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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) - Exchange of views and examination of the Presidency text (Spectrum)

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**Introduction**

1. Following the discussions in WP TELE of 17/03/2017 and 22/03/2017, written comments from Member States and reflecting the discussion at TTE Council 09/06/2017 **the Presidency intends to hold, in WP TELE of 21 June, a discussion of the Spectrum section of the Code.**
2. The discussion will be held **in three parts, focusing on key questions:**
  - A. Discussion of **coordination** - a policy discussion to further explore how to improve coordination among Member States to provide better certainty for investors.
  - B. Review of **revised text not in square brackets** - article by article review of drafting changes in those areas where the policy is more stable and the Presidency has proposed revisedtext.

- C. Discussion of **key outstanding issues in square brackets** - discussions, informed by revised drafting, to get further guidance on outstanding issues of **implementing decisions, the peer review process, the duration of rights and the powers under Article 59(3)**. These are marked in the text with square brackets.
3. For ease of reading **the amendments** set out in annex A **have been made to the original version of the recast**. Changes to the Commission recast are in **bold** and ~~striketrough~~. *Italics* represent text from the current Code that has been moved or reintroduced following its deletion in the Commission proposal.
4. The issue of whether it should be **National Regulatory Authorities or Competent Authorities** that are responsible for various elements is **to be discussed further** in the context of the institutional arrangements. **Terminological consistency has been improved throughout**, taking into account that the term 'competent authority' can include both ministries and national regulatory authorities. The **instances where further discussion is most likely required are included in square brackets**.
5. The issue of **whether the articles refer to all radio spectrum or only to radio spectrum for electronic communications services and networks** was raised by a number of Member States. **In Article 4 only, the provisions relate to all radio spectrum**, as is the case in the current Code. **In all other Articles, radio spectrum refers only to that radio spectrum used for electronic communications services and networks**. The inclusion of networks is important because there are some networks which use spectrum and support services, but which do not in themselves provide services. The Presidency has sought to make this clearer by **being explicit about the scope of provisions** where Member States were unclear about the scope.
6. At this stage **the Presidency has only made changes to the Articles**. The recitals will need to be updated in order to reflect the proposed changes to articles and to make other improvements.

## **PART A: Discussion of coordination**

7. On 9 June, the TTE Council supported the need for better cooperation, in particular to avoid problems in the 5G roll-out similar to those experienced during the 4G roll-out. Member States largely favoured the use of existing cooperation structures (BEREC, RSPG) for this improved cooperation.
8. Thus the Presidency would like to hold a discussion about **how** to ensure effective coordination of radio spectrum in the Union. In light of the views that the existing structures operate effectively and could be used to achieve greater coordination in the interest of improving investment, the Presidency would welcome an exchange of views about how this can be achieved and what structural changes, if any, are required to support this.

**Q1: The Presidency will ask Member States to set out their views on coordination in relation to radio spectrum, in particular on what the preferred approach is with regard to the roles of the Commission, BEREC and RSPG in this section.**

## **PART B: Discussion of revised text NOT in square brackets**

### **Strategic Planning (Article 4)**

9. The new text 'public security and defence' in **Article 4(1)** has been removed as the inclusion might cause confusion about the status of these issues in relation to the national prerogatives. The additional text, previously included as **Article 4(3)**, has been incorporated into Article 4(1) in order to clarify how the cooperation among Member States is envisaged.
10. The current **Article 4(4)**, deleted in the recast, has not been reinserted as this provision would no longer be compatible with the Lisbon Treaty.

### **Restriction or Withdrawal of Rights (Article 19)**

11. The beginning of **Article 19(1)** has been amended to make clear that the whole article is intended to address the restriction or withdrawal of rights in situations other than a breach of the general authorisation conditions.
12. **Article 19(2)** has been amended to further clarify the grounds on which withdrawal of rights is permitted. The rights concerned have been clarified as rights of use for radio spectrum. The reference to 25 years has been replaced by a reference to the relevant Article. The phrase 'procedures laid down in advance' has been replaced by 'pre-established procedures' which avoid ambiguity.
13. The public consultation requirement specified in **Article 19(4)** has been deleted as Article 23 (adapted from the current Article 6) contains the relevant provisions and repetition in this article is unnecessary.

