ☒ 114 ☒ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .



- (1) Directive 2002/19/EC of the European Parliament and of the Council³, Directive 2002/20/EC of the European Parliament and of the Council⁴, Directive 2002/21/EC of the European Parliament and of the Council⁵ and Directive 2002/22/EC of the European Parliament and of the Council⁶ have been substantially amended. Since further amendments are to be made, those Directives should be recast in the interests of clarity.
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↓ 2002/21/EC recital 1 (adapted)

~~The current regulatory framework for telecommunications has been successful in creating the conditions for effective competition in the telecommunications sector during the transition from monopoly to full competition.~~

↓ 2002/21/EC recital 2 (adapted)

~~On 10 November 1999, the Commission presented a communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled 'Towards a new framework for electronic communications infrastructure and associated services – the 1999 communications review'. In that communication, the Commission reviewed the existing regulatory framework for telecommunications, in accordance with its obligation under Article 8 of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision². It also presented a series of policy proposals for a new regulatory framework for electronic communications infrastructure and associated services for public consultation.~~

³ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7).

⁴ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ L 108, 24.4.2002, p. 21).

⁵ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33)

⁶ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108 24.4.2002, p. 51).

¹⁹ ~~OJ L 192, 24.7.1990, p. 1. Directive as amended by Directive 97/51/EC of the European Parliament and of the Council (OJ L 295, 29.10.1997, p. 23).~~

⁷ ~~OJ L 192, 24.7.1990, p. 1. Directive as amended by Directive 97/51/EC of the European Parliament and of the Council (OJ L 295, 29.10.1997, p. 23).~~

~~On 26 April 2000 the Commission presented a communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the results of the public consultation on the 1999 communications review and orientations for the new regulatory framework. The communication summarised the public consultation and set out certain key orientations for the preparation of a new framework for electronic communications infrastructure and associated services.~~

~~The Lisbon European Council of 23 and 24 March 2000 highlighted the potential for growth, competitiveness and job creation of the shift to a digital, knowledge-based economy. In particular, it emphasised the importance for Europe's businesses and citizens of access to an inexpensive, world-class communications infrastructure and a wide range of services.~~

- (2) The functioning of the five directives ~~comprising~~ ☒ which are part of ☒ the existing regulatory framework for electronic communications networks and services (Directive 2002/19/EC ~~of the European Parliament and of the Council of 7 March 2002 on access to and interconnection of electronic communications networks and associated facilities (Access Directive)~~⁸, Directive 2002/20/EC ~~of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)~~⁹, Directive 2002/21/EC ~~of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)~~¹⁰, Directive 2002/22/EC (Universal Service Directive)¹¹ and Directive 2002/58/EC of the European Parliament and of the Council (Directive on privacy and electronic communications)¹² (together referred to as 'the Framework Directive and the Specific Directives')) is subject to periodic review by the Commission, with a view, in particular, to determining the need for modification in the light of technological and market developments ⇒ ¹³ ⇐ .

- (3) In the Digital Single Market strategy, the Commission outlined that the review of the telecoms framework will focus on measures that aim at incentivising investment in high-speed broadband networks, bring a more consistent single market approach to spectrum policy and management, deliver conditions for a true single market by tackling regulatory fragmentation, ensure a level playing field for all market players and consistent application of the rules, as well as provide a more effective regulatory institutional framework.
- (4) This Directive is part of a "Regulatory Fitness" exercise the scope of which includes four of the Directives (Framework, Authorisation, Access and Universal Service Directive) and a

⁸ ~~OJ L 108, 24.4.2002, p. 7.~~

⁹ ~~OJ L 108, 24.4.2002, p. 21.~~

¹⁰ ~~OJ L 108, 24.4.2002, p. 33.~~

¹¹ ~~OJ L 108, 24.4.2002, p. 51.~~

¹² Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

¹³ The Union Regulatory Framework for Electronic Communications also includes Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10), Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1) and Directive 2014/61 of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (OJ L 155, 23.5.2014, p. 1), as well as a number of co-legislator and Commission decisions.

Regulation (BEREC Regulation¹⁴). Each of the Directives currently contains measures applicable to providers of electronic communications networks and of electronic communications services, consistently with the regulatory history of the sector under which undertakings were vertically integrated i.e. active in both the provision of networks and of services. The review offers an occasion to recast the four directives in order to simplify the current structure, with a view to reinforcing its coherence and accessibility, consistently with the REFIT objective. It offers also the possibility to adapt the structure to the new market reality, where the provision of communications services is not any more necessarily bundled to the provision of a network. As provided in the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, recasting consists in the adoption of a new legal act which incorporates in a single text both the substantive amendments which it makes to an earlier act and the unchanged provisions of that act. The proposal for recasting deals with the substantive amendments which it makes to an earlier act, and on a secondary level, it includes the codification of the unchanged provisions of the earlier act with those substantive amendments.

↓ 2002/20/EC recital 3 (adapted)

- (5) ~~The objective of this Directive is to~~ ☒ should ☒ create a legal framework to ensure the freedom to provide electronic communications networks and services, subject only to the conditions laid down in this Directive and to any restrictions in conformity with Article 46 ☒ 52 ☒ (1) of the Treaty, ~~in particular measures regarding public policy, public security and public health.~~

↓ 2002/21/EC recital 7 (adapted)
⇒ new

- (6) The provisions of this Directive ~~and the Specific Directives~~ are without prejudice to the possibility for each Member State to take the necessary measures ⇒ justified on grounds set out in Articles 87 and 45 of the Treaty on the Functioning of the European Union, ⇐ to ensure the protection of its essential security interests, to safeguard public policy⇒, public morality⇐ and public security, and to permit the investigation, detection and prosecution of criminal offences

¹⁴ Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (OJ L. 337, 18.12.2009, p.1).

- (7) The convergence of the telecommunications, media and information technology sectors means ☒ that ☒ all ~~transmission~~ ⇒ electronic communications ⇐ networks and services should be covered ☒ to the extent possible ☒ by a single ☒ European Electronic Communications Code established by a single Directive, with the exception of matters better dealt with through directly applicable rules established through regulations ☒ ~~regulatory framework~~. ~~That regulatory framework consists of this Directive and four specific Directives: Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)¹⁵, Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)¹⁶, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)¹⁷, Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector¹⁸, (hereinafter referred to as 'the Specific Directives')~~. It is necessary to separate the regulation of ~~transmission~~ ⇒ electronic communications networks and services ⇐ from the regulation of content. This ~~framework~~ ☒ Code ☒ does not therefore cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content, financial services and certain information society services, and is therefore without prejudice to measures taken at ~~Community~~ ☒ Union ☒ or national level in respect of such services, in compliance with ~~Community~~ ☒ Union ☒ law, in order to promote cultural and linguistic diversity and to ensure the defence of media pluralism. The content of television programmes is covered by ~~Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities¹⁹~~ Directive 2010/13/EU of the European Parliament and of the Council²⁰. ⇒ The regulation of audiovisual policy and content aims at achieving general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors. ⇐ The separation between the regulation of ~~transmission~~ ⇒ electronic communications ⇐ and the regulation of content does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection.

¹⁵ See page 21 of this Official Journal.

¹⁶ See page 7 of this Official Journal.

¹⁷ See page 51 of this Official Journal.

¹⁸ OJ L 24, 30.1.1998, p. 1.

¹⁹ OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

²⁰ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

↓ 2002/21/EC recital 8

⇒ new

- (8) This Directive does not ~~cover equipment within the scope of Directive 1999/5/EC of the European Parliament and of the Council of March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity²¹~~ ⇒ affect the application to radio equipment of Directive 2014/53/EU ⇐ , but does cover consumer equipment used for digital television.
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↓ 2009/140/EC recital 11 (adapted)

⇒ new

- (9) In order to allow national regulatory authorities to meet the objectives set out in ~~the Framework~~ ☒ this ☒ Directive ~~and the Specific Directives~~, in particular concerning end-to-end interoperability, the scope of the ~~Framework~~ Directive should ~~be extended to~~ cover certain aspects of radio equipment ~~and telecommunications terminal equipment~~ as defined in ~~Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity²²~~ ☒ Directive 2014/53/EU of the European Parliament and of the Council²³ ☒ and consumer equipment used for digital television, in order to facilitate access for disabled users. ⇒ It is important for regulators to encourage network operators and equipment manufacturers to cooperate in order to facilitate access by disabled users to electronic communications services. The non-exclusive use of spectrum for the self-use of radio terminal equipment, although not related to an economic activity, should also be subject to this directive in order to guarantee a coordinated approach with regard to their authorisation regime. ⇐

²¹ ~~OJ L 91, 7.4.1999, p. 10.~~

²² ~~OJ L 91, 7.4.1999, p. 10.~~

²³ Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).

↓ 2002/21/EC recital 6 (adapted)

~~Audiovisual policy and content regulation are undertaken in pursuit of general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors. The Commission communication ‘Principles and guidelines for the Community’s audio-visual policy in the digital age’, and the Council conclusions of 6 June 2000 welcoming this communication, set out the key actions to be taken by the Community to implement its audio-visual policy.~~

↓ 2002/22/EC recital 50 (adapted)

~~The provisions of this Directive do not prevent a Member State from taking measures justified on grounds set out in Articles 30 and 46 of the Treaty, and in particular on grounds of public security, public policy and public morality.~~

↓ 2002/21/EC recital 9 (adapted)

~~Information society services are covered by Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce)²⁴.~~

²⁴ [OJL 178, 17.7.2000, p. 1.](#)

- (10) ~~The definition of ‘information society service’ in Article 1 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules of information society services²⁵ spans a wide range of economic activities which take place on-line. Most of these activities are not covered by the scope of this Directive because they do not consist wholly or mainly in the conveyance of signals on electronic communications networks.~~ ⇒ Certain electronic communications services under this Directive could also fulfil the definition of ‘information society service’ in Article 1 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services. The provisions governing Information Society Services apply to those electronic communications services to the extent that there are not more specific provisions applicable to electronic communications services in this Directive or in other Union acts. ⇐ ☒ However, electronic communications services such as ☒ ~~V~~voice telephony, ⇒ messaging services ⇐ and electronic mail ~~conveyance~~ services are covered by this Directive. The same undertaking, for example an Internet service provider, can offer both an electronic communications service, such as access to the Internet, and services not covered under this Directive, such as the provision of web-based ⇒ and not communications-related ⇐ content.

- (11) The same undertaking, for example a cable operator, can offer both an electronic communications service, such as the conveyance of television signals, and services not covered under this Directive, such as the commercialisation of an offer of sound or television broadcasting content services, and therefore additional obligations can be imposed on this undertaking in relation to its activity as a content provider or distributor, according to provisions other than those of this Directive, without prejudice to the list of conditions laid in ~~the~~ Annex I to this Directive.

²⁵ ~~OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).~~

- (12) The regulatory framework should cover the use of radio spectrum by all electronic communications networks, including the emerging self-use of radio spectrum by new types of networks consisting exclusively of autonomous systems of mobile radio equipment that is connected via wireless links without a central management or centralised network operator, and not necessarily within the exercise of any specific economic activity. In the developing fifth generation mobile communications environment, such networks are likely to develop in particular outside buildings and on the roads, for transport, energy, R&D, eHealth, public protection and disaster relief, Internet of Things, machine-to-machine and connected cars. As a result, the application by Member States, based on Article 7 of Directive 2014/53/EU, of additional national requirements regarding the putting into service or use of such radio equipment, or both, in relation to the effective and efficient use of spectrum and avoidance of harmful interference should reflect the principles of the internal market.
- (13) The requirements concerning the capabilities of electronic communications networks are constantly increasing. While in the past the focus was mainly on growing bandwidth available overall and to each individual user, other parameters like latency, availability and reliability are becoming increasingly important. The current response towards this demand is bringing optical fibre closer and closer to the user and future 'very high capacity networks' will require performance parameters which are equivalent to what a network based on optical fibre elements at least up to the distribution point at the serving location can deliver. This corresponds in the fixed-line connection case to network performance equivalent to what is achievable by an optical fibre installation up to a multi-dwelling building, considered as the serving location, and in the mobile connection case to network performance similar to what is achievable based on an optical fibre installation up to the base station, considered as the serving location. Variations in end-users' experience which are due to the different characteristics of the medium by which the network ultimately connects with the network termination point should not be taken into account for the purposes of establishing whether or not a wireless network could be considered as providing similar network performance. In accordance with the principle of technological neutrality, other technologies and transmission media should not be excluded, where they compare with this baseline scenario in terms of their capabilities. The roll-out of such 'very high capacity networks' will further increase the capabilities of networks and pave the way for the roll-out of future mobile network generations based on enhanced air interfaces and a more densified network architecture.

- (14) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. ⇒ Technological and market evolution has brought networks to move to internet protocol technology, and enabled end-users to choose between a range of competing voice service providers. Therefore, the term 'publicly available telephone service', exclusively used in Directive 2002/22/EC and widely perceived as referring to traditional analogue telephone services should be replaced by the more current and technological neutral term 'voice communications'. ⇐ In particular, Conditions for the provision of a service should be separated from the actual definitional elements of a ~~publicly available telephone~~ ☒ voice communications ☒ service, i.e. an electronic communications service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan, whether such a service is based on circuit switching or packet switching technology. It is the nature of such a service that it is bidirectional, enabling both the parties to communicate. A service which does not fulfil all these conditions, such as for example a 'click-through' application on a customer service website, is not ☒ such ☒ a ~~publicly available telephone~~ service. ~~Publicly available telephone~~ ☒ Voice communications ☒ services also include means of communication specifically intended for disabled end-users using text relay or total conversation services.

- (15) The services used for communications purposes, and the technical means of their delivery, have evolved considerably. End-users increasingly substitute traditional voice telephony, text messages (SMS) and electronic mail conveyance services by functionally equivalent online services such as Voice over IP, messaging services and web-based e-mail services. In order to ensure that end-users are effectively and equally protected when using functionally equivalent services, a future-oriented definition of electronic communications services should not be purely based on technical parameters but rather build on a functional approach. The scope of necessary regulation should be appropriate to achieve its public interest objectives. While "conveyance of signals" remains an important parameter for determining the services falling into the scope of this Directive, the definition should cover also other services that enable communication. From an end-user's perspective it is not relevant whether a provider conveys signals itself or whether the communication is delivered via an internet access service. The amended definition of electronic communications services should therefore contain three types of services which may partly overlap, that is to say internet access services according to the definition in Article 2(2) of Regulation (EU) 2015/2120, interpersonal communications services as defined in this Directive, and services consisting wholly or mainly in the conveyance of signals. The definition of electronic communications service should eliminate ambiguities observed in the implementation of the previous definition and allow a calibrated provision-by-provision application of the specific rights and obligations contained in the framework to the different types of services. The processing of personal data by electronic communications services, whether as remuneration or otherwise, must be in compliance with Directive 95/46/EC which will be replaced by Regulation (EU) 2016/679 (General Data Protection Regulation) on 25 May 2018²⁶.
- (16) In order to fall within the scope of the definition of electronic communications service, a service needs to be provided normally in exchange for remuneration. In the digital economy, market participants increasingly consider information about users as having a monetary value. Electronic communications services are often supplied against counter-performance other than money, for instance by giving access to personal data or other data. The concept of remuneration should therefore encompass situations where the provider of a service requests and the end-user actively provides personal data, such as name or email address, or other data directly or indirectly to the provider. It should also encompass situations where the provider collects information without the end-user actively supplying it, such as personal data, including the IP address, or other automatically generated information, such as information collected and transmitted by a cookie). In line with the jurisprudence of the Court of Justice of the European Union on Article 57 TFEU²⁷, remuneration exists within the meaning of the Treaty also if the service provider is paid by a third party and not by the service recipient. The concept of remuneration should therefore also encompass situations where the end-user is exposed to advertisements as a condition for gaining access to the service, or situations where the service provider monetises personal data it has collected.

²⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); OJ L 119, 4.5.2016, p. 1

²⁷ Case C-352/85 Bond van Adverteerders and Others vs The Netherlands State, EU:C:1988:196.

- (17) Interpersonal communications services are services that enable interpersonal and interactive exchange of information, covering services like traditional voice calls between two individuals but also all types of emails, messaging services, or group chats. Interpersonal communications services only cover communications between a finite, that is to say not potentially unlimited, number of natural persons which is determined by the sender of the communication. Communications involving legal persons should be within the scope of the definition where natural persons act on behalf of those legal persons or are involved at least on one side of the communication. Interactive communication entails that the service allows the recipient of the information to respond. Services which do not meet those requirements, such as linear broadcasting, video on demand, websites, social networks, blogs, or exchange of information between machines, should not be considered as interpersonal communications services. ~~Under exceptional circumstances, a~~ **A** service should, **by way of exception**, not be considered as an interpersonal communications service if the interpersonal and interactive communication facility is ~~an purely~~ ancillary feature to another service and for objective technical reasons cannot be used without that principal service, and its integration is not a means to circumvent the applicability of the rules governing electronic communications services. An example for such an exception could be, in principle, a communication channel in online games, depending on the features of the communication facility of the service.
- (18) Interpersonal communications services using numbers from a national and international telephone numbering plan connect with the public ~~(packet or circuit) switched~~ telephone network. Those number-based interpersonal communications services comprise both services to which end-users numbers are assigned for the purpose of ensuring end-to-end connectivity and services enabling end-users to reach persons to whom such numbers have been assigned. The mere use of a number as an identifier should not be considered equivalent to the use of a number to connect with the public ~~switched~~ telephone network, and should therefore, in itself, not be considered sufficient to qualify a service as a number-based interpersonal communications service. Number-independent interpersonal communications services should be subject only to obligations, where public interests require applying specific regulatory obligations to all types of interpersonal communications services, regardless of whether they use numbers for the provision of their service. It is justified to treat number-based interpersonal communications services differently, as they participate in and hence also benefit from a publicly assured interoperable ecosystem.

↓ 2002/22/EC recital 6 (adapted)

⇒ new

- (19) The network termination point represents a boundary for regulatory purposes between the regulatory framework for electronic ~~communication~~ ☒ communications ☒ networks and services and the regulation of telecommunication terminal equipment. Defining the location of the network termination point is the responsibility of the national regulatory authority, ~~where necessary on the basis of a proposal by the relevant undertakings.~~ ⇒ In the light of the practice of national regulatory authorities, and given the variety of fixed and wireless topologies, the Body of European Regulators for Electronic Communications ('BEREC') should, in close cooperation with the Commission, adopt guidelines on how to identify the network termination point, in accordance with this Directive, in various concrete circumstances. ⇐
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↓ new

- (20) Technical developments make it possible for end-users to access emergency services not only by voice calls but also by other interpersonal communications services. The concept of emergency communication should therefore cover all those interpersonal communications services that allow such emergency services access. It builds on the emergency system elements already enshrined in Union legislation, namely 'Public Safety Answering Point' ('PSAP') and 'most appropriate PSAP'²⁸, and on 'emergency services'²⁹.
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↓ 2002/21/EC recital 16 (adapted)

⇒ new

- (21) National regulatory ⇐ and other competent ⇐ authorities should have a harmonised set of objectives and principles to underpin ☒ their work ☒ , and should, where necessary, coordinate their actions with the ~~regulatory~~ authorities of other Member States ⇐ and with BEREC ⇐ in carrying out their tasks under this regulatory framework.

²⁸ Both defined in Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 service and amending Directive 2007/46/EC [OJ L 123, 19.05.2015, p. 77], and in Commission Regulation (EU) No 305/2013 of 26 November 2012 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the harmonised provision for an interoperable EU-wide eCall [OJ L 91, 03.04.2013, p. 1].

²⁹ As defined in Regulation (EU) 2015/758.

