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2016/0288 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the European Electronic Communications Code**

**(Recast)**

(Text with EEA relevance)

{SWD(2016) 303}

{SWD(2016) 304}

{SWD(2016) 305}

{SWD(2016) 313}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Since the last revision of the regulatory framework for electronic communications in 2009, the sector has significantly evolved and its role as an enabler of the online economy has grown. Market structures have evolved, with monopolistic market power becoming increasingly limited, and at the same time connectivity has become a widely pervasive feature of economic life. Consumers and businesses are increasingly relying on data and internet access services instead of telephony and other traditional communication services. This evolution has brought formerly unknown types of market players to compete with traditional telecom operators (e.g. so called over-the-top -players (OTTs): service providers offering a wide variety of applications and services, including communications services, over the internet). At the same time, it has also increased the demand for high-quality fixed and wireless connectivity with the rise in the number and popularity of online content services, such as cloud computing, the Internet of Things, Machine-to-Machine communication (M2M) etc. Electronic communications networks have evolved as well. The main changes include: (i) the ongoing transition to an all-IP environment, (ii) the possibilities provided by new and enhanced underlying network infrastructures that support the practically unlimited transmission capacity of fibre optical networks, (iii) the convergence of fixed and mobile networks towards seamless service offers to the end-users regardless of location or device used and (iv) the development of innovative technical network management approaches, in particular Software Defined Networks and Network Function Virtualisation (NFV). These usage and operational changes expose the current rules to new challenges that are likely to increase in importance in the medium and long term, and therefore must be factored into a review of the regulatory framework for electronic communications.

This review needs to be seen in light of the Digital Single Market (DSM) strategy for Europe<sup>1</sup>. The DSM strategy recognised the importance of the paradigm shifts that the digital sector is undergoing and stated that individuals and businesses should be able to seamlessly access and conduct online activities under conditions of fair competition. Furthermore, it announced that ‘the Commission will present proposals in 2016 for an ambitious overhaul of the regulatory framework focusing on (i) a consistent single market approach to spectrum policy and management (ii) delivering the conditions for a true single market by tackling regulatory fragmentation to allow economies of scale for efficient network operators and service providers and effective protection of consumers, (iii) ensuring a level playing field for market players and consistent application of the rules, (iv) incentivising investment in high-speed broadband networks (including a review of the Universal Service Directive) and (v) a more effective regulatory institutional framework.’

Pursuant to this commitment and in line with ‘Better Regulation’ requirements<sup>2</sup>, the Commission carried out an *ex post* evaluation. It assessed the effectiveness, efficiency, relevance, coherence and EU added-value of the Union regulatory framework, and pinpointed

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Digital Single Market Strategy for Europe, Brussels, 6.5.2015, COM(2015) 192.

<sup>2</sup> The REFIT evaluation of the regulatory framework was announced in the Commission Staff Working Document "REFIT: Initial results of the mapping of the acquis" (SWD(2013) 401 final) and is part of the Commission's 2015 Work Programme (Annex 3 (COM2014) 910 final of 16.12.2014).

areas where there is potential for simplification, without undermining the objectives of the framework.

- **Consistency with existing policy provisions in the policy area**

As connectivity services provided over electronic communications networks constitute the backbone for digital products and services, this proposal presents a high degree of synergy with the other initiatives included in the DSM strategy.

The proposal also complements existing sector-specific regulation. In particular, the proposal is fully coherent with Directive 2014/61/EU (Broadband Cost Reduction Directive) with which it provides a comprehensive set of rules facilitating the roll-out of broadband infrastructures. Alongside the recently adopted Regulation (EU) 2015/2120 ensuring an open internet and abolishing roaming surcharges, the current proposal ensures a high level of end-user protection in other areas requiring sector-specific rules. The proposed rules on spectrum management build on current instruments in this area, most notably the Radio Spectrum Decision No 676/2002/EC, the Radio Spectrum Policy Group Decision 2002/622/EC and Decision 243/2012/EU establishing a multiannual radio spectrum policy programme (RSPP). Finally, it also paves the way for the review of Directive 2002/58/EC on privacy and electronic communications announced as part of the DSM strategy.

- **Consistency with other Union policies**

While this proposal addresses regulatory issues arising from the specificities of the electronic communications sector as a network industry, it builds on and complements existing EU law in several areas. In the domain of market regulation, the proposals remain based on the principles of EU Competition Law, like the existing regulatory framework. It further sets out measures, such as mapping of network deployments, that also provide useful information for State aid purposes and thereby enhances the coherence of the two policies.

On end-user protection, the proposed rules complement horizontal consumer protection law by addressing the specificities of the sector on the one hand, while streamlining the current sector-specific rules in areas where the former has evolved since the last review in 2009 on the other. In this way, the proposal avoids overlaps in areas where horizontal rules alone can ensure an adequate level of protection for end-users.

Cohesion policy and European structural and investment funds are an important tool to fill the connectivity gaps in market failure areas and should be allocated in a way that allows the resources available to be maximised. The proposal contributes to this objective by providing appropriate conditions for private investments so that public funds can be focused where they are most needed.

The proposal maintains the current complementarity between electronic communications and audiovisual media services policy by continuing to ensure that the framework remains without prejudice to measures taken at Union or national level, in accordance with EU law, to pursue general interest objectives, in particular relating to content regulation and audiovisual policy. The distinction between the regulation of broadcasting signal transmission and the regulation of content does not prevent the links between them from being considered, in particular in order to guarantee media pluralism, cultural diversity and consumer protection.

- **Consistency with international law obligations**

The proposal is consistent with existing international law obligations, including GATS and the GATS Annex on Telecommunications and the GATS Reference Paper.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union, as it aims to achieve the internal market for electronic communications and ensure its functioning.

- **Subsidiarity (for non-exclusive competence)**

As the proposal constitutes a review of the existing framework, the subsidiarity analysis below focuses on: the new objective of ubiquitous and unconstrained connectivity, the harmonisation of the competences of national regulatory authorities (NRAs), the harmonisation of spectrum-related issues and revised rules on services.

### Ubiquitous and unconstrained connectivity

Without ubiquitous, very high capacity connectivity the single market cannot tap into a significant part of its human capital. This impairs both territorial cohesion and the ability of businesses to produce efficiently and to provide innovative and competitive services. Connectivity can play an essential socioeconomic role in preventing isolation and depopulation and in linking peripheral with central regions of the EU. The situation of Member States with regard to connectivity differs quite significantly. There are very important discrepancies, which may not be explained solely by the different landscape, population, GDP or purchasing power, but are the result of different policy choices made today and in the past. Absence of EU action to pursue ubiquitous and unconstrained connectivity as a separate objective of the framework would only perpetuate this patchwork with negative effects on the single market and consumer interests.

### The harmonisation of NRAs competences

The institutional set-up allows for a high degree of flexibility for national regulatory authorities and Member States which allows for regulation to be tailored to meet specific national or local circumstances. However, this system carries significant weakness in areas where consistency is essential or would better serve the common European interest. Some areas of regulation require a more coordinated, or harmonised, approach at EU level. This can be achieved, inter alia, by ensuring that the tasks of the NRAs, which then participate in the Body of European Regulators for Electronic Communications (BEREC), as the pillars of the institutional set-up, are harmonised. The harmonisation of NRA tasks should not result in a reduction of their political independence, but on the contrary to an extension of the protection against instructions to all new areas of competence.

### Harmonisation of spectrum related issues

Spectrum, like other resources such as numbers and to some extent land, is a scarce resource that belongs to the Member States, and whose management and assignment needs to consider national specificities and needs. At the same time, there is a need for a more convergent and consistent EU regulation for market entry to eliminate the obstacles that appear due to undue divergent conditions for the assignment of individual rights of use for spectrum, numbers or land. Consistent EU level rules are necessary to (i) enable providers to expand their services to other Member States; (ii) create a sufficient market scale effect allowing front running Member States to benefit from it ; (iii) give timely access to state of the art wireless capacities and services for EU citizens and businesses to benefit from the digital environment, innovative services and applications and be able to commercially develop and underpin the

benefits of the digital economy that is constantly evolving towards the "mobile" economy, where spectrum policy has an important role; (iv) allow countries which are lagging behind to catch up and participate in the DSM, thereby also allowing more advanced Member States to further increase citizens' and commercial exchanges within their borders; and, (v) treat all spectrum users in a coherent way throughout the Union. Lastly, in order for the EU to lead the rest of the world on new and enhanced services, such as 5G, equipment manufacturers and providers of communications services need sufficient scale. This means not only technical harmonisation, but most importantly an internal market developing in a broadly aligned fashion, for services and devices to benefit from stable and harmonised rules.

### Services

In services, competition between local providers of electronic communications services that bundle network access with services and global providers of services over the top of the networks reinforces the right of the EU to act to ensure a level playing field. Action is also needed at EU level to reduce fragmentation of end-user protection rules, which raises administrative costs for cross-border service providers and hinders development of innovative services, while resulting in an uneven and sub-optimal level of consumer protection across the Union.

- **Proportionality**

The proposal complies with the principle of proportionality as set out in Article 5 of the Treaty on European Union because it will not go beyond what is necessary for the achievement of the objectives. It makes targeted adjustments to the current framework in order to respond to the market and technology changes and in particular to the need to address at Union level the need for availability and widespread take-up of very high capacity networks as a basis for a fully functioning digital single market.

Regarding access regulation, the national regulatory authorities remain competent in ensuring that market failures are addressed with appropriate remedies and that regulation contributes to the common policy objectives. The proposed rules provide regulators with additional tools to address the current connectivity challenge, but the way they are to be used depends on national circumstances which are for national regulators to assess. The reasons for targeted strengthening of regulatory oversight mainly through an enhanced role of BEREC is justified on the basis of evidence of a lack of consistency in the implementation of regulation, which is key for promoting the internal market.

Equally, spectrum is a shared competence between the Commission and Member States. The proposed rules provide an overall framework for coherent spectrum management across the EU while Member States have the necessary discretion to implement and apply the rules corresponding to national circumstances. Due to the important cross-border implications of spectrum management and its wider impact on connectivity in the internal market certain co-ordination procedures at the Union level are necessary.

The end-user protection rules introduce full harmonisation with targeted exceptions (e.g. regarding maximum contract duration), but harmonisation is limited to the areas covered by the proposal.

Moreover, the choice of the legal form of a Directive will leave as a result certain discretion to Member States to adapt the implementation to their national law.

- **Choice of the instrument**

The proposal for a European Electronic Communications Code consists of a horizontal recasting<sup>3</sup> of the four existing Directives (Framework, Authorisation, Access and Universal Service), bringing them all under a single Directive. Each of the Directives contains measures applicable to electronic communications networks and to electronic communications service providers. The review offers an occasion to simplify the current structure, with a view to reinforcing its coherence and accessibility, consistently with the regulatory fitness objective. It offers also the possibility to adapt the structure to the new market reality, where the provision of communications services is no longer necessarily bundled to the provision of a network.

### **3. RESULTS OF EX POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- ***Ex post* evaluations/fitness checks of existing legislation**

Overall, the Staff Working Document accompanying the proposal and assessing the regulatory fitness of the current rules concludes that the regulatory framework for electronic communications has broadly achieved its general objective of ensuring a competitive sector providing significant end-user benefits. Nevertheless, while its main specific objectives — promoting competition, developing the internal market, and promoting end-user interest — remain relevant, a review of the regulatory framework seems necessary in order to address the growing need for increased connectivity of the Digital Single Market and to streamline provisions taking into account market and technological developments.

More specifically, regarding the specific evaluation criteria, the findings can be summarised as follows:

**Relevance** - Generally speaking, the evaluation has shown that the specific objectives of the framework — promoting competition, realising the single market and protecting consumer interests — remain as valid as ever, with an increased relevance for the single market objective. Effective and sustainable competition drives efficient investment and fuels the development of the internal market. It ultimately serves the interests of end-users, by inducing innovation and providing maximum benefit in terms of choice, price and quality.

At the same time, connectivity has emerged as the underlying driving force for the digital society and economy, underpinned by technological changes and evolving consumer and market demands – it is key to the political commitment of the Juncker Commission to deliver the Digital Single Market. It is therefore necessary to consider adjusting the current policy objectives and regulatory tools to further support the deployment of infrastructure and widespread take-up of corresponding connectivity services in line with future needs.

Most regulatory areas remain as relevant as in 2009, if not more so — in particular spectrum management, given the role of spectrum as an essential but scarce input for the deployment of current and next-generation mobile and fixed wireless networks, along with access regulation as a means of addressing the enduring entry barriers in the networks. For instance, while the relevance of certain specific components of the universal service rules is being called into question by market developments, the concept of a safety net ensuring that all citizens are included in a fully developed digital society is gaining even greater importance in a digital single market. Similarly, while specific provisions under the end-user protection objective

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<sup>3</sup> For more information on this technique, cf. [http://ec.europa.eu/dgs/legal\\_service/recasting\\_en.htm](http://ec.europa.eu/dgs/legal_service/recasting_en.htm).

might have to be adjusted in view of technological, market or legislative changes, the basic end-user protection needs to which the provisions respond remain relevant and their specific objectives remain central.

**Effectiveness** - It is widely recognised that the regulatory framework has been effective in delivering a competitive sector overall. This, in turn, has generated significant end-user benefits, such as widely available (basic) broadband, a significant decrease in prices, and increased choice.

Access and spectrum regulation in particular, but also market entry provisions, have contributed to higher levels of competition. Nevertheless, access regulation has delivered competition more at service level than at network level, and while investments in very high capacity networks have advanced, they have not taken place across all Member States at the pace envisaged by the public policy agendas and corresponding to expected future needs. Importantly, although the release of a significant amount of spectrum for wireless broadband is a notable achievement, progress in spectrum management did not meet the expectations of the last review, resulting in a delayed and fragmented 4G network roll-out and take-up.

Efforts to achieve the Single Market objective have reached rather modest results. Regulatory consistency has been achieved only to a limited extent, affecting the operations of cross-border providers and reducing predictability for all operators and their investors. The current framework harmonises very few competences assigned to national regulatory authorities responsible for *ex ante* market regulation and allows Member States to assign tasks under the framework to other authorities which do not meet the same independence requirements. The result is a patchwork since, other than *ex ante* market regulation, there is no other competence for which all 28 national regulatory authorities that are members of BEREC are also competent.

More importantly, the cooperation and consistency tools available have led to a situation where the best regulatory solutions have not always been followed, which has had an impact on end-user outcomes. EU-level consistency checks, through the current governance structure, contribute to the predictability of access regulation throughout the EU; however their influence is significantly restricted as regards draft regulatory remedies. Similarly, the lack of consistency in spectrum management and the absence of an institutional set-up for the coordination of spectrum assignments has had negative consequences for end-users such as the delayed 4G deployment in most parts of the EU.

The achievements of the framework in protecting end-users and in ensuring a safety net (universal service) are significant — albeit progress in consumer satisfaction is relatively slow. It is also clear that not all sector-specific end-user protection provisions are still fit for purpose in the context of technological, market and wider legislative developments.

**Efficiency** - While a precise cost calculation has not been possible, the evaluation has shown that the benefits of the framework — for most operators, end-users and society as a whole - greatly outweigh the costs resulting from its implementation. However, while a certain level of complexity might be necessary in order to ensure well calibrated intervention (e.g. appropriate access regulation), several areas have been identified where the administrative burden could be reduced without compromising – in some cases even improving - the effectiveness of the provisions. Examples are longer *ex ante* market regulation cycles, simplified procedures for imposing remedies in termination markets, streamlining certain overlapping consumer protection provisions.

**EU added value** - The regulatory framework has been instrumental in delivering competition on the single market, that, to an extent, would not have been possible or likely at national

level. It has levelled up national regulatory practice in the sector, promoting - with different degrees of success for specific regulation areas - 'best in class' models across the European Union. EU action has also contributed to a more comprehensive, if not homogeneous, end-user protection than would otherwise be the case.

**Coherence** – Overall, the various instruments making up the regulatory framework for electronic communications have reinforced each other in the pursuit of their objectives. Two issues however merit specific attention in the review process: the coherence between (i) regulation aimed at incentivising competitive network roll-out and (ii) the EU financing and state aid rules in the sector, as well as the potential overlaps between certain sector-specific provisions and horizontal consumer interest legislation.

- **Stakeholder consultations**

A dedicated 12-week open public consultation was launched on 11 September 2015 that gathered inputs for the evaluation process in order to assess the current rules and to seek views on possible adaptations to the framework in light of market and technological developments. It covered a general evaluation of the current framework as well as a more detailed evaluation and review of the specific elements of the framework: (i) network access regulation, (ii) spectrum management and wireless connectivity, (iii) sector-specific regulation for electronic communications services, (iv) universal service rules and (v) institutional set-up and governance.

The consultation was both broad and detailed, eliciting extensive inputs from consumers, providers of electronic communications networks and services, national and EU operator associations, civil society organisations, broadcasters, technology providers, internet and online service providers, undertakings relying on connectivity and wider digital economy players, national authorities at all levels, national regulators and other interested stakeholders. Inputs provided include those from stakeholders affected by the policy, those who have to implement it and those with a stated interest in the policy. The consultation attracted 244 online replies from stakeholders in all Member States as well as from outside the Union. The consultation was complemented with a public hearing on 11 November 2015, halfway through the public consultation.

In addition to the public consultation BEREC provided input to the evaluation and the review process and published its opinion in December 2015<sup>4</sup>. The Radio Spectrum Policy Group (RSPG) had also provided its opinion on the DSM and the Framework Review<sup>5</sup>.

The following trends emerged from the consultation process:

- Connectivity is broadly recognised as the underlying driving force for the digital society and economy, underpinned by technological changes and evolving consumer and market demands.
- Good connectivity is perceived as a necessary condition to achieve the Digital Single Market. Many respondents pointed to the need for policy measures and possible adjustments to current policy and regulatory tools to support the deployment of infrastructure in line with future needs.

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<sup>4</sup> [http://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/opinions/5577-berec-opinion-on-the-review-of-the-eu-electronic-communications-regulatory-framework](http://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/5577-berec-opinion-on-the-review-of-the-eu-electronic-communications-regulatory-framework)

<sup>5</sup> [http://rspg-spectrum.eu/wp-content/uploads/2013/05/RSPG16-001-DSM\\_opinion.pdf](http://rspg-spectrum.eu/wp-content/uploads/2013/05/RSPG16-001-DSM_opinion.pdf)

- A number of inputs asserted that the current regulatory framework does not sufficiently advance the internal market. There is a general perception that the regulatory framework needs to be adjusted to current market dynamics. Many respondents however acknowledged the achievements ushered in by the liberalisation of the telecom markets, in particular in terms of end-user benefits and competition within most national markets.
- On spectrum, the importance of wireless connectivity and wireless broadband are acknowledged. In general, industry is supportive of a more coordinated approach and seeks additional certainty for investments and possibilities to develop throughout the EU new wireless and mobile communications including 5G. A more flexible access to and use of spectrum was identified as increasingly important.
- Member States' authorities generally underline the achievements in the field of technical harmonisation, and the need for additional coordination to be bottom-up and voluntary; some of them call for a better balance between harmonisation and flexibility. There is general recognition of the importance of more flexible access and use of spectrum in the future.
- The administrations of several Member States see the need for updating the telecoms rules, for reasons varying from the need to promote investment in next-generation infrastructures to the need to respond to technological and market changes. There are also calls for greater flexibility and simplification of those rules.
- Whereas traditional telecom companies consider that short-term economic gains have been preferred to long-term investment and innovation, alternative operators, BEREC, and consumer organisations consider that the framework has largely delivered on its current objectives.
- Telecom users are generally in favour of the current access regulation, while some consider that the emphasis should be put on service competition rather than on the underlying infrastructure, and that the sharing of infrastructure should be emphasised.
- The vast majority of respondents consider that the review should be the opportunity to reconsider the universal service regime completely. The administrations of the Member States see the need to maintain universal service, with flexibility at Member State level on funding and application to broadband. BEREC supports maintaining the current range of universal service obligation instruments.
- While administrations of several Member States, the regulatory community and consumer organisations still see a need for a sector-specific end-user protection based on high-level minimum harmonisation, the telecom sector calls for more reliance on horizontal legislation and full harmonisation, especially for services. The telecom sector in general but also some administrations argue that the same rules should apply to similar services while other administrations, so-called 'over-the-top' players, software and equipment vendors, cable operators and some broadcasters are of the view that the concept of electronic communications services as currently defined has proven robust.
- While the continuing role of national regulatory authorities and spectrum management authorities is widely acknowledged, a large group of respondents highlights that the institutional set-up at EU level should be revised to improve legal certainty and accountability.

As part of the evaluation process, the Commission has also contracted a number of studies. Implementation of these studies encompassed public workshops that allowed stakeholders to comment and provide feedback to the ongoing evaluation work:

on 6 April 2016 a public workshop was held to validate the interim findings of a study SMART 2015/002 conducted by WIK, IDATE and Deloitte on ‘regulatory, in particular access, regimes for network investments models in Europe’, and

on 2 May 2016, a public workshop was held to validate the interim findings of study SMART 2015/003 conducted by WIK, CRIDS and Cullen on ‘Substantive issues for review in the areas of market entry, management of scarce resources and general end-user issues’.

- **Collection and use of expertise**

The Commission relied on the following external expert advice:

Policy recommendations from **other EU institutions**, in particular the European Parliament<sup>6</sup> and the European Council<sup>7</sup>.

Three dedicated review studies:

‘Support for the preparation of the impact assessment accompanying the review of the regulatory framework for e-communications’ (SMART 2015/0005),

‘Regulatory, in particular access, regimes for network investment models in Europe’ (SMART 2015/0002),

‘Substantive issues for review in the areas of market entry, management of scarce resources and general consumer issues’ (SMART 2015/0003).

- In addition, a number of other studies have provided input to the review process. These studies are listed in section 6.1.4 of the impact assessment.

A high-level expert panel conducted in the framework of study SMART 2015/0005<sup>8</sup>.

- **Impact assessment**

The executive summary of the impact assessment and the positive opinion of the Regulatory Scrutiny Board can be found on the website of the Commission: [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/cia\\_2016\\_en.htm](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm).

A number of options, as outlined in the impact assessment, were examined and the following options were retained:

### ***Access Regulation***

#### ***NGA+ Focusing regulation on high-quality connectivity***

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<sup>6</sup> European Parliament resolution of 19 January 2016 on Towards a Digital Single Market Act (2015/2147(INI)).

<sup>7</sup> Conclusions of the European Council meeting of 28 June 2016 (EUCO 26/16).

<sup>8</sup> Expert profiles and a report of the discussion are presented in Annex 13 of the Impact Assessment.

This option considers that while the key principles of the framework remain valid, significant adjustments are necessary to provide necessary incentives for both incumbents and competitors to make economically viable investments or co-investments in future networks that are in principle capable of providing very high capacity connectivity to every citizen and business in Europe.

### ***Spectrum***

#### ***Binding and enforceable rules for enhancing coordination of spectrum management in the EU with greater focus on adapting spectrum rules to the future 5G challenges***

This aims at adapting the framework to the developments in terms of ubiquitous connectivity and 5G deployment and to ensure greater consistency with regard to Member States' measures, notably those affecting competitive market conditions and economic regulation. It seeks to do this by means of greater adaptations of the framework, legally enforceable instruments and a peer review mechanism allowing BEREC, the Commission and national regulatory authorities to review elements of individual Member States' planned national assignment procedures which have more impact on market and business developments. Moreover, this option will place greater emphasis on the investment environment for dense 5G networks.

### ***Universal service***

#### ***Incremental adaptation to trends with the focus on voice and broadband affordability***

This option focuses the universal service EU obligation on the affordability aspect, including the provision of affordable voice communications and basic broadband in the EU in its scope as well as a right to contract for consumers benefiting from special universal tariffs. At the EU level, broadband would be defined by referring to a functional internet access connection defined on the basis of a minimum list of online services which enable end-users' participation in civil society, which Member States shall further define at national level. Affordability should be ensured for these services provided at a fixed location, notably via direct support, but Member States have the possibility to include affordability measures for mobile services for the most vulnerable end-users' where lack of such affordability is demonstrated. Availability of these services will be primarily promoted by other policy tools (incentives to private investment, state aid, spectrum-related coverage obligations, etc.) and can only exceptionally be included at national level if duly demonstrated. Taking into account a broader range of beneficiaries (beyond the telecom sector) of universal broadband, this option relies on financing through the general budget as a more equitable and the least distortive way of funding the provision of universal service.

### ***Services***

#### ***Internet Access Services (IAS) and regulatory obligations for electronic communications services mainly linked to the use of numbering resources***

This option builds on other options. It proposes, on top of the regulation of IAS, to apply a limited set of sector-specific rules to interpersonal communications services, provided either traditionally (voice telephony or SMS), or via the IAS. In particular, the option determines those areas which still require sector-specific protection by reason of their characteristics and proposes to apply the relevant rules equally to all providers of services that are functionally equivalent. In many cases this will be IAS plus interpersonal communications services using

numbers ('use' being understood as provision of numbers to the service's own subscribers, or provision of a service that enables communication with other providers' subscribers via such numbers). In key areas such as security and the power to impose interoperability, the relevant rules should apply to all interpersonal communications services. It is proposed that end-user rules be subject to full harmonisation to the extent possible, instead of the current minimum harmonisation approach, in order to lessen the compliance burden and to avoid distorting market conditions across the Member States. In order to reduce regulatory burden, it is proposed to lift regulatory obligations where they are no longer needed or are adequately covered by general consumer protection law. One key example is the repeal of the power of NRAs to directly impose retail price regulation.

As regards regulatory obligations applicable to interpersonal communications services, most of them would be linked to the use of public numbering resources — confirming an approach that has been identified by regulators<sup>9</sup> since at least the last review of the framework but which is widely contested by the relevant service providers and has not been widely applied in practice. The scope of access to emergency services is redefined using the concept of number-based interpersonal communications services, but taking account of the inability of certain online services to assure quality of service of such calls. Rules that would apply to number-based interpersonal communications services cover *inter alia* contract duration, transparency, information on quality of service, number portability led by the receiving provider, consumption monitoring tools, comparison tools for both prices and quality of service or switching rules for bundles to avoid lock-in effects.

Additionally, in certain areas public policy interests such as security, require applying regulatory obligations to all interpersonal communications services, i.e. also to those that are provided over the IAS but do not use numbering resources.

#### ***'Must carry' and electronic programme guides (EPG)***

##### ***Maintain Member States' possibility to impose 'must carry' and EPG obligations***

This option would keep the current 'must carry' and EPG rules in place. However, it clarifies that the transmission obligations may include data complementary to radio and TV channels which supports connected TV services and EPGs.

#### ***Numbering***

##### ***Adapting the EU framework on numbering to address competition issues on the market***

Under this option the framework is adapted to allow Member States the assignment of numbers to undertakings other than providers of electronic communications services or networks. This option would allow extraterritorial use of certain numbering resources within the EU, subject to appropriate safeguards to protect end-users in all Member States where the numbers are used.

#### ***Governance***

##### ***Advisory role for BEREC/RSPG with certain normative powers for BEREC and improved process for market review and spectrum assignment***

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<sup>9</sup> ERG Common Position on VoIP, December 2007

This option envisages, in particular, a minimum set of harmonised competences for NRAs and the alignment of NRAs' and BEREC's tasks, as well as the substantial alignment of BEREC's governance structure with the Common Approach on decentralised agencies.

Furthermore, BEREC will be given additional tasks, such as powers to adopt binding decisions on the identification of transnational markets and on a contract summary template; quasi-binding powers in relation to the internal market procedures for draft national measures on market regulation (the 'double-lock' system – see below) and the establishment of a single maximum termination rate for the EU; and the issuing of guidelines in a number of areas: geographical surveys, common approaches to meeting transnational demand, minimum criteria for reference offers, common criteria for the management of numbering resources, quality-of-service parameters, applicable measurement methods and the technical details of the cost model to be applied by NRAs when setting maximum symmetric termination rates. It will also be given the power to request information directly from operators.

BEREC will also be in charge of setting up a register for the extraterritorial use of numbers and cross-border arrangements and another EU register of providers of electronic communications networks and services. In addition, it will be asked to assist the Commission and NRAs in the area of standardisation by helping them identify a lack of interoperability or a threat to end-to-end connectivity or to effective access to emergency services.

As regards remedies, a 'double-lock' system is proposed whereby, in cases where BEREC and the Commission agree on their position regarding the draft remedies proposed by an NRA, the NRA could be required by the Commission to amend or withdraw the draft measure and, if necessary, to re-notify the market analysis. BEREC will receive some additional normative and advisory tasks.

As regards spectrum, NRAs will gain decision-making competences concerning only the regulatory and market shaping conditions of spectrum assignment for electronic communications networks and services. Furthermore, a 'peer review' system within BEREC is introduced as a new coordination mechanism. This mechanism will require NRAs to notify their draft measures in regard to these aspects of spectrum assignment for review by BEREC and issuance of a non-binding opinion.

Moreover, additional general normative powers are to be accorded to the Commission with regard to laying down criteria for defining certain spectrum assignments elements, taking the utmost account of the advice of RSPG and based on adoption through comitology (Cocom) – to guide individual NRAs, and the 'peer review' within BEREC. The RSPG will remain an advisory body and will provide opinions to the Commission before adopting the implementing measures by comitology.

- **Regulatory fitness and simplification**

The policy measures proposed under the preferred option bundle support the REFIT agenda and address the objective of simplification and reduction of administrative burden in line with the findings of the evaluation exercise on the REFIT potential of the review. Several of the proposed changes under access, spectrum, universal service, services/end-users, numbering and governance policy areas aim to make rules clear; allow parties to easily understand their rights and obligations; and to avoid overregulation and administrative burdens.

The proposed changes include specifically: streamlining and geographic targeting of access regulation; the use (wherever possible) of general authorisation in preference to individual licences for spectrum; fostering secondary markets for spectrum; the removal of redundant universal service obligations such as requirements to ensure the provision of payphones and physical directories; narrowing of the scope of universal service availability obligations and

ending of the sectorial sharing mechanism; clarifying the scope of the Regulatory Framework and the removal of redundant consumer protection obligations where these are already addressed through horizontal legislation or met by the market; harmonisation and clarification of rules and governance of numbering in the M2M context; and aligning the remit of NRAs with BEREC.

The simplification measures in the preferred options have also a single market coherence dimension as they will ensure greater consistency in access remedies and in spectrum assignment processes, which at the moment tend to generate complexity for operators wanting to use spectrum in various Member States, and can also (in case of divergent timetables) cause interference in border areas. Equally the introduction of standardised wholesale remedies for example in relation to business access facilitates businesses operating in more than one Member State and the lengthening of the spectrum licences fosters the creation of a pan-European secondary market for spectrum as well as a more investment-friendly environment for holders of such licences.

- **Fundamental rights**

The proposal also takes full account of the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union. In particular, the proposed measures aim at achieving higher levels of connectivity with a modernised set of end-user protection rules. This will in turn ensure non-discriminatory access to any contents and services, including public services, and help promote freedom of expression and of business, and enable Member States to comply with the Charter at a much lower cost in the future.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the EU budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Monitoring of the implementation will continue to be assured by the Commission on the basis of:

- The European Digital Progress Report

The **European Digital Progress Report** covers 28 Member States and provides comprehensive data and analysis of market, regulatory and consumer developments in the digital economy, including:

**Digital Scoreboard**<sup>10</sup>, which measures progress of the European Digital Economy. It is fed by data conveyed by the national regulatory authorities, Eurostat and additional relevant sources and includes data about the general situation of all dimensions of the Digital Economy Society Index in the EU Member States<sup>11</sup>. The indicators included in the report allow a comparison of progress across European countries as well as over time.

