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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

I. INTRODUCTION

1. Following the discussion in WP TELE of 5, 6, 12 and 13 September, and written comments from Member States, **the Presidency intends to hold in WP TELE of 27 September, 3 and 4 October discussions on the CODE.**
2. The Working Party will consider each Article in turn, with a focus on key areas where political concerns remain, in particular concerning:
   a. Services - how national provisions relate to full harmonisation (Article 94).
   b. Access - ensuring Member States are able to address access concerns using the regulatory tools provided for in the CODE and supporting investment in infrastructure (Articles 59, 74 and 77).

c. Spectrum - particularly provisions concerning investment in infrastructure (Articles 49 and 50).
d. Institutional Arrangements - ensuring the right alignment of tasks to authorities throughout the CODE (Article 5).

II. CHANGES TO THE TEXT

3. The Presidency has compiled a full text in the Annex covering all parts of the proposed CODE. Changes to the text have been made pursuant to ST11679, ST11680, ST11681 and ST11777 discussed in the Working Party meetings of 5, 6, 12 and 13 September.
4. For ease of reading, the most recent changes to these four texts are underlined. Changes to the Commission recast are in **bold** and ~~strikethrough~~. *Italics* represent text from the current framework that has been moved or reintroduced.

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

5. **Article 2(6-7)** in the definitions of NB-ICS and NI-ICS the word 'or' has been changed to 'and'.
6. In **Article 2(26)** the term “national regulatory authority” has been removed.
7. **Article 2(32-34)** terminology has been brought up to date.
8. The terminology in **Recitals 17 and 18** has been brought up to date and corrected. The term “switched telephone network” is considered to be out-dated and has been removed throughout the Code and replaced with “publicly assigned numbers”.
9. **Article 3(2)** terminology has been corrected.

Strategic Planning and Coordination (Article 4 and Recitals 30-32)

10. The list of RSPG tasks in **Article 4** has been amended through:
    a. Removing the list of “any other matters” in subparagraph (a), removing ambiguity about the RSPG’s role with regards to public order and security, civil protection and defense.
    b. The addition of subparagraph (c) enumerating the RSPG’s power to publish reports or opinions.
    c. The removal of the phrase “in the context of this legislation”
11. In addition, text specifying the composition of the RSPG has been removed, as this duplicates the existing RSPG decision.

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

12. In order to facilitate a compromise new wording for the list of minimum NRA competences has been provided in **Article 5(1)**. This new approach includes references to ex ante regulation, as the core function of NRAs, and lists the articles in the Code where the concrete tasks have been assigned to NRAs. The obligation to consult with the NRA concerning other tasks proposed in st11680 has been deleted.
13. The amount of detail in **Article 7** concerning the necessary structures of an NRA has been further reduced.
14. In **Article 7(2),** the reference to national law in the existing framework has been restored, replacing the conditions for the removal of the head of the NRA proposed by the Commission in the previous paragraph.

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

15. In **Article 12(4)** the description of the process regarding the maintenance of and input for an EU database has been improved.
16. The phrase "ensure its effective and efficient use" has been added to **Article 13(1)**. This change is necessary to address the previous deletion of general authorisation in Article 47.
17. In **Article 13(2)** the references have been corrected.
18. In **Recital 53** rights of use for numbers has been added.
19. Small changes have been made to the references in part E of **Annex I**.

Geographical Survey (Article 22 and recitals 60-61)

20. **Article 22(4)** has been rewritten to better specify that the power to issue penalties is related specifically to the provision by an operator of misleading, erroneous or incomplete information in the context of the geographical survey.
21. **Recital 60** has been updated and "national regulatory authority" has been replaced with "competent authority" throughout the recital.
22. **Recital 61** has been updated to refer to "knowingly" misleading.

Radio Spectrum Coordination (Article 28 and Recitals 67-68)

23. References to related international agreements and negotiations in **Article 28(1) and 28(5)** have been corrected. In addition, the wording has been updated to reflect delegations' comments on the RSPG's tasks.
24. The overall scope of **Article 28** is left unchanged. In order to sufficiently address problems and disputes arising from coordination involving harmonised bands, this Article should function also with regards to non-harmonised use of spectrum.

Peer Review (Article 35 and Recital 84)

25. The Presidency has integrated changes proposed by a number of Member States into its drafting of the Peer review mechanism. In particular, these include:
    a. Triggering the peer review process, in the form of a Peer review forum, at a time of a Member States' choosing, in particular early on in the process of launching a selection procedure.
    b. Open participation in the peer review forum by RSPG members, experts from other competent authorities, and BEREC.
26. Several elements have been maintained from the previous Presidency text or added, notably:
    a. an annual report to be published by the RSPG reflecting work done in the Peer review forum,
    b. the possibility for the competent authority requesting the Peer review forum to (voluntarily) request an RSPG opinion,
    c. the possibility for the RSPG to convene the Peer review forum in exceptional circumstances, which are now specified in the text.
27. The Presidency has chosen to retain the title of "Peer review". A cursory review of the usage of the phrase in other EU legislation reveals that peer reviews are often quite light touch and contain a strong voluntary element. The Presidency is therefore of the view that the continued use of "peer review" is appropriate to the measures in the text.
28. The corresponding **Recital 84** has also been updated to reflect these changes.

Harmonisation procedures (Article 38)

29. **Recital 87** now refers to “competent authority”, reflecting earlier changes to the Article.

Security (Articles 40-41 and Recitals 90-93)

30. The Presidency has made changes to the security text to further align it with the NIS directive. Nevertheless, there remains some legitimate divergence, as the NIS directive differs from the already existing framework in several regards (notably a greater degree of harmonisation for ECS than NIS essential services and the lack of an identification procedure for ECS). Therefore, perfect alignment is not possible.
31. **Article 40(2)** on incident notification has been simplified by deleting the third subparagraph, which had limited the obligation to notify in case of partial information. No equivalent text exists in the NIS directive. Instead, the phrase “where available” has been added to the second subparagraph.
32. In **Article 40(3a)**, the scope has been broadened to refer to all users, as opposed to only end-users.
33. The reference to CSIRTs in **Article 41(4)** has been slightly clarified.
34. Several delegations asked about the word “threat”, which is not used in articles of the NIS directive, though it is referenced in the recitals. “Threat” is not defined in the draft CODE, though it does have several commonly accepted definitions in the computer security field, including according to the relevant ISO standard (“A potential cause of an incident, that may result in harm of systems and organization”) and by ENISA (“Any circumstance or event with the potential to adversely impact an asset through unauthorized access, destruction, disclosure, modification of data, and/or denial of service”). The intention is that this is understood to be a narrower term than 'risk', which was considered too broad for the purpose of this provision.

Fees for rights of use (Article 42 and Recitals 93-96)

35. Minor edits to **Article 42(2)** clarifying the article, and a deletion of the requirement to take into account possible alternative uses of resources.

Access to Land (Articles 43-44 and recitals 97-100)

36. **Article 44(2)** has been edited for clarity, and it has been made clear that a Member State may designate specific competent authorities for specific tasks, thereby making it clear that these tasks can be specified in national law, e.g. in the transposition of the Code.

Management of Spectrum (Article 45 and Recitals 101-111)

37. One minor wording change to **Article 45**. **Recital 101** has been updated to reflect the article. The reference to coverage goals in **Recital 103** has been changed from "ubiquitous" to "widespread", and **Recital 104** updated to better complement the approach in the text to EMF.

Authorisation and Conditions (Article 46 - 48 and Recitals 112-119)

38. No substantive changes. Removal of square brackets in Article 48.6, indicating that the Competent authority is responsible for decisions on the granting of rights of use.
39. In Recital 113, the injunction to avoid diverging durations has been softened.

Duration of Rights (Articles 49-50)

40. No changes to the previous text have been made, however **Member States are asked to comment on proposals submitted by several delegations.**

Transfer or Lease of Rights (Article 51 and Recital 123)

41. A minor correction has been made to **Article 51(2)**, no substantive changes.

Competition (Article 52 *and Recital 124*)

42. The text and recital have been updated to refer to "Competent Authority" throughout. Editorial changes have been made to the indicative list of appropriate measures.

Coordinated Timing (Article 53 and Recital 125)

43. The proposed period for coordinated timing in **Article 53(2)** has been changed from 2 years to 3 years as requested by some Member States. In addition, the flexibility for Member States to delay any such implementation has been increased, requiring only a review at least every 3 years if there is such a delay.

Procedure for Limiting Rights of Use (Article 54 and Recital 126)

44. In **Article 54(2)**, it has been specified that the selection procedure for limiting the rights of use should be "competitive or comparative". The tasks arising from **Article 54** have been assigned to "competent authorities" throughout.

Local Area Networks (Article 55 and Recitals 127)

45. The clarity of **Article 55(1)** has been improved by specifying more precisely where end-users are not liable for third party use of internet access.

Small-Area Wireless Access Points (Article 56 and Recitals 128)

46. **Article 56(1)** has been redrafted in order to make clear that any restrictions imposed by Member States on the deployment of small-area wireless access points shall be specified by a competent authority in advance. The article no longer explicitly refers to Member States' competence regarding protection of the environment and human health, instead introducing a more general rule. The rest of the article has also been redrafted accordingly.

Access and Interconnection (Articles 59-60 and recitals 132-145)

47. In **Article 59(1)**, the Presidency has re-introduced text from the initial proposal that had previously been deleted in order to ensure consistency with the rest of the Article.
48. In **Article 59(2)** the Presidency has maintained the text discussed at the previous Working Party with a change to the second subparagraph:

a. **Sub-subparagraph (a)** has been reworded to ensure legal certainty by specifying that the exception to 59(2) applies in instances where the NRA has determined that the criteria for being a wholesale-only operator are met,

b. **Article 59(2a)** has been reworded to give BEREC clearer guidance on the purpose of their guidelines, and the scope of the guidelines has been extended to allow BEREC to give guidance also for determining the relevant thresholds for newness and size of a network deployment.

49. **Recital 138** makes clear that the Commission should "take utmost account" of the BEREC report on interoperability issues.
50. **Recital 140** clarifies that the market analysis to be performed as part of the procedure for Article 59(2) does not need to establish SMP in order to proceed with the appropriate remedies.
51. Correction of a transcription error in **Recital 182**.
52. Tasks under **Article 59(3-4)** have been assigned to "Competent Authorities". The Recital reflects this change.

Imposition, amendment or withdrawal of Obligations (Article 66)

53. **Article 66** has been corrected to reflect that Article 73 no longer falls under the SMP regime. An editorial clarification has been added to **Article 66(6)**.

Obstacles of access to, and use of, specific network facilities (Article 71)

54. Correction of a transcription error in **Article 71(1)**. Deletion of the word "already" in **Article 71(2)** for clarity.
55. A minor change specifying that the NRA should look at the interests of the end-user, not citizen.

Cost Control and Termination Rates (Articles 72-73 and recitals 177-183)

56. The objective of ensuring competition has been included in **Article 72(1)**.
57. **Recital 181** has been updated to reflect changes to the procedure for the Implementing act.
58. In **Article 73(3)**, it has been specified that NRA's should report to BEREC annually.

Regulatory Treatment of New Elements (Article 74 and recital 184)

59. **The Presidency will separately distribute a new text for Article 74 reflecting discussion at the Working Party of 13 September.**

Separation and Migration (Articles 75-78 and recitals 185-191)

60. A footnote to **Article 77** indicates that further discussion may be necessary on the treatment of public financing and state aid.
61. Following a proposal from Member States with a particular interest in this article several changes have been made to **Article 78** the addition of "if any" and the deletion of "decommissioned".

Universal Service (Articles 79-86, Recitals 192-222, Annex V and Annex VI Part A)

62. The majority of Articles concerning Universal Services are unchanged, reflecting the broad support for the changes already made to this section, in particular retaining flexibility for Member States financing of universal services.
63. Clarifications about the fact that available functional internet access and voice communications services can be offered also by wireless means has been added to **Recital 196**.
64. In **Articles 80, 81, 84, 85** the term "national regulatory authorities" is replaced with "competent authorities". The same change has been made to **Recitals 199, 204, 209, 213 and 222** to bring them in line with corresponding Articles.

65. In **Article 80(2)** previous wording has been brought back to ensure that Member States may continue to provide universal services through social allowances. **In Recital 205** "all undertakings" has been replaced with "undertakings in general" to indicate that it is intended to be in a general sense (i.e. not designated).
66. In **Article 81(1)** the previous addition of "where available" has been deleted.
67. A clarification about the scope of information on itemised bills has been added to **Recital 215**.
68. Flexibility for Member States has been explicitly indicated in **Recital 216**.

Numbering (Articles 87-91, Recitals 223-228 and 93 and Annex I)

69. The term "national regulatory authorities" has been replaced with "competent authorities" and the term "numbers" has been replaced with "numbering resources" throughout the Numbering section of the Code, in **Articles 87-89** and **Recitals 223 and 225**.
70. **Annex I** has been updated accordingly.

End-user Rights (Articles 92-108 and 114a, Recitals 229-271, 275 and 278a and Annexes VI, VII, VIIbis, VIII, IX and X

71. The Presidency retains the full harmonisation approach introduced in the previous version of the Presidency text.
72. A number of Member States have identified end-user protections in national laws that go beyond what is set out in the text. In the majority of these cases, the protections offered fall outside the scope of the provisions in the Code and would therefore not be prohibited. This has been further clarified in the Recitals. In other cases where these would fall in scope small changes to the Articles and corresponding recitals have been made.
73. In **Recital 230** it is explained that the switching between undertakings who commercialise an offer of sound or television broadcasting content services delivered over an electronic communications network falls out of scope of full harmonisation in the Code.
74. In **Article 94** the scope of full harmonisation is corrected in line with st11680-co01. Also the transitional period in **Article 94(2)** has been extended to 3 years.

75. **In Article 95(5)** the references have been corrected and distance contracts have been included. **Article 95(5c)** has been further clarified. The scope of **Article 95(5d)** has been extended to switching, compensation and refund arrangements. **Article 95(5bis**) has been aligned with CRD. In **Article 95(6)** a possibility for Member States to maintain or introduce in their national law provisions to require service providers to provide additional information. **Recital 233** has been aligned with the changes in Article 95. The flexibility for Member States around the level of detail of the specific information has been clarified.

76. **In Article 96** the term "national regulatory authorities" has been replaced with “competent authorities”. The word **“relevant”** has been removed from **Article 96(1).** The phrase “recurring and/or consumption based direct monetary payments” has been introduced in **Article 96(2)**. The text of the criteria for the comparison tool has been clarified in **Article 96(2) points a and f**. In **Recital 237** the term “restrictions” has been replaced with “conditions” which is more appropriate. Additional specifications have been added to **Recital 238** concerning “bill-shocks”.

77. In **Article 97(1)** the criteria for quality of service has been specified further. **Recital 243** has been aligned with Article 97.

78. In **Article 98(3-4)** additional flexibility has been provided for Member States. In **Recital 235** the term “restrictions” has again been replaced with “conditions”. In **Recital 244** possibility for Member States to permit a change in tariff plan has been explicitly introduced. A clarification about automatic prolongation has been added to **Recital 245**. Text has been added to **Recital 246** clarifying that Member States retain the possibility of introducing further end-user protection rules in case of end-user changing their place of residence.

79. In **Article 99** it has been clarified that the date of activation of the service has to be requested by, and explicitly agreed with, the end-user. In **Article 99(5)** the switching of providers of internet access services has been removed to avoid unnecessary repetition. The wording of **Article 99(6)** has been slightly changed to ensure that sanctions and compensation are provided for failure to comply with provisions of the entire Article. The term "national regulatory authorities" has been replaced with “competent authorities” in **Recital 251** to align it with Article 99.

80. In **Article 100(2)** the reference to Article 95 has been corrected.
81. National regulatory authority has been removed from **Article 102(2)** in order to provide additional flexibility to Member states. In **Recital 256** the term “emergency call” has been replaced with “emergency communications” to align the terminology through-out the Code.
82. The term "national regulatory authorities" has been replaced with “competent authorities” in **Article 107(1)**. The wording of **Article 107(2)** has been slightly changed to provide more clarity.
83. The reference to Annex V has been removed from **Article 108**.
84. The review mechanism in **Article 114a** has been updated to ensure that the described process is in accordance with the Union law. The wording has been changed to provide more clarity. All electronic services have been brought into the scope of this Article. **Recital 278a** has been aligned with the new wording of Article 114a.
85. These amendments have been reflected also in **Annex VI, Annex VII and VIIbis.**

III. NEXT STEPS

86. Following examination in the Working Party on 27 September and 3-4 October, the Presidency will forward this text to COREPER, with final amendments and a cover note proposing the Council position on the Electronic Communications Code (CODE). On 11 October, the Presidency will ask COREPER to approve the Council position.
87. Based on this position, the Presidency envisages holding a first, exploratory trilogue in the end of October. At this trilogue, the co-legislators would present their positions and identify areas of agreement and areas requiring further political negotiations. On areas of agreement, the Presidency and Parliament could then continue work at the technical level, while at the same time beginning preparations for further trilogues. The Presidency aims to hold at least one further trilogue during the Estonian Presidency.
88. Further trilogues are expected to proceed on a chapter-by-chapter basis, covering the relevant sections of CODE (access, services, spectrum, institutional). The precise order would be agreed with the Parliament at the first trilogue. The Presidency would return to COREPER for a negotiating mandate before the next trilogue.

89. In parallel, the Working Party will begin in-depth examination of the BEREC Regulation, with an aim to concluding a General approach by the end of the Estonian Presidency. The Presidency envisages that inter-institutional negotiations on BEREC would then be merged with ongoing trilogues on the CODE. For instance, the trilogue on the institutional sections of the CODE could also agree the relevant portions of the BEREC regulation.

↓ 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 Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

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 Council[3], Directive 2002/20/EC of the European Parliament and of the Council[4], Directive 2002/21/EC of the European Parliament and of the Council[5] and Directive 2002/22/EC of the European Parliament and of the Council[6] have been substantially amended. Since further amendments are to be made, those Directives should be recast in the interests of clarity.

↓ 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 provision[7]. 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).~~

↓ 2002/21/EC recital 3 (adapted)

~~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.~~

↓ 2002/21/EC recital 4 (adapted)

~~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.~~

↓ 2009/136/EC recital 1 (adapted)
⇨ new

(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] ⇦ .

⇩ new

(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.

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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.

(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 Regulation (BEREC Regulation[14]). 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~~ t~~T~~his 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

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[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).

↓ 2002/21/EC recital 5 (adapted)
⇨ new

(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 sector[18], (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 activities[19]~~Directive 2010/13/EU of the European Parliament and of the Council[20]. ⇨ 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.

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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 conformity[21]~~ ⇨ affect the application to radio equipment of Directive 2014/53/EU ⇦ , but does cover consumer equipment used for digital television.

↓ 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 conformity[22]~~ ⌦ Directive 2014/53/EU of the European Parliament and of the Council[23] ⌫ 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).

~~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.~~

↓ 2002/21/EC recital 6 (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.~~

↓ 2002/22/EC recital 50 (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].~~

↓ 2002/21/EC recital 9 (adapted)

~~[24] OJ L 178, 17.7.2000, p. 1.~~

↓ 2002/21/EC recital 10 (adapted)
⇨ new

(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 services[25] 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.

↓ 2002/20/EC recital 20

(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.

⇩ new

(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.

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[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).~~

(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.

↓ 2009/136/EC recital 13 (adapted)
⇨ new

(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,~~ ~~e~~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.

⇩ new

(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 2018[26].

[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

(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 TFEU[27], 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.

(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 a**n** ~~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.

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

(18) Interpersonal communications services using numbers from a national and international ~~telephone~~ numbering plan **use and** connect with ~~the public~~ ~~(packet or circuit) switched telephone network~~ **publicly assigned numbering resources**. 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,~~ **publicy assigned numbers** 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. ⇦

⇩ 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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[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 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.

↓ 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.

⇩ 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.

↓ 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 ⌫ ~~it~~ 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.

↓ 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.

↓ 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.

↓ 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.

🡻 2009/140/EC recital 28 (adapted)
⇨ new

(30) ~~Although spectrum management remains within the competence of the Member States,~~ ~~s~~Strategic planning, coordination and, where appropriate, harmonisation at ~~Community~~ ⌦ Union ⌫ level can help ensure that spectrum users derive the full benefits of the internal market and that ~~EU~~ ⌦ Union ⌫ interests can be effectively defended globally. For these purposes, where appropriate, legislative multiannual radio spectrum policy programmes ~~should~~ ⌦ may ⌫ be ~~established~~ ⌦ adopted ⌫ ⇨ , with the first one defined by Decision No 243/2012/EU of the European Parliament and of the Council[30], ⇦ ⌦ setting ⌫ ~~to set~~ out ~~the~~ policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in the ~~Community~~ ⌦ Union ⌫. These policy orientations and objectives may refer to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market ⌦ , in accordance with this Directive ⌫ ~~and may also refer, in appropriate cases, to the harmonisation of procedures for the granting of general authorisations or individual rights of use for radio frequencies where necessary to overcome barriers to the internal market. These policy orientations and objectives should be in accordance with this Directive and the Specific Directives~~.

🡻 2009/140/EC recital 32 (adapted)
⇨ new

~~(31) The current spectrum management and distribution system is generally based on administrative decisions that are insufficiently flexible to cope with technological and economic evolution, in particular with the rapid development of wireless technology and the increasing demand for bandwidth.~~ ⌦ National borders are increasingly irrelevant in determining optimal radio spectrum use. ⌫ ~~The~~ ~~u~~Undue fragmentation amongst national policies ~~⇨ regarding the management of radio spectrum, including unjustified different conditions for access to, and use of, radio spectrum according to the type of operator, may ⇦~~ result~~s~~ in increased costs and lost market opportunities for spectrum users,~~:~~ ~~and~~ ⌦ It may ⌫ slow~~s~~ down innovation, ~~⇨ limit investment, reduce economies of scale for manufacturers and operators as well as create tensions between rights holders and discrepancies in the cost of access to spectrum. This fragmentation may overall result in a distortion of the functioning ⇦ ***to the detriment*** of the internal market~~.~~ ⌦ and prejudice to ⌫ consumers and the economy as a whole. ~~Moreover, the conditions for access to, and~~

[30] OJ L 81, 21.3.2012, p. 7.

~~use of, radio frequencies may vary according to the type of operator, while electronic services provided by these operators increasingly overlap, thereby creating tensions between rights holders, discrepancies in the cost of access to spectrum, and potential distortions in the functioning of the internal market.~~

↓ 2009/140/EC recital 33 (adapted)

~~National borders are increasingly irrelevant in determining optimal radio spectrum use. Fragmentation of the management of access to spectrum rights limits investment and innovation and does not allow operators and equipment manufacturers to realise economies of scale, thereby hindering the development of an internal market for electronic communications networks and services using radio spectrum.~~

↓ 2009/140/EC recital 30 (adapted)

(32) The spectrum management provisions of this Directive should be consistent with the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), so as to ensure the efficient management of and harmonisation of the use of spectrum across the ~~Community~~ ⌦ Union ⌫ and between the Member States and other members of the ITU.

↓ 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.

⇩ 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. ⇦

⇩ 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~~ could 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 law[31], 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 Council[32].

↓ 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 conformity[33].~~

↓ 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~~

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

[32] 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.

[33] ~~OJ L 91, 7.4.1999, p. 10.~~

~~consisting of, conditional access[34]. The authorisation of such systems and services therefore does not need to be covered by this Directive.~~

↓ 2002/20/EC recital 7

(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.

↓ 2002/20/EC recital 8 (adapted)
⇨ new

(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~~.

⇩ new

(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.

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34 ~~OJ L 320, 28.11.1998, p. 54.~~

(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

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↓ 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~~.

↓ 2002/20/EC recital 18 (adapted)
⇨ new

(44) ~~The~~ ~~g~~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~~.

↓ 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.~~

↓ 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.

↓ 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)~~[35]. Undertakings providing electronic communications networks and services other than to the public can negotiate interconnection on commercial terms.

↓ 2002/20/EC recital 11 (adapted)

~~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.~~

↓ 2002/20/EC recital 16

(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.

↓ 2002/20/EC recital 17 (adapted)
⇨ new

(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)~~[36] should be imposed separately from the general rights and obligations under the general authorisation.

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35 ~~See page 7 of this Official Journal.~~

36 ~~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.

↓ 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.

↓ 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. ⇦

↓ 2002/20/EC recital 33
⇨ new

(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 numbers,** 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 **or numbers** 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. ⇦

↓ 2002/20/EC recital 34

~~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.~~

↓ 2002/20/EC recital 35

~~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,~~

↓ 2009/140/EC recital 70

(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.

↓ 2002/21/EC recital 13 (adapted)
⇨ new

(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 ⌫ ~~S~~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.

↓ 2009/140/EC recital 16
⇨ new

(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~~ **the competent authority** 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 **the burden of** ⇦ reporting and information obligations ⇨ for network and ⇦ ⌦ service providers ⌫ ~~can be cumbersome, both for the undertaking~~ and ~~for~~ the ~~national regulatory~~ ⇨ competent ⇦ authority concerned~~.~~ ~~S~~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 p~~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.

↓ 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 ⌫ .

↓ 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.

(60) Electronic communications broadband networks are becoming increasingly diverse in terms of technology, topology, medium used and ownership, therefore, regulatory intervention must rely on detailed information ~~and forecasts~~ regarding network roll-out in order to be effective and to target the areas where it is needed. That information should include plans regarding both deployment of very high capacity networks, as well as significant upgrades or extensions of existing copper or other networks which might not match the performance characteristics of very high capacity networks in all respects, such as roll-out of fibre to the cabinet coupled with active technologies like vectoring. The level of detail and territorial granularity of the information that ~~national regulatory~~ **competent** authorities should gather

should be guided by the specific regulatory objective, and should be adequate for the regulatory purposes that it serves. Therefore, the size of the territorial unit will also vary between Member States, depending on the regulatory needs in the specific national circumstances, and on the availability of local data. Level 3 in the Nomenclature of Territorial Units for Statistics (NUTS) is unlikely to be a sufficiently small territorial unit in most circumstances. ~~National regulatory~~ **Competent** authorities should be guided by BEREC guidelines on best practice to approach such a task, and such guidelines will be able to rely on the existing experience of national regulatory authorities in conducting geographical surveys of networks roll-out. ~~National regulatory~~ **Competent** authorities ~~should~~ **may** make available tools to end-users as regards quality of service to contribute towards the improvement of their awareness of the available connectivity services.

(61) In the case of specific and well defined digital exclusion areas, national regulatory authorities should have the possibility to **invite undertakings to declare their intention to deploy very high capacity networks,** ~~organise a call for declarations of interest~~ with the aim of identifying undertakings that are willing to invest in very high capacity networks **in these areas**. **Where an undertaking declares an intention to deploy in this area, the competent authority may require other undertakings to declare whether or not they intend to invest. This procedure will create transparency for undertakings that have expressed their interest in deploying in these areas, so that when designing their business plans they can assess the likely competition that they will face from other networks. The positive effect of such transparency relies on market participants responding truthfully and in good faith. While market participants can change their deployment plans for unforeseen, objective and justifiable reasons, competent authorities should be able to intervene, including ~~in particular~~ if public funding is affected, and if appropriate impose a sanction if they have been ~~deliberately~~ knowingly misle~~a~~d by an undertaking, with the objective of undermining other market participants that have taken the risk to deploy ~~deliver~~ very high capacity networks in these areas and which consequently may result, in the case of public funding, in an ineffective use of public resources. It is important that the penalties are sufficiently dissuasive in view of the negative impact caused, in particular to publicly funded projects.** In the interests of predictable investment conditions, national regulatory authorities should be able to share information with undertakings expressing interest in deploying very high-speed networks on whether other types of network upgrades, including those below 100 Mbps download speed, are present or foreseen in the area in question.

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

(62) It is important that national regulatory ⇨ 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~~.

↓ 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.

↓ 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 ⇦.

↓ 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.

⇩ new

(67) Lack of coordination between Member States when organising the use of spectrum in their territory can**, if not solved through bilateral Member States negotiations,** create large-scale interference issues severely impacting the development of the Digital Single Market. Member States should take all necessary measures to avoid cross-border and harmful interference and cooperate with each other to that end. ~~Upon request of one or more Member States or of the Commission, the~~ **The** Radio Spectrum Policy Group should be tasked with supporting the necessary cross-border coordination. Building on RSPG's proposed solution, an implementing measure may be required in some circumstances to definitively resolve cross-border interferences or to enforce under Union law a coordinated solution agreed by two or several Member States in bilateral negotiations.

(68) The Radio Spectrum Policy Group (RSPG) is a Commission high-level advisory group which was created by Commission Decision 2002/622/EC[37] to contribute to the development of the internal market and to support the development of a Union-level radio spectrum policy, taking into account economic, political, cultural, strategic, health and social considerations, as well as technical parameters. It should be composed of the heads of the bodies that have overall political responsibility for strategic spectrum policy. It should advise the Commission in developing strategic objectives, priorities and roadmaps for spectrum policy. This should further increase the visibility of spectrum policy in the various EU policy areas and help to ensure cross-sectorial coherence at national and Union level. It should also provide advice to the European Parliament and the Council upon their request. Moreover, the RSPG should also be the forum for the coordination of implementation by Member States of their obligations related to radio spectrum under this Directive and should play a central role in fields essential for the internal market **and spectrum policy.** ~~such as cross-border coordination or standardisation. Technical or expert working~~ **Working** groups could also be created to assist plenary meetings, at which strategic policy is framed through senior-level representatives of the Member States and the Commission.

↓ 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~~ **competent** 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 Council[38] 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[39].~~ ⇨ ~~In view of the deep sectorial expertise of national regulatory~~

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[37] Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group (OJ L 198 , 27/07/2002, p. 49).

[38] 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).

[39] ~~OJ L 115, 17.4.1998, p. 31.~~

~~authorities,~~ Member States should enable the ~~national regulatory~~ **competent** 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 ⇦

↓ 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~~ **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. ⇦

↓ 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.

↓ 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, appeal~~s~~ 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.

↓ 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~~ **competent** 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. ⇦

(75) The Commission should be able, after ~~consulting the Communications Committee~~ ⇨ taking utmost account of the opinion of BEREC ⇦ , to ~~require~~ **invite** a national regulatory authority to withdraw a draft measure where it concerns definition of relevant markets or the designation or not of undertakings with significant market power, and where such decisions would create a barrier to the single market or would be incompatible with ~~Community~~ ⌦ Union ⌫ law and in particular the policy objectives that national regulatory authorities should follow. This procedure is without prejudice to the notification procedure provided for in Directive ~~98/34/EC~~2015/1535/EU and the Commission's prerogatives under the Treaty in respect of infringements of ~~Community~~ ⌦ Union ⌫ law.

(76) The national consultation provided for under Article ⌦ 24 ⌫ ~~6 of Directive 2002/21/EC (Framework Directive)~~ should be conducted prior to the ~~Community~~ ⌦ Union ⌫ law consultation provided for under Articles ~~7~~ ⌦ ~~34~~ ⌫ **32** and ~~7a~~ ⌦ ~~35~~ ⌫ **33** of ~~that~~ ⌦ this ⌫ Directive, in order to allow the views of interested parties to be reflected in the ~~Community~~ ⌦ Union ⌫ law consultation. This would also avoid the need for a second ~~Community~~ ⌦ Union ⌫ law consultation in the event of changes to a planned measure as a result of the national consultation.

(77) It is important that the regulatory framework is implemented in a timely manner. When the Commission has taken a decision requiring a national regulatory authority to withdraw a planned measure, national regulatory authorities should submit a revised measure to the Commission. A deadline should be laid down for the notification of the revised measure to

the Commission under Article ~~7~~ ⊠ 34 ⊠ **32** ~~of Directive 2002/21/EC (Framework Directive)~~ in order to allow market players to know the duration of the market review and in order to increase legal certainty.

(78) The ~~Community~~ ⊠ Union ⊠ mechanism allowing the Commission to require national regulatory authorities to withdraw planned measures concerning market definition and the designation of operators having significant market power has contributed significantly to a consistent approach in identifying the circumstances in which *ex ante* regulation may be applied and those in which the operators are subject to such regulation. ~~Monitoring of the market by the Commission and, in particular, t~~The experience of the ~~procedure~~ ⊠ procedures ⊠ under Article 7 ⊠ and 7a ⊠ of Directive 2002/21/EC (Framework Directive)~~,~~ has shown that inconsistencies in the national regulatory authorities' application of remedies~~, even~~ under similar market conditions~~, could~~ undermine the internal market in electronic communications. Therefore the Commission ⇨ and BEREC ⇦ ~~may~~ ⇨ should ⇦ participate in ensuring ⇨, within their respective responsibilities, ⇦ a higher level of consistency in the application of remedies ~~by adopting opinions on~~ ⊠ concerning ⊠ draft measures proposed by national regulatory authorities. ~~⇨ In addition, where BEREC shares the Commission's concerns, the Commission should be able to require a national regulatory authority to withdraw a draft measure. ⇦~~ In order to benefit from the expertise of national regulatory authorities on the market analysis, the Commission should consult BEREC prior to adoption of its decisions and/or recommendations.

(79) Having regard to the short time-limits in the ~~Community~~ ⌦ Union ⌫ consultation mechanism, powers should be conferred on the Commission to adopt recommendations and/or guidelines to simplify the procedures for exchanging information between the Commission and national regulatory authorities, for example in cases concerning stable markets, or involving only minor changes to previously notified measures. Powers should also be conferred on the Commission in order to allow for the introduction of a notification exemption so as to streamline procedures in certain cases.

~~(80)~~ National regulatory authorities should be required to cooperate with each other, ⇨ with BEREC ⇦ and with the Commission in a transparent manner to ensure the consistent application, in all Member States, of the provisions of this Directive ~~and the Specific Directives~~. ~~This cooperation could take place, inter alia, in the Communications Committee or in a group comprising European regulators. Member States should decide which bodies are national regulatory authorities for the purposes of this Directive and the Specific Directives.~~

(81) The discretion of national regulatory authorities needs to be reconciled with the development of consistent regulatory practices and the consistent application of the regulatory framework in order to contribute effectively to the development and completion of the internal market. National regulatory authorities should therefore support the internal market activities of the Commission and those of BEREC.

(82) Measures that could affect trade between Member States are measures that may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in a manner which might create a barrier to the single market. They comprise measures that have a significant impact on operators or users in other Member States, which include, *inter alia*: measures which affect prices for users in other Member States; measures which affect the ability of an undertaking established in another Member State to provide an electronic communications service, and in particular measures which affect the ability to offer services on a transnational basis; and measures which affect market structure or access, leading to repercussions for undertakings in other Member States.

(83) In carrying out its reviews of the functioning of ~~the~~ ⌦ this ⌫ ~~Framework~~ Directive ~~and the Specific Directives~~, the Commission should assess whether, in the light of developments in the market and with regard to both competition and consumer protection, there is a continued need for the provisions on sector-specific *ex ante* regulation ~~laid down in Articles 8 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive)~~ or whether those provisions should be amended or repealed.

⇩ new

(84) ~~By virtue of their overall economic expertise and market knowledge, and of the objective and technical character of their assessments, and in order to ensure coherence with their other tasks of market regulation, national regulatory authorities should determine the elements of selection procedures and the conditions attached to the rights of use for spectrum which have the greatest impact on market conditions and the competitive situation, including conditions for entry and expansion. That includes for example the parameters for economic valuation of spectrum in compliance with this Directive, the specification of the regulatory and market shaping measures such as the use of spectrum caps or reservation of spectrum or the imposition of wholesale access obligations, or the means to define the coverage conditions attached to rights of use.~~ [A more

convergent use and definition of ~~such~~ elements **of selection procedures and the conditions attached to the rights of use for radio spectrum which have the greatest impact on market conditions and the competitive situation, including conditions for entry and expansion,** would be favoured by a coordination mechanism whereby **the RSPG,** ~~BEREC,~~ ~~the Commission~~ and the ~~national regulatory~~ **competent** authorities of the other Member States would **convene a Peer Review Forum to examine** ~~review~~ draft measures in advance of the granting of rights of use by a given Member State **with a view to exchanging best practice.** ~~in parallel to the national public consultation~~. The **exchange of views should be based on information provided by the competent authority that requests the forum and should** ~~measure determined by the national regulatory authority can only~~ be a subset of a wider national measure, which may more broadly consist of the granting, trade and lease, duration, renewal or the amendment of rights of use ~~for radio spectrum as well as of the selection procedure or the conditions attached to the rights of use.~~ Therefore, ~~when notifying~~ a ~~draft measure,~~ ~~national regulatory~~ **competent** authorities may **also** provide information on other draft national measures **or aspects thereof** related to the relevant selection procedure for limiting rights of use for radio spectrum which are not covered by the peer review mechanism. **To reduce administrative burden, competent authorities may submit such information by way of a common reporting format, where available, for transmission to RSPG members.**

↓ 2002/20/EC recital 24 (adapted)

(85) Where the harmonised assignment of radio ~~frequencies~~ **spectrum** to particular undertakings has been agreed at European level, Member States should strictly implement such agreements in the granting of rights of use ~~of~~ ⊠ for ⊠ radio ~~frequencies~~ **spectrum** from the national frequency usage plan.

⇩ new

(86) Member States ~~should be encouraged to~~ **may** consider joint authorisations as an option when issuing rights of use where the expected usage covers cross-border situations**. When doing so, there are some criteria which Member States should consider. Jointly agreed scheduling of the individual national authorisation processes should be initiated and implemented by the competent authorities according to a jointly agreed schedule. The process should provide, where appropriate, for common conditions and procedures for the selection and granting of individual rights among the Member States concerned. Where appropriate, common or comparable conditions, should be able to be attached to the individual rights of use among the Member States concerned, thereby allowing users to be assigned similar radio spectrum blocks. Other Member States should be enabled to join the process.**

🡻 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 **or other competent** authorities that do not create a barrier to the internal market.

🡻 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.

↓ 2002/21/EC recital 30 (adapted)

(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 signals[40] 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 limits[41] and Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility[42]~~ the Radio Equipment Directive 2014/53/EU, the Low Voltage Directive 2014/35/EU and the Electromagnetic Compatibility Directive 2014/30/EU.

↓ 2002/21/EC recital 31

~~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.~~

~~40 OJ L 281, 23.11.1995, p. 51.~~
~~41 OJ L 77, 26.3.1973, p. 29.~~
~~42 OJ L 139, 23.5.1989, p. 19.~~

(90) Providers of public electronic communications networks or publicly available electronic communications services, or of both, should be required to take measures to safeguard the security of their networks and services, respectively. Having regard to the state of the art, those measures should ensure a level of security of networks and services appropriate to the risks posed. Security measures should take into account, as a minimum, all the relevant aspects of the following elements: as regards security of networks and facilities: physical and environmental security, security of supplies, access control to networks and integrity of networks; as regards incident handling: incident-handling procedures, incident detection capability, incident reporting and communication; as regards business continuity management: service continuity strategy and contingency plans, disaster recovery capabilities; and as regards monitoring, auditing and testing: monitoring and logging policies, exercise contingency plans, network and service testing, security assessments and compliance monitoring; and compliance with international standards.

(91) Given the growing importance of number-independent interpersonal communications services, it is necessary to ensure that they are also subject to appropriate security requirements in accordance with their specific nature and economic importance. Providers of such services should thus **also** ensure a level of security ~~commensurate with the degree of~~ **appropriate to the** risk posed ~~to the security of the electronic communications services they provide~~. Given that providers of number-independent interpersonal communications services normally do not exercise actual control over the transmission of signals over networks, the degree of risk for such services can be considered in some respects lower than for traditional electronic communications services. Therefore, whenever it is justified by the actual assessment of the security risks involved, the ~~security requirements for~~ **measures taken by** number-independent interpersonal communications services should be lighter. ~~In that context, the providers should be able to decide about the measures they consider appropriate to manage the risks posed to the security of their services.~~ The same approach should apply *mutatis mutandis* to interpersonal communications services which make use of numbers and which do not exercise actual control over signal transmission.

(91a) Providers of public communications networks or of publicly available electronic communications services should inform end-users of particular and significant security threats and of measures they can take to protect the security of their communications, for instance by using specific types of software or encryption technologies. The requirement to inform end-users of such threats should not discharge a service provider from the obligation to take, at its own costs, appropriate and immediate measures to remedy any security threats and restore the normal security level of the service. The provision of such information about security threats to the end-user should be free of charge.

(92) Competent authorities should ensure that the integrity and availability of public communications networks are maintained. The European Network and Information Security Agency ('ENISA') should contribute to an enhanced level of security of electronic communications by, amongst other things, providing expertise and advice, and promoting the exchange of best practices. The competent authorities should have the necessary means to perform their duties, including powers to request the information necessary to assess the level of security of networks or services. They should also have the power to request comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. They should, where necessary, be assisted by Computer Security Incident Response Teams (CSIRTs) established under Article 9 of Directive (EU) 2016/1148/EU[43]. In particular, CSIRTs may be required to provide competent authorities with information about risks and incidents affecting public communications networks and publicly available electronic communications services and recommend ways to address them.

[43] Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016).

(93) Where the provision of electronic communications relies on public resources whose use is subject to specific authorisation, Member States may grant the authority competent for issuance thereof the right to impose fees to ensure optimal use of those resource, in accordance with the procedures envisaged in this Directive, In line with the case-law of the Court of Justice, Member States cannot levy any charges or fees in relation to the provision of networks and electronic communications services other than those provided for by this Directive. In that regard, Member States should have a coherent approach in establishing those charges or fees in order not to provide an undue financial burden linked to the general authorisation procedure or rights of use for undertakings providing electronic communications networks and services.

(93) Where the provision of electronic communications relies on public resources whose use is subject to specific authorisation, Member States may grant the authority competent for issuance thereof the right to impose fees to ensure optimal use of those resource, in accordance with the procedures envisaged in this Directive, In line with the case-law of the Court of Justice, Member States cannot levy any charges or fees in relation to the provision of networks and electronic communications services other than those provided for by this Directive. In that regard, Member States should have a coherent approach in establishing those charges or fees in order not to provide an undue financial burden linked to the general authorisation procedure or rights of use for undertakings providing electronic communications networks and services.

🡻 2002/20/EC recital 32
⇨ new

(94) ⇨ To ensure optimal use of resources, fees should reflect the economic and technical situation of the market concerned as well as any other significant factor determinaning their value. ~~At the same time, fees should be set in a manner that enables innovation in the provision of networks and services as well as competition in the market. Member States should therefore ensure that fees for rights of use are established on the basis of a mechanism which provides for appropriate safeguards against outcomes whereby the value of the fees is distorted as a result of revenue maximisation policies, anticompetitive bidding or equivalent behaviour.~~ ⇦ ~~In addition to administrative charges, usage fees may be levied for the use of radio frequencies and numbers as an instrument to ensure the optimal use of such resources. Such fees should not hinder the development of innovative services and competition in the market.~~This Directive is without prejudice to the purpose for which fees for rights of use ⇨ and rights to install facilities ⇦ are employed. Such fees may for instance be used to finance activities of national regulatory authorities ⇨ and competent authorities ⇦ that cannot be covered by administrative charges. Where, in the case of competitive or comparative selection procedures, fees for rights of use for radio ~~frequencies~~ ⇨ spectrum ⇦ consist entirely or partly of a one-off amount, payment arrangements should ensure that such fees do not in practice lead to selection on the basis of criteria unrelated to the objective of ensuring optimal use of radio ~~frequencies~~ ⇨ spectrum ⇦ . The Commission may publish on a regular basis benchmark studies ⇨ and other guidance as appropriate ⇦

with regard to best practices for the assignment of radio ~~frequencies~~ ⇨ spectrum ⇦, the assignment of numbers or the granting of rights of way.

⇩ new

(95) In line with their role of ensuring optimal use of radio spectrum, fees linked to rights of use for radio spectrum can influence decisions about whether to seek such rights and put into use radio spectrum resources. ~~When setting reserve prices as a means to determine the minimum valuation ensuring optimal use,~~ Member States should therefore ensure that **reserve prices are set in a way that leads to the efficient assignment of the rights** ~~such prices~~, irrespective of the type of selection procedure used~~, also reflect the additional costs associated with the fulfilment of authorisation conditions imposed to further policy objectives that would not reasonably be expected to be met pursuant to normal commercial standards, such as territorial coverage conditions~~. In doing so, regard should also be had to the competitive situation of the market concerned **including the possible alternative uses of the resources**.

(96) Optimal use of radio spectrum resources depends on the availability of appropriate networks and associated facilities. In that regard, fees for rights of use for radio spectrum and for rights to install facilities should take into consideration the need to facilitate continuous infrastructure development with a view to achieving the most efficient use of the resources. ~~Member States should therefore provide for modalities for payment of the fees for rights of use for radio spectrum linked with the actual availability of the resource in a manner that facilitates the investments necessary to promote such development. The modalities should be specified in an objective, transparent, proportionate and non-discriminatory manner before opening procedures for the granting of rights of use for spectrum.~~

(97) It should be ensured that procedures exist for the granting of rights to install facilities that are timely, non-discriminatory and transparent, in order to guarantee the conditions for fair and effective competition. This Directive is without prejudice to national provisions governing the expropriation or use of property, the normal exercise of property rights, the normal use of the public domain, or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership.

(98) Permits issued to undertakings providing electronic communications networks and services allowing them to gain access to public or private property are essential factors for the establishment of electronic communications networks or new network elements. Unnecessary complexity and delay in the procedures for granting rights of way may therefore represent important obstacles to the development of competition. Consequently, the acquisition of rights of way by authorised undertakings should be simplified. National regulatory authorities should be able to coordinate the acquisition of rights of way, making relevant information accessible on their websites.

(99) It is necessary to strengthen the powers of the Member States as regards holders of rights of way to ensure the entry or roll-out of a new network in a fair, efficient and environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. Improving facility sharing can ~~significantly improve competition and~~ lower the ~~overall financial and~~ environmental cost of deploying electronic communications infrastructure ~~for undertakings, particularly of new access networks~~ ⇨ and serve public health, public security and meet town and country planning objectives ⇦ . ~~National regulatory~~ ⇨ Competent ⇦ authorities should be empowered to require that the ~~holders~~ ⌦ undertakings which have benefitted from ⌫ ~~of the~~ rights to install facilities on, over or under public or private property share such facilities or property (including physical co-location) ~~in order to encourage efficient investment in infrastructure and the promotion of innovation,~~ after an appropriate period of public consultation, during which all interested parties should be given the opportunity to state their views ⇨ , in the specific areas where such general interest reasons impose such sharing. That can be the case for instance where the subsoil is highly congested or where a natural barrier needs to be crossed. ⇦ ~~Such sharing or coordination arrangements may include rules for apportioning the costs of the facility or property sharing and should ensure that there is an appropriate reward of risk for the undertakings concerned. National regulatory~~ ⇨ Competent ⇦ authorities should in particular be able to impose the sharing of network elements and associated facilities, such as ducts, conduits, masts, manholes, cabinets, antennae, towers and other supporting constructions, buildings or entries into buildings, and a better coordination of civil works ⇨ on environmental or other public-policy grounds. On the contrary, it should be for national regulatory authorities to define rules for apportioning the costs of the facility or property sharing, to ensure that there is an appropriate reward of risk for the undertakings concerned ⇦. ⌦ In the light of the obligations imposed by Directive 2014/61/EU, ⌫ ~~T~~the competent authorities, particularly local authorities, should also establish appropriate coordination procedures, in cooperation with national regulatory authorities, with respect to public works and other appropriate public facilities or property which may include procedures that ensure that interested parties have information concerning appropriate public facilities or property and ongoing and planned public works, that they are notified in a timely manner of such works, and that sharing is facilitated to the maximum extent possible.

↓ 2002/21/EC recital 23
⇨ new

~~Facility sharing can be of benefit for town planning, public health or environmental reasons, and should be encouraged by national regulatoryauthorities on the basis of voluntary agreements. In cases where undertakings are deprived of access to viable alternatives, compulsory facility or property sharing may be appropriate. It covers inter alia: physical co-location and duct, building, mast, antenna or antenna system sharing. Compulsory facility or property sharing should be imposed on undertakings only after full public consultation.~~

↓ 2002/21/EC recital 24
⇨ new

(100) Where mobile operators are required to share towers or masts for environmental reasons, such mandated sharing may lead to a reduction in the maximum transmitted power levels allowed for each operator for reasons of public health, and this in turn may require operators to install more transmission sites to ensure national coverage. ⇨ Competent authorities should seek to reconcile the environmental and public health considerations in question, taking due account of the precautionary approach set out in Council Recommendation No 1999/519/EC. ⇦

↓ 2002/20/EC recital 29

~~This Directive should be without prejudice to Member States' obligations to provide any information necessary for the defence of Communityinterests within the context of international agreements. This Directive should also be without prejudice to any reporting obligations under legislation which is not specific to the electronic communications sector such as competition law.~~

↓ 2002/21/EC recital 19 (adapted)
⇨ new

(101) ~~Radio frequencies~~ ⇨ Radio spectrum ⇦ is a scarce public resource with an important public and market value. ⇦ ⌦ It is ⌫ an essential input for radio-based electronic communications ⌦ networks and ⌫ services and, in so far as ⌦ it relates ⌫ ~~they relate~~ to such ⌦ networks and ⌫ services, should therefore be ⇨ efficiently ⇦ allocated and assigned by ~~national regulatory~~ **competent** authorities according to ~~a set of~~ harmonised objectives and principles governing their action as well as to objective, transparent and non-discriminatory criteria, taking into account the democratic, social, linguistic and cultural interests related to the use of ~~frequency~~ ⌦ frequencies ⌫ . ~~It is important that the allocation and assignment of radio frequencies is managed as efficiently as possible. Transfer of radio frequencies spectrum can be an effective means of increasing efficient use of spectrum, as long as there are sufficient safeguards in place to protect the public interest, in particular the need to ensure transparency and regulatory supervision of such transfers~~. Decision No 676/2002/EC of the European Parliament and of the Council of 7

March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)[44] establishes a framework for harmonisation of radio ~~frequencies~~ ⇨ spectrum ⇦ ~~, and action taken under this Directive should seek to facilitate the work under that Decision~~.

↓ 2009/140/EC recital 25 (adapted)
⇨ new

(102) Radio spectrum policy activities in the ~~Community~~ ⌦ Union ⌫ should be without prejudice to measures taken, at ~~Community~~ ⌦ Union ⌫ or national level, in accordance with ~~Community~~ ⌦ Union ⌫ **or national** law, to pursue general interest objectives, in particular with regard to **public governmental networks,** content regulation and audiovisual and media policies, and the right of Member States to organise and use their radio spectrum for ~~the purposes of~~ public order, public security and defence**.** ~~⇨ As use of spectrum for military and other national public security purposes impacts on the availability of spectrum for the internal market, radio spectrum policy should take into account all sectors and aspects of Union policies and balance their respective needs, while respecting Member States' rights. ⇦~~

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[44] Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) (OJ L 108, 24.4.2002).

⇩ new

(103) Ensuring ~~ubiquitous~~ **widespread** connectivity in each Member State is essential for economic and social development, participation in public life and social and territorial cohesion. As connectivity becomes an integral element to European society and welfare, EU-wide coverage should be achieved by relying on imposition by Member States of appropriate coverage requirements, which should be adapted to each area served and limited to proportionate burdens in order not to hinder deployment by service providers. Coverage of the territory as well as connectivity across Member States should be maximised and reliable, with a view to promote in-border and cross-border services and applications such as connected cars and e-health. ~~Therefore, in order to increase regulatory certainty and predictability of investment needs and to guarantee proportionate and equitable connectivity for all citizens, application by competent authorities of coverage obligations should be coordinated at Union level. Considering national specificities, such coordination should be limited to general criteria to be used to define and measure coverage obligations, such as population density or topographical and topological features.~~

(104) The need to ensure that citizens are not exposed to electromagnetic fields at a level harmful to public health **is imperative. Member States should have** ~~should be approached in a consistent way across the Union, having~~ particular regard to the precautionary approach taken in Council Recommendation No 1999/519/EC[45], in order to ~~ensure~~ **work towards more** consistent deployment conditions.

(105) Spectrum harmonisation and coordination and equipment regulation supported by standardisation are complementary need to be coordinated closely to meet their joint objectives effectively, with the support of the RSPG. Coordination between the content and timing of mandates to CEPT under the Radio Spectrum Decision and standardisation requests to standardisation bodies, such as the European Telecommunications Standards Institute, including with regard to radio receivers parameters, should facilitate the introduction of future systems, support spectrum sharing opportunities and ensure efficient spectrum management.

(106) The demand for harmonised radio spectrum is not uniform in all parts of the Union. In cases where there is lack of demand for a harmonised band at regional or national level, Member States ~~could~~ **may** ~~exceptionally be able to~~ allow an alternative use of the band as long as such lack of demand persists and provided that the alternative use does not prejudice the harmonised use of the said band by other Member States ~~and that it ceases when demand for the harmonised use materialises~~.

[45] Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz), OJ L 199, 30.7.1999, p. 59–70.

↓ 2009/140/EC recital 34 (adapted)

(107) Flexibility in spectrum management and access to spectrum ⌦ has been established ⌫ ~~should be increased~~ through technology and service-neutral authorisations to allow spectrum users to choose the best technologies and services to apply in frequency bands declared available for electronic communications services in the relevant national frequency allocation plans in accordance with ⌦ Union ⌫ ~~Community~~ law (the 'principles of technology and service neutrality'). The administrative determination of technologies and services should apply ⌦ only ⌫ when general interest objectives are at stake and should be clearly justified and subject to regular periodic review.

↓ 2009/140/EC recital 35 (adapted)

(108) Restrictions on the principle of technology neutrality should be appropriate and justified by the need to avoid harmful interference, for example by imposing emission masks and power levels, to ensure the protection of public health by limiting public exposure to electromagnetic fields, to ensure the proper functioning of services through an adequate level of technical quality of service, while not necessarily precluding the possibility of using more than one service in the same frequency band, to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, to safeguard efficient use of spectrum, or to fulfil a general interest objective in conformity with ~~Community~~ ⌦ Union ⌫ law.

↓ 2009/140/EC recitals 36 and 37 (adapted)

(109) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum ~~subject to transitional measures to deal with previously acquired rights~~. On the other hand, measures should be allowed which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or the avoidance of the inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined by Member States in conformity with ~~Community~~ ⌦ Union ⌫ law. Except where necessary to protect safety of life or, exceptionally, to fulfil other general interest objectives as defined by Member States in accordance with ~~Community~~ ⌦ Union ⌫ law, exceptions should not result in certain services having exclusive use, but should rather grant them priority so that, in so far as possible, other services or technologies may coexist in the same band. It lies within the competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity and media pluralism.