↓ 2002/21/EC recital 17 (adapted)

⇒ new

- (22) The activities of ~~national regulatory~~ ⇒ competent ⇐ authorities established under this Directive ~~and the Specific Directives~~ contribute to the fulfilment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning.
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↓ new

- (23) In order to translate the political aims of the Digital Single Market strategy into regulatory terms, the framework should, in addition to the existing three primary objectives of promoting competition, internal market and end-user interests, pursue an additional connectivity objective, articulated in terms of outcomes: widespread access to and take-up of very high capacity fixed and mobile connectivity for all Union citizens and businesses on the basis of reasonable price and choice, enabled by effective and fair competition, by efficient investment and open innovation, by efficient use of spectrum, by common rules and predictable regulatory approaches in the internal market and by the necessary sector-specific rules to safeguard the interests of citizens. For the Member States, the national regulatory authorities and other competent authorities and the stakeholders, that connectivity objective translates on the one hand into aiming for the highest capacity networks and services economically sustainable in a given area, and on the other hand into pursuing territorial cohesion, in the sense of convergence in capacity available in different areas.
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↓ 2002/21/EC recital 18 (adapted)

⇒ new

- (24) The ~~requirement for~~ ☒ principle that ☒ Member States ~~to~~ ⇒ should apply EU law in a technologically neutral fashion ⇐ ~~ensure that national regulatory authorities take the utmost account of the desirability of making regulation technologically neutral~~, that is to say that ☒ a national regulatory ☒ ⇒ or other competent ⇐ ☒ authority ☒ # neither imposes nor discriminates in favour of the use of a particular type of technology, does not preclude the taking of proportionate steps to promote certain specific services where this is justified in ⇒ order to attain the objectives of the regulatory framework ⇐ , for example digital television as a means for increasing spectrum efficiency. ⇒ Furthermore, it does not preclude taking into account that certain transmission media have physical characteristics and architectural features that can be superior in terms of quality of service, capacity, maintenance cost, energy efficiency, management flexibility, reliability, robustness and scalability, and ultimately in terms of performance, which can be reflected in actions taken in view of pursuing the various regulatory objectives. ⇐

↓ 2009/140/EC recital 53

- (25) Both efficient investment and competition should be encouraged in tandem, in order to increase economic growth, innovation and consumer choice.
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↓ 2009/140/EC recital 54

- (26) Competition can best be fostered through an economically efficient level of investment in new and existing infrastructure, complemented by regulation, wherever necessary, to achieve effective competition in retail services. An efficient level of infrastructure-based competition is the extent of infrastructure duplication at which investors can reasonably be expected to make a fair return based on reasonable expectations about the evolution of market shares.
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↓ 2009/140/EC recital 8 (adapted)
⇒ new

- (27) ~~In order to achieve the goals of the Lisbon Agenda, it~~ is necessary to give appropriate incentives for investment in new ☒ very ☒ high-speed ⇒ capacity ⇐ networks that will support innovation in content-rich Internet services and strengthen the international competitiveness of the European Union. Such networks have enormous potential to deliver benefits to consumers and businesses across the European Union. It is therefore vital to promote sustainable investment in the development of these new networks, while safeguarding competition and boosting consumer choice through regulatory predictability and consistency.
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↓ 2009/140/EC recital 5 (adapted)

- (28) The aim is progressively to reduce *ex ante* sector-specific rules as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. Considering that the markets for electronic communications have shown strong competitive dynamics in recent years, it is essential that *ex ante* regulatory obligations only be imposed where there is no effective and sustainable competition ☒ on the retail markets concerned ☒ .

↓ new

- (29) Electronic communications are becoming essential for an increasing number of sectors. The Internet of Things is an illustration of how the radio signal conveyance underpinning electronic communications continues to evolve and shape societal and business reality. To derive the greatest benefit from those developments, the introduction and accommodation of new wireless communications technologies and applications in spectrum management is essential. As other technologies and applications relying on spectrum are equally subject to growing demand, and can be enhanced by integration of or combination with electronic communications, spectrum management should adopt, where appropriate, a cross-sectorial approach to improve spectrum usage efficiency.
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↓ 2002/21/EC recital 11 (adapted)

⇒ new

- (33) In accordance with the principle of the separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority ~~or~~ ⇒ and other competent ⇐ authorities with a view to ensuring the impartiality of their decisions. This requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership laid down in Article 295 of the Treaty. National regulatory ⇒ and other competent ⇐ authorities should be in possession of all the necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks.
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↓ new

- (34) **Ex ante market regulation, including the imposition of obligations for access and interconnection, and the resolution of disputes between undertakings are tasks which should be undertaken only by national regulatory authorities, i.e. bodies which are independent both from the sector and from any external intervention of political pressure. Member States may assign other regulatory tasks provided in this Directive either to the national regulatory authorities or to other competent authorities. When Member States opt to assign regulatory tasks to other competent authorities, they should ensure prior consultation and information of the national regulatory authorities with the view to enabling all forms of EU coordination foreseen in this Directive as well as in other EU legislation such as Regulation (EU) 2015/2120 or Regulation (EU) 531/2012.**

~~It is necessary to provide for a list of tasks that Member States may assign only to bodies which they designate as national regulatory authorities whose political independence and regulatory capacity is guaranteed, as opposed to other regulatory tasks which they can assign either to the national regulatory authorities or to other competent authorities. Hence, where this Directive provides that a Member State should assign a task to or empower a competent authority, the Member State can assign the task either to a national regulatory authority, or to another competent authority.~~

↓ 2009/140/EC recital 13 (adapted)
⇒ new

- (35) The independence of the national regulatory authorities ~~should be~~ ☒ was ☒ strengthened in ☒ the 2009 review in ☒ order to ensure a more effective application of the regulatory framework and to increase their authority and the predictability of their decisions. To this end, express provision ~~should~~ ☒ had to ☒ be made in national law to ensure that, in the exercise of its tasks, a national regulatory authority ~~responsible for ex ante market regulation or for resolution of disputes between undertakings~~ is protected against external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. Such outside influence makes a national legislative body unsuited to act as a national regulatory authority under the regulatory framework. For that purpose, rules ~~should~~ ☒ had to ☒ be laid down at the outset regarding the grounds for the dismissal of the head of the national regulatory authority in order to remove any reasonable doubt as to the neutrality of that body and its imperviousness to external factors. ⇒ In order to avoid arbitrary dismissals, the dismissed member should have the right to request that the competent courts verify the existence of a valid reason to dismiss, among those foreseen in this Directive. Such dismissal should relate only to the personal or professional qualifications of the head or member. ⇐ It is important that national regulatory authorities ~~responsible for ex ante market regulation should~~ have their own budget allowing them, in particular, to recruit a sufficient number of qualified staff. In order to ensure transparency, this budget should be published annually. ⇒ Within the limits of their budget, they should have autonomy in managing their resources, human and financial. In order to ensure impartiality, Member States who retain ownership of or control undertakings contributing to the budget of the national regulatory authority or other competent authorities through administrative charges should ensure that there is effective structural separation of activities associated with the exercise of ownership or control from the exercise of control over the budget. ⇐
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↓ new

- (36) There is a need to further reinforce the independence of the national regulatory authorities to ensure the imperviousness of its head and members to external pressure, by providing minimum appointment qualifications, and a minimum duration for their mandate. Furthermore, the limitation of the possibility to renew more than once their mandate and the requirement for an appropriate rotation scheme for the board and the top management would address the risk of regulatory capture, ensure continuity, and enhance independence. **This should be arranged in a way that provides for an appropriate rotation scheme for the members of the collegiate body or the top management, such as by appointing the first members of the collegiate body for different periods, in order for their mandates, as well as that of their successors not to elapse at the same moment.**
- (37) National regulatory authorities should be accountable for and should be required to report on the way they are exercising their tasks. That obligation should **normally** take the form of an annual reporting obligation, rather than ad hoc reporting requests, which if disproportionate

could limit their independence or hinder them in the exercise of their tasks. Indeed, according to recent case law³⁰, extensive or unconditional reporting obligations may indirectly affect the independence of an authority.

- (38) Member States should notify to the Commission the identity of the national regulatory and other competent authorities. For authorities competent for granting rights of way, the notification requirement may be fulfilled by a reference to the single information point established pursuant to Article 7(1) of Directive 2014/61/EU of the European Parliament and of the Council³¹.

↓ 2002/20/EC recital 4

~~This Directive covers authorisation of all electronic communications networks and services whether they are provided to the public or not. This is important to ensure that both categories of providers may benefit from objective, transparent, non-discriminatory and proportionate rights, conditions and procedures.~~

↓ 2002/20/EC recital 5

~~This Directive only applies to the granting of rights to use radio frequencies where such use involves the provision of an electronic communications network or service, normally for remuneration. The self-use of radio terminal equipment, based on the non-exclusive use of specific radio frequencies by a user and not related to an economic activity, such as use of a citizen's band by radio amateurs, does not consist of the provision of an electronic communications network or service and is therefore not covered by this Directive. Such use is covered by the Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity³².~~

↓ 2002/20/EC recital 6 (adapted)

~~Provisions regarding the free movement of conditional access systems and the free provision of protected services based on such systems are laid down in Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access³³. The authorisation of such systems and services therefore does not need to be covered by this Directive.~~

³⁰ Case C-614/10 European Commission v Republic of Austria, EU:C:2012:631.

³¹ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, OJ L 155, 23.5.2014.

³² ~~OJ L 91, 7.4.1999, p. 10.~~

³³ ~~OJ L 320, 28.11.1998, p. 54.~~

- (39) The least onerous authorisation system possible should be used to allow the provision of electronic communications networks and services in order to stimulate the development of new ~~electronic~~ communications services and pan-European communications networks and services and to allow service providers and consumers to benefit from the economies of scale of the single market.

- (40) ~~Those aims~~ ⇒ The benefits of the single market to service providers and end-users ⇐ can be best achieved by general authorisation of ⇒ electronic communications networks and of electronic communications services other than number-independent interpersonal communications services, ⇐ ~~all electronic communications networks and services~~ without requiring any explicit decision or administrative act by the national regulatory authority and by limiting any procedural requirements to ⇒ a declaratory ⇐ notification only. Where Member States require notification by providers of electronic ~~communication~~ ☒ communications ☒ networks or services when they start their activities, ~~⇒ this notification should be submitted to BEREC which acts as a single contact point.~~ Such notification should not entail administrative cost for the providers and could be made available via an entry point at the website of the national regulatory authorities. **In order to support effective cross-border coordination, in particular for pan-European operators, BEREC should establish and maintain a database of notifications, based on the information provided by national regulatory authorities. .** ~~BEREC should forward in good time the notifications to the national regulatory authority in all Member States in which the providers of electronic communications networks or services intend to provide electronic communications networks or services. Member States can also require proof that notification was made by means of any legally recognised postal or electronic acknowledgement of receipt of the notification to BEREC. Such acknowledgement should in any case not consist of or require an administrative act by the national regulatory authority, or any other authority ⇐ they may also require proof of such notification having been made by means of any legally recognised postal or electronic acknowledgement of receipt of the notification. Such acknowledgement should in any case not consist of or require an administrative act by the national regulatory authority to which the notification must be made.~~

- (41) The notification ~~to BEREC~~ should entail a mere declaration of the provider's intention to commence the provision of electronic communications networks and services. A provider may only be required to accompany such declaration by the information set out in Article 12 of this Directive. Member States should not impose additional or separate notification requirements.
- (42) Contrary to the other categories of electronic communications networks and services as defined in this Directive, number-independent interpersonal communications services do not benefit from the use of public numbering resources and do not participate in a publicly assured interoperable ecosystem. It is therefore not appropriate to subject these types of services to the general authorisation regime

↓ 2002/20/EC recital 21 (adapted)

⇒ new

- (43) When granting rights of use for radio ~~frequencies~~ ⇒ spectrum ⇐ , numbers or rights to install facilities, the ~~relevant~~ ☒ competent ☒ authorities ~~may~~ ☒ should ☒ inform the undertakings to whom they grant such rights of the relevant conditions ~~in the general authorisation.~~
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↓ 2002/20/EC recital 18 (adapted)

⇒ new

- (44) ~~The general authorisation~~ ☒ authorisations ☒ should only contain conditions which are specific to the electronic communications sector. It should not be made subject to conditions which are already applicable by virtue of other existing national law which is not specific to the ~~electronic~~ communications sector. ~~Nevertheless,~~ ⇒ For instance, ⇐ the national regulatory authorities may inform network operators ~~and service providers~~ about ⇒ applicable environmental and town and country planning requirements ⇐ ~~other legislation concerning their business, for instance through references on their websites.~~
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↓ 2009/140/EC recital 73

- (45) The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities and emergency services to communicate between themselves and with the general public before, during and after major disasters. ~~Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.~~
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↓ 2002/20/EC recital 9 (adapted)

- (46) It is necessary to include the rights and obligations of undertakings under general authorisations explicitly in such authorisations in order to ensure a level playing field throughout the ~~Community~~ ☒ Union ☒ and to facilitate cross-border negotiation of interconnection between public communications networks.
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↓ 2002/20/EC recital 10 (adapted)

- (47) The general authorisation entitles undertakings providing electronic communications networks and services to the public to negotiate interconnection under the conditions of ☒ this ☒ Directive ~~2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communication networks and associated facilities (Access Directive)³⁴~~. Undertakings providing electronic communications networks and services other than to the public can negotiate interconnection on commercial terms.

³⁴ See page 7 of this Official Journal.

~~The granting of specific rights may continue to be necessary for the use of radio frequencies and numbers, including short codes, from the national numbering plan. Rights to numbers may also be allocated from a European numbering plan, including for example the virtual country code ‘3883’ which has been attributed to member countries of the European Conference of Post and Telecommunications (CEPT). Those rights of use should not be restricted except where this is unavoidable in view of the scarcity of radio frequencies and the need to ensure the efficient use thereof.~~

- (48) In the case of electronic communications networks and services not provided to the public it is appropriate to impose fewer and lighter conditions than are justified for electronic communications networks and services provided to the public.
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- (49) Specific obligations which may be imposed on providers of electronic communications networks and ⇒ electronic communications services other than number-independent interpersonal communications services ⇐ ~~services~~ in accordance with ~~Community~~ ☒ Union ☒ law by virtue of their significant market power as defined in ☒ this ☒ Directive ~~2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)³⁵~~ should be imposed separately from the general rights and obligations under the general authorisation.

³⁵ See page 33 of this Official Journal.

↓ 2002/20/EC recital 25

⇒ new

- (50) Providers of electronic communications networks and services may need a confirmation of their rights under the general authorisation with respect to interconnection and rights of way, in particular to facilitate negotiations with other, regional or local, levels of government or with service providers in other Member States. For this purpose *the national regulatory authorities* ⇒ ~~BEREC, which receives the notification to provide public or private communications networks or services,~~ ⇒ should provide declarations to undertakings either upon request or alternatively as an automatic response to a notification under the general authorisation. Such declarations should not by themselves constitute entitlements to rights nor should any rights under the general authorisation or rights of use or the exercise of such rights depend upon a declaration.
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↓ 2002/20/EC recital 30

⇒ new

- (51) Administrative charges may be imposed on providers of electronic communications services in order to finance the activities of the national regulatory authority ⇒ or other competent authority ⇐ in managing the authorisation system and for the granting of rights of use. Such charges should be limited to cover the actual administrative costs for those activities. For this purpose transparency should be created in the income and expenditure of national regulatory authorities ⇒ and of other competent authorities ⇐ by means of annual reporting about the total sum of charges collected and the administrative costs incurred. This will allow undertakings to verify that administrative costs and charges are in balance.
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↓ 2002/20/EC recital 31 (adapted)

⇒ new

- (52) Systems for administrative charges should not distort competition or create barriers for entry into the market. With a general authorisation system it will no longer be possible to attribute administrative costs and hence charges to individual undertakings except for the granting of rights to ⇐ of ⇐ use ⇐ for ⇐ numbers, radio frequencies ⇒ spectrum ⇐ and for rights to install facilities. Any applicable administrative charges should be in line with the principles of a general authorisation system. An example of a fair, simple and transparent alternative for these charge attribution criteria could be a turnover related distribution key. Where administrative charges are very low, flat rate charges, or charges combining a flat rate basis with a turnover related element could also be appropriate. ⇒ To the extent that the general authorisation system extends to undertakings with very small market shares, such as community-based network providers, or to service providers whose business model generates very limited revenues even in case of significant market penetration in terms of volumes, Member States should assess the possibility to establish an appropriate de minimis threshold for the imposition of administrative charges. ⇐

- (53) Member States may need to amend rights, conditions, procedures, charges and fees relating to general authorisations and rights of use where this is objectively justified. Such changes should be duly notified to all interested parties in good time, giving them adequate opportunity to express their views on any such amendments. ⇒ Taking into account the need to ensure legal certainty and to promote regulatory predictability, any restriction or withdrawal of existing rights of use for radio spectrum or to install facilities should be subject to predictable and transparent procedures; hence stricter requirements or a notification mechanism could be imposed where rights of use have been assigned pursuant to competitive or comparative procedures. Unnecessary procedures should be avoided in case of minor amendments to existing rights to install facilities or to use spectrum when such amendments do not impact on third parties' interests. The change in the use of spectrum as a result of the application of technology and service neutrality principles should not be considered a sufficient justification for a withdrawal of rights since it does not constitute the granting of a new right. ⇐
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~~The objective of transparency requires that service providers, consumers and other interested parties have easy access to any information regarding rights, conditions, procedures, charges, fees and decisions concerning the provision of electronic communications services, rights of use of radio frequencies and numbers, rights to install facilities, national frequency usage plans and national numbering plans. The national regulatory authorities have an important task in providing such information and keeping it up to date. Where such rights are administered by other levels of government the national regulatory authorities should endeavour to create a user-friendly instrument for access to information regarding such rights.~~

~~The proper functioning of the single market on the basis of the national authorisation regimes under this Directive should be monitored by the Commission.~~

↓ 2002/20/EC recital 36

~~In order to arrive at a single date of application of all elements of the new regulatory framework for the electronic communications sector, it is important that the process of national transposition of this Directive and of alignment of the existing licences with the new rules take place in parallel. However, in specific cases where the replacement of authorisations existing on the date of entry into force of this Directive by the general authorisation and the individual rights of use in accordance with this Directive would lead to an increase in the obligations for service providers operating under an existing authorisation or to a reduction of their rights, Member States may avail themselves of an additional nine months after the date of application of this Directive for alignment of such licences, unless this would have a negative effect on the rights and obligations of other undertakings.~~

↓ 2002/20/EC recital 37

~~There may be circumstances under which the abolition of an authorisation condition regarding access to electronic communications networks would create serious hardship for one or more undertakings that have benefited from the condition. In such cases further transitional arrangements may be granted by the Commission, upon request by a Member State.~~

↓ 2002/20/EC recital 38

~~Since the objectives of the proposed action, namely the harmonisation and simplification of electronic communications rules and conditions for the authorisation of networks and services cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary for those objectives,~~