**Telecom reports on European electronic communications regulation and markets**, which provide comprehensive data and analysis of market, regulatory and consumer developments in the sector.

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<sup>10</sup> The reports are available at: <https://ec.europa.eu/digital-single-market/en/digital-scoreboard>

<sup>11</sup> All information is available here: <https://ec.europa.eu/digital-single-market/en/download-scoreboard-reports>

- Eurobarometer annual household survey

The current Eurobarometer survey provides insights into how the e-comms market performed for end-users and on consumer attitudes in relation to service platforms uptake and usage of services, as well as on a number of consumer protection-related issues.

- **Detailed explanation of the specific provisions of the proposal**

The proposal amends the current framework with the following substantive changes:

#### **Amendments to policy objectives:**

**Article 3** streamlines the presentation of current objectives and complements them with a new objective of widespread access to and take-up of very high capacity connectivity across the EU alongside the existing objectives of promotion of competition, of the internal market and of end-user interests.

#### **Amendments related to access regulation:**

Amendments related to access regulation aim at reinforcing and improving the SMP access regime currently in place, to further promote infrastructure competition and network deployment by all operators and to sustain the deployment of very high capacity networks throughout the Union's territory.

In the first and second category (the reinforcement of the SMP regime and the promotion of infrastructure competition and network deployment by all operators), the following provisions and changes are relevant:

**Articles 61 and 65** amend the market analysis procedures, codifying current best practices and aiming at more focused and legally certain access regulation, as well as tightening its geographical focus, to ensure that access obligations are imposed only when and where necessary to address retail market failures and to assure end-user outcomes. The rules also lay down an obligation for regulators to take into consideration commercial access agreements in their market analyses, as well as any other regulatory obligations already imposed, for example symmetrical obligations. Furthermore, the article extends the current maximum three-year market review period to five years, which will allow operators longer term planning, and will provide national regulators with greater flexibility as regards the timing of market reviews. **Article 66** reflects these objectives by updating and amending the corresponding rules for the imposition and revision of regulatory obligations, for example when market conditions change.

**Article 70** supports greater infrastructure competition by ensuring access to civil infrastructure, such as ducts, poles etc., where these are held by operators with SMP.

Also with a view to supporting infrastructure competition, **Article 59** clarifies the conditions under which obligations can be imposed on all operators (symmetric obligations), to ensure access to non-replicable network assets, such as in-house wiring and cables. To protect investment incentives, such access is limited to the first concentration point from the end-user, but can be expanded beyond it in limited circumstances, to facilitate alternative network deployment in the most difficult and less densely populated areas.

Articles 63 and 64 empower BEREC to identify transnational markets, as well as to identify transnational demand even where markets remain national or sub-national. BEREC can adopt guidelines for national regulators to adopt common approaches when imposing remedies that can help such transnational demand to be met. Article 64 also empowers the Commission,

with the support of BEREC, to establish harmonised technical specifications for certain wholesale access products to meet the demand for cross-border communications, in particular from business users, in cases where the absence of such harmonised products hinders the internal market.

Article 73 introduces an EU-level process for determining a binding methodology for setting voice termination rates, a stable market which is similarly regulated across most Member States. In addition, it creates a mechanism for establishing maximum termination rates at EU level, with a view to alleviating the administrative burden for national regulators, allowing them to focus their efforts on the analysis of the most complex broadband markets.

Finally, to sustain the deployment of very high capacity networks throughout the Union territory the following changes are proposed:

**Article 22** requires national regulators to survey the state of broadband networks and investment plans across their national territory, to enable them to better take geographic specificities into account in market analyses. National regulators must also identify so called ‘digital exclusion areas’ where no operator or public authority has deployed or plans to deploy a very high capacity network or has upgraded or extended their legacy network to a performance of at least 100 Mbps download speeds, or is planning to do so. They can publish the designated digital exclusion areas and organise a call for interest therein with a view to promote very high capacity network deployment in these difficult areas.

**Article 72** clarifies the circumstances in which pricing flexibility can be granted to SMP operators, without compromising competition. Pricing flexibility can be beneficial to investors in new networks, provided it does not impede downstream competition.

**Article 74, together with Annex IV**, introduces provisions to facilitate commercial co-investment in new infrastructures and to draw the necessary regulatory consequences. The sharing of new network elements between an SMP network owner and access seekers entails a greater degree of risk sharing compared to traditional access products, and also can give a more durable basis for sustainable competition if appropriate conditions on the design of the co-investment are met. This should allow adaptation of regulated access, enabling all co-investors to benefit from first-mover advantages relative to other undertakings. The continued availability of regulated access products to non-participating undertakings, up to the capacity that was available prior to the investment, may still be appropriate.

**Article 77** offers a simplified regulatory model for wholesale-only networks with significant market power, limited to fair, reasonable and non-discriminatory access rules and subject to dispute resolution as necessary. The provisions require strict conditions for a network to be seen as truly ‘wholesale-only’, and may be particularly appropriate for local very high capacity networks, which might nevertheless be considered to have significant market power in the future. **Article 76** provides clarifications on the process for voluntary separation, introducing legal certainty by way of commitments provided by the operator undergoing a process of separation.

Finally, **Article 78** clarifies the role of national regulators in accompanying SMP operators that migrate from legacy to new networks (e.g. when switching off legacy copper networks), as a means to further support the transition to new networks.

#### **Amendments related to spectrum management:**

**Article 45** provides a clarification of the general objectives and principles to guide Member States when managing spectrum at national level. These address consistency and proportionality in authorisation procedures, the importance of ensuring appropriate coverage, timing considerations when making spectrum available, the prevention of cross-border or

harmful interference, establishing the ‘use it or lose it’ principle and fostering shared spectrum use as well as spectrum trading and leasing. The article also provides a mechanism for allowing temporary alternative use for harmonised spectrum subject to clearly defined conditions.

**Article 46** gives more prominence to general authorisations vs. individual licences as well as to shared use of spectrum in line with Union law, in order to ensure that national authorities prospectively develop the authorisation models most appropriate to 5G developments. It also provides for Commission powers to adopt binding measures to achieve consistency within different types of authorisation regimes.

**Article 47** defines authorisation conditions attached to a general authorisation for radio frequencies and their rights of use and provides for Commission implementing measures to achieve consistency as regards certain conditions, such as the criteria for defining and measuring coverage obligations, whose importance is strengthened as part of spectrum efficiency. It also puts an emphasis on obligations such as sharing infrastructure to improve end-users’ connectivity especially in less dense areas.

**Articles 48-54** target key aspects of spectrum authorisation with a view to enhancing consistency in Member States practice, such as (i) minimum licence durations (25 years); (ii) clear and simpler process for spectrum trading and leasing, (iii) objective criteria for consistent application based on competition law principles for measures to promote competition, such as spectrum caps, spectrum reservation for new entrants and wholesale access obligations; (iv) processes to improve consistency and predictability when granting and renewing individual spectrum usage rights; (v) clearer conditions for the restriction or withdrawal of existing rights, including by means of the ‘use it or lose it’ solution and strengthened enforcement roles for national authorities. These articles also provide for Commission powers to adopt measures to set common maximum deadlines for authorising the use of harmonised spectrum in all Member States and for coordinating the major elements of selection processes and setting criteria for their design.

**Articles 55 and 56** simplify conditions for access to Wi-Fi, to meet the exponential demand for connectivity and for the deployment and provisions of low-power wireless broadband access (small cells) to reduce costs of deploying very dense networks.

**Article 28** sets out a coordination obligation between Member States to address cross-border interferences problems, with the involvement of RSPG, accompanied by implementing powers for the Commission to adopt binding measures to resolve cross-border disputes taking the utmost account of the RSPG’s advice.

The proposal confers on national regulators competences in respect of market and economic regulatory aspects of spectrum assignment for electronic communications services. They are also made competent for deciding on the imposition of exceptional measures on network/spectrum sharing and national roaming with a view to cover white connectivity spots. National regulators must base their action in this field on a sound economic and competitive analysis of the markets. In order to ensure the consistent application across the Union of assignment conditions which have an impact on economic, market and competitive conditions and thus on market functioning, **Article 35** creates a peer review mechanism for BEREC to review the market and economic regulatory aspects of national draft spectrum assignments and issue non-binding opinions.

**Article 37** introduces a framework for Member States to facilitate voluntary pan-EU or multi-country assignment procedures.

**Amendments to the universal service regime:**

The proposal aims at modernising the universal service regime by removing the mandatory inclusion at EU level of legacy services (public payphones, comprehensive directories and directory enquiry services) from the scope and focusing on the basic universal service broadband, which would be defined by reference to a dynamic basic list of online services usable over a broadband connection. Member State intervention should focus on affordability of available connectivity rather than on the deployment of networks, for which better tools exist.

Affordability of universal service must be ensured at least at a fixed location but Member States will have flexibility to extend affordability measures to mobile services too, for the most vulnerable users.

**Article 79** lays down an obligation for Member States to ensure affordable access to all end-users to functional broadband internet access services and voice communications at least at a fixed location. In order to ensure affordability, Article 80 empowers Member States to require undertakings to have special tariff options for end-users identified as having low incomes or special social needs and/or to provide those end-users direct support and establishes a right to contract for consumers benefiting from special universal tariffs.

While Member State intervention should focus on the affordability of available connectivity rather than on the deployment of networks, **Article 81** allows a Member State to include the provision of connection at fixed location (availability) in the scope if it demonstrates that such connection cannot be ensured under normal commercial circumstances or through other public policy tools at its disposal.

In recognition of the need for flexibility to tackle different national circumstances, **Article 82** allows Member States to continue mandating at national level services that currently fall within the EU universal service obligation, such as pay phones, directories and directory inquiry services, if the need is duly demonstrated provided they adapt the financing regime too.

**Article 85** establishes that the universal service should be financed through the general budget and no longer through sectoral funding.

#### **Amendments to the services and end-user protection rules:**

In order to reflect the market and regulatory developments over the past years and the continued need for sector-specific rules, **Article 2(4)** redefines the term ‘electronic communications service’. It contains three types of service categories: (i) internet access service, (ii) interpersonal communications service, encompassing two sub-categories: i.e. one that is number-based and one that is number-independent, and (iii) services consisting wholly or mainly of the conveyance of signals, such as transmission services used for M2M communications and for broadcasting. Many end-user provisions will only apply to internet access services and to number-based interpersonal communications services.

Number-independent interpersonal communications services will be subject only to obligations, where public policy interests require applying specific regulatory obligations to be applied to all types of interpersonal communications services, regardless of whether they use numbers. This relates in particular to security provisions (**Article 40**). Additionally, in the event of an actual threat to end-to-end connectivity or to effective access to emergency services, the Commission may identify a need for measures to ensure interoperability, for instance through the launch of a standardisation process. Such standards could be imposed by NRAs where necessary (**Article 59**)

The proposal reduces the regulatory burden by lifting regulatory obligations where they are no longer needed or are adequately covered by general consumer law. One key example is the

repeal of the power of national regulators to directly impose retail price regulation on SMP operators (repeal of article 17 of the Universal Service Directive). Also certain provisions on contracts, transparency, equivalence of access by disabled users, directory services and interoperability of consumer digital television equipment have been streamlined and partly deleted because of overlap with horizontal rules or other redundancies (Articles 95 -98, 103-105).

A limited number of new provisions are envisaged to address new challenges, e.g. better readability of contracts through a short-form summarising the essential contract information, the provision of consumption control tools to inform end-users about their current communications usage, enhanced provisions on price and quality comparison tools, switching rules for the rapidly increasing number of bundles to avoid lock-in effects (key sector-specific provisions, such as maximum contract duration and rights to contract termination, would apply to the entire bundle) and a provision prohibiting discrimination based on nationality or the country of residence (Articles 92, 95, 96, 98,- and 100).

While there is a general maximum service contract period of 2 years, longer separate agreements with end-users are allowed as a means to facilitate reimbursement of contributions to the deployment of a physical connection and to support network roll-out through instalment-based contributions to network capital costs (the ‘demand aggregation’ approach), (Article 98).

#### **Amendments to numbering provisions:**

In order to address competition issues in the M2M market (most importantly, the lock-in with a given operator), the proposal allows national regulators to assign numbers to undertakings other than providers of electronic communications networks and services, without however requiring them to do so (Article 88). The same article also requires national regulators to determine certain numbering resources for the extraterritorial use of national numbers within the EU, as a means of responding to the increasing demand for such extraterritorial use of numbering resources in particular for M2M applications.

As regards the rules for harmonised numbers for services of social value, the focus remains on the effective implementation of the missing children hotline (**Article 90**) while the overall framework for 116 numbers continues to be based on Commission Decision 2007/116/EC. Due to the lack of demand for the European Telephone Numbering Space over the past years the corresponding provision has been deleted (Article 27 of the Universal Service Directive).

#### **Amendments to emergency communications provisions:**

Legal clarity is brought about regarding access to emergency services by all number-based interpersonal communications service providers. The proposed provisions replace the existing Commission mandate to impose technical implementing measures by the power to adopt delegated acts to ensure effective access to the single European emergency number 112 with regards to caller location, call routing to the ‘public safety answering points’ and access for disabled end-users in a coherent way EU-wide. Such an approach ensures cross-border deployment and functioning of technical solutions for emergency communications (**Article 102**).

#### **Amendments to governance:**

**Articles 5, 6 and 8** strengthen the role of independent national regulators by establishing a minimum set of competences for those regulators across the EU and enhance their independence requirements, by providing for appointment requirements and reporting obligations.

**Article 12** introduces some changes as regards the procedure for general authorisation. Providers should submit notifications to BEREC, which should act as a single contact point and forward the notifications to relevant national regulatory authorities. BEREC should establish a register at EU level.

**Article 27** provides a procedure for resolution of cross-border disputes between undertakings, reinforcing BEREC's role by obliging national regulatory authority to consult BEREC.

**Article 33** provides a 'double-lock' system, in cases where BEREC and the Commission agree on their position regarding the draft remedies proposed by a national regulator and notified to the Commission and BEREC under Article 32. In such cases, the regulator could be required by the Commission to amend or withdraw the draft measure and, if necessary, to re-notify its market analysis to them.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

**(Recast)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty ~~establishing the European Community~~ ☒ on the Functioning of the European Union ☒, and in particular Article ~~95~~ ☒ 114 ☒ thereof,  
Having regard to the proposal from the European Commission,  
After transmission of the draft legislative act to the national parliaments,  
Having regard to the opinion of the European Economic and Social Committee<sup>12</sup>,  
Having regard to the opinion of the Committee of the Regions<sup>13</sup>,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:



- (1) Directive 2002/19/EC of the European Parliament and of the Council<sup>14</sup>, Directive 2002/20/EC of the European Parliament and of the Council<sup>15</sup>, Directive 2002/21/EC of the European Parliament and of the Council<sup>16</sup> and Directive 2002/22/EC of the

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<sup>12</sup> OJ C , , p. .

<sup>13</sup> OJ C , , p. .

<sup>14</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7).

<sup>15</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ L 108, 24.4.2002, p. 21).

<sup>16</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33)

European Parliament and of the Council<sup>17</sup> have been substantially amended. Since further amendments are to be made, those Directives should be recast in the interests of clarity.

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↓ 2002/21/EC recital 1 (adapted)

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

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↓ 2002/21/EC recital 2 (adapted)

~~On 10 November 1999, the Commission presented a communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled 'Towards a new framework for electronic communications infrastructure and associated services — the 1999 communications review'. In that communication, the Commission reviewed the existing regulatory framework for telecommunications, in accordance with its obligation under Article 8 of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision<sup>18</sup>. It also presented a series of policy proposals for a new regulatory framework for electronic communications infrastructure and associated services for public consultation.~~

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↓ 2002/21/EC recital 3 (adapted)

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

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↓ 2002/21/EC recital 4 (adapted)

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

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<sup>17</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108 24.4.2002, p. 51).

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

<sup>18</sup> ~~OJ L 192, 24.7.1990, p. 1. Directive as amended by Directive 97/51/EC of the European Parliament and of the Council (OJ L 295, 29.10.1997, p. 23).~~

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

- (2) The functioning of the five directives ~~comprising~~ ☒ which are part of ☒ the existing regulatory framework for electronic communications networks and services (Directive 2002/19/EC ~~of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)~~<sup>19</sup>, Directive 2002/20/EC ~~of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)~~<sup>20</sup>, Directive 2002/21/EC ~~of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)~~<sup>21</sup>, Directive 2002/22/EC ~~(Universal Service Directive)~~<sup>22</sup> and Directive 2002/58/EC ~~of the European Parliament and of the Council (Directive on privacy and electronic communications)~~<sup>23</sup> (together referred to as ‘the Framework Directive and the Specific Directives’)<sup>24</sup>) is subject to periodic review by the Commission, with a view, in particular, to determining the need for modification in the light of technological and market developments ⇒<sup>24</sup> ⇐.

↓ new

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

<sup>19</sup> [OJ L 108, 24.4.2002, p. 7](#)

<sup>20</sup> [OJ L 108, 24.4.2002, p. 21](#)

<sup>21</sup> [OJ L 108, 24.4.2002, p. 33](#)

<sup>22</sup> [OJ L 108, 24.4.2002, p. 51](#)

<sup>23</sup> [Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector \(Directive on privacy and electronic communications\) \(OJ L 201, 31.7.2002, p. 37\)](#).

<sup>24</sup> The Union Regulatory Framework for Electronic Communications also includes Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10), Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (OJ L 310, 26.11.2015, p. 1) and Directive 2014/61 of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (OJ L 155, 23.5.2014, p. 1), as well as a number of co-legislator and Commission decisions.

Directive) and a Regulation (BEREC Regulation<sup>25</sup>). Each of the Directives currently contains measures applicable to providers of electronic communications networks and of electronic communications services, consistently with the regulatory history of the sector under which undertakings were vertically integrated i.e. active in both the provision of networks and of services. The review offers an occasion to recast the four directives in order to simplify the current structure, with a view to reinforcing its coherence and accessibility, consistently with the REFIT objective. It offers also the possibility to adapt the structure to the new market reality, where the provision of communications services is not any more necessarily bundled to the provision of a network. As provided in the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, recasting consists in the adoption of a new legal act which incorporates in a single text both the substantive amendments which it makes to an earlier act and the unchanged provisions of that act. The proposal for recasting deals with the substantive amendments which it makes to an earlier act, and on a secondary level, it includes the codification of the unchanged provisions of the earlier act with those substantive amendments.

↓ 2002/20/EC recital 3 (adapted)

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

↓ 2002/21/EC recital 7 (adapted)

⇒ new

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

↓ 2002/21/EC recital 5 (adapted)

⇒ new

- (7) The convergence of the telecommunications, media and information technology sectors means  that  all ~~transmission~~  electronic communications  networks and services should be covered  to the extent possible  by a single  European Electronic Communications Code established by a single Directive, with the exception of matters better dealt with through directly applicable rules established through regulations  ~~regulatory framework. That regulatory framework consists of this Directive and four specific Directives: Directive 2002/20/EC of the European~~

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

~~Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)<sup>26</sup>, Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)<sup>27</sup>, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)<sup>28</sup>, Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector<sup>29</sup>, (hereinafter referred to as 'the Specific Directives'). It is necessary to separate the regulation of **transmission** ⇒ electronic communications networks and services ⇐ from the regulation of content. This ~~framework~~ ⊗ Code ⊗ does not therefore cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content, financial services and certain information society services, and is therefore without prejudice to measures taken at ~~Community~~ ⊗ Union ⊗ or national level in respect of such services, in compliance with ~~Community~~ ⊗ Union ⊗ law, in order to promote cultural and linguistic diversity and to ensure the defence of media pluralism. The content of television programmes is covered by ~~Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities~~<sup>30</sup> Directive 2010/13/EU of the European Parliament and of the Council<sup>31</sup>. ⇒ The regulation of audiovisual policy and content aims at achieving general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors. ⇐ The separation between the regulation of **transmission** ⇒ electronic communications ⇐ and the regulation of content does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection.~~

↓ 2002/21/EC recital 8

⇒ new

- (8) This Directive does not ~~cover equipment within the scope of Directive 1999/5/EC of the European Parliament and of the Council of March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity~~<sup>32</sup> ⇒ affect the application to radio equipment of Directive 2014/53/EU ⇐, but does cover consumer equipment used for digital television.

<sup>26</sup> ~~See page 21 of this Official Journal.~~

<sup>27</sup> ~~See page 7 of this Official Journal.~~

<sup>28</sup> ~~See page 51 of this Official Journal.~~

<sup>29</sup> ~~OJ L 24, 30.1.1998, p. 1.~~

<sup>30</sup> ~~OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).~~

<sup>31</sup> ~~Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).~~

<sup>32</sup> ~~OJ L 91, 7.4.1999, p. 10.~~

↓ 2009/140/EC recital 11,  
2002/21/EC recital 8 (adapted)  
⇒ new

- (9) In order to allow national regulatory authorities to meet the objectives set out in ~~the Framework~~ ☒ this ☒ Directive ~~and the Specific Directives~~, in particular concerning end-to-end interoperability, the scope of the ~~Framework~~ Directive should be extended to cover certain aspects of radio equipment ~~and telecommunications terminal equipment~~ as defined in ~~Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity~~<sup>22</sup> ☒ Directive 2014/53/EU of the European Parliament and of the Council<sup>34</sup> ☒ and consumer equipment used for digital television, in order to facilitate access for disabled users. ⇒ It is important for regulators to encourage network operators and equipment manufacturers to cooperate in order to facilitate access by disabled users to electronic communications services. The non-exclusive use of spectrum for the self-use of radio terminal equipment, although not related to an economic activity, should also be subject to this directive in order to guarantee a coordinated approach with regard to their authorisation regime. ⇐

↓ 2002/21/EC recital 4 (adapted)

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

↓ 2002/22/EC recital 50 (adapted)

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

↓ 2002/21/EC recital 9 (adapted)

~~Information society services are covered by Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce)~~<sup>25</sup>.

<sup>33</sup> [OJ L 91, 7.4.1999, p. 10](#)

<sup>34</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).

<sup>35</sup> [OJ L 178, 17.7.2000, p. 1](#)

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

- (11) ~~The definition of ‘information society service’ in Article 1 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules of information society services<sup>26</sup> spans a wide range of economic activities which take place on-line. Most of these activities are not covered by the scope of this Directive because they do not consist wholly or mainly in the conveyance of signals on electronic communications networks.~~ ⇒ Certain electronic communications services under this Directive could also fulfil the definition of ‘information society service’ in Article 1 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services. The provisions governing Information Society Services apply to those electronic communications services to the extent that there are not more specific provisions applicable to electronic communications services in this Directive or in other Union acts. ⇐ ⊗ However, communications services such as ⊗ ~~V~~voice telephony, ⇒ messaging services ⇐ and electronic mail ~~conveyance~~ services are covered by this Directive. The same undertaking, for example an Internet service provider, can offer both an electronic communications service, such as access to the Internet, and services not covered under this Directive, such as the provision of web-based ⇒ and not communications-related ⇐ content.

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↓ 2002/20/EC recital 20

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

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↓ new

- (13) The regulatory framework should cover the use of radio spectrum by all electronic communications networks, including the emerging self-use of radio spectrum by new types of networks consisting exclusively of autonomous systems of mobile radio equipment that is connected via wireless links without a central management or centralised network operator, and not necessarily within the exercise of any specific economic activity. In the developing fifth generation mobile communications environment, such networks are likely to develop in particular outside buildings and on the roads, for transport, energy, R&D, eHealth, public protection and disaster relief, Internet of Things, machine-to-machine and connected cars. As a result, the application by Member States, based on Article 7 of Directive 2014/53/EU, of additional national requirements regarding the putting into service or use of such radio

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<sup>36</sup> OJL 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJL 217, 5.8.1998, p. 18).

equipment, or both, in relation to the effective and efficient use of spectrum and avoidance of harmful interference should reflect the principles of the internal market.

- (14) The requirements concerning the capabilities of electronic communications networks are constantly increasing. While in the past the focus was mainly on growing bandwidth available overall and to each individual user, other parameters like latency, availability and reliability are becoming increasingly important. The current response towards this demand is bringing optical fibre closer and closer to the user and future 'very high capacity networks' will require performance parameters which are equivalent to what a network based on optical fibre elements at least up to the distribution point at the serving location can deliver. This corresponds in the fixed-line connection case to network performance equivalent to what is achievable by an optical fibre installation up to a multi-dwelling building, considered as the serving location, and in the mobile connection case to network performance similar to what is achievable based on an optical fibre installation up to the base station, considered as the serving location. Variations in end-users' experience which are due to the different characteristics of the medium by which the network ultimately connects with the network termination point should not be taken into account for the purposes of establishing whether or not a wireless network could be considered as providing similar network performance. In accordance with the principle of technological neutrality, other technologies and transmission media should not be excluded, where they compare with this baseline scenario in terms of their capabilities. The roll-out of such 'very high capacity networks' will further increase the capabilities of networks and pave the way for the roll-out of future mobile network generations based on enhanced air interfaces and a more densified network architecture.

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

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

- (16) The services used for communications purposes, and the technical means of their delivery, have evolved considerably. End-users increasingly substitute traditional voice telephony, text messages (SMS) and electronic mail conveyance services by functionally equivalent online services such as Voice over IP, messaging services and web-based e-mail services. In order to ensure that end-users are effectively and equally protected when using functionally equivalent services, a future-oriented definition of electronic communications services should not be purely based on technical parameters but rather build on a functional approach. The scope of necessary regulation should be appropriate to achieve its public interest objectives. While "conveyance of signals" remains an important parameter for determining the services falling into the scope of this Directive, the definition should cover also other services that enable communication. From an end-user's perspective it is not relevant whether a provider conveys signals itself or whether the communication is delivered via an internet access service. The amended definition of electronic communications services should therefore contain three types of services which may partly overlap, that is to say internet access services according to the definition in Article 2(2) of Regulation (EU) 2015/2120, interpersonal communications services as defined in this Directive, and services consisting wholly or mainly in the conveyance of signals. The definition of Electronic Communications Service should eliminate ambiguities observed in the implementation of the previous definition and allow a calibrated provision-by-provision application of the specific rights and obligations contained in the framework to the different types of services. The processing of personal data by electronic communications services, whether as remuneration or otherwise, must be in compliance with Directive 95/46/EC which will be replaced by Regulation (EU) 2016/679 (General Data Protection Regulation) on 25 May 2018<sup>37</sup>.
- (17) In order to fall within the scope of the definition of electronic communications service, a service needs to be provided normally in exchange for remuneration. In the digital economy, market participants increasingly consider information about users as having a monetary value. Electronic communications services are often supplied against counter-performance other than money, for instance by giving access to personal data or other data. The concept of remuneration should therefore encompass situations where the provider of a service requests and the end-user actively provides personal data, such as name or email address, or other data directly or indirectly to the provider. It should also encompass situations where the provider collects information without the end-user actively supplying it, such as personal data, including the IP address, or other automatically generated information, such as information collected and transmitted by a cookie). In line with the jurisprudence of the Court of Justice of the European Union on Article 57 TFEU<sup>38</sup>, remuneration exists within the meaning of the Treaty also if the service provider is paid by a third party and not by the service recipient. The concept of remuneration should therefore also encompass situations where the end-user is exposed to advertisements as a condition for gaining access to

<sup>37</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); OJ L 119, 4.5.2016, p. 1

<sup>38</sup> Case C-352/85 Bond van Adverteerders and Others vs The Netherlands State, EU:C:1988:196.

the service, or situations where the service provider monetises personal data it has collected.

(18) Interpersonal communications services are services that enable interpersonal and interactive exchange of information, covering services like traditional voice calls between two individuals but also all types of emails, messaging services, or group chats. Communications services only cover communications between a finite, that is to say not potentially unlimited, number of natural persons which is determined by the sender of the communication. Communications involving legal persons should be within the scope of the definition where natural persons act on behalf of those legal persons or are involved at least on one side of the communication. Interactive communication entails that the service allows the recipient of the information to respond. Services which do not meet those requirements, such as linear broadcasting, video on demand, websites, social networks, blogs, or exchange of information between machines, should not be considered as communications services. Under exceptional circumstances, a service should not be considered as an interpersonal communications service if the interpersonal and interactive communication facility is a purely ancillary feature to another service which for objective technical reasons cannot be used without the principal service, and its integration is not a means to circumvent the applicability of the rules governing communications services. An example for such an exception could be, in principle, a communication channel in online games, depending on the features of the communication facility of the service.

(19) Interpersonal communications services using numbers from a national and international telephone numbering plan connect with the public (packet or circuit) switched telephone network. Those number-based interpersonal communications services comprise both services to which end-users numbers are assigned for the purpose of ensuring end-to-end connectivity and services enabling end-users to reach persons to whom such numbers have been assigned. The mere use of a number as an identifier should not be considered equivalent to the use of a number to connect with the public switched telephone network, and should therefore, in itself, not be considered sufficient to qualify a service as a number-based interpersonal communications service. Number-independent interpersonal communications services should be subject only to obligations, where public interests require applying specific regulatory obligations to all types of communications services, regardless of whether they use numbers for the provision of their service. It is justified to treat number-based interpersonal communications services differently, as they participate in and hence also benefit from a publicly assured interoperable ecosystem.

↓ 2002/22/EC recital 6 (adapted)

⇒ new

(20) The network termination point represents a boundary for regulatory purposes between the regulatory framework for electronic ~~communication~~  communications  networks and services and the regulation of telecommunication terminal equipment. Defining the location of the network termination point is the responsibility of the national regulatory authority, ~~where necessary on the basis of a proposal by the relevant undertakings.~~  In the light of the practice of national regulatory authorities, and given the variety of fixed and wireless topologies, the Body of European Regulators for Electronic Communications ('BEREC') should, in close cooperation

with the Commission, adopt guidelines on how to identify the network termination point, in accordance with this Directive, in various concrete circumstances. ↩

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↓ new

(21) Technical developments make it possible for end-users to access emergency services not only by voice calls but also by other communications services. The concept of emergency communication should therefore cover all those communications services that allow such emergency services access. It builds on the emergency system elements already enshrined in Union legislation, namely 'Public Safety Answering Point' (PSAP) and 'most appropriate PSAP'<sup>39</sup>, and on 'emergency services'<sup>40</sup>.

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↓ 2002/21/EC recital 16 (adapted)  
⇒ new

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

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↓ 2002/21/EC recital 17 (adapted)  
⇒ new

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

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↓ new

(24) In order to translate the political aims of the Digital Single Market strategy into regulatory terms, the framework should, in addition to the existing three primary objectives of promoting competition, internal market and end-user interests, pursue an additional connectivity objective, articulated in terms of outcomes: widespread access to and take-up of very high capacity fixed and mobile connectivity for all Union citizens and businesses on the basis of reasonable price and choice, enabled by effective and fair competition, by efficient investment and open innovation, by efficient use of spectrum, by common rules and predictable regulatory approaches in the internal market and by the necessary sector-specific rules to safeguard the interests of citizens. For the Member States, the national regulatory authorities and other competent authorities and the stakeholders, that connectivity objective translates on

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<sup>39</sup> Both defined in Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 service and amending Directive 2007/46/EC [OJ L 123, 19.05.2015, p. 77], and in Commission Regulation (EU) No 305/2013 of 26 November 2012 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the harmonised provision for an interoperable EU-wide eCall [OJ L 91, 03.04.2013, p. 1].