↓ 2009/140/EC recital 38

(110) As the allocation of spectrum to specific technologies or services is an exception to the principles of technology and service neutrality and reduces the freedom to choose the service provided or technology used, any proposal for such allocation should be transparent and subject to public consultation.

⇩ new

(111) In exceptional cases where Member States decide to limit the freedom to provide electronic communications networks and services based on grounds of public policy, public security or public health, Member States should explain the reasons for such limitation.

↓ 2009/140/EC recital 31
⇨ new

(112) Radio ~~frequencies~~ ⇨ spectrum ⇦ should be managed so as to ensure that harmful interference is avoided. This basic concept of harmful interference should therefore be properly defined to ensure that regulatory intervention is limited to the extent necessary to prevent such interference, ⇨ having regard also to the need ~~for network equipment and end-user devices to incorporate resilient receiver technology~~ **to take into consideration advanced methods for protection against harmful interference, with the aim to apply these technologies and spectrum management paradigms in order to avoid, to the best extent possible the application of the non-interference, non-protection principle**. Transport has a strong cross-border element and its digitalisation brings challenges. Vehicles (metro, bus, cars, trucks, trains, etc) are becoming more and more autonomous and connected. In an EU single market, vehicles travel beyond national borders more easily. Reliable communications, and avoiding harmful interferences, are critical for the safe and good operation of vehicles and their on-board communications systems. ⇦

⇩ new

(113) With growing spectrum demand and new varying applications and technologies which necessitate more flexible access and use of spectrum, Member States should promote the shared use of spectrum by determining the most appropriate authorisation regimes for each scenario and by defining appropriate and transparent rules and conditions therefor. Shared use of spectrum increasingly ensures its effective and efficient use by allowing several independent users or devices to access the same frequency band under various types of legal regimes so as to make additional spectrum resources available, raise usage efficiency and facilitate spectrum access for new users. Shared use can be based on general authorisations or licence-exempt use allowing, under specific sharing conditions, several users to access and use the same spectrum in different geographic areas or at different moments in time. It can also be based on individual rights of use under arrangements such as licenced shared access where all users (with an existing user and new users) agree on the terms and conditions for shared access, under the supervision of the competent authorities, in such a way as to ensure a minimum guaranteed radio transmission quality. When allowing shared use under different authorisation regimes, Member States should not **in principle** set widely diverging durations for such use under different authorisation regimes.

(114) In order to ensure predictability and preserve legal certainty and investment stability, Member States should define in advance appropriate criteria to determine compliance with the objective of efficient use of spectrum by right holders when implementing the conditions attached to individual rights of use and general authorisations. Interested parties should be involved in the definition of such conditions and informed in a transparent manner about how the fulfilment of their obligations will be assessed.

(115) Considering the importance of technical innovation, Member States should be able to provide for rights to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.

(116) Network infrastructure sharing, and in some instances spectrum sharing, can allow for a more efficient and effective use of radio spectrum and ensure the rapid deployment of networks, especially in less densely populated areas. When defining the conditions to be attached to rights of use for radio spectrum, competent authorities should also consider authorising forms of sharing or coordination between undertakings with a view to ensure effective and efficient use of spectrum or compliance with coverage obligations, in compliance with competition law principles.

~~(117) Market conditions as well as the relevance and number of players can differ amongst Member States. While the need and opportunity to attach conditions to rights of use for radio spectrum can be subject to national specificities which should be duly accommodated, the modalities of the application of such obligations should be coordinated at EU level through Commission implementing measures to ensure a consistent approach in addressing similar challenges across the EU.~~

↓ 2002/20/EC recitals 12 and 13 (adapted)
⇨ new

(118) ⇨ The requirements of service and technology neutrality in granting rights of use, together with the possibility to transfer rights between undertakings, underpin the freedom and means to deliver electronic communications services to the public, thereby also facilitating the achievement of general interest objectives. ⇦ This Directive does not prejudice whether radio ~~frequencies~~ ⇨ spectrum ⇦ ⌦ is ⌫ ~~are~~ assigned directly to providers of electronic communications networks or services or to entities that use these networks or services. Such entities may be radio or television broadcast content providers. ~~Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use for radio frequencies to providers of radio or television broadcast content services, to pursue general interest objectives in conformity with Community law, the procedure for assignment of radio frequencies should in any event be objective, transparent, non-discriminatory and proportionate. In accordance with case law of the Court of Justice, any national restrictions on the rights guaranteed by Article 49 of the Treaty should be objectively justified, proportionate and not exceed what is necessary to achieve general interest objectives as defined by Member States in conformity with Community law.~~ The responsibility for compliance with the conditions attached to the right to use a radio frequency and the relevant conditions attached to the general authorisation should in any case lie with the undertaking to whom the right of use for the radio ~~frequencies~~ ⇨ spectrum ⇦ has been granted. ⇨ Certain obligations imposed on broadcasters for the delivery of audiovisual media services may require the use of specific criteria and procedures for the granting of spectrum usage rights to meet a specific general interest objective set out by Member States in conformity with Union law. ⇦ ⌦ However, the procedure for the granting of such right should in any event be objective, transparent, non-discriminatory and proportionate. The case law of the Court of Justice requires that any national restrictions on the rights guaranteed by Article 56 of the Treaty on the Functioning of the European Union should be objectively justified, proportionate and not exceed what is necessary to achieve those objectives. ⌫ ⇨ Moreover, spectrum granted without following an open procedure should not be used for purposes other than the general interest objective for which they were granted. In such case, the interested parties should be given the opportunity to comment within a reasonable period. ⇦ As part of the application procedure for granting rights ~~to use a radio frequency~~, Member States ~~may~~ ⌦ should ⌫ verify whether the applicant will be able to comply with the conditions ⌦ to be ⌫ attached to such rights. ⇨ These conditions should be reflected in eligibility criteria set out in objective, transparent, proportionate and non-discriminatory terms prior to the launch of any competitive selection procedure. ⇦ For ~~this~~ ⌦ the ⌫ purpose ⌦ of applying these criteria ⌫, the applicant may be requested to submit the necessary information to prove his ability to comply with these conditions. Where such information is not provided, the application for the right to use a radio frequency may be rejected.

⇩ new

(119) Member States should only impose, prior to the granting of right, the verification of elements that can reasonably be demonstrated by an applicant exercising ordinary care, taking due account of the important public and market value of radio spectrum as a scarce public resource. This is without prejudice to the possibility for subsequent verification of the fulfilment of eligibility criteria, for example through milestones, where criteria could not reasonably be met initially. To preserve effective and efficient use of radio spectrum, Member States should not grant rights where their review indicates applicants' inability to comply with the conditions, without prejudice to the possibility of facilitating time-limited experimental use. Sufficiently long duration of authorisations for the use of spectrum should increase investment predictability to contribute to faster network roll-out and better services, as well as stability to support spectrum trading and leasing. Unless use of spectrum is authorised for an unlimited period of time, such duration should both take account of the objectives pursued and be sufficient to facilitate recoupment of the investments made. While a longer duration can ensure investment predictability, measures to ensure effective and efficient use of radio spectrum, such as the power of the competent authority to amend or withdraw the right in case of non-compliance with the conditions attached to the rights of use, or the facilitation of radio spectrum tradability and leasing, will serve to prevent inappropriate accumulation of radio spectrum and support greater flexibility in distributing spectrum resources. Greater recourse to annualised fees is also a means to ensure a continuous assessment of the use of the spectrum by the holder of the right.

(120) In deciding whether to renew already granted rights of use for radio spectrum, competent authorities should take into account the extent to which renewal would further the objectives of the regulatory framework and other objectives under national and Union law. Any such decision should be subject to an open, non-discriminatory and transparent procedure and based on a review of how the conditions attached to the rights concerned have been fulfilled. ~~**This should normally be completed at least 3 years before the expiry of such rights.**~~ When assessing the need to renew rights of use, Member States should weigh the competitive impact of extending already assigned rights against the promotion of more efficient exploitation or of innovative new uses that might result if the band were opened to new users. Competent authorities may make their determination in this regard by allowing for only a limited extension in order to prevent severe disruption of established use. While decisions on whether to extend rights assigned prior to the applicability of this Directive should respect any rules already applicable, Member States should equally ensure that they do not prejudice the objectives of this Directive.

(121) When renewing existing rights of use, Member States should, together with the assessment of the need to renew the right, review the fees attached thereto with a view to ensuring that those fees continue to promote optimal use, taking account amongst other things, of the stage of market and technological evolution. For reasons of legal certainty, it is appropriate for any adjustments to the existing fees to be based on the same principles as those applicable to the award of new usage rights.

(122) Effective management of radio spectrum can be ensured by facilitating the continued efficient use of spectrum that has already been assigned. In order to ensure legal certainty to rights holders, the possibility of renewal of rights of use should be considered within an appropriate time-span prior to the expiry of the rights concerned. In the interest of continuous resource management, competent authorities should be able to undertake such consideration at their own initiative as well as in response to a request from the assignee. The renewal of the right to use may not be granted contrary to the will of the assignee.

↓ 2009/140/EC recital 39 (adapted)
⇨ new

(123) ⇨ Transfer of spectrum usage rights can be an effective means of increasing the efficient use of spectrum. ⇦ ~~In the interests~~ ⌦ For the sake ⌫ of flexibility and efficiency, ⇨ and to allow valuation of spectrum by the market, ⇦ ~~national regulatory authorities may~~ ⇨ Member States should ~~by default~~ ⇦ allow spectrum users ~~freely~~ to transfer or lease their ⇨ spectrum ⇦ usage rights to third parties ⇨ following a simple procedure and subject to the conditions attached to such rights and to competition rules, under the supervision of the national regulatory authorities responsible ⇦ . ~~This would allow spectrum valuation by the market. In view of their power to ensure effective use of spectrum~~ ⇨ In order to facilitate such transfers or leases, as long as harmonisation measures adopted under the Radio Spectrum Decision are respected ⇦ , ~~national regulatory authorities~~ ⇨ Member States ⇦ should ⌦ also ⌫ ~~take action so as to ensure that trading does not lead to a distortion of competition where spectrum is left unused~~ ⇨ consider requests to have spectrum rights partitioned or disaggregated and conditions for use reviewed ⇦ .

⇩ new

(124) Measures taken specifically to promote competition when granting or renewing rights of use for radio spectrum should be decided by ~~national regulatory~~ **competent** authorities~~,~~ which have the necessary economic, technical and market knowledge. Spectrum assignment conditions can influence the competitive situation in electronic communications markets and conditions for entry. Limited access to spectrum, in particular when spectrum is scarce, can create a barrier to entry or hamper investment, network roll-out, the provision of new services or applications, innovation and competition. New rights of use, including those acquired through transfer or leasing, and the introduction of new flexible criteria for spectrum use can also influence existing competition. Where unduly applied, certain conditions used to promote competition, can have other effects; for example, spectrum caps and reservations can create artificial scarcity, wholesale access obligations can unduly constrain business models in the absence of market power, and limits on transfers can impede the development of secondary markets. Therefore, a consistent and objective competition test for the imposition of such conditions is necessary and should be applied consistently. The use of such measures should therefore be based on a thorough and objective assessment~~, by national regulatory authorities,~~ of the market and the competitive conditions thereof.

(125) Building on opinions from the RSPG, the adoption of a common deadline for allowing the use of a band which has been harmonised under the Radio Spectrum Decision, **in particular the bands harmonised for wireless broadband electronic communications such as the 3.4-3.8 GHz and the 24.25-27.5 GHz bands as well as the 31.8-33.4 GHz and 40.5-43.5 GHz bands**, can be necessary to avoid cross-border interferences and beneficial to ensure release of the full benefits of the related technical harmonisation measures for equipment markets and for the deployment of very high capacity electronic communications networks and services. ~~In order to significantly contribute to the objectives of this framework and facilitate coordination, the establishment of such common deadlines should be subject to Commission implementing acts.~~ **To comply with and adapt to such common deadlines, Member States would consequently have to consider the adoption of transitional measures to extend or reduce the duration of existing rights ~~or authorisations~~.**

🡻 2002/20/EC recitals 21 and 22 (adapted)
⇨ new

(126) Where the demand for ⌦ a ⌫radio ~~frequencies in a specific~~ ⌦ spectrum ⌫ ~~range~~ ⌦ band ⌫ exceeds the~~ir~~ availability ⇨ and, as a result, a Member State concludes that the rights of use for radio spectrum must be limited ⇦ , appropriate and transparent procedures should ~~be followed~~ ⌦ apply ⌫ for the ~~assignment~~ ⌦ granting ⌫ of such ~~frequencies~~ ⌦ rights ⌫ ~~in order~~ to avoid any discrimination and optimise ⌦ the ⌫ use of ~~those~~ ⌦ the ⌫ scarce resource~~s~~. ⇨ Such limitation should be justified, proportionate and based on a thorough assessment of market conditions, giving due weight to the overall benefits for users and to national and internal market objectives. The objectives governing any limitation procedure should be clearly defined in advance. When considering the most appropriate selection procedure, and in compliance with coordination measures taken at Union level, Member States should timely and transparently consult all interested parties on the justification, objectives and conditions of the procedure. ⇦ Member States may use, *inter alia*, competitive or comparative selection procedures for the assignment of radio ~~frequencies~~ ⇨ spectrum ⇦ ~~as well as~~ ⌦ or for ⌫ numbers with exceptional economic value. In administering such schemes, ~~national regulatory~~ **competent** authorities should take into account the ~~provisions of Article 8~~ ⇨ objectives of this Directive ⇦ . ⇨ If a Member State finds that further rights can be made available in a band, it should start the process therefor. ⇦

↓ 2002/20/EC recital 23

~~National regulatory authorities should ensure, in establishing criteria for competitive or comparative selection procedures, that the objectives of Article 8 of Directive 2002/21/EC (Framework Directive) are met. It would therefore not be contrary to this Directive if the application of objective, non-discriminatory and proportionate selection criteria to promote the development of competition would have the effect of excluding certain undertakings from a competitive or comparative selection procedure for a particular radio frequency. A Member State may find that further rights can be made available in a band. In this case it should start the process of making such rights available.~~

⇩ new

(127) Massive growth in radio spectrum demand, and in end-user demand for wireless broadband capacity, calls for solutions allowing alternative, complementary, spectrally efficient access solutions, including low-power wireless access systems with a small-area operating range such as radio local area networks (RLAN) and networks of low-power small-size cellular access points. Such complementary wireless access systems, in particular publicly accessible RLAN access points, increase access to the internet for end-users and mobile traffic off-loading for mobile operators. RLANs use harmonised radio spectrum without requiring an individual authorisation or spectrum usage right. Most RLAN access points are so far used by private users as local wireless extension of their fixed broadband connection. End-users, within the limits of their own internet subscription, should not be prevented from sharing access to their RLAN with others, so as to increase the number of available access points, particularly in densely populated areas, maximise wireless data capacity through radio spectrum re-use and create a cost-effective complementary wireless broadband infrastructure accessible to other end-users. Therefore, unnecessary restrictions to the deployment and interlinkage of RLAN access points should also be removed. Public authorities or public service providers, who use RLANs in their premises for their personnel, visitors or clients, for example to facilitate access to e-Government services or for information on public transport or road traffic management, could also provide access to such access points for general use by citizens as an ancillary service to services they offer to the public on such premises, to the extent allowed by competition and public procurement rules. Moreover, the provider of such local access to electronic communications networks within or around a private property or a limited public area on a non-commercial basis or as an ancillary service to another activity that is not dependant on such access (such as RLAN hotspots made available to customers of other commercial activities or to the general public in that area) can be subject to compliance with general authorisations for rights of use for radio spectrum but should not be subject to any conditions or requirements attached to general authorisations applicable to providers of public communications networks or services or to obligations regarding end-users or interconnection **considering that such conditions or requirements shall apply upon the providers of access to the network from such RLAN**. However, such provider should remain subject to the liability rules of Article 12 of Directive 2000/31/EC on electronic commerce[46]. Further technologies such as LiFi are emerging that will complement current radio spectrum capabilities of RLANs and wireless access point to include optical visible light-based access points and lead to hybrid local area networks allowing optical wireless communication.

[46] Directive2000/31/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), (OJ L 178, 17.7.2000, p.1).

(128) Since low power small-area wireless access points are very small and make use of unobtrusive equipment similar to that of domestic RLAN routers and considering their positive impact on the use of spectrum and on the development of wireless communications, their technical characteristics - such as power output- should be specified at Union level in a proportionate way for local deployment and their use should be subject to general authorisations only – to the exception of RLAN which should not be subject to any authorisation requirement beyond what is necessary for the use of radio spectrum - and any additional restrictions under individual planning or other permits should be limited to the greatest extent possible. **As a result, in order to facilitate the deployment and operation of small area wireless access points, and without prejudice to any applicable requirement related to spectrum management, Member States should subject such devices to general rules only and not impose the granting of individual authorisations, such as individual town planning approval, for the installation and/or operation of every small cell device. Properly justified exceptions could be however envisaged for the protection of specific sites of high military, architectural, historical or natural value defined in advance and the permit should be granted within a short deadline.**

(129) ~~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)[47] lays down the objectives of a regulatory framework to cover electronic communications networks and services in the Community, including fixed and mobile telecommunications networks, cable television networks, networks used for terrestrial broadcasting, satellite networks and Internet networks, whether used for voice, fax, data or images. Such networks may have been authorised by Member States under 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)[48] or have been authorised under previous regulatory measures.~~ The provisions of this Directive ⌦ as regards access and interconnection ⌫ apply to those networks that are used for the provision of publicly available electronic communications services. ~~This Directive covers access and interconnection arrangements between service suppliers.~~ Non-public networks do not have ⌦ access or interconnection ⌫ obligations under this Directive except where, in benefiting from access to public networks, they may be subject to conditions laid down by Member States.

~~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.~~

(130) The term 'access' has a wide range of meanings, and it is therefore necessary to define precisely how that term is used in this Directive, without prejudice to how it may be used in other ~~Community~~ ⌦ Union ⌫ measures. An operator may own the underlying network or facilities or may rent some or all of them.

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47 ~~See page 33 of this Official Journal~~

48 ~~See page 21 of this Official Journal.~~

(131) In an open and competitive market, there should be no restrictions that prevent undertakings from negotiating access and interconnection arrangements between themselves, in particular on cross-border agreements, subject to the competition rules of the Treaty. In the context of achieving a more efficient, truly pan-European market, with effective competition, more choice and competitive services to ~~consumers~~ ⇨ end-users ⇦ , undertakings which receive requests for access or interconnection ⇨ from other undertakings which are subject to general authorisation in order to provide electronic communications networks or services to the public ⇦ should in principle conclude such agreements on a commercial basis, and negotiate in good faith.

(132) In markets where there continue to be large differences in negotiating power between undertakings, and where some undertakings rely on infrastructure provided by others for delivery of their services, it is appropriate to establish a framework to ensure that the market functions effectively. National regulatory authorities should have the power to secure, where commercial negotiation fails, adequate access and interconnection and interoperability of services in the interest of end-users. In particular, they ~~may~~ ⌦ can ⌫ ensure end-to-end connectivity by imposing proportionate obligations on undertakings that ⇨ are subject to the general authorisation and that ⇦ control access to end-users. Control of means of access may entail ownership or control of the physical link to the end-user (either fixed or mobile), and/or the ability to change or withdraw the national number or numbers needed to access an end-user's network termination point. This would be the case for example if network operators were to restrict unreasonably end-user choice for access to Internet portals and services.

(133) In the light of the principle of non-discrimination, national regulatory authorities should ensure that all operators, irrespective of their size and business model, whether vertically integrated or separated, can interconnect on reasonable terms and conditions, with the view to providing end-to-end connectivity and access to the global Internet.

(134) National legal or administrative measures that link the terms and conditions for access or interconnection to the activities of the party seeking interconnection, and specifically to the degree of its investment in network infrastructure, and not to the interconnection or access services provided, may cause market distortion and may therefore not be compatible with competition rules.

(135) Network operators who control access to their own customers do so on the basis of unique numbers or addresses from a published numbering or addressing range. Other network operators need to be able to deliver traffic to those customers, and so need to be able to interconnect directly or indirectly to each other. ~~The existing~~ ⇨ It is therefore appropriate to lay down ⇦ rights and obligations to negotiate interconnection ~~should therefore be maintained. It is also appropriate to maintain the obligations formerly laid down in Directive 95/47/EC requiring fully digital electronic communications networks used for the distribution of television services and open to the public to be capable of distributing wide-screen television services and programmes, so that users are able to receive such programmes in the format in which they were transmitted~~.

(136) Interoperability is of benefit to end-users and is an important aim of this regulatory framework. Encouraging interoperability is one of the objectives for national regulatory authorities as set out in this framework, which also provides for the Commission to publish a list of standards and/or specifications covering the provision of services, technical interfaces and/or network functions, as the basis for encouraging harmonisation in electronic communications. Member States should encourage the use of published standards and/or specifications to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.

(137) Currently both end-to-end connectivity and access to emergency services depend on end-users ~~adopting~~ **using** number-based interpersonal communications services. Future technological developments or an increased use of number-independent interpersonal communications services could entail a lack of sufficient interoperability between communications services. As a consequence significant barriers to market entry and obstacles to further onward innovation could emerge and appreciably threaten both effective end-to-end connectivity between end-users and effective access to emergency services.

(138) In case such interoperability issues arise, the Commission may request a BEREC report which should provide a factual assessment of the market situation at the Union and Member States level. ~~On the basis~~ **Taking utmost account** of the BEREC report and other available evidence and taking into account the effects on the internal market, the Commission should decide whether there is a need for regulatory intervention by national regulatory authorities. If the Commission considers that such regulatory intervention should be considered by National Regulatory Authorities, it may adopt implementing measures specifying the nature and scope of possible regulatory interventions by NRAs, including in particular measures to impose the mandatory use of standards or specifications on all or specific providers. The terms 'European standards' and 'international standards' are defined in Article 2 of Regulation (EU) No 1025/2012.[49] National regulatory authorities should assess, in the light of the specific national circumstances, whether any intervention is necessary and justified to ensure end-to-end-connectivity or access to emergency services, and if so, impose proportionate obligations in accordance with the Commission implementing measures.

(139) In situations where undertakings are deprived of access to viable alternatives to non-replicable ~~assets~~ **wiring and cables inside buildings or** up to the first distribution **or concentration** point **just outside**, national regulatory authorities should be empowered to impose access obligations to all operators, without prejudice to their respective market power. In this regard, national regulatory authorities should take into consideration all technical and economic barriers to future replication of networks. The mere fact that more than one such infrastructure already exists should not necessarily be interpreted as showing that its assets are replicable. The first distribution **or concentration** point should be identified **by national regulatory authorities** by reference to objective criteria. **If necessary in combination with such access obligations, undertakings may also rely on the obligations to provide access to physical infrastructure, inter alia inspection chambers, manholes, buildings or entries to buildings, based on Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks.**

[49] Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council [OJ L 364 of 14.11.2012, p.12]

(140) **It is important that when national regulatory authorities assess which concentration or distribution point to impose obligations on they choose a concentration point close to end-users. Selecting a concentration point nearer end-users will be more beneficial to infrastructure competition and the roll-out of very high speed networks. In this way choosing a concentration point in a building or just outside a building will be the first point that a national regulatory authority should assess.** It could be justified to extend access obligations to wiring and cables beyond the first concentration point ~~in areas with lower population density,~~ while confining such obligations to points as close as possible to end-users, where it is demonstrated that replication would also be ~~impossible~~ **impracticable** beyond that first concentration point **for an economically viable operator and to ensure competitive outcomes for end-users, including in terms of choice, price and network quality. Obligations are unlikely to be necessary where end-users can be reached on the basis of wholesale access products that are imposed on operators with significant market power, or that are commercially provided on fair and reasonable terms. The analysis that is performed to assess significant market power and the analysis of the replicability of network elements is however different and thus significant market power does not need to be established in order to impose these obligations. Obligations are more likely to be necessary in geographical areas where the case for alternative infrastructure rollout is made more risky, for example by low population density or the limited number of multi-dwelling buildings. National regulatory authorities should also consider whether such obligations may unintentionally strengthen the position of operators with significant market power. National regulatory authorities should be able to impose access to active network components used for service provision on such infrastructure if access to passive elements would be economically inefficient or physically impracticable, and if the national regulatory authority considers that, absent an intervention, access obligation would be frustrated.**

(141) In such cases, in order to comply with the principle of proportionality, it can be appropriate for national regulatory authorities to exclude certain categories of owners or undertakings, or both, from obligations going beyond the first ~~distribution~~ **concentration** point, **which should be determined by national regulatory authorities**, on the grounds that an access obligation not based on significant market power would risk compromising their business case for recently deployed network elements. ~~Structurally separated u~~**U**ndertakings should not be subject to such access obligations if they offer an effective alternative access on a commercial basis to a very high capacity network, **on fair and reasonable terms and conditions, including as regards price.**.

(142) [Sharing of passive or active infrastructure used in the provision of wireless electronic communications services, or the joint roll-out of such infrastructures, in compliance with competition law principles can be particularly useful to maximise very high capacity connectivity throughout the Union, especially in less dense areas where replication is impracticable and end-users risk being deprived of such connectivity. ~~National regulatory~~ **Competent** authorities should, exceptionally, be enabled to impose such sharing or joint roll-out, or localised roaming access, in compliance with Union law, if they demonstrate the benefits of such sharing or access in terms of overcoming very significant barriers to replication and of addressing otherwise severe restrictions on end-user choice or quality of service, or both, or on territorial coverage, and taking into account several elements, including in particular the need to maintain infrastructure roll-out incentives.]

(143) While it is appropriate in some circumstances for a national regulatory authority to impose obligations on operators that do not have significant market power in order to achieve goals such as end-to-end connectivity or interoperability of services, it is however necessary to ensure that such obligations are imposed in conformity with the ~~EU~~ regulatory framework and, in particular, its notification procedures. **Such obligations must only be imposed where justified in order to secure the objectives of this Directive, and where they are objectively justified, transparent, proportionate and non-discriminatory for the purpose of promoting efficiency, sustainable competition, efficient investment and innovation, and giving the maximum benefit to end-users, and imposed in conformity with the relevant notification procedures.**

(144) Competition rules alone may not be sufficient to ensure cultural diversity and media pluralism in the area of digital television. ~~Directive 95/47/EC provided an initial regulatory framework for the nascent digital television industry which should be maintained, including in particular the obligation to provide conditional access on fair, reasonable and non-discriminatory terms, in order to make sure that a wide variety of programming and services is available.~~ Technological and market developments make it necessary to review ~~these~~ obligations ⇨ to provide conditional access on fair, reasonable and non-discriminatory terms ⇦ on a regular basis, either by a Member State for its national market or the Commission for the ~~Community~~ ⌦ Union ⌫ , in particular to determine whether there is justification for extending obligations to ~~new gateways, such as~~ electronic programme guides (EPGs) and application programme interfaces (APIs), to the extent that is necessary to ensure accessibility for end-users to specified digital broadcasting services. Member States may specify the digital broadcasting services to which access by end-users must be ensured by any legislative, regulatory or administrative means that they deem necessary.

(145) Member States may also permit their national regulatory authority to review obligations in relation to conditional access to digital broadcasting services in order to assess through a market analysis whether to withdraw or amend conditions for operators that do not have significant market power on the relevant market. Such withdrawal or amendment should not adversely affect access for end-users to such services or the prospects for effective competition.

~~In order to ensure continuity of existing agreements and to avoid a legal vacuum, it is necessary to ensure that obligations for access and interconnection imposed under Articles 4, 6, 7, 8, 11, 12, and 14 of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP)[50], obligations on special access imposed under Article 16 of 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 environment[51], and obligations concerning the provision of leased line transmission capacity under Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines[52], are initially carried over into the new regulatory framework, but are subject to immediate review in the light of prevailing market conditions. Such a review should also extend to those organisations covered by Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop[53].~~

~~50 OJ L 199, 26.7.1997, p. 32. Directive as last amended by Directive 98/61/EC (OJ L 268, 3.10.1998, p. 37).~~

~~51 OJ L 101, 1.4.1998, p. 24.~~

~~52 OJ L 165, 19.6.1992, p. 27. Directive as last amended by Commission Decision No 98/80/EC (OJ L 14, 20.1.1998, p. 27).~~

~~53 OJ L 366, 30.12.2000, p. 4.~~

~~The review should be carried out using an economic market analysis based on competition law methodology. The aim is to reduce *ex ante* sector specific rules progressively as competition in the market develops. However the procedure also takes account of transitional problems in the market such as those related to international roaming and of the possibility of new bottlenecks arising as a result of technological development, which may require *ex ante* regulation, for example in the area of broadband access networks. It may well be the case that competition develops at different speeds in different market segments and in different Member States, and national regulatory authorities should be able to relax regulatory obligations in those markets where competition is delivering the desired results. In order to ensure that market players in similar circumstances are treated in similar ways in different Member States, the Commission should be able to ensure harmonised application of the provisions of this Directive. National regulatory authorities and national authorities entrusted with the implementation of competition law should, where appropriate, coordinate their actions to ensure that the most appropriate remedy is applied. The Community and its Member States have entered into commitments on interconnection of telecommunications networks in the context of the World Trade Organisation agreement on basic telecommunications and these commitments need to be respected.~~

~~Directive 97/33/EC laid down a range of obligations to be imposed on undertakings with significant market power, namely transparency, non-discrimination, accounting separation, access, and price control including cost orientation. This range of possible obligations should be maintained but, in addition, they should be established as a set of maximum obligations that can be applied to undertakings, in order to avoid over-regulation. Exceptionally, in order to comply with international commitments or Community law, it may be appropriate to impose obligations for access or interconnection on all market players, as is currently the case for conditional access systems for digital television services.~~

(146) There is a need for *ex ante* obligations in certain circumstances in order to ensure the development of a competitive market, ⇨ the conditions of which favour the deployment and take-up of very high capacity connectivity and the maximisation of end-user benefits ⇦. The definition of significant market power ~~in the Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP)[54] has proved effective in the initial stages of market opening as the threshold for ex ante obligations, but now needs to be adapted to suit more complex and dynamic markets. For this reason, the definition~~ used in this Directive is equivalent to the concept of dominance as defined in the case law of the Court of Justice ~~and the Court of First Instance of the European Communities~~.

(147) Two or more undertakings can be found to enjoy a joint dominant position not only where there exist structural or other links between them but also where the structure of the relevant market is conducive to coordinated effects, that is, it encourages parallel or aligned anti-competitive behaviour on the market.

(148) It is essential that *ex ante* regulatory obligations should only be imposed ⇨ on a wholesale market ⇦ ~~where there is not effective competition, i.e. in markets~~ where there are one or more undertakings with significant market power, ⇨ with a view to ensure sustainable competition on a related retail market ⇦, and where national and ~~Community~~ ⌦ Union ⌫ competition law remedies are not sufficient to address the problem. ~~It is necessary therefore for~~ ~~t~~The Commission ⌦ has ⌫ ~~to~~ drawn up guidelines at ~~Community~~ ⌦ Union ⌫ level in accordance with the principles of competition law for national regulatory authorities to follow in assessing whether competition is effective in a given market and in assessing significant market power. National regulatory authorities should analyse whether a given product or service market is effectively competitive in a given geographical area, which could be the whole or a part of the territory of the Member State concerned or neighbouring parts of territories of Member States considered together. An analysis of effective competition should include an analysis as to whether the market is prospectively competitive, and thus whether any lack of effective competition is durable. Those guidelines ~~will~~ ⌦ should ⌫ also address the issue of newly emerging markets, where de facto the market leader is likely to have a substantial market share but should not be subjected to inappropriate obligations. The Commission should review the guidelines regularly, ⇨ in particular on the occasion of a review of the existing legislation, taking into account evolving case law, economic thinking and actual market experience and with a view ⇦ to ensur~~e~~ing that they remain appropriate in a rapidly developing market. National regulatory authorities will need to cooperate with each other where the relevant market is found to be transnational.

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54 ~~OJ L 199, 26.7.1997, p. 32. Directive as amended by Directive 98/61/EC (OJ L 268, 3.10.1998, p. 37).~~

(149) In determining whether an undertaking has significant market power in a specific market, national regulatory authorities should act in accordance with ~~Community~~ ⌦ Union ⌫ law and take into the utmost account the Commission guidelines ⌦ on market analysis and the assessment of significant market power ⌫ .

(150) National regulatory authorities should define relevant geographic markets within their territory taking into utmost account the Commission Recommendation on Relevant Product and Service Markets adopted in accordance with this Directive and taking into account national and local circumstances. Therefore, national regulatory authorities should at least analyse the markets that are contained in the Recommendation, including those markets that are listed but no longer regulated in the specific national or local context. National regulatory authorities should also analyse markets that are not contained in that Recommendation, but are regulated within the territory of their jurisdiction on the basis of previous market analyses, or other markets, if they have sufficient grounds to consider that the three criteria test provided in this Directive may be met.

(151) Transnational markets can be defined when it is justified by the geographic market definition, taking into account all supply-side and demand-side factors in accordance with competition law principles. BEREC is the most appropriate body to undertake such analysis, benefiting from the extensive collective experience of national regulatory authorities when defining markets on a national level. **National circumstances should be taken into account when an analysis of potential transnational markets is undertaken.** If transnational markets are defined and warrant regulatory intervention, concerned national regulatory authorities should cooperate to identify the appropriate regulatory response, including in the process of notification to the Commission. They can also cooperate in the same manner where transnational markets are not identified but on their territories market conditions are sufficiently homogeneous to benefit from a coordinated regulatory approach, such as for example in terms of similar costs, market structures or operators or in case of transnational or comparable end-user demand.

(152) In some circumstances geographic markets are defined as national or sub-national, for example due to the national or local nature of network roll-out which determines the boundaries of undertakings' potential market power in respect of wholesale supply, but there still is a significant transnational demand from one or more categories of end-users. That can in particular be the case for demand from business end-users with multisite facility operations in different Member States. If that transnational demand is not sufficiently met by suppliers, for example if they are fragmented along national borders or locally, a potential internal market barrier arises. Therefore, BEREC should be empowered to provide guidelines to national regulatory authorities on common regulatory approaches to ensure that transnational demand can be met in a satisfactory way, permitting efficiencies and economies of scale despite the fragmented supply side. BEREC's guidelines should shape the choices of national regulatory authorities in pursuing the internal market objective when imposing regulatory obligations on SMP operators at the national level.

~~(153) If national regulatory authorities have not followed the common approach recommended by BEREC to meet the identified transnational demand, with the consequence that transnational end-user demand is not efficiently met, and that avoidable barriers to the internal market arise, it could be necessary to harmonise the technical specifications of wholesale access products capable of meeting a given transnational demand, taking into account the BEREC guidelines.~~

(154) The objective of any *ex ante* regulatory intervention is ultimately to produce benefits for end-users in terms of price, quality and choice by making retail markets effectively competitive on a sustainable basis. It is likely that national regulatory authorities will gradually be able to find many retail markets to be competitive even in the absence of wholesale regulation, especially taking into account expected improvements in innovation and competition.

(155) For national regulatory authorities the starting point for the identification of wholesale markets susceptible to *ex ante* regulation is the analysis of corresponding retail markets. The analysis of effective competition at the retail and at the wholesale level is conducted from a forward-looking perspective over a given time horizon, and is guided by competition law, including the relevant case-law of the Court of Justice, as appropriate. If it is concluded that a retail markets would be effectively competitive in the absence of *ex ante* wholesale regulation on the corresponding relevant market(s), this should lead the national regulatory authority to conclude that regulation is no longer needed at the relevant wholesale level.

(156) During the gradual transition to deregulated markets, commercial agreements between operators will gradually become more common, and if they are sustainable and improve competitive dynamics, they can contribute to the conclusion that a particular wholesale market does not warrant *ex ante* regulation. A similar logic would apply in reverse, to unforeseeable termination of commercial agreements on a deregulated market. The analysis of such agreements should take into account that the prospect of regulation can be a motive for network owners to enter into commercial negotiations. With a view to ensure adequate consideration of the impact of regulation imposed on related markets when determining whether a given market warrants *ex ante* regulation, national regulatory authorities should ensure markets are analysed in a coherent manner and where possible, at the same time or as close as possible to each other in time.

(157) When assessing wholesale regulation to solve problems at the retail level, national regulatory authorities should take into account that several wholesale markets can provide wholesale upstream inputs for a particular retail market, and conversely, one wholesale market can provide wholesale upstream inputs for a variety of retail markets. Furthermore, competitive dynamics in a particular market can be influenced by markets that are contiguous but not in a vertical relationship, such as can be the case between certain fixed and mobile markets. National regulatory authorities should conduct that assessment for each individual wholesale market considered for regulation, starting with remedies for access to civil infrastructure, as such remedies are usually conducive to more sustainable competition including infrastructure competition, and thereafter analysing any wholesale markets considered susceptible to *ex ante* regulation in order of their likely suitability to address identified competition problems at retail level. When deciding on the specific remedy to be imposed, national regulatory authorities should assess its technical feasibility and carry out a cost-benefit analysis, having regard to its degree of suitability to address the identified competition problems at retail level. National regulatory authorities should consider the consequences of imposing any specific remedy which, if feasible only on certain network topologies, could constitute a disincentive for the deployment of very high capacity networks in the interest of end-users. At each stage of the assessment, before the national regulatory authority determines whether any additional remedy should be imposed on the significant market power operator, it should seek to determine whether the retail market concerned would be effectively competitive in the light of any relevant commercial arrangements or other wholesale market circumstances, including other types of regulation already in force, such as for example general access obligations to non-replicable assets or obligations imposed pursuant to Directive 2014/61/EU, and of any regulation already deemed appropriate by the national regulatory authority for an operator with significant market power. Even if such differences do not result in the definition of distinct geographic markets, they may justify differentiation in the appropriate remedies imposed in the light of the ~~diferring~~ **differing** intensity of competitive constraints.

(158) *Ex ante* regulation imposed at the wholesale level, which is in principle less intrusive than retail regulation, is considered sufficient to tackle potential competition problems on the related downstream retail market or markets. The advances in the functioning of competition since the regulatory framework for electronic communications has been in place are demonstrated by the progressive deregulation of retail markets across the Union. Further, the rules relating to the imposition of *ex ante* remedies on undertakings with significant market power should be simplified and be made more predictable, where possible. Therefore, the power of imposition of *ex ante* regulatory controls based on significant market power in retail markets should be repealed.

(159) When a national regulatory authority withdraws wholesale regulation it should define an appropriate period of notice to ensure a sustainable transition to a de-regulated market. In defining such period, the national regulatory authority should take into account the existing agreements between access providers and access seekers that have been entered into on the basis of the imposed regulatory obligations. In particular, such agreements can provide a contractual legal protection to access seekers for a determined period of time. The national regulatory authority should also take into account the effective possibility for market participants to take up any commercial wholesale access or co-investment offers which can be present in the market and the need to avoid an extended period of possible regulatory arbitrage. Transition arrangements established by the national regulatory authority should consider the extent and timing of regulatory oversight of pre-existing agreements, once the notice period starts.

(160) In order to provide market players with certainty as to regulatory conditions, a time limit for market reviews is necessary. It is important to conduct a market analysis on a regular basis and within a reasonable and appropriate time frame. ~~The time-frame should take account of whether the particular market has previously been subject to market analysis and duly notified.~~ Failure by a national regulatory authority to analyse a market within the time limit may jeopardise the internal market, and normal infringement proceedings may not produce their desired effect on time. Alternatively, the national regulatory authority concerned should be able to request the assistance of BEREC to complete the market analysis. For instance, this assistance could take the form of a specific task force composed of representatives of other national regulatory authorities.

(161) Due to the high level of technological innovation and highly dynamic markets in the electronic communications sector, there is a need to adapt regulation rapidly in a coordinated and harmonised way at ~~Community~~ ⌦ Union ⌫ level, as experience has shown that divergence among the national regulatory authorities in the implementation of the ~~EU~~ regulatory framework may create a barrier to the development of the internal market.

(162) However, in the interest of greater stability and predictability of regulatory measures, the maximum period allowed between market analyses should be extended from three to five years, provided market changes in the intervening period do not require a new analysis. In determining whether a national regulatory authority has complied with its obligation to analyse markets and notified the corresponding draft measure at a minimum every five years, only a notification including a new assessment of the market definition and of significant market power will be considered as starting a new five-year market cycle. A mere notification of new or amended regulatory remedies, imposed on the basis of a previous and unrevised market analysis will not be considered to have satisfied that obligation. **The validity of obligations imposed by a national regulatory authority based on a market analysis laid down in this directive is not dependent upon whether that national regulatory authority has complied with the obligation to conduct market analysis at regular intervals.**

(163) The imposition of a specific obligation on an undertaking with significant market power does not require an additional market analysis but a justification that the obligation in question is appropriate and proportionate in relation to the nature of the problem identified ⇨ on the market in question, and on the related retail market ⇦ .

(164) When assessing the proportionality of the obligations and conditions to be imposed, national regulatory authorities should take into account the different competitive conditions existing in the different areas within their Member States ⇨ having regard in particular to the results of the geographical survey conducted in accordance with this Directive ⇦ .

(165) When ⌦ considering whether to ⌫ impose~~ing~~ remedies to control prices, ⌦ and if so in what form ⌫ , national regulatory authorities should seek to allow a fair return for the investor on a particular new investment project. In particular, there may be risks associated with investment projects specific to new access networks which support products for which demand is uncertain at the time the investment is made.

(166) Reviews of obligations imposed on operators designated as having significant market power during the timeframe of a market analysis should allow national regulatory authorities to take into account the impact on competitive conditions of new developments, for instance of newly concluded voluntary agreements between operators, such as access and co-investment agreements, thus providing the flexibility which is particularly necessary in the context of longer regulatory cycles. A similar logic should apply in case of unforeseeable termination of commercial agreements. If such termination occurs in a deregulated market, a new market analysis may be necessary.

(167) Transparency of terms and conditions for access and interconnection, including prices, serve to speed up negotiation, avoid disputes and give confidence to market players that a service is not being provided on discriminatory terms. Openness and transparency of technical interfaces can be particularly important in ensuring interoperability. Where a national regulatory authority imposes obligations to make information public, it may also specify the manner in which the information is to be made available, ~~covering for example the type of publication (paper and/or electronic)~~ and whether or not it is free of charge, taking into account the nature and purpose of the information concerned.

(168) In light of the variety of network topologies, access products and market circumstance that have arisen since 2002, the objectives of Annex II of the Directive 2002/19/EC, concerning local loop unbundling, and access products for providers of digital television and radio services, can be better achieved and in a more flexible manner, by providing guidelines on the minimum criteria for a reference offer to be developed by and periodically updated by BEREC. Annex II of the Directive 2002/19/EC should therefore be removed.

(169) The principle of non-discrimination ensures that undertakings with market power do not distort competition, in particular where they are vertically integrated undertakings that supply services to undertakings with whom they compete on downstream markets.

(170) In order to address and prevent non-price related discriminatory behaviour, equivalence of inputs (EoI) is in principle the surest way to achieve effective protection from discrimination. On the other hand, providing regulated wholesale inputs on an EoI basis is likely to trigger higher compliance costs than other forms of non-discrimination obligations. Those higher compliance costs should be measured against the benefits of more vigorous competition downstream, and of the relevance of non-discrimination guarantees in circumstances where the operator with significant market power is not subject to direct price controls. In particular, national regulatory authorities might consider that the provision of wholesale inputs over new systems on an EoI basis is more likely to create sufficient net benefits, and thus be proportionate, given the comparatively lower incremental compliance costs to ensure that newly built systems are EoI-compliant. On the other hand, national regulatory authorities should also **consider whether obligations are proportionate taking into account the implementation costs for affected undertakings and** weigh up possible disincentives to the deployment of new systems, relative to more incremental upgrades, in the event that the former would be subject to more restrictive regulatory obligations. In Member States with a high number of small-scale SMP operators, the imposition of EoI on each of these operators can be disproportionate.

(171) Accounting separation allows internal price transfers to be rendered visible, and allows national regulatory authorities to check compliance with obligations for non-discrimination where applicable. In this regard the Commission published Recommendation ~~98/322/EC of 8 April 1998 on interconnection in a liberalised telecommunications market (Part 2 — accounting separation and cost accounting)~~[55] 2005/698/EC of 19 September 2005 on accounting separation and cost accounting systems.

(172) Civil engineering assets that can host an electronic communications network are crucial for the successful roll-out of new very high capacity networks because of the high cost of duplicating them, and the significant savings that can be made when they can be reused. Therefore, in addition to the rules on physical infrastructure laid down in Directive 2014/61/EU, a specific remedy is necessary in those circumstances where civil engineering assets are owned by an operator designated with significant market power. Where civil engineering assets exist and are reusable, the positive effect of achieving effective access to them on the roll-out of competing infrastructure is very high, and it is therefore necessary to ensure that access to such assets can be used as a self-standing remedy for the improvement of competitive and deployment dynamics in any downstream market, to be considered before assessing the need to impose any other potential remedies, and not just as an ancillary remedy to other wholesale products or services or as a remedy limited to undertakings availing of such other wholesale products or services. National regulatory authorities should value reusable legacy civil engineering assets on the basis of the regulatory accounting value net of the accumulated depreciation at the time of calculation, indexed by an appropriate price index, such as the retail price index, and excluding those assets which are fully depreciated, over a period of not less than 40 years, but still in use.

~~55 OJ L 141, 13.5.1998, p. 6.~~

(173) National regulatory authorities should, when imposing obligations for access to new and enhanced infrastructures, ensure that access conditions reflect the circumstances underlying the investment decision, taking into account, *inter alia*, the roll-out costs, the expected rate of take up of the new products and services and the expected retail price levels. Moreover, in order to provide planning certainty to investors, national regulatory authorities should be able to set, if applicable, terms and conditions for access which are consistent over appropriate review periods. ⇨ In the event that price controls are deemed appropriate, ⇦ ~~S~~such terms and conditions ⌦ can ⌫ ~~may~~ include pricing arrangements which depend on volumes or length of contract in accordance with ~~Community~~ ⌦ Union ⌫ law and provided they have no discriminatory effect. Any access conditions imposed should respect the need to preserve effective competition in services to consumers and businesses.

(174) Mandating access to network infrastructure can be justified as a means of increasing competition, but national regulatory authorities need to balance the rights of an infrastructure owner to exploit its infrastructure for its own benefit, and the rights of other service providers to access facilities that are essential for the provision of competing services.

(175) In geographic areas where two access networks can be expected on a forward-looking basis, end-users are more likely to benefit from improvements in network quality, by virtue of infrastructure-based competition, than in areas where only one network persists. The adequacy of competition on other parameters, such as price and choice, is likely to depend on the national and local competitive circumstances. Where at least one of the network operators offers wholesale access to any interested undertaking on reasonable commercial terms permitting sustainable ~~competition~~ **competitive outcomes for end-users** on the retail market, national regulatory authorities are unlikely to need to impose or maintain SMP-based wholesale access obligations, beyond access to civil infrastructure, therefore reliance can be placed on the application of general competition rules. This applies *a fortiori* if both network operators offer reasonable commercial wholesale access. In both such cases, it may be more appropriate for national regulatory authorities to rely on specific monitoring on an *ex post* basis. Where on a forward-looking basis, three access network operators are present or are expected to be present and to sustainably compete in the same retail and wholesale markets (e.g. as can be the case for mobile, and as can occur in some geographic areas for fixed-line networks, especially where there is effective access to civil infrastructure and/or co-investment, such that three or more operators have effective control over the necessary access network assets to meet retail demand), national regulatory authorities will be less likely to identify an operator as having SMP, unless they make a finding of collective dominance, or if each of the undertakings in question has significant market power in distinct wholesale markets, such as in the case of voice call termination markets. The application of general competition rules in such markets characterised by sustainable and effective infrastructure-based competition should be sufficient.

(176) ~~Mandating access to network infrastructure can be justified as a means of increasing competition, but national regulatory authorities need to balance the rights of an infrastructure owner to exploit its infrastructure for its own benefit, and the rights of other service providers to access facilities that are essential for the provision of competing services.~~ Where obligations are imposed on operators that require them to meet reasonable requests for access to and use of networks elements and associated facilities, such requests should only be refused on the basis of objective criteria such as technical feasibility or the need to maintain network integrity. Where access is refused, the aggrieved party may submit the case to the dispute resolutions procedure referred to in Articles ~~20~~ 27 and ~~21~~ 28 ~~of Directive 2002/21/EC (Framework Directive)~~. An operator with mandated access obligations cannot be required to provide types of access which ~~are~~ ⌦ it is ⌫ not within its power~~s~~ to provide. The imposition by national regulatory authorities of mandated access that increases competition in the short term should not reduce incentives for competitors to invest in alternative facilities that will secure more ⇨ sustainable ⇦ competition ⌦ and/or higher performance and end-user benefits ⌫ in the long-term. **For example, national regulatory authorities might decide not to impose access obligations if this contributes significantly to the deployment of very high capacity networks in the interests of users when sustainable service competition could be safeguarded in other ways.** ~~The Commission has published a Notice on the application of the competition rules to access agreements in the telecommunications sector[56] which addresses these issues.~~ National regulatory authorities may impose technical and operational conditions on the provider and/or beneficiaries of mandated access in accordance with ~~Community~~ ⌦ Union ⌫ law. In particular the imposition of technical standards should comply with Directive 1535/2015/EU ~~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 Services[57]~~.

~~56 OJ C 265, 22.8.1998, p. 2.~~

~~57 OJ L 241, 17.9.2015, p. 1–15.~~

(177) Price control may be necessary when market analysis in a particular market reveals inefficient competition. ~~The regulatory intervention may be relatively light, such as an obligation that prices for carrier selection are reasonable as laid down in Directive 97/33/EC, or much heavier such as an obligation that prices are cost oriented to provide full justification for those prices where competition is not sufficiently strong to prevent excessive pricing.~~ In particular, operators with significant market power should avoid a price squeeze whereby the difference between their retail prices and the interconnection ⌦ and/or access ⌫ prices charged to competitors who provide similar retail services is not adequate to ensure sustainable competition. When a national regulatory authority calculates costs incurred in establishing a service mandated under this Directive, it is appropriate to allow a reasonable return on the capital employed including appropriate labour and building costs, with the value of capital adjusted where necessary to reflect the current valuation of assets and efficiency of operations. The method of cost recovery should be appropriate to the circumstances taking account of the need to promote efficiency, ~~and~~ sustainable competition ⇨ and deployment of very high capacity networks ⇦ and ⌦ thereby ⌫ maximise ~~consumer~~ ⇨ end-user ⇦ benefits, ⇨ and should take in account the need to have predictable and stable wholesale prices for the benefit of all operators seeking to deploy new and enhanced networks, in accordance with Commission guidance[58]. ⇦

(178) Due to uncertainty regarding the rate of materialisation of demand for the provision of next-generation broadband services it is important in order to promote efficient investment and innovation to allow those operators investing in new or upgraded networks a certain degree of pricing flexibility. To prevent excessive prices in markets where there are operators designated as having significant market power, pricing flexibility should be accompanied by additional safeguards to protect competition and end-user interests, such as strict non-discrimination obligations, measures to ensure technical and economic replicability of downstream products, and a demonstrable retail price constraint resulting from infrastructure competition or a price anchor stemming from other regulated access products, or both. Those competitive safeguards do not prejudice the identification by national regulatory authorities of other circumstances under which it would be appropriate not to impose regulated access prices for certain wholesale inputs, such as where high price elasticity of end-user demand makes it unprofitable for the operator with significant market power to charge prices appreciably above the competitive level **or where lower population density reduces the incentives for the development of very high capacity networks and the national regulatory authority establishes that effective and non-discriminatory access is ensured through obligations imposed in accordance with this directive**.

(179) Where a national regulatory authority imposes obligations to implement a cost accounting system in order to support price controls, it may itself undertake an annual audit to ensure compliance with that cost accounting system, provided that it has the necessary qualified staff, or it may require the audit to be carried out by another qualified body, independent of the operator concerned.

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58 Commission Recommendation 2013/466/EU of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment, OJ L 251, 21.9.2013, p. 13.

(180) The charging system in the Union for wholesale voice call termination is based on Calling Party Network Pays. An analysis of demand and supply substitutability shows that currently or in the foreseeable future, there are as yet no substitutes at wholesale level which might constrain the setting of charges for termination in a given network. Taking into account the two-way access nature of termination markets, further potential competition problems include cross-subsidisation between operators. These potential competition problems are common to both fixed and mobile voice call termination markets. Therefore, in the light of the ability and incentives of terminating operators to raise prices substantially above cost, cost orientation is considered the most appropriate intervention to address this concern over the medium term. **Future market developments may alter the dynamics of these markets to the extent that regulation would no longer be necessary.**

(181) In order to reduce the regulatory burden in addressing the competition problems relating to wholesale voice call termination coherently across the Union, ~~this Directive should lay down a common approach as a basis for setting price control obligations, to be completed by a binding common methodology to be determined by the Commission and by technical guidance which should be developed by BEREC~~ **the Commission should establish in an implementing act a single maximum voice termination rates for mobile fixed services that apply EU-wide**.