- (54) Minor amendments to rights and obligations are those amendments which are mainly administrative, do not change the substantial nature of the general authorisations and the individual rights of use and thus cannot cause any comparative advantage to the other undertakings.
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- (55) National regulatory ⇒ and other competent ⇐ authorities need to gather information from market players in order to carry out their tasks effectively. **By exception it may also be necessary to gather information from other undertakings that hold relevant information for these purposes** ☒ It might also be necessary to gather ☒ ~~Such~~ information ~~may also need to be gathered~~ on behalf of the Commission ⇒ or BEREC ⇐, to allow ~~it~~ ☒ them ☒ to fulfil ~~its~~ ☒ their respective ☒ obligations under ~~Community~~ ☒ Union ☒ law. Requests for information should be proportionate and not impose an undue burden on undertakings. Information gathered by national regulatory ⇒ and other competent ⇐ authorities should be publicly available, except in so far as it is confidential in accordance with national rules on public access to information and subject to ~~Community~~ ☒ Union ☒ and national law on business confidentiality.
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- (56) In order to ensure that national regulatory authorities carry out their regulatory tasks in an effective manner, the data which they gather should include accounting data on the retail markets that are associated with wholesale markets where an operator has significant market power and as such are regulated by the national regulatory authority. The data should also include data which enables the national regulatory authority to assess ⇒ compliance with conditions attached to rights of use, ⇐ the possible impact of planned upgrades or changes to network topology on the development of competition or on wholesale products made available to other parties. ⇒ Information regarding compliance with coverage obligations attached to rights of use for radio spectrum is key to ensure completeness of the geographic surveys of network deployments undertaken by national regulatory authorities. In that respect, they should be able to require that information is provided at disaggregated local level with a granularity adequate to conduct a geographical survey of networks. ⇐

↓ 2002/20/EC recital 28 adapted
(adapted)
⇒ new

- (57) ~~Subjecting service providers to~~ ⇒ To alleviate ⇐ reporting and information obligations
⇒ for network and ⇐ ☒ service providers ☒ ~~can be cumbersome, both for the undertaking~~
and for the ~~national regulatory~~ ⇒ competent ⇐ authority concerned. ~~Such obligations~~
should ~~therefore~~ be proportionate, objectively justified and limited to what is strictly
necessary. ⇒ In particular, duplication of requests for information by the competent
authority, and by BEREC ⇐ ~~It is not necessary to require~~ ☒ and the ☒ systematic and
regular proof of compliance with all conditions under ~~the~~ ☒ a ☒ general authorisation or
~~attached to~~ ☒ a ☒ right of use ⇒ should be avoided ⇐. Undertakings ⇒ should ⇐ ~~have a~~
~~right to~~ know the ☒ intended use of ☒ ~~purposes for which~~ the information ☒ sought ☒
~~they should provide will be used. The~~ ~~provision of information should not be a condition~~
for market access. For statistical purposes a notification may be required from providers of
electronic ~~communication~~ ☒ communications ☒ networks or services when they cease
activities.
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↓ 2002/20/EC recital 29 adapted
(adapted)
⇒ new

- (58) ~~This Directive should be without prejudice to~~ Member States' obligations to provide ~~any~~
information ~~necessary~~ for the defence of ~~Community~~ ☒ Union ☒ interests ☒ under ☒
~~within the context of~~ international agreements. ~~This Directive should also be without~~
~~prejudice to~~ ☒ as well as ☒ ~~any~~ reporting obligations under legislation which is not
specific to the electronic communications sector such as competition law ☒ should not be
affected ☒.
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↓ 2002/21/EC recital 14 (adapted)
⇒ new

- (59) Information that is considered confidential by a ~~national regulatory~~ ⇒ competent ⇐
authority, in accordance with ~~Community~~ ☒ Union ☒ and national rules on business
confidentiality ⇒ and protection of personal data ⇐, may ~~only~~ be exchanged with the
Commission and other national regulatory authorities ⇒ and BEREC ⇐ where such
exchange is ~~strictly~~ necessary for the application of the provisions of this Directive ~~or the~~
~~Specific Directives~~. The information exchanged should be limited to that which is relevant
and proportionate to the purpose of such an exchange.

↓ 2002/21/EC recital 15 (adapted)
⇒ new

- (62) It is important that national regulatory ~~authorities~~ ⇒ and other competent ⇐ authorities consult all interested parties on proposed decisions, ⇒ give them sufficient time to the complexity of the matter to provide their comments ⇐, and take account of their comments before adopting a final decision. In order to ensure that decisions at national level do not have an adverse effect on the single market or other Treaty objectives, national regulatory authorities should also notify certain draft decisions to the Commission and other national regulatory authorities to give them the opportunity to comment. It is appropriate for national regulatory authorities to consult interested parties on all draft measures which have an effect on trade between Member States. The cases where the procedures referred to in Articles ~~6~~ ☒ 24 ☒ and ~~7~~ ☒ 34 ☒ apply are defined in this Directive ~~and in the Specific Directives~~.
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↓ 2009/136/EC recital 49 (adapted)

- (63) In order to ~~overcome existing shortcomings in terms of consumer consultation and to~~ appropriately address the interests of citizens, Member States should put in place an appropriate consultation mechanism. Such a mechanism could take the form of a body which would, independently of the national regulatory authority and service providers, carry out research into consumer-related issues, such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholder consultation. Furthermore, a mechanism could be established for the purpose of enabling appropriate cooperation on issues relating to the promotion of lawful content. Any cooperation procedures agreed pursuant to such a mechanism should, however, not allow for the systematic surveillance of Internet usage.
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↓ 2002/21/EC recital 32 (adapted)
⇒ new

- (64) In the event of a dispute between undertakings in the same Member State in an area covered by this Directive ~~or the Specific Directives~~, for example relating to obligations for access and interconnection or to the means of transferring ~~subscriber~~ ⇒ end-user ⇐ lists, an aggrieved party that has negotiated in good faith but failed to reach agreement should be able to call on the national regulatory authority to resolve the dispute. National regulatory authorities should be able to impose a solution on the parties. The intervention of a national regulatory authority in the resolution of a dispute between undertakings providing electronic communications networks or services in a Member State should seek to ensure compliance with the obligations arising under this Directive ~~or the Specific Directives~~.

↓ 2002/21/EC recital 33 (adapted)

⇒ new

- (65) In addition to the rights of recourse granted under national or ~~Community~~ ☒ Union ☒ law, there is a need for a simple procedure to be initiated at the request of either party in a dispute, to resolve cross-border disputes ~~which lie outside the competence of a single national regulatory authority~~ ⇒ between undertakings providing or authorised to provide electronic communications networks or services in different Member States ⇐.
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↓ 2009/140/EC recital 50

⇒ new

- (66) One important task assigned to BEREC is to adopt opinions in relation to cross-border disputes where appropriate. National regulatory authorities should therefore ⇒ fully reflect any opinion taken by BEREC in their measures imposing ⇐ ~~take account of~~ any ⇐ obligation on an undertaking or otherwise resolving the dispute ⇐ ~~opinions of BEREC~~ in such cases.
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↓ 2002/22/EC recital 47 (adapted)

⇒ new

- (69) In the context of a competitive environment, the views of interested parties, including users and consumers, should be taken into account by national regulatory authorities when dealing with issues related to end-users' rights. ⇒ Out-of-court dispute settlement procedures may constitute a fast and cost-efficient way end-users to enforce their rights, in particular for consumers and micro and small enterprises. ⇐ ☒ For consumer disputes, ☒ effective ⇒ , non-discriminatory and inexpensive ⇐ procedures ☒ to settle their ⇐ ~~should be available to deal with disputes between consumers, on the one hand, and undertakings providing~~ ☒ with providers of ⇐ publicly available ⇐ electronic ⇐ communications services, ~~on the other~~ ⇒ are already ensured by Directive 2013/11/EU of the European Parliament and of the Council³⁶ in so far as relevant contractual disputes are concerned and the consumer is resident and the undertaking is established within the Union ⇐ . ⇒ As many Member States have established dispute resolution procedures also for end-users other than consumers, to whom Directive 2013/11/EU does not apply, it is reasonable to maintain the sector-specific dispute resolution procedure for both consumers and, where Member States extend it, also for other end-users, in particular micro and small enterprises. ⇐ ~~Member States should take full account of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out of court settlement of consumer disputes~~³⁷ ⇒ In view of the deep sectorial expertise of national regulatory authorities, Member States should enable the national regulatory authority to act as dispute settlement entity, through a separate body within that authority which should not be subject to any instructions. Dispute resolution procedures under this Directive that involve consumers should be subject to the quality requirements set out in Chapter II of Directive 2013/11/EU ⇐

³⁶ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).

³⁷ ~~OJ L 115, 17.4.1998, p. 31.~~

↓ 2009/140/EC recital 72 (adapted)
⇒ new

- (70) ~~National regulatory~~ ⇒ Competent ⇐ authorities should be able ~~to take effective action~~ to monitor and secure compliance with the terms and conditions of the general authorisation ~~⊗~~ and ~~⊗~~ ~~or of~~ rights of use, ⇒ and in particular to ensure effective and efficient use of spectrum and compliance with coverage and quality of service obligations, through ⇐ ~~including the power to impose effective~~ financial or administrative penalties ⇒ including injunctions and withdrawals of rights of use ⇐ in the event of breaches of those terms and conditions. ⇒ Undertakings should provide the most accurate and complete information possible to competent authorities to allow them to fulfil their surveillance tasks. In order to avoid the creation of barriers to entry in the market, namely through anti-competitive hoarding, enforcement of conditions attached to spectrum rights by Member States should be improved effective and all competent authorities beyond national regulatory authorities should participate where necessary. Enforcement conditions should include the application of a "use it or lose it" solution to counter-balance long duration of rights. For that purpose, trading and leasing of spectrum should be considered as modalities which ensure effective use by the original right holder. In order to ensure legal certainty in respect of possible exposure to any sanction for lack of use for spectrum, thresholds of use, among others in terms of time, quantity or identity of spectrum, should be defined in advance. ⇐
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↓ 2002/20/EC recital 15 (adapted)

- (71) The conditions, which may be attached to ~~the general authorisation~~ ~~⊗~~ authorisations ~~⊗~~ and ~~to the specific~~ ~~⊗~~ individual ~~⊗~~ rights of use, should be limited to what is strictly necessary to ensure compliance with requirements and obligations under ~~Community law~~ and national law ~~in accordance with Community~~ ~~⊗~~ and Union ~~⊗~~ law.
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↓ 2002/21/EC recital 12 (adapted)
⇒ new

- (72) Any party ~~who is the~~ subject of ~~⊗~~ to ~~⊗~~ a decision ~~by~~ ~~⊗~~ of ~~⊗~~ a ~~national regulatory~~ ⇒ competent ⇐ authority should have the right to appeal to a body that is independent of the parties involved ⇒ and of any external intervention or political pressure which could jeopardise its independent assessment of matters coming before it ⇐. ~~This~~ ~~⊗~~ That ~~⊗~~ body ~~may~~ ~~⊗~~ can ~~⊗~~ be a court. Furthermore, any undertaking which considers that its applications for the granting of rights to install facilities have not been dealt with in accordance with the principles set out in this Directive should be entitled to appeal against such decisions. ~~This~~ ~~⊗~~ That ~~⊗~~ appeal procedure ~~is~~ ~~⊗~~ should be ~~⊗~~ without prejudice to the division of competences within national judicial systems and to the rights of legal entities or natural persons under national law. ⇒ In any case, Member States should grant effective judicial review against such decisions. ⇐

↓ 2009/140/EC recital 14 (adapted)
⇒ new

- (73) In order to ensure legal certainty for market players, appeal bodies should carry out their functions effectively; in particular, appeals proceedings should not be unduly lengthy. Interim measures suspending the effect of the decision of a ~~national regulatory~~ ⇒ competent ⇐ authority should be granted only in urgent cases in order to prevent serious and irreparable damage to the party applying for those measures and if the balance of interests so requires.
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↓ 2009/140/EC recital 15 (adapted)
⇒ new

- (74) There has been a wide divergence in the manner in which appeal bodies have applied interim measures to suspend the decisions of the national regulatory authorities. In order to achieve greater consistency of approach common standards should be applied in line with ~~Community~~ ☒ Union ☒ case-law. Appeal bodies should also be entitled to request available information published by BEREC. Given the importance of appeals for the overall operation of the regulatory framework, a mechanism should be set up for collecting information on appeals and decisions to suspend decisions taken by the ⇒ competent ⇐ ~~regulatory~~ authorities in all the Member States and for the reporting of that information to the Commission ⇒ and to BEREC ⇐ . ⇒ That mechanism should ensure that the Commission or BEREC can retrieve from Member States the text of the decisions and judgments with a view to developing a data-base. ⇐
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↓ 2009/140/EC recital 58

- (87) Any Commission decision under Article ~~19(1)~~ 40(1) of ~~Directive 2002/21/EC (Framework Directive)~~ should be limited to regulatory principles, approaches and methodologies. For the avoidance of doubt, it should not prescribe detail which will normally need to reflect national circumstances, and it should not prohibit alternative approaches which can reasonably be expected to have equivalent effect. Such a decision should be proportionate and should not have an effect on decisions taken by national regulatory authorities that do not create a barrier to the internal market.
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↓ 2002/21/EC recital 29 (adapted)

- (88) The ~~Community~~ ☒ Union ☒ and the Member States have entered into commitments in relation to standards and the regulatory framework of telecommunications networks and services in the World Trade Organisation.

- (89) Standardisation should remain primarily a market-driven process. However there may still be situations where it is appropriate to require compliance with specified standards at ~~Community~~ ☒ Union ☒ level to ensure interoperability in the single market. At national level, Member States are subject to the provisions of Directive ~~98/34/EC~~ 2015/1535/EU. ~~Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals³⁸ did not mandate any specific digital television transmission system or service requirement. Through the Digital Video Broadcasting Group, European market players have developed a family of television transmission systems that have been standardised by the European Telecommunications Standards Institute (ETSI) and have become International Telecommunication Union recommendations. Any decision to make the implementation of such standards mandatory should follow a full public consultation. Standardisation procedures under this Directive are without prejudice to the provisions of Directive 1999/5/EC, Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits³⁹ and Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility⁴⁰ the Radio Equipment Directive 2014/53/EU, the Low Voltage Directive 2014/35/EU and the Electromagnetic Compatibility Directive 2014/30/EU.~~

~~Interoperability of digital interactive television services and enhanced digital television equipment, at the level of the consumer, should be encouraged in order to ensure the free flow of information, media pluralism and cultural diversity. It is desirable for consumers to have the capability of receiving, regardless of the transmission mode, all digital interactive television services, having regard to technological neutrality, future technological progress, the need to promote the take-up of digital television, and the state of competition in the markets for digital television services. Digital interactive television platform operators should strive to implement an open application program interface (API) which conforms to standards or specifications adopted by a European standards organisation. Migration from existing APIs to new open APIs should be encouraged and organised, for example by Memoranda of Understanding between all relevant market players. Open APIs facilitate interoperability, i.e. the portability of interactive content between delivery mechanisms, and full functionality of this content on enhanced digital television equipment. However, the need not to hinder the functioning of the receiving equipment and to protect it from malicious attacks, for example from viruses, should be taken into account.~~

³⁸ ~~OJ L 281, 23.11.1995, p. 51.~~

³⁹ ~~OJ L 77, 26.3.1973, p. 29.~~

⁴⁰ ~~OJ L 139, 23.5.1989, p. 19.~~

↓ 2002/22/EC recital 2 (adapted)

(193) Under Article ~~153~~ 169 of the Treaty on the Functioning of the European Union, the ~~Community~~ Union is to contribute to the protection of consumers.

↓ 2002/22/EC recital 3 (adapted)

~~The Community and its Member States have undertaken commitments on the regulatory framework of telecommunications networks and services in the context of the World Trade Organisation (WTO) agreement on basic telecommunications. Any member of the WTO has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the member.~~

↓ 2002/22/EC recital 51 (adapted)

~~Since the objectives of the proposed action, namely setting a common level of universal service for telecommunications for all European users and of harmonising conditions for access to and use of public telephone networks at a fixed location and related publicly available telephone services and also achieving a harmonised framework for the regulation of electronic communications services, electronic communications networks and associated facilities, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale or effects of the action be better achieved at Community level, the Community may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.~~

↓ 2002/22/EC recital 5

~~In a competitive market, certain obligations should apply to all undertakings providing publicly available telephone services at fixed locations and others should apply only to undertakings enjoying significant market power or which have been designated as a universal service operator.~~

↓ 2009/140/EC recital 22 (adapted)

(254) In line with the objectives of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of Persons with Disabilities, the regulatory framework should ensure that all users, including disabled end-users, the elderly, and users with special social needs, have easy access to affordable high quality services. Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the ~~Community~~ ☒ Union ☒ shall take account of the needs of persons with a disability in drawing up measures under Article ~~95 of the Treaty~~ ☒ 114 of the TFEU ☒.

↓ 2002/19/EC recital 22

(272) Publication of information by Member States will ensure that market players and potential market entrants understand their rights and obligations, and know where to find the relevant detailed information. Publication in the national gazette helps interested parties in other Member States to find the relevant information.

↓ 2002/19/EC recital 23

(273) In order to ensure that the pan-European electronic communications market is effective and efficient, the Commission should monitor and publish information on charges which contribute to determining prices to end-users.

↓ 2002/19/EC recital 24

~~The development of the electronic communications market, with its associated infrastructure, could have adverse effects on the environment and the landscape. Member States should therefore monitor this process and, if necessary, take action to minimise any such effects by means of appropriate agreements and other arrangements with the relevant authorities.~~

- (274) In order to determine the correct application of ~~Community~~ ☒ Union ☒ law, the Commission needs to know which undertakings have been designated as having significant market power and what obligations have been placed upon market players by national regulatory authorities. In addition to national publication of this information, it is therefore necessary for Member States to send this information to the Commission. Where Member States are required to send information to the Commission, this may be in electronic form, subject to appropriate authentication procedures being agreed.
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- (275) In order to take account of market, social and technological developments, **including evolution of technical standards**, to manage the risks posed to security of networks and services and to ensure effective access to emergency services through emergency communications, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying measures to address security risks; adapting conditions for access to digital television and radio services; setting a single wholesale voice call termination rate in fixed and mobile markets ; adopting measures related to emergency communications in the Union; and adapting annexes II, IV, V, VI, VIII, IX and X of this Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (276) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to adopt decisions to resolve cross-border harmful interferences between Member States; to make the implementation of standards compulsory, or remove standards and/or specifications from the compulsory part of the list of standards; ~~to take decisions setting out whether rights in a harmonised band shall be subject to a general authorisation or to individual rights of use; to specify the modalities of application of the criteria, rules and conditions with regard to harmonised radio spectrum; to specify the modalities of applying the conditions that Member States may attach to authorisations to use harmonised radio spectrum;~~ to identify the bands for which rights of use for radio frequencies may be transferred or leased between undertakings; ~~to establish common limitation maximum dates by which the use of specific harmonised radio spectrum bands shall be authorised; to adopt transitional measures regarding the duration of rights of use for radio spectrum;~~ to set criteria to coordinate the implementation of certain obligations; ~~to specify technical characteristics for the design, deployment and operation of small-area wireless access points;~~ to address unmet cross-border or pan-European demand for numbers; and to specify the nature and scope of obligations ensuring effective access to emergency services or to end-to-end connectivity between end-users within one or several Member States or throughout the European Union. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

(277) ⇒ Finally, the Commission should be able to adopt as necessary, having taken utmost account of the opinion of BEREC, recommendations in relation to the identification of the relevant product and service markets, the notifications under the procedure for consolidating the internal market and the harmonised application of the provisions of the regulatory framework. ⇐

↓ 2002/21/EC recital 39

(278) The provisions of this Directive should be reviewed periodically, in particular with a view to determining the need for modification in the light of changing technological or market conditions.

↓ 2002/21/EC recital 42

(279) Certain directives and decisions in this field should be repealed.