<sup>40</sup> As defined in Regulation (EU) 2015/758.

the one hand into aiming for the highest capacity networks and services economically sustainable in a given area, and on the other hand into pursuing territorial cohesion, in the sense of convergence in capacity available in different areas.

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↓ 2002/21/EC recital 18 (adapted)  
⇒ new

- (25) ~~The requirement for~~ ☒ principle that ☒ Member States ~~to~~ ⇒ should apply EU law in a technologically neutral fashion ☐ ~~ensure that national regulatory authorities take the utmost account of the desirability of making regulation technologically neutral~~, that is to say that ☒ a national regulatory ☒ ⇒ or other competent ☐ ☒ authority ☒ ~~neither imposes nor discriminates in favour of the use of a particular type of technology, does not preclude the taking of proportionate steps to promote certain specific services where this is justified in~~ ⇒ order to attain the objectives of the regulatory framework ☐, for example digital television as a means for increasing spectrum efficiency. ⇒ Furthermore, it does not preclude taking into account that certain transmission media have physical characteristics and architectural features that can be superior in terms of quality of service, capacity, maintenance cost, energy efficiency, management flexibility, reliability, robustness and scalability, and ultimately in terms of performance, which can be reflected in actions taken in view of pursuing the various regulatory objectives. ☐
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↓ 2009/140/EC recital 53

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

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

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

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↓ 2009/140/EC recital 5 (adapted)

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

- (30) Electronic communications are becoming essential for an increasing number of sectors. The Internet of Things is an illustration of how the radio signal conveyance underpinning electronic communications continues to evolve and shape societal and business reality. To derive the greatest benefit from those developments, the introduction and accommodation of new wireless communications technologies and applications in spectrum management is essential. As other technologies and applications relying on spectrum are equally subject to growing demand, and can be enhanced by integration of or combination with electronic communications, spectrum management should adopt, where appropriate, a cross-sectorial approach to improve spectrum usage efficiency.
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↓ 2009/140/EC recital 28  
(adapted)  
⇒ new

- (31) ~~Although spectrum management remains within the competence of the Member States, s~~ Strategic planning, coordination and, where appropriate, harmonisation at ~~Community~~ ☒ Union ☒ level can help ensure that spectrum users derive the full benefits of the internal market and that ~~EU~~ ☒ Union ☒ interests can be effectively defended globally. For these purposes, where appropriate, legislative multiannual radio spectrum policy programmes ~~should~~ ☒ may ☒ be established ☒ adopted ☒ ⇒ , with the first one defined by Decision No 243/2012/EU of the European Parliament and of the Council<sup>41</sup>, ⇐ ☒ setting ☒ ~~to set out the~~ policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in the ~~Community~~ ☒ Union ☒. These policy orientations and objectives may refer to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market ☒ , in accordance with this Directive ☒ ~~and may also refer, in appropriate cases, to the harmonisation of procedures for the granting of general authorisations or individual rights of use for radio frequencies where necessary to overcome barriers to the internal market. These policy orientations and objectives should be in accordance with this Directive and the Specific Directives.~~

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<sup>41</sup> OJ L 81, 21.3.2012, p. 7.

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↓ 2009/140/EC recital 32  
(adapted)  
⇒ new

~~(32) The current spectrum management and distribution system is generally based on administrative decisions that are insufficiently flexible to cope with technological and economic evolution, in particular with the rapid development of wireless technology and the increasing demand for bandwidth. ⊗ National borders are increasingly irrelevant in determining optimal radio spectrum use. ⊗ The # Undue fragmentation amongst national policies ⇒ regarding the management of radio spectrum, including unjustified different conditions for access to, and use of, radio spectrum according to the type of operator, may ⇐ results in increased costs and lost market opportunities for spectrum users, and ⊗ It may ⊗ slows down innovation, ⇒ limit investment, reduce economies of scale for manufacturers and operators as well as create tensions between rights holders and discrepancies in the cost of access to spectrum. This fragmentation may overall result in a distortion of the functioning ⇐ to the detriment of the internal market, ⊗ and prejudice to ⊗ consumers and the economy as a whole. Moreover, the conditions for access to, and use of, radio frequencies may vary according to the type of operator, while electronic services provided by these operators increasingly overlap, thereby creating tensions between rights holders, discrepancies in the cost of access to spectrum, and potential distortions in the functioning of the internal market.~~

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↓ 2009/140/EC recital 33  
(adapted)

~~(33) National borders are increasingly irrelevant in determining optimal radio spectrum use. Fragmentation of the management of access to spectrum rights limits investment and innovation and does not allow operators and equipment manufacturers to realise economies of scale, thereby hindering the development of an internal market for electronic communications networks and services using radio spectrum.~~

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↓ 2009/140/EC recital 30  
(adapted)

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

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↓ 2002/21/EC recital 11 (adapted)  
⇒ new

(35) In accordance with the principle of the separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority ~~or~~ ⇒ and other competent ⇐ authorities with a view to ensuring

the impartiality of their decisions. This requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership laid down in Article 295 of the Treaty. National regulatory  $\Rightarrow$  and other competent  $\Leftarrow$  authorities should be in possession of all the necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks.

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$\Downarrow$  new

- (36) It is necessary to provide for a list of tasks that Member States may assign only to bodies which they designate as national regulatory authorities whose political independence and regulatory capacity is guaranteed, as opposed to other regulatory tasks which they can assign either to the national regulatory authorities or to other competent authorities. Hence, where this Directive provides that a Member State should assign a task to or empower a competent authority, the Member State can assign the task either to a national regulatory authority, or to another competent authority.
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$\Downarrow$  2009/140/EC recital 13  
(adapted)  
 $\Rightarrow$  new

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

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↓ new

- (38) There is a need to further reinforce the independence of the national regulatory authorities to ensure the imperviousness of its head and members to external pressure, by providing minimum appointment qualifications, and a minimum duration for their mandate. Furthermore, the limitation of the possibility to renew more than once their mandate and the requirement for an appropriate rotation scheme for the board and the top management would address the risk of regulatory capture, ensure continuity, and enhance independence.
- (39) National regulatory authorities should be accountable for and should be required to report on the way they are exercising their tasks. That obligation should take the form of an annual reporting obligation, rather than ad hoc reporting requests, which if disproportionate could limit their independence or hinder them in the exercise of their tasks. Indeed, according to recent case law<sup>42</sup>, extensive or unconditional reporting obligations may indirectly affect the independence of an authority.
- (40) Member States should notify to the Commission the identity of the national regulatory and other competent authorities. For authorities competent for granting rights of way, the notification requirement may be fulfilled by a reference to the single information point established pursuant to Article 7(1) of Directive 2014/61/EU of the European Parliament and of the Council<sup>43</sup>.
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↓ 2002/20/EC recital 4

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

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↓ 2002/20/EC recital 5

~~This Directive only applies to the granting of rights to use radio frequencies where such use involves the provision of an electronic communications network or service, normally for remuneration. The self-use of radio terminal equipment, based on the non-exclusive use of specific radio frequencies by a user and not related to an economic activity, such as use of a citizen's band by radio amateurs, does not consist of the provision of an electronic communications network or service and is therefore not covered by this Directive. Such use is covered by the Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity<sup>44</sup>.~~

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<sup>42</sup> Case C-614/10 European Commission v Republic of Austria, EU:C:2012:631.

<sup>43</sup> Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, OJ L 155, 23.5.2014.

<sup>44</sup> OJ L 91, 7.4.1999, p. 10.

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↓ 2002/20/EC recital 6 (adapted)

~~Provisions regarding the free movement of conditional access systems and the free provision of protected services based on such systems are laid down in Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access<sup>45</sup>. The authorisation of such systems and services therefore does not need to be covered by this Directive.~~

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↓ 2002/20/EC recital 7

- (41) The least onerous authorisation system possible should be used to allow the provision of electronic communications networks and services in order to stimulate the development of new ~~electronic~~ communications services and pan-European communications networks and services and to allow service providers and consumers to benefit from the economies of scale of the single market.
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↓ 2002/20/EC recital 8 (adapted)

⇒ new

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

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<sup>45</sup> [OJL 320, 28.11.1998, p. 54](#)

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↓ new

- (43) The notification to BEREC should entail a mere declaration of the provider's intention to commence the provision of electronic communications networks and services. A provider may only be required to accompany such declaration by the information set out in Article 12 of this Directive. Member States should not impose additional or separate notification requirements.
- (44) Contrary to the other categories of electronic communications networks and services as defined in this Directive, number-independent interpersonal communications services do not benefit from the use of public numbering resources and do not participate in a publicly assured interoperable ecosystem. It is therefore not appropriate to subject these types of services to the general authorisation regime
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↓ 2002/20/EC recital 21 (adapted)

⇒ new

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

⇒ new

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

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

- (48) It is necessary to include the rights and obligations of undertakings under general authorisations explicitly in such authorisations in order to ensure a level playing field

throughout the ~~Community~~ ☒ Union ☒ and to facilitate cross-border negotiation of interconnection between public communications networks.

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↓ 2002/20/EC recital 10 (adapted)

- (49) The general authorisation entitles undertakings providing electronic communications networks and services to the public to negotiate interconnection under the conditions of ☒ this ☒ Directive ~~2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communication networks and associated facilities (Access Directive)~~<sup>46</sup>. Undertakings providing electronic communications networks and services other than to the public can negotiate interconnection on commercial terms.
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↓ 2002/20/EC recital 11 (adapted)

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

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↓ 2002/20/EC recital 16

- (50) In the case of electronic communications networks and services not provided to the public it is appropriate to impose fewer and lighter conditions than are justified for electronic communications networks and services provided to the public.
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↓ 2002/20/EC recital 17 (adapted)

⇒ new

- (51) Specific obligations which may be imposed on providers of electronic communications networks and ⇒ electronic communications services other than number-independent interpersonal communications services ⇐ services in accordance with ~~Community~~ ☒ Union ☒ law by virtue of their significant market power as defined in ☒ this ☒ Directive ~~2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)~~<sup>47</sup> should be imposed separately from the general rights and obligations under the general authorisation.
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↓ 2002/20/EC recital 25

⇒ new

- (52) Providers of electronic communications networks and services may need a confirmation of their rights under the general authorisation with respect to

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<sup>46</sup> [See page 7 of this Official Journal](#)

<sup>47</sup> [See page 33 of this Official Journal](#)

interconnection and rights of way, in particular to facilitate negotiations with other, regional or local, levels of government or with service providers in other Member States. For this purpose ~~the national regulatory authority~~ ⇒ BERECA, which receives the notification to provide public or private communications networks or services, ⇐ should provide declarations to undertakings either upon request or alternatively as an automatic response to a notification under the general authorisation. Such declarations should not by themselves constitute entitlements to rights nor should any rights under the general authorisation or rights of use or the exercise of such rights depend upon a declaration.

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↓ 2002/20/EC recital 30  
⇒ new

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

- (54) Systems for administrative charges should not distort competition or create barriers for entry into the market. With a general authorisation system it will no longer be possible to attribute administrative costs and hence charges to individual undertakings except for the granting of rights to use of ~~the~~ use of ~~the~~ numbers, radio frequencies ⇒ spectrum ⇐ and for rights to install facilities. Any applicable administrative charges should be in line with the principles of a general authorisation system. An example of a fair, simple and transparent alternative for these charge attribution criteria could be a turnover related distribution key. Where administrative charges are very low, flat rate charges, or charges combining a flat rate basis with a turnover related element could also be appropriate. ⇒ To the extent that the general authorisation system extends to undertakings with very small market shares, such as community-based network providers, or to service providers whose business model generates very limited revenues even in case of significant market penetration in terms of volumes, Member States should assess the possibility to establish an appropriate de minimis threshold for the imposition of administrative charges. ⇐
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↓ 2002/20/EC recital 33  
⇒ new

- (55) Member States may need to amend rights, conditions, procedures, charges and fees relating to general authorisations and rights of use where this is objectively justified. Such changes should be duly notified to all interested parties in good time, giving them adequate opportunity to express their views on any such amendments. ⇒ Taking into account the need to ensure legal certainty and to promote regulatory

predictability, any restriction or withdrawal of existing rights of use for radio spectrum or to install facilities should be subject to predictable and transparent procedures; hence stricter requirements or a notification mechanism could be imposed where rights of use have been assigned pursuant to competitive or comparative procedures. Unnecessary procedures should be avoided in case of minor amendments to existing rights to install facilities or to use spectrum when such amendments do not impact on third parties' interests. The change in the use of spectrum as a result of the application of technology and service neutrality principles should not be considered a sufficient justification for a withdrawal of rights since it does not constitute the granting of a new right. ↩

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↓ 2002/20/EC recital 34

~~The objective of transparency requires that service providers, consumers and other interested parties have easy access to any information regarding rights, conditions, procedures, charges, fees and decisions concerning the provision of electronic communications services, rights of use of radio frequencies and numbers, rights to install facilities, national frequency usage plans and national numbering plans. The national regulatory authorities have an important task in providing such information and keeping it up to date. Where such rights are administered by other levels of government the national regulatory authorities should endeavour to create a user friendly instrument for access to information regarding such rights.~~

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↓ 2002/20/EC recital 35

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

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↓ 2002/20/EC recital 36

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

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↓ 2002/20/EC recital 37

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

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↓ 2002/20/EC recital 38

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

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↓ 2009/140/EC recital 70

- (56) Minor amendments to rights and obligations are those amendments which are mainly administrative, do not change the substantial nature of the general authorisations and the individual rights of use and thus cannot cause any comparative advantage to the other undertakings. ~~Therefore, unnecessary procedures should be avoided in case of minor amendments to existing rights to install facilities or to use spectrum when such amendments do not impact on third parties or grant unfair advantages to the right holder.~~
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↓ 2002/21/EC recital 13 (adapted)  
⇒ new

- (57) National regulatory ⇒ and other competent ⇐ authorities need to gather information from market players in order to carry out their tasks effectively. ☒ It might also be necessary to gather ☒ ~~Such information may also need to be gathered~~ on behalf of the Commission ⇒ or BEREC ⇐, to allow # ☒ them ☒ to fulfil # ☒ their respective ☒ obligations under ~~Community~~ ☒ Union ☒ law. Requests for information should be proportionate and not impose an undue burden on undertakings. Information gathered by national regulatory ⇒ and other competent ⇐ authorities should be publicly available, except in so far as it is confidential in accordance with national rules on public access to information and subject to ~~Community~~ ☒ Union ☒ and national law on business confidentiality.
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↓ 2009/140/EC recital 16  
⇒ new

- (58) In order to ensure that national regulatory authorities carry out their regulatory tasks in an effective manner, the data which they gather should include accounting data on the retail markets that are associated with wholesale markets where an operator has significant market power and as such are regulated by the national regulatory authority. The data should also include data which enables the national regulatory authority to assess ⇒ compliance with conditions attached to rights of use, ⇐ the possible impact of planned upgrades or changes to network topology on the development of competition or on wholesale products made available to other parties. ⇒ Information regarding compliance with coverage obligations attached to rights of use for radio spectrum is key to ensure completeness of the geographic surveys of network deployments undertaken by national regulatory authorities. In that respect,

they should be able to require that information is provided at disaggregated local level with a granularity adequate to conduct a geographical survey of networks. ↵

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

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

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

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

- (62) Electronic communications broadband networks are becoming increasingly diverse in terms of technology, topology, medium used and ownership, therefore, regulatory intervention must rely on detailed information and forecasts regarding network roll-out in order to be effective and to target the areas where it is needed. That information

should include plans regarding both deployment of very high capacity networks, as well as significant upgrades or extensions of existing copper or other networks which might not match the performance characteristics of very high capacity networks in all respects, such as roll-out of fibre to the cabinet coupled with active technologies like vectoring. The level of detail and territorial granularity of the information that national regulatory authorities should gather should be guided by the specific regulatory objective, and should be adequate for the regulatory purposes that it serves. Therefore, the size of the territorial unit will also vary between Member States, depending on the regulatory needs in the specific national circumstances, and on the availability of local data. Level 3 in the Nomenclature of Territorial Units for Statistics (NUTS) is unlikely to be a sufficiently small territorial unit in most circumstances. National regulatory authorities should be guided by BEREC guidelines on best practice to approach such a task, and such guidelines will be able to rely on the existing experience of national regulatory authorities in conducting geographical surveys of networks roll-out. National regulatory authorities should make available tools to end-users as regards quality of service to contribute towards the improvement of their awareness of the available connectivity services.

- (63) In the case of specific and well defined digital exclusion areas, national regulatory authorities should have the possibility to organise a call for declarations of interest with the aim of identifying undertakings that are willing to invest in very high capacity networks. In the interests of predictable investment conditions, national regulatory authorities should be able to share information with undertakings expressing interest in deploying very high-speed networks on whether other types of network upgrades, including those below 100 Mbps download speed, are present or foreseen in the area in question.

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

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

↓ 2009/136/EC recital 49  
(adapted)

- (65) In order to ~~overcome existing shortcomings in terms of consumer consultation and to~~ appropriately address the interests of citizens, Member States should put in place an appropriate consultation mechanism. Such a mechanism could take the form of a body which would, independently of the national regulatory authority and service providers, carry out research into consumer-related issues, such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner

and contribute to the existing mechanisms for stakeholder consultation. Furthermore, a mechanism could be established for the purpose of enabling appropriate cooperation on issues relating to the promotion of lawful content. Any cooperation procedures agreed pursuant to such a mechanism should, however, not allow for the systematic surveillance of Internet usage.

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↓ 2002/21/EC recital 32 (adapted)  
⇒ new

- (66) In the event of a dispute between undertakings in the same Member State in an area covered by this Directive ~~or the Specific Directives~~, for example relating to obligations for access and interconnection or to the means of transferring ~~subscriber~~ ⇒ end-user ⇐ lists, an aggrieved party that has negotiated in good faith but failed to reach agreement should be able to call on the national regulatory authority to resolve the dispute. National regulatory authorities should be able to impose a solution on the parties. The intervention of a national regulatory authority in the resolution of a dispute between undertakings providing electronic communications networks or services in a Member State should seek to ensure compliance with the obligations arising under this Directive ~~or the Specific Directives~~.
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↓ 2002/21/EC recital 33 (adapted)  
⇒ new

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

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

- (69) Lack of coordination between Member States when organising the use of spectrum in their territory can create large-scale interference issues severely impacting the development of the Digital Single Market. Member States should take all necessary measures to avoid cross-border and harmful interference and cooperate with each other to that end. Upon request of one or more Member States or of the Commission, the Radio Spectrum Policy Group should be tasked with supporting the necessary cross-border coordination. Building on RSPG's proposed solution, an implementing measure may be required in some circumstances to definitively resolve cross-border

interferences or to enforce under Union law a coordinated solution agreed by two or several Member States in bilateral negotiations.

- (70) The Radio Spectrum Policy Group (RSPG) is a Commission high-level advisory group which was created by Commission Decision 2002/622/EC<sup>48</sup> to contribute to the development of the internal market and to support the development of a Union-level radio spectrum policy, taking into account economic, political, cultural, strategic, health and social considerations, as well as technical parameters. It should be composed of the heads of the bodies that have overall political responsibility for strategic spectrum policy. It should advise the Commission in developing strategic objectives, priorities and roadmaps for spectrum policy. This should further increase the visibility of spectrum policy in the various EU policy areas and help to ensure cross-sectorial coherence at national and Union level. It should also provide advice to the European Parliament and the Council upon their request. Moreover, the RSPG should also be the forum for the coordination of implementation by Member States of their obligations related to radio spectrum under this Directive and should play a central role in fields essential for the internal market such as cross-border coordination or standardisation. Technical or expert working groups could also be created to assist plenary meetings, at which strategic policy is framed through senior-level representatives of the Member States and the Commission.

↓ 2002/22/EC recital 47 (adapted)  
⇒ new

- (71) In the context of a competitive environment, the views of interested parties, including users and consumers, should be taken into account by national regulatory authorities when dealing with issues related to end-users' rights. ⇒ Out-of-court dispute settlement procedures may constitute a fast and cost-efficient way end-users to enforce their rights, in particular for consumers and micro and small enterprises. ⇐ ☒ For consumer disputes, ☒ effective ⇒, non-discriminatory and inexpensive ⇐ procedures ☒ to settle their ☒ ~~should be available to deal with disputes between consumers, on the one hand, and undertakings providing~~ ☒ with providers of ☒ publicly available ☒ electronic ☒ communications services, ~~on the other~~ ⇒ are already ensured by Directive 2013/11/EU of the European Parliament and of the Council<sup>49</sup> in so far as relevant contractual disputes are concerned and the consumer is resident and the undertaking is established within the Union ⇐ . ⇒ As many Member States have established dispute resolution procedures also for end-users other than consumers, to whom Directive 2013/11/EU does not apply, it is reasonable to maintain the sector-specific dispute resolution procedure for both consumers and, where Member States extend it, also for other end-users, in particular micro and small enterprises. ⇐ ~~Member States should take full account of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes<sup>50</sup>~~ . ⇒ In view of the deep sectorial expertise of national regulatory authorities, Member States should

<sup>48</sup> Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group (OJ L 198, 27/07/2002, p. 49).

<sup>49</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).

<sup>50</sup> OJ L 115, 17.4.1998, p. 31.

enable the national regulatory authority to act as dispute settlement entity, through a separate body within that authority which should not be subject to any instructions. Dispute resolution procedures under this Directive that involve consumers should be subject to the quality requirements set out in Chapter II of Directive 2013/11/EU ↵

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

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

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↓ 2002/20/EC recital 15 (adapted)

(73) The conditions, which may be attached to ~~the general authorisation~~ ⊗ authorisations ⊗ and ~~to the specific~~ ⊗ individual ⊗ rights of use, should be limited to what is strictly necessary to ensure compliance with requirements and obligations under ~~Community law and~~ national law ~~in accordance with Community~~ ⊗ and Union ⊗ law.

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↓ 2002/21/EC recital 12 (adapted)  
⇒ new

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

law. ⇒ In any case, Member States should grant effective judicial review against such decisions. ⇐

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

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

- (76) There has been a wide divergence in the manner in which appeal bodies have applied interim measures to suspend the decisions of the national regulatory authorities. In order to achieve greater consistency of approach common standards should be applied in line with ~~Community~~ ☒ Union ☒ case-law. Appeal bodies should also be entitled to request available information published by BEREC. Given the importance of appeals for the overall operation of the regulatory framework, a mechanism should be set up for collecting information on appeals and decisions to suspend decisions taken by the ⇒ competent ⇐ ~~regulatory~~ authorities in all the Member States and for the reporting of that information to the Commission ⇒ and to BEREC ⇐ . ⇒ That mechanism should ensure that the Commission or BEREC can retrieve from Member States the text of the decisions and judgments with a view to developing a database. ⇐
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↓ 2002/21/EC recital 15 (adapted)  
⇒ new

- (77) The Commission should be able, after ~~consulting the Communications Committee~~ ⇒ taking utmost account of the opinion of BEREC ⇐ , to require a national regulatory authority to withdraw a draft measure where it concerns definition of relevant markets or the designation or not of undertakings with significant market power, and where such decisions would create a barrier to the single market or would be incompatible with ~~Community~~ ☒ Union ☒ law and in particular the policy objectives that national regulatory authorities should follow. This procedure is without prejudice to the notification procedure provided for in Directive ~~98/34/EC~~ 2015/1535/EU and the Commission's prerogatives under the Treaty in respect of infringements of ~~Community~~ ☒ Union ☒ law.
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↓ 2009/140/EC recital 17  
(adapted)

- (78) The national consultation provided for under Article ☒ 24 ☒ ~~6 of Directive 2002/21/EC (Framework Directive)~~ should be conducted prior to the ~~Community~~

⊗ Union ⊗ law consultation provided for under Articles 7 ⊗ 34 ⊗ and 7a ⊗ 35 ⊗ of ~~that~~ ⊗ this ⊗ Directive, in order to allow the views of interested parties to be reflected in the Community ⊗ Union ⊗ law consultation. This would also avoid the need for a second Community ⊗ Union ⊗ law consultation in the event of changes to a planned measure as a result of the national consultation.

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↓ 2009/140/EC recital 20  
(adapted)

- (79) It is important that the regulatory framework is implemented in a timely manner. When the Commission has taken a decision requiring a national regulatory authority to withdraw a planned measure, national regulatory authorities should submit a revised measure to the Commission. A deadline should be laid down for the notification of the revised measure to the Commission under Article 7 ⊗ 34 ⊗ ~~of Directive 2002/21/EC (Framework Directive)~~ in order to allow market players to know the duration of the market review and in order to increase legal certainty.
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↓ 2009/140/EC recital 19  
(adapted)  
⇒ new

- (80) The Community ⊗ Union ⊗ mechanism allowing the Commission to require national regulatory authorities to withdraw planned measures concerning market definition and the designation of operators having significant market power has contributed significantly to a consistent approach in identifying the circumstances in which *ex ante* regulation may be applied and those in which the operators are subject to such regulation. ~~Monitoring of the market by the Commission and, in particular,~~ ~~the experience of the procedure~~ ⊗ procedures ⊗ under Article 7 ⊗ and 7a ⊗ of Directive 2002/21/EC (Framework Directive) has shown that inconsistencies in the national regulatory authorities' application of remedies, ~~even~~ under similar market conditions, ~~could~~ undermine the internal market in electronic communications. Therefore the Commission ⇒ and BEREC ⇐ ~~may~~ ⇒ should ⇐ participate in ensuring ⇒, within their respective responsibilities, ⇐ a higher level of consistency in the application of remedies ~~by adopting opinions on~~ ⊗ concerning ⊗ draft measures proposed by national regulatory authorities. ⇒ In addition, where BEREC shares the Commission's concerns, the Commission should be able to require a national regulatory authority to withdraw a draft measure. ⇐ In order to benefit from the expertise of national regulatory authorities on the market analysis, the Commission should consult BEREC prior to adoption of its decisions and/or recommendations.
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↓ 2009/140/EC recital 21  
(adapted)

- (81) Having regard to the short time-limits in the Community ⊗ Union ⊗ consultation mechanism, powers should be conferred on the Commission to adopt recommendations and/or guidelines to simplify the procedures for exchanging information between the Commission and national regulatory authorities, for example in cases concerning stable markets, or involving only minor changes to previously notified measures. Powers should also be conferred on the Commission in order to

allow for the introduction of a notification exemption so as to streamline procedures in certain cases.

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↓ 2002/21/EC recital 37 (adapted)  
⇒ new

- (82) National regulatory authorities should be required to cooperate with each other, ⇒ with BEREC ⇐ and with the Commission in a transparent manner to ensure the consistent application, in all Member States, of the provisions of this Directive ~~and the Specific Directives~~. ~~This cooperation could take place, inter alia, in the Communications Committee or in a group comprising European regulators. Member States should decide which bodies are national regulatory authorities for the purposes of this Directive and the Specific Directives.~~
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↓ 2009/140/EC recital 18

- (83) The discretion of national regulatory authorities needs to be reconciled with the development of consistent regulatory practices and the consistent application of the regulatory framework in order to contribute effectively to the development and completion of the internal market. National regulatory authorities should therefore support the internal market activities of the Commission and those of BEREC.
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↓ 2002/21/EC recital 38

- (84) Measures that could affect trade between Member States are measures that may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in a manner which might create a barrier to the single market. They comprise measures that have a significant impact on operators or users in other Member States, which include, *inter alia*: measures which affect prices for users in other Member States; measures which affect the ability of an undertaking established in another Member State to provide an electronic communications service, and in particular measures which affect the ability to offer services on a transnational basis; and measures which affect market structure or access, leading to repercussions for undertakings in other Member States.
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↓ 2009/140/EC recital 6 (adapted)

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

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↓ 2002/21/EC recital 40

~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>51</sup>.~~

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↓ new

- (86) By virtue of their overall economic expertise and market knowledge, and of the objective and technical character of their assessments, and in order to ensure coherence with their other tasks of market regulation, national regulatory authorities should determine the elements of selection procedures and the conditions attached to the rights of use for spectrum which have the greatest impact on market conditions and the competitive situation, including conditions for entry and expansion. That includes for example the parameters for economic valuation of spectrum in compliance with this Directive, the specification of the regulatory and market-shaping measures such as the use of spectrum caps or reservation of spectrum or the imposition of wholesale access obligations, or the means to define the coverage conditions attached to rights of use. A more convergent use and definition of such elements would be favoured by a coordination mechanism whereby BEREC, the Commission and the national regulatory authorities of the other Member States would review draft measures in advance of the granting of rights of use by a given Member State in parallel to the national public consultation. The measure determined by the national regulatory authority can only be a subset of a wider national measure, which may more broadly consist of the granting, trade and lease, duration, renewal or the amendment of rights of use for radio spectrum as well as of the selection procedure or the conditions attached to the rights of use. Therefore, when notifying a draft measure, national regulatory authorities may provide information on other draft national measures related to the relevant selection procedure for limiting rights of use for radio spectrum which are not covered by the peer review mechanism.
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↓ 2002/20/EC recital 24 (adapted)

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

- (88) Member States should be encouraged to consider joint authorisations as an option when issuing rights of use where the expected usage covers cross-border situations.

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<sup>51</sup> ~~OJL 184, 17.7.1999, p. 23~~

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↓ 2009/140/EC recital 58

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

- (90) The ~~Community~~  Union  and the Member States have entered into commitments in relation to standards and the regulatory framework of telecommunications networks and services in the World Trade Organisation.
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↓ 2002/21/EC recital 30 (adapted)

- (91) Standardisation should remain primarily a market-driven process. However there may still be situations where it is appropriate to require compliance with specified standards at ~~Community~~  Union  level to ensure interoperability in the single market. At national level, Member States are subject to the provisions of Directive ~~98/34/EC~~ 2015/1535/EU. ~~Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals<sup>52</sup> did not mandate any specific digital television transmission system or service requirement. Through the Digital Video Broadcasting Group, European market players have developed a family of television transmission systems that have been standardised by the European Telecommunications Standards Institute (ETSI) and have become International Telecommunication Union recommendations. Any decision to make the implementation of such standards mandatory should follow a full public consultation. Standardisation procedures under this Directive are without prejudice to the provisions of Directive 1999/5/EC, Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits<sup>53</sup> and Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility<sup>54</sup> the Radio Equipment Directive 2014/53/EU, the Low Voltage Directive 2014/35/EU and the Electromagnetic Compatibility Directive 2014/30/EU.~~
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↓ 2002/21/EC recital 31

~~Interoperability of digital interactive television services and enhanced digital television equipment, at the level of the consumer, should be encouraged in order to ensure the free flow of information, media pluralism and cultural diversity. It is desirable for consumers to have the capability of receiving, regardless of the transmission mode, all digital interactive~~

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<sup>52</sup> OJL 281, 23.11.1995, p. 51.

<sup>53</sup> OJL 77, 26.3.1973, p. 29.

<sup>54</sup> OJL 139, 23.5.1989, p. 19.

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

↓ new

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

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

(94) Competent authorities should ensure that the integrity and availability of public communications networks are maintained. The European Network and Information Security Agency ('ENISA') should contribute to an enhanced level of security of electronic communications by, amongst other things, providing expertise and advice, and promoting the exchange of best practices. The competent authorities should have

the necessary means to perform their duties, including powers to request the information necessary to assess the level of security of networks or services. They should also have the power to request comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. They should, where necessary, be assisted by Computer Security Incident Response Teams (CSIRTs) established under Article 9 of Directive (EU) 2016/1148/EU<sup>55</sup>. In particular, CSIRTs may be required to provide competent authorities with information about risks and incidents affecting public communications networks and publicly available electronic communications services and recommend ways to address them.