(182) In order to simplify their setting and facilitate their imposition where appropriate, ~~wholesale voice call termination rates in fixed and mobile markets in the Union shall **should** be set by means of a delegated **an implementing** act. This~~ **this** Directive should lay down the detailed criteria and parameters on the basis of which the values of voice call termination rates are set. ~~In applying that set of criteria and parameters, the Commission should take into account, inter alia, that only those costs which are incremental to the provision of wholesale call termination service should be covered; that spectrum fees are subscriber- and not traffic-driven and should therefore be excluded and that additional spectrum is mainly allocated for data and therefore not relevant for the call termination increment; that it is recognised that while in mobile networks a minimum efficient scale is estimated at the level of at least 20% market share, in the fixed networks smaller operators can achieve the same efficiencies and produce at the same unit costs as the efficient operator, independently of their size. When setting the exact maximum rate, the Commission should include appropriate weighting to take into account the total number of end-users in each Member State, where this is required on account of remaining cost divergences. When the Commission determines that rate, the experience of BEREC and the national regulatory authorities in building suitable cost models will be invaluable and should be taken into account.~~

~~(183) This Directive sets maximum wholesale voice call termination rates for fixed and mobile networks below which the initial delegated act will establish the exact rate to be applied by national regulatory authorities. The initial rate will be further updated. Based on the bottom-up pure LRIC models applied by national regulators to date and applying the above criteria the voice termination rates currently vary from 0.4045 €cent per minute to 1.226 €cent per minute in mobile networks and between 0.0430 €cent per minute and 0.1400 €cent per minute in fixed networks in the most local layer of interconnection (calculated as a weighted average between peak and off-peak rates). The variation in rates is due to different local conditions and relative price structures currently existing as well as to the different timing of the model calculations across Member States. In addition, in fixed networks the level of cost efficient termination rates depends also on the network layer where the termination service is provided.~~

(184) Due to current uncertainty regarding the rate of materialisation of demand for very high capacity broadband services as well as general economies of scale and density, co-investment agreements offer significant benefits in terms of pooling of costs and risks, enabling smaller-scale operators to invest on economically rational terms and thus promoting sustainable, long-term competition, including in areas where infrastructure-based competition might not be efficient. Where an operator with significant market power makes an open call for co-investment on fair, reasonable and non-discriminatory terms in new network elements which significantly contribute to the deployment of very high capacity networks **and provide an opportunity to operators of different sizes and financial capacity to become infrastructure co-investors**, the national regulatory authority should ~~typically~~ **be able to** refrain from imposing obligations pursuant to this Directive on the new network elements, subject to further review in subsequent market analyses. **National regulatory authorities should be able to continue imposing obligations in favour of new entrants, in particular companies that could not have responded to the initial co-investment offer because they were not present in the market, unless at the time of market entry they are able to negotiate commercial wholesale offers from one or more of the co-investors. A failure by co-investors to provide viable wholesale offers to new entrants should be considered by national regulatory authorities in their subsequent analysis of potential single or joint significant market power. Such obligations to the benefit of new entrants should be of transitional nature until they achieve a scale which would allow them to negotiate a viable co-investment agreement.** Provided due account is taken of the prospective pro-competitive effects of the co-investment at wholesale and retail level, national regulatory authorities can still consider it appropriate, in light of the existing market structure and dynamics developed under regulated wholesale access conditions, and in the absence of a commercial offer to that effect, to safeguard the rights of access seekers who do not participate in a given co-investment through the maintenance of existing access products or – where legacy network elements are dismantled in due course – through imposition of access products with comparable functionality to those previously available on the legacy infrastructure. **Furthermore, obligations imposed on operators irrespective of market power pursuant to this Directive or to the Directive on measures to reduce the cost of deploying high-speed electronic communications networks (2014/61/EU) will continue to apply. Obligations in relation to co-investment agreements are without prejudice to the application of Union law.**

(185) The purpose of functional separation, whereby the vertically integrated operator is required to establish operationally separate business entities, is to ensure the provision of fully equivalent access products to all downstream operators, including the operator's own vertically integrated downstream divisions. Functional separation has the capacity to improve competition in several relevant markets by significantly reducing the incentive for discrimination and by making it easier to verify and enforce compliance with non-discrimination obligations. In exceptional cases, functional separation may be justified as a remedy where there has been persistent failure to achieve effective non-discrimination in several of the markets concerned, and where there is little or no prospect of infrastructure competition within a reasonable time frame after recourse to one or more remedies previously considered to be appropriate. However, it is very important to ensure that its imposition preserves the incentives of the concerned undertaking to invest in its network and that it does not entail any potential negative effects on consumer welfare. Its imposition requires a coordinated analysis of different relevant markets related to the access network, in accordance with the market analysis procedure set out in Article 67~~16~~ ~~of Directive 2002/21/EC (Framework Directive)~~. When undertaking the market analysis and designing the details of this remedy, national regulatory authorities should pay particular attention to the products to be managed by the separate business entities, taking into account the extent of network roll-out and the degree of technological progress, which may affect the substitutability of fixed and wireless services. In order to avoid distortions of competition in the internal market, proposals for functional separation should be approved in advance by the Commission.

(186) The implementation of functional separation should not prevent appropriate coordination mechanisms between the different separate business entities in order to ensure that the economic and management supervision rights of the parent company are protected.

(187) Where a vertically integrated undertaking chooses to transfer a substantial part or all of its local access network assets to a separate legal entity under different ownership or by establishing a separate business entity for dealing with access products, the national regulatory authority should assess the effect of the intended transaction, ⇨ including any access commitments offered by this undertaking ⇦ , on all existing regulatory obligations imposed on the vertically integrated operator in order to ensure the compatibility of any new arrangements with ⌦ this ⌫ Directive ~~2002/19/EC (Access Directive) and Directive 2002/22/EC (Universal Service Directive)~~ . The national regulatory authority concerned should undertake a new analysis of the markets in which the segregated entity operates, and impose, maintain, amend or withdraw obligations accordingly. To this end, the national regulatory authority should be able to request information from the undertaking.

(188) Binding commitments can add predictability and transparency to the process of voluntary separation by a vertically integrated undertaking which has been designated as having significant market power in one or more relevant markets, by setting out the process of implementation of the planned separation, for example by providing a roadmap for implementation with clear milestones and predictable consequences if certain milestones are not met. National regulatory authorities should consider the commitments made from a forward-looking perspective of sustainability, in particular when choosing the period for which they are made binding, and should have regard to the value placed by stakeholders in the public consultation on stable and predictable market conditions.

(189) The commitments can include the appointment of a monitoring trustee, whose identity and mandate should be approved by the national regulatory authority and the obligation on the operator offering them to provide periodic implementation reports.

(190) Network owners that do not have retail market activities and whose business model is therefore limited to the provision of wholesale services to others, can be beneficial to the creation of a thriving wholesale market, with positive effects on retail competition downstream. Furthermore, their business model can be attractive to potential financial investors in less volatile infrastructure assets and with longer term perspectives on deployment of very high capacity networks. Nevertheless, the presence of a wholesale-only operator does not necessarily lead to effectively competitive retail markets, and wholesale-only operators can be designated with significant market power in particular product and geographic markets. ~~The~~ **Certain** competition risks arising from the behaviour of operators following wholesale-only business models might be lower than for vertically integrated operators, provided the wholesale-only model is genuine and no incentives to discriminate between downstream providers exist. The regulatory response should therefore be commensurately less intrusive**, but should preserve in particular the possibility to introduce obligations in relation to price**. On the other hand, national regulatory authorities must be able to intervene if competition problems have arisen to the detriment of end-users. **An undertaking active on a wholesale market which supplies services solely to retail markets other than households and SME's should not be regarded as vertically integrated with respect to the latter segment, and should therefore be regarded as a vertically separate undertaking.**

(191) To facilitate the migration from legacy copper networks to next-generation networks, which is in the interests of end-users, national regulatory authorities should be able to monitor network operators' own initiatives in this respect and to establish, where necessary, an appropriate migration process, for example by means of prior notice, transparency and acceptable comparable access products, once the intent and readiness by the network owner to switch off the copper network is clearly demonstrated. In order to avoid unjustified delays to the migration, national regulatory authorities should be empowered to withdraw access obligations relating to the copper network once an adequate migration process has been established.

(192) The liberalisation of the telecommunications sector and increasing competition and choice for communications services go hand in hand with parallel action to create a harmonised regulatory framework which secures the delivery of universal service. The concept of universal service should evolve to reflect advances in technology, market developments and changes in user demand. ~~The regulatory framework established for the full liberalisation of the telecommunications market in 1998 in the Community defined the minimum scope of universal service obligations and established rules for its costing and financing.~~

(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.

~~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.~~

~~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.~~

~~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.~~

(194) Universal service is a safety net to ensure that a set of minimum services is available to all end-users at an affordable price, where a risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society.

(195) Basic b**r**oadband internet access is virtually universally available across the Union and very widely used for a wide range of activities. However, the overall take-up rate is lower than availability as there are still those who are disconnected by reasons related to awareness, cost, skills and by choice. Affordable functional internet access has become of crucial importance to society and the wider economy. It provides the basis for participation in the digital economy and society through essential online internet services.

~~(196) **Where Member States have established that availability of functional internet access or of voice communications cannot be ensured under normal commercial circumstances or through other potential public policy tools, they should be able to address the lack of availability with universal service obligations. The obligation to ensure such availability of access should be limited to fixed location only, as there are more proportionate tools to ensure wireless coverage. This access at a fixed location may be restricted to the end-user's primary location or residence. However,** *there should be no limitations on the technical means by which the connection* **at a fixed location** *is provided, allowing for wired or wireless technologies, nor any limitations on the category of operators which provide part or all of universal service obligations.*~~ A fundamental requirement of universal service is to ⌦ ensure that all end-users have access at an affordable price to available functional internet access and voice communications services, at least ⌫ ~~provide users on request with a connection to the public telephone network~~ at a fixed location **which can be provided also by wireless means**~~, at an affordable price~~. ⇨ ~~In the same way,~~ **The minimum requirement to provide universal service at least at a fixed location** ~~This~~ means that Member States should also have the possibility to ensure affordability **of wireless functional internet access and voice communications services which are not limited to a fixed location ~~via wireless means~~** ~~of services not provided at a fixed location but to citizens on the move~~, where they ~~deem this~~ consider that **this** ~~a mobile internet connection affordable functional internet access and voice communications via wireless means~~ is necessary to ensure ~~their~~ end-users' full social and economic participation in society. ⇦ ~~The requirement is limited to a single narrowband network connection, the provision of which may be restricted by Member States to the end-user's primary location/residence, and does not extend to the Integrated Services Digital Network (ISDN) which provides two or more connections capable of being used simultaneously.~~ ~~*There should be no constraints* ⌦ *limitations* ⌫ *on the technical means by which the connection is provided, allowing for wired or wireless technologies, nor any constraints* ⌦ *limitations* ⌫ *on which* ⌦ *the category of* ⌫ *operators* ⌦ *which* ⌫ *provide part or all of universal service obligations.*~~ *There should be no limitations on the technical means by which the connection is provided allowing for wired or wireless technologies, nor any limitations on the category of operators which provide part or all of universal service obligations.*

~~Connections to the public telephone network at a fixed location should be capable of supporting speech and data communications at rates sufficient for access to online services such as those provided via the public Internet. The speed of Internet access experienced by a given user may depend on a number of factors including the provider(s) of Internet connectivity as well as the given application for which a connection is being used. The data rate that can be supported by a single narrowband connection to the public telephone network depends on the capabilities of the subscriber's terminal equipment as well as the connection. For this reason it is not appropriate to mandate a specific data or bit rate at Community level. Currently available voice band modems typically offer a data rate of 56 kbit/s and employ automatic data rate adaptation to cater for variable line quality, with the result that the achieved data rate may be lower than 56 kbit/s. Flexibility is required on the one hand to allow Member States to take measures where necessary to ensure that connections are capable of supporting such a data rate, and on the other hand to allow Member States where relevant to permit data rates below this upper limit of 56 kbits/s in order, for example, to exploit the capabilities of wireless technologies (including cellular wireless networks) to deliver universal service to a higher proportion of the population. This may be of particular importance in some accession countries where household penetration of traditional telephone connections remains relatively low. In specific cases where the connection to the public telephony network at a fixed location is clearly insufficient to support satisfactory Internet access, Member States should be able to require the connection to be brought up to the level enjoyed by the majority of subscribers so that it supports data rates sufficient for access to the Internet. Where such specific measures produce a net cost burden for those consumers concerned, the net effect may be included in any net cost calculation of universal service obligations.~~

(197) ~~Data connections to the public communications network at a fixed location should be capable of supporting data communications at rates sufficient for access to online services such as those provided via the public Internet.~~ The speed of Internet access experienced by a given user may depend on a number of factors, including the provider(s) of Internet connectivity as well as the given application for which a connection is being used. ~~The data rate that can be supported by a connection to the public communications network depends on the capabilities of the subscriber's terminal equipment as well as the connection. For this reason, it is not appropriate to mandate a specific data or bit rate at Community level.~~ ⇨ The affordable functional internet access service should ~~be~~ **have** sufficient **capacity** ~~in order~~ to support access to and use of a minimum set of basic services that reflect the services used by the majority of end-users. **To this end, the Commission should monitor the development in the usage of internet to identify online services used by a majority of end-users across the EU and update the list accordingly.** ~~This~~ **The** minimum list of services **sets out the minimum requirements for functional internet access at EU level** ~~**is appropriate at this point in time**~~**, but** should be further defined by Member States, **including to ensure that it remains up to date with end-user needs. It is for the Member States to define the most appropriate way to ensure that the functional internet access supports the minimum list of services. For instance, they may determine the capacity of functional internet by reference to a list of services to be supported by the internet access or they may define the capacity in terms of bandwidth that is needed to support the minimum list of services with the aim** ~~in order~~ to allow an adequate level of social inclusion and participation in the digital society and economy in their territory. **The requirements of Union legislation on open internet, in particular of Regulation (EU) No 2015/2120**[59] **of the European Parliament and of the Council of 25 November 2015, should apply to any functional internet access service.**

[59] 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 (Text with EEA relevance) [*OJ L 310 of 26.11.2015, p. 1–18* .]

⇦ ~~Flexibility is required to allow Member States to take measures, where necessary, to ensure that a data connection is capable of supporting satisfactory data rates which are sufficient to permit functional Internet access, as defined by the Member States, taking due account of specific circumstances in national markets, for instance the prevailing bandwidth used by the majority of subscribers in that Member State, and technological feasibility, provided that these measures seek to minimise market distortion. Where such measures result in an unfair burden on a designated undertaking, taking due account of the costs and revenues as well as the intangible benefits resulting from the provision of the services concerned, this may be included in any net cost calculation of universal obligations. Alternative financing of underlying network infrastructure, involving Community funding or national measures in accordance with Community law, may also be implemented.~~

(198) End-users should not be obliged to access services they do not want and it should therefore be possible for eligible end-users to limit, on request, the affordable universal service to voice communications service only.

(199) ~~National regulatory~~ **Competent** authorities should be able to monitor the evolution and level of retail tariffs for services that fall under the scope of universal service obligations~~, even where a Member State has not yet designated an undertaking to provide universal service. In such a case,~~ ~~t~~The monitoring should be carried out in such a way that it would not represent an excessive administrative burden for either ~~national regulatory~~**competent** authorities or undertakings providing such service.

(200) Affordable price means a price defined by Member States at national level in the light of specific national conditions, and may involve ~~setting common tariffs irrespective of location or~~ special tariff options ⇨ or packages ⇦ to deal with the needs of low-income users ⌦ or users with special social needs, including the elderly, the disabled and the end-users living in rural or geographically isolated areas. These offers should be provided with basic features, in order to avoid distortion of the functioning of the market. ⌫ Affordability for individual ~~consumers~~ ⇨ end-users should be founded upon ⇦ their ⇨ right to contract with an undertaking, availability of a number, continued connection of service and their ⇦ ability to monitor and control their expenditure.

(201) ~~It should no longer be possible to refuse~~ **Affordability should no longer be a barrier to** end-users access to the minimum set of connectivity services. A right to contract with an undertaking should mean that end-users who might face refusal, in particular those with low incomes or special social needs, should have the possibility to enter into a contract for the provision of affordable functional internet access and voice communications services at least at a fixed location with any undertaking providing such services in that location **or a designated undertaking, where a Member State has chosen to designate one or more undertakings to offer those tariff options or packages**. In order to minimise the financial risks such as non-payment of bills, undertakings should be free to provide the contract under pre-payment terms, on the basis of affordable individual pre-paid units.

(202) In order to ensure that citizens are reachable by voice communications services, Member States should ensure the availability of a telephone number for a reasonable period also during periods of non-use of voice communications service. Undertakings should be able to put in place mechanisms to check the continued interest of the end-user in keeping the availability of the number.

(203) ~~Ensuring universal service (that is to say, the provision of a defined minimum set of services to all end-users at an affordable price) may involve the provision of some services to some end-users at prices that depart from those resulting from normal market conditions. However,~~eCompensating undertakings ~~designated to~~ providinge such services in such circumstances need not result in ~~any~~ distortion of competition, provided that ~~designated~~ ⌦ such ⌫ undertakings are compensated for the specific net cost involved and provided that the net cost burden is recovered in a competitively neutral way.

(204)In order to assess the need for affordability measures, ~~national regulatory~~ **competent** authorities should be able to monitor the evolution and details of offers of tariff options or packages for end-users with low incomes or special social needs.

(205) Where **Member States conclude that** ~~additional~~ **specific** measures **are needed to ensure** ~~beyond the basic tariff options or packages provided by undertakings are insufficient for ensuring~~ affordability for end-users with low incomes or special needs, **they may, having regard to the need to minimise market distortions, provide those end-users with** direct support**, which may be realised by social allowances,** such as ~~for example~~ vouchers**.** ~~to such end-users can be an appropriate alternative having regard to the need to minimise market distortions~~ **Member States may also require ~~all~~ undertakings in general, or those undertakings they have designated, where a Member State has chosen to use a designation mechanism, to offer basic tariff options or packages to those end-users**.

(206) Member States should introduce measures to promote the creation of a market for ⌦ affordable ⌫ ~~widely available~~ products and services incorporating facilities for disabled end-users ⌦ , including equipment with assistive technologies ⌫ . This can be achieved, inter alia, by referring to European standards, ⌦ or by ⌫ introducing ~~electronic accessibility (eAccessibility)~~ requirements ⌦ in accordance with Directive xxx/YYYY/EU of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services[60] ⌫ ~~for public procurement procedures and calls for tender relating to the provision of services, and by implementing legislation upholding the rights of disabled end-users.~~ ⇨ Member States should define appropriate measures according to national circumstances, which gives flexibility for Member States to take specific measures for instance if the market is not delivering affordable products and services incorporating facilities for disabled end-users under normal economic conditions. **Those measures could include direct financial support to end users.** ⇦

[60] OJ C […], […], p. […].

(207) For data communications at data rates that are sufficient to permit a functional Internet access, fixed-line connections are nearly universally available and used by a majority of citizens across the Union . The standard fixed broadband coverage and availability in the Union stands at 97% of homes in 2015, with an average take-up rate of 72%, and services based on wireless technologies have even greater reach. However, there are differences between Member States as regards availability and affordability of fixed broadband across urban and rural areas.

(208) The market has a leading role to play in ensuring availability of broadband internet access with constantly growing capacity. In areas where the market would not deliver, other public policy tools to support availability of functional internet access connections appear, in principle, more cost-effective and less market-distortive than universal service obligations, for example recourse to financial instruments such as those available under EFSI and CEF, the use of public funding from the European structural and investment funds, attaching coverage obligations to rights of use for radio spectrum to support the deployment of broadband networks in less densely populated areas and public investment in conformity with Union State aid rules.

(209) ~~A fundamental requirement of universal service is to provide users on request with a connection to the public communications network at a fixed location and at an affordable price.~~ ⇨ If after carrying out a due assessment, taking into account the results of the geographical survey of networks deployment conducted by the ~~national regulatory~~ **competent** authority, **or the latest information available to the Member States before the results of the first geographical survey are available,** it is shown that neither the market nor public intervention mechanisms are likely to provide end-users in certain areas with a connection capable of delivering functional internet access service as defined by Member States ~~in accordance with Article 79 (2)~~ and voice communications services at a fixed location, the Member State should be able to exceptionally designate different undertakings or sets of undertakings to provide these services in the different relevant parts of the national territory. ⇦ ~~The requirement is for the provision of local, national and international telephone calls, facsimile communications and data services, the provision of which~~ ⇨ Universal service obligations in support of availability of functional internet access service ⇦ may be restricted by Member States to the end-user's primary location or residence. There should be no constraints on the technical means by which ~~this is~~ ⇨ the functional internet access and voice communications services at a fixed location are ⇦ provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations.

(210) In accordance with the principle of subsidiarity, it is for the Member States to decide on the basis of objective criteria which undertakings are designated as universal service providers, where appropriate taking into account the ability and the willingness of undertakings to accept all or part of the universal service obligations. This does not preclude that Member States ~~may~~ ⌦ can ⌫ include, in the designation process, specific conditions justified on grounds of efficiency, including, inter alia, grouping geographical areas or components or setting minimum periods for the designation.

(211) The costs of ensuring the availability of a connection capable of delivering functional internet access service as identified in accordance with Article 79 (2) and voice communications service at a fixed location at an affordable price within the universal service obligations should be estimated, in particular by assessing the expected financial burden for undertakings and users in the electronic communications sector.

(212) A priori, requirements to ensure nation-wide territorial coverage imposed in the designation procedure are likely to exclude or dissuade certain undertakings from applying for being designated as universal service providers. Designating providers with universal service obligations for an excessive or indefinite time period may also lead to an a priori exclusion of certain undertakings.

Where a Member State decides to designate one or more providers for affordability purposes, these providers may be different from those designated for the availability element of universal service.

~~The provisions of this Directive do not preclude Member States from designating different undertakings to provide the network and service elements of universal service. Designated undertakings providing network elements may be required to ensure such construction and maintenance as are necessary and proportionate to meet all reasonable requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location.~~

~~Directory information and a directory enquiry service constitute an essential access tool for publicly available telephone services and form part of the universal service obligation. Users and consumers desire comprehensive directories and a directory enquiry service covering all listed telephone subscribers and their numbers (including fixed and mobile numbers) and want this information to be presented in a non-preferential fashion. 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 sector[61] ensures the subscribers' right to privacy with regard to the inclusion of their personal information in a public directory.~~

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61 ~~OJ L 24, 30.1.1998, p. 1.~~

~~For the citizen, it is important for there to be adequate provision of public pay telephones, and for users to be able to call emergency telephone numbers and, in particular, the single European emergency call number ('112') free of charge from any telephone, including public pay telephones, without the use of any means of payment. Insufficient information about the existence of '112' deprives citizens of the additional safety ensured by the existence of this number at European level especially during their travel in other Member States.~~

~~Member States should take suitable measures in order to guarantee access to and affordability of all publicly available telephone services at a fixed location for disabled users and users with special social needs. Specific measures for disabled users could include, as appropriate, making available accessible public telephones, public text telephones or equivalent measures for deaf or speech-impaired people, providing services such as directory enquiry services or equivalent measures free of charge for blind or partially sighted people, and providing itemised bills in alternative format on request for blind or partially sighted people. Specific measures may also need to be taken to enable disabled users and users with special social needs to access emergency services '112' and to give them a similar possibility to choose between different operators or service providers as other consumers. Quality of service standards have been developed for a range of parameters to assess the quality of services received by subscribers and how well undertakings designated with universal service obligations perform in achieving these standards. Quality of service standards do not yet exist in respect of disabled users. Performance standards and relevant parameters should be developed for disabled users and are provided for in Article 11 of this Directive. Moreover, national regulatory authorities should be enabled to require publication of quality of service performance data if and when such standards and parameters are developed. The provider of universal service should not take measures to prevent users from benefiting fully from services offered by different operators or service providers, in combination with its own services offered as part of universal service.~~

~~The importance of access to and use of the public telephone network at a fixed location is such that it should be available to anyone reasonably requesting it. In accordance with the principle of subsidiarity, it is for Member States to decide on the basis of objective criteria which undertakings have universal service obligations for the purposes of this Directive, where appropriate taking into account the ability and the willingness of undertakings to accept all or part of the universal service obligations. It is important that universal service obligations are fulfilled in the most efficient fashion so that users generally pay prices that correspond to efficient cost provision. It is likewise important that universal service operators maintain the integrity of the network as well as service continuity and quality. The development of greater competition and choice provide more possibilities for all or part of the universal service obligations to be provided by undertakings other than those with significant market power. Therefore, universal service obligations could in some cases be allocated to operators demonstrating the most cost-effective means of delivering access and services, including by competitive or comparative selection procedures. Corresponding obligations could be included as conditions in authorisations to provide publicly available services.~~

(213) When an undertaking designated to ~~provide universal service~~ ⌦ **provide tariff options or packages different from those provided under normal commercial conditions as identified in Article 80 of this Directive or to** ensure the availability at a fixed location of functional internet access or voice communications services ⌫ , as identified in Article 81 **4** of ⌦ this ⌫ Directive ~~2002/22/EC (Universal Service Directive)~~, chooses to dispose of a substantial part, viewed in light of its universal service obligation, or all, of its local access network assets in the national territory to a separate legal entity under different ultimate ownership, the ~~national regulatory~~ **competent** authority should assess the effects of the transaction in order to ensure the continuity of universal service obligations in all or parts of the national territory. To this end, the ~~national regulatory~~**competent** authority which imposed the universal service obligations should be informed by the undertaking in advance of the disposal. The assessment of the ~~national regulatory~~ **competent** authority should not prejudice the completion of the transaction.

(214) In order to provide stability and support a gradual transition, Member States should be able to continue to ensure the provision of universal services in their territory, other than functional internet access and voice communications services at a fixed location, that are included in the scope of their universal obligations on the basis of Directive 2002/22/EC at the entry into force of this Directive, provided the services or comparable services are not available under normal commercial circumstances. Allowing the continuation of the provision of public payphones, directories and directory enquiry services under the universal service regime, as long as the need is still demonstrated, would give Member States the flexibility necessary to duly take into account the varying national circumstances. ~~However, the financing of such services should be done via public funds as for the other universal service obligations.~~

~~(215)~~ Member States should monitor the situation of ~~consumers~~ ⇨ end-users ⇦ with respect to their use of ⇨ functional internet access and voice communications services ⇦ ~~publicly available telephone services~~ and in particular with respect to affordability. The affordability of ⇨ functional internet access and voice communications services ⇦ ~~telephone service~~ is related to the information which users receive regarding ~~telephone~~ usage expenses as well as the relative cost of ~~telephone~~ usage compared to other services, and is also related to their ability to control expenditure. Affordability therefore means giving power to consumers through obligations imposed on undertakings ~~designated as having universal service obligations~~. These obligations include a specified level of itemised billing, the possibility for consumers selectively to block certain calls (such as high-priced calls to premium services), the possibility for consumers to control expenditure via pre-payment means and the possibility for consumers to offset up-front connection fees. Such measures may need to be reviewed and changed in the light of market developments. **Itemised bills on the usage of functional internet access should only indicate the time, duration and the amount of consumption during a usage session but not indicate the websites or internet end-points connected to during such a usage session.** ~~Current conditions do not warrant a requirement for operators with universal service obligations to alert subscribers where a predetermined limit of expenditure is exceeded or an abnormal calling pattern occurs. Review of the relevant legislative provisions in future should consider whether there is a possible need to alert subscribers for these reasons.~~

(216) Except in cases of persistent late payment or non-payment of bills, consumers ⇨ entitled to affordable tariffs ⇦ should be protected from immediate disconnection from the network on the grounds of an unpaid bill and, particularly in the case of disputes over high bills for premium-rate services, should continue to have access to essential ~~telephone~~ ⌦ voice communications ⌫ services **and minimum service level of functional internet access as defined by Member States** pending resolution of the dispute. Member States may decide that such access may continue to be provided only if the subscriber continues to pay line rental charges.

~~Quality and price are key factors in a competitive market and national regulatory authorities should be able to monitor achieved quality of service for undertakings which have been designated as having universal service obligations. In relation to the quality of service attained by such undertakings, national regulatory authorities should be able to take appropriate measures where they deem it necessary. National regulatory authorities should also be able to monitor the achieved quality of services of other undertakings providing public telephone networks and/or publicly available telephone services to users at fixed locations.~~

(217) Where the provision of functional internet access and voice communications services or the provision of other universal services in accordance with Article 85 result in an unfair burden on an undertaking, taking due account of the costs and revenues as well as the intangible benefits resulting from the provision of the services concerned, that unfair burden can be included in any net cost calculation of universal obligations.

(218) Member States should, where necessary, establish mechanisms for financing the net cost of universal service obligations in cases where it is demonstrated that the obligations can only be provided at a loss or at a net cost which falls outside normal commercial standards. It is important to ensure that the net cost of universal service obligations is properly calculated and that any financing is undertaken with minimum distortion to the market and to undertakings, and is compatible with the provisions of Articles ~~87~~ ⌦ 107 ⌫ and ~~88~~ 108 of the Treaty ⌦ on the Functioning of the European Union ⌫ .

(219) Any calculation of the net cost of universal service should take due account of costs and revenues, as well as the intangible benefits resulting from providing universal service, but should not hinder the general aim of ensuring that pricing structures reflect costs. Any net costs of universal service obligations should be calculated on the basis of transparent procedures.

(220) Taking into account intangible benefits means that an estimate in monetary terms, of the indirect benefits that an undertaking derives by virtue of its position as provider of universal service, should be deducted from the direct net cost of universal service obligations in order to determine the overall cost burden.

~~(221)~~ When a universal service obligation represents an unfair burden on an undertaking, it is appropriate to allow Member States to establish mechanisms for efficiently recovering net costs. ⇨ ***Recovery via public funds constitutes one method of recovering the net costs of universal service obligations*****. Sharing the net costs of universal service obligations between providers of electronic communications networks and services is another method.** ***Member States should be able to finance the net costs of different elements of universal service through different mechanisms, and/or to finance the net costs of some or all elements from either of the mechanisms or a combination of both*****.** ~~The net costs of universal service obligations should be recovered via public funds.~~ Functional internet access brings benefits not only to the electronic communications sector but also to the wider online economy and to society as a whole. Providing a connection which supports broadband speeds to an increased number of end-users enables them to use online services and so actively to participate in the digital society. Ensuring such connections on the basis of universal service obligations serves ~~at least as much~~ **both** the public interest ~~as it serves~~ **and** the interests of electronic communications providers. **These facts should be taken into account by Member States when choosing and designing mechanism for recovering net costs.** ~~Therefore Member States should compensate the net costs of such connections supporting broadband speeds as part of the universal service from public funds, which should be understood to comprise funding from general government budgets.~~ ***In the case of cost recovery by means of*** **sharing the net cost of universal service obligation between providers of electronic communications networks and services,** ***Member States should ensure that the method of allocation amongst them is based on objective and non-discriminatory criteria and is in accordance with the principle of proportionality. This principle does not prevent Member States from exempting new entrants which have not yet achieved any significant market presence. Any funding mechanism should ensure that market participants only contribute to the financing of universal service obligations and not to other activities which are not directly linked to the provision of the universal service obligations. Recovery mechanisms should in all cases respect the principles of*** **Union** ***law, and in particular in the case of sharing mechanisms those of non-discrimination and proportionality.***

Any funding mechanism should ensure that users in one Member State do not contribute to universal service costs in another Member State, for example when making calls from one Member State to another. ⇦ ~~Recovery via public funds constitutes one method of recovering the net costs of universal service obligations. It is also reasonable for established net costs to be recovered from all users in a transparent fashion by means of levies on undertakings. Member States should be able to finance the net costs of different elements of universal service through different mechanisms, and/or to finance the net costs of some or all elements from either of the mechanisms or a combination of both. In the case of cost recovery by means of levies on undertakings, Member States should ensure that that the method of allocation amongst them is based on objective and non-discriminatory criteria and is in accordance with the principle of proportionality. This principle does not prevent Member States from exempting new entrants which have not yet achieved any significant market presence. Any funding mechanism should ensure that market participants only contribute to the financing of universal service obligations and not to other activities which are not directly linked to the provision of the universal service obligations. Recovery mechanisms should in all cases respect the principles of Community law, and in particular in the case of sharing mechanisms those of non-discrimination and proportionality. Any funding mechanism should ensure that users in one Member State do not contribute to universal service costs in another Member State, for example when making calls from one Member State to another.~~

~~Where Member States decide to finance the net cost of universal service obligations from public funds, this should be understood to comprise funding from general government budgets including other public financing sources such as state lotteries.~~

~~The net cost of universal service obligations may be shared between all or certain specified classes of undertaking. Member States should ensure that the sharing mechanism respects the principles of transparency, least market distortion, non-discrimination and proportionality. Least market distortion means that contributions should be recovered in a way that as far as possible minimises the impact of the financial burden falling on end-users, for example by spreading contributions as widely as possible.~~

(222) ~~National regulatory authorities should satisfy themselves that those u~~Undertakings benefiting from universal service funding ⌦ should ⌫ provide ⌦ to ~~national regulatory~~ **competent** authorities ⌫ a sufficient level of detail of the specific elements requiring such funding in order to justify their request. ~~Member States' schemes for the costing and financing of universal service obligations should be communicated to the Commission for verification of compatibility with the Treaty. There are incentives for designated operators to raise the assessed net cost of universal service obligations. Therefore~~ Member States should ensure effective transparency and control of amounts charged to finance universal service obligations. ⇨ Calculation of the net costs of providing universal service should be based on an objective and transparent methodology to ensure the most cost-effective provision of universal service and promote a level playing field for market operators. Making the methodology intended to be used to calculate the net costs of individual universal service elements known in advance before implementing the calculation could help to achieve increased transparency. ⇦

~~Communications markets continue to evolve in terms of the services used and the technical means used to deliver them to users. The universal service obligations, which are defined at a Community level, should be periodically reviewed with a view to proposing that the scope be changed or redefined. Such a review should take account of evolving social, commercial and technological conditions and the fact that any change of scope should be subject to the twin test of services that become available to a substantial majority of the population, with a consequent risk of social exclusion for those who can not afford them. Care should be taken in any change of the scope of universal service obligations to ensure that certain technological choices are not artificially promoted above others, that a disproportionate financial burden is not imposed on sector undertakings (thereby endangering market developments and innovation) and that any financing burden does not fall unfairly on consumers with lower incomes. Any change of scope automatically means that any net cost can be financed via the methods permitted in this Directive. Member States are not permitted to impose on market players financial contributions which relate to measures which are not part of universal service obligations. Individual Member States remain free to impose special measures (outside the scope of universal service obligations) and finance them in conformity with Community law but not by means of contributions from market players.~~

~~More effective competition across all access and service markets will give greater choice for users. The extent of effective competition and choice varies across the Community and varies within Member States between geographical areas and between access and service markets. Some users may be entirely dependent on the provision of access and services by an undertaking with significant market power. In general, for reasons of efficiency and to encourage effective competition, it is important that the services provided by an undertaking with significant market power reflect costs. For reasons of efficiency and social reasons, end-user tariffs should reflect demand conditions as well as cost conditions, provided that this does not result in distortions of competition. There is a risk that an undertaking with significant market power may act in various ways to inhibit entry or distort competition, for example by charging excessive prices, setting predatory prices, compulsory bundling of retail services or showing undue preference to certain customers. Therefore, national regulatory authorities should have powers to impose, as a last resort and after due consideration, retail regulation on an undertaking with significant market power. Price cap regulation, geographical averaging or similar instruments, as well as non-regulatory measures such as publicly available comparisons of retail tariffs, may be used to achieve the twin objectives of promoting effective competition whilst pursuing public interest needs, such as maintaining the affordability of publicly available telephone services for some consumers. Access to appropriate cost accounting information is necessary, in order for national regulatory authorities to fulfil their regulatory duties in this area, including the imposition of any tariff controls. However, regulatory controls on retail services should only be imposed where national regulatory authorities consider that relevant wholesale measures or measures regarding carrier selection or pre-selection would fail to achieve the objective of ensuring effective competition and public interest.~~

~~Where a national regulatory authority imposes obligations to implement a cost accounting system in order to support price controls, it may itself undertake an annual audit to ensure compliance with that cost accounting system, provided that it has the necessary qualified staff, or it may require the audit to be carried out by another qualified body, independent of the operator concerned.~~

~~National regulatory authorities may also, in the light of an analysis of the relevant market, require mobile operators with significant market power to enable their subscribers to access the services of any interconnected provider of publicly available telephone services on a call-by-call basis or by means of pre-selection.~~

(223) In order to effectively support the free movement of goods, services and persons within the Union, it should be possible to use certain national numbering resources, in particular certain non-geographic numbers, in an extraterritorial manner, that is to say outside the territory of the assigning Member State throughout the territory of the Union. In view of the considerable risk of fraud with respect to interpersonal communications, such extraterritorial use should **only** be allowed for **the provision of** electronic communications services ~~with the exception of~~ **other than** interpersonal communications services. ~~Member States should therefore ensure~~ **eEnforcement of** ~~that~~ relevant national laws, in particular consumer protection rules and other rules related to the use of ~~numbers~~ **numbering resources**~~, are enforced~~ **should be ensured by Member States independently of where the rights of use have been granted and where the numbering resources are used within the Union**. ~~independently of the Member State where the rights of use for numbers~~ **numbering resources** ~~have been granted. That should entail that the national regulatory and other competent authorities of those~~ Member States **remain competent to apply their national laws to numbering resources used in their territory, including where rights have been granted in another Member State.** ~~where a number is used are competent to apply their national laws to the undertaking to which the number has been assigned. In addition,~~ **t The** ~~**national regulatory**~~ **competent authorities of the Member States where numbering resources from another Member State are used do not have control over those numbering resources. It is therefore essential that the** ~~**national regulatory**~~ **competent authorities of the Member State which grants the rights of extraterritorial use should also ensure the effective protection of the end-users in the Member States where those numbers are used. In view of achieving effective protection, a** ~~**national regulatory**~~ **competent authority granting rights of extraterritorial use should attach conditions in accordance with Annex I, Part E regarding the respect by the provider of the consumer protection rules and other rules related to the use of numbering resources in those Member States where those resources will be used.**

The ~~national regulatory~~ **competent** authorities of those Member States **where a numbering resource is used** ~~should have the possibility to~~ **may** request the support of the ~~national regulatory~~ **competent** authority ~~responsible for the assignment~~ **which has that granted the rights** of **use for** the number**ing resources** to assist ~~them~~ in enforcing ~~the respect of the~~ **those its** rules ~~applicable in those Member states where the number is used~~. ~~Such support~~ **Enforcement** measures **by the ~~national regulatory~~ competent authority that granted the rights of use ~~for the numbering resources~~** should include dissuasive sanctions, in particular in case of a serious breach the withdrawal of the right of extraterritorial use for the ~~numbers~~ **numbering resources** assigned to the undertaking concerned. The requirements on extraterritorial use should be without prejudice to Member States' powers to block, on a case-by case basis, access to numbers or services where that is justified by reasons of fraud or misuse. The extraterritorial use of ~~numbers~~ **numbering resources** should be without prejudice to Union~~'s~~ rules related to the provision of roaming services, including those relative to preventing anomalous or abusive use of roaming services which are subject to retail price regulation and which benefit from regulated wholesale roaming rates. Member States should continue to be able to enter into specific agreements on extraterritorial use of numbering resources with third countries.

(224) Member States should promote over-the-air provisioning of numbering resources to facilitate switching of electronic communications providers. Over the-air provisioning of numbering resources enables the reprogramming of telecommunication equipment identifiers without physical access to the devices concerned. This feature is particularly relevant for machine-to-machine services, that is to say services involving an automated transfer of data and information between devices or software-based applications with limited or no human interaction. Providers of such machine-to-machine services might not have recourse to physical access to their devices due to their use in remote conditions, or to the large number of devices deployed or to their usage patterns. In view of the emerging machine-to-machine market and new technologies, Member States should strive to ensure technological neutrality in promoting over-the-air provisioning.

~~(225)~~ Access to numbering resources on the basis of transparent, objective and non-discriminatory criteria is essential for undertakings to compete in the electronic communications sector. ⇨ Member States should be able to grant rights of use for ~~numbers~~ **numbering resources** to undertakings other than providers of electronic communications networks or services in view of the increasing relevance of numbers for various Internet of Things services. ⇦ All elements of national numbering plans should be managed by ~~national regulatory~~ **competent** authorities, including point codes used in network addressing. Where there is a need for harmonisation of numbering resources in the ~~Community~~ ⌦ Union ⌫ to support the development of pan-European services ⇨ or cross-border services, in particular new machine-to-machine-based services such as connected cars, and where the demand could not be met on the basis of the existing numbering resources in place ⇦ , the Commission ~~may~~ ⌦ can ⌫ take ~~technical~~ implementing measures ~~using its executive powers~~ ⇨ with the assistance of BEREC ⇦ . ~~Where this is appropriate to ensure full global interoperability of services, Member States should coordinate their national positions in accordance with the Treaty in international organisations and fora where numbering decisions are taken. The provisions of this Directive do not establish any new areas of responsibility for the national regulatory authorities in the field of Internet naming and addressing.~~

(226) The requirement to publish decisions on the granting of rights ~~to~~ ⌦ of ⌫ use ~~frequencies or~~ ⌦ for ⌫ ~~numbers~~ **numbering resources** may be fulfilled by making these decisions publicly accessible via a website.

(227) Considering the particular aspects related to reporting missing children ~~and the currently limited availability of such a service~~, Member States ⌦ should maintain their commitment ⌫ ~~should not only reserve a number, but also make every effort~~ to ensure that a ⇨ well-functioning ⇦ service for reporting missing children is actually available in their territories under the number '116000'~~, without delay. To that end, Member States should, if appropriate, inter alia, organise tendering procedures in order to invite interested parties to provide that service.~~

(228) A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States and to access services using non-geographic numbers ⌦ , including freephone and premium-rate numbers, ⌫ within the ~~Community~~ ⌦ Union ⌫, ~~including, among others, freephone and premium rate numbers~~ ⇨ except where the called end-user has chosen, for commercial reasons, to limit access from certain geographical areas ⇦ . End-users should also be able to access numbers from the ~~European Telephone Numbering Space (ETNS) and~~ Universal International Freephone Numbers (UIFN). Cross-border access to numbering resources and associated services should not be prevented, except in objectively justified cases, for example to combat fraud or abuse (e.g. in connection with certain premium-rate services), when the number is defined as having a national scope only (e.g. a national short code) or when it is technically or economically unfeasible. ⇨ Tariffs charged to parties calling from outside the Member State concerned need not be the same as for those parties calling from inside that Member State. ⇦ Users should be fully informed in advance and in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes. **Where interconnection or other service revenues are withheld by providers of electronic communications services for reasons of fraud or misuse, Member States should ensure that retained service revenues are refunded to the end-users affected by the relevant fraud or misuse where possible.**

~~Access by end-users to all numbering resources in the Community~~ ~~is a vital pre-condition for a single market. It should include freephone, premium rate, and other non-geographic numbers, except where the called subscriber has chosen, for commercial reasons, to limit access from certain geographical areas. Tariffs charged to parties calling from outside the Member State concerned need not be the same as for those parties calling from inside that Member State.~~

(229) The completion of the single market for electronic communications requires the removal of barriers for end-users to have cross-border access to electronic communications services across the Union. Providers of electronic communications to the public should not deny or restrict access or discriminate against end-users on the basis of their nationality or Member State of residence. Differentiation should, however, be possible on the basis of objectively justifiable differences in costs and risks, which may go beyond the measures provided for in Regulation 531/2012 in respect of abusive or anomalous use of regulated retail roaming services.

(230) Divergent implementation of the rules on end-user protection has created significant internal market barriers affecting both providers of electronic communications services and end-users. Those barriers should be reduced by the applicability of the same rules ensuring a high common level of protection across the Union. A calibrated full harmonisation of the end-user rights covered by this Directive should considerably increase legal certainty for both end-users and providers of electronic communications services, and should significantly lower entry barriers and unnecessary compliance burden stemming from the fragmentation of the rules. Full harmonisation helps to overcome barriers to the single market resulting from such national end-user provisions which at the same time protect national providers against competition from other Member States. In order to **a**chieve a high common level of protection, several end-user provisions should be reasonably enhanced in this Directive in the light of best practices in Member States. Full harmonisation of their rights increases the trust of end-users in the internal market as they benefit from an equally high level of protection when using electronic communications services, not only in their Member State but also while living, working or travelling in other Member States. **Full harmonisation should only extend to the provisions on end-user rights in this directive. Therefore, it should not affect national law with respect to aspects of end-user protection which are not covered by these provisions. For example, Member States can provide for end-user protection facilitating the switching between undertakings who commercialise an offer of sound or television broadcasting content services delivered over an electronic communications network. Moreover, Member States may maintain or introduce national provisions on issues not specifically addressed in this Directive, in particular in order to address newly emerging issues. Furthermore,** Member States should maintain the possibility to have a higher level of end-user protection where an explicit derogation is provided for in this Directive~~, and to act in areas not covered by this Directive~~.

(231) Contracts are an important tool for ⌦ end- ⌫ users ~~and consumers~~ to ensure ~~a minimum level of~~ transparency of information and legal ~~security~~ ⌦ certainty ⌫ . Most service providers in a competitive environment will conclude contracts with their customers for reasons of commercial desirability. In addition to the provisions of this Directive, the requirements of existing ~~Community~~ ⌦ Union ⌫ consumer protection legislation relating to contracts, in particular ~~Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts[62] and Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts[63]~~Directive 2011/83/EU of the European Parliament and of the Council on consumer rights[64] and Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, apply to consumer transactions relating to electronic ⌦ communications ⌫ networks and services. ~~Specifically, consumers should enjoy a minimum level of legal certainty in respect of their contractual relations with their direct telephone service provider, such that the contractual terms, conditions, quality of service, condition for termination of the contract and the service, compensation measures and dispute resolution are specified in their contracts. Where service providers other than direct telephone service providers conclude contracts with consumers, the same information should be included in those contracts as well. The measures to ensure transparency on prices, tariffs, terms and conditions will increase the ability of consumers to optimise their choices and thus to benefit fully from competition.~~

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62 ~~OJ L 95, 21.4.1993, p. 29.~~

63 ~~OJ L 144, 4.6.1997, p. 19.~~

64 Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

(232) Provisions on contracts ⌦ in this Directive ⌫ ⇨ should apply irrespective **of** the amount of any payment to be made by the customer. ⇦ ⌦ They ⌫ should ~~apply~~ **benefit** not only ~~to~~ consumers but also ~~to other end-users, primarily~~ micro ~~enterprises~~ and small ~~and medium-sized~~ enterprises~~(SMEs)~~ ⌦ as defined in Commission Recommendation 2003/361/EC, ⌫ ~~which may prefer a contract adapted to consumer needs~~ **and not-for-profit organisations** ⇨ whose bargaining position is comparable to that of consumers and which should therefore benefit from the same level of protection ⇦ . ~~To avoid unnecessary administrative burdens for providers and the complexity related to the definition of SMEs, t~~The provisions on contracts ⌦ , including those contained in Directive 2011/83/EU on consumer rights, ⌫ should ~~not~~ apply automatically to those ⌦ undertakings ⌫ ~~other end-users, but only where they so request~~ ⇨ unless they prefer negotiating individualised contract terms with providers of electronic communications services ⇦. ⇨ As opposed to micro and small enterprises **and not-for-profit organisations**, larger enterprises usually have stronger bargaining power and do, therefore, not depend on the same contractual information requirements as consumers. Other provisions, such as number portability, which are important also for larger enterprises should continue to apply to all end-users. ⇦ ~~Member States should take appropriate measures to promote awareness amongst SMEs of this possibility.~~

(233) The specificities of the electronic communications sector require, beyond horizontal contract rules, a limited number of additional end-user protection provisions. End-users should inter alia be informed of any quality of service levels offered, conditions for promotions and termination of contracts, applicable tariff plans and tariffs for services subject to particular pricing conditions. **The concrete level of detail of the specific information to be provided in the implementation of the Article on information requirements for contracts should be determined by Member States.** That information is relevant for **internet access services and~~, to some extent,~~ also for** ~~most~~ publicly available ~~electronic~~ **interpersonal** communications services**. Some types of information are relevant only for some services~~, for~~ For instance ~~on~~ quality of service information is ~~or pricing, are~~ relevant only for those interpersonal communications services which offer such quality of service ~~or bill~~ a recurring or consumption based ~~a monetary price~~ payment for their services~~, respectively~~** ~~but not for number-independent interpersonal communications services~~. In order to enable the end-user to make a well-informed choice, it is essential that the required relevant information is provided prior to the conclusion of the contract and in clear and understandable language. For the same reason, providers should present a summary of the essential contract terms. In order to facilitate comparability and reduce compliance cost, ~~BEREC~~ **the Commission** should issue a template for such contract summaries.

(234) Following the adoption of Regulation (EU) 2015/2120 the provisions in this Directive regarding information on conditions limiting access to and/or use of services and applications and as regards traffic shaping became obsolete and should be repealed.

(235) With respect to terminal equipment, the customer contract should specify any ~~restrictions~~ **conditions** imposed by the provider on the use of the equipment, such as by way of 'SIM-locking' mobile devices, if such ~~restrictions~~ **conditions** are not prohibited under national legislation, and any charges due on termination of the contract, whether before or on the agreed expiry date, including any cost imposed in order to retain the equipment. ⇨ Any charges due at early termination for terminal equipment ~~and other promotional advantages~~ should be calculated on the basis of customary depreciation methods and on a pro rata temporis basis, respectively. ⇦

(236) Without ⌦ prejudice to the substantive ⌫ ~~imposing any~~ obligation~~s~~ on the provider ⇨ related to security by virtue of this Directive ⇦ ~~to take action over and above what is~~

~~required under Community law~~, the ~~customer~~ contract should ~~also~~ specify the type of action~~,~~ ~~if any,~~ the provider might take in case of security ~~or integrity~~ incidents, threats or vulnerabilities.

(237) The availability of transparent, up-to-date and comparable information on offers and services is a key element for ~~consumers~~ **end-users** in competitive markets where several providers offer services. End-users ~~and consumers of electronic communications services~~ should be able to easily compare the prices of various services offered on the market based on information published in an easily accessible form. In order to allow them to make price ⇨ and service ⇦ comparisons easily, ~~national regulatory~~ **competent** authorities should be able to require from undertakings providing electronic communications networks and/or ⇨ electronic communications ⇦ services ~~⇨ other than number-independent interpersonal communications services ⇦~~ greater transparency as regards information (including tariffs, ⇨ quality of service, ~~restrictions~~ **conditions** on terminal equipment supplied, ⇦ ~~consumption patterns~~ and other relevant statistics). ⇨ Any such requirements should take due account of the characteristics of those networks or services. ⇦ ⌦ They should also ⌫ ~~and to~~ ensure that third parties have the right to use, without charge, publicly available information published by such undertakings ⇨ , in view of providing comparison tools ⇦.

~~National regulatory authorities should also be able to make price guides available, in particular where the market has not provided them free of charge or at a reasonable price. Undertakings should not be entitled to any remuneration for the use of information where it has already been published and thus belongs in the public domain. In addition, end-users and consumers should be adequately informed of the price and the type of service offered before they purchase a service, in particular if a freephone number is subject to additional charges. National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, immediately prior to connecting the call, unless otherwise provided for by national law. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services. Without prejudice to Directive 2000/31/EC (Directive on electronic commerce), undertakings should also, if required by Member States, provide subscribers with public interest information produced by the relevant public authorities regarding, inter alia, the most common infringements and their legal consequences.~~

(238) End-users are often not aware of the cost of their consumption behaviour or have difficulties to estimate their time or data consumption when using electronic communications services. In order to increase transparency and to allow better control of their communications budget it is important to provide end-users with facilities that enable them to track their consumption in a timely manner. **In addition, Member States may maintain or introduce provisions on consumption limits protecting end-users against "bill-shocks", including in relation to premium rate services and other services subject to particular pricing conditions. This allows competent authorities to require information about such prices to be provided prior to providing the service and does not prejudice the possibility of Member States to maintain or introduce general obligations for premium rate services to ensure effective protection of end-users.**

(239) Independent comparison tools, such as websites, are an effective means for end-users to assess the merits of different providers ~~of publicly available electronic communications services other than number-independent interpersonal communications services~~ , and to obtain impartial information, in particular by comparing prices, tariffs, and quality parameters in one place. Such tools **should be operationally independent from service providers, which means that no service provider should be given favourable treatment in search results, and** should aim at providing information that is both clear and concise and complete and comprehensive. They should also aim at including the broadest possible range of offers, so as to give a representative overview and cover a significant part of the market. The information given on such tools should be trustworthy, impartial and transparent. End-users should be informed of the availability of such tools. Member States should ensure that end-users have free access to at least one such tool in their respective territories.

(240) Independent comparison tools should be operationally independent from providers of publicly available electronic communications services. They can be operated by private undertakings, or by or on behalf of competent authorities, however they should be operated in accordance with specified quality criteria including the requirement to provide details of their owners, provide accurate and up-to-date information, state the time of the last update, set out clear, objective criteria on which the comparison will be based and include a broad range of offers on publicly available electronic communications services other than number-independent interpersonal communications services, covering a significant part of the market. Member States should be able to determine how often comparison tools are required to review and update the information they provide to end-users, taking into account the frequency with which providers of publicly available electronic communications services other than number-independent interpersonal communications services, generally update their tariff and quality information. Where there is only one tool in a Member State and that tool ceases to operate or ceases to comply with the quality criteria, the Member State should ensure that end-users have access within a reasonable time to another comparison tool at national level.

(241) In order to address public interest issues with respect to the use of ⇨ publicly available electronic ⇦ communications services and to encourage protection of the rights and freedoms of others, the ~~relevant national~~ ⇨ competent ⇦ authorities should be able to produce and have disseminated, with the aid of providers, public interest information related to the use of such services. This could include public interest information ⇨ regarding the most common infringements and their legal consequences, for instance ⇦ regarding copyright infringement, other unlawful uses and the dissemination of harmful content, and advice and means of protection against risks to personal security, which may for example arise from disclosure of personal information in certain circumstances, as well as risks to privacy and personal data, and the availability of easy-to-use and configurable software or software options allowing protection for children or vulnerable persons. The information could be coordinated by way of the cooperation procedure established in ~~Article 33(3) of~~ ⌦ this ⌫ Directive ~~2002/22/EC (Universal Service Directive)~~. Such public interest information should be updated whenever necessary and should be presented in easily comprehensible ~~printed and electronic~~ formats, as determined by each Member State, and on national public authority websites. ~~National regulatory~~ **competent** authorities should be able to oblige providers to disseminate this standardised information to all their customers in a manner deemed appropriate by the ~~national regulatory~~ **competent** authorities. ~~When required by Member States, the information should also be included in contracts.~~ Dissemination of such information should however not impose an excessive burden on undertakings. Member States should require this dissemination by the means used by undertakings in communications with ~~subscribers~~ ⇨ end-users ⇦ made in the ordinary course of business.

(242) In the absence of relevant rules of ~~Community~~ ⌦ Union ⌫ law, content, applications and services are deemed lawful or harmful in accordance with national substantive and procedural law. It is a task for the Member States, not for providers of electronic communications networks or services, to decide, in accordance with due process, whether content, applications or services are lawful or harmful. ~~The Framework~~ ⌦ This ⌫ Directive and the ⌦ ~~and the~~ ePrivacy Directive 2002/58/EC ⌫ ~~Specific Directives~~ are without prejudice to 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)[65], which, inter alia, contains a 'mere conduit' rule for intermediary service providers, as defined therein.