↓ 2002/21/EC recital 43 (adapted)

(280) The Commission should monitor the transition from the existing framework to the new framework, ~~and may in particular, at an appropriate time, bring forward a proposal to repeal Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop⁴¹.~~

↓ 2002/21/EC recital 34

~~A single Committee should replace the ‘ONP Committee’ instituted by Article 9 of Directive 90/387/EEC and the Licensing Committee instituted by Article 14 of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services⁴².~~

↓ 2002/21/EC recital 35

~~National regulatory authorities and national competition authorities should provide each other with the information necessary to apply the provisions of this Directive and the Specific Directives, in order to allow them to cooperate fully together. In respect of the information exchanged, the receiving authority should ensure the same level of confidentiality as the originating authority.~~

↓ 2002/21/EC recital 36

~~The Commission has indicated its intention to set up a European regulators group for electronic communications networks and services which would constitute a suitable mechanism for encouraging cooperation and coordination of national regulatory authorities, in order to promote the development of the internal market for electronic communications networks and services, and to~~

⁴¹ ~~OJ L 336, 30.12.2000, p. 4.~~

⁴² ~~OJ L 117, 7.5.1997, p. 15.~~

~~seek to achieve consistent application, in all Member States, of the provisions set out in this Directive and the Specific Directives, in particular in areas where national law implementing Community law gives national regulatory authorities considerable discretionary powers in application of the relevant rules.~~

↓ 2002/21/EC recital 41 (adapted)
⇒ new

(281) Since the objectives of the proposed action, namely achieving a harmonised ⇒ and simplified ⇐ framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, ⇒ of the conditions for the authorisation of networks and services, of spectrum use and of numbers, of the regulation of access to and interconnection of electronic communications networks and associated facilities and of end-user protection ⇐ cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at ~~Community~~ ☒ Union ☒ level, the ~~Community~~ ☒ Union ☒ may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary for those objectives.

↓ 2002/20/EC recital 1 (adapted)

~~The outcome of the public consultation on the 1999 review of the regulatory framework for electronic communications, as reflected in the Commission communication of 26 April 2000, and the findings reported by the Commission in its communications on the fifth and sixth reports on the implementation of the telecommunications regulatory package, has confirmed the need for a more harmonised and less onerous market access regulation for electronic communications networks and services throughout the Community.~~

↓ 2002/20/EC recital 2

~~Convergence between different electronic communications networks and services and their technologies requires the establishment of an authorisation system covering all comparable services in a similar way regardless of the technologies used.~~

↓ 2002/20/EC recital 14

~~Member States are neither obliged to grant nor prevented from granting rights to use numbers from the national numbering plan or rights to install facilities to undertakings other than providers of electronic communications networks or services.~~

↓ 2002/20/EC recital 26

~~Where undertakings find that their applications for rights to install facilities have not been dealt with in accordance with the principles set out in Directive 2002/21/EC (Framework Directive) or where such decisions are unduly delayed, they should have the right to appeal against decisions or delays in such decisions in accordance with that Directive.~~

↓ 2002/20/EC recital 27

~~The penalties for non-compliance with conditions under the general authorisation should be commensurate with the infringement. Save in exceptional circumstances, it would not be proportionate to suspend or withdraw the right to provide electronic communications services or the right to use radio frequencies or numbers where an undertaking did not comply with one or more of the conditions under the general authorisation. This is without prejudice to urgent measures which the relevant authorities of the Member States may need to take in case of serious threats to public safety, security or health or to economic and operational interests of other undertakings. This Directive should also be without prejudice to any claims between undertakings for compensation for damages under national law.~~

↓ 2002/19/EC recital 4 (adapted)

~~Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals⁴³ did not mandate any specific digital television transmission system or service requirement, and this opened up an opportunity for the market actors to take the initiative and develop suitable systems. Through the Digital Video Broadcasting Group, European market actors have developed a family of television transmission systems that have been adopted by broadcasters throughout the world. These transmissions systems have been standardised by the European Telecommunications Standards Institute (ETSI) and have become International Telecommunication Union recommendations. In relation to wide-screen digital television, the 16:9 aspect ratio is the reference format for wide-format television services and programmes, and is now established in Member States' markets as a result of Council Decision 93/424/EEC of 22 July 1993 on an action plan for the introduction of advanced television services in Europe⁴⁴.~~

↓ 2002/19/EC recital 26 (adapted)

~~Given the pace of technological and market developments, the implementation of this Directive should be reviewed within three years of its date of application to determine if it is meeting its objectives.~~

↓ 2002/19/EC recital 27 (adapted)

~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁴⁵.~~

⁴³ OJ L 281, 23.11.1995, p. 51.

⁴⁴ OJ L 196, 5.8.1993, p. 48.

⁴⁵ OJ L 184, 17.7.1999, p. 23.

~~Since the objectives of the proposed action, namely establishing a harmonised framework for the regulation of access to and interconnection of electronic communications networks and associated facilities, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,~~

~~Member States should continue to ensure that the services set out in Chapter II are made available with the quality specified to all end-users in their territory, irrespective of their geographical location, and, in the light of specific national conditions, at an affordable price. Member States may, in the context of universal service obligations and in the light of national conditions, take specific measures for consumers in rural or geographically isolated areas to ensure their access to the services set out in the Chapter II and the affordability of those services, as well as ensure under the same conditions this access, in particular for the elderly, the disabled and for people with special social needs. Such measures may also include measures directly targeted at consumers with special social needs providing support to identified consumers, for example by means of specific measures, taken after the examination of individual requests, such as the paying off of debts.~~

~~Services providing content such as the offer for sale of a package of sound or television broadcasting content are not covered by the common regulatory framework for electronic communications networks and services. Providers of such services should not be subject to universal service obligations in respect of these activities. This Directive is without prejudice to measures taken at national level, in compliance with Community law, in respect of such services.~~

~~Where a Member State seeks to ensure the provision of other specific services throughout its national territory, such obligations should be implemented on a cost efficient basis and outside the scope of universal service obligations. Accordingly, Member States may undertake additional measures (such as facilitating the development of infrastructure or services in circumstances where the market does not satisfactorily address the requirements of end-users or consumers), in conformity with Community law. As a reaction to the Commission's e-Europe initiative, the Lisbon European Council of 23 and 24 March 2000 called on Member States to ensure that all schools have access to the Internet and to multimedia resources.~~

~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁴⁶;~~

(282) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁴⁷, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments.

- (283) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (284) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the dates of application of the Directives set out in Annex XI, Part B,
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⁴⁶ ~~OJ L 184, 17.7.1999, p. 23.~~

⁴⁷ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

**PART I. FRAMEWORK (GENERAL RULES FOR THE ORGANISATION OF THE
SECTOR)**

TITLE II: SCOPE, AIM & OBJECTIVES, DEFINITIONS

CHAPTER I

☒ SUBJECT MATTER ☒ ~~SCOPE~~, AIM AND DEFINITIONS

Article 1

~~Scope~~ ☒ **Subject matter** ☒ **and aim**

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment ~~to facilitate access for disabled users~~. It lays down tasks of national regulatory ⇒ and for other competent ⇐ authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the ~~Community~~ ☒ Union ☒.

↓ 2002/20/EC

~~Article 1~~

~~Objective and scope~~

~~1. The aim of this Directive is ☒ on the one hand ☒ to implement an internal market in electronic communications networks and services through the harmonisation and simplification of authorisation rules and conditions in order to facilitate their provision throughout the Community.~~

~~2. This Directive shall apply to authorisations for the provision of electronic communications networks and services.~~

↓ 2002/19/EC (adapted)
⇒ new

~~Article 1~~

~~Scope and aim~~

~~1. Within the framework set out in Directive 2002/21/EC (Framework Directive), tThis Directive harmonises the way in which Member States regulate access to, and interconnection of, electronic communications networks and associated facilities. The aim is to establish a regulatory framework, in accordance with internal market principles, for the relationships between suppliers of networks and services that will result in ⇒ deployment and take-up of very high capacity networks, ⇐ sustainable competition, interoperability of electronic communications services and consumer ⇒ end-user ⇐ benefits.~~

~~2. This Directive establishes rights and obligations for operators and for undertakings seeking interconnection and/or access to their networks or associated facilities. It sets out objectives for national regulatory authorities with regard to access and interconnection, and lays down procedures to ensure that obligations imposed by national regulatory authorities are reviewed and, where appropriate, withdrawn once the desired objectives have been achieved. Access in this Directive does not refer to access by end-users.~~

↓ 2009/136/EC Art. 1.1 (adapted)
⇒ new

~~Article 1~~

~~Subject matter and scope~~

~~1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim~~ ☒ On the other hand, it ☒ is to ensure the ~~availability~~ ⇒ provision ⇐ throughout the ~~Community~~ ☒ Union ☒ of good-quality, ⇒ affordable ⇐ , publicly available services through effective competition and choice, ~~and~~ to deal with circumstances in which the needs of end-users ⇒ , including disabled users, ⇐ are not satisfactorily met by the market ⇒ and to lay down the necessary end-user rights ⇐ . ~~The Directive also includes provisions concerning certain aspects of terminal equipment, including provisions intended to facilitate access for disabled end-users.~~

~~2. This Directive establishes the rights of end-users and the corresponding obligations of undertakings providing publicly available electronic communications networks and services. With regard to ensuring provision of universal service within an environment of open and competitive markets, this Directive defines the minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition. This Directive also sets out obligations with regard to the provision of certain mandatory services.~~

~~23. This Directive as well as the Specific Directives are~~ ☒ is ☒ without prejudice to:
☒ obligations imposed by national law in accordance with ~~Community~~ ☒ Union ☒ law or by
~~Community~~ ☒ Union ☒ law in respect of services provided using electronic communications
networks and services~~;~~ :

~~3. This Directive as well as the Specific Directives are without prejudice to~~ ☒ measures taken at
~~Community~~ ☒ Union ☒ or national level, in compliance with ~~Community~~ ☒ Union ☒ law, to
pursue general interest objectives, in particular relating to content regulation and audio-visual
policy.

~~4. This Directive and the Specific Directives are without prejudice to~~ ☒ the provisions of Directive
2014/53/EU~~1999/5/EC~~.

~~5. This Directive and the Specific Directives shall be without prejudice to any specific measure
adopted for the regulation of international roaming on public mobile communications networks
within the Community~~ ☒ - Regulation (EU) No 531/2012 and Regulation (EU) 2015/2120 ☒.

~~3. This Directive neither mandates nor prohibits conditions, imposed by providers of publicly
available electronic communications and services, limiting end-users' access to, and/or use of,
services and applications, where allowed under national law and in conformity with Community
law, but lays down an obligation to provide information regarding such conditions. National
measures regarding end-users' access to, or use of, services and applications through electronic
communications networks shall respect the fundamental rights and freedoms of natural persons,
including in relation to privacy and due process, as defined in Article 6 of the European Convention
for the Protection of Human Rights and Fundamental Freedoms.~~

4. The provisions of this Directive concerning end-users' rights shall apply without prejudice to ~~Community~~ ☒ Union ☒ rules on consumer protection, in particular Directives 93/13/EEC ~~97/7/EC~~ and ☒ 2011/83/EU ☒ and national rules in conformity with ~~Community~~ ☒ Union ☒ law.

↓ 2002/21/EC

Article 2

Definitions

For the purposes of this Directive:

↓ 2009/140/EC Art. 1.2(a)

⇒ new

(1~~a~~) 'electronic communications network' means transmission systems, ☒ whether or not based on a permanent infrastructure or centralised administration capacity, ☒ and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

↓ new

(2) 'very high capacity network' means an electronic communications network which either consists wholly of optical fibre elements at least up to the distribution point at the serving location or which is capable of delivering under usual peak-time conditions similar network performance in terms of available down- and uplink bandwidth, resilience, error-related parameters, and latency and its variation. Network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point.

(3b) 'transnational markets' means markets identified in accordance with Article 15(4)63 covering the ~~Community~~ ☒ Union or a substantial part thereof located in more than one Member State;

(e4) 'electronic communications service' means a service normally provided for remuneration ☒ via electronic communications networks, ☒ which ~~consists~~ ⇒ encompasses 'internet access service' as defined in Article 2(2) of Regulation (EU) 2015/2120; and/or 'interpersonal communications service'; and/or services consisting ☐ wholly or mainly in the conveyance of signals ~~on electronic communications networks, including telecommunications services and~~ ☒ such as ☒ transmission services ~~in networks~~ used for ⇒ the provision of machine-to-machine services and for ☐ broadcasting, but ~~exclude~~ ☒ excludes ☒ services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; ~~it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;~~

(5) 'interpersonal communications service' means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s); it does not include services which enable interpersonal and interactive communication merely as ~~an minor~~ ancillary feature that is intrinsically linked to another service;

(6) 'number-based interpersonal communications service' means an interpersonal communications service which **uses or** connects with ~~the public switched telephone network, either by means of~~ **publicly** assigned numbering resources, i.e. a number or numbers in national or international ~~telephone~~ numbering plans, or by enabling communication with a number or numbers in national or international ~~telephone~~ numbering plans;

(7) 'number-independent interpersonal communications service' means an interpersonal communications service which does not **use or** connect with ~~the public switched telephone network, either by means of~~ **publicly** assigned numbering resources, i.e. a number or numbers in national or international ~~telephone~~ numbering plans, or by enabling communication with a number or numbers in national or international ~~telephone~~ numbering plans;

↓ 2009/140/EC Art. 1.2(c)

(~~e~~8) 'public communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;

↓ 2009/140/EC Art. 1.2(d) (adapted)
⇒ new

(~~e~~9) 'network termination point (~~NTP~~)' ~~⊗~~ or 'NTP' ~~⊗~~ means the physical point at which ~~a subscriber~~ ⇒ an end-user ⇐ is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to ~~a subscriber~~ ⇒ an end-user's ⇐ number or name.

↓ 2009/140/EC Art. 1.2(e)

(~~e~~10) 'associated facilities' means those associated services, physical infrastructures and other facilities or elements associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service or have the potential to do so, and include, inter alia, buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;

↓ 2009/140/EC Art. 1.2(f)
⇒ new

(~~e~~11) 'associated services' means those services associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services, ⇒ self-provision or automated-provision ⇐ via that network and/or service or have the potential to do so and include, inter alia, number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides, ⇒ voice command, multi-language or language translation ⇐ as well as other services such as identity, location and presence service;

(~~12~~)‘conditional access system’ means any technical measure, [⇒] authentication system [⇐] and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;

~~(g)‘national regulatory authority’ means the body or bodies charged by a Member State with any of the regulatory tasks assigned in this Directive and the Specific Directives;~~

(~~13~~)‘user’ means a legal entity or natural person using or requesting a publicly available electronic communications service;

(~~14~~)‘end-user’ means a user not providing public communications networks or publicly available electronic communications services.

(~~15~~)‘consumer’ means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business [⇒] , craft [⇐] or profession;

~~(j)‘universal service’ means the minimum set of services, defined in Directive 2002/22/EC (Universal Service Directive), of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price;~~

~~(k)‘subscriber’ means any natural person or legal entity who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services;~~

~~(l)‘Specific Directives’ means Directive 2002/20/EC (Authorisation Directive), Directive 2002/19/EC (Access Directive), Directive 2002/22/EC (Universal Service Directive) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ⁴⁸;~~

⁴⁸ ~~OJ L 201, 31.7.2002, p. 37.~~

(~~m~~16) ‘provision of an electronic communications network’ means the establishment, operation, control or making available of such a network;

(~~e~~17) ‘enhanced digital television equipment’ means set-top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;

(p18) ‘application program interface (API)’ means the software interfaces between applications, made available by broadcasters or service providers, and the resources in the enhanced digital television equipment for digital television and radio services;

(~~e~~19) ‘spectrum allocation’ means the designation of a given frequency band for use by one or more types of radio communications services, where appropriate, under specified conditions;

(~~e~~20) ‘harmful interference’ means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable international, ~~Community~~ ☒ Union ☒ or national regulations;

(~~s~~21) ‘call’ means a connection established by means of a publicly available ~~electronic~~ ☒ interpersonal ☒ communications service allowing two-way voice communication;₂

(22) ‘security’ of networks and services means the ability of electronic communications networks and services to resist, at a given level of confidence, any action **that** compromises the availability, authenticity, integrity or confidentiality of **those networks and services, of** stored or transmitted or processed data, or **of** the related services offered by, or accessible via, those **electronic communications** networks or services.

~~2. The following definition shall also apply:~~

(23) ‘general authorisation’ means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector-specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.

(24) 'small-area wireless access point' means a low power wireless network access equipment of small size operating within a small range, using licenced radio spectrum or licence-exempt radio spectrum or a combination thereof, which may or may not be part of a public terrestrial mobile communications network, and be equipped with one or more low visual impact antennae, which allows wireless access by users to electronic communications networks regardless of the underlying network topology be it mobile or fixed;

(25) 'radio local area network' (RLAN) means a low power wireless access system, operating within a small range, with a low risk of interference to other such systems deployed in close proximity by other users, using on a non-exclusive basis, radio spectrum for which the conditions of availability and efficient use for this purpose are harmonised at Union level;

(26) 'shared use of radio spectrum' means access by two or more users to use the same frequencies under a defined sharing arrangement, authorised by a national regulatory authority on the basis of a general authorisation, individual rights of use or a combination thereof, including regulatory approaches such as licenced shared access aiming to facilitate the shared use of a frequency band, subject to a binding agreement of all parties involved, in accordance with sharing rules as included in their rights of use so as to guarantee to all users predictable and reliable sharing arrangements, and without prejudice to the application of competition law;

(27) 'harmonised radio spectrum' means radio spectrum for whose availability and efficient use harmonised conditions have been established by way of a technical implementing measure in line with Article 4 of Decision No 676/2002/EC (Radio Spectrum Decision).

(~~e~~28) ‘access’ means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services, including when they are used for the delivery of information society services or broadcast content services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, ⇒ including software emulated networks, ⇐ in particular for roaming; access to conditional access systems for digital television services and access to virtual network services;

(~~e~~29) ‘interconnection’ means the physical and logical linking of public communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators;

(~~e~~30) ‘operator’ means an undertaking providing or authorised to provide a public communications network or an associated facility;

~~(d) ‘wide screen television service’ means a television service that consists wholly or partially of programmes produced and edited to be displayed in a full height wide screen format. The 16:9 format is the reference format for wide screen television services;~~

(~~e~~31) ‘local loop’ means the physical ☒ path used by electronic communications signals ⇐ circuit connecting the network termination point to a distribution frame or equivalent facility in the fixed public electronic communications network.

↓ 2002/22/EC Art. 2

~~(a) ‘public pay telephone’ means a telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;~~

↓ 2009/136/EC Art. 1.2(b) (adapted)

⇒ new

~~(e32) ‘publicly available telephone service’~~ ⇒ voice communications’ ⇐ means a service made available to the public for originating and receiving, directly or indirectly, national or international and international calls through a number or numbers in a national or international telephone numbering plan;

~~(e33)~~ ‘geographic number’ means a number from the national telephone numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);

↓ 2009/136/EC Art. 1.2(d) (adapted)

~~(f34) ‘non-geographic number’ means a number from the national telephone numbering plan that is not a geographic number. It includes, inter alia, ☒ such as ☒ mobile, freephone and premium-rate numbers;~~

↓ new

(35) ‘public safety answering point’ (PSAP) means a physical location where an emergency communication is first received under the responsibility of a public authority or a private organisation recognised by the Member State;

(36) ‘most appropriate PSAP’ means a PSAP defined beforehand by responsible authorities to cover emergency communications from a certain area or for emergency communications of a certain type;

(37) ‘emergency communication’: communication by means of interpersonal communications services between an end-user and the PSAP with the goal to request and receive emergency relief from emergency services;

(38) ‘emergency service’ means a service, recognised as such by the Member State, that provides immediate and rapid assistance in situations where there is, in particular, a direct risk to life or limb, to individual or public health or safety, to private or public property, or to the environment, in accordance with national legislation.