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

↓ 2002/20/EC recital 32

⇒ new

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

<sup>55</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016).

with regard to best practices for the assignment of radio frequencies ⇒ spectrum ⇐, the assignment of numbers or the granting of rights of way.

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↓ new

- (97) In line with their role of ensuring optimal use of radio spectrum, fees linked to rights of use for radio spectrum can influence decisions about whether to seek such rights and put into use radio spectrum resources. When setting reserve prices as a means to determine the minimum valuation ensuring optimal use, Member States should therefore ensure that such prices, irrespective of the type of selection procedure used, also reflect the additional costs associated with the fulfilment of authorisation conditions imposed to further policy objectives that would not reasonably be expected to be met pursuant to normal commercial standards, such as territorial coverage conditions. In doing so, regard should also be had to the competitive situation of the market concerned.
- (98) Optimal use of radio spectrum resources depends on the availability of appropriate networks and associated facilities. In that regard, fees for rights of use for radio spectrum and for rights to install facilities should take into consideration the need to facilitate continuous infrastructure development with a view to achieving the most efficient use of the resources. Member States should therefore provide for modalities for payment of the fees for rights of use for radio spectrum linked with the actual availability of the resource in a manner that facilitates the investments necessary to promote such development. The modalities should be specified in an objective, transparent, proportionate and non-discriminatory manner before opening procedures for the granting of rights of use for spectrum.
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↓ 2002/21/EC recital 22

- (99) It should be ensured that procedures exist for the granting of rights to install facilities that are timely, non-discriminatory and transparent, in order to guarantee the conditions for fair and effective competition. This Directive is without prejudice to national provisions governing the expropriation or use of property, the normal exercise of property rights, the normal use of the public domain, or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership.
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↓ 2009/140/EC recital 42

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

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↓ 2009/140/EC recital 43  
(adapted)  
⇒ new

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

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↓ 2002/21/EC recital 23  
⇒ new

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

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↓ 2002/21/EC recital 24

⇒ new

- (102) Where mobile operators are required to share towers or masts for environmental reasons, such mandated sharing may lead to a reduction in the maximum transmitted power levels allowed for each operator for reasons of public health, and this in turn may require operators to install more transmission sites to ensure national coverage. ⇒ Competent authorities should seek to reconcile the environmental and public health considerations in question, taking due account of the precautionary approach set out in Council Recommendation No 1999/519/EC. ⇐
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↓ 2002/20/EC recital 29

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

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↓ 2002/21/EC recital 19 (adapted)

⇒ new

- (103) ~~Radio frequencies~~ ⇒ Radio spectrum is a scarce public resource with an important public and market value. ⇐ ⊗ It is ⊗ an essential input for radio-based electronic communications ⊗ networks and ⊗ services and, in so far as ⊗ it relates ⊗ they relate to such ⊗ networks and ⊗ services, should therefore be ⇒ efficiently ⇐ allocated and assigned by national regulatory authorities according to a set of harmonised objectives and principles governing their action as well as to objective, transparent and non-discriminatory criteria, taking into account the democratic, social, linguistic and cultural interests related to the use of frequency ⊗ frequencies ⊗. It is important that the allocation and assignment of radio frequencies is managed as efficiently as possible. Transfer of radio frequencies spectrum can be an effective means of increasing efficient use of spectrum, as long as there are sufficient safeguards in place to protect the public interest, in particular the need to ensure transparency and regulatory supervision of such transfers. Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)<sup>56</sup> establishes a framework for harmonisation of radio frequencies ⇒ spectrum ⇐, and action taken under this Directive should seek to facilitate the work under that Decision.

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<sup>56</sup> Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) (OJ L 108, 24.4.2002).

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

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

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↓ new

- (105) Ensuring ubiquitous connectivity in each Member State is essential for economic and social development, participation in public life and social and territorial cohesion. As connectivity becomes an integral element to European society and welfare, EU-wide coverage should be achieved by relying on imposition by Member States of appropriate coverage requirements, which should be adapted to each area served and limited to proportionate burdens in order not to hinder deployment by service providers. Coverage of the territory as well as connectivity across Member States should be maximised and reliable, with a view to promote in-border and cross-border services and applications such as connected cars and e-health. Therefore, in order to increase regulatory certainty and predictability of investment needs and to guarantee proportionate and equitable connectivity for all citizens, application by competent authorities of coverage obligations should be coordinated at Union level. Considering national specificities, such coordination should be limited to general criteria to be used to define and measure coverage obligations, such as population density or topographical and topological features.
- (106) The need to ensure that citizens are not exposed to electromagnetic fields at a level harmful to public health should be approached in a consistent way across the Union, having particular regard to the precautionary approach taken in Council Recommendation No 1999/519/EC<sup>57</sup>, in order to ensure consistent deployment conditions.
- (107) Spectrum harmonisation and coordination and equipment regulation supported by standardisation are complementary need to be coordinated closely to meet their joint objectives effectively, with the support of the RSPG. Coordination between the content and timing of mandates to CEPT under the Radio Spectrum Decision and standardisation requests to standardisation bodies, such as the European Telecommunications Standards Institute, including with regard to radio receivers parameters, should facilitate the introduction of future systems, support spectrum sharing opportunities and ensure efficient spectrum management.

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<sup>57</sup> Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz), OJ L 199, 30.7.1999, p. 59–70.

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

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↓ 2009/140/EC recital 34  
(adapted)

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

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↓ 2009/140/EC recital 35  
(adapted)

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

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

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

competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity and media pluralism.

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↓ 2009/140/EC recital 38

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

- (113) In exceptional cases where Member States decide to limit the freedom to provide electronic communications networks and services based on grounds of public policy, public security or public health, Member States should explain the reasons for such limitation.
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↓ 2009/140/EC recital 31

⇒ new

- (114) Radio ~~frequencies~~ ⇒ spectrum ⇐ should be managed so as to ensure that harmful interference is avoided. This basic concept of harmful interference should therefore be properly defined to ensure that regulatory intervention is limited to the extent necessary to prevent such interference. ⇒ having regard also to the need for network equipment and end-user devices to incorporate resilient receiver technology. Transport has a strong cross-border element and its digitalisation brings challenges. Vehicles (metro, bus, cars, trucks, trains, etc) are becoming more and more autonomous and connected. In an EU single market, vehicles travel beyond national borders more easily. Reliable communications, and avoiding harmful interferences, are critical for the safe and good operation of vehicles and their on-board communications systems.  
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↓ new

- (115) With growing spectrum demand and new varying applications and technologies which necessitate more flexible access and use of spectrum, Member States should promote the shared use of spectrum by determining the most appropriate authorisation regimes for each scenario and by defining appropriate and transparent rules and conditions therefor. Shared use of spectrum increasingly ensures its effective and efficient use by allowing several independent users or devices to access the same frequency band under various types of legal regimes so as to make additional spectrum resources available, raise usage efficiency and facilitate spectrum access for new users. Shared use can be based on general authorisations or licence-exempt use allowing, under specific sharing conditions, several users to access and use the same spectrum in different geographic areas or at different moments in time. It can also be based on individual rights of use under arrangements such as licenced shared access where all users (with an existing user and new users) agree on the terms and conditions for shared access, under the supervision of the competent authorities, in such a way as to ensure a minimum guaranteed radio transmission quality. When allowing shared use

under different authorisation regimes, Member States should not set widely diverging durations for such use under different authorisation regimes.

- (116) In order to ensure predictability and preserve legal certainty and investment stability, Member States should define in advance appropriate criteria to determine compliance with the objective of efficient use of spectrum by right holders when implementing the conditions attached to individual rights of use and general authorisations. Interested parties should be involved in the definition of such conditions and informed in a transparent manner about how the fulfilment of their obligations will be assessed.
- (117) Considering the importance of technical innovation, Member States should be able to provide for rights to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.
- (118) Network infrastructure sharing, and in some instances spectrum sharing, can allow for a more efficient and effective use of radio spectrum and ensure the rapid deployment of networks, especially in less densely populated areas. When defining the conditions to be attached to rights of use for radio spectrum, competent authorities should also consider authorising forms of sharing or coordination between undertakings with a view to ensure effective and efficient use of spectrum or compliance with coverage obligations, in compliance with competition law principles.
- (119) Market conditions as well as the relevance and number of players can differ amongst Member States. While the need and opportunity to attach conditions to rights of use for radio spectrum can be subject to national specificities which should be duly accommodated, the modalities of the application of such obligations should be coordinated at EU level through Commission implementing measures to ensure a consistent approach in addressing similar challenges across the EU.

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

- (120) ⇒ The requirements of service and technology neutrality in granting rights of use, together with the possibility to transfer rights between undertakings, underpin the freedom and means to deliver electronic communications services to the public, thereby also facilitating the achievement of general interest objectives. ⇐ This Directive does not prejudice whether radio frequencies ⇒ spectrum ⇐  is  are assigned directly to providers of electronic communications networks or services or to entities that use these networks or services. Such entities may be radio or television broadcast content providers. ~~Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use for radio frequencies to providers of radio or television broadcast content services, to pursue general interest objectives in conformity with Community law, the procedure for assignment of radio frequencies should in any event be objective, transparent, non-discriminatory and proportionate. In accordance with case law of the Court of Justice, any national restrictions on the rights guaranteed by Article 49 of the Treaty should be objectively justified, proportionate and not exceed what is necessary to achieve general interest objectives as defined by Member States in conformity with Community law.~~ The responsibility for compliance with the conditions attached to the right to use a radio frequency and the relevant conditions attached to the general authorisation should in any case lie with the undertaking to whom the right of use for the radio frequencies ⇒ spectrum ⇐ has been granted. ⇒ Certain obligations imposed on broadcasters for the delivery of audiovisual

media services may require the use of specific criteria and procedures for the granting of spectrum usage rights to meet a specific general interest objective set out by Member States in conformity with Union law. ↩ ⊗ However, the procedure for the granting of such right should in any event be objective, transparent, non-discriminatory and proportionate. The case law of the Court of Justice requires that any national restrictions on the rights guaranteed by Article 56 of the Treaty on the Functioning of the European Union should be objectively justified, proportionate and not exceed what is necessary to achieve those objectives. ⊗ ⇒ Moreover, spectrum granted without following an open procedure should not be used for purposes other than the general interest objective for which they were granted. In such case, the interested parties should be given the opportunity to comment within a reasonable period. ↩ As part of the application procedure for granting rights ~~to use a radio frequency~~, Member States ~~may~~ ⊗ should ⊗ verify whether the applicant will be able to comply with the conditions ⊗ to be ⊗ attached to such rights. ⇒ These conditions should be reflected in eligibility criteria set out in objective, transparent, proportionate and non-discriminatory terms prior to the launch of any competitive selection procedure. ↩ For ~~this~~ ⊗ the ⊗ purpose ⊗ of applying these criteria ⊗, the applicant may be requested to submit the necessary information to prove his ability to comply with these conditions. Where such information is not provided, the application for the right to use a radio frequency may be rejected.

↓ new

- (121) Member States should only impose, prior to the granting of right, the verification of elements that can reasonably be demonstrated by an applicant exercising ordinary care, taking due account of the important public and market value of radio spectrum as a scarce public resource. This is without prejudice to the possibility for subsequent verification of the fulfilment of eligibility criteria, for example through milestones, where criteria could not reasonably be met initially. To preserve effective and efficient use of radio spectrum, Member States should not grant rights where their review indicates applicants' inability to comply with the conditions, without prejudice to the possibility of facilitating time-limited experimental use. Sufficiently long duration of authorisations for the use of spectrum should increase investment predictability to contribute to faster network roll-out and better services, as well as stability to support spectrum trading and leasing. Unless use of spectrum is authorised for an unlimited period of time, such duration should both take account of the objectives pursued and be sufficient to facilitate recoupment of the investments made. While a longer duration can ensure investment predictability, measures to ensure effective and efficient use of radio spectrum, such as the power of the competent authority to amend or withdraw the right in case of non-compliance with the conditions attached to the rights of use, or the facilitation of radio spectrum tradability and leasing, will serve to prevent inappropriate accumulation of radio spectrum and support greater flexibility in distributing spectrum resources. Greater recourse to annualised fees is also a means to ensure a continuous assessment of the use of the spectrum by the holder of the right.
- (122) In deciding whether to renew already granted rights of use for radio spectrum, competent authorities should take into account the extent to which renewal would further the objectives of the regulatory framework and other objectives under national and Union law. Any such decision should be subject to an open, non-discriminatory and transparent procedure and based on a review of how the conditions attached to the rights concerned have been fulfilled. When assessing the need to renew rights of use,

Member States should weigh the competitive impact of extending already assigned rights against the promotion of more efficient exploitation or of innovative new uses that might result if the band were opened to new users. Competent authorities may make their determination in this regard by allowing for only a limited extension in order to prevent severe disruption of established use. While decisions on whether to extend rights assigned prior to the applicability of this Directive should respect any rules already applicable, Member States should equally ensure that they do not prejudice the objectives of this Directive.

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

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

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

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

↓ new

(126) Measures taken specifically to promote competition when granting or renewing rights of use for radio spectrum should be decided by national regulatory authorities, which have the necessary economic, technical and market knowledge. Spectrum assignment conditions can influence the competitive situation in electronic communications markets and conditions for entry. Limited access to spectrum, in particular when

spectrum is scarce, can create a barrier to entry or hamper investment, network roll-out, the provision of new services or applications, innovation and competition. New rights of use, including those acquired through transfer or leasing, and the introduction of new flexible criteria for spectrum use can also influence existing competition. Where unduly applied, certain conditions used to promote competition, can have other effects; for example, spectrum caps and reservations can create artificial scarcity, wholesale access obligations can unduly constrain business models in the absence of market power, and limits on transfers can impede the development of secondary markets. Therefore, a consistent and objective competition test for the imposition of such conditions is necessary and should be applied consistently. The use of such measures should therefore be based on a thorough and objective assessment, by national regulatory authorities, of the market and the competitive conditions thereof.

- (127) Building on opinions from the RSPG, the adoption of a common deadline for allowing the use of a band which has been harmonised under the Radio Spectrum Decision can be necessary to avoid cross-border interferences and beneficial to ensure release of the full benefits of the related technical harmonisation measures for equipment markets and for the deployment of very high capacity electronic communications networks and services. In order to significantly contribute to the objectives of this framework and facilitate coordination, the establishment of such common deadlines should be subject to Commission implementing acts.

↓ 2002/20/EC recital 22 (adapted)  
⇒ new

- (128) Where the demand for ~~⊗~~ a ~~⊗~~ radio frequencies in a specific ~~⊗~~ spectrum ~~⊗~~ range ~~⊗~~ band ~~⊗~~ exceeds their availability ⇒ and, as a result, a Member State concludes that the rights of use for radio spectrum must be limited ⇐, appropriate and transparent procedures should be followed ~~⊗~~ apply ~~⊗~~ for the assignment ~~⊗~~ granting ~~⊗~~ of such frequencies ~~⊗~~ rights ~~⊗~~ in order to avoid any discrimination and optimise ~~⊗~~ the ~~⊗~~ use of those ~~⊗~~ the ~~⊗~~ scarce resources.

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

⇒ Such limitation should be justified, proportionate and based on a thorough assessment of market conditions, giving due weight to the overall benefits for users and to national and internal market objectives. The objectives governing any limitation procedure should be clearly defined in advance. When considering the most appropriate selection procedure, and in compliance with coordination measures taken at Union level, Member States should timely and transparently consult all interested parties on the justification, objectives and conditions of the procedure. ⇐ Member States may use, *inter alia*, competitive or comparative selection procedures for the assignment of radio frequencies ⇒ spectrum ⇐ as well as ~~⊗~~ or for ~~⊗~~ numbers with exceptional economic value. In administering such schemes, national regulatory authorities should take into account the provisions of Article 8 ⇒ objectives of this Directive ⇐. ⇒ If a Member State finds that further rights can be made available in a band, it should start the process therefor. ⇐

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↓ 2002/20/EC recital 23

~~Directive. It would therefore not be contrary to this Directive if the application of objective, non-discriminatory and proportionate selection criteria to promote the development of competition would have the effect of excluding certain undertakings from a competitive or comparative selection procedure for a particular radio frequency. A Member State may find that further rights can be made available in a band. In this case it should start the process of making such rights available.~~

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↓ new

(129) Massive growth in radio spectrum demand, and in end-user demand for wireless broadband capacity, calls for solutions allowing alternative, complementary, spectrally efficient access solutions, including low-power wireless access systems with a small-area operating range such as radio local area networks (RLAN) and networks of low-power small-size cellular access points. Such complementary wireless access systems, in particular publicly accessible RLAN access points, increase access to the internet for end-users and mobile traffic off-loading for mobile operators. RLANs use harmonised radio spectrum without requiring an individual authorisation or spectrum usage right. Most RLAN access points are so far used by private users as local wireless extension of their fixed broadband connection. End-users, within the limits of their own internet subscription, should not be prevented from sharing access to their RLAN with others, so as to increase the number of available access points, particularly in densely populated areas, maximise wireless data capacity through radio spectrum re-use and create a cost-effective complementary wireless broadband infrastructure accessible to other end-users. Therefore, unnecessary restrictions to the deployment and interlinkage of RLAN access points should also be removed. Public authorities or public service providers, who use RLANs in their premises for their personnel, visitors or clients, for example to facilitate access to e-Government services or for information on public transport or road traffic management, could also provide access to such access points for general use by citizens as an ancillary service to services they offer to the public on such premises, to the extent allowed by competition and public procurement rules. Moreover, the provider of such local access to electronic communications networks within or around a private property or a limited public area on a non-commercial basis or as an ancillary service to another activity that is not dependant on such access (such as RLAN hotspots made available to customers of other commercial activities or to the general public in that area) can be subject to compliance with general authorisations for rights of use for radio spectrum but should not be subject to any conditions or requirements attached to general authorisations applicable to providers of public communications networks or services or to obligations regarding end-users or interconnection. However, such provider should remain subject to the liability rules of Article 12 of Directive 2000/31/EC on electronic commerce<sup>58</sup>. Further technologies such as LiFi are emerging that will complement current radio spectrum capabilities of RLANs and wireless access point

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<sup>58</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), (OJ L 178, 17.7.2000, p.1).

to include optical visible light-based access points and lead to hybrid local area networks allowing optical wireless communication.

- (130) Since low power small-area wireless access points are very small and make use of unobtrusive equipment similar to that of domestic RLAN routers and considering their positive impact on the use of spectrum and on the development of wireless communications, their technical characteristics - such as power output- should be specified at Union level in a proportionate way for local deployment and their use should be subject to general authorisations only – to the exception of RLAN which should not be subject to any authorisation requirement beyond what is necessary for the use of radio spectrum - and any additional restrictions under individual planning or other permits should be limited to the greatest extent possible.

↓ 2002/19/EC recital 1 (adapted)

- (131) ~~Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)<sup>59</sup> lays down the objectives of a regulatory framework to cover electronic communications networks and services in the Community, including fixed and mobile telecommunications networks, cable television networks, networks used for terrestrial broadcasting, satellite networks and Internet networks, whether used for voice, fax, data or images. Such networks may have been authorised by Member States under Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)<sup>60</sup> or have been authorised under previous regulatory measures. The provisions of this Directive ☒ as regards access and interconnection ☒ apply to those networks that are used for the provision of publicly available electronic communications services. This Directive covers access and interconnection arrangements between service suppliers. Non-public networks do not have ☒ access or interconnection ☒ obligations under this Directive except where, in benefiting from access to public networks, they may be subject to conditions laid down by Member States.~~

↓ 2002/19/EC recital 2

~~Services providing content such as the offer for sale of a package of sound or television broadcasting content are not covered by the common regulatory framework for electronic communications networks and services.~~

↓ 2002/19/EC recital 3 (adapted)

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

<sup>59</sup> [See page 33 of this Official Journal](#)

<sup>60</sup> [See page 21 of this Official Journal](#)

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↓ 2002/19/EC recital 5  
⇒ new

- (133) In an open and competitive market, there should be no restrictions that prevent undertakings from negotiating access and interconnection arrangements between themselves, in particular on cross-border agreements, subject to the competition rules of the Treaty. In the context of achieving a more efficient, truly pan-European market, with effective competition, more choice and competitive services to consumers ⇒ end-users ⇐, undertakings which receive requests for access or interconnection ⇒ from other undertakings which are subject to general authorisation in order to provide electronic communications networks or services to the public ⇐ should in principle conclude such agreements on a commercial basis, and negotiate in good faith.
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↓ 2002/19/EC recital 6 (adapted)  
⇒ new

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

- (135) In the light of the principle of non-discrimination, national regulatory authorities should ensure that all operators, irrespective of their size and business model, whether vertically integrated or separated, can interconnect on reasonable terms and conditions, with the view to providing end-to-end connectivity and access to the global Internet.
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↓ 2002/19/EC recital 7

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

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↓ 2002/19/EC recital 8  
⇒ new

- (137) Network operators who control access to their own customers do so on the basis of unique numbers or addresses from a published numbering or addressing range. Other network operators need to be able to deliver traffic to those customers, and so need to be able to interconnect directly or indirectly to each other. ~~The existing~~ ⇒ It is therefore appropriate to lay down ⇐ rights and obligations to negotiate interconnection ~~should therefore be maintained. It is also appropriate to maintain the obligations formerly laid down in Directive 95/47/EC requiring fully digital electronic communications networks used for the distribution of television services and open to the public to be capable of distributing wide-screen television services and programmes, so that users are able to receive such programmes in the format in which they were transmitted.~~
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↓ 2002/19/EC recital 9

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

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

- (140) In case such interoperability issues arise, the Commission may request a BEREC report which should provide a factual assessment of the market situation at the Union and Member States level. On the basis of the BEREC report and other available evidence and taking into account the effects on the internal market, the Commission should decide whether there is a need for regulatory intervention by national regulatory authorities. If the Commission considers that such regulatory intervention should be considered by National Regulatory Authorities, it may adopt implementing measures specifying the nature and scope of possible regulatory interventions by NRAs, including in particular measures to impose the mandatory use of standards or specifications on all or specific providers. The terms 'European standards' and

'international standards' are defined in Article 2 of Regulation (EU) No 1025/2012.<sup>61</sup> National regulatory authorities should assess, in the light of the specific national circumstances, whether any intervention is necessary and justified to ensure end-to-end-connectivity or access to emergency services, and if so, impose proportionate obligations in accordance with the Commission implementing measures.

- (141) In situations where undertakings are deprived of access to viable alternatives to non-replicable assets up to the first distribution point, national regulatory authorities should be empowered to impose access obligations to all operators, without prejudice to their respective market power. In this regard, national regulatory authorities should take into consideration all technical and economic barriers to future replication of networks. The mere fact that more than one such infrastructure already exists should not necessarily be interpreted as showing that its assets are replicable. The first distribution point should be identified by reference to objective criteria.
- (142) It could be justified to extend access obligations to wiring and cables beyond the first concentration point in areas with lower population density, while confining such obligations to points as close as possible to end-users, where it is demonstrated that replication would also be impossible beyond that first concentration point
- (143) In such cases, in order to comply with the principle of proportionality, it can be appropriate for national regulatory authorities to exclude certain categories of owners or undertakings, or both, from obligations going beyond the first distribution point, on the grounds that an access obligation not based on significant market power would risk compromising their business case for recently deployed network elements. Structurally separated undertakings should not be subject to such access obligations if they offer an effective alternative access on a commercial basis to a very high capacity network.
- (144) Sharing of passive or active infrastructure used in the provision of wireless electronic communications services, or the joint roll-out of such infrastructures, in compliance with competition law principles can be particularly useful to maximise very high capacity connectivity throughout the Union, especially in less dense areas where replication is impracticable and end-users risk being deprived of such connectivity. National regulatory authorities should, exceptionally, be enabled to impose such sharing or joint roll-out, or localised roaming access, in compliance with Union law, if they demonstrate the benefits of such sharing or access in terms of overcoming very significant barriers to replication and of addressing otherwise severe restrictions on end-user choice or quality of service, or both, or on territorial coverage, and taking into account several elements, including in particular the need to maintain infrastructure roll-out incentives.

↓ 2009/140/EC recital 65  
(adapted)

- (145) While it is appropriate in some circumstances for a national regulatory authority to impose obligations on operators that do not have significant market power in order to

<sup>61</sup> Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council [OJ L 364 of 14.11.2012, p.12]

achieve goals such as end-to-end connectivity or interoperability of services, it is however necessary to ensure that such obligations are imposed in conformity with the EU regulatory framework and, in particular, its notification procedures.

↓ 2002/19/EC recital 10 (adapted)  
⇒ new

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

↓ 2002/19/EC recital 11

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

↓ 2002/19/EC recital 12 (adapted)

~~In order to ensure continuity of existing agreements and to avoid a legal vacuum, it is necessary to ensure that obligations for access and interconnection imposed under Articles 4, 6, 7, 8, 11, 12, and 14 of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP)<sup>62</sup>, obligations on special access imposed under Article 16 of Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment<sup>63</sup>, and obligations concerning the provision of leased line transmission capacity under Council Directive 92/44/EEC of 5 June 1992 on the application~~

<sup>62</sup> ~~OJ L 199, 26.7.1997, p. 32. Directive as last amended by Directive 98/61/EC (OJ L 268, 3.10.1998, p. 37).~~

<sup>63</sup> ~~OJ L 101, 1.4.1998, p. 24.~~

of open network provision to leased lines<sup>64</sup>, are initially carried over into the new regulatory framework, but are subject to immediate review in the light of prevailing market conditions. Such a review should also extend to those organisations covered by Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop<sup>65</sup>.

↓ 2002/19/EC recital 13 (adapted)

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

↓ 2002/19/EC recital 14 (adapted)

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

↓ 2002/21/EC recital 25 (adapted)

⇒ new

(148) There is a need for *ex ante* obligations in certain circumstances in order to ensure the development of a competitive market, ⇒ the conditions of which favour the deployment and take-up of very high capacity connectivity and the maximisation of end-user benefits ⇐. The definition of significant market power in the Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on

<sup>64</sup> [OJL 165, 19.6.1992, p. 27. Directive as last amended by Commission Decision No 98/80/EC \(OJL 14, 20.1.1998, p. 27\).](#)

<sup>65</sup> [OJL 366, 30.12.2000, p. 4.](#)

~~interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP)<sup>66</sup> has proved effective in the initial stages of market opening as the threshold for ex ante obligations, but now needs to be adapted to suit more complex and dynamic markets. For this reason, the definition used in this Directive is equivalent to the concept of dominance as defined in the case law of the Court of Justice and the Court of First Instance of the European Communities.~~

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↓ 2002/21/EC recital 26

- (149) Two or more undertakings can be found to enjoy a joint dominant position not only where there exist structural or other links between them but also where the structure of the relevant market is conducive to coordinated effects, that is, it encourages parallel or aligned anti-competitive behaviour on the market.
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↓ 2002/21/EC recital 27 (adapted)  
⇒ new

- (150) It is essential that *ex ante* regulatory obligations should only be imposed ⇒ on a wholesale market ⇐ ~~where there is not effective competition, i.e. in markets~~ where there are one or more undertakings with significant market power, ⇒ with a view to ensure sustainable competition on a related retail market ⇐, and where national and ~~Community~~ ⊗ Union ⊗ competition law remedies are not sufficient to address the problem. ~~It is necessary therefore for~~ ⊗ The Commission ⊗ has ⊗ to draw up guidelines at ~~Community~~ ⊗ Union ⊗ level in accordance with the principles of competition law for national regulatory authorities to follow in assessing whether competition is effective in a given market and in assessing significant market power. National regulatory authorities should analyse whether a given product or service market is effectively competitive in a given geographical area, which could be the whole or a part of the territory of the Member State concerned or neighbouring parts of territories of Member States considered together. An analysis of effective competition should include an analysis as to whether the market is prospectively competitive, and thus whether any lack of effective competition is durable. Those guidelines ~~will~~ ⊗ should ⊗ also address the issue of newly emerging markets, where de facto the market leader is likely to have a substantial market share but should not be subjected to inappropriate obligations. The Commission should review the guidelines regularly, ⇒ in particular on the occasion of a review of the existing legislation, taking into account evolving case law, economic thinking and actual market experience and with a view ⇐ to ensureing that they remain appropriate in a rapidly developing market. National regulatory authorities will need to cooperate with each other where the relevant market is found to be transnational.
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↓ 2002/21/EC recital 28 (adapted)

- (151) In determining whether an undertaking has significant market power in a specific market, national regulatory authorities should act in accordance with ~~Community~~

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<sup>66</sup> ~~OJL 199, 26.7.1997, p. 32. Directive as amended by Directive 98/61/EC (OJL 268, 3.10.1998, p. 37).~~

⊗ Union ⊗ law and take into the utmost account the Commission guidelines ⊗ on market analysis and the assessment of significant market power ⊗ .

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↓ new

- (152) National regulatory authorities should define relevant geographic markets within their territory taking into utmost account the Commission Recommendation on Relevant Product and Service Markets adopted in accordance with this Directive and taking into account national and local circumstances. Therefore, national regulatory authorities should at least analyse the markets that are contained in the Recommendation, including those markets that are listed but no longer regulated in the specific national or local context. National regulatory authorities should also analyse markets that are not contained in that Recommendation, but are regulated within the territory of their jurisdiction on the basis of previous market analyses, or other markets, if they have sufficient grounds to consider that the three criteria test provided in this Directive may be met.
- (153) Transnational markets can be defined when it is justified by the geographic market definition, taking into account all supply-side and demand-side factors in accordance with competition law principles. BEREC is the most appropriate body to undertake such analysis, benefiting from the extensive collective experience of national regulatory authorities when defining markets on a national level. If transnational markets are defined and warrant regulatory intervention, concerned national regulatory authorities should cooperate to identify the appropriate regulatory response, including in the process of notification to the Commission. They can also cooperate in the same manner where transnational markets are not identified but on their territories market conditions are sufficiently homogeneous to benefit from a coordinated regulatory approach, such as for example in terms of similar costs, market structures or operators or in case of transnational or comparable end-user demand.
- (154) In some circumstances geographic markets are defined as national or sub-national, for example due to the national or local nature of network roll-out which determines the boundaries of undertakings' potential market power in respect of wholesale supply, but there still is a significant transnational demand from one or more categories of end-users. That can in particular be the case for demand from business end-users with multisite facility operations in different Member States. If that transnational demand is not sufficiently met by suppliers, for example if they are fragmented along national borders or locally, a potential internal market barrier arises. Therefore, BEREC should be empowered to provide guidelines to national regulatory authorities on common regulatory approaches to ensure that transnational demand can be met in a satisfactory way, permitting efficiencies and economies of scale despite the fragmented supply side. BEREC's guidelines should shape the choices of national regulatory authorities in pursuing the internal market objective when imposing regulatory obligations on SMP operators at the national level.
- (155) If national regulatory authorities have not followed the common approach recommended by BEREC to meet the identified transnational demand, with the consequence that transnational end-user demand is not efficiently met, and that avoidable barriers to the internal market arise, it could be necessary to harmonise the technical specifications of wholesale access products capable of meeting a given transnational demand, taking into account the BEREC guidelines.