### **Radio Spectrum Coordination (Article 28)**

14. The text 'and their competent authorities' has been deleted from **Article 28(1)** as it is unnecessary.

15. **Article 28(2)** makes it clearer that cooperation through the RSPG is only required where necessary. For example, some issues may be addressed through bilateral discussions between Member States. This does not preclude the fact that in many cases Member States may not need to be involved, for example where two operators can resolve an issue without recourse to their relevant competent authorities.
16. The process of requesting an RSPG opinion has been clarified in **Article 28(3)** and the scope has been limited so that it may only be requested where there is an ongoing problem or dispute in relation to cross-border coordination or interference. The Commission's ability to request such an opinion has been retained but is limited by this specified scope. The reference to 'good offices' has been deleted as it is not necessary.
17. **Article 28(4)** relates to implementing decisions and is addressed in Part C.
18. A number of Member States raised the issue of support for addressing external cross-border issues. A new paragraph **Article 28(5)** has been added to address this, adapted from Article 10(2) of the RSPP.

#### **Compliance with General Authorisation Conditions (Article 30)**

19. The terminology for competent authorities has been standardised throughout this article, bringing it into line with the wider code.

#### **Peer Review Process (Article 35)**

20. Article 35 is an outstanding issue addressed in Part C.

#### **Harmonised Assignment (Article 36)**

21. The terminology has been brought into line with the rest of the code, using the term *radio spectrum* rather than *radio frequencies*.

### **Joint Authorisation (Article 37)**

22. The provisions in **Article 37(1)** have been amended so that the criteria set out in subparagraphs (a) to (d) are criteria that should be considered, not binding obligations that might limit the scope for Member States to undertake joint authorisation processes in other ways. Point (d) has been amended to improve clarity.

### **Fees for Rights of Use (Article 42)**

23. The drafting in **Article 42(1)** has been improved to make clear that the article applies only to the use of spectrum for electronic communications services or networks. The objectives, in addition to those in Articles, 3, 4 and 45(2), that are to be taken into account are simplified and reduced in points (a) and (b). The objective of taking into account possible alternate uses has been removed from point (c) and instead, this consideration has been included as part of the process set out in **Article 42(2)** which now requires taking into account the opportunity cost.

### **Management of Spectrum (Article 45)**

24. The 'other agreements' referred to in **Article 45(1)** have now been specified as those specifically relating to radio spectrum and the example of the Geneva-06 agreement is given.
25. Points (a) to (h) in **Article 45(2)** have been amended to reduce unnecessary elements and make clear where an objective is something to 'pursue', 'ensure', 'promote', 'facilitate' or 'apply'. Consideration has also been given to how these points relate to the text from which they have drawn inspiration (Articles 2(1) and 3 of RSPP). The second subparagraph concerns implementing decisions and is addressed in Part C.
26. **Article 45(3)** now specifies exactly which paragraphs in Article 39 allow for adopting measures. This has not been moved to Article 39 as Article 39 has not been addressed in this recast and the inclusion here links the consideration to the wider management of radio spectrum.

### **Authorisation of Use of Spectrum (Article 46)**

27. In addition to some minor drafting amends, **Article 46(1)** has been amended by clarifying in point (c) that it is the **guarantee reliability** that is important and in point (d) to remove specific reference to the receiver. The deletion of safeguarding the efficient use of spectrum, proposed in the Commission text has been retained as this criterion is already specified as a general objective in the main body of Article 46(1). The points following the final subparagraph have been deleted.
28. The reference to 'rules' has been deleted in **Article 46(2)** as 'conditions' is the term consistently used throughout.
29. **Article 46(3)** concerns implementing decisions and is addressed in Part C.

### **Conditions Attached to Rights of Use (Article 47)**

30. This Article has been revised to focus on rights of use for radio spectrum rather than on General Authorisation.
31. The reference to 'the level of use required' in **Article 47(1)** has been retained but changed to 'any' to make clear this is a possibility but not a requirement. The criteria set out in points (a) and (b) have been removed.
32. The provisions regarding sharing have been amended in **Article 47(2)** to clarify that the conditions of the rights of use may explicitly allow for such arrangements and cannot prevent them. The reference to the competition law has been removed as it is superfluous since this law applies without needing to be stated in an Article.
33. **Article 47(3)** concerns implementing decisions and is addressed in Part C.

### **Granting Individual Rights (Article 48)**

34. No substantive changes have been made to Article 48.

### **Duration of Rights (Article 49)**

35. This article is addressed in Part C.

### **Renewal of Rights (Article 50)**

36. The minimum time required between the decision on the renewal of rights and their expiry set out in **Article 50(1)** has been reduced from 3 to 2 years while making clear that this should remain in a 'timely manner'. This is to allow NRAs greater flexibility while still seeking to ensure adequate time for the right holder to make arrangements.