CHAPTER II

OBJECTIVES

Article ~~8~~3

~~Policy~~ ☒ General ☒ objectives ~~and regulatory principles~~

1. Member States shall ensure that in carrying out the regulatory tasks specified in this Directive ~~and the Specific Directives~~, the national regulatory ⇒ and other competent ⇐ authorities take all reasonable measures which are ~~aimed at~~ ☒ necessary and proportionate for ☒ achieving the objectives set out in paragraph 2, ~~3 and 4~~. ~~Such measures shall be proportionate to those objectives.~~ ⇒ Member States, the Commission, the Radio Spectrum Policy Group, and BEREC shall also contribute to the achievement of these objectives ⇐ .

~~Unless otherwise provided for in Article 9 regarding radio frequencies, Member States shall take the utmost account of the desirability of making regulations technologically neutral and shall ensure that, in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities do likewise.~~

↓ 2002/21/EC

⇒ new

National regulatory ~~⇒~~ and other competent ~~⇐~~ authorities may contribute within their competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism.

~~2. The national regulatory authorities shall promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by *inter alia*:~~

↓ 2009/140/EC Art. 1.8(b)

~~(a) ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality;~~

~~(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, including the transmission of content;~~

↓ 2002/21/EC

~~(d) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.~~

2. The ~~national regulatory and other~~ competent authorities as well as BEREC shall, **in the context of this regulation**:

- (a) promote access to, and take-up of, very high capacity data connectivity, both fixed and **mobile wireless**, by all Union citizens and businesses;
- (b) promote competition in the provision of electronic communications networks and associated facilities, including **efficient** infrastructure-based competition, and in the provision of electronic communications services and associated services;
- (c) contribute to the development of the internal market by removing remaining obstacles to, and facilitating convergent conditions for, investment in and the provision of electronic communications networks, associated facilities and services and electronic communications services throughout the Union, by developing common rules and predictable regulatory approaches, by favouring the effective, efficient and coordinated use of spectrum, open innovation, the establishment and development of trans-European networks, the availability and interoperability of pan-European services, and end-to-end connectivity;
- (d) promote the interests of the citizens of the Union, including in the long term, by ensuring widespread availability and take-up of very high capacity connectivity, both fixed and mobile, and of interpersonal communications services, by enabling maximum benefits in terms of choice, price and quality on the basis of effective competition, by maintaining security of networks and services, by ensuring a high and common level of protection for end-users through the necessary sector-specific rules and by addressing the needs, such as for affordable prices, of specific social groups, in particular disabled users, elderly users and users with special social needs.

~~3. The national regulatory authorities shall contribute to the development of the internal market by **inter alia**:~~

- ~~(a) removing remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level;~~
- ~~(b) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services, and end-to-end connectivity;~~

↓ 2009/140/EC Art. 1.8(e)

~~(d) cooperating with each other, with the Commission and BEREC so as to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.~~

↓ 2002/21/EC

~~4. The national regulatory authorities shall promote the interests of the citizens of the European Union by *inter alia*:~~

~~(a) ensuring all citizens have access to a universal service specified in Directive 2002/22/EC (Universal Service Directive);~~

~~(b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;~~

~~(c) contributing to ensuring a high level of protection of personal data and privacy;~~

~~(d) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;~~

↓ 2009/140/EC Art. 1.8(f)

~~(e) addressing the needs of specific social groups, in particular disabled users, elderly users and users with special social needs;~~

↓ 2002/21/EC

~~(f) ensuring that the integrity and security of public communications networks are maintained;~~

↓ 2009/140/EC Art. 1.8(g)

~~(g) promoting the ability of end users to access and distribute information or run applications and services of their choice;~~

~~35.~~ The national regulatory ~~⇒~~ and other competent ~~⇐~~ authorities shall, in pursuit of the policy objectives referred to in paragraphs 2, ~~3~~ and 4 ~~⊗~~ specified in this paragraph ~~⊗~~ , apply objective, transparent, non-discriminatory and proportionate regulatory principles, by, inter alia:

(a) promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods ~~⇒~~ and through cooperation with each other, ~~with~~ BEREC, ~~the RSPG~~ and ~~with~~ the Commission ~~⇐~~;

(b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;

~~(c) safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition~~

(c) applying EU law in a technologically neutral fashion, to the extent that this is consistent with the achievement of the objectives of paragraph 1;

(d) promoting efficient investment and innovation in new and enhanced infrastructures, including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, whilst ensuring that competition in the market and the principle of non-discrimination are preserved;

(e) taking due account of the variety of conditions relating to ~~⇒~~ infrastructure, ~~⇐~~ competition and consumers that exist in the various geographic areas within a Member State;

(f) imposing *ex ante* regulatory obligations only ~~where there is no~~ ~~⇒~~ to the extent necessary to secure ~~⇐~~ effective and sustainable competition ~~⊗~~ on the retail market concerned ~~⊗~~ and relaxing or lifting such obligations as soon as that condition is fulfilled.

⊗ TITLE II: INSTITUTIONAL SET-UP AND GOVERNANCE ⊗

CHAPTER ~~II~~ I

NATIONAL REGULATORY ⊗ AND OTHER COMPETENT ⊗ AUTHORITIES

Article ~~35~~

National regulatory ⊗ and other competent ⊗ authorities

1. Member States shall ensure that each of the tasks ~~assigned to national regulatory authorities~~
⇒ laid down ⇐ in this Directive ~~and the Specific Directives~~ is undertaken by a competent
~~body~~ ⊗ authority ⊗.

↓ new

The national regulatory authority shall be responsible at least for ~~the following tasks:~~

~~implementing~~ *ex ante* market regulation, including the imposition of access and interconnection obligations; **granting general authorisation, and the resolution of disputes between undertakings.**

Member States shall ensure that the national regulatory authority is either responsible for, or duly consulted in advance and informed about the outcome of:

- **the** ~~conducting~~ **of** the geographical survey referred to in Article 22;
- ensuring the resolution of disputes between ~~undertakings and between~~ undertakings and consumers **in the electronic communications sector;**
- **decisions of deciding** the market-shaping, competition and regulatory elements of national processes for the grant, amendment or renewal of rights of use for radio spectrum, according to this Directive;
- ~~granting general authorisation;~~
- **measures for** ensuring consumer protection and end-user rights in the electronic communications sector;

- ~~the determination of determining~~ the mechanisms for the financing regime as well as assessing the unfair burden and calculating the net-cost of the provision of the universal service;
- ~~dealing with~~ issues related to open internet access;
- ~~[the granting of~~ numbering resources and managing numbering plans;]
- ~~measures for~~ ensuring number portability;
- ~~the performance of performing~~ any other task that this Directive reserves to national regulatory authorities.

Member States may assign other tasks provided for in this Directive to national regulatory authorities.

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

↓ 2002/21/EC (adapted)
⇒ new

43. Member States shall publish the tasks to be undertaken by national regulatory authorities ⇒ 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 and national authorities entrusted with the implementation of 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.

64. Member States shall notify to the Commission all national regulatory authorities ⇒ and other competent authorities ⇐ assigned tasks under this Directive ~~and the Specific Directives~~, and their respective responsibilities, ☒ as well as any change thereof ☒ .

Article 6

⊗ Independence of ⊗ National regulatory ⊗ and other competent ⊗ authorities

21. 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 all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

↓ 2009/140/EC Art. 1.3(a) (adapted)
⇒ new

22. Member States shall ensure that national regulatory authorities ⇒ and other competent authorities ⇐ exercise their powers impartially, transparently and in a timely manner. Member States shall ensure that ~~national regulatory authorities~~ ⊗ they ⊗ have adequate financial and human resources to carry out the task ⊗ s ⊗ assigned to them.

↓ new

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 replacements, shall be appointed for a term of office ~~of at least four years from among persons of recognised standing and professional experience, on the basis of merit, skills, knowledge and experience and~~ following an open selection procedure. They shall not be allowed to serve more than two terms, either consecutive or not. Member States shall ensure continuity of decision-making ~~by providing for an appropriate rotation scheme for the members of the collegiate body or the top management, such as by appointing the first members of the collegiate body for different periods, in order for their mandates, as well as that of their successors not to elapse at the same moment.~~

~~23a.~~ 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 ~~referred to in the first subparagraph~~ or their replacements 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 advance in national law~~ ⇒ set out in this Article. ☐

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 and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published. ⇒ 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** ☒

~~3a1.~~ Without prejudice to the provisions of ~~paragraphs 4 and 5~~ ☒ Article 10 ☒, national regulatory authorities ~~responsible for ex ante market regulation or for the resolution of disputes between undertakings in accordance with Article 20 or 21 of this Directive~~ shall act independently ⇒ and objectively ☐ including in the design of internal procedures and organisation of staff and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing ~~Community~~ ☒ Union ☒ law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article ~~431~~ shall have the power to suspend or overturn decisions by the national regulatory authorities.

↓ new

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

↓ 2009/140/EC (adapted)
⇒ new

Article 9

⊠ Regulatory capacity of national regulatory authorities ⊠

1. Member States shall ensure that national regulatory authorities ~~referred to in the first subparagraph~~ have separate annual budgets ⇒ with autonomy in the implementation of the allocated budget ⇐. The budgets shall be made public.

↓ new

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 exercised on the budget of the national regulatory authorities shall be exercised in a transparent manner and made public.

↓ 2009/140/EC (adapted)

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 the Body of European Regulators for Electronic Communications (BEREC)⁴⁹.

⁴⁹ Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.

Article 10

⊠ Participation of national regulatory authorities in BEREC ⊠

~~3b~~1. Member States shall ensure that the goals of BEREC of promoting greater regulatory coordination and coherence are actively supported by the respective national regulatory authorities.

~~3e~~2. Member States shall ensure that national regulatory authorities take utmost account of opinions and common positions adopted by BEREC when adopting their own decisions for their national markets.

↓ 2002/21/EC (adapted) ⇒ new

Article 11

⊠ Cooperation with national authorities ⊠

~~5~~1. 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 the provisions of this Directive ~~and the Specific Directives~~. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.

↓ 2002/20/EC

~~Article 1~~

~~Objective and scope~~

~~1. The aim of this Directive is to implement an internal market in electronic communications networks and services through the harmonisation and simplification of authorisation rules and conditions in order to facilitate their provision throughout the Community.~~

~~2. This Directive shall apply to authorisations for the provision of electronic communications networks and services.~~

CHAPTER II

GENERAL AUTHORISATION

SECTION 1 GENERAL PART

Article ~~3~~12

General authorisation of electronic communications networks and services

1. Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article ~~46~~ 52 (1) of the Treaty. ⇒ Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned and shall be ~~notified~~ **communicated** to the Commission. ⇐
2. The provision of electronic communications networks or the provision of electronic communications services ⇒ other than number-independent interpersonal communications services ⇐ may, without prejudice to the specific obligations referred to in Article ~~6~~13(2) or rights of use referred to in Articles ~~54~~6 and 88, only be subject to a general authorisation.
3. ⇒ Where a Member State deems that a notification requirement is justified **for undertakings subject to general authorisation**, that Member State may only require **such** undertakings ⇐ ~~The undertaking concerned may be required~~ to submit a notification ⇒ ~~to BEREC~~ ⇐ but ⇐ it ⇐ may not ⇐ require them ⇐ ~~be required~~ to obtain an explicit decision or any other administrative act by the national regulatory authority ⇒ or by any other authority ⇐ before exercising the rights stemming from the authorisation. Upon notification ⇒ ~~to BEREC~~ ⇐, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use ⇐ pursuant to this Directive ⇐ ~~in Articles 5, 6 and 7. ⇒ BEREC shall forward by electronic means and without delay each notification to the national regulatory authority in all Member States concerned by the provision of electronic communications networks or the provision of electronic communications services.~~ ⇐

~~⇒ Information in accordance with this paragraph on existing notifications already made to the national regulatory authority on the date of transposition of this Directive shall be provided to BEREC at the latest on [date of transposition].~~ ⇐

↓ 2009/140/EC Art. 3.2

~~Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall not be required to submit more than one notification per Member State concerned.~~

↓ 2002/20/EC (adapted)
⇒ new

~~3.4.~~ The notification referred to in paragraph ~~2~~ ☒ 3 ☒ shall not entail more than a declaration by a legal or natural person to ~~the national regulatory authority~~ ⇒ BEREC ⇐ of the intention to commence the provision of electronic ~~communication~~ ☒ communications ☒ networks or services and the submission of the minimal information which is required to allow ⇒ BEREC and ⇐ the national regulatory authority to keep a register or list of providers of electronic communications networks and services. This information ~~must be limited to~~ **shall include** ~~what is necessary for the identification of the provider, such as company registration numbers, and the provider's contact persons, the provider's address, a short description of the network or service, and an estimated date for starting the activity.~~

↓ new

- (1) the name of the provider;
- (2) the provider's legal status, form and registration number, where the provider is registered in a trade or other similar public register in the EU;
- (3) the geographical address of the provider's main establishment in the EU and, where existing, any secondary branch in a Member State;
- (4) a contact person and contact details;
- (5) a short description of the networks or services intended to be provided;
- (6) the Member States concerned, and

(7) an estimated date for starting the activity.

Member States may not impose any additional or separate notification requirements.

BEREC shall maintain an EU database of the notifications transmitted to the national regulatory authorities. To that end the national regulatory authorities shall forward by electronic means each notification received. Notifications made to the national regulatory authorities prior to the date referred to in Article 115(1), second subparagraph shall be forwarded to BEREC at the latest [twelve months after that date].

↓ 2002/20/EC (adapted)
⇒ new

Article ~~6~~13

**Conditions attached to the general authorisation and to the rights of use for radio frequencies
⊗ spectrum ⊗ and for numbers, and specific obligations**

↓ 2009/140/EC Art. 3.4(a) (adapted)
⇒ new

1. The general authorisation for the provision of electronic communications networks or services and the rights of use for radio ⇒ spectrum ⇐ frequencies and rights of use for numbers may be subject only to the conditions listed in Annex ⊗ I ⊗ . Such conditions shall be non-discriminatory, proportionate and transparent and, in the case of rights of use for radio ⇒ spectrum ⇐ frequencies, shall be in accordance with Articles ~~94~~5 and 51 of Directive ~~2002/21/EC (Framework Directive)~~. ⇒ in the case of rights of use for numbers, shall be in accordance with Article 88 ⇐ .

↓ 2002/20/EC (adapted) → ₁ 2009/140/EC Art. 3.4(b)
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2. Specific obligations which may be imposed on providers of electronic communications networks and services under Articles ~~13, 36, 54(1), 54(2), 59(1), 59(4), 60 and 66 and 8 of Directive 2002/19/EC (Access Directive) and → 1 Article 17 of Directive 2002/22/EC (Universal Service Directive)~~ ← or on those designated to provide universal service under ~~the said~~ ⊗ this ⊗ Directive shall be legally separate from the rights and obligations under the general authorisation. In order to achieve transparency for undertakings, the criteria and procedures for imposing such specific obligations on individual undertakings shall be referred to in the general authorisation.
3. The general authorisation shall only contain conditions which are specific for that sector and are set out in Parts A, B and C of ~~the~~ Annex I and shall not duplicate conditions which are applicable to undertakings by virtue of other national legislation.
4. Member States shall not duplicate the conditions of the general authorisation where they grant the right of use for radio frequencies or numbers.

↓ 2002/20/EC ⇒ new

Article ~~9~~14

Declarations to facilitate the exercise of rights to install facilities and rights of interconnection

At the request of an undertaking, ~~national regulatory authorities~~ ⇒ BEREC ⇐ shall, within one week, issue standardised declarations, confirming, where applicable, that the undertaking has submitted a notification under Article ~~312~~(32) and detailing under what circumstances any undertaking providing electronic communications networks or services under the general authorisation has the right to apply for rights to install facilities, negotiate interconnection, and/or obtain access or interconnection in order to facilitate the exercise of those rights for instance at other levels of government or in relation to other undertakings. Where appropriate such declarations may also be issued as an automatic reply following the notification referred to in Article ~~312~~(32).

SECTION 2 GENERAL AUTHORISATION RIGHTS AND OBLIGATIONS

↓ 2002/20/EC (adapted)

Article ~~4~~15

Minimum list of rights derived from the general authorisation

1. Undertakings authorised pursuant to Article ~~3~~12, shall have the right to:

- (a) provide electronic communications networks and services;
- (b) have their application for the necessary rights to install facilities considered in accordance with Article ~~11~~ 43 of ☒ this ☒ Directive ~~2002/21/EC (Framework Directive)~~.

↓ new

- c) use radio spectrum in relation to electronic communications services and networks subject to Articles 13, 46 and 54.
- d) have their application for the necessary rights of use for numbers considered in accordance with Article 88.

↓ 2002/20/EC (adapted)

2. When such undertakings provide electronic communications networks or services to the public the general authorisation shall also give them the right to:

- (a) negotiate interconnection with and where applicable obtain access to or interconnection from other providers of publicly available communications networks and services covered by a general authorisation anywhere in the ~~Community~~ ☒ Union ☒ under the conditions of and in accordance with ☒ this ☒ Directive ~~2002/19/EC (Access Directive)~~;
- (b) be given an opportunity to be designated to provide different elements of a universal service and/or to cover different parts of the national territory in accordance with ~~Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)~~⁵⁰; ☒ Article 81 or 82. ☒

⁵⁰ See page 51 of this Official Journal.

Article ~~12~~16

Administrative charges

1. Any administrative charges imposed on undertakings providing a service or a network under the general authorisation or to whom a right of use has been granted shall:
 - (a) in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of specific obligations as referred to in Article ~~6~~13(2), which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection; and
 - (b) be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges. ⇒ Member States may choose not to apply administrative charges to undertakings whose turnover is ~~is~~ below a certain threshold or whose activities do not reach a minimum market share or have a very limited territorial scope. ⇐
2. Where national regulatory authorities ⇐ or other competent authorities ⇐ impose administrative charges, they shall publish a yearly overview of their administrative costs and of the total sum of the charges collected. In the light of the difference between the total sum of the charges and the administrative costs, appropriate adjustments shall be made.

Article ~~13~~17

Accounting separation and financial reports

1. Member States shall require undertakings providing public communications networks or publicly available electronic communications services which have special or exclusive rights for the provision of services in other sectors in the same or another Member State to:

(a) keep separate accounts for the activities associated with the provision of electronic communications networks or services, to the extent that would be required if these activities were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their activities associated with the provision of electronic communications networks or services including an itemised breakdown of fixed asset and structural costs, or

(b) have structural separation for the activities associated with the provision of electronic communications networks or services.

Member States may choose not to apply the requirements referred to in the first subparagraph to undertakings the annual turnover of which in activities associated with electronic communications networks or services in the Member States is less than EUR 50 million.

2. Where undertakings providing public communications networks or publicly available electronic communications services are not subject to the requirements of company law and do not satisfy the small and medium-sized enterprise criteria of ~~Community~~ ☒ Union ☒ law accounting rules, their financial reports shall be drawn up and submitted to independent audit and published. The audit shall be carried out in accordance with the relevant ~~Community~~ ☒ Union ☒ and national rules.

This requirement shall also apply to the separate accounts required under paragraph 1(a).

↓ 2009/140/EC Art. 3.8 ⇒ new

Article ~~14~~18

Amendment of rights and obligations

1. Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use ⇒ for radio spectrum or for numbers ⇐ or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies ⇒ spectrum and for numbers ⇐.

2. Except where proposed amendments are minor, and have been agreed with the holder of the rights or general authorisation, ⇐ and without prejudice to Article 35 ⇐ notice shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances.