- (156) The objective of any *ex ante* regulatory intervention is ultimately to produce benefits for end-users in terms of price, quality and choice by making retail markets effectively competitive on a sustainable basis. It is likely that national regulatory authorities will gradually be able to find many retail markets to be competitive even in the absence of wholesale regulation, especially taking into account expected improvements in innovation and competition.
- (157) For national regulatory authorities the starting point for the identification of wholesale markets susceptible to *ex ante* regulation is the analysis of corresponding retail markets. The analysis of effective competition at the retail and at the wholesale level is conducted from a forward-looking perspective over a given time horizon, and is guided by competition law, including the relevant case-law of the Court of Justice, as appropriate. If it is concluded that a retail markets would be effectively competitive in the absence of *ex ante* wholesale regulation on the corresponding relevant market(s), this should lead the national regulatory authority to conclude that regulation is no longer needed at the relevant wholesale level.
- (158) During the gradual transition to deregulated markets, commercial agreements between operators will gradually become more common, and if they are sustainable and improve competitive dynamics, they can contribute to the conclusion that a particular wholesale market does not warrant *ex ante* regulation. A similar logic would apply in reverse, to unforeseeable termination of commercial agreements on a deregulated market. The analysis of such agreements should take into account that the prospect of regulation can be a motive for network owners to enter into commercial negotiations. With a view to ensure adequate consideration of the impact of regulation imposed on related markets when determining whether a given market warrants *ex ante* regulation, national regulatory authorities should ensure markets are analysed in a coherent manner and where possible, at the same time or as close as possible to each other in time.
- (159) When assessing wholesale regulation to solve problems at the retail level, national regulatory authorities should take into account that several wholesale markets can provide wholesale upstream inputs for a particular retail market, and conversely, one wholesale market can provide wholesale upstream inputs for a variety of retail markets. Furthermore, competitive dynamics in a particular market can be influenced by markets that are contiguous but not in a vertical relationship, such as can be the case between certain fixed and mobile markets. National regulatory authorities should conduct that assessment for each individual wholesale market considered for regulation, starting with remedies for access to civil infrastructure, as such remedies are usually conducive to more sustainable competition including infrastructure competition, and thereafter analysing any wholesale markets considered susceptible to *ex ante* regulation in order of their likely suitability to address identified competition problems at retail level. When deciding on the specific remedy to be imposed, national regulatory authorities should assess its technical feasibility and carry out a cost-benefit analysis, having regard to its degree of suitability to address the identified competition problems at retail level. National regulatory authorities should consider the consequences of imposing any specific remedy which, if feasible only on certain network topologies, could constitute a disincentive for the deployment of very high capacity networks in the interest of end-users. At each stage of the assessment, before the national regulatory authority determines whether any additional remedy should be imposed on the significant market power operator, it should seek to determine whether the retail market concerned would be effectively competitive in the light of any

relevant commercial arrangements or other wholesale market circumstances, including other types of regulation already in force, such as for example general access obligations to non-replicable assets or obligations imposed pursuant to Directive 2014/61/EU, and of any regulation already deemed appropriate by the national regulatory authority for an operator with significant market power. Even if such differences do not result in the definition of distinct geographic markets, they may justify differentiation in the appropriate remedies imposed in the light of the differing intensity of competitive constraints.

- (160) *Ex ante* regulation imposed at the wholesale level, which is in principle less intrusive than retail regulation, is considered sufficient to tackle potential competition problems on the related downstream retail market or markets. The advances in the functioning of competition since the regulatory framework for electronic communications has been in place are demonstrated by the progressive deregulation of retail markets across the Union. Further, the rules relating to the imposition of *ex ante* remedies on undertakings with significant market power should be simplified and be made more predictable, where possible. Therefore, the power of imposition of *ex ante* regulatory controls based on significant market power in retail markets should be repealed.
- (161) When a national regulatory authority withdraws wholesale regulation it should define an appropriate period of notice to ensure a sustainable transition to a de-regulated market. In defining such period, the national regulatory authority should take into account the existing agreements between access providers and access seekers that have been entered into on the basis of the imposed regulatory obligations. In particular, such agreements can provide a contractual legal protection to access seekers for a determined period of time. The national regulatory authority should also take into account the effective possibility for market participants to take up any commercial wholesale access or co-investment offers which can be present in the market and the need to avoid an extended period of possible regulatory arbitrage. Transition arrangements established by the national regulatory authority should consider the extent and timing of regulatory oversight of pre-existing agreements, once the notice period starts.

↓ 2009/140/EC recital 48

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

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↓ 2009/140/EC recital 49  
(adapted)

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

- (164) However, in the interest of greater stability and predictability of regulatory measures, the maximum period allowed between market analyses should be extended from three to five years, provided market changes in the intervening period do not require a new analysis. In determining whether a national regulatory authority has complied with its obligation to analyse markets and notified the corresponding draft measure at a minimum every five years, only a notification including a new assessment of the market definition and of significant market power will be considered as starting a new five-year market cycle. A mere notification of new or amended regulatory remedies, imposed on the basis of a previous and unrevised market analysis will not be considered to have satisfied that obligation.
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↓ 2002/19/EC recital 15  
⇒ new

- (165) The imposition of a specific obligation on an undertaking with significant market power does not require an additional market analysis but a justification that the obligation in question is appropriate and proportionate in relation to the nature of the problem identified ⇒ on the market in question, and on the related retail market ⇐ .
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↓ 2009/140/EC recital 56  
⇒ new

- (166) When assessing the proportionality of the obligations and conditions to be imposed, national regulatory authorities should take into account the different competitive conditions existing in the different areas within their Member States ⇒ having regard in particular to the results of the geographical survey conducted in accordance with this Directive ⇐ .
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↓ 2009/140/EC recital 57  
(adapted)

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

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↓ new

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

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↓ 2002/19/EC recital 16 (adapted)

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

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↓ new

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

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↓ 2002/19/EC recital 17

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

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↓ new

(172) In order to address and prevent non-price related discriminatory behaviour, equivalence of inputs (EoI) is in principle the surest way to achieve effective protection from discrimination. On the other hand, providing regulated wholesale inputs on an EoI basis is likely to trigger higher compliance costs than other forms of non-discrimination obligations. Those higher compliance costs should be measured against the benefits of more vigorous competition downstream, and of the relevance of non-discrimination guarantees in circumstances where the operator with significant

market power is not subject to direct price controls. In particular, national regulatory authorities might consider that provision of wholesale inputs over new systems on an EoI basis is more likely to create sufficient net benefits, and thus be proportionate, given the comparatively lower incremental compliance costs to ensure that newly built systems are EoI-compliant. On the other hand, national regulatory authorities should also weigh up possible disincentives to the deployment of new systems, relative to more incremental upgrades, in the event that the former would be subject to more restrictive regulatory obligations. In Member States with a high number of small-scale SMP operators, the imposition of EoI on each of these operators can be disproportionate.

↓ 2002/19/EC recital 18

- (173) Accounting separation allows internal price transfers to be rendered visible, and allows national regulatory authorities to check compliance with obligations for non-discrimination where applicable. In this regard the Commission published Recommendation ~~98/322/EC of 8 April 1998 on interconnection in a liberalised telecommunications market (Part 2 — accounting separation and cost accounting)~~<sup>67</sup> 2005/698/EC of 19 September 2005 on accounting separation and cost accounting systems.

↓ new

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

<sup>67</sup> ~~OJL 141, 13.5.1998, p. 6.~~

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↓ 2009/140/EC recital 55  
(adapted)  
⇒ new

- (175) National regulatory authorities should, when imposing obligations for access to new and enhanced infrastructures, ensure that access conditions reflect the circumstances underlying the investment decision, taking into account, *inter alia*, the roll-out costs, the expected rate of take up of the new products and services and the expected retail price levels. Moreover, in order to provide planning certainty to investors, national regulatory authorities should be able to set, if applicable, terms and conditions for access which are consistent over appropriate review periods. ⇒ In the event that price controls are deemed appropriate, ⇐ Such terms and conditions ⊗ can ⊗ may include pricing arrangements which depend on volumes or length of contract in accordance with ~~Community~~ ⊗ Union ⊗ law and provided they have no discriminatory effect. Any access conditions imposed should respect the need to preserve effective competition in services to consumers and businesses.
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↓ 2002/19/EC recital 19  
⇒ new

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

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

such as in the case of voice call termination markets. The application of general competition rules in such markets characterised by sustainable and effective infrastructure-based competition should be sufficient.

↓ 2002/19/EC recital 19 (adapted)  
⇒ new

- (178) ~~Mandating access to network infrastructure can be justified as a means of increasing competition, but national regulatory authorities need to balance the rights of an infrastructure owner to exploit its infrastructure for its own benefit, and the rights of other service providers to access facilities that are essential for the provision of competing services.~~ Where obligations are imposed on operators that require them to meet reasonable requests for access to and use of networks elements and associated facilities, such requests should only be refused on the basis of objective criteria such as technical feasibility or the need to maintain network integrity. Where access is refused, the aggrieved party may submit the case to the dispute resolutions procedure referred to in Articles ~~20~~ 27 and ~~21~~ 28 of ~~Directive 2002/21/EC (Framework Directive)~~. An operator with mandated access obligations cannot be required to provide types of access which ~~are~~  it is  not within its powers to provide. The imposition by national regulatory authorities of mandated access that increases competition in the short term should not reduce incentives for competitors to invest in alternative facilities that will secure more  sustainable  competition  and/or higher performance and end-user benefits  in the long-term. ~~The Commission has published a Notice on the application of the competition rules to access agreements in the telecommunications sector<sup>68</sup> which addresses these issues.~~ National regulatory authorities may impose technical and operational conditions on the provider and/or beneficiaries of mandated access in accordance with ~~Community~~  Union  law. In particular the imposition of technical standards should comply with Directive 1535/2015/EU 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules of Information Society Services<sup>69</sup>.

↓ 2002/19/EC recital 20 (adapted)  
⇒ new

- (179) Price control may be necessary when market analysis in a particular market reveals inefficient competition. ~~The regulatory intervention may be relatively light, such as an obligation that prices for carrier selection are reasonable as laid down in Directive 97/33/EC, or much heavier such as an obligation that prices are cost oriented to provide full justification for those prices where competition is not sufficiently strong to prevent excessive pricing.~~ In particular, operators with significant market power should avoid a price squeeze whereby the difference between their retail prices and the interconnection  and/or access  prices charged to competitors who provide similar retail services is not adequate to ensure sustainable competition. When a national regulatory authority calculates costs incurred in establishing a service mandated under this Directive, it is appropriate to allow a reasonable return on the

<sup>68</sup> OJ C 265, 22.8.1998, p. 2.

<sup>69</sup> OJ L 241, 17.9.2015, p. 1-15.

capital employed including appropriate labour and building costs, with the value of capital adjusted where necessary to reflect the current valuation of assets and efficiency of operations. The method of cost recovery should be appropriate to the circumstances taking account of the need to promote efficiency, ~~and~~ sustainable competition ⇒ and deployment of very high capacity networks ⇐ and ⇔ thereby ⇔ maximise ~~consumer~~ ⇒ end-user ⇐ benefits, ⇒ and should take in account the need to have predictable and stable wholesale prices for the benefit of all operators seeking to deploy new and enhanced networks, in accordance with Commission guidance<sup>70</sup>. ⇐

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↓ new

- (180) Due to uncertainty regarding the rate of materialisation of demand for the provision of next-generation broadband services it is important in order to promote efficient investment and innovation to allow those operators investing in new or upgraded networks a certain degree of pricing flexibility. To prevent excessive prices in markets where there are operators designated as having significant market power, pricing flexibility should be accompanied by additional safeguards to protect competition and end-user interests, such as strict non-discrimination obligations, measures to ensure technical and economic replicability of downstream products, and a demonstrable retail price constraint resulting from infrastructure competition or a price anchor stemming from other regulated access products, or both. Those competitive safeguards do not prejudice the identification by national regulatory authorities of other circumstances under which it would be appropriate not to impose regulated access prices for certain wholesale inputs, such as where high price elasticity of end-user demand makes it unprofitable for the operator with significant market power to charge prices appreciably above the competitive level.
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↓ 2002/19/EC recital 21

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

- (182) The charging system in the Union for wholesale voice call termination is based on Calling Party Network Pays. An analysis of demand and supply substitutability shows that currently or in the foreseeable future, there are as yet no substitutes at wholesale level which might constrain the setting of charges for termination in a given network. Taking into account the two-way access nature of termination markets, further potential competition problems include cross-subsidisation between operators. These potential competition problems are common to both fixed and mobile voice call termination markets. Therefore, in the light of the ability and incentives of terminating

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<sup>70</sup> Commission Recommendation 2013/466/EU of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment, OJ L 251, 21.9.2013, p. 13.

operators to raise prices substantially above cost, cost orientation is considered the most appropriate intervention to address this concern over the medium term.

- (183) In order to reduce the regulatory burden in addressing the competition problems relating to wholesale voice call termination coherently across the Union, this Directive should lay down a common approach as a basis for setting price control obligations, to be completed by a binding common methodology to be determined by the Commission and by technical guidance which should be developed by BEREC.
- (184) In order to simplify their setting and facilitate their imposition where appropriate, wholesale voice call termination rates in fixed and mobile markets in the Union shall be set by means of a delegated act. This Directive should lay down the detailed criteria and parameters on the basis of which the values of voice call termination rates are set. In applying that set of criteria and parameters, the Commission should take into account, *inter alia*, that only those costs which are incremental to the provision of wholesale call termination service should be covered; that spectrum fees are subscriber- and not traffic-driven and should therefore be excluded and that additional spectrum is mainly allocated for data and therefore not relevant for the call termination increment; that it is recognised that while in mobile networks a minimum efficient scale is estimated at the level of at least 20% market share, in the fixed networks smaller operators can achieve the same efficiencies and produce at the same unit costs as the efficient operator, independently of their size. When setting the exact maximum rate, the Commission should include appropriate weighting to take into account the total number of end-users in each Member State, where this is required on account of remaining cost divergences. When the Commission determines that rate, the experience of BEREC and the national regulatory authorities in building suitable cost models will be invaluable and should be taken into account.
- (185) This Directive sets maximum wholesale voice call termination rates for fixed and mobile networks below which the initial delegated act will establish the exact rate to be applied by national regulatory authorities. The initial rate will be further updated. Based on the bottom-up pure LRIC models applied by national regulators to date and applying the above criteria the voice termination rates currently vary from 0.4045 €cent per minute to 1.226 €cent per minute in mobile networks and between 0.0430 €cent per minute and 0.1400 €cent per minute in fixed networks in the most local layer of interconnection (calculated as a weighted average between peak and off-peak rates). The variation in rates is due to different local conditions and relative price structures currently existing as well as to the different timing of the model calculations across Member States. In addition, in fixed networks the level of cost efficient termination rates depends also on the network layer where the termination service is provided.
- (186) Due to current uncertainty regarding the rate of materialisation of demand for very high capacity broadband services as well as general economies of scale and density, co-investment agreements offer significant benefits in terms of pooling of costs and risks, enabling smaller-scale operators to invest on economically rational terms and thus promoting sustainable, long-term competition, including in areas where infrastructure-based competition might not be efficient. Where an operator with significant market power makes an open call for co-investment on fair, reasonable and non-discriminatory terms in new network elements which significantly contribute to the deployment of very high capacity networks, the national regulatory authority should typically refrain from imposing obligations pursuant to this Directive on the new network elements, subject to further review in subsequent market analyses. Provided due account is taken of the prospective pro-competitive effects of the co-

investment at wholesale and retail level, national regulatory authorities can still consider it appropriate, in light of the existing market structure and dynamics developed under regulated wholesale access conditions, and in the absence of a commercial offer to that effect, to safeguard the rights of access seekers who do not participate in a given co-investment through the maintenance of existing access products or – where legacy network elements are dismantled in due course – through imposition of access products with comparable functionality to those previously available on the legacy infrastructure.

↓ 2009/140/EC recital 61

- (187) The purpose of functional separation, whereby the vertically integrated operator is required to establish operationally separate business entities, is to ensure the provision of fully equivalent access products to all downstream operators, including the operator's own vertically integrated downstream divisions. Functional separation has the capacity to improve competition in several relevant markets by significantly reducing the incentive for discrimination and by making it easier to verify and enforce compliance with non-discrimination obligations. In exceptional cases, functional separation may be justified as a remedy where there has been persistent failure to achieve effective non-discrimination in several of the markets concerned, and where there is little or no prospect of infrastructure competition within a reasonable time frame after recourse to one or more remedies previously considered to be appropriate. However, it is very important to ensure that its imposition preserves the incentives of the concerned undertaking to invest in its network and that it does not entail any potential negative effects on consumer welfare. Its imposition requires a coordinated analysis of different relevant markets related to the access network, in accordance with the market analysis procedure set out in Article ~~6746 of Directive 2002/21/EC (Framework Directive)~~. When undertaking the market analysis and designing the details of this remedy, national regulatory authorities should pay particular attention to the products to be managed by the separate business entities, taking into account the extent of network roll-out and the degree of technological progress, which may affect the substitutability of fixed and wireless services. In order to avoid distortions of competition in the internal market, proposals for functional separation should be approved in advance by the Commission.

↓ 2009/140/EC recital 62

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

↓ 2009/140/EC recital 64  
(adapted)  
⇒ new

- (189) Where a vertically integrated undertaking chooses to transfer a substantial part or all of its local access network assets to a separate legal entity under different ownership or by establishing a separate business entity for dealing with access products, the national regulatory authority should assess the effect of the intended transaction, ⇒ including

any access commitments offered by this undertaking ⇐ on all existing regulatory obligations imposed on the vertically integrated operator in order to ensure the compatibility of any new arrangements with ⇐ this ⇐ Directive 2002/19/EC (Access Directive) and Directive 2002/22/EC (Universal Service Directive) . The national regulatory authority concerned should undertake a new analysis of the markets in which the segregated entity operates, and impose, maintain, amend or withdraw obligations accordingly. To this end, the national regulatory authority should be able to request information from the undertaking.

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↓ new

- (190) Binding commitments can add predictability and transparency to the process of voluntary separation by a vertically integrated undertaking which has been designated as having significant market power in one or more relevant markets, by setting out the process of implementation of the planned separation, for example by providing a roadmap for implementation with clear milestones and predictable consequences if certain milestones are not met. National regulatory authorities should consider the commitments made from a forward-looking perspective of sustainability, in particular when choosing the period for which they are made binding, and should have regard to the value placed by stakeholders in the public consultation on stable and predictable market conditions.
- (191) The commitments can include the appointment of a monitoring trustee, whose identity and mandate should be approved by the national regulatory authority and the obligation on the operator offering them to provide periodic implementation reports.
- (192) Network owners that do not have retail market activities and whose business model is therefore limited to the provision of wholesale services to others, can be beneficial to the creation of a thriving wholesale market, with positive effects on retail competition downstream. Furthermore, their business model can be attractive to potential financial investors in less volatile infrastructure assets and with longer term perspectives on deployment of very high capacity networks. Nevertheless, the presence of a wholesale-only operator does not necessarily lead to effectively competitive retail markets, and wholesale-only operators can be designated with significant market power in particular product and geographic markets. The competition risks arising from the behaviour of operators following wholesale-only business models might be lower than for vertically integrated operators, provided the wholesale-only model is genuine and no incentives to discriminate between downstream providers exist. The regulatory response should therefore be commensurately less intrusive. On the other hand, national regulatory authorities must be able to intervene if competition problems have arisen to the detriment of end-users.
- (193) To facilitate the migration from legacy copper networks to next-generation networks, which is in the interests of end-users, national regulatory authorities should be able to monitor network operators' own initiatives in this respect and to establish, where necessary, an appropriate migration process, for example by means of prior notice, transparency and acceptable comparable access products, once the intent and readiness by the network owner to switch off the copper network is clearly demonstrated. In order to avoid unjustified delays to the migration, national regulatory authorities should be empowered to withdraw access obligations relating to the copper network once an adequate migration process has been established.

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↓ 2002/22/EC recital 1 (adapted)

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

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↓ 2002/22/EC recital 2 (adapted)

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

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↓ 2002/22/EC recital 3 (adapted)

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

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↓ 2002/22/EC recital 51 (adapted)

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

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↓ 2002/22/EC recital 5

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

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↓ new

- (196) Universal service is a safety net to ensure that a set of minimum services is available to all end-users at an affordable price, where a risk of social exclusion arising from the lack of such access prevents citizens from full social and economic participation in society.
- (197) Basic broadband internet access is virtually universally available across the Union and very widely used for a wide range of activities. However, the overall take-up rate is lower than availability as there are still those who are disconnected by reasons related to awareness, cost, skills and by choice. Affordable functional internet access has become of crucial importance to society and the wider economy. It provides the basis for participation in the digital economy and society through essential online internet services.

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↓ 2002/22/EC recital 8 (adapted)

⇒ new

- (198) A fundamental requirement of universal service is to ☒ ensure that all end-users have access at an affordable price to available functional internet access services and voice communications services, at least ☒ ~~provide users on request with a connection to the public telephone network at a fixed location, at an affordable price.~~ ⇒ Member States should also have the possibility to ensure affordability of services not provided at a fixed location but to citizens on the move, where they deem this necessary to ensure their full social and economic participation in society. ⇐ ~~The requirement is limited to a single narrowband network connection, the provision of which may be restricted by Member States to the end-user's primary location/residence, and does not extend to the Integrated Services Digital Network (ISDN) which provides two or more connections capable of being used simultaneously.~~ There should be no ~~constraints~~ ☒ limitations ☒ on the technical means by which the connection is provided, allowing for wired or wireless technologies, nor any ~~constraints~~ ☒ limitations ☒ on which ☒ the category of ☒ operators ☒ which ☒ provide part or all of universal service obligations. ~~Connections to the public telephone network at a fixed location should be capable of supporting speech and data communications at rates sufficient for access to online services such as those provided via the public Internet. The speed of Internet access experienced by a given user may depend on a number of factors including the provider(s) of Internet connectivity as well as the given application for which a connection is being used. The data rate that can be supported by a single narrowband connection to the public telephone network depends on the capabilities of the subscriber's terminal equipment as well as the connection. For this reason it is not appropriate to mandate a specific data or bit rate at Community level. Currently available voice band modems typically offer a data rate of 56 kbit/s and employ automatic data rate adaptation to cater for variable line quality, with the result that the achieved data rate may be lower than 56 kbit/s. Flexibility is required on the one hand to allow Member States to take measures where necessary to ensure that connections are capable of supporting such a data rate, and on the other hand to allow Member States where relevant to permit data rates below this upper limit of 56 kbits/s in order, for example, to exploit the capabilities of wireless technologies (including cellular wireless networks) to deliver universal service to a higher proportion of the population. This may be of particular importance in some accession countries where~~

~~household penetration of traditional telephone connections remains relatively low. In specific cases where the connection to the public telephony network at a fixed location is clearly insufficient to support satisfactory Internet access, Member States should be able to require the connection to be brought up to the level enjoyed by the majority of subscribers so that it supports data rates sufficient for access to the Internet. Where such specific measures produce a net cost burden for those consumers concerned, the net effect may be included in any net cost calculation of universal service obligations.~~

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↓ 2009/136/EC recital 5

⇒ new

- (199) ~~Data connections to the public communications network at a fixed location should be capable of supporting data communications at rates sufficient for access to online services such as those provided via the public Internet. The speed of Internet access experienced by a given user may depend on a number of factors, including the provider(s) of Internet connectivity as well as the given application for which a connection is being used. The data rate that can be supported by a connection to the public communications network depends on the capabilities of the subscriber's terminal equipment as well as the connection. For this reason, it is not appropriate to mandate a specific data or bit rate at Community level. ⇒ The affordable functional internet access service should be sufficient in order to support access to and use of a minimum set of basic services that reflect the services used by the majority of end-users. This minimum list of services should be further defined by Member States, in order to allow an adequate level of social inclusion and participation in the digital society and economy in their territory. ⇐ Flexibility is required to allow Member States to take measures, where necessary, to ensure that a data connection is capable of supporting satisfactory data rates which are sufficient to permit functional Internet access, as defined by the Member States, taking due account of specific circumstances in national markets, for instance the prevailing bandwidth used by the majority of subscribers in that Member State, and technological feasibility, provided that these measures seek to minimise market distortion. Where such measures result in an unfair burden on a designated undertaking, taking due account of the costs and revenues as well as the intangible benefits resulting from the provision of the services concerned, this may be included in any net cost calculation of universal obligations. Alternative financing of underlying network infrastructure, involving Community funding or national measures in accordance with Community law, may also be implemented.~~
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↓ new

- (200) End-users should not be obliged to access services they do not want and it should therefore be possible for eligible end-users to limit, on request, the affordable universal service to voice communications service only.
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↓ 2009/136/EC recital 17

- (201) National regulatory authorities should be able to monitor the evolution and level of retail tariffs for services that fall under the scope of universal service obligations, ~~even where a Member State has not yet designated an undertaking to provide universal service. In such a case, †~~The monitoring should be carried out in such a way that it

would not represent an excessive administrative burden for either national regulatory authorities or undertakings providing such service.

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↓ 2002/22/EC recital 10 (adapted)  
⇒ new

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

- (203) It should no longer be possible to refuse end-users access to the minimum set of connectivity services. A right to contract with an undertaking should mean that end-users who might face refusal, in particular those with low incomes or special social needs, should have the possibility to enter into a contract for the provision of an affordable functional internet access service and voice communications service at least at a fixed location with any undertaking providing such services in that location. In order to minimise the financial risks such as non-payment of bills, undertakings should be free to provide the contract under pre-payment terms, on the basis of affordable individual pre-paid units.
- (204) In order to ensure that citizens are reachable by voice communications services, Member States should ensure the availability of a telephone number for a reasonable period also during periods of non-use of voice communications service. Undertakings should be able to put in place mechanisms to check the continued interest of the end-user in keeping the availability of the number.
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↓ 2002/22/EC recital 4 (adapted)

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

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↓ new

- (206) In order to assess the need for affordability measures, national regulatory authorities should be able to monitor the evolution and details of offers of tariff options or packages for end-users with low incomes or special social needs.
- (207) Where additional measures beyond the basic tariff options or packages provided by undertakings are insufficient for ensuring affordability for end-users with low incomes or special needs, direct support such as for example vouchers to such end-users can be an appropriate alternative having regard to the need to minimise market distortions.
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↓ 2009/136/EC recital 9 (adapted)  
⇒ new

- (208) Member States should introduce measures to promote the creation of a market for  affordable  ~~widely available~~ products and services incorporating facilities for disabled end-users  , including equipment with assistive technologies  . This can be achieved, inter alia, by referring to European standards,  or by  introducing ~~electronic accessibility (eAccessibility)~~ requirements  in accordance with Directive xxx/YYYY/EU of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services<sup>71</sup>  ~~for public procurement procedures and calls for tender relating to the provision of services, and by implementing legislation upholding the rights of disabled end-users.~~ ⇒ Member States should define appropriate measures according to national circumstances, which gives flexibility for Member States to take specific measures for instance if the market is not delivering affordable products and services incorporating facilities for disabled end-users under normal economic conditions. ⇐
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↓ new

- (209) For data communications at data rates that are sufficient to permit a functional Internet access, fixed-line connections are nearly universally available and used by a majority of citizens across the Union . The standard fixed broadband coverage and availability in the Union stands at 97% of homes in 2015, with an average take-up rate of 72%, and services based on wireless technologies have even greater reach. However, there are differences between Member States as regards availability and affordability of fixed broadband across urban and rural areas.
- (210) The market has a leading role to play in ensuring availability of broadband internet access with constantly growing capacity. In areas where the market would not deliver, other public policy tools to support availability of functional internet access connections appear, in principle, more cost-effective and less market-distortive than universal service obligations, for example recourse to financial instruments such as those available under EFSI and CEF, the use of public funding from the European structural and investment funds, attaching coverage obligations to rights of use for radio spectrum to support the deployment of broadband networks in less densely populated areas and public investment in conformity with Union State aid rules.

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<sup>71</sup> OJ C [...], [...], p. [...].

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↓ 2009/136/EC recital 4

⇒ new

- (211) ~~A fundamental requirement of universal service is to provide users on request with a connection to the public communications network at a fixed location and at an affordable price.~~ ⇒ If after carrying out a due assessment, taking into account the results of the geographical survey of networks deployment conducted by the national regulatory authority, it is shown that neither the market nor public intervention mechanisms are likely to provide end-users in certain areas with a connection capable of delivering functional internet access as defined by Member States in accordance with Article 79 (2) and voice communications services at a fixed location, the Member State should be able to exceptionally designate different undertakings or sets of undertakings to provide these services in the different relevant parts of the national territory. ⇐ ~~The requirement is for the provision of local, national and international telephone calls, facsimile communications and data services, the provision of which~~ ⇒ Universal service obligations in support of availability of functional internet access ⇐ may be restricted by Member States to the end-user's primary location or residence. There should be no constraints on the technical means by which ~~this is~~ ⇒ the functional internet access and voice communications service at a fixed location are ⇐ provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations.
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↓ 2009/136/EC recital 16

(adapted)

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

- (213) The costs of ensuring the availability of a connection capable of delivering functional internet access as identified in Article 79 (2) and voice communications at a fixed location at an affordable price within the universal service obligations should be estimated, in particular by assessing the expected financial burden for undertakings and users in the electronic communications sector.
- (214) A priori, requirements to ensure nation-wide territorial coverage imposed in the designation procedure are likely to exclude or dissuade certain undertakings from applying for being designated as universal service providers. Designating providers with universal service obligations for an excessive or indefinite time period may also lead to an a priori exclusion of certain undertakings.

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↓ 2002/22/EC recital 9

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

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↓ 2002/22/EC recital 11 (adapted)

~~Directory information and a directory enquiry service constitute an essential access tool for publicly available telephone services and form part of the universal service obligation. Users and consumers desire comprehensive directories and a directory enquiry service covering all listed telephone subscribers and their numbers (including fixed and mobile numbers) and want this information to be presented in a non-preferential fashion. Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector<sup>72</sup> ensures the subscribers' right to privacy with regard to the inclusion of their personal information in a public directory.~~

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↓ 2002/22/EC recital 12 (adapted)

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

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↓ 2002/22/EC recital 13

~~Member States should take suitable measures in order to guarantee access to and affordability of all publicly available telephone services at a fixed location for disabled users and users with special social needs. Specific measures for disabled users could include, as appropriate, making available accessible public telephones, public text telephones or equivalent measures for deaf or speech impaired people, providing services such as directory enquiry services or equivalent measures free of charge for blind or partially sighted people, and providing itemised bills in alternative format on request for blind or partially sighted people. Specific measures may also need to be taken to enable disabled users and users with special social needs to access emergency services '112' and to give them a similar possibility to choose between different operators or service providers as other consumers. Quality of service standards have been developed for a range of parameters to assess the quality of services received by subscribers and how well undertakings designated with universal service obligations perform in achieving these standards. Quality of service standards do not yet exist in respect of disabled users. Performance standards and relevant parameters should be~~

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<sup>72</sup> [OJL 24, 30.1.1998, p. 1](#)

~~developed for disabled users and are provided for in Article 11 of this Directive. Moreover, national regulatory authorities should be enabled to require publication of quality of service performance data if and when such standards and parameters are developed. The provider of universal service should not take measures to prevent users from benefiting fully from services offered by different operators or service providers, in combination with its own services offered as part of universal service.~~

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↓ 2002/22/EC recital 9

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

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↓ 2009/136/EC recital 10  
(adapted)

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

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↓ new

(216) In order to provide stability and support a gradual transition, Member States should be able to continue to ensure the provision of universal services in their territory, other than functional internet access service and voice communications at a fixed location, that are included in the scope of their universal obligations on the basis of Directive 2002/22/EC at the entry into force of this Directive, provided the services or comparable services are not available under normal commercial circumstances. Allowing the continuation of the provision of public payphones, directories and

directory enquiry services under the universal service regime, as long as the need is still demonstrated, would give Member States the flexibility necessary to duly take into account the varying national circumstances. However, the financing of such services should be done via public funds as for the other universal service obligations.