37. The scope of the provision has been specified in **Article 50(3) and (4)** as applying to harmonised spectrum and other amendments have been made to the text to improve clarity.

### **Transfer or Lease of Rights (Article 51)**

38. The additional text in **Article 51(1)** that specifies action in accordance with other Union measures has been replaced with a simpler reference that avoids overlapping empowerments.

39. The provisions in **Article 51(3)** have been clarified to make clear that they apply where the rights holder notifies their intention to transfer or lease the rights.

40. A new paragraph has been added, **Article 51(3a)** to address concerns raised regarding critical infrastructure. This new text draws on similar provisions in the merger regulation.

41. **Article 51(4)** concerns implementing decisions and is addressed in Part C.

### **Competition (Article 52)**

42. The reference to 'market competitive decisions' has been removed from **Article 52(2)** as this was an unnecessary repetition. The majority of the text, which draws heavily on Article 5 of the RSPP, has remained unchanged.

### **Coordinated Timing of Assignments (Article 53)**

43. **Article 53** concerns implementing decisions and is addressed in Part C.

### **Procedure for Limiting the Number of Rights (Article 54)**

44. **Article 54(1)** has been amended to improve clarity. The six-month limit for consultation to begin has been retained as this is the deadline provided in technical harmonisations decisions for MS to designate and make a band available (e.g. Commission Implementing Decisions (EU) 2015/750, Art. 2(1) and (EU) 2016/339, Art. 3(1)).

45. Unnecessary text has been deleted from **Article 54(2)**. The objective of promoting competition has been moved above the list to make clear that it is a necessary objective and its place in the list is replaced with 'promoting the efficient use of spectrum'. This change means that point (e) is no longer required.

46. **Article 54(3), (5), (6) and (8)** have all been streamlined with the removal of unnecessary additional text, particularly in reference to Article 35.

47. **Article 54(7)** concerns implementing decisions and is addressed in Part C.

### **Access to Local Area Networks (Article 55)**

48. The scope of **Article 55(1)** has been specified and concerns about the impact of the provision on end-users allowing access to their internet access service have been addressed.

49. The provisions in **Article 55(3)** has been streamlined with the deletion of the second subparagraph. **Article 55(4)** has been streamlined and clarified.

50. **Article 55(5)** has been retained, particularly in light of its relevance to Wifi4EU.

### **Deployment and Operation of Small-area Wireless Access Points (Article 56)**

51. The text of **Article 56(1)** has been substantially revised in order to clarify that Member States should in normal circumstances only subject small-area wireless access points to general rules and only impose additional authorisation by exception and when justified by considerations defined in advance, for example for the protection of sites of high military, architectural, historical or natural value.
52. **Article 56(2)** concerns implementing decisions and is addressed in Part C.
53. The limiting of fees and charges is moved from the first paragraph to a new **Article 56(3)**.

### **Powers and Responsibilities of NRAs - Spectrum (Article 59(3))**

54. This section is addressed in Part C.

**Q2: The Presidency will ask if Member States support the proposed drafting for each of these Articles, except for those areas identified for discussion in Part C (implementing decisions, peer review and duration of rights), and if there are any other suggestions for improvements.**

## **PART C: Discussion of outstanding issues in square brackets**

### **Implementing decisions**

55. The Presidency would like to have a discussion about how implementing measures are used throughout the text. The Presidency has made proposed changes to each of these, depending on their specific context, and would welcome the views of the Member States on both the specific drafting and the overall approach, particularly in light of the discussion in Part A of this meeting. The relevant Articles and any proposed revisions for further discussion are set out below.
56. The Commission's power to adopt implementing decisions set out in **Article 28(4)** has been **more clearly scoped** in that it should only be triggered by a Member State's request or in the light of information provided by a Member State and can only take place following an RSPG opinion provided as explained in the previous paragraph. It is also clarified that such measures would only apply to the Member States concerned and would not entail obligations for all Member States.
57. The second subparagraph of **Article 45(2)** has been **amended to explain** the relation of implementing measures to technical harmonisation measures and to make clearer the necessity of an RSPG opinion in this process.
58. **Article 46(3)** establishing the power to adopt implementing measures for the conditions for authorisations of has been **deleted**.
59. The implementing decision in **Article 47(3)** has been **retained and amended** so that, in addition to the explicit exclusion of fees and coverage, it is clearer that the RSPG opinion applies to the decision about whether to adopt an implementing decision, as well as to what such a decision may include.
60. Since the provision for an implementing decision in **Article 51(4)** exists under the CODE today and as such the text only **clarifies** the 'appropriate' implementing decisions.