(243) ~~End-users should have access to publicly available information on communications services. Member States should be able to monitor the quality of services which are offered in their territories.~~ ~~National regulatory~~ **Competent** authorities should be ~~able~~ ⌦ empowered to monitor the quality of services ⌫ ~~systematically~~ ⌦ and ⌫ to collect ⌦ systematically ⌫ information on the quality of services **offered by providers of internet access services and of publicly available interpersonal communications services, to the extent that they are able to offer minimum levels of service quality either through control of at least some elements of the network or by virtue of a service level agreement to that effect,** ⌦ , including that related to the provision of services to disabled end-users. ⌫ ⌦ This information should be collected ⌫ on the basis of criteria which allow comparability between service providers and between Member States. Undertakings providing ⌦ electronic ⌫ communications services, operating in a competitive environment, are likely to make adequate and up-to-date information on their services publicly available for reasons of commercial advantage. ~~National regulatory~~ **Competent** authorities should nonetheless be able to require publication of such information where it is demonstrated that such information is not effectively available to the public. ⇨ ~~National regulatory~~ **Competent** authorities should also set out the measurement methods to be applied by the service providers in order to improve the comparability of the data provided. In order to facilitate comparability across the Union and to reduce compliance cost, BEREC should adopt guidelines on relevant quality of service parameters which ~~national regulatory~~ **competent** authorities should take into utmost account. ⇦

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65 OJ L 178, 17.7.2000, p. 1.

(244) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their ⌦ best ⌫ interest~~s~~. It is essential to ensure that they ~~can~~ ⌦ are able to ⌫ do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges ⌦ etc ⌫ ~~and so on~~. ~~This~~ ⌦ That ⌫ does not preclude ~~the imposition~~ ⌦ undertakings ⌫ ~~of~~ ⌦ from setting ⌫ reasonable minimum contractual periods ⇨ of up to 24 months ⇦ in consumer contracts. ⇨ However, Member States should have the possibility to set a shorter maximum duration **or permit a change in tariff plan within this period,** in light of national conditions, such as levels of competition and stability of network investments. Independently from the electronic communications service contract, consumers might prefer and benefit from a longer reimbursement period for physical connections. Such consumer commitments can be an important factor in facilitating deployment of very high capacity connectivity networks up to or very close to end-user premises, including through demand aggregation schemes which enable network investors to reduce initial take-up risks. However, the rights of consumers to switch between providers of electronic communications services, as established in this Directive, should not be restricted by such reimbursement periods in contracts on physical connections. ⇦

~~Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications and should be implemented with the minimum delay, so that the number is functionally activated within one working day and the user does not experience a loss of service lasting longer than one working day. Competent national authorities may prescribe the global process of the porting of numbers, taking into account national provisions on contracts and technological developments. Experience in certain Member States has shown that there is a risk of consumers being switched to another provider without having given their consent. While that is a matter that should primarily be addressed by law enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process, including appropriate sanctions, as are necessary to minimise such risks, and to ensure that consumers are protected throughout the switching process without making the process less attractive for them.~~

(245) Consumers should be able to terminate their contract without incurring any costs also in cases of automatic prolongation after the expiration of the ~~initial~~ contract term**, where Member States permit such automatic prolongation**.

(246) Any changes to the contractual conditions ~~imposed~~ **proposed** by providers of publicly available electronic communications services ~~other than number-independent interpersonal communications services~~, to the detriment of the end-user, for example in relation to charges, tariffs, data volume limitations, data speeds, coverage, or the processing of personal data should be considered as giving rise to the right of the end-user to terminate the contract without incurring any costs, even if they are combined with some beneficial changes. **Any change to the contractual conditions by the provider should therefore entitle the end-user to terminate the contract unless each change is in itself beneficial to the end-user, or the changes are strictly necessary to implement legislative or regulatory changes, such as new contract information requirements imposed by Union or national law. End-users should be notified of any changes to the contractual conditions in a durable medium. Such medium could be in particular paper, USB sticks, CD-ROMs, DVDs, memory cards or the hard disks of computers as well as e-mails. Member States can provide for end-user protections where the end-user changes their place of residence.**

(247) The possibility of switching between providers is key for effective competition in a competitive environment. The availability of transparent, accurate and timely information on switching should increase the end-users' confidence in switching and make them more willing to engage actively in the competitive process. Service providers should ensure continuity of service so that end-users are able to switch providers without being hindered by the risk of a loss of service.

(248) Number portability is a key facilitator of consumer choice and effective competition in ~~a~~ competitive ~~telecommunications environment~~ ⇨ electronic communications markets. ⇦ ~~such that~~ ~~e~~End-users who so request should be able to retain their number(s) on the public telephone network independently of the ~~organisation~~ ⌦ undertaking ⌫ providing service. The provision of this facility between connections to the public telephone network at fixed and non-fixed locations is not covered by this Directive. However, Member States may apply provisions for porting numbers between networks providing services at a fixed location and mobile networks.

(249) The impact of number portability is considerably strengthened when there is transparent tariff information, both for end-users who port their numbers and also for end-users who call those who have ported their numbers. ~~National regulatory~~ **Competent** authorities should, where feasible, facilitate appropriate tariff transparency as part of the implementation of number portability.

(250) When ensuring that pricing for interconnection related to the provision of number portability is cost-oriented, ~~national regulatory~~ **competent** authorities may also take account of prices available in comparable markets.

(251) ~~In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interests. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts.~~ Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications and should be implemented with the minimum delay, so that the number is functionally activated within one working day and the user does not experience a loss of service lasting longer than one working day. ⌦ **The right to port the number should be attributed to the end-user who has the relevant (pre- or post-paid) contract with the provider.** In order to facilitate a one-stop-shop enabling a seamless switching experience for end- users, the switching process should be led by the receiving provider of electronic communications to the public. ⌫ ~~Competent n~~[~~National ⇨ regulatory ⇦~~ **competent** authorities~~]~~ may prescribe the global process of the porting of numbers, taking into account national provisions on contracts and technological developments. Experience in certain Member States has shown that there is a risk of consumers being switched to another provider without having given their consent. While that is a matter that should primarily be addressed by law enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process, including appropriate sanctions, as are necessary to minimise such risks, and to ensure that consumers are protected throughout the switching process without making the process less attractive for them. **The right to port numbers should not be restricted by contractual conditions.**

(252) Bundles comprising **an internet access service or a number-based** ~~publicly available electronic communications services other than number-independent~~ interpersonal communications service~~s~~, and other services such as linear broadcasting, or ~~devices~~ **terminal equipment sold by the same provider in the same or a closely related contract**~~,~~ have become increasingly widespread and are an important element of competition. While they often bring about benefits for end-users, they can make switching more difficult or costly and raise risks of contractual "lock-in". Where divergent contractual rules on contract termination and switching apply to the different services, and to any contractual commitment regarding acquisition of products which form part of a bundle, consumers are effectively hampered in their rights under this Directive to switch to competitive offers for the entire bundle or parts of it. The provisions of this Directive regarding contracts, transparency, contract duration and termination and switching should, therefore, apply to all elements of a bundle, except to the extent that other rules applicable to the non-electronic communications elements of the bundle are more favourable to the consumer. Other contractual issues, such as the remedies applicable in the event of non-conformity with the contract, should be governed by the rules applicable to the respective element of the bundle, for instance by the rules of contracts for the sales of goods or for the supply of digital content. For the same reasons consumers should not be locked in with a provider by means of a contractual de facto extension of the initial contract period.

(253) Providers of ~~electronic~~ ⇨ number-based interpersonal ⇦ communications services ~~that allow calls~~ ⇨ have an obligation to provide access to emergency services through emergency communications. ⇦ ⇨ In exceptional circumstances, namely due to a lack of technical feasibility, they might not be able to provide access to emergency services or caller location, or to both. In such cases, they should inform their customers adequately in the contract. ⇦ ~~should ensure that their customers are adequately informed as to whether or not access to emergency services is provided and of any limitation on service (such as a limitation on the provision of caller location information or the routing of emergency calls).~~ Such providers should ~~also~~ provide their customers with clear and transparent information in the initial contract and ⇨ update it ⇦ in the event of any change in the ~~access~~ provision ⇨ of access to emergency services ⇦ , for example in ⌦ invoices ⌫ ~~billing information~~. This information should include any limitations on territorial coverage, on the basis of the planned technical operating parameters of the ⇨ communications ⇦ service and the available infrastructure. Where the service is not provided over a ~~switched telephony network~~ ⇨ connection which is managed to give a specified quality of service ⇦ , the information should also include the level of reliability of the access and of caller location information compared to a service that is provided over ⌦ such ⌫ a ~~switched telephony network~~ ⇨ connection ⇦ , taking into account current technology and quality standards, as well as any quality of service parameters specified under ⌦ this ⌫ Directive ~~2002/22/EC (Universal Service Directive)~~.

(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 ⌫ .

(255) End-users should be able to access emergency services through emergency communications free of charge and without having to use any means of payment, from any device which enables number-based interpersonal communications services, including when using roaming services in a Member State. Emergency communications are means of communication, that include not only voice communications but also SMS, messaging, video or other types of communications, that are enabled in a Member State to access emergency services. Emergency communication can be triggered on behalf of a person by the eCall in-vehicle system as defined by Regulation 2015/758/EU of the European Parliament and of the Council[66].

(256) Member States should ensure that undertakings providing end-users with number-based interpersonal communications services provide reliable and accurate access to emergency services, taking into account national specifications and criteria. Where the number-based interpersonal communications service is not provided over a connection which is managed to give a specified quality of service, the service provider might not be able to ensure that emergency ~~calls~~ **communications** made through their service are routed to the most appropriate PSAP with the same reliability. For such network-independent undertakings, namely undertakings which are not integrated with a public communications network provider, providing caller location information may not always be technically feasible. Member States should ensure that standards ensuring accurate and reliable routing and connection to the emergency services are implemented as soon as possible in order to allow network-independent providers of number-based interpersonal communications services to fulfil the obligations related to access to emergency services and caller location information provision at a level comparable to that required of other providers of such communications services.

[66] Regulation 2015/758/EU of the European Parliament and of the Council concerning type-approval requirements for the eCall in-vehicle system based on the 112 service and amending Directive 2007/46/EC(OJ L 123, 19.5.2015, p. 77)

~~It is important that users should be able to call the single European emergency number '112', and any other national emergency telephone numbers, free of charge, from any telephone, including public pay telephones, without the use of any means of payment. Member States should have already made the necessary organisational arrangements best suited to the national organisation of the emergency systems, in order to ensure that calls to this number are adequately answered and handled. Caller location information, to be made available to the emergency services, will improve the level of protection and the security of users of '112' services and assist the emergency services, to the extent technically feasible, in the discharge of their duties, provided that the transfer of calls and associated data to the emergency services concerned is guaranteed. The reception and use of such information should comply with relevant Community law on the processing of personal data. Steady information technology improvements will progressively support the simultaneous handling of several languages over the networks at a reasonable cost. This in turn will ensure additional safety for European citizens using the '112' emergency call number~~

~~Easy access to international telephone services is vital for European citizens and European businesses. '00' has already been established as the standard international telephone access code for the Community. Special arrangements for making calls between adjacent locations across borders between Member States may be established or continued. The ITU has assigned, in accordance with ITU Recommendation E.164, code '3883' to the European Telephony Numbering Space (ETNS). In order to ensure connection of calls to the ETNS, undertakings operating public telephone networks should ensure that calls using '3883' are directly or indirectly interconnected to ETNS serving networks specified in the relevant European Telecommunications Standards Institute (ETSI) standards. Such interconnection arrangements should be governed by the provisions of 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)[67].~~

~~[67] See page 7 of this Official Journal.~~

(257) Member States should take specific measures to ensure that emergency services, including '112', are equally accessible to disabled end-users, in particular deaf, hearing-impaired, speech-impaired and deaf-blind users. This could involve the provision of special terminal devices for hearing-impaired users, text relay services, or other specific equipment.

(258) ~~End-users should be able to call and access the emergency services using any telephone service capable of originating voice calls through a number or numbers in national telephone numbering plans. Member States that use national emergency numbers besides '112' may impose on undertakings similar obligations for access to such national emergency numbers. Emergency authorities should be able to handle and answer calls to the number '112' at least as expeditiously and effectively as calls to national emergency numbers.~~ It is important to increase awareness of '112' in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware, when travelling in any Member State, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, ~~payphone kiosks, subscriber~~ ⇨ end-user ⇦ and billing material, that '112' can be used as a single emergency number throughout the ~~Community~~ ⌦ Union ⌫ . This is primarily the responsibility of the Member States, but the Commission should continue both to support and to supplement initiatives of the Member States to heighten awareness of '112' and periodically to evaluate the public's awareness of it. ~~The obligation to provide caller location information should be strengthened so as to increase the protection of citizens. In particular, undertakings should make caller location information available to emergency services as soon as the call reaches that service independently of the technology used. In order to respond to technological developments, including those leading to increasingly accurate caller location information, the Commission should be empowered to adopt technical implementing measures to ensure effective access to '112' services in the Community for the benefit of citizens. Such measures should be without prejudice to the organisation of emergency services of Member States.~~

(259) Caller location information improves the level of protection and the security of end-users and assists the emergency services in the discharge of their duties, provided that the transfer of emergency communication and associated data to the emergency services concerned is guaranteed by the national system of PSAPs. The reception and use of caller location information should comply with relevant Union law on the processing of personal data. Undertakings that provide network-based location should make caller location information available to emergency services as soon as the call reaches that service, independently of the technology used. However handset-based location technologies have proven to be significantly more accurate and cost effective due to the availability of data provided by the EGNOS and Galileo Satellite system and other Global Navigation Satellite Systems and Wi-Fi data. Therefore handset-derived caller location information should complement network-based location information even if the handset-derived location may become available only after the emergency communication is set up. Member States should ensure that the PSAPs are able to retrieve and manage the caller location information available. The establishment and transmission of caller location information should be free of charge for both the end-user and the authority handling the emergency communication irrespective of the means of establishment, for example through the handset or the network, or the means of transmission, for example through voice channel, SMS or Internet Protocol-based.

(260) In order to respond to technological developments concerning accurate caller location information, equivalent access for disabled end-users and call routing to the most appropriate PSAP, the Commission should be empowered to adopt measures necessary to ensure the compatibility, interoperability, quality and continuity of emergency communications in the Union. Those measures may consist of functional provisions determining the role of various parties within the communications chain, for example interpersonal communications service providers, electronic communications network operators and PSAPs, as well as technical provisions determining the technical means to fulfil the functional provisions. Such measures should be without prejudice to the organisation of emergency services of Member States.

(261) In order to ensure that disabled end-users benefit from competition and the choice of service providers enjoyed by the majority of end-users, ~~relevant national~~ **competent** authorities should specify, where appropriate and in light of national conditions, consumer protection requirements ⇨ for disabled end-users ⇦ to be met by undertakings providing publicly available electronic communications services. Such requirements ~~may~~ ⌦ can ⌫ include, in particular, that undertakings ensure that disabled end-users take advantage of their services on equivalent terms and conditions, including prices, ~~and~~ tariffs ⇨ and quality ⇦ , as those offered to their other end-users, irrespective of any additional costs incurred by ~~them~~ ⌦ these undertakings ⌫ . Other requirements ~~may~~ ⌦ can ⌫ relate to wholesale arrangements between undertakings. ⇨ In order to avoid creating an excessive burden on service providers ~~national regulatory~~ **competent** authorities should verify, whether the objectives of equivalent access and choice can actually be achieved without such measures. ⇦

(262) In addition to the affordability measures for disabled users set out in this Directive, Directive xxx/YYYY/EU of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services sets out several compulsory requirements for the harmonisation of a number of accessibility features for disabled users of electronic communications services and related consumer terminal equipment. Therefore the corresponding obligation in this Directive that required Member States to encourage the availability of terminal equipment for disabled users has become obsolete and should be repealed.

(263) ⌦ Effective competition has developed in the ⌫ ~~The~~ provision of directory enquiry services and directories ⌦ pursuant inter alia to Article 5 of Commission Directive 2002/77/EC[68] ⌫. ~~is already open to competition. The provisions of this Directive complement the provisions of Directive 97/66/EC by giving subscribers a right to have their personal data included in a printed or electronic directory~~ ⌦ In order to maintain this effective competition, ⌫ a~~A~~ll service providers which assign telephone numbers to their ~~subscribers are~~ ⌦ end-users should continue to be ⌫ obliged to make relevant information available in a fair, cost-oriented and non-discriminatory manner.

(264) End-users should be informed about their right to determine whether or not they want to be included in a directory. Providers of number-based interpersonal communications services should respect the end-users' decision when making data available to directory service providers. Article 12 of Directive 2002/58/EC ensures the end-users' right to privacy with regard to the inclusion of their personal information in a public directory.

(265) End-users should be able to enjoy a guarantee of interoperability in respect of all equipment sold in the ~~Community~~ ⌦ Union ⌫ for the reception of digital television. Member States should be able to require minimum harmonised standards in respect of such equipment. Such standards could be adapted from time to time in the light of technological and market developments.

[68] Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L 249, 17.9.2002, p. 21).

(266) It is desirable to enable consumers to achieve the fullest connectivity possible to digital television sets. Interoperability is an evolving concept in dynamic markets. Standards bodies should do their utmost to ensure that appropriate standards evolve along with the technologies concerned. It is likewise important to ensure that connectors are available on ⇨ digital ⇦ television sets that are capable of passing all the necessary elements of a digital signal, including the audio and video streams, conditional access information, service information, application program interface (API) information and copy protection information. This Directive ⌦ should ⌫ therefore ensure~~s~~ that the functionality ⇨ associated to and/or implemented in connectors ⇦ ~~of the open interface for digital television sets is~~ is not limited by network operators, service providers or equipment manufacturers and continue~~s~~ to evolve in line with technological developments. For display and presentation of ~~digital interactive~~ ⇨ connected ⇦ television services, the realisation of a common standard through a market-driven mechanism is recognised as a consumer benefit. Member States and the Commission may take policy initiatives, consistent with the Treaty, to encourage this development.

(267) ~~Directory enquiry services should be, and frequently are, provided under competitive market conditions, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services[69].~~ Wholesale measures ensuring the inclusion of end-user data (both fixed and mobile) in databases should comply with the safeguards for the protection of personal data ⌦ under Directive 95/46/EC which will be replaced by Regulation (EU) 2016/697[70] on 25 May 2018, and ⌫ including Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications). The cost-oriented supply of that data to service providers, with the possibility for Member States to establish a centralised mechanism for providing comprehensive aggregated information to directory providers, and the provision of network access under reasonable and transparent conditions, should be put in place in order to ensure that end-users benefit fully from competition, ~~with the ultimate aim of~~ ⌦ which has largely allowed ⌫ enabling the removal of retail regulation from these services and the provision of offers of directory services under reasonable and transparent conditions.

(268) Following the abolition of the universal service obligation for directory services and given the existence of a functioning market for such services, the right to access directory enquiry services is not necessary any more. However, the national regulatory authorities should still be able to impose obligations and conditions on undertakings that control access to end-users in order to maintain access and competition in that market.

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69 ~~OJ L 249, 17.9.2002, p. 21.~~

70 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

~~*(269)* Currently, Member States impose certain 'must carry' obligations on networks for the distribution of radio or television broadcasts to the public.~~ Member States should be able to lay down proportionate **'must carry'** obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with ~~Community~~ ⊠ Union ⊠ law and should be proportionate ⊠ and ⊠ ~~,~~ transparent ~~and subject to periodical review~~. 'Must carry' ⊠ obligations may be applied to specified radio and television broadcast channels and complementary services supplied by a specified media service provider. ⊠ ~~e~~Obligations imposed by Member States should be reasonable, that is they should be proportionate and transparent in the light of clearly defined general interest objectives. ⇨ Member States should provide an objective justification for the 'must carry' obligations that they impose in their national law so as to ensure that such obligations are transparent, proportionate and clearly defined. The obligations should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. Obligations should be subject to periodic review at least every five years in order to keep them up-to-date with technological and market evolution and in order to ensure that they continue to be proportionate to the objectives to be achieved. ⇦ ~~and~~ ⊠ Obligations ⊠ could, where appropriate, entail a provision for proportionate remuneration. **In the absence of a national provision on remuneration, providers of radio or television broadcast channels and providers of electronic communications networks used for the transmission of those radio or television broadcast channels should be able to agree contractually on a proportionate remuneration.** ~~Such 'must carry' obligations may include the transmission of services specifically designed to enable appropriate access by disabled users.~~

(270) Networks used for the distribution of radio or television broadcasts to the public include cable, ⊠ IPTV, ⊠ satellite and terrestrial broadcasting networks. They might also include other networks to the extent that a significant number of end-users use such networks as their principal means to receive radio and television broadcasts. ⇨ Must carry obligations can include the transmission of services specifically designed to enable appropriate access by disabled users. Accordingly complementary services include, amongst others, services designed to improve accessibility for end-users with disabilities, such as videotext, subtitling, audio description and sign language. Because of the growing provision and reception of connected TV services and the continued importance of electronic programme

guides for user choice the transmission of programme-related data supporting those functionalities can be included in must carry obligations. ⇦

(271) ~~Tone dialling and~~ ~~e~~Calling line identification facilities are normally available on modern telephone exchanges and can therefore increasingly be provided at little or no expense. ~~Tone dialling is increasingly being used for user interaction with special services and facilities, including value added services, and the absence of this facility can prevent the user from making use of these services.~~ Member States are not required to impose obligations to provide these facilities when they are already available. Directive ~~97/66/EC~~ 2002/58/EC safeguards the privacy of users with regard to itemised billing, by giving them the means to protect their right to privacy when calling line identification is implemented. The development of these services on a pan-European basis would benefit consumers and is encouraged by this Directive.

(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.

(278a) Future technological and market developments, in particular ~~an increased~~ changes in the relative use of different electronic ~~number-independent~~ communications services, might jeopardise the achievement of the objectives of this Directive. BEREC should therefore monitor those developments and regularly publish an opinion ~~report~~ including an assessment of ~~whether or not~~ the impact of such developments on the application in practice of the provisions of this ~~directive~~ Directive relating to end users. ~~should be amended in order to ensure that the objectives set out in this Directive continue to be met.~~ The Commission, taking utmost account of BEREC's opinion should publish a report and ~~that report, should~~ submit a legislative proposal to amend Title III where it considers that this would be necessary in order to ensure that the objectives of this Directive continue to be met.

↓ 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 loop~~[71].

↓ 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 services~~[72].

↓ 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~~

[71] ~~OJ L 336, 30.12.2000, p. 4.~~

[72] ~~OJ L 117, 7.5.1997, p. 15.~~

~~development of the internal market for electronic communications networks and services, and to 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 signals[73] 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 Europe[74].~~

↓ 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 Commission[75].~~

~~73 OJ L 281, 23.11.1995, p. 51.~~
~~74 OJ L 196, 5.8.1993, p. 48.~~
~~75 OJ L 184, 17.7.1999, p. 23.~~

~~↓ 2002/19/EC recital 28 (adapted)~~

~~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,~~

~~↓ 2002/22/EC recital 7 (adapted)~~

~~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.~~

~~↓ 2002/22/EC recital 45 (adapted)~~

~~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.~~

↓ 2002/22/EC recital 46 (adapted)

~~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.~~

↓ 2002/22/EC recital 52 (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 Commission[76],~~

⇩ new

(282) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[77], 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,

[76] ~~OJ L 184, 17.7.1999, p. 23.~~

[77] OJ C 369, 17.12.2011, p. 14.

↓ 2009/140/EC (adapted)

HAVE ADOPTED THIS DIRECTIVE:

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

TITLE ~~I~~II: SCOPE, AIM & OBJECTIVES, DEFINITIONS

CHAPTER I

⌦ SUBJECT MATTER ⌫ ~~SCOPE~~, AIM AND DEFINITIONS

Article 1

~~Scope~~ ⌦ Subject matter ⌫ and aim

↓ 2009/140/EC Art. 1.1(a) (adapted)
⇨ new

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~~2. 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), t~~This 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.~~

↓ 2002/21/EC (adapted)

~~2~~3. 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~~.

↓ 544/2009 Art. 2 (adapted)

~~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 ⌫.

↓ 2009/136/EC (adapted)

~~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:

(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;

(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.

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

(~~c~~4)‘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 a**n** ~~minor~~ ancillary feature that is intrinsically linked to another service;

(6) ‘number-based interpersonal communications service’ means an interpersonal communications service which **uses** ~~**or**~~ **and** 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**~~ **and** 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;

(~~d~~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;

(~~da~~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.

(~~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;

(~~ea~~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;

(~~f~~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;~~

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

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

(~~i~~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)~~[78]~~;~~

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

(~~o~~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;

[78] ~~OJ L 201, 31.7.2002, p. 37.~~

(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;

(~~q~~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;

(~~r~~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;~~,~~

(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).

(~~a~~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;

(~~b~~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.

~~(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;~~

(~~e~~32) ~~‘publicly available telephone service~~ ⇨ voice communications’ ⇦ means a 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;

(~~d~~33) ‘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);

(~~f~~34) ‘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;~~:~~

(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.

↓ 2002/21/EC (adapted)
⇨ new

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 ⇦ .

↓ 2009/140/EC Art. 1.8(a)

~~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.~~

⇩ new

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

(a) promote access to, and take-up of, very high capacity data connectivity, ~~both~~ **including** fixed**,** ~~and~~ mobile **and 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.

🡻 2002/21/EC

~~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;

↓ 2009/140/EC Art. 1.8(h) (adapted)
⇨ new

3~~5~~. The national regulatory ⇨ and other competent ⇦ authorities shall, in pursuit of the policy objectives referred to in paragraph~~s~~ 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~~

⇩ new

(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;

↓ 2009/140/EC Art. 1.8(h) (adapted)
⇨ new

(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.

↓ 2009/140/EC Art. 1.9 (adapted)
⇨ new

Article ~~8a~~4

Strategic planning and coordination of radio spectrum policy

1. Member States shall cooperate with each other and with the Commission**, including through the Radio Spectrum Policy Group, established by Commission Decision 2002/622/EC** in the strategic planning, coordination and harmonisation of the use of radio spectrum in the ~~European Community~~ ⌦ Union ⌫ **in line with EU policies for the establishment and functioning of the internal market in electronic communications**. To this end, they shall take into consideration, inter alia, the economic, safety, health, public interest, ~~⇨ public security and defence ⇦~~ **,** freedom of expression, cultural, scientific, social and technical aspects of EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.

2. By cooperating with each other and with the Commission, Member States shall promote the coordination of radio spectrum policy approaches in the European ~~Community~~ ⌦ Union ⌫ and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in electronic communications.

3. Member States shall cooperate through the Radio Spectrum Policy Group, established by Commission Decision 2002/622/EC, with each other and with the Commission, and upon their request with the European Parliament and the Council~~, in support of the strategic planning and coordination of radio spectrum policy approaches in the Union.~~ **In the context of this legislation ~~the~~ The tasks of the RSPG shall include:**

a) developing and disseminating among its members best practices on spectrum related matters, including on the strategic planning and coordination of radio spectrum policy approaches between Member States and in the Union ~~as well as any other matter which affects the use of radio spectrum in Member States in relation not only to the internal market but also to public order, public security, civil protection and defence policies as the use of radio spectrum for such policies may influence the organisation of radio spectrum as a whole;~~

b) on request, providing assistance to its members on spectrum related matters

c) on request from the Commission, the European Parliament or the Council, or on its own initiative, publishing reports or opinions on spectrum related matters.

~~The RSPG shall be composed of one high level representative per Member State as well as of a high-level representative from the Commission.~~

~~3~~4. The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group ~~(RSPG), established by Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group[79]~~, may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy programmes. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of this Directive ~~and the Specific Directives~~.

~~4. Where necessary to ensure the effective coordination of the interests of the European Community in international organisations competent in radio spectrum matters, the Commission, taking utmost account of the opinion of the RSPG, may propose common policy objectives to the European Parliament and the Council.~~

~~79 OJ L 198, 27.7.2002, p. 49.~~

↓ 2002/21/EC (adapted)
⇨ new

⌦ TITLE II: INSTITUTIONAL SET-UP AND GOVERNANCE ⌫

CHAPTER ~~II~~ I

NATIONAL REGULATORY ⌦ AND OTHER COMPETENT ⌫ AUTHORITIES

Article ~~3~~5

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~~ **authorities** shall be responsible at least for ~~the following tasks:~~

~~—~~ ~~implementing~~ *ex ante* market regulation, including the imposition of access and interconnection obligations, **and the tasks and competences allocated to national regulatory authorities in Articles 26, 27, 59(1), 59(2), 60-78 and other Union legislation;, 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

~~4~~3. 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.

~~6~~4. 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 ⌫ ~~N~~national regulatory ⌦ and other competent ⌫ authorities

~~2~~1. Member States shall guarantee the independence of national regulatory authorities ⇨ and of other competent authorities ⇦ by ensuring that they are legally distinct from and functionally independent of 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

~~3~~2. 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~~.

↓ 2009/140/EC Art. 1.3(b) (adapted)
⇨ new

2~~3a~~. 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 ⌫

~~3a~~1. 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 the~~se~~ 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 ~~4~~31 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)[80].

[80] 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.

~~3c~~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.~~

↓ 2002/20/EC (adapted)
⇨ new

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 ~~5~~46 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 ⇦~~ **to the national regulatory authority** 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.

In order to minimise duplication of notification requirements, BEREC shall publish guidelines for the notification template and maintain an EU database of the notifications transmitted to the national regulatory authorities. To that end the national regulatory authorities shall forward without undue delay to BEREC by electronic means each notification duly 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

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↓ 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 **ensure its effective and efficient use and** be in accordance with Articles ~~9~~45~~,~~ 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)

2. Specific obligations which may be imposed on providers of electronic communications networks and services under Articles ~~13, 36,~~ ~~5~~46(1), ~~5~~ 48(2)~~,~~ **59(1), 59(2), 59(4), 60 ~~and~~ 66 and 73~~6~~** ~~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 ~~3~~12(**3**~~2~~) 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 ~~3~~12(**3**~~2~~).

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)~~[81]. ⌦ Article 81 or 82. ⌫

[81] ~~See page 51 of this Official Journal.~~

↓ 2002/20/EC
⇨ new

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.

↓ 2002/21/EC (adapted)
⇨ new

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).

SECTION 3 AMENDMENT AND WITHDRAWAL

↓ 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.

⇩ new

Any amendment shall be published stating the reasons thereof.

🡻 2009/140/EC Art. 3.8 (adapted)
⇨ new

Article 19

⌦ Restriction or withdrawal of rights ⌫

~~2~~1. **Without prejudice to Article 30 paragraph 5,** Member States shall not restrict or withdraw rights to install facilities or rights of use for radio ~~frequencies~~ ⌦ spectrum ⌫ ⇨ or numbers ⇦ before expiry of the period for which they were granted except where justified ~~⌦ pursuant to paragraph 2 ⌫~~ and where applicable in conformity with the Annex ⌦ I ⌫ and relevant national provisions regarding compensation for withdrawal of rights.

⇩ new

2. In line with the need to ensure the effective and efficient use of radio spectrum or the implementation of harmonised conditions adopted under Decision No 676/2002/EC, Member States may allow withdrawal of rights **of use for radio spectrum**, including those **rights granted pursuant to Article 49** ~~with a 25 year minimum duration~~, based on **pre-established** procedures ~~laid down in advance~~, in compliance with the principles of proportionality and non-discrimination.

3. A modification in the use of radio spectrum as a result of the application of paragraphs 4 or 5 of Article 45 shall not justify by itself the withdrawal of a right to use radio spectrum.

~~4. Any intention to restrict or withdraw authorisations or individual rights of use for radio spectrum or numbers shall be subject to a public consultation in accordance with Article 23.~~

🡻 2002/21/EC Art. 5 (adapted)

CHAPTER III

PROVISION OF INFORMATION, SURVEYS AND CONSULTATION MECHANISM

Article ~~5~~20

~~Provision of information~~ ⌦ Information request to undertakings ⌫

🡻 2009/140/EC Art. 1.5 (adapted)
⇨ new

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]~~ **competent 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~~ **knowingly** 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 **any other competent** ~~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~~ Directive.**

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 condition~~s~~ 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~~ AnnexI 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)~~;

🡻 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

~~2~~3. 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.

⇩ new

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)][82] **where BEREC has made the information received available to those authorities**.

Article 22

Geographical surveys of network deployments

1. ~~National regulatory authorities~~ **Competent authorities** shall conduct a geographical survey of the reach of electronic communications networks capable of delivering broadband ("broadband networks") within three years from [deadline for transposition of the Directive] and shall update it at least every three years .

This geographical survey shall ~~consist of:~~

~~a)~~ **include** a survey of the current geographic reach of broadband networks within their territory, in particular for conducting the tasks required by Articles 62 and 65 and by Article 81, as well as for imposing obligations in accordance with Article 66 and for the surveys required for the application of State aid rules; and

~~b)~~ **This geographical survey may also include** a ~~three-year~~ forecast **of up to three years** of the reach of broadband networks within their territory, relying **in particular** on the information gathered in accordance with point (a)~~,~~ where this is ~~available and~~ relevant.

This forecast shall reflect the economic prospects of the electronic communications networks sector and investment intentions of operators at the time when the data is gathered, in order to allow the identification of available connectivity in different areas. This forecast shall include information on planned deployments by any undertaking or public authority, in particular to include very high capacity networks and significant upgrades or extensions of legacy broadband networks to at least the performance of next-generation access networks. For this purpose, ~~national regulatory authorities~~ **competent authorities** shall request undertakings to provide relevant information regarding planned deployments of such networks **to the extent that it is available and can be provided with reasonable effort. The national regulatory authority ~~may~~ shall decide to what extent it would be appropriate to rely on all or part of the information gathered in the context of such forecast for conducting the tasks required by Articles 62 and 65 and by Article 81, as well as for imposing obligations in accordance with Article 66.**.

[82] 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 information collected in the **geographical** survey shall be at an appropriate level of local detail and shall include sufficient information on the quality of service and parameters thereof.

Competent authorities shall ensure that confidential information gathered in the context of a geographical survey are treated in accordance with Article 20.

2. ~~National regulatory authorities~~ **Competent authorities** may designate a "digital exclusion area" corresponding to an area with clear territorial boundaries where, on the basis of the information gathered **and forecast prepared** pursuant to paragraph 1, it is determined that for the duration of the relevant forecast period **defined by the competent authority**, no undertaking or public authority has deployed or is planning to deploy a very high capacity network or has significantly upgraded or extended its network to a performance of at least 100 Mbps download speeds, or is planning to do so. ~~National regulatory authorities~~ **Competent authorities** shall publish the designated digital exclusion areas.

3. Within a designated digital exclusion area, ~~national regulatory authorities~~ **competent authorities** may **invite** ~~issue a call open to any~~ undertaking**s** to declare their intention to deploy very high capacity networks over the duration of the relevant forecast period. **In cases where this invitation results in a declaration by an undertaking to invest within the digital exclusion area, the competent authority may require other undertakings to declare any intention to deploy very high capacity networks in this area.** The ~~national regulatory authority~~ **competent authority** shall specify the information to be included in such submissions, in order to ensure at least a similar level of detail as that taken into consideration in the forecast envisaged in paragraph 1~~(b)~~. It shall also inform any undertaking expressing its interest whether the designated digital exclusion area is covered or likely to be covered by an NGA network offering download speeds below 100 Mbps on the basis of the information gathered pursuant to paragraph 1(b).

4. When ~~national regulatory authorities~~ **competent authorities** take measures pursuant to paragraph 3, they shall do so according to an efficient, objective, transparent and non-discriminatory procedure, whereby no undertaking is a priori excluded. ~~Failure to provide information pursuant to paragraph 1(b) or to respond to the call for interest pursuant to paragraph 3 may be considered as misleading information pursuant to Articles 20 or 21.~~ **~~on an operator deploying very high capacity networks in a designated digital exclusion area, c~~C**ompetent authorities shall have regard to any negative impact that is suffered by the first network to deploy in the area**, ~~in particular~~** including where it has benefitted from the allocation of public funds, when imposing penalties**, fines and periodic penalties** pursuant to Article 29 **paragraph 3 for the provision of misleading, erroneous or incomplete information in the context of the procedure referred to paragraph 3 on any other operator which has subsequently deployed a very high capacity network in the same area, or a network offering a performance of at least 100 Mbps download speeds, in contradiction with its previously stated intentions, and cannot**

provide an objective justification for a change in its plans that occurred after the procedure referred to in paragraph 3.

5. Member States shall ensure that **national regulatory authorities,** local, regional and national authorities with responsibility for the allocation of public funds for the deployment of electronic communications networks, for the design of national broadband plans, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligation in their territory take into account the results of the **geographical** surveys and ~~of~~ the designated digital exclusion areas ~~conducted in accordance with~~ **pursuant to** paragraphs 1, 2 and 3, and that ~~national regulatory authorities~~ **competent authorities** supply such results subject to the receiving authority ensuring the same level of confidentiality and protection of business secrets as the originating authority. These results shall also be made available to BEREC and the Commission upon their request and under the same conditions.

6. ~~National regulatory authorities~~ **Competent authorities** may make available information tools to end-users, in order to assist them to determine the availability of connectivity in different areas, with a level of detail which is useful to support their choice in terms of connectivity services, in line with ~~national regulatory authority´s~~ **competent authorities'** obligations regarding the protection of confidential information and business secrets.

7. By [date] in order to contribute to the consistent application of geographical surveys and forecasts, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, issue guidelines to assist ~~national regulatory authorities~~ **competent authorities** on the consistent implementation of their obligations under this Article.

↓ 2009/140/EC Art. 1.6 (adapted)
⇨ new

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 ⇦. **The competent authorities shall inform RSPG at the moment of publication about any such draft measures which fall within the scope of the comparative or competitive selection procedure pursuant to Article 54 paragraph 2 and relate to the use of spectrum for which the harmonised technical conditions have been set in order to enable the use for wireless broadband. In doing so, the competent authorities shall submit to the RSPG the appropriate information on the elements (a) to (g) of Article 35 paragraph 1.**

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.

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~~ **competent** 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~~ **competent** 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.

↓ 2009/136/EC Art. 1.23(b) (adapted)

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).

↓ 2002/22/EC

Article ~~34~~25

Out-of-court dispute resolution

↓ 2009/136/EC Art. 1.24 (adapted)
⇨ new

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. ⌫ ~~s~~Such procedures ⌦ shall comply with the quality requirements set out in Cehapter 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

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.

↓ 2002/21/EC (adapted)

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 3~~8~~. 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 3~~8~~. 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.

↓ 2009/140/EC Art. 1.23 (adapted)
⇨ new

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. **Where such a notification has been made,** 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 ⌦ 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~~ 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.~~

↓ 2009/140/EC Art. 1.23

~~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.~~

~~4~~6. The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.

⇩ new

Article 28

Radio Spectrum Coordination among Member States

1. Member States ~~and their competent authorities~~ shall ensure that the use of radio spectrum is organised on their territory in a way that no other Member State is impeded, in particular due to cross-border harmful interference between Member States, from allowing on its territory the use of harmonised radio spectrum in accordance with Union legislation.

They shall take all necessary measures to this effect without prejudice to their obligations under international law and relevant international agreements such as the ITU Radio Regulations **and the ITU Radio Regional Agreements**.

2. Member States shall cooperate with each other~~,~~ **and** through the Radio Spectrum Policy Group **where appropriate**, in the cross-border coordination of the use of radio spectrum in order to:

(a) ensure compliance with paragraph 1;

(b) solve any problem or dispute in relation to cross-border coordination or cross-border harmful interference.

3. **In order to ensure compliance with paragraph 1, any** ~~Any~~ Member State concerned ~~as well as the Commission~~ may request the Radio Spectrum Policy Group to use its good offices **to address any problem or dispute in relation to cross-border coordination or cross border harmful**

interference. Where appropriate, the RSPG may ~~and, where appropriate, to~~ propose ~~a coordinated solution~~ in an opinion **a coordinated solution regarding any such problem or dispute**~~, in order to assist Member States in complying with paragraphs 1 and 2~~.

4. **Where no solution has been reached following the ~~mechanisms~~ procedures set out in paragraphs 2 and 3 and at** ~~At~~ the request of a Member State ~~**concerned**~~ **affected** ~~or upon its own initiative,~~ the Commission may, taking utmost account of ~~the~~ **any** opinion of the Radio Spectrum Policy Group **recommending a coordinated solution pursuant to paragraph 3**, adopt ~~implementing measures~~ **decisions** to resolve cross-border harmful interferences between two or several Member States which prevent them from using the harmonised radio spectrum in their territory. Those ~~implementing acts~~ **decisions** shall be adopted in accordance with the examination procedure referred to in Article 110(4) **and shall be addressed to those Member States concerned by the unresolved harmful interference**.

5. The Union shall, upon request of an affected Member State, provide legal, political and technical support to resolve spectrum coordination issues with countries neighbouring the Union, including candidate and acceding countries, in such a way that the Member States concerned can observe their obligations under Union law.

TITLE III: IMPLEMENTATION

↓ 2009/140/EC Art. 1.24 (adapted)
⇨ new

Article ~~21a~~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.

↓ 2002/20/EC Art.10

Article ~~10~~30

Compliance with the conditions of the general authorisation or of rights of use for radio spectrum and for numbers and compliance with specific obligations

↓ 2009/140/EC Art. 3.6(a) (adapted)
⇨ new

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 ~~6~~13(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 c~~**C**ompetent ⇦ 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 **for radio spectrum and for numbers** or with the specific obligations referred to in Article ~~6~~13(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 **for radio spectrum and for numbers**, or with the specific obligations referred to in Article ~~6~~13(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~~ **competent** 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~~ **competent** 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

4. Notwithstanding ~~the provisions of~~ paragraphs 2 and 3, Member States shall empower the ~~relevant~~ **competent** 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 **for radio spectrum and for numbers**, 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~~ **competent** 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~~ **competent** authority has evidence of a breach of the conditions of the general authorisation ⌦ or of the ⌫ rights of use **for radio spectrum and for numbers** 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~~ **competent** 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 ~~4~~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.

TITLE IV: INTERNAL MARKET PROCEDURES

Article ~~7~~32

Consolidating the internal market for electronic communications

1. In carrying out their tasks under this Directive ~~and the Specific Directives~~, national regulatory authorities shall take the utmost account of the objectives set out in Article ~~8~~ 3, including in so far as they relate to the functioning of the internal market.

2. National regulatory authorities shall contribute to the development of the internal market by working with each other and with the Commission and BEREC in a transparent manner so as to ensure the consistent application, in all Member States, of the provisions of this Directive ~~and the Specific Directives~~. To this end, they shall, in particular, work with the Commission and BEREC to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

3. Except where otherwise provided in recommendations or guidelines adopted pursuant to Article ~~7b~~ 34 upon completion of the consultation**, if** ~~referred to in~~ **required, under** Article ~~6~~ 23, where a national regulatory authority intends to take a measure which:

(a) falls within the scope of Articles ⌦ 59, 62, 65 or 66 ⌫ ~~15 or 16~~ of this Directive~~, or Articles 5 or 8 of Directive 2002/19/EC (Access Directive)~~; and

(b) would affect trade between Member States;

it shall make the draft measure accessible to the Commission, BEREC, and the national regulatory authorities in other Member States, at the same time, together with the reasoning on which the measure is based, in accordance with Article ~~5~~20(3), and inform the Commission, BEREC and other national regulatory authorities thereof. National regulatory authorities, BEREC and the

Commission may make comments to the national regulatory authority concerned only within one month. The one-month period may not be extended.

4. Where an intended measure covered by paragraph 3 aims at:

(a) defining a relevant market which differs from those defined in the Recommendation in accordance with Article ~~15~~ 62(1); or

(b) deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article ~~16~~65(3) or ~~(5)~~ (4);

and would affect trade between Member States, and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with ~~Community~~ ⌦ Union ⌫ law and in particular the objectives referred to in Article ~~8~~3, the draft measure shall not be adopted for a further two months. This period may not be extended. The Commission shall inform other national regulatory authorities of its reservations in such a case.

5. Within the two-month period referred to in paragraph 4, the Commission may:

(a) take a decision requiring the national regulatory authority concerned to withdraw the draft measure; and/or

(b) take a decision to lift its reservations in relation to a draft measure referred to in paragraph 4.

The Commission shall take utmost account of the opinion of BEREC before issuing a decision. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted, together with specific proposals for amending the draft measure.

6. Where the Commission has adopted a decision in accordance with paragraph 5, requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure within six months of the date of the Commission's decision. When the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article ~~6~~23, and shall re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

7. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, BEREC and the Commission and may, except in cases covered by paragraphs 4 and 5(a), adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

8. The national regulatory authority shall communicate to the Commission and BEREC all adopted final measures which fall under ~~Article 7~~ ⌦ paragraph ⌫ (3)(a) and (b) ⌦ of this Article ⌫ .

9. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, in order to safeguard competition and protect the interests of users, by way of derogation from the procedure set out in paragraphs 3 and 4, it may immediately adopt proportionate and provisional measures. It shall, without delay, communicate those measures, with full reasons, to the Commission, the other national regulatory authority, and BEREC. A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the provisions of paragraphs 3 and 4.

Article ~~7a~~33

Procedure for the consistent application of remedies

1. Where an intended measure covered by Article ~~7~~32(3) aims at imposing, amending or withdrawing an obligation on an operator in application of Article ~~16~~ 65 in conjunction with Article ~~5~~ 59 and Articles ~~9~~67 to ~~13~~ 74 ~~of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive)~~, the Commission may, within the period of one month provided for by Article ~~7~~32(3) ~~of this Directive~~, notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to its compatibility with ~~Community~~ ⌦ Union ⌫ law. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.

In the absence of such notification, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission, BEREC or any other national regulatory authority.

2. Within the three month period referred to in paragraph 1, the Commission, BEREC and the national regulatory authority concerned shall cooperate closely to identify the most appropriate and effective measure in the light of the objectives laid down in Article ~~8~~3, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

3. Within six weeks from the beginning of the three month period referred to in paragraph 1, BEREC shall, acting by a majority of its component members, issue an opinion on the Commission's notification referred to in paragraph 1, indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, provide specific proposals to that end. This opinion shall be reasoned and made public.

4. If in its opinion, BEREC shares the serious doubts of the Commission, it shall cooperate closely with the national regulatory authority concerned to identify the most appropriate and effective measure. Before the end of the three month period referred in paragraph 1, the national regulatory authority may:

(a) amend or withdraw its draft measure taking utmost account of the Commission's notification referred to in paragraph 1 and of BEREC's opinion and advice;

(b) maintain its draft measure.

5. ~~*Where BEREC does not share the serious doubts of the Commission or does not issue an opinion, or where the national regulatory authority amends or maintains its draft measure pursuant to paragraph 4,*~~ ~~t~~The Commission may, within one month following the end of the three month period referred to in paragraph 1 and taking utmost account of the opinion of BEREC if any:

(a) issue a recommendation ~~requiring~~ **inviting** the national regulatory authority concerned to amend or withdraw the draft measure, including specific proposals to that end and providing reasons justifying its recommendation, in particular where BEREC does not share the serious doubts of the Commission;

(b) take a decision to lift its reservations indicated in accordance with paragraph 1.

~~(c) take a decision requiring the national regulatory authority concerned to withdraw the draft measure, where BEREC shares the serious doubts of the Commission. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted, together with specific proposals for amending the draft measure. In this case, the procedure referred to in Article 32 (6) shall apply *mutatis mutandis*.~~

↓ 2009/140/EC Art. 1.7 (adapted)

6. Within one month of the Commission issuing the recommendation in accordance with paragraph 5(a) or lifting its reservations in accordance with paragraph 5(b) ⌦ of this Article ⌫ , the national regulatory authority concerned shall communicate to the Commission and BEREC the adopted final measure.

This period may be extended to allow the national regulatory authority to undertake a public consultation in accordance with Article ~~6~~23.

7. Where the national regulatory authority decides not to amend or withdraw the draft measure on the basis of the recommendation issued under paragraph 5(a), it shall provide a reasoned justification.

8. The national regulatory authority may withdraw the proposed draft measure at any stage of the procedure.

Article ~~7b~~34

Implementing provisions

~~1.~~ After public consultation and consultation with national regulatory authorities and taking utmost account of the opinion of BEREC, the Commission may adopt recommendations and/or guidelines in relation to Article ~~7~~32 that define the form, content and level of detail to be given in the notifications required in accordance with Article ~~7~~32(3), the circumstances in which notifications would not be required, and the calculation of the time-limits.

~~2. The measures referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 22(2).~~

⇩ new

CHAPTER II

CONSISTENT SPECTRUM ASSIGNEMENT

Article 35

Peer review process

1. **Where undertaking, or preparing to undertake, a selection procedure in accordance with Article 54 paragraph 2 for spectrum bands in order to enable use for wireless broadband for which harmonised technical conditions have been set under Decision 676/2002/EC, a competent authority may at a time of its choosing, request that the RSPG convene a Peer Review Forum to discuss and exchange views on its draft measures including the following elements:** ~~As regards the management of radio spectrum, national regulatory~~ **competent** ~~authorities shall be entrusted with the powers to at least adopt the following measures::~~

(c) in case of individual rights of use for radio spectrum, the selection process, in relation to Article 54;

(d) the criteria regarding the eligibility of the bidder, where appropriate, in relation to Article 48 (4);

(e) the parameters of spectrum economic valuation measures, such as the reserve price, in relation to Article 42;

(f) the duration of the rights of use and the conditions for renewal in line with Articles 49 and Article 50;

(g) any measures to promote competition pursuant to Article 52~~, when necessary~~;

(h) the conditions related to the assignment, transfer, including trade and lease of rights of use for radio spectrum in relation to Article 51, sharing of spectrum or wireless infrastructure in relation to Article 59 paragraph 3 or the accumulation of rights of use in relation to Article 52 paragraph 2 (c) and (e); and

(i) the parameters of coverage conditions pursuant to overall Member State policy objectives in this respect, in relation to Article 47.

~~When adopting these measures, the national regulatory~~ **competent** ~~authority shall take into account the relevant national policy objectives set out by the Member State as well as other relevant national measures in regard to the management of radio spectrum in compliance with Union law and shall base its measure on a thorough and objective assessment of the competitive, technical and economic situation of the market.~~

2. **The Peer Review Forum shall be organised and chaired by the RSPG and shall facilitate the exchange of experiences and best practices on the draft measures. The Peer Review Forum shall be open to voluntary participation from RSPG members, experts from other competent authorities and BEREC.** ~~Where **the RSPG has been informed of a draft** a national regulatory authority intends to take a **national** measure which falls within the scope of **the selection procedure in Article 54 paragraph 2** paragraph 1 (a) to (g), **for bands for which the harmonised technical conditions have been set in order to enable use for wireless broadband,** it shall make the draft measure accessible, together with the reasoning on which the measure is based, to **its members,** BEREC, **and** the Commission and national regulatory authorities in other Member States, at the same time.~~ **Where necessary, the RSPG may request the responsible competent authority provide further reasoning or background information on which the measure is based.**

3. ~~Within one month, or a longer period, if the [national regulatory authority] agrees to extend the deadline, BEREC shall issue a reasoned opinion on the draft measure, which shall analyse whether that measure would be~~ **The RSPG may invite the competent authority concerned for an exchange of views together with other members with a view to assess whether the measure is, as regards the matters referred to in paragraph 1,**~~the most appropriate in order to:~~ **The Peer Review Forum shall be presented with an explanation by the requesting competent authority of the draft measure and how it will:**

(j) promote the development of the internal market as well as competition and maximise the benefits for the consumer, and overall achieve the objectives and principles set in Articles 3 and 45~~(2)~~, **46 and 47, as well as Decisions 676/2002/EC and 243/2012/EC;**

(k) ensure effective and efficient use of radio spectrum; and

(l) ensure stable and predictable investment conditions for existing and prospective radio spectrum users when deploying networks for the provision of electronic communications services which rely on radio spectrum.

~~The reasoned opinion shall state if the draft measure should be amended or withdrawn. Where appropriate,~~ **The competent authority may request the RSPG to defer such an exchange of views until a later preparatory stage in its national assignment procedure. Following such an exchange the RSPG** ~~BEREC shall~~**, where it deems appropriate, issue a reasoned opinion on any aspect of the draft measure relating to the matters referred to in paragraph 1 which may include** ~~provide specific recommendations.~~ **Such an opinion shall be provided within one month, or up to three months if the competent authority agrees to extend the deadline.** ~~to that end. National regulatory~~ **Competent** ~~authorities and the Commission may also make comments on the draft decision to the national regulatory~~ **competent** ~~authority concerned.~~

4. **The RSPG shall publish an annual report reflecting views exchanged relating to draft measures discussed pursuant to paragraph 3 and identifying national best practices relating to the application of Article 54.**

~~When carrying out their tasks pursuant to this Article, **the RSPG,** BEREC and national regulatory **competent** authorities shall have regard in particular to:~~

~~(m) the objectives and principles provided in this Directive; as well as to any relevant Commission implementing decision adopted in accordance with this Directive as well as Decisions 676/2002/EC and 243/2012/EC;~~

~~(n) any specific national objectives established by the Member State consistent with Union law;~~

~~(o) the need to avoid that competition is distorted when adopting such measures;~~

~~(p) the results of the most recent geographical survey of networks pursuant to Article 22; **and**~~

(q) ~~the need to ensure coherence with recent and pending assignment procedures in other Member States, and possible effects on trade between Member States.; and~~

~~(r) any relevant opinion of the Radio Spectrum Policy Group.~~

5. **The RSPG may exceptionally take the initiative to convene a Peer Review Forum in order to exchange experiences and best practices on a draft measure relating to a selection procedure under paragraph 1 where it considers that this would contribute to furthering the objectives and principles set in Articles 3, 45, 46 and 47 of this Directive, as well as Decisions 676/2002/EC and 243/2012/EC. In such cases, paragraphs 2 to 4 shall apply.**

~~The national regulatory **competent** authority concerned shall take utmost account of the opinion of BEREC and of comments made by the Commission and other national regulatory authorities before adopting its final decision. It shall communicate the final decision adopted**, together with a reasoned justification,** to **the RSPG,** BEREC and the Commission.~~

~~Where the national regulatory authority decides not to amend or withdraw the draft measure on the basis of the reasoned opinion issued pursuant to paragraph 2 of this Article, it shall provide a reasoned justification.~~

~~The **[**national regulatory authority**]** concerned may withdraw its draft measure at any stage of the procedure.~~

6. When preparing their draft measure pursuant to this Article, ~~national regulatory~~ **competent** authorities may seek support from **the Commission,** BEREC **and the RSPG**.