↓ 2002/22/EC recital 15

⇒ new

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

↓ 2002/22/EC recital 16 (adapted)

⇒ new

- (218) Except in cases of persistent late payment or non-payment of bills, consumers ⇒ entitled to affordable tariffs ⇐ should be protected from immediate disconnection from the network on the grounds of an unpaid bill and, particularly in the case of disputes over high bills for premium-rate services, should continue to have access to essential ~~telephone~~ ⊗ voice communications ⊗ services pending resolution of the dispute. Member States may decide that such access may continue to be provided only if the subscriber continues to pay line rental charges.

↓ 2002/22/EC recital 16

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

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↓ new

- (219) Where the provision of functional internet access and voice communications services or the provision of other universal services in accordance with Article 85 result in an unfair burden on an undertaking, taking due account of the costs and revenues as well as the intangible benefits resulting from the provision of the services concerned, that unfair burden can be included in any net cost calculation of universal obligations.
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↓ 2002/22/EC recital 18 (adapted)

- (220) Member States should, where necessary, establish mechanisms for financing the net cost of universal service obligations in cases where it is demonstrated that the obligations can only be provided at a loss or at a net cost which falls outside normal commercial standards. It is important to ensure that the net cost of universal service obligations is properly calculated and that any financing is undertaken with minimum distortion to the market and to undertakings, and is compatible with the provisions of Articles ~~87~~ ~~107~~ and ~~88~~ 108 of the Treaty on the Functioning of the European Union .
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↓ 2002/22/EC recital 19

- (221) Any calculation of the net cost of universal service should take due account of costs and revenues, as well as the intangible benefits resulting from providing universal service, but should not hinder the general aim of ensuring that pricing structures reflect costs. Any net costs of universal service obligations should be calculated on the basis of transparent procedures.
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↓ 2002/22/EC recital 20

- (222) Taking into account intangible benefits means that an estimate in monetary terms, of the indirect benefits that an undertaking derives by virtue of its position as provider of universal service, should be deducted from the direct net cost of universal service obligations in order to determine the overall cost burden.
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↓ 2002/22/EC recital 21

⇒ new

- (223) When a universal service obligation represents an unfair burden on an undertaking, it is appropriate to allow Member States to establish mechanisms for efficiently recovering net costs. ⇒ The net costs of universal service obligations should be recovered via public funds. Functional internet access brings benefits not only to the electronic communications sector but also to the wider online economy and to society as a whole. Providing a connection which supports broadband speeds to an increased number of end-users enables them to use online services and so actively to participate in the digital society. Ensuring such connections on the basis of universal service obligations serves at least as much the public interest as it serves the interests of electronic communications providers. Therefore Member States should compensate the net costs of such connections supporting broadband speeds as part of the universal service from public funds, which should be understood to comprise funding from

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

↓ 2002/22/EC recital 22

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

↓ 2002/22/EC recital 23

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

↓ 2002/22/EC recital 24 (adapted)  
⇒ new

(224) National regulatory authorities should satisfy themselves that those undertakings benefiting from universal service funding should provide to national regulatory authorities a sufficient level of detail of the specific elements requiring such funding in order to justify their request. Member States' schemes for the costing and financing of universal service obligations should be communicated to the Commission for verification of compatibility with the Treaty. There are incentives for designated operators to raise the assessed net cost of universal service obligations. Therefore Member States should ensure effective transparency and control of amounts charged to finance universal service obligations. ⇒ Calculation of the net costs of providing universal service should be based on an objective and transparent methodology to ensure the most cost-effective provision of universal service and promote a level playing field for market operators. Making the methodology intended

to be used to calculate the net costs of individual universal service elements known in advance before implementing the calculation could help to achieve increased transparency. ↩

↓ 2002/22/EC recital 25

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

↓ 2002/22/EC recital 26

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

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↓ 2002/22/EC recital 27

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

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↓ 2002/22/EC recital 29

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

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↓ new

- (225) In order to effectively support the free movement of goods, services and persons within the Union, it should be possible to use certain national numbering resources, in particular certain non-geographic numbers, in an extraterritorial manner, that is to say outside the territory of the assigning Member State throughout the territory of the Union. In view of the considerable risk of fraud with respect to interpersonal communications, such extraterritorial use should be allowed for electronic communications services with the exception of interpersonal communications services. Member States should therefore ensure that relevant national laws, in particular consumer protection rules and other rules related to the use of numbers, are enforced independently of the Member State where the rights of use for numbers have been granted. That should entail that the national regulatory and other competent authorities of those Member States where a number is used are competent to apply their national laws to the undertaking to which the number has been assigned. In addition, the national regulatory authorities of those Member States should have the possibility to request the support of the national regulatory authority responsible for the assignment of the number to assist them in enforcing the respect of the rules applicable in those Member states where the number is used. Such support measures should include dissuasive sanctions, in particular in case of a serious breach the withdrawal of the right of extraterritorial use for the numbers assigned to the undertaking concerned. The requirements on extraterritorial use should be without prejudice to Member States' powers to block, on a case-by case basis, access to numbers or services where that is justified by reasons of fraud or misuse. The extraterritorial use of numbers should be without prejudice to Union's rules related to the provision of roaming services, including those relative to preventing anomalous or abusive use of roaming services which are subject to retail price regulation and which benefit from regulated wholesale roaming rates. Member States should continue to be able to enter into specific agreements on extraterritorial use of numbering resources with third countries.
- (226) Member States should promote over-the-air provisioning of numbering resources to facilitate switching of electronic communications providers. Over the-air provisioning of numbering resources enables the reprogramming of telecommunication equipment identifiers without physical access to the devices concerned. This feature is

particularly relevant for machine-to-machine services, that is to say services involving an automated transfer of data and information between devices or software-based applications with limited or no human interaction. Providers of such machine-to-machine services might not have recourse to physical access to their devices due to their use in remote conditions, or to the large number of devices deployed or to their usage patterns. In view of the emerging machine-to-machine market and new technologies, Member States should strive to ensure technological neutrality in promoting over-the-air provisioning.

↓ 2002/21/EC recital 20 (adapted)  
⇒ new

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

↓ 2002/20/EC recital 19 (adapted)

- (228) The requirement to publish decisions on the granting of rights ~~to~~ ☒ of ☒ use ~~frequencies or~~ ☒ for ☒ numbers may be fulfilled by making these decisions publicly accessible via a website.

↓ 2009/136/EC recital 43  
(adapted)  
⇒ new

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

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↓ 2009/136/EC recital 46  
(adapted)  
⇒ new

- (230) A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States and to access services using non-geographic numbers ☒ , including freephone and premium-rate numbers, ☒ within the Community ☒ Union ☒, ~~including, among others, freephone and premium-rate numbers~~ ⇒ except where the called end-user has chosen, for commercial reasons, to limit access from certain geographical areas ⇐ . End-users should also be able to access numbers from the ~~European Telephone Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN)~~. Cross-border access to numbering resources and associated services should not be prevented, except in objectively justified cases, for example to combat fraud or abuse (e.g. in connection with certain premium-rate services), when the number is defined as having a national scope only (e.g. a national short code) or when it is technically or economically unfeasible. ⇒ Tariffs charged to parties calling from outside the Member State concerned need not be the same as for those parties calling from inside that Member State. ⇐ Users should be fully informed in advance and in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes.
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↓ 2002/22/EC recital 38  
⇒ new

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

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↓ new

- (231) The completion of the single market for electronic communications requires the removal of barriers for end-users to have cross-border access to electronic communications services across the Union. Providers of electronic communications to the public should not deny or restrict access or discriminate against end-users on the basis of their nationality or Member State of residence. Differentiation should, however, be possible on the basis of objectively justifiable differences in costs and risks, which may go beyond the measures provided for in Regulation 531/2012 in respect of abusive or anomalous use of regulated retail roaming services.
- (232) Divergent implementation of the rules on end-user protection has created significant internal market barriers affecting both providers of electronic communications services and end-users. Those barriers should be reduced by the applicability of the same rules ensuring a high common level of protection across the Union. A calibrated full harmonisation of the end-user rights covered by this Directive should considerably increase legal certainty for both end-users and providers of electronic communications services, and should significantly lower entry barriers and unnecessary compliance

burden stemming from the fragmentation of the rules. Full harmonisation helps to overcome barriers to the single market resulting from such national end-user provisions which at the same time protect national providers against competition from other Member States. In order to achieve a high common level of protection, several end-user provisions should be reasonably enhanced in this Directive in the light of best practices in Member States. Full harmonisation of their rights increases the trust of end-users in the internal market as they benefit from an equally high level of protection when using electronic communications services, not only in their Member State but also while living, working or travelling in other Member States. Member States should maintain the possibility to have a higher level of end-user protection where an explicit derogation is provided for in this Directive, and to act in areas not covered by this Directive.

↓ 2002/22/EC recital 30 (adapted)

- (233) Contracts are an important tool for  end-  users ~~and consumers~~ to ensure a ~~minimum level of~~ transparency of information and legal ~~security~~  certainty  . Most service providers in a competitive environment will conclude contracts with their customers for reasons of commercial desirability. In addition to the provisions of this Directive, the requirements of existing ~~Community~~  Union  consumer protection legislation relating to contracts, in particular ~~Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>73</sup> and Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts<sup>74</sup> Directive 2011/83/EU of the European Parliament and of the Council on consumer rights<sup>75</sup> and Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts~~, apply to consumer transactions relating to electronic  communications  networks and services. ~~Specifically, consumers should enjoy a minimum level of legal certainty in respect of their contractual relations with their direct telephone service provider, such that the contractual terms, conditions, quality of service, condition for termination of the contract and the service, compensation measures and dispute resolution are specified in their contracts. Where service providers other than direct telephone service providers conclude contracts with consumers, the same information should be included in those contracts as well. The measures to ensure transparency on prices, tariffs, terms and conditions will increase the ability of consumers to optimise their choices and thus to benefit fully from competition.~~

↓ 2009/136/EC recital 21  
(adapted)  
⇒ new

- (234) Provisions on contracts  in this Directive  ⇒ should apply irrespective the amount of any payment to be made by the customer. ⇐  They  should apply not

<sup>73</sup> [OJL 95, 21.4.1993, p. 29.](#)

<sup>74</sup> [OJL 144, 4.6.1997, p. 19.](#)

<sup>75</sup> [Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council \(OJ L 304, 22.11.2011, p. 64\).](#)

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

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$\Downarrow$  new

- (235) The specificities of the electronic communications sector require, beyond horizontal contract rules, a limited number of additional end-user protection provisions. End-users should inter alia be informed of any quality of service levels offered, , conditions for promotions and termination of contracts, applicable tariff plans and tariffs for services subject to particular pricing conditions. That information is relevant for most publicly available electronic communications services but not for number-independent interpersonal communications services. In order to enable the end-user to make a well-informed choice, it is essential that the required relevant information is provided prior to the conclusion of the contract and in clear and understandable language. For the same reason, providers should present a summary of the essential contract terms. In order to facilitate comparability and reduce compliance cost, BEREC should issue a template for such contract summaries.
- (236) Following the adoption of Regulation (EU) 2015/2120 the provisions in this Directive regarding information on conditions limiting access to and/or use of services and applications and as regards traffic shaping became obsolete and should be repealed.
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$\Downarrow$  2009/136/EC recital 24  
 $\Rightarrow$  new

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

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↓ 2009/136/EC recital 25  
(adapted)  
⇒ new

- (238) Without  prejudice to the substantive  ~~imposing any~~ obligations on the provider ~~⇒ related to security by virtue of this Directive~~  ~~to take action over and above what is required under Community law,~~ the customer contract should also specify the type of action, ~~if any,~~ the provider might take in case of security ~~or integrity~~ incidents, threats or vulnerabilities.
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↓ 2009/136/EC recital 32  
(adapted)  
⇒ new

- (239) The availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets where several providers offer services. End-users ~~and consumers of electronic communications services~~ should be able to easily compare the prices of various services offered on the market based on information published in an easily accessible form. In order to allow them to make price ~~⇒ and service~~  comparisons easily, national regulatory authorities should be able to require from undertakings providing electronic communications networks and/or ~~⇒ electronic communications~~  services ~~⇒ other than number-independent interpersonal communications services~~  greater transparency as regards information (including tariffs, ~~⇒ quality of service, restrictions on terminal equipment supplied,~~  ~~consumption patterns~~ and other relevant statistics). ~~⇒ Any such requirements should take due account of the characteristics of those networks or services.~~  ~~They should also~~  ~~and to ensure that third parties have the right to use, without charge, publicly available information published by such undertakings~~  ~~, in view of providing comparison tools~~  ~~National regulatory authorities should also be able to make price guides available, in particular where the market has not provided them free of charge or at a reasonable price. Undertakings should not be entitled to any remuneration for the use of information where it has already been published and thus belongs in the public domain. In addition, end-users and consumers should be adequately informed of the price and the type of service offered before they purchase a service, in particular if a freephone number is subject to additional charges. National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, immediately prior to connecting the call, unless otherwise provided for by national law. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services. Without prejudice to Directive 2000/31/EC (Directive on electronic commerce), undertakings should also, if required by Member States, provide subscribers with public interest information produced by the relevant public authorities regarding, inter alia, the most common infringements and their legal consequences.~~

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↓ new

- (240) End-users are often not aware of the cost of their consumption behaviour or have difficulties to estimate their time or data consumption when using electronic communications services. In order to increase transparency and to allow better control of their communications budget it is important to provide end-users with facilities that enable them to track their consumption in a timely manner.
- (241) Independent comparison tools, such as websites, are an effective means for end-users to assess the merits of different providers of publicly available electronic communications services other than number-independent interpersonal communications services, and to obtain impartial information, in particular by comparing prices, tariffs, and quality parameters in one place. Such tools should aim at providing information that is both clear and concise and complete and comprehensive. They should also aim at including the broadest possible range of offers, so as to give a representative overview and cover a significant part of the market. The information given on such tools should be trustworthy, impartial and transparent. End-users should be informed of the availability of such tools. Member States should ensure that end-users have free access to at least one such tool in their respective territories.
- (242) Independent comparison tools should be operationally independent from providers of publicly available electronic communications services. They can be operated by private undertakings, or by or on behalf of competent authorities, however they should be operated in accordance with specified quality criteria including the requirement to provide details of their owners, provide accurate and up-to-date information, state the time of the last update, set out clear, objective criteria on which the comparison will be based and include a broad range of offers on publicly available electronic communications services other than number-independent interpersonal communications services, covering a significant part of the market. Member States should be able to determine how often comparison tools are required to review and update the information they provide to end-users, taking into account the frequency with which providers of publicly available electronic communications services other than number-independent interpersonal communications services, generally update their tariff and quality information. Where there is only one tool in a Member State and that tool ceases to operate or ceases to comply with the quality criteria, the Member State should ensure that end-users have access within a reasonable time to another comparison tool at national level.

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↓ 2009/136/EC recital 26  
(adapted)  
⇒ new

- (243) In order to address public interest issues with respect to the use of ⇒ publicly available electronic ⇐ communications services and to encourage protection of the rights and freedoms of others, the ~~relevant national~~ ⇒ competent ⇐ authorities should be able to produce and have disseminated, with the aid of providers, public interest information related to the use of such services. This could include public interest information ⇒ regarding the most common infringements and their legal consequences, for instance ⇐ regarding copyright infringement, other unlawful uses and the dissemination of harmful content, and advice and means of protection against risks to personal security, which may for example arise from disclosure of personal

information in certain circumstances, as well as risks to privacy and personal data, and the availability of easy-to-use and configurable software or software options allowing protection for children or vulnerable persons. The information could be coordinated by way of the cooperation procedure established in ~~Article 33(3) of~~ this ~~Directive 2002/22/EC (Universal Service Directive)~~. Such public interest information should be updated whenever necessary and should be presented in easily comprehensible ~~printed and electronic~~ formats, as determined by each Member State, and on national public authority websites. National regulatory authorities should be able to oblige providers to disseminate this standardised information to all their customers in a manner deemed appropriate by the national regulatory authorities. ~~When required by Member States, the information should also be included in contracts.~~ Dissemination of such information should however not impose an excessive burden on undertakings. Member States should require this dissemination by the means used by undertakings in communications with ~~subscribers~~ ⇒ end-users ⇐ made in the ordinary course of business.

↓ 2009/136/EC recital 31  
(adapted)

- (244) In the absence of relevant rules of ~~Community~~ Union law, content, applications and services are deemed lawful or harmful in accordance with national substantive and procedural law. It is a task for the Member States, not for providers of electronic communications networks or services, to decide, in accordance with due process, whether content, applications or services are lawful or harmful. ~~The Framework Directive and the ePrivacy Directive 2002/58/EC~~ This Directive and the ~~and the ePrivacy Directive 2002/58/EC~~ and the ePrivacy Directive 2002/58/EC are without prejudice to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)<sup>76</sup>, which, inter alia, contains a ‘mere conduit’ rule for intermediary service providers, as defined therein.

↓ 2002/22/EC recital 31 (adapted)  
⇒ new

- (245) ~~End users should have access to publicly available information on communications services. Member States should be able to monitor the quality of services which are offered in their territories.~~ National regulatory authorities should be able to empower to monitor the quality of services and to collect systematically information on the quality of services, including that related to the provision of services to disabled end-users. This information should be collected on the basis of criteria which allow comparability between service providers and between Member States. Undertakings providing electronic communications services, operating in a competitive environment, are likely to make adequate and up-to-date information on their services publicly available for reasons of commercial advantage. National regulatory authorities should nonetheless be able to require publication of such information where it is demonstrated that such information is not effectively available to the public. ⇒ National regulatory

<sup>76</sup> OJ L 178, 17.7.2000, p. 1.

authorities should also set out the measurement methods to be applied by the service providers in order to improve the comparability of the data provided. In order to facilitate comparability across the Union and to reduce compliance cost, BEREC should adopt guidelines on relevant quality of service parameters which national regulatory authorities should take into utmost account. ↩

↓ 2009/136/EC recital 47  
(adapted)  
⇒ new

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

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

↓ new

(248) Consumers should be able to terminate their contract without incurring any costs also in cases of automatic prolongation after the expiration of the initial contract term.

(249) Any changes to the contractual conditions imposed by providers of publicly available electronic communications services other than number-independent interpersonal communications services, to the detriment of the end-user, for example in relation to

charges, tariffs, data volume limitations, data speeds, coverage, or the processing of personal data should be considered as giving rise to the right of the end-user to terminate the contract without incurring any costs, even if they are combined with some beneficial changes.

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

↓ 2002/22/EC recital 40 (adapted)  
⇒ new

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

↓ 2002/22/EC recital 41

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

↓ 2002/22/EC recital 42

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

↓ 2009/136/EC recital 47  
(adapted)  
⇒ new

- (254) ~~In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interests. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts.~~ Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications and

should be implemented with the minimum delay, so that the number is functionally activated within one working day and the user does not experience a loss of service lasting longer than one working day. ☒ In order to facilitate a one-stop-shop enabling a seamless switching experience for end-users, the switching process should be led by the receiving provider of electronic communications to the public. ☒ ~~Competent~~ ~~National~~ ⇒ regulatory ⇐ authorities may prescribe the global process of the porting of numbers, taking into account national provisions on contracts and technological developments. Experience in certain Member States has shown that there is a risk of consumers being switched to another provider without having given their consent. While that is a matter that should primarily be addressed by law enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process, including appropriate sanctions, as are necessary to minimise such risks, and to ensure that consumers are protected throughout the switching process without making the process less attractive for them.

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↓ new

- (255) Bundles comprising publicly available electronic communications services other than number-independent interpersonal communications services, and other services such as linear broadcasting, or goods such as devices, have become increasingly widespread and are an important element of competition. While they often bring about benefits for end-users, they can make switching more difficult or costly and raise risks of contractual "lock-in". Where divergent contractual rules on contract termination and switching apply to the different services, and to any contractual commitment regarding acquisition of products which form part of a bundle, consumers are effectively hampered in their rights under this Directive to switch to competitive offers for the entire bundle or parts of it. The provisions of this Directive regarding contracts, transparency, contract duration and termination and switching should, therefore, apply to all elements of a bundle, except to the extent that other rules applicable to the non-electronic communications elements of the bundle are more favourable to the consumer. Other contractual issues, such as the remedies applicable in the event of non-conformity with the contract, should be governed by the rules applicable to the respective element of the bundle, for instance by the rules of contracts for the sales of goods or for the supply of digital content. For the same reasons consumers should not be locked in with a provider by means of a contractual de facto extension of the initial contract period.
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↓ 2009/136/EC recital 23  
(adapted)  
⇒ new

- (256) Providers of ~~electronic~~ ⇒ number-based interpersonal ⇐ communications services ~~that allow calls~~ ⇒ have an obligation to provide access to emergency services through emergency communications. ⇐ ⇒ In exceptional circumstances, namely due to a lack of technical feasibility, they might not be able to provide access to emergency services or caller location, or to both. In such cases, they should inform their customers adequately in the contract. ⇐ ~~should ensure that their customers are adequately informed as to whether or not access to emergency services is provided and of any limitation on service (such as a limitation on the provision of caller location information or the routing of emergency calls)~~. Such providers should ~~also~~ provide

their customers with clear and transparent information in the initial contract and ⇒ update it ⇐ in the event of any change in the ~~access~~ provision ⇒ of access to emergency services ⇐ , for example in ⊗ invoices ⊗ ~~billing information~~. This information should include any limitations on territorial coverage, on the basis of the planned technical operating parameters of the ⇒ communications ⇐ service and the available infrastructure. Where the service is not provided over a ~~switched telephony network~~ ⇒ connection which is managed to give a specified quality of service ⇐ , the information should also include the level of reliability of the access and of caller location information compared to a service that is provided over ⊗ such ⊗ a ~~switched telephony network~~ ⇒ connection ⇐ , taking into account current technology and quality standards, as well as any quality of service parameters specified under ⊗ this ⊗ Directive ~~2002/22/EC (Universal Service Directive)~~.

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↓ 2009/140/EC recital 22  
(adapted)

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

- (258) End-users should be able to access emergency services through emergency communications free of charge and without having to use any means of payment, from any device which enables number-based interpersonal communications services, including when using roaming services in a Member State. Emergency communications are means of communication, that include not only voice communications but also SMS, messaging, video or other types of communications, that are enabled in a Member State to access emergency services. Emergency communication can be triggered on behalf of a person by the eCall in-vehicle system as defined by Regulation 2015/758/EU of the European Parliament and of the Council<sup>77</sup>.
- (259) Member States should ensure that undertakings providing end-users with number-based interpersonal communications services provide reliable and accurate access to emergency services, taking into account national specifications and criteria. Where the number-based interpersonal communications service is not provided over a connection which is managed to give a specified quality of service, the service provider might not be able to ensure that emergency calls made through their service are routed to the most appropriate PSAP with the same reliability. For such network-independent undertakings, namely undertakings which are not integrated with a public

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

communications network provider, providing caller location information may not always be technically feasible. Member States should ensure that standards ensuring accurate and reliable routing and connection to the emergency services are implemented as soon as possible in order to allow network-independent providers of number-based interpersonal communications services to fulfil the obligations related to access to emergency services and caller location information provision at a level comparable to that required of other providers of such communications services.

↓ 2002/22/EC recital 36 (adapted)

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

↓ 2002/22/EC recital 37 (adapted)

~~Easy access to international telephone services is vital for European citizens and European businesses. '00' has already been established as the standard international telephone access code for the Community. Special arrangements for making calls between adjacent locations across borders between Member States may be established or continued. The ITU has assigned, in accordance with ITU Recommendation E.164, code '3883' to the European Telephony Numbering Space (ETNS). In order to ensure connection of calls to the ETNS, undertakings operating public telephone networks should ensure that calls using '3883' are directly or indirectly interconnected to ETNS serving networks specified in the relevant European Telecommunications Standards Institute (ETSI) standards. Such interconnection arrangements should be governed by the provisions of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)<sup>78</sup>.~~

↓ 2009/136/EC recital 41

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

<sup>78</sup> [See page 7 of this Official Journal.](#)

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↓ 2009/136/EC recital 39  
(adapted)  
⇒ new

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

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↓ new

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

network, or the means of transmission, for example through voice channel, SMS or Internet Protocol-based.

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

↓ 2009/136/EC recital 36  
(adapted)  
⇒ new

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

↓ new

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

↓ 2002/22/EC recital 35 (adapted)

- (266) ⇔ Effective competition has developed in the ⇔ ~~The~~ provision of directory enquiry services and directories ⇔ pursuant inter alia to Article 5 of Commission Directive

2002/77/EC<sup>79</sup> ~~is already open to competition. The provisions of this Directive complement the provisions of Directive 97/66/EC by giving subscribers a right to have their personal data included in a printed or electronic directory~~ ~~⊗~~ In order to maintain this effective competition, ~~⊗~~ All service providers which assign telephone numbers to their subscribers are ~~⊗~~ end-users should continue to be ~~⊗~~ obliged to make relevant information available in a fair, cost-oriented and non-discriminatory manner.

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↓ new

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

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↓ 2002/22/EC recital 32 (adapted)

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

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↓ 2002/22/EC recital 33 (adapted)

⇒ new

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

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<sup>79</sup> Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L 249, 17.9.2002, p. 21).

↓ 2009/136/EC (adapted)

- (270) ~~Directory enquiry services should be, and frequently are, provided under competitive market conditions, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services<sup>80</sup>. Wholesale measures ensuring the inclusion of end-user data (both fixed and mobile) in databases should comply with the safeguards for the protection of personal data ☒ under Directive 95/46/EC which will be replaced by Regulation (EU) 2016/697<sup>81</sup> on 25 May 2018, and ☒ including Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications). The cost-oriented supply of that data to service providers, with the possibility for Member States to establish a centralised mechanism for providing comprehensive aggregated information to directory providers, and the provision of network access under reasonable and transparent conditions, should be put in place in order to ensure that end-users benefit fully from competition, with the ultimate aim of ☒ which has largely allowed ☒ enabling the removal of retail regulation from these services and the provision of offers of directory services under reasonable and transparent conditions.~~

↓ new

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

↓ 2002/22/EC recital 43 (adapted)

⇒ new

- (272) ~~Currently, Member States impose certain ‘must carry’ obligations on networks for the distribution of radio or television broadcasts to the public. Member States should be able to lay down proportionate obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Community ☒ Union ☒ law and should be proportionate ☒ and ☒ ☒ transparent and subject to periodical review. ‘Must carry’ ☒ obligations may be applied to specified radio and television broadcast channels and complementary services supplied by a specified media service provider. ☒ ☒ Obligations imposed by Member States should be reasonable, that is they should be proportionate and transparent in the light of clearly defined general interest objectives. ⇒ Member States should provide an objective justification for the ‘must carry’ obligations that they impose in their national law so as to ensure that such~~

<sup>80</sup> [OJ L 249, 17.9.2002, p. 21](#)

<sup>81</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); OJ L 119, 4.5.2016, p. 1

obligations are transparent, proportionate and clearly defined. The obligations should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. Obligations should be subject to periodic review at least every five years in order to keep them up-to-date with technological and market evolution and in order to ensure that they continue to be proportionate to the objectives to be achieved. ~~and~~  Obligations  could, where appropriate, entail a provision for proportionate remuneration. ~~Such ‘must carry’ obligations may include the transmission of services specifically designed to enable appropriate access by disabled users.~~

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↓ 2002/22/EC recital 44 (adapted)  
⇒ new

- (273) Networks used for the distribution of radio or television broadcasts to the public include cable,  IPTV,  satellite and terrestrial broadcasting networks. They might also include other networks to the extent that a significant number of end-users use such networks as their principal means to receive radio and television broadcasts.  Must carry obligations can include the transmission of services specifically designed to enable appropriate access by disabled users. Accordingly complementary services include, amongst others, services designed to improve accessibility for end-users with disabilities, such as videotext, subtitling, audio description and sign language. Because of the growing provision and reception of connected TV services and the continued importance of electronic programme guides for user choice the transmission of programme-related data supporting those functionalities can be included in must carry obligations.
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↓ 2002/22/EC recital 39

- (274) ~~Tone dialling and~~ eCalling line identification facilities are normally available on modern telephone exchanges and can therefore increasingly be provided at little or no expense. ~~Tone dialling is increasingly being used for user interaction with special services and facilities, including value added services, and the absence of this facility can prevent the user from making use of these services.~~ Member States are not required to impose obligations to provide these facilities when they are already available. Directive ~~97/66/EC~~ 2002/58/EC safeguards the privacy of users with regard to itemised billing, by giving them the means to protect their right to privacy when calling line identification is implemented. The development of these services on a pan-European basis would benefit consumers and is encouraged by this Directive.
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↓ 2002/19/EC recital 22

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

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↓ 2002/19/EC recital 23

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

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↓ 2002/19/EC recital 24

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

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↓ 2002/19/EC recital 25 (adapted)

(277) In order to determine the correct application of ~~Community~~ ☒ Union ☒ law, the Commission needs to know which undertakings have been designated as having significant market power and what obligations have been placed upon market players by national regulatory authorities. In addition to national publication of this information, it is therefore necessary for Member States to send this information to the Commission. Where Member States are required to send information to the Commission, this may be in electronic form, subject to appropriate authentication procedures being agreed.

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↓ new

(278) In order to take account of market, social and technological developments, to manage the risks posed to security of networks and services and to ensure effective access to emergency services through emergency communications, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying measures to address security risks; adapting conditions for access to digital television and radio services; setting a single wholesale voice call termination rate in fixed and mobile markets ; adopting measures related to emergency communications in the Union; and adapting annexes II, IV, V, VI, VIII, IX and X of this Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(279) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to adopt decisions to resolve cross-border harmful interferences between Member States; to make the implementation of standards compulsory, or remove standards and/or specifications from the compulsory part of the list of standards; to take decisions setting out whether rights in a harmonised band shall be subject to a general authorisation or to individual rights of use; to specify the modalities of application of the criteria, rules and

conditions with regard to harmonised radio spectrum; to specify the modalities of applying the conditions that Member States may attach to authorisations to use harmonised radio spectrum; to identify the bands for which rights of use for radio frequencies may be transferred or leased between undertakings; to establish common limitation maximum dates by which the use of specific harmonised radio spectrum bands shall be authorised; to adopt transitional measures regarding the duration of rights of use for radio spectrum; to set criteria to coordinate the implementation of certain obligations; to specify technical characteristics for the design, deployment and operation of small-area wireless access points; to address unmet cross-border or pan-European demand for numbers; and to specify the nature and scope of obligations ensuring effective access to emergency services or to end-to-end connectivity between end-users within one or several Member States or throughout the European Union. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

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

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↓ 2002/21/EC recital 39

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

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↓ 2002/21/EC recital 42

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

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↓ 2002/21/EC recital 43 (adapted)

(283) The Commission should monitor the transition from the existing framework to the new framework, and may in particular, at an appropriate time, bring forward a proposal to repeal Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop<sup>82</sup>.