Any amendment shall be published stating the reasons thereof.

CHAPTER III

PROVISION OF INFORMATION, SURVEYS AND CONSULTATION MECHANISM

Article ~~5~~20

~~Provision of information~~ ☒ Information request to undertakings ☒

1. Member States shall ensure that undertakings providing electronic communications networks and services ⇒ associated facilities, or associated services ⇐ provide all the information, including financial information, necessary for national regulatory authorities, ⇒ other competent authorities and BEREC ⇐ to ensure conformity with the provisions of, or decisions made in accordance with, this Directive ~~and the Specific Directives~~. In particular, national regulatory authorities shall have the power to require those undertakings to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors. ⇒ They may also require information on electronic communications networks and associated facilities which is disaggregated at local level and sufficiently detailed for the [national regulatory authority] to be able to conduct the geographical survey and to designate digital exclusion areas in accordance with Article 22. In accordance with Article 29, national regulatory authorities may sanction undertakings deliberately providing misleading, erroneous or incomplete information. ⇐

Where the information collected in accordance with the first subparagraph is insufficient for the [national regulatory authority] to carry out their regulatory tasks, such information may be required from other relevant undertakings.

Undertakings with significant market power on wholesale markets may also be required to submit accounting data on the retail markets that are associated with those wholesale markets.

↓ new

National regulatory authorities and other competent authorities may request information from the single information points established pursuant to Directive 2014/61/EU on measures to reduce the cost of high-speed electronic communications networks.

↓ 2009/140/EC Art. 1.5
⇒ new

Undertakings shall provide such information promptly upon request and in conformity with the timescales and level of detail required ~~by the national regulatory authority~~. The information requested ~~by the national regulatory authority~~ shall be proportionate to the performance of that task. The ~~national regulatory~~ ⇒ competent ⇐ authority shall give the reasons justifying its request for information and shall treat the information in accordance with paragraph 3.

↓ 2002/21/EC (adapted)
⇒ new

2. Member States shall ensure that national regulatory authorities ☒ and other competent authorities ☒ provide the Commission, after a reasoned request, with the information necessary for it to carry out its tasks under the Treaty. The information requested by the Commission shall be proportionate to the performance of those tasks. Where the information provided refers to information previously provided by undertakings at the request of the ~~national regulatory~~ authority, such undertakings shall be informed thereof. To the extent necessary, and unless the authority that provides the information has made an explicit and reasoned request to the contrary, the Commission shall make the information provided available to another such authority in another Member State.

Subject to the requirements of paragraph 3, Member States shall ensure that the information submitted to one ~~national regulatory~~ authority can be made available to another such authority in the same or different Member State ~~⇒~~ and to BEREC ~~⇐~~ , after a substantiated request, where necessary to allow either authority ~~⇒~~ , or BEREC ~~⇐~~ , to fulfil its responsibilities under ~~Community~~ ~~⊗~~ Union ~~⊗~~ law.

3. Where information is considered confidential by a national regulatory ~~⊗~~ or other competent ~~⊗~~ authority in accordance with ~~Community~~ ~~⊗~~ Union ~~⊗~~ and national rules on business confidentiality ~~⇒ or the protection of personal data ⇐~~ , the Commission ~~⇒~~ , BEREC ~~⇐~~ and the ~~national regulatory~~ authorities concerned shall ensure such confidentiality. ~~⇒ In accordance with the principle of sincere cooperation, national regulatory authorities and other competent authorities shall not deny the provision of the requested information to the Commission, to BEREC or to another authority on the grounds of confidentiality or the need to consult with the parties which provided the information. When the Commission, BEREC or a competent authority undertake to respect the confidentiality of information identified as such by the authority holding it, the latter shall share the information on request for the identified purpose without having to further consult the parties who provided the information. ⇐~~ **Where a national regulatory authority considers information to be confidential in accordance with Union and national rules on business confidentiality, the Commission, BEREC and any other national regulatory authorities concerned shall ensure such confidentiality. Business confidentiality shall not prevent the timely sharing of information between the national regulatory authority, the Commission, BEREC and any other national regulatory authorities concerned for the purposes of reviewing, monitoring and supervising the application of this Regulation.**

4. Member States shall ensure that, acting in accordance with national rules on public access to information and subject to ~~Community~~ ~~⊗~~ Union ~~⊗~~ and national rules on business confidentiality ~~⇒~~ and protection of personal data ~~⇐~~ , national regulatory ~~⇒~~ and other competent ~~⇐~~ authorities publish such information as would contribute to an open and competitive market.

5. National regulatory ~~⇒~~ and other competent ~~⇐~~ authorities shall publish the terms of public access to information as referred to in paragraph 4, including procedures for obtaining such access.

↓ 2002/20/EC
⇒ new

Article ~~11~~21

Information required under the general authorisation, for rights of use and for the specific obligations

1. Without prejudice to information and reporting obligations under national legislation other than the general authorisation, national regulatory ~~⇒~~ and other competent ~~⇐~~ authorities may only require undertakings to provide information under the general authorisation, for rights of use or the specific obligations referred to in Article ~~6~~13(2) that is proportionate and objectively justified for:

↓ 2009/140/EC Art. 3.7(a) (adapted)

(a) systematic or case-by-case verification of compliance with conditions ~~1 and 2~~ of Part A, conditions 2 and 6 of Part ~~B~~ ~~⇒~~ D ~~⇐~~ and conditions 2 and 7 of Part ~~C~~ ~~⇒~~ E ~~⇐~~ of Annex ~~⇒~~ I ~~⇐~~ and of compliance with obligations as referred to in Article ~~13~~6(2);

↓ 2002/20/EC (adapted)
⇒ new

(b) case-by-case verification of compliance with conditions as set out in ~~the~~ Annex I where a complaint has been received or where the ~~national regulatory~~ ~~⇒~~ competent ~~⇐~~ authority has other reasons to believe that a condition is not complied with or in case of an investigation by the ~~national regulatory~~ ~~⇒~~ competent ~~⇐~~ authority on its own initiative;

(c) procedures for and assessment of requests for granting rights of use;

(d) publication of comparative overviews of quality and price of services for the benefit of consumers;

(e) clearly defined statistical purposes;

(f) market analysis for the purposes of ~~⇒~~ this ~~⇐~~ Directive ~~2002/19/EC (Access Directive) or Directive 2002/22/EC (Universal Service Directive)~~; ~~2002/19/EC (Access Directive)~~ or ~~Directive 2002/22/EC (Universal Service Directive)~~;

↓ 2009/140/EC Art. 3.7(b)

⇒ new

(g) safeguarding the efficient use and ensuring the effective management of radio frequencies ⇒ spectrum and of numbering resources ⇐ ;

(h) evaluating future network or service developments that could have an impact on wholesale services made available to competitors ⇒ , on connectivity available to end-users or on the designation of digital exclusion areas ⇐ .

↓ 2009/140/EC Art. 3.7(c)

The information referred to in points (a), (b), (d), (e), (f), (g) and (h) of the first subparagraph may not be required prior to, or as a condition for, market access.

↓ new

2. As regards the rights of use for radio spectrum, such information shall refer in particular to the effective and efficient use of radio spectrum as well as to compliance with ~~the~~ **any** coverage and quality of service obligations attached to the rights of use for radio spectrum and their verification.

↓ 2002/20/EC

⇒ new

23. Where national regulatory ⇒ or other competent ⇐ authorities require undertakings to provide information as referred to in paragraph 1, they shall inform them of the specific purpose for which this information is to be used.

4. National regulatory or other competent authorities may not duplicate requests of information already made by BEREC pursuant to Article 30 of Regulation [xxxx/xxxx/EC (BEREC Regulation)]⁵¹ **where BEREC has made the information received available to those authorities.**

Article ~~6~~23

Consultation and transparency mechanism

Except in cases falling within Articles ~~7~~32(9), ~~20~~26, or ~~21~~ 27, Member States shall ensure that, where national regulatory authorities ☒ or other competent authorities ☒ intend to take measures in accordance with this Directive ~~or the Specific Directives~~, or where they intend to provide for restrictions in accordance with Article ~~9(3)~~45(4) and ~~9(4)~~45(5), which have a significant impact on the relevant market, they give interested parties the opportunity to comment on the draft measure within a reasonable period ⇒ , having regard to the complexity of the matter and in any event not shorter than 30 days, except in exceptional circumstances ⇐.

National regulatory ☒ and other competent ☒ authorities shall publish their national consultation procedures.

Member States shall ensure the establishment of a single information point through which all current consultations can be accessed.

⁵¹ Regulation (EC) No xxxx/xxxx of the European Parliament and of the Council of [] establishing the Body of European Regulators for Electronic Communications (BEREC) (OJ L. []).

The results of the consultation procedure shall be made publicly available ~~by the national regulatory authority~~, except in the case of confidential information in accordance with ~~Community~~ ☒ Union ☒ and national law on business confidentiality.

↓ 2002/22/EC

Article ~~33~~24

Consultation with interested parties

↓ 2009/136/EC Art. 1.23(a)

1. Member States shall ensure as far as appropriate that national regulatory authorities take account of the views of end-users, consumers (including, in particular, disabled consumers), manufacturers and undertakings that provide electronic communications networks and/or services on issues related to all end-user and consumer rights concerning publicly available electronic communications services, in particular where they have a significant impact on the market.

In particular, Member States shall ensure that national regulatory authorities establish a consultation mechanism ensuring that in their decisions on issues related to end-user and consumer rights concerning publicly available electronic communications services, due consideration is given to consumer interests in electronic communications.

↓ 2002/22/EC

2. Where appropriate, interested parties may develop, with the guidance of national regulatory authorities, mechanisms, involving consumers, user groups and service providers, to improve the general quality of service provision by, *inter alia*, developing and monitoring codes of conduct and operating standards.

3. Without prejudice to national rules in conformity with ~~Community~~ ☒ Union ☒ law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, national regulatory authorities and other relevant authorities may promote cooperation between undertakings providing electronic communications networks and/or services and sectors interested in the promotion of lawful content in electronic communications networks and services. That cooperation may also include coordination of the public interest information to be provided pursuant to Article 96(3) and Article 95(1).

Article ~~34~~25

Out-of-court dispute resolution

1. Member States shall ensure that ☒ consumers have access to ☒ transparent, non-discriminatory, simple ☒ , fast, fair ☒ and inexpensive out-of-court procedures ~~are available~~ for ~~dealing with~~ ☒ their ☒ unresolved disputes ~~between consumers and~~ ☒ with ☒ undertakings providing ~~electronic communications networks and/or~~ ⇒ publicly available electronic communications ⇐ services ⇒ other than number-independent interpersonal communications services, ⇐ arising under this Directive and relating to the contractual conditions and/or performance of contracts concerning the supply of those ⇒ networks and/or ⇐ services. Member States shall ~~adopt measures to ensure that~~ ☒ enable the national regulatory competent authority to act as a dispute settlement entity. ☒ ~~Such~~ Such procedures ☒ shall comply with the quality requirements set out in Chapter II of Directive 2013/11/EU. ☒ ~~enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Such procedures shall enable disputes to be settled impartially and shall not deprive the consumer of the legal protection afforded by national law.~~ Member States may extend ⇒ grant access to such procedures ⇐ ~~these obligations to cover disputes involving~~ ☒ to ☒ other end-users ⇒ , in particular micro and small enterprises. ⇐

↓ 2002/22/EC (adapted) ⇒ new

2. Member States shall ensure that their legislation does not hamper the establishment of complaints offices and the provision of online services at the appropriate territorial level to facilitate access to dispute resolution by consumers and ☒ other ☒ end-users. ⇒ For disputes involving consumers and falling within the scope of Regulation (EU) 524/2013, the provisions of that Regulation shall apply provided that the dispute settlement entity concerned has been notified to the Commission under Article 20 of Directive 2013/11/EU. ⇐

3. ☒ Without prejudice to the provisions of Directive 2013/11/EU, ☒ ~~W~~where such disputes involve parties in different Member States, Member States shall coordinate their efforts with a view to bringing about a resolution of the dispute.

4. This Article is without prejudice to national court procedures.

↓ 2002/21/EC

Article ~~20~~26

Dispute resolution between undertakings

↓ 2009/140/EC Art. 1.22 (adapted) ⇒ new
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1. In the event of a dispute arising in connection with existing obligations under this Directive ~~or the Specific Directives~~ between undertakings providing electronic communications networks or services in a Member State, or between such undertakings and other undertakings in the Member State benefiting from obligations of access and/or interconnection ⇒ or between undertakings providing electronic communications networks or services in a Member State and providers of associated facilities ⇐ ~~arising under this Directive or the Specific Directives~~, the national regulatory authority concerned shall, at the request of either party, and without prejudice to ~~the provisions of~~ paragraph 2, issue a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months, except in exceptional circumstances. The Member State concerned shall require that all parties cooperate fully with the national regulatory authority.

2. Member States may make provision for national regulatory authorities to decline to resolve a dispute through a binding decision where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with ~~the provisions of Article 38~~. The national regulatory authority shall inform the parties without delay. If after four months the dispute is not resolved, and if the dispute has not been brought before the courts by the party seeking redress, the national regulatory authority shall issue, at the request of either party, a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months.
3. In resolving a dispute, the national regulatory authority shall take decisions aimed at achieving the objectives set out in Article ~~38~~. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive ~~or the Specific Directives~~.
4. The decision of the national regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.
5. The procedure referred to in paragraphs 1, 3 and 4 shall not preclude either party from bringing an action before the courts.

Article ~~21~~27

Resolution of cross-border disputes

1. In the event of a ~~cross-border~~ dispute arising under this Directive ~~or the Specific Directives~~ between ~~parties~~ ☒ undertakings ☒ in different Member States, ~~and where the dispute lies within the competence of national regulatory authorities from more than one Member State,~~ the provisions set out in paragraphs 2, 3 and 4 shall be applicable. ⇒ Those provisions shall not apply to disputes relating to radio spectrum coordination covered by Article 28. ⇐

2. Any party may refer the dispute to the national regulatory ☒ authority or ☒ authorities concerned. The competent national regulatory ☒ authority or ☒ authorities ~~shall coordinate their efforts and may shall have the right to consult~~ ⇒ notify the dispute to ⇐ BEREC in order to bring about a consistent resolution of the dispute, in accordance with the objectives set out in Article ~~8~~3.

~~Any national regulatory authority which has competence in such a dispute may request BEREC to adopt an opinion as to the action to be taken in accordance with the provisions of the Framework Directive and/or the Specific Directives to resolve the dispute.~~

↓ new

3. BEREC shall issue an opinion ~~indicating to~~ **inviting** the national regulatory authority or authorities concerned to take specific action in order to solve the dispute or to refrain from action, in the shortest possible time frame and in any case within four months, except in exceptional circumstances.

↓ 2009/140/EC Art 1.23

~~Where such a request has been made to BEREC, any national regulatory authority with competence in any aspect of the dispute shall await BEREC's opinion before taking action to resolve the dispute. This shall not preclude national regulatory authorities from taking urgent measures where necessary.~~

↓ new

4. The national regulatory authority or authorities concerned shall await BEREC's opinion before taking any action to solve the dispute. In exceptional circumstances, where there is an urgent need to act, in order to safeguard competition or protect the interests of end-users, any of the competent national regulatory authorities may, either at the request of the parties or on its own initiative, adopt interim measures.

↓ 2009/140/EC Art. 1.23 (adapted)

⇒ new

~~Any obligations imposed by the national regulatory authority or authorities on undertakings as part of the resolution of a dispute shall comply with this Directive and the Specific Directives.~~

5. Any obligations imposed on an undertaking by the national regulatory authority ~~in resolving a dispute~~ ☒ as part of the resolution of the ~~in resolving a dispute~~ ☒ shall ~~respect~~ ☒ comply with ~~the provisions of this Directive, or the Specific Directives and~~ ☒ the provisions of this Directive, and take the utmost account of the opinion adopted by BEREC ☒ , and be adopted within one month from such opinion ☒ .

↓ 2009/140/EC Art. 1.23 amended by
Corrigendum, OJ L 241, 10.9.2013, p. 8

~~3. Member States may make provision for the competent national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolving the dispute in a timely manner in accordance with the provisions of Article 8.~~

~~They shall inform the parties without delay. If after four months the dispute is not resolved, where the dispute has not been brought before the courts by the party seeking redress and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to resolve the dispute, in accordance with the provisions set out in Article 8 and taking the utmost account of any opinion adopted by BEREC.~~

46. The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.

TITLE III: IMPLEMENTATION

Article ~~21~~29

Penalties

Member States shall lay down rules on penalties ⇒ , fines and periodic penalties, where necessary, ⇨ applicable to infringements of national provisions ~~adopted pursuant to this Directive~~ ⇨ or of any ~~relevant legally-binding decision of~~ **issued by** the national regulatory or other competent authority ⇨ ***pursuant to this Directive*** ~~and the Specific Directives~~ and shall take all measures necessary to ensure that they are implemented. ⇨ Within the limits of national ~~constitutional~~ law, national regulatory and other competent authorities shall have the power to impose such penalties. ⇨ The penalties provided for must be appropriate, effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by ~~25 May 2011~~ [date for transposition] and shall notify it without delay of any subsequent amendment affecting them.

Article ~~10~~30

Compliance with the conditions of the general authorisation or of rights of use and with specific obligations

1. ⇒ Member States shall ensure that their national regulatory and other competent authorities ⇐ ~~National regulatory authorities shall~~ monitor and supervise compliance with the conditions of the general authorisation or of rights of use ⇒ for radio spectrum and for numbers ⇐, ~~and~~ with the specific obligations referred to in Article ~~613(2)~~, ~~in accordance with Article 11~~ ⇒ and with the obligation to use radio spectrum effectively and efficiently in accordance with Articles 4, 45(1) and 47 paragraphs 1 and 2. ⇐

~~National regulatory~~ ⇒ ~~and other competent~~ ⇐ **Competent** authorities shall have the power to require undertakings ~~providing electronic communications networks or services~~ covered by the general authorisation or enjoying rights of use for radio ⇒ spectrum ⇐ ~~frequencies~~ or numbers to provide all information necessary to verify compliance with the conditions of the general authorisation or of rights of use or with the specific obligations referred to in Article ~~613(2)~~ ☒ or Article 47(1) and (2) ☒, in accordance with Article ~~11~~21.

2. Where a ~~national regulatory~~ ⇒ competent ⇐ authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation or of rights of use, or with the specific obligations referred to in Article ~~613(2)~~, it shall notify the undertaking of those findings and give the undertaking the opportunity to state its views, within a reasonable time limit.

3. The relevant authority shall have the power to require the cessation of the breach referred to in paragraph 2 either immediately or within a reasonable time limit and shall take appropriate and proportionate measures aimed at ensuring compliance.

In this regard, Member States shall empower the relevant authorities to impose:

(a) dissuasive financial penalties where appropriate, which may include periodic penalties having retroactive effect; and

(b) orders to cease or delay provision of a service or bundle of services which, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with Article ~~16~~ 65 ~~2002/21/EC (Framework Directive)~~.

The measures and the reasons on which they are based shall be communicated to the undertaking concerned without delay and shall stipulate a reasonable period for the undertaking to comply with the measure.

↓ 2009/140/EC Art. 3.6(b) (adapted) ⇒ new
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4. Notwithstanding ~~the provisions of~~ paragraphs 2 and 3, Member States shall empower the relevant authority to impose financial penalties where appropriate on undertakings for failure to provide information in accordance with the obligations imposed under Article ~~11~~ 21(1)(a) or (b) ~~of this Directive~~ and Article ~~9~~ 67 ~~of Directive 2002/19/EC (Access Directive)~~ within a reasonable period stipulated by the national ~~regulatory~~ ⇒ competent ⇐ authority.