7. **Following the Peer Review Forum, at the request of the competent authority that requested the meeting, the RSPG may adopt an opinion on the draft measure.** ~~**The RSPG,** BEREC, the Commission and the national regulatory **competent** authority concerned shall cooperate closely to identify the most appropriate and effective solution in the light of the regulatory objectives and principles laid down in this Directive whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.~~

~~8. The final decision adopted by the **[**national regulatory **competent** authority**]** shall be published.**]**~~

↓ 2002/20/EC (adapted)

Article ~~8~~ 36

Harmonised assignment of radio spectrum ~~frequencies~~

Where the usage of radio ~~frequencies~~ **spectrum** has been harmonised, access conditions and procedures have been agreed, and undertakings to which the radio ~~frequencies~~ **spectrum** shall be assigned have been selected in accordance with international agreements and ~~Community~~ ⌦ Union ⌫ rules, Member States shall grant the right of use for such radio ~~frequencies~~ **spectrum** in accordance therewith. Provided that all national conditions attached to the right to use the radio ~~frequencies~~ **spectrum** concerned have been satisfied in the case of a common selection procedure, Member States shall not impose any further conditions, additional criteria or procedures which would restrict, alter or delay the correct implementation of the common assignment of such radio ~~frequencies~~ **spectrum**.

⇩ new

Article 37

Joint authorisation process to grant individual rights of use for radio spectrum

1. Two or several Member States may cooperate with each other and with the ~~Commission,~~ **RSPG** ~~and where appropriate BEREC to meet their obligations under Articles 13, 46 and 54,~~ by jointly establishing the common aspects of an authorisation process and**, where appropriate,** also jointly conducting the selection process to grant individual rights of use for radio spectrum~~. in line, where applicable with any common timetable established in accordance with Article 53. The joint authorisation process shall meet the following criteria:~~

~~(s) the individual national authorisation processes shall be initiated and implemented by the competent authorities according to a jointly agreed schedule;~~

~~(t) it shall provide where appropriate for common conditions and procedures for the selection and granting of individual rights among the Member States concerned,;~~

~~(u) it shall provide where appropriate for common or comparable conditions to be attached to the individual rights of use among the Member States concerned, inter alia allowing users to be assigned similar radio spectrum blocks;~~

~~(v) it shall be open at any time until the authorisation process has been conducted to other Member States.~~

~~2. Where the measures taken for the purposes of paragraph (1) fall in the scope of Article 35(1), the procedure provided in that Article shall be followed by the national regulatory authorities concerned simultaneously.~~

CHAPTER III

HARMONISATION PROCEDURES

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

Article ~~19~~38

Harmonisation procedures

1. Without prejudice to Article ⌦ s ⌫ ~~9~~ ⌦ 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 ~~3~~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 ~~those~~ 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.

↓ 2009/140/EC Art. 1.19(c)

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~~:~~ ~~acting 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.

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

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 ← .

↓ 2009/140/EC Art. 1.19(e) (adapted)
⇨ new

~~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)~~.

↓ 2002/21/EC

~~7~~8. 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.

↓ 2002/21/EC (adapted)

~~*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.~~

TITLE V: SECURITY ~~AND INTEGRITY~~

Article ~~13a~~40

Security ~~and integrity~~ ⌦ of networks and services ⌫

1. Member States shall ensure that ~~undertakings providing~~ **providers of** public communications networks or publicly available electronic communications services take appropriate **and proportionate** technical and organisational measures to appropriately manage the risks posed to security of networks and services. Having regard to the state of the art, these measures shall ensure a level of security appropriate to the risk presented. In particular, measures shall be taken to prevent and minimise the impact of security incidents on users and ~~interconnected~~ ⇨ on other ⇦ networks ⇨ and services ⇦.

~~2. Member States shall ensure that undertakings providing public communications networks take all appropriate steps to guarantee the integrity of their networks, and thus ensure the continuity of supply of services provided over those networks.~~

~~3~~2. Member States shall ensure that ~~undertakings providing~~ **providers of** public communications networks or **of** publicly available electronic communications services notify ⇨ without undue delay ⇦ the competent ~~national regulatory~~ authority of a ~~breach of~~ security **incident** ~~or loss of integrity~~ that has had a significant impact on the operation of networks or services.

In order to determine the significance of the impact of a security incident, **where available** the following parameters shall, in particular, be taken into account:

(a) the number of users affected by the ~~breach~~ **incident**;

(b) the duration of the ~~breach~~ **incident**;

(c) the geographical spread of the area affected by the ~~breach~~ **incident**;

(d) the extent to which the functioning of the service is ~~disrupted~~ **affected**;

(e) the **extent of** impact on economic and societal activities.

~~The obligation to notify an incident shall only apply where to the extent that the provider of publicly available electronic communications services has access to at least part of the information needed necessary to assess the impact of an incident against by reference to the parameters referred to in the second subparagraph.~~

Where appropriate, the ~~national regulatory~~ ⇨ competent ⇦ authority concerned shall inform the ~~national regulatory~~ ⇨ competent ⇦ authorities in other Member States and the European Network and Information Security Agency (ENISA). The ~~national regulatory~~ ⇨ competent ⇦ authority concerned may inform the public or require the ~~undertakings~~ **providers** to do so, where it determines that disclosure of the ~~breach~~ **incident** is in the public interest.

Once a year, the ~~national regulatory~~ ⇨ competent ⇦ authority concerned shall submit a summary report to the Commission and ENISA on the notifications received and the action taken in accordance with this paragraph.

3a. Member States shall ensure that in case of a particular and significant threat of a security incident in public communications networks or publicly available electronic communications services, providers of such networks or services shall inform their ~~end-~~users potentially affected by such a threat of any possible protective measures or remedies which can be taken by the ~~end-~~users. Where appropriate, providers should inform their ~~end-~~users also of the threat itself.

~~4. The Commission, taking the utmost account of the opinion of ENISA, may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements. These technical implementing measures shall be based on European and international standards to the greatest extent possible, and shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraphs 1 and 2.~~

~~These implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).~~

4. This Article is without prejudice to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector.

5. The Commission, **taking utmost account of the opinion of ENISA,** ~~shall~~ **may** ~~be empowered to~~ adopt ~~delegated acts in accordance with Article 109 with a view to specifying~~ **decisions detailing** the **technical and organisational** measures referred to in paragraphs 1 ~~and 2~~, ~~including measures defining~~ **as well as** the circumstances, format and procedures applicable to notification requirements **pursuant to paragraph 2 ~~3~~**. ~~The delegated~~ **Those implementing** acts shall be **adopted in accordance with the examination procedure referred to in Article 110(4). They shall be** based on European and international standards to the greatest extent possible, and shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraphs 1 ~~and 2~~.

Article ~~13b~~41

Implementation and enforcement

1. Member States shall ensure that in order to implement Article ~~13a~~40, ⌦ the ⌫ competent ~~national regulatory~~ authorities have the power to issue binding instructions, including those regarding ⇨ the measures required to remedy a ~~breach~~ **security incident or prevent one from occurring when a significant threat has been identified** and ⇦ time-limits for implementation, to ~~undertakings providing~~ **providers of** public communications networks or publicly available electronic communications services.

2. Member States shall ensure that competent ~~national regulatory~~ authorities have the power to require ~~undertakings providing~~ **providers of** public communications networks or publicly available electronic communications services to:

(a) provide information needed to assess the security ~~and/or integrity~~ of their services and networks, including documented security policies; and

(b) submit to a security audit carried out by a qualified independent body or a competent ~~national~~ authority and make the results thereof available to the ~~national regulatory~~ ⇨ competent ⇦ authority. The cost of the audit shall be paid by the ~~undertaking~~ **provider**.

3. Member States shall ensure that ~~national regulatory~~ ⇨ the competent ⇦ authorities have all the powers necessary to investigate cases of non-compliance and the effects thereof on the security ~~and integrity~~ of the networks ⌦ and services ⌫ .

4. Member States shall ensure that, in order to implement Article 40, the competent authorities have the power to obtain the assistance of ~~**their**~~ **a** Computer Security Incident Response Teams ('CSIRTs') **designated** under Article 9 of Directive (EU) 2016/1148/EU in relation to issues falling within the tasks of the CSIRTs pursuant to Annex I, point 2 of that Directive.

5. The competent authorities shall, whenever appropriate and in accordance with national law, consult and cooperate with the relevant national law enforcement authorities, the competent authorities as defined in Article 8 (1) of Directive (EU) 2016/1148 and the national data protection authorities.

~~4. These provisions shall be without prejudice to Article 3 of this Directive.~~

~~*Article 13*~~

~~Fees for rights of use and rights to install facilities~~

~~Member States may allow the relevant authority to impose fees for the rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 8 of Directive 2002/21/EC (Framework Directive).~~

↓ 2002/20/EC (adapted)
⇨ new

⌦ PART II. NETWORKS ⌫

⌦ TITLE I: MARKET ENTRY AND DEPLOYMENT ⌫

Article ~~13~~ 42

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

1. Member States may allow the ~~relevant~~ ⌦ competent ⌫ authority to impose fees for the rights of use for radio ~~frequencies~~ ⇨ spectrum ⇦ ~~or numbers~~ or rights to install facilities on, over or under public or private property**,** ⇨ that are used for the provision of electronic communications services or networks and associated facilities ⇦ which ~~reflect the need to~~ ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article~~s~~ 3, ~~4 and 45(2).~~ ~~8 of Directive 2002/21/EC (Framework Directive).~~ ⌦ ~~, as well as:~~ ⌫

~~⇩ new~~

(w) ~~being service and technology neutral, subject only to limitations in line with Article 45(4) and (5), while promoting the effective and efficient use of spectrum and maximising social and economic utility of spectrum;~~

~~(x) taking into account the need to foster the development of innovative services; and~~

~~(y) taking into account possible alternative uses of the resources.~~

2. Member States shall **seek to** ensure that **fees for rights of use for radio spectrum, including** reserve prices**,** ~~established as minimum fees for rights of use for radio spectrum~~ **are set at a level that ensures the efficient assignment of rights of use for spectrum.** ~~reflect the additional costs entailed by conditions attached to these rights in pursuit of the objectives under Articles 3, 4 and 45(2), such as coverage obligations that would fall outside normal commercial standards, in accordance with paragraph 1.~~

~~3. Member States shall apply payment modalities linked to the actual availability of the radio spectrum in question, which do not unduly burden any additional investments in networks and associated facilities necessary for the efficient use of the radio spectrum and the provision of related services.~~

~~4. Member States shall ensure that where competent authorities impose fees, they take into account other fees or administrative charges linked to the general authorisation or rights of use established pursuant to this Directive, in order not to create undue financial burden to undertakings providing electronic communications networks and services and to incentivise optimal use of the allocated resources.~~

~~5. The imposition of fees pursuant to this Article shall comply with the requirements of Article 23 and, where applicable, Articles 35, 48(6) and 54.~~

CHAPTER I

⌦ ACCESS TO LAND ⌫

Article ~~11~~43

Rights of way

1. Member States shall ensure that when a competent authority considers:

– an application for the granting of rights to install facilities on, over or under public or private property to an undertaking authorised to provide public communications networks, or

– an application for the granting of rights to install facilities on, over or under public property to an undertaking authorised to provide electronic communications networks other than to the public,

the competent authority:

– acts on the basis of simple, efficient, transparent and publicly available procedures, applied without discrimination and without delay, and in any event makes its decision within six months of the application, except in cases of expropriation, and

– follows the principles of transparency and non-discrimination in attaching conditions to any such rights.

The abovementioned procedures can differ depending on whether the applicant is providing public communications networks or not.

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

~~3. Member States shall ensure that effective mechanisms exist to allow undertakings to appeal against decisions on the granting of rights to install facilities to a body that is independent of the parties involved.~~

~~*Article 12*~~

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

~~1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall, taking full account of the principle of proportionality, be able to impose the sharing of such facilities or property, including buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets.~~

~~2. Member States may require holders of the rights referred to in paragraph 1 to share facilities or property (including physical co-location) or take measures to facilitate the coordination of public works in order to protect the environment, public health, public security or to meet town and country planning objectives and only after an appropriate period of public consultation, during which all interested parties shall be given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.~~

~~3. Member States shall ensure that national authorities, after an appropriate period of public consultation during which all interested parties are given the opportunity to state their views, also have the power to impose obligations in relation to the sharing of wiring inside buildings or up to the first concentration or distribution point where this is located outside the building, on the holders of the rights referred to in paragraph 1 and/or on the owner of such wiring, where this is justified on the grounds that duplication of such infrastructure would be economically inefficient or physically impracticable. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing adjusted for risk where appropriate.~~

~~4. Member States shall ensure that competent national authorities may require undertakings to provide the necessary information, if requested by the competent authorities, in order for these authorities, in conjunction with national regulatory authorities, to be able to establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in paragraph 1 and make it available to interested parties.~~

⇩ new

Article 44

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

1. Where an operator has **been granted rights of way pursuant to Article 43** ~~exercised the right under national legislation to install facilities on, over or under public or private property,~~ or has taken advantage of a procedure for the expropriation or use of property, competent authorities **may** ~~shall, be able to~~ impose co-location and sharing of the network elements and associated facilities installed **on this basis**, in order to protect the environment, public health, public security or to meet town and country planning objectives. Co-location or sharing of networks elements and facilities installed and sharing of property may only be imposed after an appropriate period of public consultation, during which all interested parties shall be given an opportunity to express their views and only in the specific areas where such sharing is deemed necessary in view of pursuing the objectives provided in this Article. Competent authorities **may** ~~shall, be able to~~ impose the sharing of such facilities or property, including land, buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets or measures facilitating the coordination of public works. Where necessary, ~~national regulatory~~ **~~specific~~ a Member State may designate competent** authorities ~~shall~~ **~~may~~ to coordinate the procedure provided for in this article, act as a single point of ~~contact~~ reference and/or** provide rules for apportioning the costs of facility or property sharing and of civil works coordination.

~~5~~2. Measures taken by a ~~national~~ ~~regulatory~~ ⇨ competent ⇦ authority in accordance with this Article shall be objective, transparent, non-discriminatory, and proportionate. Where relevant, these measures shall be carried out in coordination with ⌦ the ⌫ ~~local~~ ⇨ national regulatory ⇦ authorities.

CHAPTER II

ACCESS TO RADIO SPECTRUM

SECTION 1 AUTHORISATIONS

↓ 2009/140/EC Art. 1.10 (adapted)
⇨ new

Article ~~9~~45

Management of radio ⌦ spectrum ⌫ ~~frequenciesfor electronic communications services~~

1. Taking due account of the fact that radio ~~frequencies are~~ ⇨ spectrum is ⇦ a public good that has an important social, cultural and economic value, Member States shall ensure the effective management of radio ~~frequencies~~ ⇨ spectrum ⇦ for electronic communications services ⇨ and networks ⇦ in their territory in accordance with Articles ~~8~~3 and ~~48a~~. They shall ensure that ⇨ radio ⇦ spectrum allocation used for electronic communications services ⇨ and networks ⇦ and issuing general authorisations or individual rights of use ~~of~~ ⌦ for ⌫ such radio ~~frequencies~~ ⇨ spectrum ⇦ by competent ~~national~~ authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

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

2. Member States shall promote the harmonisation of use of radio ~~frequencies~~ ⇨ spectrum ⇦ **for use by electronic communications ~~services~~** across the ~~Community~~ ⌦ Union ⌫ , consistent with the need to ensure effective and efficient use thereof and in pursuit of benefits for the consumer such as economies of scale and interoperability of services ⌦ and networks ⌫ . In so doing, they shall act in accordance with Article ~~8a~~ 4 and with ~~the~~ Decision ~~No~~ 676/2002/EC ~~(Radio Spectrum Decision)~~ ⇨ by inter alia ⇦ :

⇩ new

(z) ~~ensuring~~ **pursuing wireless broadband** coverage of their national territory and/**or** population at high quality and speed, ~~both indoors and outdoors,~~ including **taking into account** ~~along~~ major transport paths, including the trans-European transport network;

~~(aa) ensuring that areas with similar characteristics, in particular in terms of network deployment or population density, are subject to consistent coverage conditions;~~

(bb) facilitating the rapid development in the Union of new wireless communications technologies and applications, including, where appropriate, in a cross-sectorial approach;

(cc) ensuring the prevention of cross-border or national harmful interference ~~in accordance with Articles 28 and 46 respectively, and taking appropriate pre-emptive and remedial measures to that end;~~

(dd) promoting the shared use of radio spectrum between similar and/or different uses of spectrum ~~through appropriate established sharing rules and conditions, including the protection of existing rights of use,~~ in accordance with ~~Union~~ **competition** law;

(ee) applying the most appropriate and least onerous authorisation system possible ~~in accordance with Article 46~~ in such a way as to maximise flexibility~~, sharing~~ and efficiency in the use of radio spectrum;

(ff) ~~ensuring that~~ **applying** rules for the granting, transfer, renewal, modification and withdrawal of rights to use radio spectrum **that** are clearly and transparently defined ~~and applied~~ in order to guarantee regulatory certainty, consistency and predictability;

(gg) ~~ensuring~~ **pursuing** consistency and predictability throughout the Union regarding the way the use of radio spectrum is authorised in protecting public health **taking into account the Council Recommendation of 12 July 1999 on Exposure of the General Public to Electromagnetic Fields.** ~~against electromagnetic fields.~~

~~When adopting technical harmonisation measures under Decision No 676/2002/EC, the Commission may, taking utmost account of the opinion of Radio Spectrum Policy Group, adopt an implementing measure setting out whether, pursuant to Article 46 of this Directive, rights in the harmonised band shall be subject to a general authorisation or to individual rights of use. Those implementing measures shall be adopted in accordance with the examination procedure referred to in Article 110(4).~~

Where the Commission is considering acting to provide for **adopting** measures in accordance with Article 39 **(1), (4), (5) and (6)**, it may seek the advice **opinion** of the Radio Spectrum Policy Group with regard to the implications of any such standard or specification for the coordination, harmonisation and availability of radio spectrum. The Commission shall take utmost account of the advice **opinion** of the Radio Spectrum Policy Group in taking any subsequent steps.

3. In case of a national or regional lack of market demand for the use of a harmonised band, and subject to the harmonisation measure adopted under Decision No 676/2002/EC, Member States may allow an alternative use of all or part of that band, including the existing use, in accordance with paragraphs 4 and 5, provided that:

(hh) the finding of a lack of market demand for the use of the harmonised band is based on a public consultation in line with Article 23;

(ii) such alternative use does not prevent or hinder the availability or the use of the harmonised band in other Member States; and

(jj) the Member State concerned takes due account of the long-term availability or use of the harmonised band in the Union and the economies of scale for equipment resulting from using the harmonised radio spectrum in the Union

The alternative use ~~shall only be allowed on an exceptional basis. It~~ shall be subject to a **regular** review ~~every three years,~~ or upon **a duly justified** request to the competent authority for use of the band in accordance with the harmonisation measure by a prospective user. The Member State shall inform the Commission and the other Member States of the decision taken as well as of the outcome of any review, together with its reasoning.

↓ 2009/140/EC Art. 1.10 (adapted)
⇨ new

~~3~~4. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of technology used for **the provision of** electronic communications services ⇨ or networks ⇦ may be used in the radio ~~frequency bands~~ ⇨ spectrum ⇦ , declared available for electronic communications services in their National Frequency Allocation Plan in accordance with ~~Community~~ ⌦ Union ⌫ law.

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

(a) avoid harmful interference;

(b) protect public health against electromagnetic fields ⌦ , taking utmost account of Council Recommendation No 1999/519/EC[83]; ⌫

(c) ensure technical quality of service;

(d) ensure maximisation of ~~radio frequency sharing~~ ***~~radio~~* spectrum *sharing*** ~~⇨ shared use of radio spectrum resources, in accordance with Union law; ⇦~~

(e) safeguard efficient use of ⇨ radio ⇦ spectrum; or

(f) ensure the fulfilment of a general interest objective in accordance with paragraph ~~5~~4.

~~4~~5. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of electronic communications services may be provided in the radio ~~frequency bands~~ ⇨ spectrum ⇦ , declared available for electronic communications services in their National Frequency Allocation Plan in accordance with ~~Community~~ ⌦ Union ⌫ law. Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, including, where necessary, to fulfil a requirement under the ITU Radio Regulations.

[83] 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).

Measures that require an electronic communications service to be provided in a specific band available for electronic communications services shall be justified in order to ensure the fulfilment of a general interest objective as defined by Member States in conformity with ~~Community~~ ⌦ Union ⌫ law, such as, and not limited to:

(a) safety of life;

(b) the promotion of social, regional or territorial cohesion;

(c) the avoidance of inefficient use of radio ~~frequencies~~ ⇨ spectrum ⇦ ; or

(d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.

A measure which prohibits the provision of any other electronic communications service in a specific band may only be provided for where justified by the need to protect safety of life services. Member States may, exceptionally, also extend such a measure in order to fulfil other general interest objectives as defined by Member States in accordance with ~~Community~~ ⌦ Union ⌫ law.

6~~5~~. Member States shall regularly review the necessity of the restrictions referred to in paragraphs ~~3~~4 and ~~4~~5, and shall make the results of these reviews public.

⇩ new

7. Restrictions established prior to 25 May 2011 shall comply with paragraphs 4 and 5 ~~by the date of application of this Directive~~ .

🡻 2009/140/EC Art. 1.10

~~6. Paragraphs 3 and 4 shall apply to spectrum allocated to be used for electronic communications services, general authorisations issued and individual rights of use of radio frequencies granted after 25 May 2011.~~

~~Spectrum allocations, general authorisations and individual rights of use which existed by 25 May 2011 shall be subject to Article 9a.~~

~~7. Without prejudice to the provisions of the Specific Directives and taking into account the relevant national circumstances, Member States may lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of the rights of use by the holder of the rights and by applying penalties, including financial penalties or the withdrawal of the rights of use in case of non-compliance with the deadlines. These rules shall be established and applied in a proportionate, non-discriminatory and transparent manner.~~

⇓ 2009/140/EC Art. 3.3 (adapted)
⇨ new

Article ~~5~~ 46

~~Rights of use for radio frequencies and numbers~~ ⌦ **Authorisation of the use of radio spectrum** ⌫

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

⇨ ~~To this end,~~ Member States shall decide on the most appropriate regime for authorising the use of radio spectrum, taking account **of**⇦ ~~Where necessary, Member States may grant individual rights of use in order to~~:

⇩ new

(kk) the specific characteristics of the radio spectrum concerned;

↓ 2009/140/EC Art. 3.3
⇨ new

(ll) ⇨ the need to protect against ⇦ ~~avoid~~ harmful interference~~.~~;

⇩ new

(mm) the ~~requirements for~~ **development** of ~~a~~ reliable sharing ~~arrangement~~ **conditions**, where appropriate;

↓ 2009/140/EC Art. 3.3 (adapted)
⇨ new

(nn) ⇨ the **need** ~~appropriate level of receiver resilience~~ to ⇦ ensure technical quality of ⇨ communications or ⇦ service~~.~~;

~~safeguard efficient use of spectrum, or~~

(oo) ~~fulfil other~~ objectives of general interest as defined by Member States in conformity with ~~Community~~ ⌦ Union ⌫ law.

⇩ new

When applying a general authorisation or individual rights taking in account measures adopted under Decision No 676/2002/EC where the radio spectrum band concerned has been harmonised, Member States shall seek to minimise problems of harmful interference, including in cases of shared use of radio spectrum on the basis of a combination of general authorisation and individual rights of use. ~~In so doing, they shall have regard to the need:~~

~~– to maintain incentives for incorporation of resilient receiver technologies in devices;~~

~~– to prevent impediments caused by alternative users;~~

~~– to avoid to the best extent possible the application of the non-interference, non-protection principle to general authorisation regimes; and~~

~~– where that principle still applies, to protect against out-of-band interference.~~

2. When taking a decision pursuant to paragraph 1 with a view to facilitating the shared use of radio spectrum, the competent authorities shall ensure that the ~~rules and~~ conditions for the shared use of radio spectrum are clearly set out ~~and concretely specified~~ in the ~~acts of~~ authorisation.

~~3. The Commission may, taking utmost account of the opinion of the Radio Spectrum Policy Group, adopt implementing measures on the modalities of application of the criteria, rules and conditions referred to in paragraphs 1 and 2 with regard to harmonised radio spectrum. It shall adopt these measures in accordance with the examination procedure referred to in Article 110(4).~~

Article 47

Conditions attached to ~~general authorisations and to~~ individual rights of use for radio spectrum

1. Competent authorities shall attach conditions to individual rights ~~and general authorisations to~~ **of** use **for** radio spectrum in accordance with Article 13(1) in such a way as to ensure the most effective and efficient use of radio spectrum ~~by the beneficiaries of the general authorisation or the holders of individual rights or by any third party to which an individual right or part thereof has been traded or leased~~. They shall clearly define any such conditions including ~~the~~ **any** level of use required and the possibility to trade and lease in relation to this obligation in order to ensure the implementation of those conditions in line with Article 30. Conditions attached to renewals of right of use for radio spectrum may not provide undue advantages to existing holders of those rights.

~~In order to maximise radio spectrum efficiency, when determining the amount and type of radio spectrum to be assigned, the competent authority shall have regard in particular to:~~

~~a. the possibility to combine complementary bands in a single assignment process; and~~

~~b. the relevance of the size of radio spectrum blocks or of the possibility to combine such blocks in relation to the possible uses thereof, considering in particular the needs of new emerging communications systems.~~

Competent authorities shall timely consult and inform interested parties regarding conditions attached to individual usage rights ~~and general authorisations~~ in advance of their imposition. They shall determine in advance and inform interested parties in a transparent manner of the criteria for the assessment of the fulfilment of these conditions.

2. When attaching conditions to individual rights of use for radio spectrum, competent authorities may **provide for the possibility to share** ~~authorise the sharing of~~ passive or active infrastructure **which rely on radio spectrum**, or ~~of~~ radio spectrum, as well as **to enter into** commercial roaming access agreements, or ~~the joint~~ **to jointly** roll-out ~~of~~ infrastructures for the provision of services or networks which rely on the use of radio spectrum, in particular with a view to ensuring effective and efficient use of radio spectrum or promoting coverage. **Competent authorities shall not prevent** ~~Conditions attached to the rights of use shall not prevent~~ the sharing of radio spectrum **in conditions attached to the rights of use for radio spectrum**. ~~Implementation by undertakings of conditions attached pursuant to this paragraph shall remain subject to competition law.~~

~~3. The Commission may adopt implementing measures in order to specify the modalities of applying the conditions that Member States may attach to authorisations to use harmonised radio spectrum in accordance with paragraphs 1 and 2, with the exception of fees pursuant to Article 42.~~

~~With regard to the coverage requirement under Part D of Annex I, any implementing measure shall be limited to specifying criteria to be used by the competent authority to define and measure coverage obligations, taking into account similarities of regional geographical characteristics, population density, economic development or network development for specific types of electronic communications and evolution of demand. Implementing measures shall not extend to the definition of specific coverage obligations.~~

~~Those implementing measures shall be adopted in accordance with the examination procedure referred to in Article 110(4), taking utmost account of any opinion of the Radio Spectrum Policy Group.~~

↓ 2009/140/EC Art. 3.3 (adapted)
⇨ new

⌦ SECTION 2 RIGHTS OF USE ⌫

Article 48

⌦ Granting of individual rights of use for radio spectrum ⌫

~~2~~1. Where it is necessary to grant individual rights of use for radio ~~frequencies and numbers~~ ⇨ spectrum ⇦ , Member States shall grant such rights, upon request, to any undertaking for the provision of networks or services under the general authorisation referred to in Article ~~3~~12, subject to the provisions of Articles ~~6~~13, ~~7~~54 and ~~11~~21(1)(c) ~~of this Directive~~ and any other rules ensuring the efficient use of those resources in accordance with ⌦ this ⌫ Directive ~~2002/21/EC (Framework Directive)~~.

2. Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use ~~of~~ ⌦ for ⌫ radio ~~frequencies~~ ⇨ spectrum ⇦ to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with ~~Community~~ ⌦ Union ⌫ law, the rights of use for radio ~~frequencies and numbers~~ ⇨ spectrum ⇦ shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article ~~9~~45 ~~ofDirective 2002/21/EC (Framework Directive)~~.

3. An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use ~~of~~ ⌦ for ⌫ radio ~~frequencies~~ ⇨ spectrum ⇦ to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with ~~Community~~ ⌦ Union ⌫ law.

⇩ new

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

🡻 2009/140/EC Art. 3.3 (adapted)
⇨ new

5. When granting rights of use, Member States shall specify whether those rights can be transferred ⇨ or leased ⇦ by the holder of the rights, and under which conditions. In the case of radio ~~frequencies~~ ⇨ spectrum ⇦ , such provision shall be in accordance with Articles ~~9~~45 and ~~9b~~ 51 of this Directive ~~2002/21/EC (Framework Directive)~~.

~~Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued taking due account of the need to allow for an appropriate period for investment amortisation.~~

~~Where individual rights to use radio frequencies are granted for 10 years or more and such rights may not be transferred or leased between undertakings pursuant to Article 9b of Directive 2002/21/EC (Framework Directive) the competent national authority shall ensure that the criteria to grant individual rights of use apply and are complied with for the duration of the licence, in particular upon a justified request of the holder of the right. If those criteria are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice and after a reasonable period, or shall be made transferable or leaseable between undertakings in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).~~

~~3~~6. Decisions on the granting of rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the ~~national regulatory~~ **competent** authority, ~~within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and~~ within six weeks in the case of radio ⇨ spectrum ⇦ ~~frequencies~~ ⇨ declared available for ⇦ ~~that have been allocated to be used by~~ electronic communications services ~~within the~~ ⌦ in their ⌫ national frequency allocation plan. ~~The latter~~ ⌦ This ⌫ time limit shall be without prejudice to **Article 54(8) and to** any applicable international agreements relating to the use of radio ~~frequencies~~ ⇨ spectrum ⇦ or of orbital positions.

🡻 2009/140/EC Art. 3.3 (adapted)
⇨ new

Article 49

⌦ Duration of rights ⌫

1. Where Member States ⇨ authorise the use of **harmonized** radio spectrum **for electronic communications services or networks** through individual ⇦ ~~grant~~ rights of use for a limited period of time, **in particular for bands for which technical conditions have been set in order to enable the use for wireless broadband,** ⇨ they shall ensure that the authorisation is granted for a period that is ⇦ ~~the duration shall be~~ appropriate ~~for the service concerned~~ in view of the objective pursued taking due account of the need to ⇨ ensure effective and efficient use and promote efficient investments, including ⇦ ~~allow~~ ⌦ by allowing ⌫ for an appropriate period for investment amortisation **and communicate these considerations in a timely, transparent and predictable manner**. **This subparagraph does not apply**

⇩ new

~~2. Where Member States grant rights of use for harmonised radio spectrum for a limited period of time, those rights of use for harmonised radio spectrum shall be valid for a duration of at least [25] years, except~~ in the case of temporary rights, temporary ~~extension~~ **adjustment** of rights pursuant to paragraph 3 and rights for secondary use in **such** harmonised bands.

3. Member States may ~~extend~~ **adjust** the duration of rights of use for a short period of time to ensure the simultaneous expiry of rights in one or several bands.

Article 50

Renewal of rights

1. Competent authorities shall ~~**may**~~ take a decision on the renewal of individual rights of use for harmonised radio spectrum **in a timely manner** ~~at least 3 years before the expiry of those rights~~. They ~~shall~~ **may** consider such renewal, whether at their own initiative or upon request by the right holder, in the latter case not earlier than 5 years prior to expiry of the rights concerned. This shall be without prejudice to renewal clauses applicable to existing rights.

2. In taking a decision pursuant to paragraph 1, competent authorities shall ~~have regard to the following considerations~~ **consider, inter alia**:

(a) fulfilment of the objectives of Articles 3, 45(2) and 48(2), as well as public policy objectives under national or Union law;

(b) implementation of a measure adopted pursuant to Article 4 of Decision No 676/2002/EC;

(c) review of the appropriate implementation of the conditions attached to the right concerned;

(d) the need to promote, or avoid any distortion of, competition in line with Article 52;

(e) rendering the use of radio spectrum more efficient in light of technological or market evolution;

(f) the need to avoid severe service disruption.

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

(a) give all interested parties~~, including users and consumers,~~ the opportunity to express their views through a public consultation in accordance with article 23; and

(b) clearly state the reasons for such possible renewal.

If as a result of the consultation pursuant to the first subparagraph, there is evidence of market demand from undertakings other than those holding rights of use for spectrum in the band concerned, the competent authority shall **decide whether to renew** ~~grant~~ the rights **or to organise a new selection procedure in order to grant the rights of use** pursuant to Article 54.

4. A decision to grant a renewal of rights **of use for harmonised radio spectrum** ~~shall~~ **may** be accompanied by a review of the fees attached thereto. Where appropriate, competent authorities may adjust the fees for the rights of use in compliance with the principles set out in Article 42(1) and (2).

↓ 2009/140/EC Art. 1.11 (adapted)

~~*Article 9a*~~

~~Review of restrictions on existing rights~~

~~1. For a period of five years starting from 25 May 2011, Member States may allow holders of rights to use radio frequencies which were granted before that date and which will remain valid for a period of not less that five years after that date, to submit an application to the competent national authority for a reassessment of the restrictions on their rights in accordance with Article 9(3) and (4).~~

~~Before adopting its decision, the competent national authority shall notify the right holder of its reassessment of the restrictions, indicating the extent of the right after reassessment, and shall allow him a reasonable time limit to withdraw his application.~~

~~If the right holder withdraws his application, the right shall remain unchanged until its expiry or until the end of the five-year period, whichever is the earlier date.~~

~~2. After the five-year period referred to in paragraph 1, Member States shall take all appropriate measures to ensure that Article 9(3) and (4) apply to all remaining general authorisations or individual rights of use and spectrum allocations used for electronic communications services which existed on 25 May 2011.~~

~~3. In applying this Article, Member States shall take appropriate measures to promote fair competition.~~

~~4. Measures adopted in applying this Article do not constitute the granting of new rights of use and therefore are not subject to the relevant provisions of Article 5(2) of Directive 2002/20/EC (Authorisation Directive).~~

↓ 2002/20/EC (adapted)

~~*Article 17*~~

~~**Existing authorisations**~~

↓ 2009/140/EC Art. 3.10 (adapted)

~~1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States shall bring general authorisations and individual rights of use already in existence on 31 December 2009 into conformity with Articles 5, 6, 7, and the Annex of this Directive 19 December 2011 at the latest.~~

~~2. Where application of paragraph 1 results in a reduction of the rights or an extension of the general authorisations and individual rights of use already in existence, Member States may extend the validity of those authorisations and rights until 30 September 2012 at the latest, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefor.~~

↓ 2002/20/EC (adapted)

~~3. Where the Member State concerned can prove that the abolition of an authorisation condition regarding access to electronic communications networks, which was in force before the date of entry into force of this Directive, creates excessive difficulties for undertakings that have benefited from mandated access to another network, and where it is not possible for these undertakings to negotiate new agreements on reasonable commercial terms before the date of application referred to in Article 18(1), second subparagraph, Member States may request a temporary prolongation of the relevant condition(s). Such requests shall be submitted by the date of application referred to in Article 18(1), second subparagraph, at the latest, and shall specify the condition(s) and period for which the temporary prolongation is requested.~~

~~The Member State shall inform the Commission of the reasons for requesting a prolongation. The Commission shall consider such a request, taking into account the particular situation in that Member State and of the undertaking(s) concerned, and the need to ensure a coherent regulatory environment at a Community level. It shall take a decision on whether to grant or reject the request, and where it decides to grant the request, on the scope and duration of the prolongation to be granted. The Commission shall communicate its decision to the Member State concerned within six months after receipt of the application for a prolongation. Such decisions shall be published in the *Official Journal of the European Communities*.~~

↓ 2009/140/EC Art. 1.11 (adapted)
⇨ new

Article ~~9b~~ 51

Transfer or lease of individual rights ~~to~~ ⌦ of ⌫ use ⌦ for ⌫ radio ~~frequencies~~ ⌦ spectrum ⌫

1. Member States shall ensure that undertakings may transfer or lease to other undertakings in accordance with conditions attached to the rights of use ~~of~~ ⌦ for ⌫ radio ~~frequencies~~ ⇨ spectrum ⇦ and in accordance with national procedures individual rights ~~to~~ of use ⌦ for ⌫ radio ~~frequencies~~ ⇨ spectrum ⇦ in the bands for which this is provided **in Union law or** in the implementing measures adopted pursuant to paragraph ~~3~~ 4 ~~⇨ or by any other Union measure such as the a radio spectrum policy programme adopted pursuant to Article 4(4) ⇦~~.

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights ~~to~~ ⌦ of ⌫ use ⌦ for ⌫ radio frequencies to other undertakings in accordance with national procedures.

⌦ Without prejudice to paragraph 3, ⌫ ~~C~~conditions attached to individual rights ~~to~~ ⌦ of ⌫ use for radio ~~frequencies~~ ⇨ spectrum ⇦ shall continue to apply after the transfer or lease, unless otherwise specified by the competent ~~national~~ authority.

Member States may also determine that the provisions of this paragraph shall not apply where the undertaking's individual right to use radio frequencies was initially obtained free of charge.

2. Member States shall ensure that an undertaking's intention to transfer **or lease** rights ~~to~~ ⌦ of ⌫ use ⌦ for ⌫ radio ~~frequencies~~ ⇨ spectrum ⇦, as well as the effective transfer thereof is notified in accordance with national procedures to the ~~⇨ national regulatory authority and to the ⇦~~ competent ~~national~~ authority ~~responsible for granting individual rights of use if different~~ and is made public. Where ⌦ the use of ⌫ radio ~~frequency use~~ ⇨ spectrum ⇦ has been harmonised through the application of the Decision No 676/2002/EC (Radio Spectrum Decision) or other ~~Community~~ ⌦ Union ⌫ measures, any such transfer shall comply with such harmonised use.

⇩ new

3. **Where undertakings notify their intention to transfer or lease rights of use for radio spectrum in accordance with paragraph 2** Member States shall allow ~~the~~ **such** transfer or lease ~~of rights of use for radio spectrum~~ where the original conditions attached to the rights of use are maintained. Without prejudice to the need to ensure the absence of a distortion of competition, in particular in accordance with Article 52 of this Directive, Member States shall:

(a) submit trading and leasing to the least onerous procedure possible;

(b) following notification by the lessor, not refuse the lease of rights of use for radio spectrum unless the lessor does not undertake to remain liable for meeting the original conditions attached to the rights of use;

(c) following a request by the parties, approve the transfer of rights of use for radio spectrum unless the new holder is unable to meet the original conditions for the right of use.

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

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

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

3a. Notwithstanding paragraphs 2 and 3, Member States may take appropriate measures to protect public security and the safe functioning of vital national infrastructure and services in accordance with Union law

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↓ 2009/140/EC (adapted)
⇨ new

~~[~~43~~]~~. The Commission may adopt appropriate **technical** implementing ~~measures~~ **decisions** to identify the bands for which rights ~~to~~ ⌦ of ⌫ use ⌦ for ⌫ radio frequencies may be transferred or leased between undertakings. These measures shall not cover frequencies which are used for broadcasting.

These technical implementing **decisions** ~~measures, 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 ⌦ 110(4) ⌫ ~~22(3).1~~

⇩ new

Article 52

Competition

1. ~~[~~National regulatory authorities~~]~~ **Competent authorities** shall promote effective competition and avoid distortions of competition in the internal market when deciding on the grant, amendment or renewal of rights of use for radio spectrum for electronic communications services and networks in accordance with this Directive.

2. When Member States grant, amend or renew rights of use for radio spectrum, their ~~[~~national regulatory authorities~~]~~ **competent authorities** may take appropriate measures such as:

(a) limiting the amount of radio spectrum for which rights of use are granted to any undertaking, or attaching conditions to such rights of use, such as the provision of wholesale access, national or regional roaming, in certain bands or in certain groups of bands with similar characteristics;

(b) reserving, if appropriate in regard to ~~an exceptional~~ **a** situation in the national market, a certain part of a frequency band or group of bands for assignment to new entrants;

(c) refusing to grant new rights of use for radio spectrum or to allow new radio spectrum uses in certain bands, or attaching conditions to the grant of new rights of use for radio spectrum or to the authorisation of new radio spectrum uses, in order to avoid the distortion of competition by any assignment, transfer or accumulation of rights of use;

(d) **including conditions** prohibiting or imposing conditions on transfers of rights of use for radio spectrum, not subject to national or Union merger control, where such transfers are likely to result in significant harm to competition;

(e) amending the existing rights in accordance with this Directive where this is necessary to remedy ex post a distortion of competition by any transfer or accumulation of rights of use for radio spectrum.

~~[National regulatory authorities]~~ **Competent authorities** shall, taking into account market conditions and available benchmarks, base their decision on an objective and forward-looking assessment of ~~the market competitive conditions and of~~ whether such measures are necessary to maintain or achieve effective competition and of the likely effects of such measures on existing and future investments by market operators in particular for network roll-out.

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

SECTION 3 PROCEDURES

Article 53

Coordinated timing of assignments

1. Member States shall cooperate in ~~In~~ order to coordinate the use of harmonised radio spectrum**, in particular in bands for which the technical conditions have been harmonised in order to enable their use for wireless broadband,** in the Union ~~and~~ taking due account of the different national market situations**.**~~, the Commission may, by way of an implementing measure:~~ **This may include identifying**

~~(a) establish~~ one, or, where appropriate, several common maximum dates by which the use of specific harmonised radio spectrum bands shall be authorised**.**

~~(b) where necessary to ensure the effectiveness of coordination, adopt any transitional measure regarding the duration of rights pursuant to Article 49, such as an extension or a reduction of their duration, in order to adapt existing rights or authorisations to such harmonised date.~~

~~Those implementing measures shall be adopted in accordance with the examination procedure referred to in Article 110(4), taking utmost account of the opinion of the Radio Spectrum Policy Group.~~

~~[~~2. In bands for which the technical conditions have been harmonised in order to enable their use for wireless broadband, Member States shall allow the use of radio spectrum, and, if necessary, adopt any general authorisation or grant individual rights as soon as possible and at the latest ~~two~~ three years from the adoption of harmonised technical conditions pursuant to Article 4 of Decision N°676/2002/EC, unless the relevant decision specifies otherwise.

3. A Member State may however delay the ~~two~~ three year deadline provided for in paragraph 2 for a specific band, and shall review such a delay at least every three years:

(a) to the extent justified by a restriction to the usage of that band imposed on general interest grounds as allowed under Article 45(5)(a) or (d), and

(b) to the extent necessary ~~and for up to another two years~~ in case of

- lack of market demand, without prejudice to Article 45(3);

- unresolved cross-border coordination issues resulting in harmful interference;

- financial costs of transition exceeding the expected revenue generated by award procedure;

- needs for national security and defense;

- force majeure.~~]~~

↓ 2002/20/EC (adapted)

Article ~~7~~ 54

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

↓ 2009/140/EC Art. 3.5(a) (adapted)
⇨ new

1. ⌦ Without prejudice to ~~any implementing act adopted pursuant to~~ Article 53, ⌫ w~~W~~here a Member State ⇨ concludes that a right to use radio spectrum cannot be granted ~~pursuant to Article 46~~ ⇦ **under a general authorisation**⌦ and where it considers ⌫ ~~is considering~~ whether to limit

the number of rights of use to be granted for radio ⇨ spectrum ⇦ ~~frequencies or whether to extend the duration of existing rights other than in accordance with the terms specified in such rights~~, it shall inter alia:

↓ 2002/20/EC (adapted)
⇨ new

(a) ⇨ clearly state the reasons for limiting the rights of use, in particular ⇦ ⌦ by giving ⌫ ~~give~~ due weight to the need to maximise benefits for users and to facilitate the development of competition ⇨ , and review the limitation at regular intervals or at the reasonable request of affected undertakings ⇦ ;

(b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation ⌦ through a public consultation ⌫ in accordance with Article 23~~6 of Directive 2002/21/EC (Framework Directive)~~ ⇨ . In the case of harmonised radio spectrum, this public consultation shall start within ~~six~~ **twelve** months of the adoption of the implementing measure under Decision No 676/2002/EC unless ~~technical~~ **objective** reasons ~~therein~~ require a longer deadline ⇦ ;

⇩ new

2. When a Member State concludes that the number of rights of use has to be limited, it shall ~~clearly~~ define and justify the objectives pursued with the **competitive or comparative** selection procedure, and where possible quantify them~~, giving due weight to the need to fulfil national and internal market objectives~~. The objectives that the Member State may set out with a view to design the specific selection procedure shall**, in addition to promoting competition,** be limited to ~~one or more of~~ the following:

(a) promoting coverage;

(b) **ensuring the** required quality of service;

(c) promoting ~~competition~~ **efficient use of spectrum**; **and**

(d) promoting innovation and business development~~; and~~**.**

~~(e) ensuring that fees promote optimal use of radio spectrum in accordance with Article 42;~~

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

🡻 2009/140/EC Art. 3.5(a) (adapted)
⇨ new

3. ~~(c)~~ ⌦ Member States shall ⌫ publish any decision ⇨ on the selection procedure chosen and the related ~~elements~~ **conditions** ⇦ ~~to limit the granting of rights of use or the renewal of rights of use~~, ⌦ clearly ⌫ stating the reasons therefor~~;~~ ~~⇨ and how it has taken into account the measure adopted by the national regulatory authority in accordance with Article 35~~. It shall also publish the conditions that will be attached to the rights of use. ⇦

↓ 2002/20/EC (adapted)
⇨ new

~~4.~~ ~~(d)~~ A~~a~~fter having determined the procedure, ⌦ the Member State shall ⌫ invite applications for rights of use; ~~and~~

~~(e) review the limitation at reasonable intervals or at the reasonable request of affected undertakings.~~

5~~2~~. Where a Member State concludes that further rights of use for radio ⇨ spectrum ⇦ ~~frequencies~~ ⇨ or a combination of different types of rights ⇦ can be granted, ~~⇨ taking into consideration advanced methods for protection against harmful interference, ⇦~~ it shall publish that conclusion and ⇨ initiate the process of granting ⇦ ~~invite applications for~~ such rights.

↓ 2009/140/EC Art. 3.5(b) (adapted)
⇨ new

6~~3~~. Where the granting of rights of use for radio ⇨ spectrum ⇦ ~~frequencies~~ needs to be limited, Member States shall grant such rights on the basis of selection criteria ~~⇨ and a procedure determined by their national regulatory authorities pursuant to Article 35, ⇦~~ which must be objective, transparent, non-discriminatory and proportionate. Any such selection criteria must give due weight to the achievement of the objectives ~~of Article 8 of Directive 2002/21/EC (Framework Directive)~~ and ~~of the~~ requirements of Article~~s~~ 3, 4, 28 and 45~~9~~ ~~of that Directive~~.

⇩ new

~~7. The Commission may adopt implementing measures setting criteria in order to coordinate the implementation of the obligations under paragraphs 1 to 3 by Member States. The implementing measures shall be adopted in accordance with the procedure referred to in Article 110(4) and taking utmost account of the opinion of the Radio Spectrum Policy Group.~~

🡻 2002/20/EC
➔1 2009/140/EC Art. 3.5(c)
⇨ new

84. Where competitive or comparative selection procedures are to be used, Member States may extend the maximum period of six weeks referred to in Article 48(6) ~~5(3)~~ for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than eight months ⇨ ~~, subject to any specific timetable established pursuant to Article 53~~ ⇦ ~~.~~

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

95. This Article is without prejudice to the transfer of rights of use for radio ⇨ spectrum ⇦ ~~frequencies~~ in accordance with ➔1 Article 519~~b~~ 🡸 of this Directive~~2002/21/EC (Framework Directive)~~.

⇩ new

CHAPTER III

DEPLOYMENT AND USE OF WIRELESS NETWORK EQUIPMENT

Article 55

Access to radio local area networks

1. Competent authorities shall allow the provision of access through radio local area networks to a public communications network as well as the use of the harmonised radio spectrum for that provision, subject only to applicable general authorisation conditions **relating to radio spectrum use**.

Where that provision is not ~~commercial in character~~ **part of an economic activity** or is ancillary to another ~~commercial~~ **economic** activity or public service which is not dependent on the conveyance of signals on those networks, any undertaking, public authority or end-user providing such access shall not be subject to any general authorisation for the provision of electronic communications networks or services pursuant to Article 12, to obligations regarding end-users rights pursuant to Title III of Part III of this Directive nor to obligations to interconnect their networks pursuant to Article 59 (1).

Without prejudice to Article 12 of Directive 2000/31, end-users allowing third party access to their internet access service otherwise than as part of their economic activity shall not, by virtue of providing such access, be liable for any use of that access nor for information transmitted by such parties over that access.

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

3. ~~In line in particular with Article 3(1) of Regulation 2015/2120 of the European Parliament and of the Council,[84] competent~~ **Competent** authorities shall ensure that providers of public communications networks or publicly available electronic communications services do not unilaterally ~~restrict~~ **prevent end-users from**:

a) ~~the right of end-users to accede to~~ **accessing** radio local area networks of their choice provided by third parties; **or**

b) ~~the right of end-users to allow~~ **allowing** reciprocally or more generally access**ing** ~~to~~ the networks of such providers by other end-users through radio local area networks, including on the basis of third-party initiatives which aggregate and make publicly accessible the radio local area networks of different end-users.

~~[84] 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~~

~~To that end, providers of public communications networks or publicly available electronic communications services shall make available and actively offer, clearly and transparently, products or specific offers allowing its end-users to provide access to third parties through a radio local area network.~~

4. Competent authorities shall not ~~restrict~~ **prevent** ~~the right of~~ end-users **from allowing** ~~to allow~~ reciprocally or more generally access to their radio local area networks by other end-users, including on the basis of third-party initiatives which aggregate and make the radio local area networks of different end-users publicly accessible.

5. Competent authorities shall not **unduly** restrict the provision of access to radio local area networks to the public:

(a) by public ~~authorities~~ **sector bodies** ~~on~~ or in ~~the immediate~~ **public spaces close** to ~~vicinity of~~ premises occupied by such public ~~authorities~~ **sector bodies**, when that provision is ancillary to the public services provided on those premises;

(b) by initiatives of non-governmental organisations or public ~~authorities~~ **sector bodies** to aggregate and make reciprocally or more generally accessible the radio local area networks of different end-users, including, where applicable, the radio local area networks to which public access is provided in accordance with point (a).

Article 56

Deployment and operation of small-area wireless access points

1. ~~**Without prejudice to the application of the essential requirements of Directive 2014/53/EU[85], to the competence of Member States to establish binding rules regarding the potection of the environment and human health against electromagnetic fields, and to the authorisation regime applicable for the use of the relevant radio spectrum, competent**~~ ~~Competent authorities~~ **Member States may only subject** ~~shall allow~~ the deployment~~, connection~~ and operation of ~~unobtrusive~~ small-area wireless access points ~~under the~~ **to ~~a~~** general **requirements set in advance by the competent authority.** ~~authorisation, which shall include all relevant requirements and conditions thereof, unless individual authorisation is properly justified in~~ **In exceptional cases defined in advance, Member States may require an individual permit, which** ~~in which case such individual authorisation~~ **shall be granted within four months from receipt of the request.** ~~regime and shall not unduly restrict that deployment, connection or operation through individual town planning permits or in any other way, whenever such use is in compliance with implementing measures adopted pursuant to paragraph 2. The small-area wireless access points shall not be subject to any fees or charges going beyond the administrative charge that may be associated to the general authorisation in accordance with Article 16.~~

~~This paragraph is without prejudice to the authorisation regime for the radio spectrum employed to operate small-area wireless access points.~~

85 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

2. ~~In order to ensure the uniform implementation of the general authorisation regime for the deployment, connection and operation of small-area wireless access points, the Commission may, by means of an implementing act, specify technical characteristics for the design, deployment and operation of small-area wireless access points, which~~ **Member States shall define in advance** **The general requirements shall include any applicable restrictions in terms of size, power, visual impact and electromagnetic characteristics, for small area wireless access points. Technical characteristics for the design, deployment and operation of small-area wireless access points** shall at a minimum comply with the requirements of Directive 2013/35/EU[86] and take account of the thresholds defined in Council Recommendation No 1999/519/EC.[87] ~~The Commission shall specify those technical characteristics by reference to the maximum size, power and electromagnetic characteristics, as well as the visual impact, of the deployed small-area wireless access points. Compliance with the specified characteristics shall ensure that small-area wireless access points are unobtrusive when in use in different local contexts.~~ **Any imposition of a more stringent threshold shall be duly justified in advance.**

~~The technical characteristics specified in order for the deployment, connection and operation of small-area wireless access point to benefit from paragraph 1 shall be~~ **This provision is** without prejudice to the essential requirements of Directive 2014/53/EU **and to the authorisation regime applicable for the use of the relevant radio spectrum..**[88]

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[86] Directive 2013/35/EU of the European Parliament and of the Council of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (20th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and repealing Directive 2004/40/EC (OJ L 179, 29.6.2013, p. 1).

[87] 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).

[88] 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)

~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 110(4).~~

3. Without prejudice to any commercial agreements, the small-area wireless access points shall not be subject to any fees or charges going beyond the administrative charge that may be associated to the general authorisation in accordance with Article 16.

⌦ TITLE II: ACCESS ⌫

CHAPTER I ~~II~~

GENERAL PROVISIONS ⌦ , ACCESS PRINCIPLES ⌫

Article ~~3~~57

General framework for access and interconnection

1. Member States shall ensure that there are no restrictions which prevent undertakings in the same Member State or in different Member States from negotiating between themselves agreements on technical and commercial arrangements for access and/or interconnection, in accordance with ~~Community~~ ⌦ Union ⌫ law. The undertaking requesting access or interconnection does not need to be authorised to operate in the Member State where access or interconnection is requested, if it is not providing services and does not operate a network in that Member State.