61. **Article 53** has been **amended** to make clearer that coordination is particularly relevant for wireless broadband and to make more explicit the necessity of an RSPG opinion. The adoption of maximum dates has been specified as being subject to market demand and the possibility of transitional measures has been deleted.
62. **Article 54(7)** concerning the implementing power in relation to criteria for the granting of rights of use for radio spectrum has been **deleted**.
63. The implementing powers in **Article 56(2)** have been **deleted and replaced** by the requirement for Member States to undertake the role of specifying the relevant technical characteristics.

**Q3: The Presidency will ask Member States for their view on the appropriate balance between implementing decisions and Member State flexibility, taking into account in particular the interest in ensuring investment certainty. Member States views on whether the above proposals strike the right balance would be welcomed.**

#### **Peer Review Process (Article 35)**

64. A number of concerns have been raised about the peer review process, in particular that it might prove unduly burdensome as a mandatory process applying to all spectrum assignment. The Presidency has updated the text slightly to specify more clearly the scope of this provision in **Article 35(2)**. The Presidency recognises that this does not go as far as requested by Member States and will welcome suggestions on how this process can be further improved, particularly in ways that would limit the burden.
65. The process of BEREC issuing an opinion has been clarified in **Article 35(3)**, establishing a maximum period of 3 months and that the specific recommendations are only where appropriate. The reference to the Commission in this paragraph has also been removed.
66. **Article 35(5)** has been amended to reflect the changes to Article 35(3) and to more clearly specify the scope.

**Q4: The Presidency will ask Member States if they can support the proposed amendments to the peer review process and whether there are other ways of limiting the burden of such a mechanism, or of facilitating more coordinated outcomes.**

**Duration of Rights (Article 49)**

67. The whole Article 49(2) has been placed in brackets as this paragraph requires further discussion. However, a number of changes have been made to improve clarity. The scope of the Article has been clarified in **Article 49(2)** as applying to ECS and Networks and in particular for wireless broadband. In order to address the issue that imposing a minimum rights duration might have a negative impact on the ability to ensure efficient use of spectrum, two new subparagraphs have been added to make clear that this paragraph does not prejudice the powers established elsewhere in the CODE. The first subparagraph explains that in line with Article 18 the amendment of rights is permitted. The second subparagraph explains that, in line with Article 30(5) and Article 19, there are grounds on which withdrawal is permitted and processes by which this can be done. The duration of rights has been placed in additional square brackets subject to further discussion.

**Q5: The Presidency will ask Member States if such an approach might permit a rights duration to be retained, and if not, what approach might allow for sufficient flexibility while ensuring investment certainty.**

**Powers and Responsibilities of NRAs - Spectrum (Article 59(3))**

68. Paragraph 3 will be the only paragraph of Article 59 discussed in the Working Party meeting on 21 June.
69. **Article 59(3)** aims at providing a new tool, additional to those currently provided for in Article 30 (penalties and eventually withdrawal of rights of use) to address undertakings' non-compliance with conditions attached to rights of use. Following comments by Member States, it has been revised in two ways.

70. First, it has been **further scoped** with a view to address concerns about creating legal uncertainty in terms of complying with license conditions such as coverage obligations and even disincentives undertakings to roll-out networks. The application of such exceptional measures for wireless networks would now be subject to making right holders aware of this possibility before/at the time of actually granting the rights of use and demonstrating a breach of the attached conditions.
71. Second, the provision **clarifies under which conditions the obligations referred to in paragraph 1 can be imposed**, with a view to clarifying that the provision would only be used to address a severe connectivity problem in localised areas where wireless network deployment/upgrade would prove economically very difficult (the proposed merging of letters a and b). It is also clearer that access obligations can be limited to a specific area.
72. Finally other smaller changes have been made which seek to clarify that the provision concerns only mobile networks and that the access obligation can also consist of sharing spectrum itself which was unclear in original version.