↓ 2009/140/EC Art. 3.6(c) (adapted)

5. In cases of serious ☒ breach ☒ or repeated breaches of the conditions of the general authorisation or of the rights of use, or specific obligations referred to in Article ~~6~~ 13(2) ☒ or Article 47 (1) or (2) ☒, where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, ☒ Member States shall ensure that ☒ national regulatory ☒ and other competent ☒ authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use. ☒ Member States shall empower the relevant authority to impose ☒ ~~S~~sanctions and penalties which are effective, proportionate and dissuasive. ☒ Such sanctions and penalties ☒ may be applied to cover the period of any breach, even if the breach has subsequently been rectified.

↓ 2009/140/EC Art. 3.6(d) (adapted)

6. Irrespective of the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation ☒ or of the ☒ rights of use or of the specific obligations referred to in Article ~~6~~13(2) ☒ or Article 47(1) and (2) ☒ that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services or other users of the radio spectrum, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months, but which may, in circumstances where enforcement procedures have not been completed, be extended for a further period of up to three months.

↓ 2002/20/EC (adapted)

7. Undertakings shall have the right to appeal against measures taken under this Article in accordance with the procedure referred to in Article ~~4~~ 31 of ☒ this ☒ Directive ~~2002/21/EC (Framework Directive)~~.

↓ 2002/21/EC

Article ~~43~~31

Right of appeal

↓ 2009/140/EC Art. 1.4(a)
⇒ new

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks, ~~and/or~~ services **and/or associated facilities** who is affected by a decision of a ~~national regulatory~~ ⇒ competent ⇐ authority has the right of appeal against the decision to an appeal body that is ⇒ ~~completely~~ ⇐ independent of the parties involved ⇒ and of any external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it ⇐. This body, which may be a court, shall have the appropriate expertise to enable it to carry out its functions effectively. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism.

Pending the outcome of the appeal, the decision of the ~~⇒ competent ⇐ national regulatory~~ authority shall stand, unless interim measures are granted in accordance with national law.

↓ 2002/21/EC

2. Where the appeal body referred to in paragraph 1 is not judicial in character, written reasons for its decision shall always be given. Furthermore, in such a case, its decision shall be subject to review by a court or tribunal within the meaning of Article 267 of the Treaty.

↓ 2009/140/EC Art. 1.4(b)
⇒ new

3. Member States shall collect information on the general subject matter of appeals, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures. Member States shall provide such information, ~~⇒ as well as the decisions or judgments ⇐~~ to the Commission and BEREC after a reasoned request from either.

CHAPTER III

HARMONISATION PROCEDURES

↓ 2009/140/EC Art. 1.21 (adapted)
⇒ new

Article ~~19~~³⁸

Harmonisation procedures

1. Without prejudice to Article ~~37~~³⁷, 45, 46(3), 47(3), 53 ~~of this Directive and Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive)~~, where the Commission finds that divergences in the implementation by the national regulatory authorities ^{⇒ or by other competent authorities ⇐} of the regulatory tasks specified in this Directive ~~and the Specific Directives~~ may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of BEREC, issue a recommendation or a decision on the harmonised application of the provisions in this Directive ~~and the Specific Directives~~ in order to further the achievement of the objectives set out in Article ~~38~~³⁸.

2. ~~Where the Commission issues a recommendation pursuant to paragraph 1, it shall act in accordance with the advisory procedure referred to in Article 22(2).~~

Member States shall ensure that national regulatory [⇒] and other competent [⇐] authorities take the utmost account of ~~these~~ recommendations [⇒] pursuant to paragraph 1 [⇐] in carrying out their tasks. Where a national regulatory authority [⇒] 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 may include only the identification of a harmonised or coordinated approach for the purposes of addressing the following matters:

- (a) the inconsistent implementation of general regulatory approaches by national regulatory authorities on the regulation of electronic ~~communication~~ ^{communications} ~~markets~~ in the application of Articles ~~15~~⁶² and ~~16~~⁶⁵, 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 ~~7a~~³³;

In such a case, the Commission shall propose a draft decision only:

- after at least two years following the adoption of a Commission Recommendation dealing with the same matter, and
- 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 112 emergency services.

4. The decision referred to in paragraph 1, ~~designed to amend non-essential elements of this Directive by supplementing it,~~ shall be adopted in accordance with the ~~regulatory~~ ⇒ examination ⇐ procedure ~~with scrutiny~~ referred to in Article ~~22(3)~~ 110(4).

5. BEREC may on its own initiative advise the Commission on whether a measure should be adopted pursuant to paragraph 1.

↓ 2002/21/EC
→₁ 2009/140/EC Art. 1.19(a)

Article ~~17~~39

Standardisation

1. The Commission, ~~acting in accordance with the procedure referred to in Article 22(2),~~ shall draw up and publish in the *Official Journal of the European Union* ~~Communities~~ a list of →₁ non-compulsory standards ← and/or specifications to serve as a basis for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities and services. Where necessary, the Commission may, ~~acting in accordance with the procedure referred to in Article 22(2) and~~ following consultation of the Committee established by Directive 2015/1535/EU ~~98/34/EC~~, request that standards be drawn up by the European standards 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 and/or specifications referred to in paragraph 1, for the provision of services, technical interfaces and/or network functions, to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.

As long as standards and/or specifications have not been published in accordance with paragraph 1, Member States shall encourage the implementation of standards and/or specifications adopted by the European standards organisations.

↓ 2009/140/EC Art. 1.19(b)

In the absence of such standards and/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).

↓ 2002/21/EC

Where international standards exist, Member States shall encourage the European standards 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.

3. If the standards and/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 and/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 and/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 take appropriate implementing measures and make implementation of the relevant standards compulsory by making reference to them as compulsory standards in the list of standards and/or specifications published in the *Official Journal of the European Union*.

5. Where the Commission considers that standards and/or specifications referred to in paragraph 1 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall ~~act~~₂ ~~in accordance with the advisory procedure referred to in Article 22(2)~~, remove them from the list of standards and/or specifications referred to in paragraph 1.

6. Where the Commission considers that standards and/or specifications referred to in paragraph 4 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall →₁ take the appropriate implementing measures and remove those standards and/or specifications from the list of standards and/or specifications referred to in paragraph 1 ← .

~~6a~~ 7. The implementing measures ~~designed to amend non-essential elements of this Directive by supplementing it~~, referred to in paragraphs 4 and 6, shall be adopted in accordance with the ~~regulatory~~ ⇒ examination ⇐ procedure ~~with scrutiny~~ referred to in Article ~~110(4)~~₂₂₍₃₎.

~~78.~~ This Article does not apply in respect of any of the essential requirements, interface specifications or harmonised standards to which the provisions of Directive 2014/53/EU ~~1999/5/EC~~ apply.

~~Article 18~~

~~Interoperability of digital interactive television services~~

~~1. In order to promote the free flow of information, media pluralism and cultural diversity, Member States shall encourage, in accordance with the provisions of Article 17(2):~~

~~— (a) providers of digital interactive television services for distribution to the public in the Community on digital interactive television platforms, regardless of the transmission mode, to use an open API;~~

~~— (b) providers of all enhanced digital television equipment deployed for the reception of digital interactive television services on interactive digital television platforms to comply with an open API in accordance with the minimum requirements of the relevant standards or specifications;~~

~~— (c) providers of digital TV services and equipment to cooperate in the provision of interoperable TV services for disabled end users.~~

~~2. Without prejudice to Article 5(1)(b) of Directive 2002/19/ EC (Access Directive), Member States shall encourage proprietors of APIs to make available on fair, reasonable and non-discriminatory terms, and against appropriate remuneration, all such information as is necessary to enable providers of digital interactive television services to provide all services supported by the API in a fully functional form.~~

Adaptation of annexes

⇒ The Commission is empowered to adopt delegated acts in accordance with Article 109 ~~amending concerning the adaptations of~~ ⇐ ~~Measures designed to amend non-essential elements of this Directive and necessary to adapt~~ Annexes V, VI, ~~II~~ VIII, ~~III~~ IX, and ~~VI~~ X ⇒ in order to take account of ⇐ ~~to~~ technological ⇐ and social ⇐ developments or changes in market demand ~~shall be adopted by the Commission in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).~~

PART IV. FINAL PROVISIONS

↓ 2002/21/EC

~~Article 22~~

~~Committee~~

- ~~1. The Commission shall be assisted by a Committee ('the Communications Committee').~~
- ~~2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

↓ 2009/140/EC Art. 1.25(a)

- ~~3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

~~CHAPTER IV~~

~~PROCEDURAL PROVISIONS~~

~~Article 14~~

~~Committee~~

~~1. The Commission shall be assisted by the Communications Committee set up by Article 22 of Directive 2002/21/EC (Framework Directive).~~

~~2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

~~3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

~~Article 37~~

~~Committee procedure~~

~~1. The Commission shall be assisted by the Communications Committee set up under Article 22 of Directive 2002/21/EC (Framework Directive).~~

~~2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

Article 109

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles ~~40, 60, 73~~, 102 and 108 shall be conferred on the Commission for an indeterminate period of time from ... [date of entry into force of the basic legislative act or any other date set by the co-legislators].
3. The delegation of power referred to in Articles ~~40, 60, 73~~, 102 and 108 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article(s) ~~40, 60, 73~~, 102, and 108 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 110

Committee

1. The Commission shall be assisted by a Committee ('the Communications Committee'), established by Directive 2002/21/EC.. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

~~2. For the implementing measures referred to in the second subparagraph of Article 45(2), the Committee shall be the Radio Spectrum Committee established pursuant to Article 3(1) of Decision No 676/2002/EC.~~

3. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply. Where the opinion of the committee is to be obtained by a written procedure, the procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the committee so decides or a committee member so requests. In such a case, the chair shall convene a committee meeting within a reasonable time.

4. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 8 thereof.

5. Where the opinion of the committee is to be obtained by a written procedure, the procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the committee so decides or a committee member so requests. In such a case, the chair shall convene a committee meeting within a reasonable time.

Article ~~23~~111

Exchange of information

1. The Commission shall provide all relevant information to the Communications Committee on the outcome of regular consultations with the representatives of network operators, service providers, users, consumers, manufacturers and trade unions, as well as third countries and international organisations.
2. The Communications Committee shall, taking account of the ~~Community's~~ ☒ Union's ☒ electronic communications policy, foster the exchange of information between the Member States and between the Member States and the Commission on the situation and the development of regulatory activities regarding electronic communications networks and services.

Article ~~24~~112

Publication of information

1. Member States shall ensure that up-to-date information pertaining to the application of this Directive ~~and the Specific Directives~~ is made publicly available in a manner that guarantees all interested parties easy access to that information. They shall publish a notice in their national official gazette describing how and where the information is published. The first such notice shall be published before the date of application referred to in Article ~~115~~82(1), second subparagraph, and thereafter a notice shall be published whenever there is any change in the information contained therein.
2. Member States shall send to the Commission a copy of all such notices at the time of publication. The Commission shall distribute the information to the Communications Committee as appropriate.

13. Member States shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, rights of use and rights to install facilities is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties.

24. Where information as referred to in paragraph 13 is held at different levels of government, in particular information regarding procedures and conditions on rights to install facilities, the national regulatory authority shall make all reasonable efforts, bearing in mind the costs involved, to create a user-friendly overview of all such information, including information on the relevant levels of government and the responsible authorities, in order to facilitate applications for rights to install facilities.

15. Member States shall ensure that the specific obligations imposed on undertakings under this Directive are published and that the specific product/service and geographical markets are identified. They shall ensure that up-to-date information, provided that the information is not confidential and, in particular, does not comprise business secrets, is made publicly available in a manner that guarantees all interested parties easy access to that information.

26. Member States shall send to the Commission a copy of all such information published. The Commission shall make this information available in a readily accessible form, and shall distribute the information to the Communications Committee as appropriate.

Article ~~36~~113

Notification and monitoring

1. National regulatory authorities shall notify to the Commission by at the latest the date of application referred to in Article ~~115838~~113(1), second subparagraph, and immediately in the event of any change thereafter in the names of undertakings designated as having universal service obligations under Articles ~~8(1)~~84(1) or 85.

The Commission shall make the information available in a readily accessible form, and shall distribute it to the Communications Committee referred to in Article ~~11137~~113.

~~2. National regulatory authorities shall notify to the Commission the universal service obligations imposed upon undertakings designated as having universal service obligations. Any changes affecting these obligations or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.~~

~~3. The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than three years after the date of application referred to in Article 38(1), second subparagraph. The Member States and national regulatory authorities shall supply the necessary information to the Commission for this purpose.~~

~~1. Member States shall notify to the Commission by at the latest the date of application referred to in Article 18(1) second subparagraph the national regulatory authorities responsible for the tasks set out in this Directive.~~

24. National regulatory authorities shall notify to the Commission the names of operators deemed to have significant market power for the purposes of this Directive, and the obligations imposed upon them under this Directive. Any changes affecting the obligations imposed upon undertakings or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.

Article ~~25~~14

Review procedures

1. The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than ~~three~~ ⇒ five ⇐ years after the date of application referred to in Article ~~115~~ 28(1), second subparagraph. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay.

~~2. The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than three years after the date of application referred to in Article 18(1), second subparagraph. For this purpose, the Commission may request from the Member States information, which shall be supplied without undue delay.~~

~~3. The Commission shall periodically review the functioning of the national authorisation systems and the development of cross-border service provision within the Community and report to the European Parliament and to the Council on the first occasion not later than three years after the date of application of this Directive referred to in Article 18(1), second subparagraph. For this purpose, the Commission may request from the Member States information, which shall be supplied without undue delay.~~

12. The Commission shall periodically review the scope of universal service, in particular with a view to proposing to the European Parliament and the Council that the scope be changed or redefined. A review shall be carried out, ~~on the first occasion within two years after the date of application referred to in Article 38(1), second subparagraph, and subsequently every three~~ ⇒ five ⇐ years.

23. This review shall be undertaken in the light of social, economic and technological developments, taking into account, *inter alia*, mobility and data rates in the light of the prevailing technologies used by the majority of subscribers ⇒ end-users ⇐. ~~The review process shall be undertaken in accordance with Annex V.~~ The Commission shall submit a report to the European Parliament and the Council regarding the outcome of the review.

~~Article 26~~

~~Repeal~~

~~The following Directives and Decisions are hereby repealed with effect from the date of application referred to in Article 28(1), second subparagraph:~~

- ~~– Directive 90/387/EEC,~~
- ~~– Council Decision 91/396/EEC of 29 July 1991 on the introduction of a single European emergency call number⁵²;~~
- ~~– Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines⁵³;~~
- ~~– Council Decision 92/264/EEC of 11 May 1992 on the introduction of a standard international telephone access code in the Community⁵⁴;~~
- ~~– Directive 95/47/EC,~~
- ~~– Directive 97/13/EC,~~
- ~~– Directive 97/33/EC,~~
- ~~– Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment⁵⁵.~~

⁵² ~~OJ L 217, 6.8.1991, p. 31.~~

⁵³ ~~OJ L 165, 19.6.1992, p. 27. Directive as last amended by Commission Decision 98/80/EC (OJ L 14, 20.1.1998, p. 27).~~

⁵⁴ ~~OJ L 137, 20.5.1992, p. 21.~~

⁵⁵ ~~OJ L 101, 1.4.1998, p. 24.~~

~~Article 28~~

~~Transposition~~

~~1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive not later than 24 July 2003. They shall forthwith inform the Commission thereof.~~

~~They shall apply those measures from 25 July 2003.~~

~~2. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.~~

~~3. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive and of any subsequent amendments to those provisions.~~

~~Article 18~~

~~Transposition~~

~~1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 24 July 2003 at the latest. They shall forthwith inform the Commission thereof.~~

~~They shall apply those measures from 25 July 2003.~~

~~When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

~~2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive and of any subsequent amendments to those provisions.~~

↓ 2002/19/EC (adapted)

~~Article 18~~

~~Transposition~~

~~1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by not later than 24 July 2003. They shall forthwith inform the Commission thereof.~~

~~They shall apply those measures from 25 July 2003.~~

~~When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

~~2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive and of any subsequent amendments to those provisions.~~

↓ 2002/22/EC (adapted)

~~Article 38~~

~~Transposition~~

~~1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 24 July 2003 at the latest. They shall forthwith inform the Commission thereof. They shall apply those measures from 25 July 2003.~~

~~2. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.~~

~~3. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive and of any subsequent modifications to those provisions.~~

↓ 2002/19/EC (adapted)

~~Article 19~~

Entry into force

~~This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.~~

~~Article 20~~

Addressees

~~This Directive is addressed to the Member States.~~

↓ 2002/20/EC (adapted)

~~Article 19~~

Entry into force

~~This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.~~

~~Article 20~~

~~Addressees~~

~~This Directive is addressed to the Member States.~~

↓ 2002/21/EC (adapted)

~~Article 29~~

~~Entry into force~~

~~This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.~~

~~Article 30~~

~~Addressees~~

~~This Directive is addressed to the Member States.~~

↓ 2002/22/EC

~~Article 39~~

~~Entry into force~~

~~This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.~~

~~Article 40~~

~~Addressees~~

~~This Directive is addressed to the Member States.~~



Article 115

Transposition

1. Member States shall adopt and publish, by [day/month/year], the laws, regulations and administrative provisions necessary to comply with Articles [...] and Annexes [...]. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from [day/month/year].

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 116

Repeal

Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC, listed in Annex XI, Part A, are repealed with effect from [...], without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the dates of application of the Directives set out in Annex XI, Part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XII.

Article 117

Entry into force

This Directive shall enter into force on ~~on~~ the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 118

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

↓ 2002/20/EC (adapted)

ANNEX I

⊗ LIST OF CONDITIONS WHICH MAY BE ATTACHED TO GENERAL AUTHORISATIONS, RIGHTS OF USE OF RADIO SPECTRUM AND RIGHTS TO USE NUMBERS ⊗

↓ 2009/140/EC Art. 3.11 and Annex .1
(adapted)
⇒ new

The conditions listed in this Annex provide the maximum list of conditions which may be attached to general authorisations ⇒ for electronic communications networks and services, except number-independent interpersonal communications services ⇐, (Part A), ⇒ electronic communications networks (Part B), electronic communications services, except number-independent interpersonal communications services, (Part C) ⇐ rights to use radio frequencies (Part ~~BD~~) and rights to use numbers (Part ~~CE~~) ~~as referred to in Article 6(1) and Article 11(1)(a), within the limits allowed under Articles 5, 6, 7, 8 and 9 of Directive 2002/21/EC (the Framework Directive).~~

↓ 2002/20/EC (adapted)

A. ⊗ GENERAL ⊗ CCONDITIONS WHICH MAY BE ATTACHED TO A GENERAL AUTHORISATION

1. Financial contributions to the funding of universal service ~~in conformity with Directive 2002/22/EC (Universal Service Directive).~~

21. Administrative charges in accordance with Article ~~12~~ 16 of this Directive.

↓ 2009/140/EC Art. 3.11 and Annex .2(b)
--

~~72~~. Personal data and privacy protection specific to the electronic communications sector in conformity with Directive 2002/58/EC of the European Parliament and of the Council (Directive on privacy and electronic communications)⁵⁶

↓ 2002/20/EC → ₁ 2009/140/EC Art. 3.11 and Annex .2(d)

~~103~~. Information to be provided under a notification procedure in accordance with Article ~~3(2)~~ 12 of this Directive and for other purposes as included in Article ~~11~~ 21 of this Directive.

~~114~~. Enabling of legal interception by competent national authorities in conformity with →₁ Directive 2002/58/EC ← and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁵⁷.