2. Without prejudice to Article 106 ~~31 of 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)~~[89], Member States shall not maintain legal or administrative measures which oblige operators, when granting access or interconnection, to offer different terms and conditions to different undertakings for equivalent services and/or imposing obligations that are not related to the actual access and interconnection

[89] ~~See page 51 of this Official Journal.~~

services provided without prejudice to the conditions fixed in ~~the~~ Annex I of ⌦ this ⌫ Directive~~2002/20/EC (Authorisation Directive)~~.

Article ~~4~~58

Rights and obligations for undertakings

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article ~~4~~ 15 of ⌦ this ⌫ Directive ~~2002/20/EC (Authorisation Directive)~~, an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the ~~Community~~ ⌦ Union ⌫ . Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 59, 60 and 66 ~~5 to 8~~.

~~2. Public electronic communications networks established for the distribution of digital television services shall be capable of distributing wide-screen television services and programmes. Network operators that receive and redistribute wide-screen television services or programmes shall maintain that wide-screen format.~~

2~~3~~. Without prejudice to Article ~~11~~ 21 of ⌦ this ⌫ Directive ~~2002/20/EC (Authorisation Directive)~~, Member States shall require that undertakings which acquire information from another undertaking before, during or after the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. The received information shall not be passed on to any other party, in particular other departments, subsidiaries or partners, for whom such information could provide a competitive advantage.

CHAPTER II

ACCESS AND INTERCONNECTION

Article ~~5~~59

Powers and responsibilities of the national regulatory authorities with regard to access and interconnection

1. National regulatory authorities shall, acting in pursuit of the objectives set out in Article 3 ~~8 of Directive 2002/21/EC (Framework Directive)~~, encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and the interoperability of services*, exercising their responsibility in a way that promotes efficiency, sustainable competition, ⇨ the deployment of very high capacity networks ⇦, efficient investment and innovation, and gives the maximum benefit to end-users*. ⇨ They shall provide guidance and make publicly available the procedures applicable to gain access and interconnection to ensure that small and medium-sized enterprises and operators with a limited geographical reach can benefit from the obligations imposed. ⇦

In particular, without prejudice to measures that may be taken regarding undertakings with significant market power in accordance with Article ~~8~~66, national regulatory authorities shall be able to impose:

(a) to the extent that is necessary to ensure end-to-end connectivity, obligations on ⌦ those ⌫ undertakings ⇨ that are subject to general authorisation ⇦ ⌦ and ⌫ that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case;

(~~a~~b) in justified cases and to the extent that is necessary, obligations on those undertakings ⇨ that are subject to general authorisation ⇦ and that control access to end-users to make their services interoperable;

(c) in justified cases, obligations on providers of number-independent interpersonal communications services to make their services interoperable, namely where access to emergency services or end-to-end connectivity between end-users is endangered due to a lack of interoperability between interpersonal communications services.

(d~~b~~) to the extent that is necessary to ensure accessibility for end-users to digital radio and television broadcasting services specified by the Member State, obligations on operators to provide access to the other facilities referred to in Annex II, Part II on fair, reasonable and non-discriminatory terms.

The obligations referred to in point (c) of the second subparagraph may only be imposed:

(i) to the extent necessary to ensure interoperability of interpersonal communications services and may include obligations relating to the use and implementation of standards or specifications listed in Article 39(1) or of any other relevant European or international standards; and

(ii) where the Commission, ~~on the basis~~ **taking utmost account** of a report that it had requested from BEREC, has found an appreciable threat to 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 and has adopted implementing measures specifying the nature and scope of any obligations that may be imposed, in accordance with the examination procedure referred to in Article 110(4).

2. **In particular, and without prejudice to paragraph 1, n**~~N~~ational regulatory authorities shall impose obligations upon reasonable request to grant access to wiring and cables inside buildings or up to the first concentration or distribution point **as determined by the national regulatory authority,** where that point is located outside the building~~,~~**. Such obligations shall be imposed** on **providers of electronic communications networks** ~~the owners of such wiring and cable or on undertakings that have the right to use such wiring and cables,~~ where this is justified on the grounds that replication of such network elements would be economically inefficient or physically impracticable. **National regulatory authorities may also impose such obligations on the owners of such wiring and cable, where the undertakings are not providers of electronic communications networks, on the same grounds.** The access conditions imposed may include specific rules on access **to such network elements and to associated facilities and services**, transparency and non-discrimination and for apportioning the costs of access, which, where appropriate, are adjusted to take into account risk factors.

Where the obligations imposed in accordance with the previous subparagraph do not ensure adequate access and competitive outcomes for end-users, and to the extent that a national regulatory authority, in consistency with the results of the market analysis process, considers necessary to address such outcomes ~~economic or physical barriers to replication, which would otherwise not ensure competitive outcomes for end-users~~, ~~National regulatory authorities~~ **it** may extend ~~to those owners or undertakings~~ the imposition of such access obligations, on fair and reasonable terms and conditions, beyond the first concentration or distribution point**, to a point that it determines to be the closest to end-users capable of hosting** ~~to a concentration point as close as possible to end-users~~ **a sufficient number of end-user connections to be commercially viable for access seekers. In determining the extent of the extension beyond the concentration or distribution point, the national regulatory authority shall have regard to relevant BEREC guidelines.**~~, to the extent strictly necessary to address insurmountable economic or physical barriers to replication in areas with lower population density.~~ **If justified on physical and/or economic grounds, national regulatory authorities may impose active or virtual access obligations.**

National regulatory authorities shall not impose ~~**such**~~ obligations *in accordance with the second subparagraph* where~~:~~

> ~~(a)~~ **they determine that an undertaking meeting the criteria listed in Article 77 paragraphs (a) and (b) makes available** a viable and similar alternative means of access to end-users ~~is made available~~ to any undertaking, ~~provided that the access is offered~~ on fair and reasonable terms and conditions to a very high capacity network *by* ~~*an undertaking meeting the criteria listed in Article 77 paragraphs (a) and (b)*~~; ~~and~~ **or**
>
> ~~(b) in the case of recently deployed network elements, in particular by smaller local projects,~~ the granting of that access would compromise the economic or financial viability of ~~their~~ **a new network** deployment **in particular by smaller local projects**.

2a. BEREC shall publish guidelines to foster a consistent application of paragraph 2, in particular addressing the relevant criteria for determining the point, beyond the first concentration or distribution point, at which a sufficient number of end-user connections is commercially viable for access seekers, and for determining which network deployments can be considered new and which projects considered small.

3. **Without prejudice to Article 30,** Member States shall ensure that ~~national regulatory authorities~~ **competent authorities** have the power to impose on undertakings providing or authorised to provide electronic communications **services or** networks obligations in relation to the sharing of passive or active infrastructure **which rely on the use of radio spectrum, to the sharing of radio spectrum in a specific area, or** ~~, obligations~~ to ~~conclude~~ localised roaming access**, provided that this possibility has been clearly set out when granting the rights of use for radio spectrum and is** ~~agreements, or the joint roll-out of infrastructures directly necessary for the local provision of services which rely on the use of spectrum~~, in compliance with Union law**.**~~, where it is justified on the grounds that,~~

~~National regulatory authorities~~ **Competent authorities may only impose such obligations in case of duly demonstrated failure by undertakings to comply with any of the conditions attached to their rights of use for radio spectrum and after the national regulatory authorities have been consulted with regard to the need to avoid distortion of competition.**

Any obligation imposed on undertakings pursuant to the first subparagraph shall be limited to specific geographical areas where the market-driven deployment of infrastructure for the provision of services or networks which rely on the use of radio spectrum is subject to very significant economic or physical obstacles, and the available connectivity is therefore severely deficient or inexistent.

~~(a) the replication of such infrastructure would be economically inefficient or physically impracticable, and~~

~~(b) the connectivity in that area, including along its main transport paths, would be severely deficient, or the local population would be subjected to severe restrictions on choice or quality of service, or on both.~~

~~National regulatory authorities~~ **Competent authorities** shall have regard to:

(a) the need to maximise connectivity throughout the Union and in particular territorial areas;

(b) the efficient use of radio spectrum;

(c) the technical feasibility of sharing and associated conditions;

(d) the state of infrastructure-based as well as service-based competition;

(e) the possibility to significantly increase choice and higher quality of service for end-users;

(f) technological innovation;

(g) the overriding need to support the incentive of the host to roll out the infrastructure in the first place.

Such sharing, access or coordination obligations shall be subject to agreements concluded on the basis of fair and reasonable terms and conditions. In the event of dispute resolution, ~~national regulatory~~ **competent** authorities may inter alia impose on the beneficiary of the sharing or access obligation, the obligation to share its spectrum with the infrastructure host in the relevant area.~~]~~

↓ 2009/140/EC Art. 2.3(b) (adapted)
⇨ new

~~4~~2. Obligations and conditions imposed in accordance with paragraph 1 ⇨ ,2 and 3 ⇦ shall be objective, transparent, proportionate and non-discriminatory, ⌦ they ⌫ ~~and~~ shall be implemented in accordance with the procedures referred to in Articles 23~~6~~, ~~7~~32 and ~~7a~~33~~of Directive 2002/21/EC (Framework Directive)~~ ⇨ . ~~National regulatory~~ **Competent** authorities shall assess the results of such obligations and conditions within five years from the adoption of the previous measure adopted in relation to the same operators and whether it would be appropriate to withdraw or amend them in the light of evolving conditions. ~~National regulatory~~ **Competent** authorities shall notify the outcome of their assessment in accordance with the same procedures ⇦ .

↓ 2009/140/EC Art. 2.3(d) (adapted)

5~~3~~. With regard to access and interconnection referred to in paragraph 1, Member States shall ensure that the national regulatory authority is empowered to intervene at its own initiative where justified in order to secure the policy objectives of Article 3 ~~8 of Directive 2002/21/EC (Framework Directive)~~, in accordance with the provisions of this Directive and the procedures referred to in Articles 23~~6~~ and 32~~7~~, 26~~20~~ and ~~21~~ 27 ~~of Directive 2002/21/EC (Framework Directive)~~.

⇩ new

6. By [entry into force plus 18 months] in order to contribute to a consistent definition of the location of network termination points by national regulatory authorities, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, adopt guidelines on common approaches to the identification of the network termination point in different network topologies. National regulatory authorities shall take utmost account of those guidelines when defining the location of network termination points.

Article ~~6~~60

Conditional access systems and other facilities

1. Member States shall ensure that ⌦ the conditions laid down in Annex II, Part I, apply ⌫ in relation to conditional access to digital television and radio services broadcast to viewers and listeners in the ~~Community~~ ⌦ Union ⌫ , irrespective of the means of transmission~~, the conditions laid down in Annex II, Part I apply~~.

~~2. In the light of market and technological developments, the Commission may ⌦ shall be empowered to ⌫ adopt implementing measures ⇨ delegated acts in accordance with Article 109⇦ to amend Annex II. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).~~

3. Notwithstanding the provisions of paragraph 1, Member States may permit their national regulatory authority, as soon as possible after the entry into force of this Directive and periodically thereafter, to review the conditions applied in accordance with this Article, by undertaking a market analysis in accordance with the first paragraph of Article 65~~16 of Directive 2002/21/EC (Framework Directive)~~ to determine whether to maintain, amend or withdraw the conditions applied.

Where, as a result of this market analysis, a national regulatory authority finds that one or more operators do not have significant market power on the relevant market, it may amend or withdraw the conditions with respect to those operators, in accordance with the procedures referred to in Articles ~~6~~ 23 and 32~~7 of Directive 2002/21/EC (Framework Directive~~ , only to the extent that:

(a) accessibility for end-users to radio and television broadcasts and broadcasting channels and services specified in accordance with Article 106 ~~31 of Directive 2002/22/EC (Universal Service Directive~~ would not be adversely affected by such amendment or withdrawal, and

(b) the prospects for effective competition in the markets for:

(i) retail digital television and radio broadcasting services, and

(ii) conditional access systems and other associated facilities,

would not be adversely affected by such amendment or withdrawal.

An appropriate period of notice shall be given to parties affected by such amendment or withdrawal of conditions.

4. Conditions applied in accordance with this Article are without prejudice to the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides and similar listing and navigation facilities.

CHAPTER III

MARKET ANALYSIS AND SIGNIFICANT MARKET POWER

Article ~~14~~61

Undertakings with significant market power

1. Where ~~the Specific~~ ⌦ this ⌫ Directive~~s~~ requires national regulatory authorities to determine whether operators have significant market power in accordance with the procedure referred to in Article ~~16~~65, paragraph~~s~~ 2 ~~and 3~~ of this Article shall apply.

2. An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

In particular, national regulatory authorities shall, when assessing whether two or more undertakings are in a joint dominant position in a market, act in accordance with ~~Community~~ ⌦ Union ⌫ law and take into the utmost account the guidelines on market analysis and the assessment of significant market power published by the Commission pursuant to Article ~~15~~62. ~~Criteria to be used in making such an assessment are set out in Annex II.~~

~~3. Where an undertaking has significant market power on a specific market (the first market), it may also be designated as having significant market power on a closely related market (the second market), where the links between the two markets are such as to allow the market power held in the first market to be leveraged into the second market, thereby strengthening the market power of the undertaking. Consequently, remedies aimed at preventing such leverage may be applied in the second market pursuant to Articles 9, 10, 11 and 13 of Directive 2002/19/EC (Access Directive), and where such remedies prove to be insufficient, remedies pursuant to Article 17 of Directive 2002/22/EC (Universal Service Directive) may be imposed.~~

Article ~~15~~62

Procedure for the identification and definition of markets

1. After public consultation including with national regulatory authorities and taking the utmost account of the opinion of BEREC, the Commission shall~~, in accordance with the advisory procedure referred to in Article 22(2),~~ adopt a Recommendation on Relevant Product and Service Markets (the Recommendation). The Recommendation shall identify those product and service markets within the electronic communications sector the characteristics of which may be such as to justify the imposition of regulatory obligations set out in ~~the Specific~~ ⌦ this ⌫ Directive~~s~~, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.

The Commission shall include product and service markets in the Recommendation where, after observing overall trends in the Union, it finds that each of the **three** criteria listed in paragraph 1 of Article 65 is met.

The Commission shall regularly review the R~~r~~ecommendation.

2. The Commission shall publish~~, at the latest on the date of entry into force of this Directive,~~ guidelines for market analysis and the assessment of significant market power (hereinafter 'the ⌦ SMP ⌫ guidelines') which shall be in accordance with the principles of competition law **and include guidance to national regulatory authorities on the application of the concept of significant market power to the specific context of *ex ante* regulation of electronic communications markets, taking account of the three criteria listed in paragraph 1 of Article 65**.

3. National regulatory authorities shall, taking the utmost account of the Recommendation and the ⌦ SMP ⌫ ~~G~~guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall **also** ⇨ take into account the results of the geographical survey conducted in accordance with Article 22(1) **where relevant**. They shall ⇦ follow the procedures referred to in Articles ~~6~~23 and ~~7~~32 before defining the markets that differ from those identified in the Recommendation.

Article 63

Procedure for the identification of transnational markets

1. **If the Commission or at least two national regulatory authorities concerned submit a reasoned request including supporting evidence BEREC shall conduct an analysis of a potential transnational market.** After consulting stakeholders and **taking utmost account of the analysis carried out by BEREC,** ~~in close cooperation with~~ the Commission~~, BEREC~~ may adopt ~~a~~ Decision**s** identifying transnational markets in accordance with the principles of competition law and taking utmost account of the Recommendation and SMP Guidelines adopted in accordance with Article 62. ~~BEREC shall conduct an analysis of a potential transnational market if the Commission or at least two national regulatory authorities concerned submit a reasoned request providing supporting evidence.~~

~~5~~2. In the case of transnational markets identified ~~in the Decision referred to in Article 15(4)~~ ⇨ in accordance with paragraph 1 ⇦ , the national regulatory authorities concerned shall jointly conduct the market analysis taking the utmost account of the ⌦ SMP ⌫ Guidelines and, in a concerted fashion, shall decide on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in ~~paragraph 2 of this~~ Article 65(4). ⇨ The national regulatory authorities concerned shall jointly notify to the Commission with their draft measures regarding the market analysis and any regulatory obligations pursuant to Articles 32 and 33. ⇦

Two or more national regulatory authorities may also jointly notify their draft measures regarding the market analysis and any regulatory obligations in the absence of transnational markets, where they consider that market conditions in their respective jurisdictions are sufficiently homogeneous.

Article 64

Procedure for the identification of transnational demand

1. BEREC shall conduct an analysis of transnational end-user demand for products and services that are provided within the Union in one or more of the markets listed in the Recommendation, if it receives a reasoned request providing supporting evidence from the Commission or from at least two of the national regulatory authorities concerned indicating that there is a serious demand problem to be addressed. BEREC may also conduct such analysis if it receives a reasoned request from market participants providing sufficient supporting evidence and considers there is a serious demand problem to be addressed. BEREC's analysis is without prejudice to any findings of transnational markets in accordance with Article 63(1) and to any findings of national or sub-national geographical markets by national regulatory authorities in accordance with Article 62(3).

That analysis of transnational end-user demand may include products and services that are supplied within product or service markets that have been defined in different ways by one or more national regulatory authorities when taking into account national circumstances, provided that those products and services are substitutable to those supplied in one of the markets listed in the Recommendation.

If BEREC concludes that a transnational end-user demand exists, is significant and is not sufficiently met by supply provided on a commercial or regulated basis, it shall, after consulting stakeholders and in close cooperation with the Commission, issue guidelines on common approaches for national regulatory authorities to meet the identified transnational demand, including, where appropriate, when they impose remedies in accordance with Article 66. National regulatory authorities shall take into utmost account these guidelines when performing their regulatory tasks within their jurisdiction.

~~2. On the basis of BEREC guidelines referred to in paragraph 1, the Commission may adopt a Decision pursuant to Article 38 to harmonise the technical specifications of wholesale access products capable of meeting such identified transnational demand, when they are imposed by national regulatory authorities on operators designated with significant market power in markets where such access products are supplied, as defined according to national circumstances. Article 38(3)(a) second subparagraph first indent shall not apply in such a case.~~

Article ~~16~~ 65

Market analysis procedure

1. National regulatory authorities shall

~~carry out an analysis of the relevant markets taking into account the markets identified in the Recommendation, and taking the utmost account of the Guidelines~~ ⇨ determine whether a relevant market defined in accordance with Article 62(3) may be such as to justify the imposition of the regulatory obligations set out in this Directive ⇦ . Member States shall ensure that ~~this~~ ⌦ an ⌫ analysis is carried out, where appropriate, in collaboration with the national competition authorities. ⇨ National regulatory authorities shall take utmost account of the SMP guidelines and shall follow the procedures referred to in Articles 23 and 32 when conducting such analysis. ⇦

A market may be such as to justify the imposition of regulatory obligations set out in this Directive if the following three criteria are cumulatively met:

(a) high and non-transitory structural, legal or regulatory barriers to entry are present;

(b) there is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry;

(c) competition law alone is insufficient to adequately address the identified market failure(s).

Where a national regulatory authority conducts an analysis of a market that is included in the Recommendation, it shall consider that points (a), (b) and (c) of the second subparagraph have been met, unless the national regulatory authority determines that one or more of such criteria is not met in the specific national circumstances.

~~2. Where a national regulatory authority is required under paragraphs 3 or 4 of this Article, Article 17 of Directive 2002/22/EC (Universal Service Directive), or Article 8 of Directive 2002/19/EC (Access Directive) to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 1 of this Article whether a relevant market is effectively competitive~~

2. Where a national regulatory authority conducts the analysis required by paragraph 1, it shall consider developments from a forward-looking perspective in the absence of regulation imposed on the basis of this Article in that relevant market, and taking into account:

(a) ~~the existence of~~ market developments **affecting competition** ~~which may increase the likelihood of the relevant market tending towards effective competition, such as those commercial co-investment or access agreements between operators which benefit competitive dynamics sustainably;~~

(b) all relevant competitive constraints, including at retail level, irrespective of whether the sources of such constraints are deemed to be electronic communications networks, electronic communications services, or other types of services or applications which are comparable from the perspective of the end-user, and irrespective of whether such constraints are part of the relevant market;

(c) other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period, including, without limitation, obligations imposed in accordance with Articles 44, 58 and 59; and

(d) regulation imposed on other relevant markets on the basis of this Article.

3. Where a national regulatory authority concludes that ⇨ a relevant market may not be such as to justify the imposition of regulatory obligations in accordance with the procedure in paragraphs 1 and 2 of this Article, or where the conditions in paragraph 4 of this Article are not met ⇦ ~~the market is effectively competitive~~, it shall not impose or maintain any ~~of the~~ specific regulatory obligations ~~referred to in paragraph 2 of this Article~~⌦ in accordance with Article 66 ⌫ . In cases where ⌦ there already are ⌫ sector specific regulatory obligations ⌦ imposed in accordance with Article 66 ⌫~~already exist~~, it shall withdraw such obligations placed on undertakings in that relevant market. ~~An appropriate period of notice shall be given to parties affected by such a withdrawal of obligations.~~

National regulatory authorities shall ensure that parties affected by such a withdrawal of obligations receive an appropriate period of notice, defined by balancing the need to ensure a sustainable transition for the beneficiaries of these obligations and end-users, end-user choice, and that regulation does not continue beyond what is necessary. When setting such period of notice, national regulatory authorities may determine specific conditions and notice periods in relation to existing access agreements.

4. Where a national regulatory authority determines that , ⌦ in ⌫ a relevant market ~~is not effectively competitive~~ ⇨ the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified ⇦ , it shall identify ⌦ any ⌫ undertakings which individually or jointly have a significant market power on that ⌦ relevant ⌫ market in accordance with Article ~~14~~ 61. ~~and~~ ~~t~~The national regulatory authority shall ⌦ impose ⌫ on such undertakings ~~impose~~ appropriate specific regulatory obligations ~~referred to in paragraph 2 of this Article~~⌦ in accordance with Article 66 ⌫ or maintain or amend such obligations where they already exist ⇨ if it considers that **the outcome for end-users** ~~one or more retail markets~~ would not be effectively competitive in the absence of those obligations ⇦ .

5~~6~~. Measures taken in accordance with the provisions of paragraphs 3 and 4 shall be subject to the procedures referred to in Articles ~~6~~23 and ~~7~~32. National regulatory authorities shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with Article 32~~7~~:

(a) within ~~three~~ ⇨ five ⇦ years from the adoption of a previous measure ⇨ where the national regulatory authority has defined the relevant market and determined which undertakings have significant market power ⇦ ~~relating to that market~~. ~~However,~~ ~~e~~Exceptionally, that ⌦ five-year ⌫ period may be extended for up to ~~three~~ ⇨ one ⇦ additional year~~s~~, where the national regulatory authority has notified a reasoned proposed extension to the Commission ⇨ no later than four months before the expiry of the five years period, ⇦ and the Commission has not objected within one month of the notified extension**.**;

(b) within ~~two~~ **three** years from the adoption of a revised Recommendation on relevant markets, for markets not previously notified to the Commission; or

(c) within ~~two~~ ⇨ three ⇦ years from their accession, for Member States which have newly joined the Union.

~~7~~6. Where a national regulatory authority ⇨ considers that it may not complete or ⇦ has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in paragraph ~~6~~**5**, BEREC shall, upon request, provide assistance to the national regulatory authority concerned in completing the analysis of the specific market and the specific obligations to be imposed. With this assistance, the national regulatory authority concerned shall within six months ⌦ of the limit laid down in paragraph 5 ⌫ notify the draft measure to the Commission in accordance with Article ~~7~~32.

CHAPTER IV

⌦ ACCESS REMEDIES AND SIGNIFICANT MARKET POWER ⌫

Article ~~8~~66

Imposition, amendment or withdrawal of obligations

1. Member States shall ensure that national regulatory authorities are empowered to impose the obligations identified in ➔1 Articles ~~9~~67 to **72 and 74 to** ~~13a~~***78*** ➔.

2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article ~~16~~ 65 of this Directive ~~2002/21/EC (Framework Directive)~~, national regulatory authorities shall ⇨ be able to ⇦ impose ⇨ any of ⇦ the obligations set out in Articles ~~9~~ 67 to **72 and 74,** ~~13~~ 75and 77 of this Directive as appropriate.

3. Without prejudice to:

– the provisions of ➔2 Articles 59~~5(1)~~ and ~~6~~ 60 ←,

– the provisions of Articles ~~12~~ 44 and ~~13~~17 of this Directive ~~2002/21/EC (Framework Directive)~~, Condition 7 in Part ~~B~~ D of ~~the~~ Annex I ~~to Directive 2002/20/EC (Authorisation Directive)~~ as applied by virtue of Article ~~6~~13(1) of ~~that~~ ⌦ this ⌫ Directive, Articles ~~27,~~ ~~28~~ 91 and ~~30~~ 99 of this Directive ~~2002/22/EC (Universal Service Directive)~~ and the relevant provisions of ➔2 Directive 2002/58/Ec~~o 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)~~[90] ← containing obligations on undertakings other than those designated as having significant market power, or

– the need to comply with international commitments,

national regulatory authorities shall not impose the obligations set out in Articles ~~9~~67 to **72 and 74,** ~~13~~75 ⌦ and 77 ⌫ on operators that have not been designated in accordance with paragraph 2.

In exceptional circumstances, when a national regulatory authority intends to impose on operators with significant market power obligations for access or interconnection other than those set out in Articles ~~9~~67 to **72 and 74,** ~~13~~75 ⌦ and 77 ⌫, it shall submit this request to the Commission. The Commission shall take utmost account of the opinion of BEREC. The Commission, acting in accordance with ⇨ the procedure referred to in ⇦ Article~~14(2)~~ ⌦ 110(3) ⌫ , shall take a decision authorising or preventing the national regulatory authority from taking such measures.

4. Obligations imposed in accordance with this Article shall be**:**

a) based on the nature of the problem identified **by a national regulatory authority in its market analysis**, ⇨ in particular at retail level and where appropriate taking into account the identification of transnational demand pursuant to Article 64**;**

90 OJ L 201, 31.7.2002, p. 37.

b)~~. They shall be~~ ⇦ proportionate ⇨ ~~, having regard to the costs and benefits;~~

c) ~~⇦ , and~~ justified in the light of the objectives laid down in Article ~~8~~3 of ⌦ this ⌫ Directive**; and**

d) ~~2002/21/EC (Framework Directive). Such obligations shall only be~~ imposed following consultation in accordance with Articles ~~6~~ 23 and ~~7~~32 ~~of that~~ ~~Directive~~.

5. In relation to the third indent of the first subparagraph of paragraph 3, national regulatory authorities shall notify decisions to impose, amend or withdraw obligations on market players to the Commission, in accordance with the procedure referred to in Article ~~7~~32 ~~of~~ ~~Directive 2002/21/EC (Framework Directive)~~.

6. National regulatory authorities shall consider the impact of new market developments, such as in relation to commercial agreements **influencing competitive dynamics**, including co-investment agreements, which have been concluded**,** ~~or unforeseeably~~ breached**,** ~~or~~ terminated**, or have effects that diverge from the national regulatory authorities' expectations at the time of the market analysis** ~~affecting competitive dynamics~~. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Article ~~9~~67

Obligation of transparency

1. National regulatory authorities may, in accordance with the provisions of Article ~~8~~66, impose obligations for transparency in relation to interconnection and/or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics **and expected developments thereof**, terms and conditions for supply and use, including any conditions ~~limiting~~ **altering** access to and/or use of services and applications**, particularly with regard to migration from legacy infrastructure,** where such conditions are allowed by Member States in conformity with ~~Community~~ ⌦ Union ⌫ law, and prices.

2. In particular where an operator has obligations of non-discrimination, national regulatory authorities may require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices. The national regulatory authority shall, *inter alia*, be able to impose changes to reference offers to give effect to obligations imposed under this Directive.

3. National regulatory authorities may specify the precise information to be made available, the level of detail required and the manner of publication.

4. ⇨ No later than [1 year after the adoption of this Directive], in order to contribute to the consistent application of transparency obligations, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, issue guidelines on the minimum criteria for a reference offer and shall review them whenever necessary in order to adapt them to technological and market developments. In providing such minimum criteria, BEREC shall pursue the objectives in Article 3, and shall have regard for the needs of the beneficiaries of access obligations and end-users that are active in more than one Member State as well as to any BEREC guidelines identifying transnational demand in accordance with Article 64 and to any related Commission Decision.⇦

Notwithstanding paragraph 3, where an operator has obligations under Article ~~12~~ ⌦ 70 or 71 ⌫ concerning wholesale network infrastructure access, national regulatory authorities shall ensure the publication of a reference offer ~~containing at least the elements set out in Annex II~~ ⇨ taking utmost account of the BEREC guidelines on the minimum criteria for a reference offer ⇦.

~~5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). In implementing the provisions of this paragraph, the Commission may be assisted by BEREC.~~

Article ~~10~~68

Obligation of non-discrimination

1. A national regulatory authority may, in accordance with the provisions of Article 66~~8~~, impose obligations of non-discrimination, in relation to interconnection and/or access.

2. Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners. ~~⇨In particular, in cases where the operator is deploying new systems, n~~**N**ational regulatory authorities may **also** impose ~~on that operator~~ obligations to supply access products and services to all undertakings, including to **its downstream arm** ~~itself~~, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes, in order to ensure equivalence of access.⇦

Article ~~11~~69

Obligation of accounting separation

1. A national regulatory authority may, in accordance with the provisions of Article ~~8~~66, impose obligations for accounting separation in relation to specified activities related to interconnection and/or access.

In particular, a national regulatory authority may require a vertically integrated company to make transparent its wholesale prices and its internal transfer prices *inter alia* to ensure compliance where there is a requirement for non-discrimination under Article 68~~10~~ or, where necessary, to prevent unfair cross-subsidy. National regulatory authorities may specify the format and accounting methodology to be used.

2. Without prejudice to Article 20 ~~5 of Directive 2002/21/EC (Framework Directive)~~, to facilitate the verification of compliance with obligations of transparency and non-discrimination, national regulatory authorities shall have the power to require that accounting records, including data on revenues received from third parties, are provided on request. National regulatory authorities may publish such information as would contribute to an open and competitive market, while respecting national and ~~Community~~ ⌦ Union ⌫ rules on commercial confidentiality.

Article 70

Access to civil engineering

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, ~~without limitation~~ **but not limited to**, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where **having considered** the market analysis ~~indicates~~ **the national regulatory authority deems** that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

2. National regulatory authorities may impose obligations on an operator to provide access in accordance with this Article, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that the obligation is necessary and proportionate to meet the objectives of Article 3.

Article ~~12~~71

Obligations of access to, and use of, specific network facilities

1. ~~⌦ Only where ⌫~~ ***A*** ~~a~~ national regulatory authority ~~⇨ concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it ⇦~~ may, in accordance with the provisions of Article ~~8~~66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, ~~*inter alia*~~ in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, ⌦ and ⌫ ~~or~~ would not be in the end-user's interest.

Operators may be required *inter alia*:

(a) to give third parties access to specified network elements and/or facilities, ⇨ as appropriate ⇦ including access to network elements which are ⌦ either ⌫ not active ⇨ or physical ⇦ and/or ⇨ active or virtual ⇦ unbundled access to the local loop~~, to, inter alia, allow carrier selection and/or pre-selection and/or subscriber line resale offers~~;

(b) to negotiate in good faith with undertakings requesting access;

(c) not to withdraw access to facilities already granted;

(~~d~~**ca**) *to provide specified services on a wholesale basis for resale by third parties;*

(d~~e~~) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;

(e~~f~~) to provide co-location or other forms of associated facilities sharing;

(f~~g~~) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for ⇨ software emulated networks ⇦ ~~intelligent network services~~ or roaming on mobile networks;

(gh) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;

(hi) to interconnect networks or network facilities;

(ij) to provide access to associated services such as identity, location and presence service.

National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness and timeliness.

2. When national regulatory authorities are considering ⇨ the appropriateness of imposing any of ⇦ the ⇨possible specific ⇦ obligations referred in paragraph 1, and in particular when assessing ⌦ , in conformity with the principle of proportionality, ⌫ ⌦ whether and ⌫ how such obligations ⌦ should ⌫ ~~would~~ be imposed ~~proportionate to the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive)~~ , ⇨ they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would ~~already~~ be sufficient to address the identified problem at the retail level. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or ~~contemplated~~ **planned** regulated access to other wholesale inputs pursuant to this Article. ⇦ Tthey shall take account in particular of the following factors:

(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and/or access involved, including the viability of other upstream access products such as access to ducts;

(b) the expected technological evolution affecting network design and management

(cb) the feasibility of providing the access proposed, in relation to the capacity available;

(dc) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment ⇨ with particular regard to investments in and risk levels associated with very high capacity networks ⇦ ;

(ed) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition ⇨ and to sustainable competition based on co-investment in networks ⇦ ;

(fe) where appropriate, any relevant intellectual property rights;

(g) the provision of pan-European services.

Where a national regulatory authority considers, in accordance with Article 66, the imposition of obligations on the basis of Articles 70 or this Article, it shall examine whether the sole imposition of obligations in accordance with Article 70 would be a proportionate means to promote competition and the interests of the ~~citizen~~ end-user.

Where a national regulatory authority considers obligations in respect of access to active or virtual networks pursuant to this Article, it shall examine whether the imposition of other obligations, in conjunction or not with obligations under Article 70, would be a proportionate means to promote competition and the interests of the ~~citizen~~ end-user.

3. When imposing obligations on an operator to provide access in accordance with the provisions of this Article, national regulatory authorities may lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with Article 39 ~~17 of Directive 2002/21/EC (Framework Directive)~~.

Article ~~13~~72

Price control and cost accounting obligations

1. A national regulatory authority may, in accordance with the provisions of Article 668, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users.

⇨ In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account **the need to promote competition and** long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks. In particular, ⇦ t~~T~~o encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator~~.~~. ⇨ Where the national regulatory authorities deem price controls appropriate, they shall ⇦ ~~and~~ allow ⌦ the operator ⌫ ~~him~~ a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

~~National regulatory authorities shall not impose or maintain obligations pursuant to this Article, w~~**Where** ~~they~~ **national regulatory authorities** establish that a demonstrable retail price constraint is present and that ~~any obligations imposed~~ **effective and non-discriminatory access is ensured** in accordance with Articles 67 to 71, **they shall consider whether imposing or maintaining obligations pursuant to this Article may be inappropriate** ~~including in particular any economic replicability test imposed in accordance with Article 68 ensures effective and non discriminatory access~~.

When national regulatory authorities consider it appropriate to impose price controls on access to existing network elements, they shall also take account of the benefits of predictable and stable wholesale prices in ensuring efficient entry and sufficient incentives for all operators to deploy new and enhanced networks.

2. National regulatory authorities shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote ⇨ the deployment of new and enhanced networks ⇦ , efficiency and sustainable competition and maximise ⇨ sustainable ⇦ consumer benefits. In this regard national regulatory authorities may also take account of prices available in comparable competitive markets.

3. Where an operator has an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs including a reasonable rate of return on investment shall lie with the operator concerned. For the purpose of calculating the cost of efficient provision of services, national regulatory authorities may use cost accounting methods independent of those used by the undertaking. National regulatory authorities may require an operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

4. National regulatory authorities shall ensure that, where implementation of a cost accounting system is mandated in order to support price controls, a description of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. Compliance with the cost accounting system shall be verified by a qualified independent body. A statement concerning compliance shall be published annually.

⇩ new

Article 73

Termination rates

~~1. Where a national regulatory authority imposes obligations relating to cost recovery and price controls on operators designated as having significant market power on a market for wholesale voice call termination, it shall set maximum symmetric termination rates. based on the costs incurred by an efficient operator. The evaluation of efficient costs shall be based on current cost values. The cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice call termination service to third parties.~~

~~The details of the cost methodology shall be set by a Commission decision, adopted pursuant to Article 38.~~

~~2.~~ **1.** By [date **of transposition**] the Commission shall, ~~after having consulted~~ **taking utmost account of the opinion of** BEREC, adopt **a Decision setting:** ~~delegated acts in accordance with Article 109 concerning~~

~~–~~ a single maximum **EU-wide mobile voice** termination rate **and a single maximum EU-wide fixed voice termination rate, which is imposed on any operator active on each of the markets of mobile voice termination and fixed voice termination respectively in any Member State**. ~~to be imposed by national regulatory authorities;~~

~~on undertakings designated as having significant market power in fixed and mobile voice termination markets respectively in the Union.~~

~~When adopting these delegated acts, the Commission~~

To that end the Commission shall**:**

- ~~follow the principles laid down in the first subparagraph of paragraph 1 and shall~~ comply with the **principles** criteria and parameters provided in Annex III;~~.~~

~~4. In applying paragraph 2, the Commission shall ensure that the single voice call termination rate in mobile networks shall not exceed 1.23 €cent per minute and the single voice call termination rate in fixed networks shall not exceed 0.14 €cent per minute. The Commission shall~~

- **when setting the single maximum termination rate for the first time,** take into account the weighted average of maximum termination rates in fixed and mobile networks established in accordance with the principles provided in **Annex III** ~~the first subparagraph of paragraph 1~~ applied across the Union; ~~when setting the single maximum termination rate for the first time.~~

~~5. When adopting delegated acts pursuant to paragraph 2, the Commission shall~~

- take into account the total number of end-users in each Member State, in order to ensure a proper weighting of the maximum termination rates, as well as national circumstances which result in significant differences between Member States when determining the maximum termination rates in the Union**;**

~~6. The Commission may request BEREC to develop an economic model in order to assist the Commission in determining the maximum termination rates in the Union. The Commission shall~~

- take into account market information provided by BEREC, national regulatory authorities or, directly, by undertakings providing electronic communications networks and services**; and**~~.~~

- consider the need to allow for a transition period so as to allow adjustments in Member States where this is necessary on the basis of rates previously imposed.

~~7.~~**2. The decision referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 110(4). Taking utmost account of the opinion of BEREC, t**~~T~~he Commission shall review **its decision** ~~the delegated acts adopted pursuant this Article~~ every five years **and shall consider on that occasion, by application of the criteria listed in Article 65(1), whether EU wide maximum mobile voice termination rates or fixed voice termination rates continue to be necessary. Where the Commission decides in accordance with this subparagraph not to impose a maximum mobile voice termination rate or a maximum fixed termination rate, or both, national regulatory authorities may conduct market analyses of voice termination markets in accordance with Article 65, to assess whether the imposition of regulatory obligations is necessary. If a national regulatory authority imposes as a result of such analysis cost oriented termination rates in a relevant market, it shall follow the principles, criteria and parameters provided in Annex III and shall be implemented in accordance with the procedures referred to in Articles 23, 32 and 33**.

3. National regulatory authorities shall monitor the application of the single maximum EU-wide mobile and fixed voice termination rates by providers of termination services. National regulatory authorities may at any time require a provider of voice termination services to amend the rate it charges to other undertakings if it does not comply with the Decision referred to in paragraph 1. National regulatory authorities shall ~~inform~~ annually report to BEREC and the Commission concerning the application of this Article.

[Article 74]

[Regulatory treatment of new network elements]

[1. A national regulatory authority shall not impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 ~~and Articles 67~~ to 72 and that the operator designated as **having** significant market power on that relevant market has deployed or is planning to deploy, if **it determines that** the following cumulative conditions are met:

(a) the deployment of the new network elements is open to co-investment offers **from any operator over the lifetime of the network,** according to a transparent process and on terms which **the national regulatory authority considers capable of ensuring** ~~favour~~ sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

(aa) at least one co-investment agreement based on an offer made pursuant to (a) has been concluded;

(b) the deployment of the new network elements contributes significantly to the deployment of very high capacity networks; **and**

(c) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

When assessing co-investment offers and ~~processes~~ **agreements** referred to in point (a) **and (aa)** of the first subparagraph, national regulatory authorities shall ensure that those offers and ~~processes~~ **agreements** comply with the criteria set out in Annex IV.]

[1a. In the absence of an agreement pursuant to subparagraph 1(aa), and where all other conditions of paragraph 1 are satisfied, national regulatory authorities may decide to conduct a market test by consulting stakeholders and interested parties, in particular on the offered terms and conditions. Such consultation shall allow potential co-investors to provide a counter-offer, including a reasoned justification where they deem the terms and conditions of the initial proposal not to be in line with the requirements in point (a) of the above paragraph or in Annex IV. The counter offer shall be submitted within a deadline established by the national regulatory authority so as to avoid unnecessary delays. The national regulatory authority shall allow sufficient time to the operator designated as having significant market to react to any such counter-offer before completing its assessment. In the light of the results of the market test, the NRA may reasonably conclude that the conditions for the non-imposition of obligations in accordance with Articles 67 to 72 are fulfilled.]

[2. Following its assessment and decision pursuant to paragraph 1, national regulatory authorities shall review, in the context of subsequent market analyses pursuant to Article 65, which obligations may be imposed in accordance with Articles 66 to 72, where it concludes that, absent its intervention, effective competition in one or more retail markets would not be achieved by the continued application of the conditions set out in paragraph 1 and of the criteria set out in Annex IV.]

[3. Paragraph 1 shall not prevent a national regulatory authority from imposing or maintaining remedies in accordance with Articles 66 to 72 on an operator designated as having significant market power in a relevant wholesale market where these are necessary to enable undertakings that were absent from downstream retail markets when the offer referred to in paragraph 1(a) was published, to enter the market in the geographic area where the co-investment takes place, unless a viable and similar alternative is available, including on a commercial basis.]

Article ~~13a~~75

Functional separation

1. Where the national regulatory authority concludes that the appropriate obligations imposed under Articles 67 to 72~~9 to 13~~ have failed to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access product markets, it may, as an exceptional measure, in accordance with the provisions of the second subparagraph of Article ~~8~~66(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in an independently operating business entity.

That business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes.

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a proposal to the Commission that includes:

(a) evidence justifying the conclusions of the national regulatory authority as referred to in paragraph 1;

(b) a reasoned assessment that there is no or little prospect of effective and sustainable infrastructure-based competition within a reasonable time frame;

(c) an analysis of the expected impact on the regulatory authority, on the undertaking, in particular on the workforce of the separated undertaking and on the electronic communications sector as a whole, and on incentives to invest in a sector as a whole, particularly with regard to the need to ensure social and territorial cohesion, →1 and on other stakeholders including, in particular, the expected impact on competition and any potential consequential effects on consumers ← ;

(d) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems/markets failures identified.

3. The draft measure shall include the following elements:

(a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;

(b) an identification of the assets of the separate business entity, and the products or services to be supplied by that entity;

(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;

(f) a monitoring programme to ensure compliance, including the publication of an annual report.

4. Following the Commission's decision on the draft measure taken in accordance with Article ~~8~~66(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 65 ~~16 of Directive 2002/21/EC (Framework Directive)~~. On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 23~~6~~ and 32~~7~~ of this Directive ~~2002/21/EC (Framework Directive)~~.

5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles ~~9~~67 to 72~~13~~ in any specific market where it has been designated as having significant market power in accordance with Article 65~~16 of Directive 2002/21/EC (Framework Directive)~~ , or any other obligations authorised by the Commission pursuant to Article ~~8~~66(3).

Article ~~13b~~76

Voluntary separation by a vertically integrated undertaking

1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 65~~16~~of this Directive ~~2002/21/EC (Framework Directive~~ shall inform the national regulatory authority **at least three months** in advance ~~and in a timely manner~~, in order to allow the national regulatory authority to assess the effect of the intended transaction, when they intend to transfer their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, fully equivalent access products.

Undertakings shall also inform the national regulatory authority of any change of that intent as well as the final outcome of the process of separation.

Undertakings may also offer commitments regarding access conditions that will apply to their network during an implementation period and after the proposed form of separation is implemented, with a view to ensuring effective and non-discriminatory access by third parties. The offer of commitments shall include sufficient details, including in terms of timing of implementation and duration, so as to allow the national regulatory authority to conduct its tasks in accordance with paragraph 2 of this Article. Such commitments may extend beyond the maximum period for market reviews established in Article 65(6).

2. The national regulatory authority shall assess the effect of the intended transaction ⇨ together with the proposed commitments where applicable ⇦ on existing regulatory obligations under ⌦ this ⌫ Directive ~~2002/21/EC (Framework Directive)~~.

For that purpose, the national regulatory authority shall conduct an ~~coordinated~~ analysis of the different markets related to the access network in accordance with the procedure set out in Article 65 ~~16 of Directive 2002/21/EC (Framework Directive)~~.

The national regulatory authority shall take into account any commitments offered by the undertaking, having regard in particular to the objectives in Article 3. In so doing, the national regulatory authority shall consult third parties in accordance with Article 23, and shall address in particular, without limitation, those third parties which are directly affected by the intended transaction.

On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 236 and 32 ~~7 of Directive 2002/21/EC (Framework Directive),~~ ⇨ applying, if appropriate, the provisions of Article 77. In its decision, the national regulatory authority may make the commitments binding, wholly or in part. By way of exception to Article 65(6), the national regulatory authority may make some or all commitments binding for the entire period for which they are offered. ⇦

3. ⇨ Without prejudice to the provisions of Article 77, ⇦ ~~T~~the legally and/or operationally separate business entity may be subject ⇨ as appropriate ⇦ to any of the obligations identified in Articles 679 to ~~13~~72 in any specific market where it has been designated as having significant market power in accordance with Article 65 ~~16 of Directive 2002/21/EC (Framework Directive)~~, or any other obligations authorised by the Commission pursuant to Article ~~8~~66(3) ⇨ and where any commitments offered are insufficient to meet the objectives of Article 3⇦ .

4. The national regulatory authority shall monitor the implementation of the commitments offered by the undertakings that it has made binding in accordance with paragraph 2 of this Article and shall consider their extension when the period of time for which they are initially offered has expired.

Article 77[91]

~~Vertically separate~~ Wholesale only undertakings

1. A national regulatory authority that designates an undertaking which is absent from any retail markets for electronic communications services as having significant market power in one or several wholesale markets in accordance with Article 65 shall consider whether that undertaking has the following characteristics:

(a) all companies and business units within the undertaking, ~~including~~ **and** all companies that are controlled but not necessarily wholly owned by the same ultimate owner(s), only have activities, current and planned for the future, in wholesale markets for electronic communications services and therefore do not have activities in any retail market for electronic communications services provided to end-users in the Union;

(b) the undertaking **is not bound to deal with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to private or commercial end-users, because of** ~~does not hold~~ an exclusive agreement, or an agreement which de facto amounts to an exclusive agreement~~, with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to private or commercial end-users~~.

2. If the national regulatory authority ~~concludes~~ **considers** that the conditions laid down in points (a) and (b) of paragraph 1 of this Article are fulfilled, it may *only* impose on that undertaking obligations pursuant to Article~~s 70 or~~ 71 **or obligations relative to fair and reasonable pricing if justified on the basis of a market analysis including a prospective assessment of the SMP operator's likely behaviour**.

3. The national regulatory authority shall review obligations imposed on the undertaking in accordance with this Article at any time if it concludes that the conditions laid down in points (a) and (b) of paragraph 1 of this Article are no longer met and shall apply Articles 65 to 72, as appropriate.

[91] Further discussions required.

4. The national regulatory authority shall also review obligations imposed on the undertaking in accordance with this Article if on the basis of evidence of terms and conditions offered by the undertaking to its downstream customers, the authority concludes that competition problems have arisen **or are likely to arise** to the detriment of end-users which require the imposition of one or more obligations provided in Articles 67, 68, 69**, 70** or 72, or the modification of the obligations imposed in accordance with paragraph 2.

5. The imposition of obligations and their review in accordance with this Article shall be implemented in accordance with the procedures referred to in Articles 23, 32 and 33.

Article 78

Migration from legacy infrastructure

1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 65 shall inform the national regulatory authority in advance and in a timely manner when they plan to decommission **or replace with a new infrastructure** parts of the network, including legacy infrastructure necessary to operate a copper network, which are subject to obligations pursuant to Articles 66 to 77.

2. The national regulatory authority shall ensure that the decommissioning **or replacement** process includes a transparent timetable and conditions, including inter alia an appropriate period of notice and for transition, and establishes the availability of alternative comparable products**, if any,** providing access to network elements substituting the ~~decommissioned or~~ **replaced** infrastructure if necessary to safeguard competition and the rights of end-users.

With regard to assets which are proposed for decommissioning **or replacement**, the national regulatory authority may withdraw the obligations after having ascertained:

(a) the access provider has demonstrably established the appropriate conditions for migration, including making available a comparable alternative access product enabling to reach the same end-users, as was available using the legacy infrastructure; and

(b) the access provider has complied with the conditions and process provided to the national regulatory authority in accordance with the present Article.

Such withdrawal shall be implemented in accordance with the procedures referred to in Articles 23, 32 and 33.

PART III. SERVICES

TITLE I: UNIVERSAL SERVICE OBLIGATIONS

Article 79

Affordable universal service

1. Member States shall ensure that all end-users in their territory have access at an affordable price, in the light of specific national conditions, to available functional internet access and voice communications services at the quality specified in their territory, including the underlying connection, at least at a fixed location.

2. Member States shall**, in the light of national conditions,** define the functional internet access service referred to in paragraph 1 with a view to adequately reflect services used by the majority of end-users in their territory. To that end, the functional internet access service shall **at least** be capable of supporting the minimum set of services set out in Annex V.

3. When an end-user so requests, the connection referred to in paragraph 1 may be limited to support voice communications only.

Article 80

Provision of affordable universal service

1. ~~National regulatory authorities~~ **Competent authorities** shall monitor the evolution and level of retail tariffs of services identified in Article 79(1) available on the market, in particular in relation to national prices and national end-user income.

2. Where Member States establish that, in the light of national conditions, retail prices for services identified in Article 79(1) are not affordable, because low-income or special social needs end-users are prevented from accessing such services, ***they may ensure that support is provided to*** **those** ***end-users in view of ensuring affordability of functional internet access and voice communications services at least at a fixed location***~~.~~ **and/*or*** ~~they~~ **Member States** may require undertakings which provide such services to offer to those end-users tariff options or packages different from those provided under normal commercial conditions. To that end, Member States may require such undertakings to apply common tariffs, including geographic averaging, throughout the territory. ~~**Alternatively,**~~ **Member States may decide to limit the obligation to offer those specific tariff options and packages only by designated undertakings. To this effect, they may designate one or more undertakings to offer tariff options or packages different from those provided under normal commercial conditions to ensure affordability of universal service to all end-users with low income or special social needs. Article 81 shall apply to such designations mutatis mutandis.** Member States shall ensure that end-users entitled to such tariff options or packages have a right to contract **either** with an undertaking providing the services identified in Article 79(1)**, or with a provider designated in accordance with this paragraph**, and that such undertaking provides them with an adequate period of availability of a number and avoid unwarranted disconnection of service.

3. Member States shall ensure that undertakings which provide tariff options or packages to low-income or special social needs end-users pursuant to paragraph 2, keep the ~~national regulatory~~ **competent** authorities informed of the details of such offers. ~~National regulatory authorities~~ **Competent authorities** shall ensure that the conditions under which undertakings provide tariff options or packages pursuant to paragraph 2 are fully transparent and are published and applied in accordance with the principle of non-discrimination. ~~National regulatory authorities~~ **Competent authorities** may require that specific schemes be modified or withdrawn.

~~*4. Member States may,* in the light of national conditions*, ensure that support is provided to low-income or special social needs end-users in view of ensuring affordability of functional internet access and voice communications services at least at a fixed location.*~~

~~5~~**4**. Member States shall ensure, in the light of national conditions, that support is provided as appropriate to end-users with disabilities, or that other specific measures are taken, in view of ensuring that related terminal equipment, specific equipment and specific services enhancing equivalent access are **available and** affordable.

~~6~~**5**. When applying this Article, Member States shall seek to minimise market distortions.

~~*Article 3*~~

~~**Availability of universal service**~~

~~1. Member States shall ensure that the services set out in this Chapter are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price.~~

~~2. Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.~~

~~*Article 8*~~

~~**Designation of undertakings**~~

~~1. Member States may designate one or more undertakings to guarantee the provision of universal service as identified in Articles 4, 5, 6 and 7 and, where applicable, Article 9(2) so that the whole of the national territory can be covered. Member States may designate different undertakings or sets of undertakings to provide different elements of universal service and/or to cover different parts of the national territory.~~

~~2. When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated. Such designation methods shall ensure that universal service is provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Article 12.~~

~~3. When an undertaking designated in accordance with paragraph 1 intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform in advance the national regulatory authority in a timely manner, in order to allow that authority to assess the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to Article 4. The national regulatory authority may impose, amend or withdraw specific obligations in accordance with Article 6(2) of Directive 2002/20/EC (Authorisation Directive).~~

Article 81

Availability of universal service

1. Where a Member State has ~~duly demonstrated~~ **established**, ~~account taken of~~ **taking into account** the results**, where available,** of the geographical survey conducted in accordance with Article 22(1), that the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service cannot be ensured under normal commercial circumstances or through other potential public policy tools **in its national territory or different parts thereof**, it may impose appropriate universal service obligations to meet all reasonable requests for accessing those services in **the relevant parts of** its territory.

2. Member States shall determine the most efficient and appropriate approach for ensuring the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

3. In particular, where Member States decide to impose obligations to ensure the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service, they may designate one or more undertakings to guarantee the availability at a fixed location of functional internet access service as identified in accordance with Article 79(2) and of voice communications service in order to cover all the national territory. Member States may designate different undertakings or sets of undertakings to provide functional internet access and voice communications services at a fixed location and/or to cover different parts of the national territory.

4. When Member States designate undertakings in part or all of the national territory as undertakings having the obligation to ensure the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated. Such designation methods shall ensure that functional internet access and voice communications services at a fixed location are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Article 84.

5. When an undertaking designated in accordance with paragraph 3 intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform in advance the ~~national regulatory~~ **competent** authority in a timely manner, in order to allow that authority to assess the effect of the intended transaction on the provision at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service. The ~~national regulatory~~ **competent** authority may impose, amend or withdraw specific obligations in accordance with Article 13(2).

~~*Article 4*~~

~~**Provision of access at a fixed location and provision of telephone services**~~

~~1. Member States shall ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking.~~

2. The connection provided shall be capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

3. Member States shall ensure that all reasonable requests for the provision of a publicly available telephone service over the network connection referred to in paragraph 1 that allows for originating and receiving national and international calls are met by at least one undertaking.

Article 5

Directory enquiry services and directories

1. Member States shall ensure that:

(a) at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year;

(b) at least one comprehensive telephone directory enquiry service is available to all end-users, including users of public pay telephones.

2. The directories referred to in paragraph 1 shall comprise, subject to the provisions of Article 12 of 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)[92], all subscribers of publicly available telephone services.