**Q6: The Presidency will ask Member States for their views on the proposed amendments to the this section and whether there are other ways of increasing the ability of NRAs to effectively ensure efficient and effective use of spectrum, while incentivising investments.**

↓ 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 . 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.~~

~~34.~~ 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<sup>1</sup>~~, 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.~~

↓ 2009/140/EC Art. 3.8 (adapted)  
⇒ new

#### Article 19

#### ⊗ Restriction or withdrawal of rights ⊗

~~21.~~ **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.

<sup>1</sup> ~~OJL 198, 27.7.2002, p. 49.~~

2. In line with the need to ensure the effective and efficient use of radio spectrum or the implementation of **technological and service neutrality as set out in Article 45 paragraphs 4 and 5 or 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.~~

*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.

2. Member States shall cooperate with each other, **and where necessary** through the Radio Spectrum Policy Group, 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 and, where appropriate, to propose a coordinated solution~~ in an opinion **a coordinated solution regarding any problem or dispute in relation to cross-border coordination or cross-border harmful interference, in order to assist Member States in complying with paragraphs 1 and 2.**

[4. At the request of a Member State **concerned** or **in light of information provided by such a Member State** ~~upon its own initiative~~, the Commission may, taking utmost account of the 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 Commission 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 to the fullest extent possible benefit from the internal market in electronic communications services and observe their obligations under Union law.**

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↓ 2002/20/EC Art.10

Article ~~40~~30

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

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↓ 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 ~~613~~(2), ~~in accordance with Article 11~~ ⇐ and with the obligation to use radio spectrum effectively and efficiently in accordance with Articles 4, 45 and 47 paragraphs 1 and 2. ⇐

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

2. Where a national ~~regulatory~~ ⇒ **competent** ⇐ authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation or of rights of use, or with the specific obligations referred to in Article ~~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.

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↓ 2009/140/EC Art. 3.6(b) (adapted) ⇒ new
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4. Notwithstanding ~~the provisions of~~ paragraphs 2 and 3, Member States shall empower the ~~relevant~~ **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.

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↓ 2009/140/EC Art. 3.6(c) (adapted)

5. In cases of serious ~~⊗~~ breach ~~⊗~~ or repeated breaches of the conditions of the general authorisation or of the rights of use, or specific obligations referred to in Article ~~613~~(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 ~~⊗~~ ~~ss~~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.

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↓ 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 or of the specific obligations referred to in Article ~~613~~(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.

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↓ 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~~).

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↓ new

## CHAPTER II

### CONSISTENT SPECTRUM ASSIGNMENT

#### *Article 35*

#### **[Peer review process]**

[1. As regards the management of radio spectrum, [national regulatory authorities] shall be entrusted with the powers to at least adopt the following measures::

- (a) in case of individual rights of use for radio spectrum, the selection process, in relation to Article 54;
- (b) the criteria regarding the eligibility of the bidder, where appropriate, in relation to Article 48 (4);
- (c) the parameters of spectrum economic valuation measures, such as the reserve price, in relation to Article 42;
- (d) the duration of the rights of use and the conditions for renewal in line with Articles 49 and Article 50;
- (e) any measures to promote competition pursuant to Article 52, when necessary;
- (f) 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

- (g) 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 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. Where a ~~national regulatory authority intends~~ **Member State has decided to assign rights of use for harmonised radio spectrum for electronic communications services or networks by way of a procedure limiting the number of rights of use pursuant to Article 54, and the [national regulatory authority] subsequently intends** to take a measure which falls within the scope of paragraph 1 (a) to (g), **for bands for which the harmonised technical conditions have been set in order to enable use for wireless broadband, [the national regulatory authority]** ~~it shall~~ make the draft measure accessible, together with the reasoning on which the measure is based, to BEREC, the Commission and [national regulatory authorities] in other Member States, at the same time.

3. Within one month, or ~~a longer period,~~ **up to three months** 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 most appropriate in order to:

- (h) 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),
- (i) ensure effective and efficient use of radio spectrum; and
- (j) 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, BEREC shall provide specific recommendations **as to whether the draft measure should be amended or withdrawn** ~~to that end.~~ [National regulatory authorities] ~~and the Commission~~ may also make comments on the draft decision to the [national regulatory authority] concerned.

4. When carrying out their tasks pursuant to this Article, BEREC and [national regulatory authorities] shall have regard in particular to:

- (k) 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;
- (l) any specific national objectives established by the Member State consistent with Union law;
- (m) the need to avoid that competition is distorted when adopting such measures;
- (n) the results of the most recent geographical survey of networks pursuant to Article 22;
- (o) the need to ensure coherence with recent and pending assignment procedures in other Member States, and possible effects on trade between Member States; and
- (p) any relevant opinion of the Radio Spectrum Policy Group.