↓ 2009/140/EC Art. 3.11 and Annex .2(e)
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~~11a5~~. Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.

↓ 2009/140/EC Art. 3.11 and Annex .2(f)
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~~126~~. Terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities.

⁵⁶ OJ L 201, 31.7.2002, p. 37.
⁵⁷ OJ L 281, 23.11.1995, p. 31.

↓ 2002/20/EC (adapted)

~~147.~~ Access obligations other than those provided for in Article ~~6(2)~~ 13(2) of this Directive applying to undertakings providing electronic communications networks or services, ~~in conformity with Directive 2002/19/EC (Access Directive).~~

↓ 2002/20/EC

~~188.~~ Measures designed to ensure compliance with the standards and/or specifications referred to in Article ~~39~~ 17 of Directive 2002/21/EC (Framework Directive).

↓ 2009/140/EC Art. 3.11 and Annex .2(h) (adapted)

~~199.~~ Transparency obligations on public communications network providers providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in Article ~~3~~ 8 of Directive 2002/21/EC (Framework Directive), ~~disclosure regarding any conditions limiting access to and/or use of services and applications where such conditions are allowed by Member States in conformity with Community law,~~ and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure.

↓ 2002/20/EC (adapted)

⊗ B. SPECIFIC CONDITIONS WHICH MAY BE ATTACHED TO A GENERAL AUTHORISATION FOR THE PROVISION OF ELECTRONIC COMMUNICATIONS NETWORKS ⊗

~~21. Interoperability of services and~~ Interconnection of networks in conformity with ~~this Directive 2002/19/EC (Access Directive).~~

↓ 2002/20/EC

~~5. Environmental and town and country planning requirements, as well as requirements and conditions linked to the granting of access to or use of public or private land and conditions linked to co-location and facility sharing in conformity with Directive 2002/22/EC (Framework Directive) and including, where applicable, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works.~~

~~62. ‘Must carry’ obligations in conformity with this Directive 2002/22/EC (Universal Service Directive).~~

↓ 2002/20/EC (adapted)
⇒ new

~~133. Measures ⇒ for the protection of public health against ⇐ regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with ~~Community~~ ☒ Union ☒ law ⇒ , taking utmost account of Council Recommendation No 1999/519/EC ⇐ .~~

~~154. Maintenance of the integrity of public communications networks in accordance with this Directive 2002/19/EC (Access Directive) and Directive 2002/22/EC (Universal Service Directive) including by conditions to prevent electromagnetic interference between electronic communications networks and/or services in accordance with Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility⁵⁸.~~

⁵⁸ OJ L 139, 23.5.1989, p. 19. Directive as last amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

↓ 2009/140/EC Art. 3.11 and Annex .2(g)

~~165.~~ Security of public networks against unauthorised access according to Directive 2002/58/EC (Directive on Privacy and electronic communications).

↓ 2002/20/EC (adapted)
⇒ new

~~176.~~ Conditions for the use of radio frequencies ⇒ spectrum ⇐, in conformity with Article 7(2) of Directive ~~1999/5/EC~~ 2014/53/EU, where such use is not made subject to the granting of individual rights of use in accordance with Articles ~~54~~ 46(1) ☒ and 48 ☒ of this Directive.

↓ 2009/140/EC Art. 3.11 and Annex .2(h) (adapted)

~~197.~~ Transparency obligations on public communications network providers providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in Article 3 ~~8 of Directive 2002/21/EC (Framework Directive)~~; ~~disclosure regarding any conditions limiting access to and/or use of services and applications where such conditions are allowed by Member States in conformity with Community law~~; and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure.

☒ C. SPECIFIC CONDITIONS WHICH MAY BE ATTACHED TO A GENERAL AUTHORISATION FOR THE PROVISION OF ELECTRONIC COMMUNICATIONS SERVICES, EXCEPT NUMBER-INDEPENDENT INTERPERSONAL COMMUNICATIONS SERVICES ☒

↓ new

1. Interoperability of services in conformity with this Directive.

↓ 2009/140/EC Art. 3.11 and Annex .2(a)

42. Accessibility by end users of numbers from the national numbering plan, numbers from ~~the European Telephone Numbering Space~~, the Universal International Freephone Numbers⁵⁹ and, where technically and economically feasible, from numbering plans of other Member States, and conditions in conformity with this Directive 2002/22/EC (Universal Service Directive).

↓ 2009/140/EC Art. 3.11 and Annex .2(c) (adapted)

83. Consumer protection rules specific to the electronic communications sector, ~~including conditions in conformity with Directive 2002/22/EC (Universal Service Directive), and conditions on accessibility for users with disabilities in accordance with Article 7 of that Directive.~~

↓ 2002/20/EC

94. Restrictions in relation to the transmission of illegal content, in accordance with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market⁵⁹ and restrictions in relation to the transmission of harmful content in accordance with Directive 2010/13/EU of the European Parliament and of the Council ~~Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁶⁰.~~

⁵⁹ OJ L 178, 17.7.2000, p. 1.

⁶⁰ OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

↓ 2002/20/EC (adapted)

BD. CONDITIONS WHICH MAY BE ATTACHED TO RIGHTS OF USE FOR RADIO FREQUENCIES
⊠ SPECTRUM ⊠

↓ 2009/140/EC Art. 3.11 and Annex
.3(a) (adapted)

1. Obligation to provide a service or to use a type of technology ⊠ within the limits of Article 45 of this Directive ⊠ ~~for which the rights of use for the frequency has been granted~~ including, where appropriate, coverage and quality ⊠ of service ⊠ requirements.

↓ 2009/140/EC Art. 3.11 and Annex
.3(b)
⇒ new

2. Effective and efficient use of frequencies ⇒ spectrum ⇐ in conformity with this Directive
~~2002/21/EC (Framework Directive).~~

↓ 2002/20/EC
⇒ new

3. Technical and operational conditions necessary for the avoidance of harmful interference and for the ⇒ protection of public health against ⇐ ~~limitation of exposure of the general public to~~ electromagnetic fields, ⇒ taking utmost account of Council Recommendation No 1999/519/EC ⁶¹⇐ where such conditions are different from those included in the general authorisation.

4. Maximum duration in conformity with Article ~~54~~ 42 of this Directive, subject to any changes in the national frequency plan.

5. Transfer ⇒ or leasing ⇐ of rights at the initiative of the right holder and conditions for such transfer in conformity with this Directive ~~2002/21/EC (Framework Directive).~~

6. Usage fees in accordance with Article ~~13~~ 42 of this Directive.

⁶¹ Recommendation 1999/519/EC of the Council of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) (OJ L 1999, 30.7.1999, p. 59).

7. Any commitments which the undertaking obtaining the usage right has made in the $\Rightarrow$ framework of an authorisation or authorisation renewal process prior to the authorisation being granted or, where applicable, to the invitation for application for rights of use $\Leftarrow$ ~~course of a competitive or comparative selection procedure.~~

$\Downarrow$ new

8. Obligations to pool or share radio spectrum or allow access to radio spectrum for other users in specific regions or at national level.

$\Downarrow$ 2002/20/EC

9. Obligations under relevant international agreements relating to the use of frequencies.

$\Downarrow$ 2009/140/EC Art. 3.11 and Annex .3(c)

10. Obligations specific to an experimental use of radio frequencies.

$\Downarrow$ 2002/20/EC

EE. CONDITIONS WHICH MAY BE ATTACHED TO RIGHTS OF USE FOR NUMBERS

$\Downarrow$ 2009/140/EC Art. 3.11 and Annex .4

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with Article ~~8(4)(b) of Directive 2002/21/EC (Framework Directive)~~3(2)(d) of this Directive.

2. Effective and efficient use of numbers in conformity with this Directive ~~2002/21/EC~~
~~(Framework Directive)~~.
3. Number portability requirements in conformity with this Directive ~~2002/22/EC (Universal~~
~~Service Directive)~~.
4. Obligation to provide public directory ~~subscriber~~ ⇒ end user ⇐ information for the purposes of
Articles ~~5 and 25~~ 104 of Directive ~~2002/22/EC (Universal Service Directive)~~.
5. Maximum duration in conformity with Article ~~54~~ 46 of this Directive, subject to any changes in the
national numbering plan.
6. Transfer of rights at the initiative of the right holder and conditions for such transfer in
conformity with this Directive ~~2002/21/EC (Framework Directive)~~.
7. Usage fees in accordance with Article ~~43~~ 42 of this Directive.
8. Any commitments which the undertaking obtaining the usage right has made in the course of a
competitive or comparative selection procedure.
9. Obligations under relevant international agreements relating to the use of numbers.

10. Obligations concerning the extraterritorial use of numbers within the Union to ensure
compliance with consumer protection and other number-related rules in Member States other than
that of the country code.

ANNEX XI

Part A

Repealed Directives

with [list of the successive amendments thereto/the amendment thereto]

(referred to in Article 116)

Directive 2002/21/EC of the European Parliament and of the Council

(OJ L 108, 24.4.2002, p. 33)

Directive 2009/140/EC of the European Parliament and of the
Council

Article 1

(OJ L 337, 18.12.2009, p. 37)

Regulation (EC) 544/2009 of the European Parliament and of the
Council

Article 2

(OJ L 167, 29.6.2009, p. 12)

Regulation (EC) 717/2007 of the European Parliament and of the
Council

Article 10

(OJ L 171, 29.6.2007, p. 32)

Directive 2002/20/EC of the European Parliament and of the Council

(OJ L 108, 24.4.2002, p. 21)

Directive 2009/140/EC of the European Parliament and of the
Council

Article 3 &
Annex

(OJ L 337, 18.12.2009, p. 37)

Directive 2002/19/EC of the European Parliament and of the Council

(OJ L 108, 24.4.2002, p. 7)

Directive 2009/140/EC of the European Parliament and of the
Council

Article 2

(OJ L 337, 18.12.2009, p. 37)

Directive 2002/22/EC of the European Parliament and of the Council

(OJ L 108, 24.4.2002, p. 51)

Directive 2009/136/EC of the European Parliament and of the
Council

Article 1 &
Annex I

(OJ L 337, 18.12.2009, p. 11)

Regulation (EU) 2015/2120 of the European Parliament and of the
Council

Article 8

(OJ L 310, 26.11.2015, p. 1)

Part B

Time-limits for transposition into national law [and date(s) of application]

(referred to in Article 116)

Directive	Time-limit for transposition	Date of application
2002/19/EC	24 July 2003	25 July 2003

2002/20/EC	24 July 2003	25 July 2003
2002/21/EC	24 July 2003	25 July 2003
2002/22/EC	24 July 2003	25 July 2003

ANNEX XII

CORRELATION TABLE

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 1(1), (2) and (3)				Article 1(1), (2) and (3)
Article 1(3a)				Article 1(4)
Article 1(4) and (5)				Article 1(5) and (6)
Article 2(a)				Article 2(1)
-	-	-	-	Article 2(2)
Article 2(b)				Article 2(3)
Article 2(c)				Article 2(4)
-	-	-	-	Article 2(5)
-	-	-	-	Article 2(6)
				Article 2(7)
Article 2(d)				Article 2(8)
Article 2(da)				Article 2(9)
Article 2(e)				Article 2(10)
Article 2(ea)				Article 2(11)
Article 2(f)				Article 2(12)
Article 2(g)				-

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 2(h)				Article 2(13)
Article 2(i)				Article 2(14)
Article 2(j)				-
Article 2(k)				-
Article 2(l)				-
Article 2(m)				Article 2(15)
Article 2(n)				Article 2(16)
Article 2(o)				Article 2(17)
Article 2(p)				Article 2(18)
Article 2(q)				Article 2(19)
Article 2(r)				Article 2(20)
Article 2(s)				Article 2(21)
-	-	-	-	Article 2(22)
Article 3(1)				Article 5(1)
-	-	-	-	Article 5(2)
Article 3(2)				Article 6(1)
Article 3(3)				Article 6(2)
Article 3(3a) first subparagraph				Article 8(1)
-	-	-	-	Article 8(2)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
-	-	-	-	Article 7(1)
Article 3(3a) second subparagraph				Article 7(2) and (3)
Article 3(3a) third subparagraph				Article 9(1) and(3)
-	-	-	-	Article 9(2)
Article 3(3b)				Article 10(1)
Article 3(3c)				Article 10(2)
Article 3(4)				Article 5(3)
Article 3(5)				Article 11
Article 3(6)				Article 5(4)
Article 4				Article 31
Article 5				Article 20
-	-	-	-	Article 22
Article 6				Article 23
Article 7				Article 32
Article 7a				Article 33
-	-	-	-	Article 33(5)(c)
Article 8(1) and (2)				Article 3(1) and (2)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 8(5)				Article 3(3)
Article 8a(1) and (2)				Article 4(1) and (2)
-	-	-	-	Article 4(3)
Article 8a(3)				Article 4(4)
-	-	-	-	Article 29
Article 9(1) and (2)				Article 45(1) and (2)
-	-	-	-	Article 45(3)
Article 9(3)				Article 45(4)
Article 9(4) and (5)				Article 45(5) and (6)
Article 9(6) and (7)				-
Article 9a				-
Article 9b(1) and (2)				Article 51(1) and (2)
Article 9b(3)				Article 51(4)
-	-	-	-	Article 51(3)
Article 10(1)				Article 89(1)
Article 10(2)				Article 89(3)
-	-	-	-	Article 89(2)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
-	-	-	-	Article 89(4)
-	-	-	-	Article 89(5)
-	-	-	-	Article 89(6)
Article 10(3)				Article 89(7)
Article 10(4)				Article 89(8)
Article 10(5)				-
Article 11				Article 43
Article 12(1)				Article 44(1)
Article 12(2)				-
Article 12(3)				Article 59(2)
Article 12(4)				-
Article 12(5)				Article 44(2)
Article 13				Article 17
Article 13a(1), (2) and (3)				Article 40(1), (2) and (3)
Article 13a(4)				-
-				Article 40(5)
-	-	-	-	Article 40(4)
Article 13b(1), (2) and (3)				Article 41(1), (2) and (3)
-	-	-	-	Article 41(4)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 13b(4)				Article 41(7)
-	-	-	-	Article 41(5)
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Article 14				Article 61
Article 15(1),(2),(3)				Article 62(1),(2),(3)
				-
15 (4) (4)				
-	-	-	-	
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Article 16				Article 65
Article 17				Article 39
Article 18				-
Article 19				Article 38
Article 20				Article 26
Article 21(1)				Article 27(1)
Article 21(2) first and second subparagraphs				Article 27(2)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 21(2) third subparagraph				Article 27(3)
Article 21(2) fourth & fifth subparagraphs				Article 27(4)
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Article 21(3)				-
Article 21(4)				Article 27(6)
Article 21a				Article 29
Article 22(1)				Article 110(1)
Article 22(2)				Article 110(3)
Article 22(3)				Article 110(4)
-	-	-	-	Article 11(2)
-	-	-	-	Article 110(5)
-	-	-	-	Article 109
Article 23				Article 111
Article 24				Article 112(1) and (2)
Article 25				Article 114(1)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 26				Article 116
Article 28				Article 115
Article 29				Article 117
Article 30				Article 118
Annex II				-
	Article 1			Article 1(1)
	Article 2(1)			-
	Article 2(2)			Article 2(22)
-	-	-	-	Article 2(23)
-	-	-	-	Article 2(24)
-	-	-	-	Article 2(25)
-	-	-	-	Article 2(26)
	Article 3(1)			Article 12(1)
	Article 3(2) first sentence			Article 12(2)
	Article 3(2) 2 nd , 3 rd and 4 th sentences			Article 12(3)
	Article 3(3)			Article 12(4)
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	Article 4			Article 15

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
-	Article 5(1)	-	-	Article 46(1)
-	-	-	-	Article 46(2) and (3)
-	Article 5(2) first subparagraph	-	-	Article 48(1)
-	Article 5(2) second subparagraph first sentence	-	-	Article 48(2)
-	Article 5(2) third subparagraph	-	-	Article 48(5)
-	Article 5(2) second subparagraph second sentence	-	-	Article 48(3)
-	-	-	-	Article 48(4)
-	Article 5(3)	-	-	Article 48(6)
-	Article 5(4) and (5)	-	-	Article 87(4) and (5)
-	Article 5(6)	-	-	Article 52
-	-	-	-	Article 87
-	Article 6(1),(2),(3) and (4)	-	-	Article 13

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
-	-	-	-	Article 47
	Article 7			-
	-			Article 54
	Article 8			Article 36
	Article 9			Article 14
	Article 10			Article 30
-	-	-	-	
	Article 11			Article 21
	Article 12			Article 16
	Article 13			Article 42
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	Article 14(1)			Article 18
	Article 14(2)			Article 19
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	Article 16			-
	Article 17			-
	Article 18			-
	Article 19			-
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Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
	Annex	Article 1 (1 and 2)		Annex I
		Article 2(a)		Article 1(2 and 3)
		Article 2(b)		Article 2(28)
		Article 2(c)		Article 2(29)
		Article 2(d)		Article 2(30)
		Article 2(e)		-
		Article 3		Article 2(31)
		Article 4		Article 57
		Article 5		Article 58
		Article 6		Article 59
				Article 60
				-
		Article 8		Article 66
		Article 9		Article 67
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		Article 11		Article 69
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Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
-	-	-	-	Article 73
-	-	-	-	Article 74
		Article 13a		Article 75
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-	-	-	-	Article 77
-	-	-	-	Article 78
		Article 14		-
		Article 15		Article 112(5)
		Article 16(1)		-
		Article 16(2)		113(4)
		Article 17		-
		Article 18		-
		Article 19		-
		Article 20		-
		Annex I		Annex II
		Annex II		-
-	-	-	-	Annex III
			Article 1	Article 1(4 & 5)
			Article 2(a)	-
			Article 2(c)	Article 2(32)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
			Article 2(d)	Article 2(33)
			Article 2(f)	Article 2(34)
-	-	-	-	Article 2(35)
-	-	-	-	Article 2(36)
-	-	-	-	Article 2(37)
-	-	-	-	Article 2(38)
-	-	-	-	Article 79
-	-	-	-	Article 80
			Article 3	Article 81(1) and (2)
			Article 4	-
			Article 5	-
			Article 6	-
			Article 7	-
			Article 8(1)	Article 81(3)
			Article 8(2)	Article 81(4)
			Article 8(3)	Article 81(5)
			Article 9	-
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			Article 10	Article 83

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
			Article 11	-
			Article 12	Article 84
			Article 13	Article 85
			Article 14	Article 86
			Article 15	Article 114(2) and (3)
			Article 17	-
-	-	-	-	Article 92
-	-	-	-	Article 94
			Article 20(1)	Article 95
			Article 20(2)	Article 98(3)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
			Article 21	Article 96
			Article 22	Article 97
			Article 23	Article 101
			Article 23a	Article 103
			Article 24	Article 105
			Article 25	Article 104
			Article 26	Article 102
			Article 27	-
			Article 27a	Article 90
			Article 28	Article 91
			Article 29	Article 107
			Article 30(1)	Article 99(2)
			Article 30(2)	Article 99(3)
			Article 30(3)	Article 99(4)
			Article 30(4)	Article 99(5)
			Article 30(5)	Article 98(1)
			Article 31	Article 106
			Article 32	-
			Article 33	Article 24
			Article 34	Article 25

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
			Article 35	Article 108
			Article 36	Article 113
			Article 37	-
			Article 38	-
			Article 39	-
			Article 40	-
			Annex I	Annex V
			Annex II	Annex VII
			Annex III	Annex VIII
			Annex IV	Annex VI
			Annex V	-
			Annex VI	IX
				Annex IV