3. Member States shall ensure that the undertaking(s) providing the services referred to in paragraph 1 apply the principle of non-discrimination to the treatment of information that has been provided to them by other undertakings.

[92] OJ L 201, 31.7.2002, p. 37.;

Article 6

Public pay telephones and other publics voice telephony access points

1. Member States shall ensure that national regulatory authorities may impose obligations on undertakings in order to ensure that public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other access points, accessibility to disabled end-users and the quality of services.

2. A Member State shall ensure that its national regulatory authority can decide not to impose obligations under paragraph 1 in all or part of its territory, if it is satisfied that these facilities or comparable services are widely available, on the basis of a consultation of interested parties as referred to in Article 33.

3. Member States shall ensure that it is possible to make emergency calls from public pay telephones using the single European emergency call number '112' and other national emergency numbers, all free of charge and without having to use any means of payment.

Article 7

Measures for disabled end-users

1. Unless requirements have been specified under Chapter IV which achieve the equivalent effect, Member States shall take specific measures to ensure that access to, and affordability of, the services identified in Article 4(3) and Article 5 for disabled end-users is equivalent to the level enjoyed by other end-users. Member States may oblige national regulatory authorities to assess the general need and the specific requirements, including the extent and concrete form of such specific measures for disabled end-users.

2. Member States may take specific measures, in the light of national conditions, to ensure that disabled end-users can also take advantage of the choice of undertakings and service providers available to the majority of end-users.

~~3. In taking the measures referred to in paragraphs 1 and 2, Member States shall encourage compliance with the relevant standards or specifications published in accordance with Articles 17 and 18 of Directive 2002/21/EC (Framework Directive).~~

~~*Article 9*~~

~~**Affordability of tariffs**~~

~~1. National regulatory authorities shall monitor the evolution and level of retail tariffs of the services identified in Articles 4 to 7 as falling under the universal service obligations and either provided by designated undertakings or available on the market, if no undertakings are designated in relation to those services, in particular in relation to national consumer prices and income.~~

~~2. Member States may, in the light of national conditions, require that designated undertakings provide to consumers tariff options or packages which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing the network referred to in Article 4(1) or from using the services identified in Article 4(3) and Articles 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings.~~

~~3. Member States may, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes or special social needs.~~

~~4. Member States may require undertakings with obligations under Articles 4, 5, 6 and 7 to apply common tariffs, including geographical averaging, throughout the territory, in the light of national conditions or to comply with price caps.~~

~~5. National regulatory authorities shall ensure that, where a designated undertaking has an obligation to provide special tariff options, common tariffs, including geographical averaging, or to comply with price caps, the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.~~

Article 11

Quality of service of designated undertakings

1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III. The published information shall also be supplied to the national regulatory authority.

2. National regulatory authorities may specify, *inter alia*, additional quality of service standards, where relevant parameters have been developed, to assess the performance of undertakings in the provision of services to disabled end-users and disabled consumers. National regulatory authorities shall ensure that information concerning the performance of undertakings in relation to these parameters is also published and made available to the national regulatory authority.

3. National regulatory authorities may, in addition, specify the content, form and manner of information to be published, in order to ensure that end-users and consumers have access to comprehensive, comparable and user-friendly information.

4. National regulatory authorities shall be able to set performance targets for undertakings with universal service obligations. In so doing, national regulatory authorities shall take account of views of interested parties, in particular as referred to in Article 33.

5. Member States shall ensure that national regulatory authorities are able to monitor compliance with these performance targets by designated undertakings.

~~6. Persistent failure by an undertaking to meet performance targets may result in specific measures being taken in accordance with 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)[93]. National regulatory authorities shall be able to order independent audits or similar reviews of the performance data, paid for by the undertaking concerned, in order to ensure the accuracy and comparability of the data made available by undertakings with universal service obligations.~~

Article 82

Status of existing universal services

Member States may continue to ensure the availability or affordability of other services than functional internet access service as defined in accordance with Article 79(2) and voice communications service at a fixed location that were in force prior to [set date], if the need for such services is ~~duly demonstrated~~ **established** in the light of national circumstances. When Member States designate undertakings in part or all of the national territory for the provision of those services, Article 81 shall apply. Financing of these obligations shall comply with Article 85.

Member States shall review the obligations imposed pursuant to this Article at the latest 3 years after the entry into force of this Directive and thereafter once every ~~year~~ **3 years**.

Article ~~10~~83

Control of expenditure

1. Member States shall ensure that ~~designated undertakings,~~ in providing facilities and services additional to those referred to in ~~Articles 4, 5, 6, 7 and 9(2)~~ ⌦ Article 79 ⌫ , ⌦ those ~~undertakings providing~~ **providers of** the services in accordance with Article 79~~, 81 and~~ **to** 82 ⌫ establish terms and conditions in such a way that the ~~subscriber~~ ⇨ end-user ⇦ is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

~~93 See page 21 of this Official Journal.~~

2. Member States shall ensure that ~~designated~~ ⌦ those ⌫ ~~undertakings with obligations under Articles 4, 5, 6, 7 and 9(2)~~ ⌦ ~~providing~~ **providers of** the **functional internet access and/or** voice communications services referred to in Article 79 and ~~implemented~~ **providing services** pursuant to Article 80 ⌫ ~~provide~~ **offer** the specific facilities and services set out in Annex VI, Part A, **as applicable,** in order that ~~subscribers~~ ⇨ end-users ⇦ can monitor and control expenditure and ⇨ put in place a system to ⇦ avoid unwarranted disconnection of ⇨ voice communications **service or of functional internet access** ⇦ service ⇨ for the end-users who are entitled thereto, including an appropriate mechanism to check continued interest in using the service ⇦.

3. Member States shall ensure that the ~~relevant~~ ⇨ competent ⇦ authority is able to waive the requirements of paragraph 2 in all or part of its national territory if it is satisfied that the facility is widely available.

Article ~~12~~ 84

Costing of universal service obligations

1. Where ~~national regulatory authorities~~ **competent authorities** consider that the provision of ~~universal service~~ ⇨ functional internet access service as defined in accordance with Article 79(2) and of voice communications service; ⇦ as set out in Articles ⌦ 79, 80 and 81 or the continuation of existing universal services as set out in Article 82 ⌫ ~~3 to 10~~ may represent an unfair burden on ~~undertakings designated to provide universal service,~~ ⇨ ~~providing~~ **providers of** such services ~~and~~ **which** request~~ing for~~ compensation ⇦ **,** they shall calculate the net costs of its provision.

For that purpose, ~~national regulatory authorities~~ **competent authorities** shall:

(a) calculate the net cost of the universal service obligation, taking into account any market benefit which accrues to an undertaking ⇨ providing functional internet access service as defined in accordance with Article 79(2) and voice communications service; as set out in Articles 79, 80 and 81 or the continuation of existing universal services as set out in Article 82 ⇦ ~~designated to provide universal service~~, in accordance with Annex ~~I~~VII ~~, Part A~~; or

(b) make use of the net costs of providing universal service identified by a designation mechanism in accordance with Article ~~8(2)~~ ~~81(3),~~ 81(4) ~~and 81(5)~~.

2. The accounts and/or other information serving as the basis for the calculation of the net cost of universal service obligations under paragraph 1(a) shall be audited or verified by the ~~national regulatory authority~~ **competent authority** or a body independent of the relevant parties and approved by the ~~national regulatory authority~~ **competent authority**. The results of the cost calculation and the conclusions of the audit shall be publicly available.

Article ~~13~~85

Financing of universal service obligations

~~*1.*~~ Where, on the basis of the net cost calculation referred to in Article 84~~12~~, ~~national regulatory~~ **competent** authorities find that an undertaking is subject to an unfair burden, Member States shall, upon request from ⌦ the ⌫ ~~a designated~~ undertaking ⌦ concerned ⌫ , decide~~:~~

~~*(a)*~~ to introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds~~; and/or~~ ⇨ ~~Only the net cost, as determined in accordance with Article 84, of the obligations laid down in Articles 79, 81 and 82 may be financed.~~ ⇦

~~*(b) to share the net cost of universal service obligations between providers of electronic communications networks and services.*~~

~~*2. Where the net cost is shared under* the second sub-paragraph of *paragraph 1(b), Member States shall establish a sharing mechanism administered by the national regulatory authority or a body independent from the beneficiaries under the supervision of the national regulatory authority. Only the net cost, as determined in accordance with Article 12* 84*, of the obligations laid down in Articles 3 to 10* 79 to 82 *may be financed.*~~

~~*3. A sharing mechanism shall respect the principles of transparency, least market distortion, non-discrimination and proportionality, in accordance with the principles of Annex IV* VII*, Part B. Member States may choose not to require contributions from undertakings whose national turnover is less than a set limit.*~~

~~*4. Any charges related to the sharing of the cost of universal service obligations shall be unbundled and identified separately for each undertaking. Such charges shall not be imposed or collected from undertakings that are not providing services in the territory of the Member State that has established the sharing mechanism.*~~

Article ~~14~~86

Transparency

1. Where ~~a mechanism for sharing~~ ***a mechanism for sharing*** the net cost of universal service obligations ***as referred to in Article 85 is established,*** ~~as referred to~~ ⌦ ~~is to be calculated~~ ⌫ ⌦ ~~in accordance with~~ ⌫ ~~Article~~ ~~13~~ 85 ~~**84**is established~~, national regulatory authorities shall ensure that the principles for ***cost sharing*** ~~cost sharing~~ ⌦ ~~net cost calculation, including~~ ***and*** the ⌫ ~~and~~details of ***the mechanism used*** ~~the mechanism~~ ⌦ ~~methodology~~ **methodology** ~~to be~~ ⌫ ~~used,~~ **to compensate the net cost** are publicly available.

2. Subject to ~~Community~~ ⌦ Union ⌫ and national rules on business confidentiality, national regulatory authorities shall ensure that an annual report is published ~~giving~~ ⌦ providing ⌫ the ⌦ details of ⌫ calculated cost of universal service obligations***, identifying the contributions made by all the undertakings involved,*** ~~, identifying the contributions made by all the undertakings involved, and identifying~~ ⌦ including ⌫ any market benefits that may have accrued to the undertaking(s) ~~designated~~ ⌦ pursuant ⌫ to ~~provide~~ universal service~~, where a fund is actually~~ ⌦ obligations laid down ⌫ in ⌦ Articles 79~~, 81 and~~ **to** 82 ⌫ ~~place and working~~.

~~*Article 32 **86a***~~

~~*Additional mandatory services*~~

~~*Member States may decide to make additional services, apart from services within the universal service obligations as defined in Chapter II **Articles 79-82**, publicly available in its own territory but, in such circumstances, no compensation mechanism involving specific undertakings may be imposed.*~~

~~CHAPTER V~~

~~GENERAL AND FINAL PROVISIONS~~

⌦ TITLE II: ~~NUMBERS~~ NUMBERING RESOURCES ⌫

Article ~~10~~87

Numbering resources

1. Member States shall ensure that ~~[~~national regulatory authorities~~]~~ **competent authorities** control the granting of rights of use ~~of~~ ⌦ for ⌫ all national numbering resources and the management of the national numbering plans~~. Member States shall ensure~~ ⌦ and ⌫ that ⌦ they provide ⌫ adequate ~~numbers and numbering ranges~~ ~~are provided~~ **numbering resources** for **the provision of** ~~all~~ publicly available electronic communications services. ~~[~~National regulatory authorities~~]~~ **Member States** shall ~~establish~~ **ensure that** objective, transparent and non-discriminatory procedures for granting rights of use for national numbering resources **are established**.

2. ~~[~~National regulatory authorities~~]~~ **Competent authorities** may **also** grant rights of use for ~~numbers~~ **numbering resources** from the national numbering plans for the provision of specific services to undertakings other than providers of electronic communications networks or services, provided that ~~those undertakings demonstrate their ability to manage those numbers and sufficient and~~ adequate numbering resources are made available to satisfy current and foreseeable future demand. **Those undertakings shall demonstrate their ability to manage the numbering resources and comply with any relevant requirements set out pursuant to Article 88.** ~~[~~National regulatory authorities~~]~~ **Competent authorities** may suspend the **further** granting of ~~numbering resources~~ **rights of use for numbering resources** to such undertakings if it is demonstrated that there is a risk of exhaustion of numbering resources. By [entry into force plus 18 months] in order to contribute to the consistent application of this paragraph, BEREC shall adopt, after consulting stakeholders and in close cooperation with the Commission, guidelines on common criteria for the assessment of the ability to manage numbering resources and the risk of exhaustion of numbering resources.

~~2~~3. ~~[~~National regulatory authorities~~]~~ **Competent authorities** shall ensure that national numbering plans and procedures are applied in a manner that gives equal treatment to all providers of publicly available electronic communications services ⇨ and ~~other~~ **the** undertakings ~~if they are~~ eligible in accordance with paragraph 2 ⇦ . In particular, Member States shall ensure that an undertaking to which the right of use for ~~a range of numbers~~ **numbering resources** has been granted does not discriminate against other providers of electronic communications services as regards the ~~number sequences~~ **numbering resources** used to give access to their services.

4. Each Member State shall ~~determine~~ **ensure that ~~[national regulatory authorities]~~ competent authorities make available** a range of ~~its~~ non-geographic ~~numbering resources~~ **numbers** which may be used for the provision of electronic communications services other than interpersonal communications services, throughout the territory of the Union, without prejudice to Regulation (EU) No 531/2012~~ and implementing acts based thereon~~, and Article 91 (2) of this Directive. Where rights of use for ~~numbers~~ **numbering resources** have been granted in accordance with paragraph 2 to undertakings other than providers of electronic communications networks or services, this paragraph shall apply to the specific services **for whose provision the rights of use have been granted** ~~provided by those undertakings~~. ~~[~~National regulatory authorities~~]~~ **Competent authorities** shall ensure that the conditions**, attached in accordance with Part E of Annex I,** for the right of use for ~~numbers~~ **numbering resources** used for the provision of services outside the Member State of the country code, and their enforcement, are ~~not~~ **neither** less stringent **nor more stringent** than the conditions and enforcement applicable to services provided within the Member State of the country code**, in accordance with this Directive**. ~~[~~National regulatory authorities~~]~~ **Competent authorities** shall also ensure **in accordance with Article 88(6)** that providers using ~~numbers~~ **numbering resources** of their country code in other Member States comply with consumer protection and other national rules related to the use of ~~numbers~~ **numbering resources** applicable in those Member States where the ~~numbers~~ **numbering resources** are used. This obligation is without prejudice to the enforcement powers of the competent authorities of those Member States.

~~BEREC shall assist n~~~~[~~National regulatory authorities~~]~~ **Competent authorities may request BEREC's assistance** in coordinating their activities to ensure an efficient management of numbering resources ~~and~~ **with a right of** extraterritorial use **within the Union** ~~in compliance with the regulatory framework~~.

In order to facilitate the monitoring by the ~~[national regulatory authorities]~~ competent authorities of compliance with the requirements of this paragraph, BEREC shall establish a ~~central registry~~ **database** on the **numbering resources** with a right of extraterritorial use **within the Union. For this purpose**, ~~to which national regulatory authorities~~ **competent authorities** shall transmit the relevant information **to BEREC**.

5. Member States shall ensure that the '00' code is the standard international access code. Special arrangements for ~~making calls~~ **the use of number-based interpersonal communications services** between locations adjacent to one another across borders between Member States may be established or continued. ~~*End-users in the locations concerned shall be fully informed of such arrangements.*~~

Member States may agree to share a common numbering plan for all or specific categories of numbers.

End-users in the locations concerned shall be fully informed of such arrangements **or agreements.**

6. **Without prejudice to Article 99,** Member States shall promote ~~the~~ over-~~—~~the-air provisioning ~~of numbering resources, -~~ where technically feasible - to facilitate ~~change~~ **switching** of providers of electronic communications networks or services by end-users other than consumers, in particular providers and users of machine-to-machine services..

~~3~~7. Member States shall ensure that the national numbering plans, and all subsequent additions or amendments thereto, are published, subject only to limitations imposed on the grounds of national security.

~~4~~8. Member States shall support the harmonisation of specific numbers or numbering ranges within the ~~Community~~ ⌦ Union ⌫ where it promotes both the functioning of the internal market and the development of pan-European services. ~~The Commission ⇨ shall continue to monitor market developments and participate in international organisations and fora where numbering decisions are taken. Where the Commission considers it justified and appropriate, it shall ⇦ may take appropriate technical implementing measures~~ ⇨ ~~in the interest of the Single Market,~~ **Where necessary** to address unmet cross-border or pan-European demand for numbers, **the Commission shall, taking utmost account of the opinion of BEREC, adopt implementing acts harmonising specific numbers or numbering ranges** ~~which would otherwise constitute an obstacle to trade between Member States~~ ⇦ ~~on this matter~~.

⇨ Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 110(4). ⇦ ~~These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).~~

~~5. Where this is appropriate in order to ensure full global interoperability of services, Member States shall coordinate their positions in international organisations and forums in which decisions are taken on issues relating to the numbering, naming and addressing of electronic communications networks and services.~~

Article 88

⌦ Procedure of ~~G~~granting of ⌫ ~~R~~rights of use for ~~radio frequencies and numbers~~ numbering resources

~~1. Member States shall facilitate the use of radio frequencies under general authorisations. Where necessary, Member States may grant individual rights of use in order to:~~

~~– avoid harmful interference,~~

~~– ensure technical quality of service,~~

~~– safeguard efficient use of spectrum, or~~

~~– fulfil other objectives of general interest as defined by Member States in conformity with Community law.~~

~~2~~1. Where it is necessary to grant individual rights of use for ~~radio frequencies and~~ numbers **numbering resources**, ⇨ ~~[national regulatory authorities]~~ ⇦ **competent authorities** ~~Member States~~ shall grant such rights, upon request, to any undertaking for the provision of ⌦ electronic communications ⌫ networks or services ~~under the~~ ⌦ covered by a ⌫ general authorisation referred to in Article ~~3~~12, subject to the provisions of Articles ~~6~~13, ~~7~~ and ~~11~~ 21(1)(c) ~~of this Directive~~ and any other rules ensuring the efficient use of those **numbering** resources in accordance with this Directive ~~2002/21/EC (Framework Directive)~~. ~~⇨ National regulatory authorities may also grant rights of use for numbers to undertakings other than providers of electronic communications networks or services in accordance with Article 87(2). ⇦~~

2. ~~Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law,~~ ~~t~~The rights of use for ~~radio frequencies and~~ ~~numbers~~ **numbering resources** shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures~~, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive)~~. ~~An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with Community law.~~

When granting rights of use ⇨ for ~~numbers~~ **numbering resources** ⇦ , ~~⇨ [national regulatory authorities] ⇦~~ ~~Member States~~ **competent authorities** shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. ~~In the case of radio frequencies, such provision shall be in accordance with Articles 9 and 9b of Directive 2002/21/EC (Framework Directive).~~

Where ~~⇨ [national regulatory authorities] ⇦~~ ~~Member States~~ **competent authorities** grant rights of use **for numbering resources** for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued taking due account of the need to allow for an appropriate period for investment amortisation.

~~Where individual rights to use radio frequencies are granted for 10 years or more and such rights may not be transferred or leased between undertakings pursuant to Article 9b of Directive 2002/21/EC (Framework Directive) the competent national authority shall ensure that the criteria to grant individual rights of use apply and are complied with for the duration of the licence, in particular upon a justified request of the holder of the right. If those criteria are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice and after a reasonable period, or shall be made transferable or leaseable between undertakings in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).~~

3. Decisions on the granting of rights of use ⇨ for ~~numbers~~ **numbering resources** ⇦ shall be taken, communicated and made public as soon as possible after receipt of the complete application by the ~~[~~national regulatory authority~~]~~ **competent authority**, within three weeks in the case of ~~numbers~~ **numbering resources** that have been allocated for specific purposes within the national numbering plan ~~and within six weeks in the case of radio frequencies that have been allocated to be used by electronic communications services within the national frequency plan~~. ~~The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.~~

4. Where ~~it has been decided~~ **~~[~~national regulatory authorities~~]~~ competent authorities have determined**, after consultation with interested parties in accordance with Article ~~6~~23~~of Directive 2002/21/EC (Framework Directive)~~, that rights ~~for~~ ⌦ of ⌫ use ~~of~~ ⌦ for ⌫ ~~numbers~~ **numbering resources** of exceptional economic value are to be granted through competitive or comparative selection procedures, ~~⇨ [national regulatory authorities] ⇦~~ ⇨ ~~Member States~~ ⇦ **competent authorities** may extend the maximum period of three weeks by up to a further three weeks.

~~With regard to competitive or comparative selection procedures for radio frequencies, Article 7 shall apply.~~

5. ~~Member States~~ ~~⇨ [National regulatory authorities] ⇦~~ **Competent authorities** shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of ⇨ numbering resources ⇦ ~~radio frequencies in accordance with Article 7~~.

~~6. Competent national authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Articles 8(2) and 9(2) of Directive 2002/21/EC (Framework Directive). They shall ensure competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. For such purposes, Member States may take appropriate measures such as mandating the sale or the lease of rights to use radio frequencies.~~

6. Where the right**s** of use for ~~numbers~~ **numbering resources** includes their extraterritorial use within the Union in accordance with Article 87(4), the ~~[~~national regulatory authority~~]~~ **competent authority** shall attach to the right of use specific conditions in order to ensure compliance with all the relevant national consumer protection rules and national laws related to the use of ~~numbers~~ **numbering resources** applicable in the Member States where the ~~numbers~~ **numbering resources** are used.

Upon request from a ~~[national regulatory authority]~~ **competent authority** of ~~another~~ **a** Member State **where the numbering resources are used,** demonstrating a breach of relevant consumer protection rules or ~~number-related~~ national law**s related to the use of numbering resources** of that Member State, the ~~[national regulatory authority]~~ **competent authority** of the Member State where the rights of use for the ~~numbers~~ **numbering resources** have been granted, shall enforce the conditions attached under **the first** subparagraph ~~1~~ in accordance with Article 30, including in serious cases by withdrawing the right of extraterritorial use for the ~~numbers~~ **numbering resources** granted to the undertaking concerned.

BEREC shall facilitate and coordinate the exchange of information between the ~~[national regulatory authorities]~~ **competent authorities** of the different Member States involved and ensure the appropriate coordination of work among them.

6a. This Article shall also apply where ~~[national regulatory authorities]~~ competent authorities grant rights of use for numbering resources to undertakings other than providers of electronic communications networks or services in accordance with Article 87(2).

Article ~~13~~89

Fees for rights of use for numbers

Member States may allow the ~~relevant~~ ~~⇨ [national regulatory ⇦ authority]~~ **competent authority** to impose fees for the rights of use for ~~radio frequencies or~~ numbers ~~numbering resources or rights to install facilities on, over or under public or private property~~ which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees ~~shall be~~ ⌦ are ⌫ objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 3 ~~8 of Directive 2002/21/EC (Framework Directive)~~.

Article 27

European telephone access codes

1. Member States shall ensure that the '00' code is the standard international access code. Special arrangements for making calls between locations adjacent to one another across borders between Member States may be established or continued. End-users in the locations concerned shall be fully informed of such arrangements.

2. A legal entity, established within the Community and designated by the Commission, shall have sole responsibility for the management, including number assignment, and promotion of the European Telephony Numbering Space (ETNS). The Commission shall adopt the necessary implementing rules.

3. Member States shall ensure that all undertakings that provide publicly available telephone services allowing international calls handle all calls to and from the ETNS at rates similar to those applied for calls to and from other Member States.

Article 27a

Harmonised numbers for harmonised services of social value, including the missing children hotline number

1. Member States shall promote the specific numbers in the numbering range beginning with '116' identified by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value[94]. They shall encourage the provision within their territory of the services for which such numbers are reserved.

[94] OJ L 49, 17.2.2007, p. 30.

~~2. Member States shall ensure that disabled end-users are able to access services provided under the '116' numbering range to the greatest extent possible. Measures taken to facilitate disabled end-users' access to such services whilst travelling in other Member States shall be based on compliance with relevant standards or specifications published in accordance with Article 17 of Directive 2002/21/EC (Framework Directive).~~

~~3. Member States shall ensure that citizens are adequately informed of the existence and use of services provided under the '116' numbering range, in particular through initiatives specifically targeting persons travelling between Member States.~~

~~4. Member States shall, in addition to measures of general applicability to all numbers in the '116' numbering range taken pursuant to paragraphs 1, 2, and 3, make every effort to ensure that citizens have access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number '116000'.~~

~~5. In order to ensure the effective implementation of the '116' numbering range, in particular the missing children hotline number '116000', in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted BEREC, may adopt technical implementing measures. However, these technical implementing measures shall be adopted without prejudice to, and shall have no impact on, the organisation of these services, which remains of the exclusive competence of Member States.~~

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).~~

Article 90

The missing children hotline number

1. Member States shall ensure that citizens have access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number '116000'.

2. Member States shall ensure that disabled end-users are able to access services provided under the number '116000' ~~numbering range~~ to the greatest extent possible. Measures taken to facilitate disabled end-users' access to such services whilst travelling in other Member States shall be based on compliance with relevant standards or specifications published in accordance with Article 39.

Article ~~28~~91

Access to numbers and services

1. Member States shall ensure that, where ~~technically and~~ economically feasible~~, and~~ except where a called ~~subscriber~~ ⇨ end-user ⇦ has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, **competent** ~~national regulatory~~ authorities take all necessary steps to ensure that end-users are able to:

(a) access and use services using non-geographic numbers within the ~~Community~~ ⌦ Union ⌫ ; and

(b) access all numbers provided in the ~~Community~~ ⌦ Union ⌫, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States~~, those from the ETNS~~ and Universal International Freephone Numbers (UIFN).

2. Member States shall ensure that the ~~relevant~~ ⇨ ~~national regulatory~~ ⇦ **competent** authorities are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block, on a case-by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues.

~~**CHAPTER III**~~

~~**REGULATORY CONTROLS ON UNDERTAKINGS WITH SIGNIFICANT MARKET POWER IN SPECIFIC RETAIL MARKETS**~~

~~*Article 17*~~

~~**Regulatory controls on retail services**~~

~~1. Member States shall ensure that national regulatory authorities impose appropriate regulatory obligations on undertakings identified as having significant market power on a given retail market in accordance with Article 14 of Directive 2002/21/EC (Framework Directive) where:~~

~~(a) as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), a national regulatory authority determines that a given retail market identified in accordance with Article 15 of that Directive is not effectively competitive; and~~

~~(b) the national regulatory authority concludes that obligations imposed under Articles 9 to 13 of Directive 2002/19/EC (Access Directive) would not result in the achievement of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive).~~

~~2. Obligations imposed under paragraph 1 shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). The obligations imposed may include requirements that the identified undertakings do not charge excessive prices, inhibit market entry or restrict competition by setting predatory prices, show undue preference to specific end-users or unreasonably bundle services. National regulatory authorities may apply to such undertakings appropriate retail price cap measures, measures to control individual tariffs, or measures to orient tariffs towards costs or prices on comparable markets, in order to protect end-user interests whilst promoting effective competition.~~

~~4. National regulatory authorities shall ensure that, where an undertaking is subject to retail tariff regulation or other relevant retail controls, the necessary and appropriate cost accounting systems are implemented. National regulatory authorities may specify the format and accounting methodology to be used. Compliance with the cost accounting system shall be verified by a qualified independent body. National regulatory authorities shall ensure that a statement concerning compliance is published annually.~~

~~5. Without prejudice to Article 9(2) and Article 10, national regulatory authorities shall not apply retail control mechanisms under paragraph 1 of this Article to geographical or user markets where they are satisfied that there is effective competition.~~

TITLE III: END-USER RIGHTS

Article 92

Non-discrimination

Providers of electronic communications networks or services shall not apply any ~~discriminatory~~ **different** requirements or conditions of access or use to end-users based on the end-user's nationality or ~~place~~ **Member State** of residence **or of establishment** unless such differences are objectively justified.

Article 93

⌦ Fundamental rights safeguard ⌫

~~3~~1. 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~~ ⌦ ~~guaranteed by~~ ⌫ ~~in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms~~ ⌦ the Charter of Fundamental Rights of the Union **('the Charter')** and general principles of Union law ⌫ .

~~3a Measures taken by Member States 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, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law.~~

2. Any ~~of these~~ measure~~s~~ regarding end-users' access to, or use of, services and applications through electronic communications networks liable to ~~restrict~~ **limit the exercise of** ~~those fundamental~~ **the** rights or freedoms **recognised by the Charter** may only be imposed if they ⇨ are provided for by law and respect ~~the essence of~~ those rights or freedoms, ⇦ are ~~appropriate,~~ proportionate**,** ~~and~~ necessary ~~within a democratic society~~, and ~~their implementation shall be subject to adequate procedural safeguards~~ ⇨ genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others ⇦ ~~in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms~~ ⌦ in line with Article 52(1) of the Charter ~~of Fundamental Rights of the European Union~~ ⌫ and with general principles of ~~Community~~ ⌦ Union ⌫ law, including **the right to an** effective ~~judicial protection and due process~~ **remedy and to a fair trial**. Accordingly, these measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A ~~prior,~~ fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the ~~European Convention for the Protection of Human Rights and Fundamental Freedoms~~ ⌦ Charter ~~of Fundamental Rights of the European Union~~ ⌫. ~~The right to effective and timely judicial review shall be guaranteed.~~

Article 94

Level of harmonisation

1. Member States shall not maintain or introduce in their national law end-user protection provisions ~~on the subject-matters covered by this Title and~~ diverging from the provisions laid down in ~~this Title~~ **Articles 9~~6~~5 to 106**, including more or less stringent provisions to ensure a different level of protection, unless otherwise provided for in this Title.

2. For a period of ~~two~~ three years from [transposition date in Article 115 (1)], Member States shall be able to continue to apply more stringent national consumer protection provisions ~~on the subject-matters covered by this Title~~ diverging from those laid down in Articles 95 to 106 provided that those provisions were in force before the adoption of this Directive and any restrictions to the internal market resulting therefrom are proportionate to the objective of consumer protection. Member States shall notify the Commission by [12 month after adoption of this Directive] of any national provisions to be applied on the basis of this paragraph.

~~*Article 20*~~

~~**Contracts**~~

~~1. Member States shall ensure that, when subscribing to services providing connection to a public communications network and/or publicly available electronic communications services, consumers, and other end-users so requesting, have a right to a contract with an undertaking or undertakings providing such connection and/or services. The contract shall specify in a clear, comprehensive and easily accessible form at least:~~

~~(a) the identity and address of the undertaking;~~

~~(b) the services provided, including in particular,~~

~~– whether or not access to emergency services and caller location information is being provided, and any limitations on the provision of emergency services under Article 26,~~

~~– information on any other conditions limiting access to and/or use of services and applications, where such conditions are permitted under national law in accordance with Community law,~~

~~– the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,~~

- information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link, and information on how those procedures could impact on service quality,

- the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,

- any restrictions imposed by the provider on the use of terminal equipment supplied;

(c) where an obligation exists under Article 25, the subscriber's options as to whether or not to include his or her personal data in a directory, and the data concerned;

(d) details of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, payment methods offered and any differences in costs due to payment method;

(e) the duration of the contract and the conditions for renewal and termination of services and of the contract, including:

- any minimum usage or duration required to benefit from promotional terms,

- any charges related to portability of numbers and other identifiers,

any charges due on termination of the contract, including any cost recovery with respect to terminal equipment, (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met;

(g) the means of initiating procedures for the settlement of disputes in accordance with Article 34;

(h) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.

Member States may also require that the contract include any information which may be provided by the relevant public authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data, referred to in Article 21(4) and relevant to the service provided.

~~2. Member States shall ensure that subscribers have a right to withdraw from their contract without penalty upon notice of modification to the contractual conditions proposed by the undertakings providing electronic communications networks and/or services. Subscribers shall be given adequate notice, not shorter than one month, of any such modification, and shall be informed at the same time of their right to withdraw, without penalty, from their contract if they do not accept the new conditions. Member States shall ensure that national regulatory authorities are able to specify the format of such notifications.~~

Article 95

Information requirements for contracts

1. Before a consumer is bound by a contract or any corresponding offer, providers of publicly available electronic communications services ~~other than number-independent interpersonal communications services,~~ shall provide the information required pursuant to Articles 5 and 6 of Directive 2011/83/EU, irrespective of the amount of any payment to be made, and the ~~following~~ information **listed in Annex VII bis** in a clear and comprehensible manner **on a durable medium**~~:~~**.**

~~*(a) as part of the main characteristics of each service provided:*~~

~~*(i) any minimum service quality levels to the extent that these are offered, and in accordance with BEREC guidelines to be adopted after consultation of stakeholders and in close cooperation with the Commission, regarding:*~~

~~*for internet access services: at least latency, jitter, packet loss,*~~

~~*for publicly available number-based interpersonal communications services: at least the time for the initial connection, failure probability, call signalling delays and*~~

~~*for services other than internet access services within the meaning of Article 3(5) of Regulation 2015/2120: the specific quality parameters assured,*~~

~~*(ii) without prejudice to the right of end-users to use terminal equipment of their choice in accordance with Article 3(1) of Regulation 2015/2120/EC, any restrictions imposed by the provider on the use of terminal equipment supplied;*~~

~~*(b) any compensation and refund arrangements, which apply if contracted service quality levels are not met;*~~

~~*(c) as part of the information on price:*~~

~~*(i) details of tariff plans under the contract and, where applicable, the volumes of communications (MB, minutes, SMS) included per billing period, and the price for additional communication units,*~~

~~*(ii) tariff information regarding any numbers or services subject to particular pricing conditions; with respect to individual categories of services, NRAs may require such information to be provided immediately prior to connecting the call,*~~

~~*(iii) for bundled services and bundles including both services and equipment the price of the individual elements of the bundle to the extent they are also marketed separately,*~~

~~*(iv) details of after-sales service and maintenance charges, and*~~

~~*(v) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;*~~

~~*(d) as part of the information on the duration of the contract and the conditions for renewal and termination of the contract:*~~

~~*(i) any minimum usage or duration required to benefit from promotional terms,*~~

~~*(ii) any charges related to switching and the portability of numbers and other identifiers and compensation and refund arrangements for delay or abuse of switching,*~~

~~*(iii) any charges due on early termination of the contract, including any cost recovery with respect to terminal equipment and other promotional advantages,*~~

~~*(iv) for bundled services the conditions of termination of the bundle or of elements thereof,*~~

~~*(e) details on products and services designed for disabled end-users and how updates on this information can be obtained;*~~

~~*(f) the means of initiating procedures for the settlement of disputes in accordance with Article 25;*~~

~~*(g) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.*~~

~~*2. In addition to the requirements set out in paragraph 1 providers of publicly available number-based interpersonal communications services shall provide the following information in a clear and comprehensible manner:*~~

~~*any constraints on access to emergency services and/or caller location information due to a lack of technical feasibility;*~~

~~*the end user's right to determine whether or not to include his or her personal data in a directory, and the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC;*~~

3 **The information referred to in** ~~P~~**p**aragraph~~s~~ 1 ~~and 2~~ shall ~~apply~~ also **be provided** to micro or small enterprises **and not-for-profit organisations** as end-users unless they have explicitly agreed to waive all or parts of those provisions,

~~4. *Providers of internet access services shall provide the information mentioned in paragraphs 1 and 2 in addition to the information required pursuant to Article 4(1) of Regulation (EU) 2015/2120.*~~

5. By [entry into force + 12 months], ~~BEREC~~ **the Commission** shall ~~issue~~ **adopt** a decision on a contract summary template, which identifies the main elements of the information requirements in accordance with paragraph~~s~~ 1 ~~and 2~~. Those main elements shall include at least complete information on:

(a) the name and address of the provider,

(b) the main characteristics of each service provided,

(c) the respective prices **for activating the electronic communications service and for any recurring or consumption-related charges, where the service is provided for direct monetary payment ~~remuneration~~,**

(d) the duration of the contract and the conditions for its renewal and termination**, including possible termination fees, switching, compensation and refund arrangements to the extent such elements apply**,

(e) the extent to which the products and services are designed for disabled end-users~~.~~**,**

(f) with respect to internet access services, the information required pursuant to Article 4 (1)**(d)** of Regulation (EU) 2015/2120.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 110(4).

Providers subject to the obligations under paragraphs 1-4 shall duly complete this contract summary template with the required information and provide it **free of charge** to consumers, and micro and small enterprises **and not-for-profit organisations**, prior to the conclusion of the contract **including distance contracts**. The contract summary shall become an integral part of the contract.

5bis. The information referred to in paragraphs 1 and 4 shall become an integral part of the contract and shall not be altered unless the contracting parties expressly agree otherwise.

6. **Where internet access services or publicly available interpersonal communications services are billed on the basis of either time or volume consumption, their providers** ~~of internet access services and providers of publicly available number-based interpersonal communications services~~ shall offer end-users the facility to monitor and control the usage of each of those services ~~which is billed on the basis of either time or volume consumption~~. This facility shall include access to timely information on the level of consumption of services included in a tariff plan **and shall inform the end-users before~~/when~~ any of the service volumes included in their tariff plan is consumed. In particular, end-users shall receive a notification before they fully consume a service included in their tariff plan. Member States may maintain or introduce in their national law provisions to require service providers to provide additional information and temporarily prevent further usage of the relevant service in excess of a financial or volume limit determined by the competent authority**.

~~*Article 21*~~

~~Transparency and publication of information~~

~~1. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to publish transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, on any charges due on termination of a contract and on standard terms and conditions in respect of access to, and use of, services provided by them to end-users and consumers in accordance with Annex II. Such information shall be published in a clear, comprehensive and easily accessible form. National regulatory authorities may specify additional requirements regarding the form in which such information is to be published.~~

~~2. National regulatory authorities shall encourage the provision of comparable information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques. Where such facilities are not available on the market free of charge or at a reasonable price, Member States shall ensure that national regulatory authorities are able to make such guides or techniques available themselves or through third party procurement. Third parties shall have a right to use, free of charge, the information published by undertakings providing electronic communications networks and/or publicly available electronic communications services for the purposes of selling or making available such interactive guides or similar techniques.~~

~~3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to inter alia:~~

~~(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;~~

(b) inform subscribers of any change to access to emergency services or caller location information in the service to which they have subscribed;

(c) inform subscribers of any change to conditions limiting access to and/or use of services and applications, where such conditions are permitted under national law in accordance with Community law;

(d) provide information on any procedures put in place by the provider to measure and shape traffic so as to avoid filling or overfilling a network link, and on how those procedures could impact on service quality;

(e) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(f) regularly inform disabled subscribers of details of products and services designed for them.

If deemed appropriate, national regulatory authorities may promote self- or co-regulatory measures prior to imposing any obligation.

4. Member States may require that the undertakings referred to in paragraph 3 distribute public interest information free of charge to existing and new subscribers, where appropriate, by the same means as those ordinarily used by them in their communications with subscribers. In such a case, that information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:

(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences; and

(b) the means of protection against risks to personal security, privacy and personal data when using electronic communications services.

Article 96

Transparency, comparison of offers and publication of information ~~of internet access services and/or publicly available interpersonal communications services~~

1. **Competent** ~~National regulatory~~ authorities shall ensure that**, where providers of internet access services and/or publicly available interpersonal communication services make the provision of these services subject to terms and conditions,** the information referred to in Annex VIII is published in a clear, comprehensive and easily accessible form by ~~the undertakings providing~~ **all such providers** ~~publicly available electronic communications services other than number-independent interpersonal communications services~~, or by the **competent** ~~national regulatory~~ authority itself. **Competent** ~~National regulatory~~ authorities may specify additional requirements regarding the form in which such information is to be published. **That information shall, on request, be supplied to the competent authority in advance of its publication.**

2. **Competent** ~~National regulatory~~ authorities shall ensure that end-users have access free of charge to at least one independent comparison tool which enables them to compare and evaluate prices and tariffs, **of services provided against recurring and/or consumption based direct monetary payments,** and the quality of service performance **where minimum service quality is offered,** of different **internet access services and** publicly available ~~electronic communications services other than number-independent~~ interpersonal communications services.

The comparison tool shall:

(a) be operationally independent **from service providers, there**by ensuring that service providers are given equal treatment in search results;

(b) clearly disclose ~~their~~ **the** owners and operators **of the comparison tool**;

(c) set out clear, objective criteria on which the comparison will be based;

(d) use plain and unambiguous language;

(e) provide accurate and up-to-date information and state the time of the last update;

(f) **be open to any provider of internet access services or publicly available interpersonal communications services making available the relevant information, and** include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results;

(g) provide an effective procedure to report incorrect information.

Comparison tools fulfilling the requirements in points (a) to (g) shall, upon request **by the provider of the tool**, be certified by **competent** ~~national regulatory~~ authorities. Third parties shall have a right to use, free of charge, the information published by ~~undertakings providing~~ **providers of internet access services and/or** publicly available ~~electronic communications services, other than number-independent~~ interpersonal communications services, for the purposes of making available such independent comparison tools.

3. Member States may require that the ~~undertakings providing~~ **providers of** internet access services or publicly available ~~number-based~~ interpersonal communications services distribute public interest information free of charge to existing and new end-users, where appropriate, by the same means as those they ordinarily use in their communications with end-users. In such a case, that public interest information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:

(a) the most common uses of internet access services and publicly available ~~number-based~~ interpersonal communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences; and

(b) the means of protection against risks to personal security, privacy and personal data when using internet access services and publicly available ~~number-based~~ interpersonal communications services.

Article 97~~22~~

Quality of service **of internet access services and interpersonal communications services**

1. ~~Member States shall ensure that~~ ~~n~~ National regulatory **Competent** authorities ~~are, after taking account of the views of interested parties, able to~~ ⌦ may ⌫ require ~~undertakings that provide~~ ⌦ providers of ⌫ ⇨ internet access services and of ⇦ publicly available ~~electronic~~ ⇨ ~~number-based~~ interpersonal ⇦ communications ~~networks and/or~~ services to publish ⇨ comprehensive, ⇦ comparable, ~~adequate~~ ⇨ reliable, user-friendly ⇦ and up-to-date information for end-users on the quality of their services**, to the extent that they ~~offer minimum levels of service quality~~ ~~either through~~ control ~~of~~ at least some elements of the network either directly or by virtue of a service level agreement to that effect,** and on measures taken to ensure equivalence in access for disabled end-users. That information shall, on request, be supplied to the **competent** ~~national regulatory~~ authority in advance of its publication.

2. **Where** ~~National regulatory~~ **competent** authorities ~~may~~ ⇨ **require publication of quality of service information pursuant to paragraph 1, they** shall ⇦ specify, ⇨ taking utmost account of BEREC guidelines ⇦ ~~inter alia~~, the quality of service parameters to be measured ⇨ and the applicable measurement methods, ⇦ and the content, form and manner of the information to be published, including possible quality certification mechanisms~~, in order to ensure that end-users, including disabled end-users, have access to comprehensive, comparable, reliable and user-friendly information~~. Where appropriate, the parameters, definitions and measurement methods set out in Annex ~~III~~ IX ~~may~~ ⇨ shall ⇦ be used.

~~3. In order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.~~

~~National regulatory authorities shall provide the Commission, in good time before setting any such requirements, with a summary of the grounds for action, the envisaged requirements and the proposed course of action. This information shall also be made available to the Body of European Regulators for Electronic Communications (BEREC). The Commission may, having examined such information, make comments or recommendations thereupon, in particular to ensure that the envisaged requirements do not adversely affect the functioning of the internal market. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations when deciding on the requirements.~~

By [entry into force plus 18 months], in order to contribute to a consistent application of this paragraph **and of Annex IX**, BEREC shall adopt, after consultation of stakeholders and in close cooperation with the Commission, guidelines ~~on~~ **detailing** the relevant quality of service parameters, including parameters relevant for disabled end-users, the applicable measurement methods, the content and format of publication of the information, and quality certification mechanisms.

Article 98

Contract duration and termination

1. Member States shall ensure that conditions and procedures for contract termination are not a disincentive against changing service provider and that contracts concluded between consumers and ~~undertakings providing~~ **providers of internet access services and** publicly available ~~electronic communications services, other than number-independent~~ interpersonal communications services, do not mandate ~~an initial~~ **a** commitment period longer than 24 months. Member States may adopt or maintain **provisions which mandate** shorter maximum durations for the initial commitment period.

This paragraph shall not apply to the duration of an instalment contract where the consumer has agreed in a separate contract to instalment payments **exclusively** for deployment of a physical connection.

1a. Paragraph~~s~~ 1 ~~and 2~~ shall also apply to micro or small enterprises and not-for-profit organisations as end-users unless they have explicitly agreed to waive those provisions.

2. Where a contract or national law provides for a fixed duration contract to be automatically prolonged, the Member State shall ensure that, after ~~the expiration of the initial period~~ **such an automatic prolongation,** ~~and unless the consumer has explicitly agreed to the extension of the contract, consumers~~ **end-users** are entitled to terminate the contract at any time with a ~~one-month~~ notice period **not exceeding one month as determined by Member States,** and without incurring any costs except the ~~cost~~ **charges** ~~of providing~~ **for receiving** the service during the notice period.

3. End-users shall have the right to terminate their contract without incurring any **further** costs upon notice of changes in the contractual conditions proposed by the provider of publicly available electronic communications services ~~other than number-independent interpersonal communications services,~~ unless the proposed changes are exclusively to the benefit of the end-user or they are ~~strictly necessary to implement~~ **directly imposed by** legislative or regulatory **provisions.** ~~changes.~~ Providers shall notify end-users, at least one month in advance, of any ~~such~~ change **in the contractual conditions**, and shall inform them at the same time of their right to terminate their contract **within a deadline not exceeding four months, as specified by Member States,** without incurring any **further** costs ~~**except the charges for receiving the service during the notice period**~~ if they do not accept the new conditions. Member States shall ensure that notification is made in a clear and comprehensible manner on a durable medium and in a format chosen by the end-user ~~at the time of concluding the contract~~.

4. Where an **end-user has the right to terminate** ~~early termination of~~ a contract ~~on~~ **for** a publicly available electronic communications service **before the end of the agreed contract term** ~~by the end-user is possible in accordance with~~ **on the basis of** this Directive, other provisions of Union law or national law, no compensation shall be due by the end-user**. If the end-user chooses to retain terminal equipment bundled with the contract, any compensation due shall not exceed its** ~~other than for the~~ *pro rata temporis* value ~~of subsidised equipment bundled with the contract at the moment of the contract conclusion and a *pro rata temporis* reimbursement for any other promotional advantages marked as such~~ ***at the moment of the contract conclusion*** ~~**termination**~~ **and may be further specified by Member States**. Any ~~restriction~~ **condition** on the usage of terminal equipment on other networks shall be lifted, free of charge, by the provider at **a point specified by Member States and at** the latest upon payment of such compensation.

Article ~~30~~99

~~Facilitating~~ Cc~~hange of p~~**P**rovider ⌦ **switching** and number portability ⌫

1. In case of switching between providers of internet access services, the providers concerned shall provide the end-user with adequate information before and during the switching process and ensure continuity of the service. The receiving provider shall ensure that the activation of the service shall occur **within the shortest possible time** on the date **requested by and explicitly** agreed with the end-user. The transferring provider shall continue to provide its services on the same terms until the services of the receiving provider are activated. Loss of service during the switching process shall not exceed one working day.

~~National regulatory~~ **Competent** authorities shall ensure the efficiency of the switching process for the end-user.

~~1~~2. Member States shall ensure that all ~~subscribers~~ ⇨ end-users ⇦ with numbers from the national ~~telephone~~ numbering plan who so request can retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Part C of Annex ~~I~~VI.

~~2~~3. ~~National regulatory~~ **Competent** authorities shall ensure that pricing between operators and/or service providers related to the provision of number portability is cost-oriented, and that ⇨ no ⇦ direct charges ⇨ are applied ⇦ to ⇨ end-users ⇦ ~~subscribers if any, do not act as a disincentive for subscribers against changing service provider~~.

~~34. National regulatory authorities shall not impose retail tariffs for the porting of numbers in a manner that would distort competition, such as by setting specific or common retail tariffs.~~

~~4~~5. ~~**Switching of providers of internet access services and/or**~~ *P~~p~~*orting of numbers and their subsequent activation shall be carried out within the shortest possible time **on the date(s) requested by and explicitly agreed with the end user**. In any case, ~~subscribers~~ ⇨ end-users ⇦ who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day ⇨ from the ~~conclusion of such an agreement~~ **date agreed with the end-user. In case of failure of the porting process, the transferring provider shall reactivate the number of the end-user until the porting is successful. The transferring provider shall continue to provide its services on the same terms until the services of the receiving provider are activated.** ⇦

⇨ **5a.** The receiving provider shall lead the switching and porting process **and both the receiving and transferring providers shall cooperate in good faith**. ⇦ ~~Without prejudice to the first subparagraph, competent~~ ~~n~~National ~~⇨ regulatory~~ ***Competent***~~⇦~~ authorities may establish the global process of ⇨ switching and of ⇦ porting of numbers, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the ~~subscriber~~ ⇨ end-user ⇦. In any event, loss of service during the process of **switching and** porting shall not exceed one working day. ⇨ ~~In case of failure of the porting process, the transferring provider shall reactivate the number of the end-user until the porting is successful~~ ⇦ ~~*Competent*~~ ~~n~~ National ~~⇨ regulatory ⇦~~ authorities shall also take ~~into account, where necessary,~~ ⇨ appropriate ⇦ measures ensuring that ~~subscribers~~ ⇨ end-users ⇦ are ⇨ adequately informed and ⇦ protected throughout the switching **and porting** process and are not switched to another provider against their will.

~~5~~6. Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate ~~subscribers~~ ⇨ end-users ⇦ in case of **a failure to comply with the requirements of this article.** ~~delay in porting **or switching** or abuse of porting **or switching** by them or on their behalf.~~

~~5. Member States shall ensure that contracts concluded between consumers and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months. Member States shall also ensure that undertakings offer users the possibility to subscribe to a contract with a maximum duration of 12 months.~~

~~6. Without prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing service provider.~~

Article 100

Bundled offers

1. If a bundle of services or a bundle of services and ~~goods~~ **terminal equipment** offered to ~~an end-user~~ **consumers, micro or small enterprises, or not-for-profit organisations** comprises ~~at least a publicly available electronic communications service other than number-independent interpersonal communications services~~ **an internet access service or number-based interpersonal communications service**, Articles ~~95,~~ 96 (1), 98 and 99 (1) **and the information requirements listed in points (a) to (e) of Article 95(4)** shall apply *mutatis mutandis* to all elements of the bundle except where the provisions applicable to another element of the bundle are more favourable to the end-user.

2. Any subscription to additional services or ~~goods~~ **terminal equipment** provided or distributed by the same provider of **an internet access service or number-based interpersonal communications service** ~~publicly available electronic communications services other than number-independent interpersonal communications services~~ shall not ~~re-start the contract period~~ **extend the term** of the initial contract unless **the consumer, micro or small enterprise, or not-for-profit organisation has explicitly agreed otherwise when subscribing to** the additional services ~~or goods~~ **terminal equipment** ~~are offered at a special promotional price available only on the condition that the existing contract period is re-started~~.

Article ~~23~~101

Availability of services

Member States shall take all necessary measures to ensure the fullest possible availability of ~~publicly available telephone services~~ **voice communications and internet access service** provided over public communications networks in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that ~~undertakings providing~~ **providers of** ~~publicly available telephone services~~ **voice communications** take all necessary measures to ensure uninterrupted access to emergency services.

Article ~~26~~102

Emergency ~~services~~ ⌦ communications ⌫ and the single European emergency ~~call~~ number

1. Member States shall ensure that all end-users of the service referred to in paragraph 2, including users of public pay telephones, are able to ~~call~~ ⇨ access ⇦ the emergency services ⇨ through emergency communications ⇦ free of charge and without having to use any means of payment, by using the single European emergency ~~call~~ number '112' and any national emergency ~~call~~ number specified by Member States.

2. Member States, in consultation with national regulatory authorities ⌦ and ⌫ ~~,~~ emergency services and providers ⇨ of electronic communications services ⇦, shall ensure that undertakings providing end-users with ~~an electronic~~ ⇨ number-based interpersonal ⇦ communications service**s** ~~for originating national calls to a number or numbers in a national telephone numbering plan~~ provide access to emergency services ⇨ through emergency communications to the most appropriate PSAP. In case of an appreciable threat to effective access to emergency services the obligation for undertakings may be extended ~~**by [national regulatory authorities]**~~ to ~~all~~ **other** interpersonal communications services in accordance with the conditions and procedure set out in Article 59 (1) (c). ⇦

3. Member States shall ensure that ⇨ all emergency communications ⇦ ~~calls~~ to the single European emergency ~~call~~ number '112' are appropriately answered and handled in the manner best suited to the national organisation of emergency systems. Such ~~calls~~ ⇨ emergency communications ⇦ shall be answered and handled at least as expeditiously and effectively as ~~calls~~ ⇨ emergency communications ⇦ to the national emergency number or numbers, where these continue to be in use.

4. Member States shall ensure that access for disabled end-users to emergency services is ⇨ available through emergency communications and ⇦ equivalent to that enjoyed by other end-users. Measures taken to ensure that disabled end-users are able to access emergency services ⇨ through emergency communications ⇦ whilst travelling in other Member States shall be based to the greatest extent possible on European standards or specifications published in accordance with the provisions of Article 39 ~~17 of Directive 2002/21/EC (Framework Directive)~~, and they shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in this Article.

5. Member States shall ensure that ~~undertakings concerned make~~ caller location information is ⇨ **made** available to the PSAP ⇦ ~~available free of charge~~ ⇨ without delay after the emergency communication is set up. ⇦ ~~to the authority handling emergency calls as soon as the call reaches that authority.~~ ⇨ Member States shall ensure that the establishment and the transmission of the caller location information are free of charge for the end-user and to the ~~authority handling the emergency communication~~ **PSAP**-⇦ ~~This shall apply~~ ⌦ with regard ⌫ to all ~~calls~~ ⇨ emergency communications ⇦ to the single European emergency ~~call~~ number '112'. Member States may extend ~~this~~ ⌦ that ⌫ obligation to cover ~~calls~~ ⇨ emergency communications ⇦ to national emergency numbers. Competent regulatory authorities shall lay down criteria for the accuracy and reliability of the caller location information provided.

6. Member States shall ensure that citizens are adequately informed about the existence and use of the single European emergency ~~call~~ number '112', in particular through initiatives specifically targeting persons travelling between Member States.