5. The [national regulatory authority] concerned shall take utmost account of the opinion of BEREC and of comments made by ~~the Commission and~~ other national regulatory authorities **in regard to any of the elements listed in paragraph 1 (a) to (g)** before adopting its final decision. It shall communicate the final decision adopted, **together with a reasoned justification**, to 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 authorities] may seek support from BEREC **and the RSPG**.

7. BEREC, the Commission and the [national regulatory 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 authority] shall be published.]

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↓ 2002/20/EC (adapted)

*Article ~~8~~36*

**Harmonised assignment of radio spectrum ~~frequency~~s**

Where the usage of radio frequencies has been harmonised, access conditions and procedures have been agreed, and undertakings to which the radio ~~frequency~~s **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 ~~frequency~~s **spectrum** in accordance therewith. Provided that all national conditions attached to the right to use the radio ~~frequency~~s **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 ~~frequency~~s **spectrum**.

*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 and 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~~ **When doing so, Member States shall consider** the following criteria:

- (a) **jointly agreed scheduling of** the individual national authorisation processes ~~shall be initiated and implemented by the competent authorities according to a jointly agreed schedule;~~
- (b) ~~it shall provide where appropriate for~~ common conditions and procedures for the selection and granting of individual rights among the Member States concerned, **where appropriate;**
- (c) ~~it shall provide where appropriate for~~ common or comparable conditions ~~to be attached to the individual rights of use among the Member States concerned,~~ **where appropriate**, inter alia allowing users to be assigned similar radio spectrum blocks;
- (d) ~~it shall be being open to other Member States at any time until the invitation to submit applications has been published~~ **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.

## ⊗ 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 **for the provision of electronic communications services or networks and associated facilities**. 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 Articles 3, 4 and 45(2) ~~of Directive 2002/21/EC (Framework Directive)~~ ⊗, as well as: ⊗

↓ new

- (a) 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;~~ **and**
- (b) ~~taking into account~~ **having regard to** the need to foster **innovation**. ~~the development of innovative services;~~ and
- (c) ~~taking into account possible alternative uses of the resources.~~

2. Member States shall ensure that reserve prices established as minimum fees for rights of use for radio spectrum **are set sufficiently below the estimated market value of such rights to ensure their efficient assignment, taking into account the opportunity costs.** ~~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 II

### ACCESS TO RADIO SPECTRUM

#### SECTION 1 AUTHORISATIONS

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

#### *Article ~~9~~45*

#### **Management of radio ~~⊗~~ spectrum ~~⊗~~ frequencies for 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 ~~4~~8a. 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 ⇐ 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 ~~8~~a 4 and with ~~the Decision No 676/2002/EC (Radio Spectrum Decision)~~ ⇒ by inter alia ⇐ ~~;~~

- (a) **ensuring pursuing** coverage of their national territory and population at high quality and speed, ~~both indoors and outdoors~~, including along major transport paths, including the trans-European transport network;
- (b) **ensuring pursuing the objective** that areas with similar characteristics, in particular in terms of network deployment or population density, are subject to consistent coverage conditions;
- (c) facilitating the rapid development in the Union of new wireless communications technologies and applications, including, where appropriate, in a cross-sectorial approach;
- (d) ensuring the prevention of cross-border or national harmful interference ~~in accordance with Articles 28 and 46 respectively, and taking appropriate pre-emptive and remedial measures to that end;~~
- (e) promoting the shared use of radio spectrum between similar 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 law;
- (f) applying the most appropriate and least onerous authorisation system possible ~~in accordance with Article 46~~ in such a way as to maximise flexibility, ~~sharing~~ and efficiency in the use of radio spectrum;
- (g) ~~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;
- (h) **ensuring pursuing** consistency and predictability throughout the Union regarding the way the use of radio spectrum is authorised in protecting public health against harmful electromagnetic fields.

~~When~~ **In parallel to** adopting technical harmonisation measures under Decision No 676/2002/EC **on harmonised conditions for the availability and efficient use of radio spectrum**, the Commission may, **following a request to the Radio Spectrum Policy Group** and taking utmost account of the **resulting** opinion of ~~Radio Spectrum Policy Group~~, adopt an ~~implementing measure~~ **a decision** setting out ~~whether~~, pursuant to Article 46 of this Directive, **the most appropriate authorisation regime(s) for the rights in the harmonised band or parts thereof shall be subject to a general authorisation or to individual rights of use.** Those ~~implementing measures~~ **decisions** 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 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 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:

- (a) 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;
- (b) such alternative use does not prevent or hinder the availability or the use of the harmonised band in other Member States; and
- (c) 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 review every ~~three~~ **four** years, or **after the first review**, 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.