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↓ 2002/21/EC recital 34

~~A single Committee should replace the 'ONP Committee' instituted by Article 9 of Directive 90/387/EEC and the Licensing Committee instituted by Article 14 of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services<sup>83</sup>.~~

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<sup>82</sup> [OJL 336, 30.12.2000, p. 4](#)

<sup>83</sup> [OJL 117, 7.5.1997, p. 15](#)

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↓ 2002/21/EC recital 35

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

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↓ 2002/21/EC recital 36

~~The Commission has indicated its intention to set up a European regulators group for electronic communications networks and services which would constitute a suitable mechanism for encouraging cooperation and coordination of national regulatory authorities, in order to promote the development of the internal market for electronic communications networks and services, and to seek to achieve consistent application, in all Member States, of the provisions set out in this Directive and the Specific Directives, in particular in areas where national law implementing Community law gives national regulatory authorities considerable discretionary powers in application of the relevant rules.~~

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

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

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↓ 2002/20/EC recital 1 (adapted)

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

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↓ 2002/20/EC recital 2

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

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↓ 2002/20/EC recital 14

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

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↓ 2002/20/EC recital 26

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

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↓ 2002/20/EC recital 27

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

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↓ 2002/19/EC recital 4 (adapted)

~~Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals<sup>84</sup> did not mandate any specific digital television transmission system or service requirement, and this opened up an opportunity for the market actors to take the initiative and develop suitable systems. Through the Digital Video Broadcasting Group, European market actors have developed a family of television transmission systems that have been adopted by broadcasters throughout the world. These transmission systems have been standardised by the European Telecommunications Standards Institute (ETSI) and have become International Telecommunication Union recommendations. In relation to wide-screen digital television, the 16:9 aspect ratio is the reference format for wide-format television services and programmes, and is now established in Member States' markets as a result of Council Decision 93/424/EEC of 22 July 1993 on an action plan for the introduction of advanced television services in Europe<sup>85</sup>.~~

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↓ 2002/19/EC recital 26 (adapted)

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

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<sup>84</sup> [OJL 281, 23.11.1995, p. 51](#)

<sup>85</sup> [OJL 196, 5.8.1993, p. 48](#)

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↓ 2002/19/EC recital 27 (adapted)

~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>86</sup>.~~

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↓ 2002/19/EC recital 22 (adapted)

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

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↓ 2002/22/EC recital 7 (adapted)

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

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↓ 2002/22/EC recital 45 (adapted)

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

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↓ 2002/22/EC recital 46 (adapted)

~~Where a Member State seeks to ensure the provision of other specific services throughout its national territory, such obligations should be implemented on a cost efficient basis and outside the scope of universal service obligations. Accordingly, Member States may undertake additional measures (such as facilitating the development of infrastructure or~~

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<sup>86</sup> [OJL 184, 17.7.1999, p. 23.](#)

~~services in circumstances where the market does not satisfactorily address the requirements of end-users or consumers), in conformity with Community law. As a reaction to the Commission's e-Europe initiative, the Lisbon European Council of 23 and 24 March 2000 called on Member States to ensure that all schools have access to the Internet and to multimedia resources.~~

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↓ 2002/22/EC recital 52 (adapted)

~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>87</sup>;~~

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↓ new

(285) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>88</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments.

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

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<sup>87</sup> ~~OJ L 184, 17.7.1999, p. 23.~~

<sup>88</sup> OJ C 369, 17.12.2011, p. 14.

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↓ 2009/140/EC (adapted)

HAVE ADOPTED THIS DIRECTIVE:

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

**TITLE II: SCOPE, AIM & OBJECTIVES, DEFINITIONS**

**CHAPTER I**

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

*Article 1*

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

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

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

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↓ 2002/20/EC

~~Article 1~~

~~Objective and scope~~

~~1~~2. The aim of this Directive is ☒ on the one hand ☒ to implement an internal market in electronic communications networks and services ~~through the harmonisation and simplification of authorisation rules and conditions in order to facilitate their provision throughout the Community~~.

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

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↓ 2002/19/EC (adapted)  
⇒ new

~~Article 1~~

~~Scope and aim~~

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

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

↓ 2002/22/EC (adapted)  
⇒ new

#### ~~Article 1~~

##### ~~Subject matter and scope~~

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

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

↓ 2002/21/EC (adapted)

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

~~3. This Directive as well as the Specific Directives are without prejudice to ⇐ measures taken at Community ⇔ Union ⇔ or national level, in compliance with Community ⇔ Union ⇔~~

law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy.

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

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↓ 544/2009 Art. 2 (adapted)

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

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

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

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↓ 2002/21/EC

## Article 2

### Definitions

For the purposes of this Directive:

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↓ 2009/140/EC Art. 1.2(a)  
⇒ new

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

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↓ new

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

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↓ 2009/140/EC Art. 1.2(b)  
(adapted)

(3b) 'transnational markets' means markets identified in accordance with Article 1563(4) covering the Community ~~or~~ Union or a substantial part thereof located in more than one Member State;

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↓ 2002/21/EC (adapted)  
⇒ new

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

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↓ new

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

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

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

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↓ 2009/140/EC Art. 1.2(c)

(~~4~~8) 'public communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;

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

(~~4~~9) 'network termination point (~~NTP~~)' ☒ or 'NTP' ☒ means the physical point at which ~~a subscriber~~ ⇒ an end-user ⇐ is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to ~~a subscriber~~ ⇒ an end-user's ⇐ number or name.

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↓ 2009/140/EC Art. 1.2(e)

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

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↓ 2009/140/EC Art. 1.2(f)  
⇒ new

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

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↓ 2002/21/EC  
⇒ new

~~(f12)~~ ‘conditional access system’ means any technical measure, ~~⇒ authentication system~~ ~~⇐~~ and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;

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

~~(h13)~~ ‘user’ means a legal entity or natural person using or requesting a publicly available electronic communications service;

~~(h14)~~ ‘end-user’ means a user not providing public communications networks or publicly available electronic communications services.

~~(i15)~~ ‘consumer’ means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business ~~⇒~~ , craft ~~⇐~~ or profession;

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

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

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↓ 2009/140/EC Art. 1.2(g)

~~(l) ‘Specific Directives’ means Directive 2002/20/EC (Authorisation Directive), Directive 2002/19/EC (Access Directive), Directive 2002/22/EC (Universal Service Directive) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)<sup>89</sup>;~~

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↓ 2002/21/EC

~~(m16)~~ ‘provision of an electronic communications network’ means the establishment, operation, control or making available of such a network;

~~(o17)~~ ‘enhanced digital television equipment’ means set-top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;

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<sup>89</sup> OJ L 201, 31.7.2002, p. 37.

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

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

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

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

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

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↓ new

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

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↓ 2009/140/EC Art. 3.1 (adapted)

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

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

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↓ new

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

(25) ‘radio local area network’ (RLAN) means a low power wireless access system, operating within a small range, with a low risk of interference to other such systems

deployed in close proximity by other users, using on a non-exclusive basis, radio spectrum for which the conditions of availability and efficient use for this purpose are harmonised at Union level;

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

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

↓ 2009/140/EC Art. 2.1(a)  
⇒ new

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

↓ 2002/19/EC

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

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

~~(d) 'wide-screen television service' means a television service that consists wholly or partially of programmes produced and edited to be displayed in a full height wide-~~

~~screen format. The 16:9 format is the reference format for wide screen television services;~~

↓ 2009/140/EC Art. 2.1(b)  
(adapted)

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

↓ 2002/22/EC Art. 2

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

↓ 2009/136/EC Art. 1.2(b)  
(adapted)  
⇒ new

(~~e~~32) ~~'publicly available telephone service~~ ⇒ voice communications' ⇐ means a service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan;

(~~d~~33) 'geographic number' means a number from the national telephone numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);

(~~f~~34) 'non-geographic number' means a number from the national telephone numbering plan that is not a geographic number. ~~It includes, inter alia,~~ ⊗ such as ⊗ mobile, freephone and premium-rate numbers;=

↓ new

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

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

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

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

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↓ 2002/21/EC (adapted)  
⇒ new

## CHAPTER II

### OBJECTIVES

#### Article ~~8~~3

##### ⊗ General ⊗ objectives and regulatory principles

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

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↓ 2009/140/EC Art. 1.8(a)

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

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↓ 2002/21/EC  
⇒ new

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

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

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↓ 2009/140/EC Art. 1.8(b)

~~(a) ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality; (b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, including the transmission of content;~~

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↓ 2002/21/EC

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

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↓ new

2. The national regulatory and other competent authorities as well as BEREC shall:

(a) promote access to, and take-up of, very high capacity data connectivity, both fixed and mobile, by all Union citizens and businesses;

(b) promote competition in the provision of electronic communications networks and associated facilities, including efficient infrastructure-based competition, and in the provision of electronic communications services and associated services;

(c) contribute to the development of the internal market by removing remaining obstacles to, and facilitating convergent conditions for, investment in and the provision of electronic communications networks, associated facilities and services and electronic communications services throughout the Union, by developing common rules and predictable regulatory approaches, by favouring the effective, efficient and coordinated use of spectrum, open innovation, the establishment and development of trans-European networks, the availability and interoperability of pan-European services, and end-to-end connectivity;

(d) promote the interests of the citizens of the Union, including in the long term, by ensuring widespread availability and take-up of very high capacity connectivity, both fixed and mobile, and of interpersonal communications services, by enabling maximum benefits in terms of choice, price and quality on the basis of effective competition, by maintaining security of networks and services, by ensuring a high and common level of protection for end-users through the necessary sector-specific rules and by addressing the needs, such as for affordable prices, of specific social groups, in particular disabled users, elderly users and users with special social needs.

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↓ 2002/21/EC

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

~~(a) removing remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level;~~

~~(b) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services, and end-to-end connectivity;~~

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↓ 2009/140/EC Art. 1.8(e)

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

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↓ 2002/21/EC

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

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

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

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

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

↓ 2009/140/EC Art. 1.8(f)

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

↓ 2002/21/EC

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

↓ 2009/140/EC Art. 1.8(g)

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

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

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

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

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

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

↓ new

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

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

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

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

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

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

#### Article ~~8a~~4

### Strategic planning and coordination of radio spectrum policy

1. Member States shall cooperate with each other and with the Commission 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>90</sup>, may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy

<sup>90</sup> OJL 198, 27.7.2002, p. 49.

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.~~

↓ 2002/21/EC (adapted)  
⇒ new

## ⊗ TITLE II: INSTITUTIONAL SET-UP AND GOVERNANCE ⊗

### CHAPTER ~~II~~ I

#### NATIONAL REGULATORY AND ⊗ OTHER ⊗ COMPETENT AUTHORITIES

##### Article ~~35~~

##### National regulatory and ⊗ other competent ⊗ authorities

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

↓ new

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

- implementing *ex ante* market regulation, including the imposition of access and interconnection obligations;
- conducting the geographical survey referred to in Article 22;
- ensuring the resolution of disputes between undertakings and between undertakings and consumers;
- deciding the market-shaping, competition and regulatory elements of national processes for the grant, amendment or renewal of rights of use for radio spectrum, according to this Directive;
- granting general authorisation;
- ensuring consumer protection and end-user rights in the electronic communications sector;
- determining the mechanisms for the financing regime as well as assessing the unfair burden and calculating the net-cost of the provision of the universal service;
- dealing with issues related to open internet access;
- granting numbering resources and managing numbering plans;
- ensuring number portability;

– performing any other task that this Directive reserves to national regulatory authorities.

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

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

↓ 2002/21/EC (adapted)  
⇒ new

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

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

#### Article 6

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

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

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

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

↓ new

## Article 7

### Appointment and dismissal of members of national regulatory authorities

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

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

~~23a.~~ Member States shall ensure that the head of a national regulatory authority, or where applicable, members of the collegiate body fulfilling that function within a national regulatory authority ~~referred to in the first subparagraph~~ or their replacements may be dismissed ~~⊗~~ during their term ~~⊗~~ only if they no longer fulfil the conditions ~~required for the performance of their duties which are laid down in advance in national law~~ ⇒ set out in this Article. ⇐

3. The decision to dismiss the head of the national regulatory authority concerned, or where applicable members of the collegiate body fulfilling that function shall be made public at the time of dismissal. The dismissed head of the national regulatory authority, or where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published. ⇒ Member States shall ensure that this decision is subject to review by a court, on points of fact as well as on points of law. ⇐

## Article 8

### ⊗ Political independence and accountability of the national regulatory authorities ⊗

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

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↓ new

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

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↓ 2009/140/EC (adapted)  
⇒ new

#### Article 9

##### ⊗ **Regulatory capacity of national regulatory authorities** ⊗

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

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↓ new

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

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↓ 2009/140/EC (adapted)

3. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to actively participate in and contribute to the Body of European Regulators for Electronic Communications (BEREC)<sup>91</sup>.

#### Article 10

##### ⊗ **Participation of national regulatory authorities in BEREC** ⊗

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

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

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<sup>91</sup> Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.

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↓ 2002/21/EC (adapted)  
⇒ new

*Article 11*

⊗ **Cooperation with national authorities** ⊗

~~51.~~ National regulatory authorities ⇒, other competent authorities under this Directive, ⇐ and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive and the Specific Directives. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.

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↓ 2002/20/EC

~~Article 1~~

~~Objective and scope~~

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

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

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↓ 2002/20/EC (adapted)  
⇒ new

**CHAPTER II**

**GENERAL AUTHORISATION**

**SECTION 1 GENERAL PART**

*Article ~~12~~*

**General authorisation of electronic communications networks and services**

1. Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article ~~46~~ ⊗ 52 ⊗ (1) of the Treaty. ⇒ Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned and shall be notified to the Commission. ⇐

2. The provision of electronic communications networks or the provision of electronic communications services ⇒ other than number-independent interpersonal communications services ⇐ may, without prejudice to the specific obligations referred to in Article ~~613~~(2) or rights of use referred to in Articles ~~546~~ and 88, only be subject to a general authorisation.

3. ⇒ Where a Member State deems that a notification requirement is justified, that Member State may only require undertakings ~~⇐ The undertaking concerned may be required~~ to submit a notification ⇒ to BEREC ⇐ but ⊗ it ⊗ may not ⊗ require them ⊗ ~~be required~~ to obtain an explicit decision or any other administrative act by the national regulatory authority ⇒ or by any other authority ⇐ before exercising the rights stemming from the authorisation. Upon notification ⇒ to BEREC ⇐, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use ⊗ pursuant to this Directive ⊗ ~~in Articles 5, 6 and 7.~~ ⇒ BEREC shall forward by electronic means and without delay each notification to the national regulatory authority in all Member States concerned by the provision of electronic communications networks or the provision of electronic communications services. ⇐

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

↓ 2009/140/EC Art. 3.2

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

↓ 2002/20/EC (adapted)

⇒ new

~~3.4.~~ The notification referred to in paragraph ~~2~~ ⊗ 3 ⊗ shall not entail more than a declaration by a legal or natural person to ~~the national regulatory authority~~ ⇒ BEREC ⇐ of the intention to commence the provision of electronic ~~communication~~ ⊗ communications ⊗ networks or services and the submission of the minimal information which is required to allow ⇒ BEREC and ⇐ the national regulatory authority to keep a register or list of providers of electronic communications networks and services. This information must be limited to

~~what is necessary for the identification of the provider, such as company registration numbers, and the provider's contact persons, the provider's address, a short description of the network or service, and an estimated date for starting the activity.~~

↓ new

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

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

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↓ 2002/20/EC (adapted)  
⇒ new

*Article 613*

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

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

1. The general authorisation for the provision of electronic communications networks or services and the rights of use for radio ~~⊗~~ spectrum ~~⊗~~ frequencies ~~⊗~~ and rights of ~~⊗~~ use for ~~⊗~~ numbers ~~⊗~~ may be subject only to the conditions listed in Annex ~~⊗~~ I ~~⊗~~. Such conditions shall be non-discriminatory, proportionate and transparent and, in the case of rights of use for radio ~~⊗~~ spectrum ~~⊗~~ frequencies, shall be in accordance with Articles ~~945~~ and ~~51 of Directive 2002/21/EC (Framework Directive)~~. in the case of rights of use for numbers, shall be in accordance with Article 88.

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↓ 2002/20/EC (adapted)  
→<sub>1</sub> 2009/140/EC Art. 3.4(b)

2. Specific obligations which may be imposed on providers of electronic communications networks and services under Articles ~~13, 36, 546(1), 5 48(2), 6 and 8 of Directive 2002/19/EC (Access Directive) and →<sub>1</sub> Article 17 of Directive 2002/22/EC (Universal Service Directive)~~ ← or on those designated to provide universal service under ~~the said~~ ~~⊗~~ this ~~⊗~~ Directive shall be legally separate from the rights and obligations under the general authorisation. In order to achieve transparency for undertakings, the criteria and procedures for imposing such specific obligations on individual undertakings shall be referred to in the general authorisation.

3. The general authorisation shall only contain conditions which are specific for that sector and are set out in Parts ~~A, B and C of the~~ Annex ~~I~~ and shall not duplicate conditions which are applicable to undertakings by virtue of other national legislation.

4. Member States shall not duplicate the conditions of the general authorisation where they grant the right of use for radio frequencies or numbers.

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↓ 2002/20/EC  
⇒ new

*Article 914*

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

At the request of an undertaking, ~~national regulatory authorities~~ ~~⊗~~ BEREC ~~⊗~~ shall, within one week, issue standardised declarations, confirming, where applicable, that the undertaking has submitted a notification under Article ~~312(2)~~ and detailing under what circumstances any

undertaking providing electronic communications networks or services under the general authorisation has the right to apply for rights to install facilities, negotiate interconnection, and/or obtain access or interconnection in order to facilitate the exercise of those rights for instance at other levels of government or in relation to other undertakings. Where appropriate such declarations may also be issued as an automatic reply following the notification referred to in Article ~~31~~2(2).

## SECTION 2 GENERAL AUTHORISATION RIGHTS AND OBLIGATIONS

↓ 2002/20/EC (adapted)

### Article ~~4~~15

#### Minimum list of rights derived from the general authorisation

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

- (a) provide electronic communications networks and services;
- (b) have their application for the necessary rights to install facilities considered in accordance with Article ~~41~~ 43 of ~~the~~ this ~~the~~ Directive ~~2002/21/EC (Framework Directive)~~.

↓ new

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

↓ 2002/20/EC (adapted)

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

- (a) negotiate interconnection with and where applicable obtain access to or interconnection from other providers of publicly available communications networks and services covered by a general authorisation anywhere in the ~~Community~~ ~~the~~ Union ~~the~~ under the conditions of and in accordance with ~~the~~ this ~~the~~ Directive ~~2002/19/EC (Access Directive)~~;
- (b) be given an opportunity to be designated to provide different elements of a universal service and/or to cover different parts of the national territory in accordance with ~~Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)~~<sup>92</sup>. ~~the~~ Article 81 or 82. ~~the~~

<sup>92</sup> [See page 51 of this Official Journal](#)

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↓ 2002/20/EC  
⇒ new

*Article ~~12~~16*

**Administrative charges**

1. Any administrative charges imposed on undertakings providing a service or a network under the general authorisation or to whom a right of use has been granted shall:

(a) in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of specific obligations as referred to in Article ~~6~~13(2), which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection; and

(b) be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges. ⇒ Member States may choose not to apply administrative charges to undertakings whose turnover is below a certain threshold or whose activities do not reach a minimum market share or have a very limited territorial scope. ⇐

2. Where national regulatory authorities ⇐ or other competent authorities ⇐ impose administrative charges, they shall publish a yearly overview of their administrative costs and of the total sum of the charges collected. In the light of the difference between the total sum of the charges and the administrative costs, appropriate adjustments shall be made.

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↓ 2002/21/EC (adapted)  
⇒ new

*Article ~~13~~17*

**Accounting separation and financial reports**

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

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

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

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

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

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

### SECTION 3 AMENDMENT AND WITHDRAWAL

#### *Article ~~14~~18*

##### **Amendment of rights and obligations**

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

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

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↓ new

Any amendment shall be published stating the reasons thereof.

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↓ 2002/21/EC (adapted)  
 new

#### *Article 19*

##### **Restriction or withdrawal of rights**

21. 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.

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↓ new

2. In line with the need to ensure the effective and efficient use of radio spectrum or the implementation of harmonised conditions adopted under Decision No 676/2002/EC, Member States may allow withdrawal of rights, including those with a 25 year minimum duration, based on 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.

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↓ 2002/21/EC Art. 5 (adapted)

### CHAPTER III

#### PROVISION OF INFORMATION, SURVEYS AND CONSULTATION MECHANISM

##### *Article 520*

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

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↓ 2009/140/EC Art. 1.5 (adapted)  
⇒ new

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

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

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↓ new

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

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↓ 2009/140/EC Art. 1.5  
⇒ new

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

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↓ 2002/21/EC (adapted)  
⇒ new

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

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

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

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

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

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↓ 2002/20/EC Art. 11  
⇒ new

Article ~~11~~21

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

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

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↓ 2009/140/EC Art. 3.7(a)  
(adapted)

(a) systematic or case-by-case verification of compliance with conditions 1 ~~and 2~~ of Part A, conditions 2 and 6 of Part ~~B~~ ~~⊗~~ D ~~⊗~~ and conditions 2 and 7 of Part ~~C~~ ~~⊗~~ E ~~⊗~~ of Annex ~~⊗~~ I ~~⊗~~ and of compliance with obligations as referred to in Article 13~~614~~ (2);

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↓ 2002/20/EC (adapted)  
⇒ new

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

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

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

(e) clearly defined statistical purposes;

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

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↓ 2009/140/EC Art. 3.7(b)  
⇒ new

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

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

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↓ 2009/140/EC Art. 3.7(c)

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

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↓ new

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

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↓ 2002/20/EC

⇒ new

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

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↓ new

4. National regulatory or other competent authorities may not duplicate requests of information already made by BEREC pursuant to Article 30 of Regulation [xxxx/xxxx/EC (BEREC Regulation)]<sup>93</sup>.

## Article 22

### Geographical surveys of network deployments

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

This geographical survey shall consist of:

- a) a survey of the current geographic reach of broadband networks within their territory, in particular for conducting the tasks required by Articles 62 and 65 and by Article 81, as well as for imposing obligations in accordance with Article 66 and for the surveys required for the application of State aid rules; and
- b) a three-year forecast of the reach of broadband networks within their territory, relying on the information gathered in accordance with point (a), where this is available and relevant.

This forecast shall reflect the economic prospects of the electronic communications networks sector and investment intentions of operators at the time when the data is gathered, in order to allow the identification of available connectivity in different areas. This forecast shall include information on planned deployments by any

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<sup>93</sup> Regulation (EC) No xxxx/xxxx of the European Parliament and of the Council of [] establishing the Body of European Regulators for Electronic Communications (BEREC) (OJ L. []).

undertaking or public authority, in particular to include very high capacity networks and significant upgrades or extensions of legacy broadband networks to at least the performance of next-generation access networks. For this purpose, national regulatory authorities shall request undertakings to provide relevant information regarding planned deployments of such networks.

The information collected in the survey shall be at an appropriate level of local detail and shall include sufficient information on the quality of service and parameters thereof.

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

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

4. When national regulatory authorities take measures pursuant to paragraph 3, they shall do so according to an efficient, objective, transparent and non-discriminatory procedure, whereby no undertaking is a priori excluded. Failure to provide information pursuant to paragraph 1(b) or to respond to the call for interest pursuant to paragraph 3 may be considered as misleading information pursuant to Articles 20 or 21.

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

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

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

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

*Article ~~6~~23*

**Consultation and transparency mechanism**

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

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

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

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

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↓ 2002/22/EC

*Article ~~3~~24*

**Consultation with interested parties**

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↓ 2009/136/EC Art. 1.23(a)

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

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

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↓ 2002/22/EC

2. Where appropriate, interested parties may develop, with the guidance of national regulatory authorities, mechanisms, involving consumers, user groups and service providers, to improve

the general quality of service provision by, *inter alia*, developing and monitoring codes of conduct and operating standards.

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↓ 2009/136/EC Art. 1.23(b)  
(adapted)

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

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↓ 2002/22/EC

#### Article ~~34~~25

### Out-of-court dispute resolution

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

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

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↓ 2002/22/EC (adapted)  
⇒ new

2. Member States shall ensure that their legislation does not hamper the establishment of complaints offices and the provision of online services at the appropriate territorial level to facilitate access to dispute resolution by consumers and ☒ other ☒ end-users. ⇒ For disputes involving consumers and falling within the scope of Regulation (EU) 524/2013, the

provisions of that Regulation shall apply provided that the dispute settlement entity concerned has been notified to the Commission under Article 20 of Directive 2013/11/EU. ⇐

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

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

↓ 2002/21/EC

#### Article ~~20~~26

### Dispute resolution between undertakings

↓ 2009/140/EC Art. 1.22  
(adapted)  
⇒ new

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

↓ 2002/21/EC (adapted)

2. Member States may make provision for national regulatory authorities to decline to resolve a dispute through a binding decision where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with ~~the provisions of~~ Article ~~38~~. The national regulatory authority shall inform the parties without delay. If after four months the dispute is not resolved, and if the dispute has not been brought before the courts by the party seeking redress, the national regulatory authority shall issue, at the request of either party, a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months.

3. In resolving a dispute, the national regulatory authority shall take decisions aimed at achieving the objectives set out in Article ~~38~~. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive ~~or the Specific Directives~~.

4. The decision of the national regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.

5. The procedure referred to in paragraphs 1, 3 and 4 shall not preclude either party from bringing an action before the courts.

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

#### Article ~~21~~27

### Resolution of cross-border disputes

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

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

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

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↓ new

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

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↓ 2002/21/EC Art 21

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

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↓ new

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

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↓ 2002/21/EC (adapted)  
⇒ new

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

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

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

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

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↓ 2009/140/EC Art. 1.23

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

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

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↓ new

## Article 28

### Radio Spectrum Coordination among Member States

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

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

2. Member States shall cooperate with each other, 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. 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, in order to assist Member States in complying with paragraphs 1 and 2.

4. At the request of a Member State or upon its own initiative, the Commission may, taking utmost account of the opinion of the Radio Spectrum Policy Group, adopt implementing measures 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 shall be adopted in accordance with the examination procedure referred to in Article 110(4).

### TITLE III: IMPLEMENTATION

↓ 2002/21/EC Art. 21a (adapted)  
⇒ new

#### Article ~~21a~~29

##### Penalties

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

↓ 2002/20/EC Art.10

#### Article ~~10~~30

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

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

1. ⇒ Member States shall ensure that their national regulatory and other competent authorities ⇐ ~~National regulatory authorities shall~~ monitor and supervise compliance with the conditions of the general authorisation or of rights of use ⇒ for radio spectrum and for numbers ⇐ , and with the specific obligations referred to in Article ~~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 competent ⇐ authorities shall have the power to require undertakings ~~providing electronic communications networks or services~~ covered by the

general authorisation or enjoying rights of use for radio ~~⇒ spectrum ⇐~~ ~~frequencies~~ or numbers to provide all information necessary to verify compliance with the conditions of the general authorisation or of rights of use or with the specific obligations referred to in Article ~~613(2) ☒~~ or Article 47(1) and (2) ~~☒~~, in accordance with Article ~~1121~~.

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

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

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

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

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

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

↓ 2009/140/EC Art. 3.6(b)  
(adapted)  
⇒ new

4. Notwithstanding ~~the provisions of~~ paragraphs 2 and 3, Member States shall empower the relevant authority to impose financial penalties where appropriate on undertakings for failure to provide information in accordance with the obligations imposed under Article ~~1121(1)(a) or (b) of this Directive~~ and Article ~~9 67 of Directive 2002/19/EC (Access Directive)~~ within a reasonable period stipulated by the national ~~regulatory ⇒ competent ⇐~~ authority.

↓ 2009/140/EC Art. 3.6(c)  
(adapted)

5. In cases of serious ~~☒~~ breach ~~☒~~ or repeated breaches of the conditions of the general authorisation or of the rights of use, or specific obligations referred to in Article ~~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 authority to impose ~~☒~~ ~~S~~sanctions and penalties which are effective, proportionate and dissuasive. ~~☒~~ Such sanctions and penalties ~~☒~~ may be applied to cover the period of any breach, even if the breach has subsequently been rectified.

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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 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 ~~4~~13(2)  or Article 47(1) and (2)  that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services or other users of the radio spectrum, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months, but which may, in circumstances where enforcement procedures have not been completed, be extended for a further period of up to three months.

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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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↓ 2002/21/EC

#### *Article ~~4~~31*

#### **Right of appeal**

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↓ 2009/140/EC Art. 1.4(a)  
⇒ new

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

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

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↓ 2002/21/EC

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

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↓ 2009/140/EC Art. 1.4(b)  
⇒ new

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

#### TITLE IV: INTERNAL MARKET PROCEDURES

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↓ 2002/21/EC (adapted)

##### *Article ~~7~~32*

##### **Consolidating the internal market for electronic communications**

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

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

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↓ 2002/21/EC

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

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↓ 2002/21/EC (adapted)

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

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↓ 2002/21/EC

(b) would affect trade between Member States;

it shall make the draft measure accessible to the Commission, BEREC, and the national regulatory authorities in other Member States, at the same time, together with the reasoning on which the measure is based, in accordance with Article ~~5~~ 20(3), and inform the Commission, BEREC and other national regulatory authorities thereof. National regulatory authorities, BEREC and the Commission may make comments to the national regulatory authority concerned only within one month. The one-month period may not be extended.

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

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

↓ 2002/21/EC (adapted)

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

and would affect trade between Member States, and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with ~~Community~~  Union  law and in particular the objectives referred to in Article ~~83~~ 83, the draft measure shall not be adopted for a further two months. This period may not be extended. The Commission shall inform other national regulatory authorities of its reservations in such a case.

↓ 2002/21/EC

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

- (a) take a decision requiring the national regulatory authority concerned to withdraw the draft measure; and/or
- (b) take a decision to lift its reservations in relation to a draft measure referred to in paragraph 4.

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

6. Where the Commission has adopted a decision in accordance with paragraph 5, requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure within six months of the date of the Commission's decision. When the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article ~~62~~ 62, and shall re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

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

↓ 2002/21/EC (adapted)

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

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↓ 2002/21/EC

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

*Article ~~7a~~33*

**Procedure for the consistent application of remedies**

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↓ 2002/21/EC (adapted)

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

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↓ 2002/21/EC

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

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

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

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

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

(b) maintain its draft measure.

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

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

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

↓ new

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

↓ 2002/21/EC (adapted)

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

This period may be extended to allow the national regulatory authority to undertake a public consultation in accordance with Article ~~623~~.

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

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

#### Article ~~7b~~34

### Implementing provisions

1 After public consultation and consultation with national regulatory authorities and taking utmost account of the opinion of BEREC, the Commission may adopt recommendations and/or guidelines in relation to Article ~~732~~ that define the form, content and level of detail to be given in the notifications required in accordance with Article ~~732~~(3), the circumstances in which notifications would not be required, and the calculation of the time-limits.

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

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## 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 to take a measure which falls within the scope of paragraph 1 (a) to (g), 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, 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:

- (a) 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),
- (b) ensure effective and efficient use of radio spectrum; and
- (c) 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 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:

- (a) 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;
- (b) any specific national objectives established by the Member State consistent with Union law;
- (c) the need to avoid that competition is distorted when adopting such measures;
- (d) the results of the most recent geographical survey of networks pursuant to Article 22;
- (e) the need to ensure coherence with recent and pending assignment procedures in other Member States, and possible effects on trade between Member States; and
- (f) 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 before adopting its final decision. It shall communicate the final decision adopted 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.