7. In order to ensure effective access ⇨ to emergency services through emergency communications ⇦ to '112' services in the Member States, the Commission ~~, having consulted BEREC, may~~ ⌦ shall be empowered to ⌫ adopt ⇨ delegated acts in accordance with Article 109 **supplementing paragraphs 2, 4 and 5** ~~**by laying down guidelines**~~ on the measures necessary to ensure the compatibility, interoperability, quality, reliability and continuity of emergency communications in the Union with regard to caller location solutions, access for disabled end-users and routing to the most appropriate PSAP ⇦ ~~technical implementing measures~~.

~~However, these technical implementing~~ ⌦ Those ⌫ measures shall be adopted without prejudice to, and shall have no impact on, the organisation of emergency services, which remains ~~of~~ ⌦ in ⌫ the exclusive competence of Member States.

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).~~

Article ~~23a~~103

~~Ensuring equivalence in~~ ⌦ **Equivalent** ⌫ **access and choice for disabled end-users**

1. Member States shall ~~enable~~ ⌦ ensure that the competent -⌫ ~~relevant~~ ~~national~~authorities ~~to~~ specify, where appropriate, requirements to be met by ~~undertakings providing~~ **providers of** publicly available electronic communications services to ensure that disabled end-users:

(a) have access to electronic communications services**, including the related contractual information provided pursuant to Article 95,** equivalent to that enjoyed by the majority of end-users; and

(b) benefit from the choice of undertakings and services available to the majority of end-users.

~~2. In order to be able to adopt and implement specific arrangements for disabled end-users, Member States shall encourage the availability of terminal equipment offering the necessary services and functions.~~

2. In taking the measures referred to in paragraph 1, Member States shall encourage compliance with the relevant standards or specifications published in accordance with Article 39.

Article ~~25~~104

➔1 Telephone directory enquiry services ←

~~1. Member States shall ensure that subscribers to publicly available telephone services have the right to have an entry in the publicly available directory referred to in Article 5(1)(a) and to have their information made available to providers of directory enquiry services and/or directories in accordance with paragraph 2.~~

~~2~~1. Member States shall ensure that all undertakings which assign telephone numbers to ~~subscribers~~ ⇨ end-users ⇦ meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format on terms which are fair, objective, cost oriented and non-discriminatory.

~~3~~2. ~~Member States shall ensure that all end-users provided with a publicly available telephone service can access directory enquiry services.~~ National regulatory authorities shall be able to impose obligations and conditions on undertakings that control access of end-users for the provision of directory enquiry services in accordance with the provisions of Article 59 ~~5 of Directive 2002/19/EC (Access Directive)~~. Such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

~~4~~3. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS, and shall take measures to ensure such access in accordance with Article 91~~28~~.

~~5~~4. Paragraphs 1 to ~~4~~ 3 shall apply subject to the requirements of ~~Community~~ ⌦ Union ⌫ legislation on the protection of personal data and privacy and, in particular, Article 12 of Directive 2002/58/EC ~~(Directive on privacy and electronic communications)~~.

Article ~~24~~105

Interoperability of consumer digital television equipment

In accordance with the provisions of Annex ~~VI~~X, Member States shall ensure the interoperability of the consumer digital television equipment referred to therein.

Article ~~31~~106

'Must carry' obligations

1. Member States may impose reasonable 'must carry' obligations, for the transmission of specified radio and television broadcast channels and ⇨ related ⇦ complementary services, particularly accessibility services to enable appropriate access for disabled end-users ⇨ and data supporting connected TV services and electronic programme guides ⇦ , on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcast channels. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.

The obligations referred to in the first subparagraph shall be reviewed by the Member States at the latest within one year of ~~25 May 2011~~[⌦ date of entry into force of this Directive ⌫ , except where Member States have carried out such a review within the previous ~~two~~ ⌦ four ⌫ years.

Member States shall review 'must carry' obligations ~~on a regular basis~~ ⌦ at least every five years ⌫ .

2. Neither paragraph 1 of this Article nor Article ~~3~~57(2) ~~of Directive 2002/19/EC (Access Directive)~~ shall prejudice the ability of Member States to determine appropriate remuneration, if any, in respect of measures taken in accordance with this Article while ensuring that, in similar circumstances, there is no discrimination in the treatment of ~~undertakings providing~~ **providers of** electronic communications networks. Where remuneration is provided for, Member States shall ensure that it is applied in a proportionate and transparent manner.

Article ~~29~~107

Provision of additional facilities

1. Without prejudice to Article 83~~10~~(2), Member States shall ensure that ~~[national regulatory authorities]~~ **competent authorities** are able to require all undertakings that provide ⇨ internet access services ⇦ ~~publicly available telephone services~~ and/or ⇨ publicly available number-based interpersonal communications services ⇦ ~~access to public communications networks~~ to make available **free of charge** all or part of the additional facilities listed in Part B of Annex ~~I~~VI **~~free of charge~~**, subject to technical feasibility ~~and economic viability~~, as well as all or part of the additional facilities listed in Part A of Annex ~~I~~VI.

2. A Member State ~~*may decide to*~~⌦ ~~shall~~ ⌫ waive **some or all the requirements of** paragraph 1 in all or part of its territory if it considers, after taking into account the views of interested parties, that there is sufficient access to these facilities.

Article ~~35~~108

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.~~

↓ 2002/19/EC (adapted)

~~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.~~

↓ 2009/140/EC Art. 2.11(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.~~

↓ 2009/136/EC Art. 1.27

~~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.~~

⇩ new

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.

↓ 2002/21/EC (adapted)

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.

↓ 2002/21/EC (adapted)

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~~28~~**(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.

↓ 2009/140/EC Art. 3.9

~~1~~3. 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.

↓ 2002/20/EC

~~2~~4. Where information as referred to in paragraph ~~1~~3 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.

↓ 2002/19/EC

~~1~~5. 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.

~~2~~6. 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.

↓ 2002/22/EC

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 **115~~38~~**(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 111~~37~~.

↓ 2009/136/EC Art. 1.26

~~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.~~

↓ 2002/22/EC

~~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.~~

↓ 2002/19/EC Art.16

~~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.~~

2~~4~~. 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.

↓ 2002/21/EC
⇨ new

Article ~~25~~114

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 Article115 ~~28~~(1), second subparagraph. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay.

↓ 2002/19/EC

~~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.~~

↓ 2002/20/EC

~~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.~~

↓ 2002/22/EC Art. 15 (adapted)
⇨ new

~~1~~2. 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.

~~2~~3. 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 114a

Specific review procedure on end user rights

1. BEREC shall monitor the market and technological developments regarding ~~in particular~~ the different types of ~~interpersonal~~ electronic communications services and shall, three years from the entry into force of this Directive and every three years thereafter, or upon a reasoned request from at least two of its members ~~Member States~~, publish ~~a report~~ an opinion on such developments and on their impact on the application of Title III.

~~That~~ In that opinion ~~report shall include an assessment by~~ BEREC shall assess ~~of~~ ~~whether or not~~ to what extent Title III ~~should be amended in order to ensure that~~ meets the objectives set out in Article 3 ~~continue to be met~~. The ~~report~~ opinion ~~should~~ shall in particular ~~examine~~ take into account the ~~question of the~~ scope of Title III. As a basis for the opinion ~~report,~~ BEREC shall in particular analyse:

a) **to what extent end-users of all ~~publicly available interpersonal~~ electronic communication services are able to make free and informed choices, including on the basis of complete contractual information, and are able to switch easily their provider of ~~publicly available~~ electronic ~~interpersonal~~ communication services;**

b) **to what extent any lack of such abilities has resulted in market distortions or end-user harm;**

c) **the likely cost of any potential ~~to what extent~~ readjustments of obligations in this Title ~~would lead to substantial costs or~~ impact on innovation for providers of ~~publicly available interpersonal~~ electronic communications services.**

2. The Commission, taking utmost account of the BEREC ~~report~~ opinion, shall publish a report on the application of this Title and submit a legislative proposal to amend Title III where it considers this necessary to ensure that the objectives set out in Article 3 continue to be met.

↓ 2002/21/EC (adapted)

~~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 number[95];~~

– ~~Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines[96];~~

– ~~Council Decision 92/264/EEC of 11 May 1992 on the introduction of a standard international telephone access code in the Community[97];~~

– ~~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 environment[98];~~

↓ 2009/140/EC Art. 1.26

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~~95~~ ~~OJ L 217, 6.8.1991, p. 31.~~

~~96~~ ~~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).~~

~~97~~ ~~OJ L 137, 20.5.1992, p. 21.~~

~~98~~ ~~OJ L 101, 1.4.1998, p. 24.~~

↓ 2002/21/EC (adapted)

~~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.~~

↓ 2002/20/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 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	*For the Council*
The President	*The President*

ANNEXES
to the

Proposal for a Directive of the European Parliament and of the Council

establishing the European Electronic Communications Code

↓ 2002/20/EC (adapted)

ANNEX I

⌦ LIST OF CONDITIONS WHICH MAY BE ATTACHED TO GENERAL AUTORISATIONS, 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 ~~B~~D) and rights to use numbers (Part ~~C~~E) ~~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 ⌫ C~~c~~ONDITIONS 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).~~

~~2~~1. Administrative charges in accordance with Article ~~12~~ 16 of this Directive.

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

~~7~~2. 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)[99]

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

~~10~~3. Information to be provided under a notification procedure in accordance with Article ~~3(3)~~ 12 of this Directive and for other purposes as included in Article ~~11~~ 21 of this Directive.

~~11~~4. 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 data[100].

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

~~11a~~5. 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)

~~12~~6. Terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities.

[99] OJ L 201, 31.7.2002, p. 37.
[100] OJ L 281, 23.11.1995, p. 31.

↓ 2002/20/EC (adapted)

~~14~~7. Access obligations other than those provided for in Article ~~6(2)~~ 13 of this Directive applying to undertakings providing electronic communications networks or services~~, in conformity with Directive 2002/19/EC (Access Directive)~~.

↓ 2002/20/EC

~~18~~8. 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)

~~19~~9. 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 ⌫

~~3~~1. ~~Interoperability of services and~~ ~~i~~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.~~

~~6~~2. 'Must carry' obligations in conformity with this Directive ~~2002/22/EC (Universal Service Directive)~~.

↓ 2002/20/EC (adapted)
⇨ new

~~13~~3. 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 ⇦ .

~~15~~4. 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 compatibility[101].

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

~~16~~5. Security of public networks against unauthorised access according to Directive 2002/58/EC (Directive on Privacy and electronic communications).

[101] 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).

↓ 2002/20/EC (adapted)
⇨ new

~~17~~6. 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 Article~~s~~ ~~5~~46(1) ⌦ and 48 ⌫ of this Directive.

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

~~19~~7. 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)

~~4~~2. Accessibility by end users of numbers from the national numbering plan, numbers from ~~the European Telephone Numbering Space,~~ the Universal International Freephone Numbers~~,~~ 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)

~~8~~3. 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

~~9~~4. 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 market[~~102~~] 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 activities~~[~~103~~].

↓ 2002/20/EC (adapted)

~~B~~D. 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.

~~102~~ ~~OJ L 178, 17.7.2000, p. 1.~~

~~103~~ ~~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).~~

↓ 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 [104] ⇦ where such conditions are different from those included in the general authorisation.

4. Maximum duration in conformity with Article ~~5~~49 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.

7. Any commitments which the undertaking obtaining the usage right has made in the ⇨ 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 ⇦ ~~course of a competitive or comparative selection procedure~~.

[104] 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).

⇩ 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.

🡻 2002/20/EC

~~8~~9. Obligations under relevant international agreements relating to the use of frequencies.

🡻 2009/140/EC Art. 3.11 and Annex .3(c)

~~9~~10. Obligations specific to an experimental use of radio frequencies.

🡻 2002/20/EC

~~C~~E. CONDITIONS WHICH MAY BE ATTACHED TO RIGHTS OF USE FOR NUMBERS

🡻 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.

🡻 2002/20/EC
⇨ new

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 Article~~s 5 and 25~~104 of Directive ~~2002/22/EC (Universal Service Directive)~~.

5. Maximum duration in conformity with Article ~~5~~46 **88** 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**, including that any conditions attached to the right of use for a number should be binding also on all those right holders to whom the rights are transferred** ~~2002/21/EC (Framework Directive)~~.

7. Usage fees in accordance with Article ~~13~~ ~~42~~ **89** 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.

⇩ new

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.

↓ 2002/19/EC (adapted)

ANNEX II

CONDITIONS FOR ACCESS TO DIGITAL TELEVISION AND RADIO SERVICES BROADCAST TO VIEWERS AND LISTENERS IN THE ~~COMMUNITY~~ ⌦ UNION ⌫

PART I: CONDITIONS FOR CONDITIONAL ACCESS SYSTEMS TO BE APPLIED IN ACCORDANCE WITH ARTICLE ~~6~~60(1)

In relation to conditional access to digital television and radio services broadcast to viewers and listeners in the ~~Community~~ ⌦ Union ⌫ , irrespective of the means of transmission, Member States must ensure in accordance with Article ~~6~~ 60 that the following conditions apply:

~~(a) conditional access systems operated on the market in the Community are to have the necessary technical capability for cost-effective transcontrol allowing the possibility for full control by network operators at local or regional level of the services using such conditional access systems;~~

(~~b~~a) all operators of conditional access services, irrespective of the means of transmission, who provide access services to digital television and radio services and whose access services broadcasters depend on to reach any group of potential viewers or listeners are to:

– offer to all broadcasters, on a fair, reasonable and non-discriminatory basis compatible with ~~Community~~ ⌦ Union ⌫ competition law, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers or listeners authorised by means of decoders administered by the service operators, and comply with ~~Community~~ ⌦ Union ⌫ competition law,

– keep separate financial accounts regarding their activity as conditional access providers.

(~~c~~b) when granting licences to manufacturers of consumer equipment, holders of industrial property rights to conditional access products and systems are to ensure that this is done on fair, reasonable and non-discriminatory terms. Taking into account technical and commercial factors, holders of rights are not to subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of:

– a common interface allowing connection with several other access systems, or

– means specific to another access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as he is concerned, the security of transactions of conditional access system operators.

PART II: OTHER FACILITIES TO WHICH CONDITIONS MAY BE APPLIED UNDER ARTICLE ~~5~~59(1)(B)

(a) Access to application program interfaces (APIs);

(b) Access to electronic programme guides (EPGs).

↓ 2009/140/EC Art. 2.12(a)

~~ANNEX II~~

~~**MINIMUM LIST OF ITEMS TO BE INCLUDED IN A REFERENCE OFFER FOR WHOLESALE NETWORK INFRASTRUCTURE ACCESS, INCLUDING SHARED OR FULLY UNBUNDLED ACCESS TO THE LOCAL LOOP AT A FIXED LOCATION TO BE PUBLISHED BY NOTIFIED OPERATORS WITH SIGNIFICANT MARKET POWER (SMP)**~~

↓ 2002/19/EC

~~For the purposes of this Annex the following definitions apply:~~

↓ 2009/140/EC Art. 2.12(b)

~~(a)'local sub-loop' means a partial local loop connecting the network termination point to a concentration point or a specified intermediate access point in the fixed public electronic communications network;~~

↓ 2002/19/EC

(b)'unbundled access to the local loop' means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;

↓ 2009/140/EC Art. 2.12(c)

(c)'full unbundled access to the local loop' means the provision to a beneficiary of access to the local loop or local sub-loop of the SMP operator allowing the use of the full capacity of the network infrastructure;

↓ 2009/140/EC Art. 2.12(d)

(d)'shared access to the local loop' means the provision to a beneficiary of access to the local loop or local sub-loop of the SMP operator, allowing the use of a specified part of the capacity of the network infrastructure such as a part of the frequency or an equivalent.

↓ 2002/19/EC

A.*CONDITIONS FOR UNBUNDLED ACCESS TO THE LOCAL LOOP*

↓ 2009/140/EC Art. 2.12(e)

1. Network elements to which access is offered covering in particular the following elements together with appropriate associated facilities:

(a) unbundled access to local loops (full and shared);

(b) unbundled access to local sub-loops (full and shared), including, when relevant, access to network elements which are not active for the purpose of roll-out of backhaul networks;

(c) where relevant, duct access enabling the roll out of access networks.

2. Information concerning the locations of physical access sites including cabinets and distribution frames, availability of local loops, sub-loops and backhaul in specific parts of the access network and when relevant, information concerning the locations of ducts and the availability within ducts;

~~3. Technical conditions related to access and use of local loops and sub-loops, including the technical characteristics of the twisted pair and/or optical fibre and/or equivalent, cable distributors, and associated facilities and, when relevant, technical conditions related to access to ducts;~~

↓ 2002/19/EC

~~4. Ordering and provisioning procedures, usage restrictions.~~

~~**B.*CO-LOCATION SERVICES***~~

↓ 2009/140/EC Art. 2.12(f)

~~1. Information on the SMP operator's existing relevant sites or equipment locations and planned update thereof[105].~~

↓ 2002/19/EC

~~2. Co-location options at the sites indicated under point 1 (including physical co-location and, as appropriate, distant co-location and virtual co-location).~~

~~3. Equipment characteristics: restrictions, if any, on equipment that can be co-located.~~

~~4. Security issues: measures put in place by notified operators to ensure the security of their locations.~~

~~5. Access conditions for staff of competitive operators.~~

~~6. Safety standards.~~

~~7. Rules for the allocation of space where co-location space is limited.~~

~~8. Conditions for beneficiaries to inspect the locations at which physical co-location is available, or sites where co-location has been refused on grounds of lack of capacity.~~

~~105 Availability of this information may be restricted to interested parties only, in order to avoid public security concerns.~~

~~***C.INFORMATION SYSTEMS***~~

~~Conditions for access to notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing.~~

~~**D.*SUPPLY CONDITIONS***~~

~~1. Lead time for responding to requests for supply of services and facilities; service level agreements, fault resolution, procedures to return to a normal level of service and quality of service parameters.~~

~~2. Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times.~~

~~3. Prices or pricing formulae for each feature, function and facility listed above.~~

ANNEX III

CRITERIA FOR THE DETERMINATION OF WHOLESALE CALL TERMINATION RATES

Principles, ~~C~~**c**riteria and parameters for the determination of rates for wholesale call termination on fixed and mobile markets, referred to in Article 73 (**14**):

(aa) rates shall be based on the recovery of costs incurred by an efficient operator; the evaluation of efficient costs shall be based on current cost values; the cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice call termination service to third parties;

(b) the relevant incremental costs of the wholesale voice call termination service shall be determined by the difference between the total long-run costs of an operator providing its full range of services and the total long-run costs of that operator not providing a wholesale voice call termination service to third parties;

(c) only those traffic related costs which would be avoided in the absence of a wholesale voice call termination service being provided shall be allocated to the relevant termination increment;

(d) costs related to additional network capacity shall be included only to the extent that they are driven by the need to increase capacity for the purpose of carrying additional wholesale voice call termination traffic;

(e) radio spectrum fees shall be excluded from the mobile termination increment;

(f) only those wholesale commercial costs shall be included which are directly related to the provision of the wholesale voice call termination service to third parties;

(g) all fixed network operators shall be deemed to provide voice call termination services at the same unit costs as the efficient operator, regardless of their size;

(h) for mobile network operators, the minimum efficient scale shall be set at a market share not below 20%;

(i) the relevant approach for asset depreciation shall be economic depreciation; and

(j) the technology choice of the modelled networks shall be forward looking, based on an IP core network, taking into account the various technologies likely to be used over the period of validity of the maximum rate. In the case of fixed networks, calls shall be considered to be exclusively packet switched.

ANNEX IV

CRITERIA FOR ASSESSING CO-INVESTMENT OFFERS

When assessing a co-investment offer pursuant to Article 74 (1) ~~(d)~~, the national regulatory authority shall verify whether the following criteria have been met:

(k) The co-investment offer shall be open to any undertaking over the lifetime of the network built under a co-investment offer on a non-discriminatory basis. The SMP operator may include in the offer reasonable conditions regarding the financial capacity of any undertaking, so that for instance potential co-investors need to demonstrate their ability to deliver phased payments on the basis of which the deployment is planned, the acceptance of a strategic plan on the basis of which medium-term deployment plans are prepared, etc.

(l) The co-investment offer shall be transparent:

– the offer is available and easily identified on the website of the SMP operator;

– full detailed terms must be made available without undue delay to any potential bidder that has expressed an interest, including the legal form of the co-investment agreement and - when relevant - the heads of term of the governance rules of the co-investment vehicle; and

– The process, like the road map for the establishment and development of the co-investment project must be set in advance, it must clearly explained in writing to any potential co-investor, and all significant milestones be clearly communicated to all undertakings without any discrimination.

(m) The co-investment offer shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:

– All undertakings have to be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the co-investors by those rights both during the building phase and during the exploitation phase, for example by granting indefeasible rights of use (IRUs) for the expected lifetime of the co-invested network and in terms of the conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all potential co-investors must be offered exactly the same terms, including financial terms, but that all variations of the terms offered must be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end user lines committed for.

– The offer must allow flexibility in terms of the value and timing of the commitment provided by each co-investor, for example by means of an agreed and potentially increasing percentage of the total end user lines in a given area, to which co-investors have the possibility to commit gradually and which shall be set at a unit level enabling smaller co-investors **with limited resources to enter the co-investment at a reasonably minimum scale and** to gradually increase their participation while ensuring adequate levels of initial commitment. The determination of the financial consideration to be provided by each co-investor needs to reflect the fact that early investors accept greater risks and engage capital sooner.

– A premium increasing over time has to be considered as justified for commitments made at later stages and for new co-investors entering the co-investment after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages.

– The co-investment agreement has to allow the assignment of acquired rights by co-investors to other co-investors, or to third parties willing to enter into the co-investment agreement subject to the transferee undertaking being obliged to fulfil all original obligations of the transferor under the co-investment agreement.

– Co-investors have to grant each other reciprocal rights on fair and reasonable terms and conditions to access the co-invested infrastructure for the purposes of providing services downstream, including to end-users, according to transparent conditions which have to be made transparent in the co-investment offer and subsequent agreement, in particular where co-investors are individually and separately responsible for the deployment of specific parts of the network. If a co-investment vehicle is created, it has to provide access to the network to all co-investors, whether directly or indirectly, on an equivalence of inputs basis and according to fair and reasonable terms and conditions, including financial conditions that reflect the different levels of risk accepted by the individual co-investors.

(n) The co-investment offer shall ensure a sustainable investment likely to meet future needs, by deploying new network elements that contribute significantly to the deployment of very high capacity networks.

⇩ new

ANNEX V

MINIMUM SET ~~LIST~~ OF SERVICES WHICH THE FUNCTIONAL INTERNET ACCESS SERVICE SHALL BE CAPABLE OF SUPPORTING IN ACCORDANCE WITH ARTICLE 79(2)

(2) E-mail

(3) search engines enabling search and finding of all type of information

(4) basic training and education online tools

(5) online newspapers/news

(6) buying/ordering goods or services online

(7) job searching and job searching tools

(8) professional networking

(9) internet banking

(10) eGovernment service use

(11) social media and instant messaging

(12) calls and video calls (standard quality)

🡻 2009/136/EC Art. 1.28 and Annex I (adapted)
⇨ new

ANNEX ~~I~~VI

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE ~~10~~ 83 (CONTROL OF EXPENDITURE), ARTICLE ~~29~~ 107 (ADDITIONAL FACILITIES) AND ARTICLE ~~30~~ 99 (~~FACILITATING~~ ~~CHANGE OF~~ PROVIDER **SWITCHING** ⌦ **AND** NUMBER PORTABILITY ⌫)

PART A: FACILITIES AND SERVICES REFERRED TO IN ARTICLE ~~10~~83

(a) Itemised billing

Member States are to ensure that ~~national regulatory~~ **competent** authorities, subject to the requirements of relevant legislation on the protection of personal data and privacy, may lay down the basic level of itemised bills which are to be ~~provided~~ **offered** by ~~undertakings~~ **providers** to ~~subscribers~~ ⇨ end-users ⇦ free of charge in order that they can:

(i) allow verification and control of the charges incurred in using the ~~public communications network at a fixed location~~ **functional internet access** and/or ~~related publicly available telephone~~ ⇨ voice communications ⇦ services ⇨ , or number-based interpersonal communications services in the case of Article 107 ⇦ ; and

(ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

Where appropriate, additional levels of detail may be offered to ~~subscribers~~ ⇨ end-users ⇦ at reasonable tariffs or at no charge.

Calls which are free of charge to the calling ~~subscribers~~ ⇨ end-users ⇦, including calls to helplines, are not to be identified in the calling ~~subscriber's~~ ⇨ end user's ⇦ itemised bill.

(b) Selective barring for outgoing calls or premium SMS or MMS, or, where technically feasible, other kinds of similar applications, free of charge

i.e. the facility whereby the ~~subscribers~~ ⇨ end-users ⇦ can, on request to the ~~designated undertaking that provides~~ **providers of** ~~telephone~~ ⇨ voice communications ⇦ services ⇨ , or number-based interpersonal communications services in the case of Article 107 ⇦ , bar outgoing calls or premium SMS or MMS or other kinds of similar applications of defined types or to defined types of numbers free of charge.

(c) Pre-payment systems

Member States are to ensure that ~~national regulatory~~ **competent** authorities may require ~~designated undertakings~~ **providers** to ~~provide~~ **offer** means for consumers to pay for access to the public communications network and use of ~~publicly available telephone~~ ⇨ voice communications ⇦ services ⇨ , **or functional internet access,** or number-based interpersonal communications services in the case of Article 107, ⇦ on pre-paid terms.

(d) Phased payment of connection fees

Member States are to ensure that ~~national regulatory~~ **competent** authorities may require ~~designated undertakings~~ **providers** to allow consumers to pay for connection to the public communications network on the basis of payments phased over time.

(e) Non-payment of bills

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of ~~telephone~~ bills issued by ~~undertakings~~ **providers**. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the ~~subscribers~~ ⇨ end-users ⇦ beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures are to ensure, as far as is technically feasible that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the ~~subscribers~~ ⇨ end-users ⇦ . Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the s~~ubscribers~~ ⇨ end-users ⇦ (e.g. '112' calls) **and ~~minimal~~ minimum service level of functional internet access, defined by Member States in the light of national conditions,** are permitted.

(f) Tariff advice

i.e. the facility whereby ~~subscribers~~ ⇨ end-users ⇦ may request the ~~undertaking~~ **provider** to ~~provide~~ **offer** information regarding alternative lower-cost tariffs, if available.

(g) Cost control

i.e. the facility whereby ~~undertakings~~ **providers** offer other means, if determined to be appropriate by ~~national regulatory~~ **competent** authorities, to control the costs of ~~publicly available telephone~~ ⇨ voice communications **or functional internet access** ⇦ services, ⇨ or number-based interpersonal communications services in the case of Article 107, ⇦ including free-of-charge alerts to consumers in case of abnormal or excessive consumption patterns.

PART B: FACILITIES REFERRED TO IN ARTICLE ~~29~~ 107

~~**(a) Tone dialling or DTMF (dual-tone multi-frequency operation)**~~

~~i.e. the public communications network and/or publicly available telephone services supports the use of DTMF tones as defined in ETSI ETR 207 for end-to-end signalling throughout the network both within a Member State and between Member States.~~

~~**(b)**~~ **(a) Calling-line identification**

i.e. the calling party's number is presented to the called party prior to the call being established.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, in particular Directive 2002/58/EC (Directive on privacy and electronic communications).

To the extent technically feasible, operators should provide data and signals to facilitate the offering of calling-line identity and tone dialling across Member State boundaries.

PART C: IMPLEMENTATION OF THE NUMBER PORTABILITY PROVISIONS REFERRED TO IN ARTICLE ~~30~~99

The requirement that all ~~subscribers~~ ⇨ end-users ⇦ with numbers from the national numbering plan, who so request can retain their number(s) independently of the undertaking providing the service shall apply:

(a) in the case of geographic numbers, at a specific location; and

(b) in the case of non-geographic numbers, at any location.

This Part does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

↓ 2002/22/EC (adapted)
⇨ new

ANNEX ~~IV~~VII

CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS *AND ESTABLISHING ANY RECOVERY OR SHARING MECHANISM* ~~AND ESTABLISHING ANY RECOVERY **OR SHARING** MECHANISM~~ **IN ACCORDANCE WITH ARTICLES ~~12~~ 84 AND ~~13~~85**

~~**PART A: CALCULATION OF NET COST**~~

PART A: CALCULATION OF NET COST

Universal service obligations refer to those obligations placed upon an undertaking by a Member State which concern the provision of ⇨ universal service as set out in Articles 79, 81 and 82 ⇦ ~~a network and service throughout a specified geographical area, including, where required, averaged prices in that geographical area for the provision of that service or provision of specific tariff options for consumers with low incomes or with special social needs~~.

~~National regulatory~~ **Competent** authorities are to consider all means to ensure appropriate incentives for undertakings (designated or not) to provide universal service obligations cost efficiently. In undertaking a calculation exercise, the net cost of universal service obligations is to be calculated as the difference between the net cost for ⌦ any ⌫ ~~designated~~ undertaking ~~of~~ operating with the universal service obligations and operating without the universal service obligations. ~~This applies whether the network in a particular Member State is fully developed or is still undergoing development and expansion.~~ Due attention is to be given to correctly assessing the costs that any ~~designated~~ undertaking would have chosen to avoid had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator.

The calculation is to be based upon the costs attributable to:

(i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards.

This category may include service elements such as access to emergency telephone services, provision of certain public pay telephones, provision of certain services or equipment for disabled people, etc;

(ii) specific end-users or groups of end-users who, taking into account the cost of providing the specified network and service, the revenue generated and any geographical averaging of prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those end-users or groups of end-users which would not be served by a commercial operator which did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any undertaking is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the ~~national regulatory~~ **competent** authority.

~~***PART B: RECOVERY OF ANY NET COSTS OF UNIVERSAL SERVICE OBLIGATIONS***~~

~~*The recovery or financing of any net costs of universal service obligations* ***may*** *requires designated undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such a compensation involves financial transfers, Member States are to ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result in the least distortion to competition and to user demand.*~~

~~*In accordance with Article* **85** *13(3), a sharing mechanism based on a fund should use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition of contributions falling on both outputs and inputs of undertakings.*~~

~~*The independent body administering the fund is to be responsible for collecting contributions from undertakings which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due and/or administrative payments to the undertakings entitled to receive payments from the fund.*~~

ANNEX VII bis

INFORMATION REQUIREMENTS TO BE PROVIDED IN ACCORDANCE WITH ARTICLE 95 (INFORMATION REQUIREMENTS FOR CONTRACTS)

A. INFORMATION REQUIREMENTS FOR PROVIDERS OF PUBLICLY AVAILABLE ELECTRONIC COMMUNICATIONS SERVICES

Providers of publicly available electronic communications services shall provide the following information:

(1) as part of the main characteristics of each service provided~~:~~

***~~(i)~~ any minimum service quality levels to the extent that these are offered*, either through control of at least some elements of the network or by virtue of a service level agreement to that effect~~,~~;**

(2) as part of the information on the duration of the contract and the conditions for renewal and termination of the contract, including possible termination fees, where ~~relevant~~ such conditions apply:

(i) any minimum usage or duration required to benefit from promotional terms,

(ii) any charges related to switching and compensation and refund arrangements for delay or abuse of switching,

(iii) any charges due on early termination of the contract, including any cost recovery with respect to terminal equipment ~~and other promotional advantages,~~

(3) any compensation and refund arrangements, which apply if contracted service quality levels are not met;

(4) the type of action that might be taken by the provider in reaction to security or integrity incidents or threats and vulnerabilities.

B- INFORMATION REQUIREMENTS FOR PROVIDERS OF INTERNET ACCESS SERVICES AND PUBLICLY AVAILABLE INTERPERSONAL COMMUNICATIONS SERVICES

I. In addition to the requirements set out in Part A, providers of internet access services and publicly available interpersonal communications services shall provide the following information:

(1) ***as part of the main characteristics of each service provided:***

(i) ***any minimum service quality levels to the extent that*** **the provider** ~~***these are offered,***~~ **either through controls** ~~**of**~~ **at least some elements of the network either directly or by virtue of a service level agreement to that effect, and taking utmost account of the** ***BEREC guidelines*** ~~***to be***~~ ***adopted in accordance with Article 97(2) regarding*** ~~***after consultation of stakeholders and in close cooperation with the Commission, regarding***~~**:**

– for internet access services: at least latency ~~***, jitter, packet loss***~~***;***

– for publicly available ~~***number-based***~~ ***interpersonal communications services,*** ~~**where relevant:**~~ ***at least the time for the initial connection, failure probability, call signalling delays;***

(ii) without prejudice to the right of end-users to use terminal equipment of their choice in accordance with Article 3(1) of Regulation 2015/2120/EC, any ~~***restrictions***~~ **conditions** ***imposed by the provider on the use of terminal equipment supplied;***

(2) ***as part of the information on price,*** **where and to the extent applicable, the respective prices for activating the electronic communications service and for any recurring and/or consumption-related charges:**

(i) details of tariff plans under the contract and, where applicable, the volumes of communications (such as MB, minutes, ~~SMS~~messages) included per billing period, and the price for additional communication units,

(ii) tariff information regarding any numbers or services subject to particular pricing conditions; with respect to individual categories of services, competent authorities ~~NRAs~~ may require such information to be provided immediately prior to connecting the call or to providing the service,

(iii) for bundled services and bundles including both services and **terminal** *equipment the price of the individual elements of the bundle to the extent they are also marketed separately,*

(iv) details of after-sales service and maintenance charges, and

(v) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

(3) *as part of the information on the duration of the contract* **for bundled services** *and the conditions for renewal and termination of the contract*, **where** ~~relevant~~ **applicable, the conditions of termination of the bundle or of elements thereof;**

(4) *details on products and services designed for disabled end-users and how updates on this information can be obtained;*

(5) *the means of initiating procedures for the settlement of disputes in accordance with Article 25;*

II. In addition to the requirements set out in part A and under I, providers of publicly available number-based interpersonal communications services shall also provide the following information:

(1) any constraints on access to emergency services and/or caller location information due to a lack of technical feasibility;

(2) the end-user's right to determine whether or not to include his or her personal data in a directory, and the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC;

III. In addition to the requirements set out in part A and under I, ***providers of internet access services shall also provide the information required pursuant to Article 4(1) of Regulation (EU) 2015/2120.***

ANNEX ~~II~~VIII

INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH ARTICLE ~~21~~96

(TRANSPARENCY AND PUBLICATION OF INFORMATION)

The ~~national regulatory~~ **competent** authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article ~~21~~96. It is for the ~~national regulatory~~ **competent** authority to decide which information is to be published by the undertakings providing ⇨ publicly available electronic communications services~~, except number-independent interpersonal communications services~~ ⇦ ~~public communications networks and/or publicly available telephone services~~ and which information is to be published by the ~~national regulatory~~ **competent** authority itself, so as to ensure that consumers are able to make informed choices. ⇨ If deemed appropriate, ~~national regulatory~~ **competent** authorities may promote self- or co-regulatory measures prior to imposing any obligation. ⇦

1~~. Name(s) and address(es)~~ ⌦ Contact details ⌫ of ⌦ the ⌫ undertaking~~(s)~~

~~i.e. names and head office addresses of undertakings providing public communications networks and/or publicly available telephone services.~~

2. Description of ⌦ the ⌫ services offered

2.1. Scope of ⌦ the ⌫ services offered ⇨ and the main characteristics of each service provided, including any minimum service quality levels ***to the extent*** offered and any restrictions imposed by the provider on the use of terminal equipment supplied ⇦ .

2.2. ~~Standard~~ ~~t~~Tariffs ⇨ of the services offered, including information on communications volumes of specific tariff plans and the applicable tariffs for additional communication units, numbers or services subject to particular pricing conditions, ⇦ ~~indicating the services provided and the content of each tariff element (e.g.~~ charges for access ⇨ and maintenance ⇦ , all types of usage charges, ~~maintenance charges), and including details of standard discounts applied and~~ special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment.

~~2.3. Compensation/refund policy, including specific details of any compensation/refund schemes offered.~~

2.~~4~~3. ~~Types of~~ ⇨ After-sales and ⇦ maintenance ~~service~~ ⌦ services ⌫ offered ⇨ and their contact details ⇦ .

2.~~5~~4. Standard contract conditions, including ~~any minimum contractual period~~ ⇨ contract duration ⇦ , ⇨ charges due on early ⇦ termination of the contract, ⇨ rights related to the termination of bundled offers or of elements thereof, ⇦ and procedures and direct charges related to the portability of numbers and other identifiers, if relevant.

⇩ new

2.5. If the undertaking is a provider of number-based interpersonal communications services, information on access to emergency services and caller location information.

2.6. Details of products and services designed for disabled users.

🡻 2002/22/EC (adapted)
⇨ new

3. Dispute settlement mechanisms, including those developed by the undertaking.

~~4. Information about rights as regards universal service, including, where appropriate, the facilities and services mentioned in Annex I.~~

QUALITY OF SERVICE PARAMETERS

Quality-of-Service Parameters, Definitions and Measurement Methods referred to in Article~~s 11 and 22~~ 97

For ~~undertakings providing~~ **providers of** access to a public communications network

PARAMETER (Note 1)	DEFINITION	MEASUREMENT METHOD
Supply time for initial connection	ETSI EG 202 057	ETSI EG 202 057
Fault rate per access line	ETSI EG 202 057	ETSI EG 202 057
Fault repair time	ETSI EG 202 057	ETSI EG 202 057

For ⇨ **providers of** ~~number-based~~ interpersonal communications services **who exert control over at least some elements of the network or have a service level agreement to that effect with undertakings providing access to the network** ⇦ ~~undertakings providing a publicly available telephone service~~

⌦ PARAMETER (Note 2) ⌫	⌦ DEFINITION ⌫	⌦ MEASUREMENT METHOD ⌫
Call set up time ~~(Note 2)~~	ETSI EG 202 057	ETSI EG 202 057
~~Response times for directory enquiry services~~	~~ETSI EG 202 057~~	~~ETSI EG 202 057~~

~~Proportion of coin and card operated public pay-telephones in working order~~	~~ETSI EG 202 057~~	~~ETSI EG 202 057~~
Bill correctness complaints	ETSI EG 202 057	ETSI EG 202 057
⇨ Voice connection quality ⇦	⇨ ETSI EG 202 057 ⇦	⇨ ETSI EG 202 057 ⇦
⇨ Dropped call ratio ⇦	⇨ ETSI EG 202 057 ⇦	⇨ ETSI EG 202 057 ⇦
Unsuccessful call ratio (Note 2)	ETSI EG 202 057	ETSI EG 202 057
⇨ Failure probability ⇦		
⇨ Call signalling delays ⇦		

⇩ new

For **providers of** Internet access services

PARAMETER	DEFINITION	MEASUREMENT METHOD
Latency		
~~Jitter~~		
~~Packet loss~~		

🡻 2002/22/EC

Note 1

Parameters should allow for performance to be analysed at a regional level (i.e. no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat).

Note 2

Member States may decide not to require up-to-date information concerning the performance for these two parameters to be kept if evidence is available to show that performance in these two areas is satisfactory.

↓ 2002/22/EC

~~ANNEX V~~

~~PROCESS FOR REVIEWING THE SCOPE OF UNIVERSAL SERVICE IN ACCORDANCE WITH ARTICLE 15~~

~~In considering whether a review of the scope of universal service obligations should be undertaken, the Commission is to take into consideration the following elements:~~

~~1. social and market developments in terms of the services used by consumers,~~

~~2. social and market developments in terms of the availability and choice of services to consumers,~~

~~3. technological developments in terms of the way services are provided to consumers.~~

~~In considering whether the scope of universal service obligations be changed or redefined, the Commission is to take into consideration the following elements:~~

~~4. are specific services available to and used by a majority of consumers and does the lack of availability or non-use by a minority of consumers result in social exclusion, and~~

~~5. does the availability and use of specific services convey a general net benefit to all consumers such that public intervention is warranted in circumstances where the specific services are not provided to the public under normal commercial circumstances?~~

↓ 2009/136/EC Art. 1.28 and Annex II (adapted)

ANNEX ~~VI~~ X

INTEROPERABILITY OF DIGITAL CONSUMER EQUIPMENT REFERRED TO IN ARTICLE ~~24~~105

1. COMMON SCRAMBLING ALGORITHM AND FREE-TO-AIR RECEPTION

All consumer equipment intended for the reception of conventional digital television signals (i.e. broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C or DVB-S), for sale or rent or otherwise made available in the ~~Community~~ ⌦ Union ⌫ , capable of descrambling digital television signals, is to possess the capability to:

– allow the descrambling of such signals according to a common European scrambling algorithm as administered by a recognised European standards organisation, currently ETSI,

– display signals that have been transmitted in the clear provided that, in the event that such equipment is rented, the renter is in compliance with the relevant rental agreement.

2. INTEROPERABILITY FOR ~~ANALOGUE AND~~ DIGITAL TELEVISION SETS

~~Any analogue television set with an integral screen of visible diagonal greater than 42 cm which is put on the market for sale or rent in the Community is to be fitted with at least one open interface socket, as standardised by a recognised European standards organisation, e.g. as given in the Cenelec EN 50 049-1:1997 standard, permitting simple connection of peripherals, especially additional decoders and digital receivers.~~

Any digital television set with an integral screen of visible diagonal greater than 30 cm which is put on the market for sale or rent in the ~~Community~~ ⌦ Union ⌫ is to be fitted with at least one open interface socket (either standardised by, or conforming to a standard adopted by, a recognised European standards organisation, or conforming to an industry-wide specification) ~~e.g. the DVB common interface connector,~~ permitting simple connection of peripherals, and able to pass all ~~the~~ ⌦ relevant ⌫ elements of a digital television signal, including information relating to interactive and conditionally accessed services.

↑

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 (OJ L 337, 18.12.2009, p. 37)	Article 1
Regulation (EC) 544/2009 of the European Parliament and of the Council (OJ L 167, 29.6.2009, p. 12)	Article 2

Regulation (EC) 717/2007 of the European Parliament and of the Council (OJ L 171, 29.6.2007, p. 32)	Article 10

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 (OJ L 337, 18.12.2009, p. 37)	Article 3 & Annex

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 (OJ L 337, 18.12.2009, p. 37)	Article 2

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 (OJ L 337, 18.12.2009, p. 11)	Article 1 & Annex I

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

↓ 2002/19/EC (adapted)

ANNEX II

CONDITIONS FOR ACCESS TO DIGITAL TELEVISION AND RADIO SERVICES BROADCAST TO VIEWERS AND LISTENERS IN THE ~~COMMUNITY~~ ⌦ UNION ⌫

PART I: CONDITIONS FOR CONDITIONAL ACCESS SYSTEMS TO BE APPLIED IN ACCORDANCE WITH ARTICLE ~~6~~60(1)

In relation to conditional access to digital television and radio services broadcast to viewers and listeners in the ~~Community~~ ⌦ Union ⌫ , irrespective of the means of transmission, Member States must ensure in accordance with Article ~~6~~ 60 that the following conditions apply:

~~(a) conditional access systems operated on the market in the Community are to have the necessary technical capability for cost-effective transcontrol allowing the possibility for full control by network operators at local or regional level of the services using such conditional access systems;~~

(~~b~~a) all operators of conditional access services, irrespective of the means of transmission, who provide access services to digital television and radio services and whose access services broadcasters depend on to reach any group of potential viewers or listeners are to:

– offer to all broadcasters, on a fair, reasonable and non-discriminatory basis compatible with ~~Community~~ ⌦ Union ⌫ competition law, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers or listeners authorised by means of decoders administered by the service operators, and comply with ~~Community~~ ⌦ Union ⌫ competition law,

– keep separate financial accounts regarding their activity as conditional access providers.

(~~c~~b) when granting licences to manufacturers of consumer equipment, holders of industrial property rights to conditional access products and systems are to ensure that this is done on fair, reasonable and non-discriminatory terms. Taking into account technical and commercial factors, holders of rights are not to subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of:

– a common interface allowing connection with several other access systems, or

– means specific to another access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as he is concerned, the security of transactions of conditional access system operators.

PART II: OTHER FACILITIES TO WHICH CONDITIONS MAY BE APPLIED UNDER ARTICLE ~~5~~59(1)(B)

(a) Access to application program interfaces (APIs);

(b) Access to electronic programme guides (EPGs).

↓ 2009/140/EC Art. 2.12(a)

~~ANNEX II~~

~~**MINIMUM LIST OF ITEMS TO BE INCLUDED IN A REFERENCE OFFER FOR WHOLESALE NETWORK INFRASTRUCTURE ACCESS, INCLUDING SHARED OR FULLY UNBUNDLED ACCESS TO THE LOCAL LOOP AT A FIXED LOCATION TO BE PUBLISHED BY NOTIFIED OPERATORS WITH SIGNIFICANT MARKET POWER (SMP)**~~

↓ 2002/19/EC

~~For the purposes of this Annex the following definitions apply:~~

↓ 2009/140/EC Art. 2.12(b)

~~(a)'local sub-loop' means a partial local loop connecting the network termination point to a concentration point or a specified intermediate access point in the fixed public electronic communications network;~~

↓ 2002/19/EC

(b)‘unbundled access to the local loop’ means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;

↓ 2009/140/EC Art. 2.12(c)

(c)‘full unbundled access to the local loop’ means the provision to a beneficiary of access to the local loop or local sub-loop of the SMP operator allowing the use of the full capacity of the network infrastructure;

↓ 2009/140/EC Art. 2.12(d)

(d)‘shared access to the local loop’ means the provision to a beneficiary of access to the local loop or local sub-loop of the SMP operator, allowing the use of a specified part of the capacity of the network infrastructure such as a part of the frequency or an equivalent.

↓ 2002/19/EC

A.*CONDITIONS FOR UNBUNDLED ACCESS TO THE LOCAL LOOP*

↓ 2009/140/EC Art. 2.12(e)

1. Network elements to which access is offered covering in particular the following elements together with appropriate associated facilities:

(a) unbundled access to local loops (full and shared);

(b) unbundled access to local sub-loops (full and shared), including, when relevant, access to network elements which are not active for the purpose of roll-out of backhaul networks;

(c) where relevant, duct access enabling the roll out of access networks.

2. Information concerning the locations of physical access sites including cabinets and distribution frames, availability of local loops, sub-loops and backhaul in specific parts of the access network and when relevant, information concerning the locations of ducts and the availability within ducts;

~~3. Technical conditions related to access and use of local loops and sub-loops, including the technical characteristics of the twisted pair and/or optical fibre and/or equivalent, cable distributors, and associated facilities and, when relevant, technical conditions related to access to ducts;~~

↓ 2002/19/EC

~~4. Ordering and provisioning procedures, usage restrictions.~~

~~**B.*CO-LOCATION SERVICES***~~

↓ 2009/140/EC Art. 2.12(f)

~~1. Information on the SMP operator's existing relevant sites or equipment locations and planned update thereof[106].~~

↓ 2002/19/EC

~~2. Co-location options at the sites indicated under point 1 (including physical co-location and, as appropriate, distant co-location and virtual co-location).~~

~~3. Equipment characteristics: restrictions, if any, on equipment that can be co-located.~~

~~4. Security issues: measures put in place by notified operators to ensure the security of their locations.~~

~~5. Access conditions for staff of competitive operators.~~

~~6. Safety standards.~~

~~7. Rules for the allocation of space where co-location space is limited.~~

~~8. Conditions for beneficiaries to inspect the locations at which physical co-location is available, or sites where co-location has been refused on grounds of lack of capacity.~~

~~106 Availability of this information may be restricted to interested parties only, in order to avoid public security concerns.~~

~~***C.INFORMATION SYSTEMS***~~

~~Conditions for access to notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing.~~

~~**D.*SUPPLY CONDITIONS***~~

~~1. Lead time for responding to requests for supply of services and facilities; service level agreements, fault resolution, procedures to return to a normal level of service and quality of service parameters.~~

~~2. Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times.~~

~~3. Prices or pricing formulae for each feature, function and facility listed above.~~

ANNEX III

CRITERIA FOR THE DETERMINATION OF WHOLESALE CALL TERMINATION RATES

Principles, ~~C~~**c**riteria and parameters for the determination of rates for wholesale call termination on fixed and mobile markets, referred to in Article 73 (**14**):

(aa) rates shall be based on the recovery of costs incurred by an efficient operator; the evaluation of efficient costs shall be based on current cost values; the cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice call termination service to third parties;

(a) the relevant incremental costs of the wholesale voice call termination service shall be determined by the difference between the total long-run costs of an operator providing its full range of services and the total long-run costs of that operator not providing a wholesale voice call termination service to third parties;

(b) only those traffic related costs which would be avoided in the absence of a wholesale voice call termination service being provided shall be allocated to the relevant termination increment;

(c) costs related to additional network capacity shall be included only to the extent that they are driven by the need to increase capacity for the purpose of carrying additional wholesale voice call termination traffic;

(d) radio spectrum fees shall be excluded from the mobile termination increment;

(e) only those wholesale commercial costs shall be included which are directly related to the provision of the wholesale voice call termination service to third parties;

(f) all fixed network operators shall be deemed to provide voice call termination services at the same unit costs as the efficient operator, regardless of their size;

(g) for mobile network operators, the minimum efficient scale shall be set at a market share not below 20%;

(h) the relevant approach for asset depreciation shall be economic depreciation; and

(i) the technology choice of the modelled networks shall be forward looking, based on an IP core network, taking into account the various technologies likely to be used over the period of validity of the maximum rate. In the case of fixed networks, calls shall be considered to be exclusively packet switched.

ANNEX IV

CRITERIA FOR ASSESSING CO-INVESTMENT OFFERS

When assessing a co-investment offer pursuant to Article 74 (1) ~~(d)~~, the national regulatory authority shall verify whether the following criteria have been met:

(j) The co-investment offer shall be open to any undertaking over the lifetime of the network built under a co-investment offer on a non-discriminatory basis. The SMP operator may include in the offer reasonable conditions regarding the financial capacity of any undertaking, so that for instance potential co-investors need to demonstrate their ability to deliver phased payments on the basis of which the deployment is planned, the acceptance of a strategic plan on the basis of which medium-term deployment plans are prepared, etc.

(k) The co-investment offer shall be transparent:

– the offer is available and easily identified on the website of the SMP operator;

– full detailed terms must be made available without undue delay to any potential bidder that has expressed an interest, including the legal form of the co-investment agreement and - when relevant - the heads of term of the governance rules of the co-investment vehicle; and

– The process, like the road map for the establishment and development of the co-investment project must be set in advance, it must clearly explained in writing to any potential co-investor, and all significant milestones be clearly communicated to all undertakings without any discrimination.

(l) The co-investment offer shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:

– All undertakings have to be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the co-investors by those rights both during the building phase and during the exploitation phase, for example by granting indefeasible rights of use (IRUs) for the expected lifetime of the co-invested network and in terms of the conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all potential co-investors must be offered exactly the same terms, including financial terms, but that all variations of the terms offered must be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end user lines committed for.

– The offer must allow flexibility in terms of the value and timing of the commitment provided by each co-investor, for example by means of an agreed and potentially increasing percentage of the total end user lines in a given area, to which co-investors have the possibility to commit gradually and which shall be set at a unit level enabling smaller co-investors **with limited resources to enter the co-investment at a reasonably minimum scale and** to gradually increase their participation while ensuring adequate levels of initial commitment. The determination of the financial consideration to be provided by each co-investor needs to reflect the fact that early investors accept greater risks and engage capital sooner.

– A premium increasing over time has to be considered as justified for commitments made at later stages and for new co-investors entering the co-investment after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages.

– The co-investment agreement has to allow the assignment of acquired rights by co-investors to other co-investors, or to third parties willing to enter into the co-investment agreement subject to the transferee undertaking being obliged to fulfil all original obligations of the transferor under the co-investment agreement.

– Co-investors have to grant each other reciprocal rights on fair and reasonable terms and conditions to access the co-invested infrastructure for the purposes of providing services downstream, including to end-users, according to transparent conditions which have to be made transparent in the co-investment offer and subsequent agreement, in particular where co-investors are individually and separately responsible for the deployment of specific parts of the network. If a co-investment vehicle is created, it has to provide access to the network to all co-investors, whether directly or indirectly, on an equivalence of inputs basis and according to fair and reasonable terms and conditions, including financial conditions that reflect the different levels of risk accepted by the individual co-investors.

(m) The co-investment offer shall ensure a sustainable investment likely to meet future needs, by deploying new network elements that contribute significantly to the deployment of very high capacity networks.

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)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
-	-	-	-	Article 8(2)
-	-	-	-	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)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 8(1) and (2)				Article 3(1) and (2)
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)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 10(2)				Article 89(3)
-	-	-	-	Article 89(2)
-	-	-	-	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)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 13b(1), (2) and (3)				Article 41(1), (2) and (3)
-	-	-	-	Article 41(4)
Article 13b(4)				Article 41(7)
-	-	-	-	Article 41(5)
-	-	-	-	Article 41(6)
Article 14				Article 61
Article 15(1),(2),(3)				Article 62(1),(2),(3)
15 (4) (4)				-
-	-	-	-	
-	-	-	-	Article 64
Article 16				Article 65
Article 17				Article 39
Article 18				-
Article 19				Article 38
Article 20				Article 26
Article 21(1)				Article 27(1)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 21(2) first and second subparagraphs				Article 27(2)
Article 21(2) third subparagraph				Article 27(3)
Article 21(2) fourth & fifth subparagraphs				Article 27(4)
-				Article 27(5)
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

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
Article 23				Article 111
Article 24				Article 112(1) and (2)
Article 25				Article 114(1)
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)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
	Article 3(2) 2nd, 3rd and 4th sentences			Article 12(3)
	Article 3(3)			Article 12(4)
-	-	-	-	
	Article 4			Article 15
	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)

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
	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
-	-	-	-	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
-	-	-	-	Article 88
	Article 14(1)			Article 18
	Article 14(2)			Article 19

Directive 2002/21/EC	Directive 2002/20/EC	Directive 2002/19/EC	Directive 2002/22/EC	This Directive
	Article 15			Article 112(3) and (4)
	Article 16			-
	Article 17			-
	Article 18			-
	Article 19			-
	Article 20			-
	Annex			Annex I
		Article 1 (1 and 2)		Article 1(2 and 3)
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		Article 2(b)		Article 2(29)
		Article 2(c)		Article 2(30)
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		Article 4		Article 58
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