~~34~~. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of technology used for 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<sup>2</sup>; ⊗
- (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 ~~54~~.

~~45~~. 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.

<sup>2</sup> 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~~

~~Community~~  Union ~~Community~~  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 ~~Community~~  law.

~~65.~~ Member States shall regularly review the necessity of the restrictions referred to in paragraphs ~~34~~ and ~~45~~, and shall make the results of these reviews public.

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↓ new

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

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↓ 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.~~

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↓ 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 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:~~

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↓ new

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

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↓ 2009/140/EC Art. 3.3  
⇒ new

(b) ⇒ the need to protect against ~~avoid~~ harmful interference;

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↓ new

(c) ~~the requirements for need to guarantee~~ a reliable sharing arrangement, where appropriate;

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

(d) ⇒ the ~~need appropriate level of receiver resilience~~ to ensure technical quality of communications or ~~service~~;

~~safeguard efficient use of spectrum, or~~

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

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↓ 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~~ rights of use for radio spectrum**

1. Competent authorities shall attach conditions to individual rights ~~and general authorisations to~~ 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, 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 prohibit** ~~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, **taking utmost account of the opinion of the Radio Spectrum Policy Group**, may adopt implementing ~~measures~~ **decisions regarding the criteria for defining** ~~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 **imposed** pursuant to Article 42.]

With regard to the coverage requirement under Part D of Annex I, any implementing ~~measure~~ **decision** 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~~ **decisions** 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.~~]

⊗ SECTION 2 RIGHTS OF USE ⊗

Article 48

⊗ Granting of individual rights of use for radio spectrum ⊗

1. Where it is necessary to grant individual rights of use for radio ~~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 312, subject to the provisions of Articles 613, 754 and 1121(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 945 of Directive 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.

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↓ 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.

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↓ 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).~~

36. 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 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 any applicable international agreements relating to the use of radio ~~frequencies~~ ~~⇒ spectrum ⇐~~ or of orbital positions.

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↓ 2009/140/EC Art. 3.3 (adapted) ⇒ new
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#### Article 49

#### Duration of rights

Where Member States ~~⇒ authorise the use of radio spectrum through individual ⇐ grant~~ rights of use for a limited period of time, ~~⇒ 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.

[2. Where Member States grant rights of use for harmonised radio spectrum **for electronic communications services or networks** for a limited period of time, **in particular in bands for which technical conditions have been set in order to enable use of wireless broadband**, 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 of rights pursuant to paragraph 3 and rights for secondary use in **such** harmonised bands.

**Member States may amend rights of use in accordance with Article 18, in particular to ensure that the conditions continue to reflect efficient and effective use of the spectrum.**

**Member States may also withdraw rights of use, in accordance with Article 30 (5) in case of serious breach or repeated breaches of the conditions attached to a right, including that regarding a required level of use where imposed, or, in accordance with Article 19 if efficient and effective use of the spectrum cannot otherwise be ensured.]**

3. Member States may extend 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 take a decision on the renewal of individual rights of use for harmonised radio spectrum **in a timely manner and**, at least 3 [2] years before the expiry of those rights. They shall 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:

(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 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 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).

~~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 than 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).~~

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↓ 2002/20/EC (adapted)

~~Article 17~~

**Existing authorisations**

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↓ 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.~~

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↓ 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 of 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 of for radio frequencies to other undertakings in accordance with national procedures.

Without prejudice to paragraph 3, ~~the~~ 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 rights to use 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 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**

↓ 2009/140/EC (adapted)  
⇒ new

~~142.~~ 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~~ ~~with scrutiny~~ procedure referred to in Article ~~110(4)~~ ~~22(3).~~

*Article 52***Competition**

1. National regulatory 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 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 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) 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 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 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]**

[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, **after requesting an opinion from the RSPG regarding a recommended date or timeframe and taking utmost account of the resulting opinion**, by way of an implementing ~~measure decision~~:

(a) establish one, or, where appropriate, several common maximum dates by which the use of specific harmonised radio spectrum bands shall be authorised; **subject to market demand. Any lack of market demand shall be properly substantiated and kept under constant review by the Member State which invokes it.**

(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~~ **decisions** 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.~~

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↓ 2002/20/EC (adapted)

*Article ~~7~~ 54*

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

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

1. ⊗ Without prejudice to ~~any implementing act adopted pursuant to Article 53,~~ ⊗ ~~where~~ 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:

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↓ 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 236 of Directive 2002/21/EC (Framework Directive)~~ ⇒ . In the case of harmonised radio spectrum, this public consultation shall start within six months of the adoption of the implementing measure under Decision No 676/2002/EC unless ~~technical~~ **objective** reasons ~~therein~~ require a longer deadline ⇐ ;

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↓ 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 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) 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] 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.~~

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

3. ~~(e)~~  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.

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↓ 2002/20/EC (adapted)

⇒ new

~~4. (d) After 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.~~

~~52. 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.~~

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↓ 2009/140/EC Art. 3.5(b) (adapted)

⇒ new

~~63. 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 Articles 3, 4, 28 and 459 of that Directive.~~

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↓ 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.]~~

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↓ 2002/20/EC → <sub>1</sub> 2009/140/EC Art. 3.5(c) ⇨ new
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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 →<sub>1</sub> Article 51 ⇨ of this Directive ~~2002/21/EC (Framework Directive)~~.

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↓ new
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## 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 or is ancillary to another commercial 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).

**End-users allowing access to their internet access service on a non-commercial basis to third parties as set out under this article shall not be liable for any use 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,~~<sup>3</sup> **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 ~~accessing 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.

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<sup>3</sup> ~~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 restrict the provision of access to radio local area networks to the public:

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

(b) by initiatives of non-governmental organisations or public authorities 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<sup>4</sup> and to the authorisation regime applicable for the use of the relevant radio spectrum, competent authorities may only subject the deployment, connection and operation of unobtrusive small-area wireless access points to a general authorisation, which shall include all relevant requirements and conditions thereof, unless individual authorisation is properly justified in exceptional cases defined in advance, 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.~~

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<sup>4</sup> 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 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<sup>5</sup> and take account of the thresholds defined in Council Recommendation No 1999/519/EC.<sup>6</sup> 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 without prejudice to the essential requirements of Directive 2014/53/EU.<sup>7</sup>

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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. 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.**

## CHAPTER II

### ACCESS AND INTERCONNECTION

Article ~~5~~59

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

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↓ 2009/140/EC Art. 2.3(a)  
⇒ new

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. ⇐

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↓ 2002/19/EC (adapted)  
⇒ new

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;

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↓ 2009/140/EC Art. 2.3(a) amended by  
Corrigendum, OJ L 241, 10.9.2013, p. 8  
⇒ new

(~~ab~~) 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;

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↓ new

(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.

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↓ 2002/19/EC

(~~de~~) 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.

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↓ new

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 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. National 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 where that point is located outside the building, on 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. The access conditions imposed may include specific rules on access, transparency and non-discrimination and for apportioning the costs of access, which, where appropriate, are adjusted to take into account risk factors.

National regulatory authorities 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 concentration point as close as possible to end-users, to the extent strictly necessary to address insurmountable economic or physical barriers to replication in areas with lower population density.

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

- (a) 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
- (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 deployment.

**[3. Without prejudice to Article 30, Member States shall ensure that [national regulatory authorities] have the power to impose on undertakings providing or authorised to provide electronic communications services or networks, in case of duly demonstrated failure of such an undertaking to comply with any of the conditions attached to individual rights of use for radio spectrum, obligations in relation to the sharing of passive or active infrastructure which rely on the use of radio spectrum or the sharing of radio spectrum in a specific area, or ~~obligations to conclude localised roaming access 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] may impose such obligations provided that this possibility has been clearly defined when granting the rights of use for radio spectrum and only where justified on the grounds that, in the area subject to such obligations, 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 connectivity is therefore severely deficient or absent.**

~~(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 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 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

~~42.~~ 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 ~~236, 32~~ and ~~7a33 of Directive 2002/21/EC (Framework Directive)~~ ⇒ . National regulatory 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 authorities shall notify the outcome of their assessment in accordance with the same procedures ⇐ .

↓ 2009/140/EC Art. 2.3(d) (adapted)

~~52.~~ 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 ~~236 and 327, 2620 and 21 27 of Directive 2002/21/EC (Framework Directive)~~.

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↴ 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.

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