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.

*Article ~~36~~*

**Harmonised assignment of radio frequencies**

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

*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 also jointly conducting the selection process to grant individual rights of use for radio spectrum in line, where applicable with any common timetable established in accordance with Article 53. The joint authorisation process shall meet the following criteria:

- (a) 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;
- (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 inter alia allowing users to be assigned similar radio spectrum blocks;
- (d) it shall be open at any time until the authorisation process has been conducted to other Member States.

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

## CHAPTER III

### HARMONISATION PROCEDURES

↓ 2002/21/EC (adapted)

⇒ new

*Article ~~19~~38*

#### Harmonisation procedures

1. Without prejudice to Article ~~3~~ ~~9~~ ~~37~~, 45, 46(3), 47(3), 53 ~~of this Directive and Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive)~~, where the Commission finds that divergences in the implementation by the national regulatory authorities ~~or by other competent authorities~~ ~~of the regulatory tasks specified in this Directive and the Specific Directives~~ may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of BEREC, issue a recommendation or a decision on the harmonised application of the provisions in this Directive and ~~the Specific Directives~~ in order to further the achievement of the objectives set out in Article ~~38~~.

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

Member States shall ensure that national regulatory ~~and other competent~~ authorities take the utmost account of ~~those~~ recommendations ~~in carrying out their tasks~~ pursuant to paragraph 1 ~~in carrying out their tasks~~. Where a national regulatory authority ~~or other competent authority~~ chooses not to follow a recommendation, it shall inform the Commission, giving the reasons for its position.

3. The decisions adopted pursuant to paragraph 1 may include only the identification of a harmonised or coordinated approach for the purposes of addressing the following matters:

- (a) the inconsistent implementation of general regulatory approaches by national regulatory authorities on the regulation of electronic ~~communication~~ ~~communications~~ ~~markets~~ in the application of Articles ~~15~~ ~~62~~ and ~~16~~ ~~65~~, where it creates a barrier to the internal market. Such decisions shall not refer to specific notifications issued by the national regulatory authorities pursuant to Article ~~7a~~33;

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

- after at least two years following the adoption of a Commission Recommendation dealing with the same matter, and
  - taking utmost account of an opinion from BEREC on the case for adoption of such a decision, which shall be provided by BEREC within three months of the Commission's request;
- (b) numbering, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to 112 emergency services.

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

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

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

#### Article ~~1739~~

### Standardisation

1. The Commission, ~~acting in accordance with the procedure referred to in Article 22(2),~~ shall draw up and publish in the *Official Journal of the European Communities* a list of ~~→<sub>1</sub>~~ non-compulsory standards ~~←~~ and/or specifications to serve as a basis for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities and services. Where necessary, the Commission may, ~~acting in accordance with the procedure referred to in Article 22(2) and~~ following consultation of the Committee established by Directive ~~2015/1535/EU 98/34/EC~~, request that standards be drawn up by the European standards organisations (European Committee for Standardisation (CEN), European Committee for Electrotechnical Standardisation (CENELEC), and European Telecommunications Standards Institute (ETSI)).

2. Member States shall encourage the use of the standards and/or specifications referred to in paragraph 1, for the provision of services, technical interfaces and/or network functions, to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.

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

↓ 2009/140/EC Art. 1.19(b)

In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (IEC).

↓ 2002/21/EC

Where international standards exist, Member States shall encourage the European standards organisations to use them, or the relevant parts of them, as a basis for the standards they develop, except where such international standards or relevant parts would be ineffective.

3. If the standards and/or specifications referred to in paragraph 1 have not been adequately implemented so that interoperability of services in one or more Member States cannot be ensured, the implementation of such standards and/or specifications may be made compulsory

under the procedure laid down in paragraph 4, to the extent strictly necessary to ensure such interoperability and to improve freedom of choice for users.

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↓ 2009/140/EC Art. 1.19(c)

4. Where the Commission intends to make the implementation of certain standards and/or specifications compulsory, it shall publish a notice in the *Official Journal of the European Union* and invite public comment by all parties concerned. The Commission shall take appropriate implementing measures and make implementation of the relevant standards compulsory by making reference to them as compulsory standards in the list of standards and/or specifications published in the *Official Journal of the European Union*.

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

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

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

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

~~6a7.~~ The implementing measures ~~designed to amend non-essential elements of this Directive by supplementing it,~~ referred to in paragraphs 4 and 6, shall be adopted in accordance with the ~~regulatory~~ ⇒ examination ⇐ procedure ~~with scrutiny~~ referred to in Article ~~110(4)22(3)~~.

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↓ 2002/21/EC

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

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↓ 2002/21/EC (adapted)

#### ~~Article 18~~

### ~~Interoperability of digital interactive television services~~

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

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

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

~~446639215482 — (c) providers of digital TV services and equipment to cooperate in the provision of interoperable TV services for disabled end-users.~~

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

## TITLE V: SECURITY AND INTEGRITY

↓ 2002/21/EC (adapted)  
⇒ new

### Article ~~13~~40

#### ~~Security and integrity~~ ☒ of networks and services ☒

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

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

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

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

- (a) the number of users affected by the breach;
- (b) the duration of the breach;
- (c) the geographical spread of the area affected by the breach;

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

(e) the impact on economic and societal activities.

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

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

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

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

↓ new

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

5. The Commission, shall be empowered to adopt delegated acts in accordance with Article 109 with a view to specifying the measures referred to in paragraphs 1 and 2, including measures defining the circumstances, format and procedures applicable to notification requirements. The delegated acts shall be based on European and international standards to the greatest extent possible, and shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraphs 1 and 2.

↓ 2002/21/EC (adapted)

⇒ new

#### Article ~~13b~~41

### Implementation and enforcement

1. Member States shall ensure that in order to implement Article ~~13a~~40, ⊗ the ⇐ competent ~~national regulatory~~ authorities have the power to issue binding instructions, including those regarding ⇒ the measures required to remedy a breach and ⇐ time-limits for implementation, to undertakings providing public communications networks or publicly available electronic communications services.

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

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

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

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

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⇩ new

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

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

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⇩ 2002/21/EC

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

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⇩ 2002/20/EC

### ~~Article 13~~

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

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

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

## ⊗ PART II. NETWORKS ⊗

### ⊗ TITLE I: MARKET ENTRY AND DEPLOYMENT ⊗

#### Article ~~13~~ 42

##### Fees for rights of use ⊗ for radio spectrum ⊗ and rights to install facilities

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

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↓ 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;
- (a) taking into account the need to foster the development of innovative services; and
- (b) 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 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.

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↓ 2002/21/EC (adapted)

## CHAPTER I

### ⊗ ACCESS TO LAND ⊗

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↓ 2002/21/EC

*Article ~~11~~43*

#### **Rights of way**

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

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

the competent authority:

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↓ 2009/140/EC Art. 1.13(a)

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

↓ 2002/21/EC

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

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

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↓ 2009/140/EC Art. 1.13(b)

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

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↓ 2002/21/EC

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

~~Article 12~~

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

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

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

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

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

Article 44

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

1. Where an operator has exercised the right under national legislation to install facilities on, over or under public or private property, or has taken advantage of a procedure for the expropriation or use of property, competent authorities shall, be able to impose co-location and sharing of the network elements and associated facilities installed, in order to protect the environment, public health, public security or to meet town and country planning objectives. Co-location or sharing of networks elements and facilities installed and sharing of property

may only be imposed after an appropriate period of public consultation, during which all interested parties shall be given an opportunity to express their views and only in the specific areas where such sharing is deemed necessary in view of pursuing the objectives provided in this Article. Competent authorities shall be able to impose the sharing of such facilities or property, including land, buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets or measures facilitating the coordination of public works. Where necessary, national regulatory authorities shall provide rules for apportioning the costs of facility or property sharing and of civil works coordination.

↓ 2009/140/EC (adapted)  
⇒ new

52. Measures taken by a ~~national regulatory~~ ⇒ competent ⇐ authority in accordance with this Article shall be objective, transparent, non-discriminatory, and proportionate. Where relevant, these measures shall be carried out in coordination with ⊗ the ⊗ ~~local~~ ⇒ national regulatory ⇐ authorities.

## CHAPTER II

### ACCESS TO RADIO SPECTRUM

#### SECTION 1 AUTHORISATIONS

↓ 2002/21/EC Art. 9 (adapted)  
⇒ new

##### *Article ~~94~~5*

##### **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 ~~83~~ and ~~48a~~. They shall ensure that ⇒ radio ⇐ spectrum allocation used for electronic communications services ⇒ and networks ⇐ and issuing general authorisations or individual rights of use of ⊗ for ⊗ such radio ~~frequencies~~ ⇒ spectrum ⇐ by competent ~~national~~ authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

In applying this Article, Member States shall respect relevant international agreements, including the ITU Radio Regulations ⇒ and other agreements adopted in the framework of the ITU ⇐, 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 ~~8a~~ 4 and with the Decision ~~No~~ 676/2002/EC (Radio Spectrum Decision) ⇒ by inter alia ⇐

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↓ new

- (a) ensuring 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 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 rules for the granting, transfer, renewal, modification and withdrawal of rights to use radio spectrum are clearly and transparently defined and applied in order to guarantee regulatory certainty, consistency and predictability;
- (h) ensuring 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 adopting technical harmonisation measures under Decision No 676/2002/EC, the Commission may, taking utmost account of the opinion of Radio Spectrum Policy Group, adopt an implementing measure setting out whether, pursuant to Article 46 of this Directive, rights in the harmonised band shall be subject to a general authorisation or to individual rights of use. Those implementing measures shall be adopted in accordance with the examination procedure referred to in Article 110(4).

Where the Commission is considering acting to provide for measures in accordance with Article 39, 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 years, or upon 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.

↓ 2002/21/EC (adapted)  
⇒ new

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>94</sup>; ~~⊗~~
- (c) ensure technical quality of service;
- (d) ensure maximisation of ~~radio frequency~~ ~~⇒ 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>94</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~~  Union  law, such as, and not limited to:

- (a) safety of life;
- (b) the promotion of social, regional or territorial cohesion;
- (c) the avoidance of inefficient use of radio ~~frequencies~~  spectrum  ; or
- (d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.

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

~~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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↓ 2002/21/EC

~~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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↓ 2002/20/EC

#### ~~Article 5~~

#### ~~Rights of use for radio frequencies and numbers~~

~~1. Member States shall facilitate the use of radio frequencies under general authorisations. Where necessary, Member States may grant individual rights of use in order to:~~

~~avoid harmful interference,~~

~~ensure technical quality of service,~~

~~safeguard efficient use of spectrum, or~~

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

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

~~Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, the rights of use for radio frequencies and numbers shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with Community law.~~

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

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

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

~~3. 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 frequencies that have been allocated to be used by electronic communications services within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.~~

~~4. Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection~~

~~procedures, Member States may extend the maximum period of three weeks by up to a further three weeks.~~

~~With regard to competitive or comparative selection procedures for radio frequencies, Article 7 shall apply.~~

~~5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.~~

~~6. Competent national authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Articles 8(2) and 9(2) of Directive 2002/21/EC (Framework Directive). They shall ensure competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. For such purposes, Member States may take appropriate measures such as mandating the sale or the lease of rights to use radio frequencies.~~

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

#### Article 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 ⇐ ~~Where necessary, Member States may grant individual rights of use in order to:~~

↓ new

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

↓ 2009/140/EC Art. 3.3  
⇒ new

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

↓ new

(c) the requirements for a reliable sharing arrangement, where appropriate;

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

- (d) ⇒ the appropriate level of receiver resilience to ⇐ ensure technical quality of ⇐ communications or ⇐ service;
- (e) ~~safeguard efficient use of spectrum, or~~
- (f) ~~fulfil other~~ objectives of general interest as defined by Member States in conformity with ~~Community~~ ⇔ Union ⇔ law.

↓ new

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

- to maintain incentives for incorporation of resilient receiver technologies in devices;
- to prevent impediments caused by alternative users;
- to avoid to the best extent possible the application of the non-interference, non-protection principle to general authorisation regimes; and
- where that principle still applies, to protect against out-of-band interference.

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

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

#### *Article 47*

##### **Conditions attached to general authorisations and to rights of use for radio spectrum**

1. Competent authorities shall attach conditions to individual rights and general authorisations to use 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 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 authorise the sharing of passive or active infrastructure, or of radio spectrum, as well as commercial roaming access agreements, or the joint 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. Conditions attached to the rights of use shall not prevent the sharing of radio spectrum. Implementation by undertakings of conditions attached pursuant to this paragraph shall remain subject to competition law.

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

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

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

↓ 2002/20/EC (adapted)  
⇒ new

## ⊗ SECTION 2 RIGHTS OF USE ⊗

### Article 48

#### ⊗ Granting of individual rights of use for radio spectrum ⊗

21. 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.

↓ 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.

↓ 2002/20/EC (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 ~~945 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.

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

## 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.

↓ new

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

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, at least 3 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 radio spectrum for which the number of rights of use is limited, competent authorities shall conduct an open,

transparent and non-discriminatory procedure to examine the criteria in paragraph 2, and shall, in particular,

- (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 grant the rights pursuant to Article 54.

4. A decision to grant a renewal of rights 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).

↓ 2009/140/EC Art. 1.11  
(adapted)

#### *Article 9a*

##### **Review of restrictions on existing rights**

~~1. For a period of five years starting from 25 May 2011, Member States may allow holders of rights to use radio frequencies which were granted before that date and which will remain valid for a period of not less 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).~~

#### *Article 17*

##### **Existing authorisations**

~~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.~~

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

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

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

#### Article ~~9b~~51

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

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

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

Without prejudice to paragraph 3, 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~~ 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.

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↓ new

3. Member States shall allow the 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.

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↓ 2009/140/EC (adapted)

⇒ new

~~43.~~ The Commission may adopt appropriate implementing measures 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 measures, ~~designed to amend non-essential elements of this Directive by supplementing it,~~ shall be adopted in accordance with the regulatory ~~⇒ examination~~ procedure ~~with scrutiny~~ referred to in Article ~~⇒~~ 110(4) ~~⇒~~ 22(3).

*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 the Union and taking due account of the different national market situations, the Commission may, by way of an implementing measure:

- (a) establish one, or, where appropriate, several common maximum dates by which the use of specific harmonised radio spectrum bands shall be authorised;
- (b) where necessary to ensure the effectiveness of coordination, adopt any transitional measure regarding the duration of rights pursuant to Article 49, such as an extension or a reduction of their duration, in order to adapt existing rights or authorisations to such harmonised date.

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

↓ 2002/20/EC (adapted)

*Article ~~7~~ 54*

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

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

1. ⊗ Without prejudice to any implementing act adopted pursuant to Article 53, ⊗ ~~where~~ a Member State ⇒ concludes that a right to use radio spectrum cannot be granted pursuant to Article 46 ⇐ ⊗ and where it considers ⊗ ~~is considering~~ whether to limit the number of rights of use to be granted for radio ⇒ spectrum ⇐ ~~frequencies or whether to extend the duration of existing rights other than in accordance with the terms specified in such rights~~, it shall inter alia:

↓ 2002/20/EC (adapted)  
⇒ new

- (a) ⇒ clearly state the reasons for limiting the rights of use, in particular ⇐ ⊗ by giving ⊗ ~~give~~ due weight to the need to maximise benefits for users and to facilitate the development of competition ⇒ , and review the limitation at regular intervals or at the reasonable request of affected undertakings ⇐ ;
- (b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation ⊗ through a public consultation ⊗ in accordance with Article 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 reasons therein require a longer deadline ⇐ ;

↓ new

2. When a Member State concludes that the number of rights of use has to be limited, it shall clearly define and justify the objectives pursued with the 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 be limited to one or more of the following:

(a) promoting coverage;

(b) required quality of service;

(c) promoting competition;

(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.

↓ 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  to limit the granting of rights of use or the renewal of rights of use,  clearly  stating the reasons therefor;  and how it has taken into account the measure adopted by the national regulatory authority in accordance with Article 35. It shall also publish the conditions that will be attached to the rights of use.

↓ 2002/20/EC (adapted)  
⇒ new

~~4. (d)~~ 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 45~~ ~~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

~~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

### 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.

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).

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>95</sup> competent authorities shall ensure that providers of public communications networks or publicly available electronic communications services do not unilaterally restrict:

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

b) the right of end-users to allow reciprocally or more generally access 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.

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 the right of end-users 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).

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<sup>95</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 (Text with EEA relevance), OJ L 310, 26.11.2015, p. 1

### Deployment and operation of small-area wireless access points

1. Competent authorities shall allow the deployment, connection and operation of unobtrusive small-area wireless access points under the general authorisation 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.

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 shall at a minimum comply with the requirements of Directive 2013/35/EU<sup>96</sup> and take account of the thresholds defined in Council Recommendation No 1999/519/EC.<sup>97</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.

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>98</sup>

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

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<sup>96</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>97</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>98</sup> Directive 1999/5/EC of the European Parliament and the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ L 91, 7.4.1999, p. 10).

⊗ TITLE II: ACCESS ⊗

CHAPTER I II

GENERAL PROVISIONS ⊗ , ACCESS PRINCIPLES ⊗

Article ~~3~~57

**General framework for access and interconnection**

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

2. Without prejudice to Article ~~106~~ 31 of ~~Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)~~<sup>99</sup>, Member States shall not maintain legal or administrative measures which oblige operators, when granting access or interconnection, to offer different terms and conditions to different undertakings for equivalent services and/or imposing obligations that are not related to the actual access and interconnection services provided without prejudice to the conditions fixed in ~~the~~ Annex I of ⊗ this ⊗ Directive ~~2002/20/EC (Authorisation Directive)~~.

Article ~~4~~58

**Rights and obligations for undertakings**

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

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<sup>99</sup> ~~See page 51 of this Official Journal.~~

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↓ 2002/19/EC (adapted)

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

~~23.~~ Without prejudice to Article ~~11~~ 21 of ~~⊗~~ this ~~⊗~~ Directive ~~2002/20/EC (Authorisation Directive)~~, Member States shall require that undertakings which acquire information from another undertaking before, during or after the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. The received information shall not be passed on to any other party, in particular other departments, subsidiaries or partners, for whom such information could provide a competitive advantage.

## CHAPTER II

### ACCESS AND INTERCONNECTION

#### *Article 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. ⇐

↓ 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 ~~86~~ 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

(~~db~~) 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).

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↓ 2009/140/EC Art. 1.14

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

~~2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6, 7 and 7a of Directive 2002/21/EC (Framework Directive).~~

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↓ 2009/140/EC Art. 2.3(d)

~~3. With regard to access and interconnection referred to in paragraph 1, Member States shall ensure that the national regulatory authority is empowered to intervene at its own initiative where justified in order to secure the policy objectives of Article 8 of Directive 2002/21/EC (Framework Directive), in accordance with the provisions of this Directive and the procedures referred to in Articles 6 and 7, 20 and 21 of Directive 2002/21/EC (Framework Directive).~~

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↓ new

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. Member States shall ensure that national regulatory authorities have the power to impose on undertakings providing or authorised to provide electronic communications networks obligations in relation to the sharing of passive or active infrastructure, 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,

(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, 732 and 7a33e 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)

53. 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.

⇓ 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.

↓ 2002/19/EC (adapted)

#### Article ~~660~~

### Conditional access systems and other facilities

1. Member States shall ensure that  the conditions laid down in Annex II, Part I, apply  in relation to conditional access to digital television and radio services broadcast to viewers and listeners in the ~~Community~~  Union , irrespective of the means of transmission, ~~the conditions laid down in Annex II, Part I apply.~~

↓ 2009/140/EC Art. 2.4 (adapted)

⇒ new

2. In the light of market and technological developments, the Commission ~~may~~  shall be empowered to  adopt ~~implementing measures~~  delegated acts in accordance with Article 109<sup>⊞</sup> to amend Annex II. ~~The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).~~

↓ 2002/19/EC (adapted)

3. Notwithstanding the provisions of paragraph 1, Member States may permit their national regulatory authority, as soon as possible after the entry into force of this Directive and periodically thereafter, to review the conditions applied in accordance with this Article, by undertaking a market analysis in accordance with the first paragraph of Article ~~6516 of Directive 2002/21/EC (Framework Directive)~~ to determine whether to maintain, amend or withdraw the conditions applied.

Where, as a result of this market analysis, a national regulatory authority finds that one or more operators do not have significant market power on the relevant market, it may amend or withdraw the conditions with respect to those operators, in accordance with the procedures referred to in Articles ~~6 23 and 327 of Directive 2002/21/EC (Framework Directive)~~, only to the extent that:

(a) accessibility for end-users to radio and television broadcasts and broadcasting channels and services specified in accordance with Article ~~106 31 of Directive 2002/22/EC (Universal Service Directive)~~ would not be adversely affected by such amendment or withdrawal, and

(b) the prospects for effective competition in the markets for:

- (i) retail digital television and radio broadcasting services, and
- (ii) conditional access systems and other associated facilities,

would not be adversely affected by such amendment or withdrawal.

An appropriate period of notice shall be given to parties affected by such amendment or withdrawal of conditions.

4. Conditions applied in accordance with this Article are without prejudice to the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides and similar listing and navigation facilities.

## CHAPTER III

### MARKET ANALYSIS AND SIGNIFICANT MARKET POWER

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↓ 2002/21/EC (adapted)

#### *Article ~~1461~~*

##### **Undertakings with significant market power**

1. Where ~~the Specific~~  this  Directives requires national regulatory authorities to determine whether operators have significant market power in accordance with the procedure referred to in Article ~~1465~~, paragraphs 2 and 3 of this Article shall apply.

2. An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

In particular, national regulatory authorities shall, when assessing whether two or more undertakings are in a joint dominant position in a market, act in accordance with ~~Community~~  Union  law and take into the utmost account the guidelines on market analysis and the assessment of significant market power published by the Commission pursuant to Article ~~1562~~. ~~Criteria to be used in making such an assessment are set out in Annex II.~~

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↓ 2009/140/EC

~~3. Where an undertaking has significant market power on a specific market (the first market), it may also be designated as having significant market power on a closely related market (the second market), where the links between the two markets are such as to allow the market power held in the first market to be leveraged into the second market, thereby strengthening the market power of the undertaking. Consequently, remedies aimed at preventing such leverage may be applied in the second market pursuant to Articles 9, 10, 11 and 13 of Directive 2002/19/EC (Access Directive), and where such remedies prove to be insufficient, remedies pursuant to Article 17 of Directive 2002/22/EC (Universal Service Directive) may be imposed.~~

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↓ 2002/21/EC Art.15

Article ~~15~~62

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↓ 2009/140/EC Art. 1.17(a)

**Procedure for the identification and definition of markets**

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↓ 2009/140/EC Art. 1.17(b)  
(adapted)

1. After public consultation including with national regulatory authorities and taking the utmost account of the opinion of BEREC, the Commission shall, ~~in accordance with the advisory procedure referred to in Article 22(2),~~ adopt a Recommendation on Relevant Product and Service Markets (the Recommendation). The Recommendation shall identify those product and service markets within the electronic communications sector the characteristics of which may be such as to justify the imposition of regulatory obligations set out in ~~the Specific~~ ~~⊗~~ this ~~⊗~~ Directives, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.

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↓ new

The Commission shall include product and service markets in the Recommendation where, after observing overall trends in the Union, it finds that each of the criteria listed in paragraph 1 of Article 65 is met.

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↓ 2002/21/EC (adapted)

The Commission shall regularly review the ~~R~~ecommendation.

2. The Commission shall publish, at the latest on the date of entry into force of this Directive, guidelines for market analysis and the assessment of significant market power (hereinafter ‘the ~~⊗~~ SMP ~~⊗~~ guidelines’) which shall be in accordance with the principles of competition law.

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↓ 2009/140/EC Art. 1.17(c)  
(adapted)  
⇒ new

3. National regulatory authorities shall, taking the utmost account of the Recommendation and the ~~⊗~~ SMP ~~⊗~~ ~~⊗~~ guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall ~~⇒~~ take into account the results of the geographical survey conducted in accordance with Article 22(1). They shall ~~⇐~~ follow the procedures referred to in Articles ~~6~~23 and ~~7~~32 before defining the markets that differ from those identified in the Recommendation.

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↓ new

### Article 63

#### Procedure for the identification of transnational markets

1. After consulting stakeholders and in close cooperation with the Commission, BEREC may adopt a Decision identifying transnational markets in accordance with the principles of competition law and taking utmost account of the Recommendation and SMP Guidelines adopted in accordance with Article 62. BEREC shall conduct an analysis of a potential transnational market if the Commission or at least two national regulatory authorities concerned submit a reasoned request providing supporting evidence.

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↓ 2009/140/EC Art. 1.18(b)  
(adapted)  
⇒ new

~~52.~~ In the case of transnational markets identified ~~in the Decision referred to in Article 15(4)~~ ⇒ in accordance with paragraph 1 ⇐ , the national regulatory authorities concerned shall jointly conduct the market analysis taking the utmost account of the ~~⊗~~ SMP ~~⊗~~ Guidelines and, in a concerted fashion, shall decide on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in ~~paragraph 2 of this~~ Article 65(4). ⇒ The national regulatory authorities concerned shall jointly notify to the Commission with their draft measures regarding the market analysis and any regulatory obligations pursuant to Articles 32 and 33. ⇐

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↓ new

Two or more national regulatory authorities may also jointly notify their draft measures regarding the market analysis and any regulatory obligations in the absence of transnational markets, where they consider that market conditions in their respective jurisdictions are sufficiently homogeneous.

### Article 64

#### Procedure for the identification of transnational demand

1. BEREC shall conduct an analysis of transnational end-user demand for products and services that are provided within the Union in one or more of the markets listed in the Recommendation, if it receives a reasoned request providing supporting evidence from the Commission or from at least two of the national regulatory authorities concerned indicating that there is a serious demand problem to be addressed. BEREC may also conduct such analysis if it receives a reasoned request from market participants providing sufficient supporting evidence and considers there is a serious demand problem to be addressed. BEREC's analysis is without prejudice to any findings of transnational markets in accordance with Article 63(1) and to any findings of national or sub-national geographical markets by national regulatory authorities in accordance with Article 62(3).

That analysis of transnational end-user demand may include products and services that are supplied within product or service markets that have been defined in different ways by one or more national regulatory authorities when taking into account national circumstances,

provided that those products and services are substitutable to those supplied in one of the markets listed in the Recommendation.

If BEREC concludes that a transnational end-user demand exists, is significant and is not sufficiently met by supply provided on a commercial or regulated basis, it shall, after consulting stakeholders and in close cooperation with the Commission, issue guidelines on common approaches for national regulatory authorities to meet the identified transnational demand, including, where appropriate, when they impose remedies in accordance with Article 66. National regulatory authorities shall take into utmost account these guidelines when performing their regulatory tasks within their jurisdiction.

2. On the basis of BEREC guidelines referred to in paragraph 1, the Commission may adopt a Decision pursuant to Article 38 to harmonise the technical specifications of wholesale access products capable of meeting such identified transnational demand, when they are imposed by national regulatory authorities on operators designated with significant market power in markets where such access products are supplied, as defined according to national circumstances. Article 38(3)(a) second subparagraph first indent shall not apply in such a case.

↓ 2002/21/EC

#### *Article 16*

#### **Market analysis procedure**

~~1. National regulatory authorities shall carry out an analysis of the relevant markets taking into account the markets identified in the Recommendation, and taking the utmost account of the Guidelines. Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the national competition authorities.~~

~~2. Where a national regulatory authority is required under paragraphs 3 or 4 of this Article, Article 17 of Directive 2002/22/EC (Universal Service Directive), or Article 8 of Directive 2002/19/EC (Access Directive) to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 1 of this Article whether a relevant market is effectively competitive.~~

~~3. Where a national regulatory authority concludes that the market is effectively competitive, it shall not impose or maintain any of the specific regulatory obligations referred to in paragraph 2 of this Article. In cases where sector specific regulatory obligations already exist, it shall withdraw such obligations placed on undertakings in that relevant market.~~

~~An appropriate period of notice shall be given to parties affected by such a withdrawal of obligations.~~

~~4. Where a national regulatory authority determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market in accordance with Article 14 and the national regulatory authority shall on such undertakings impose appropriate specific regulatory obligations referred to in paragraph 2 of this Article or maintain or amend such obligations where they already exist.~~

~~5. In the case of transnational markets identified in the Decision referred to in Article 15(4), the national regulatory authorities concerned shall jointly conduct the market analysis taking the utmost account of the Guidelines and, in a concerted fashion, shall decide on any~~

~~imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in paragraph 2 of this Article.~~

~~6. Measures taken in accordance with the provisions of paragraphs 3 and 4 shall be subject to the procedures referred to in Articles 6 and 7. National regulatory authorities shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with Article 7:~~

~~(a) within three years from the adoption of a previous measure relating to that market. However, exceptionally, that period may be extended for up to three additional years, where the national regulatory authority has notified a reasoned proposed extension to the Commission and the Commission has not objected within one month of the notified extension;~~

~~(b) within two years from the adoption of a revised Recommendation on relevant markets, for markets not previously notified to the Commission; or~~

~~(c) within two years from their accession, for Member States which have newly joined the Union.~~

~~7. Where a national regulatory authority has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in paragraph 6, BEREC shall, upon request, provide assistance to the national regulatory authority concerned in completing the analysis of the specific market and the specific obligations to be imposed. With this assistance, the national regulatory authority concerned shall within six months notify the draft measure to the Commission in accordance with Article 7.~~

↓ 2002/21/EC

Article ~~16~~ 65

## Market analysis procedure

↓ 2009/140/EC Art. 1.18(a)  
(adapted)  
⇒ new

1. National regulatory authorities shall

~~carry out an analysis of the relevant markets taking into account the markets identified in the Recommendation, and taking the utmost account of the Guidelines~~ ⇒ determine whether a relevant market defined in accordance with Article 62(3) may be such as to justify the imposition of the regulatory obligations set out in this Directive ⇐ . Member States shall ensure that ~~this~~ ⊗ an ⊗ analysis is carried out, where appropriate, in collaboration with the national competition authorities. ⇒ National regulatory authorities shall take utmost account of the SMP guidelines and shall follow the procedures referred to in Articles 23 and 32 when conducting such analysis. ⇐

↓ new

A market may be such as to justify the imposition of regulatory obligations set out in this Directive if the following three criteria are cumulatively met:

(a) high and non-transitory structural, legal or regulatory barriers to entry are present;

(b) there is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry;

(c) competition law alone is insufficient to adequately address the identified market failure(s).

Where a national regulatory authority conducts an analysis of a market that is included in the Recommendation, it shall consider that points (a), (b) and (c) of the second subparagraph have been met, unless the national regulatory authority determines that one or more of such criteria is not met in the specific national circumstances.

↓ 2009/140/EC Art. 1.18(a)

~~2. Where a national regulatory authority is required under paragraphs 3 or 4 of this Article, Article 17 of Directive 2002/22/EC (Universal Service Directive), or Article 8 of Directive 2002/19/EC (Access Directive) to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 1 of this Article whether a relevant market is effectively competitive~~

↓ new

2. Where a national regulatory authority conducts the analysis required by paragraph 1, it shall consider developments from a forward-looking perspective in the absence of regulation imposed on the basis of this Article in that relevant market, and taking into account:

(a) the existence of market developments which may increase the likelihood of the relevant market tending towards effective competition, such as those commercial co-investment or access agreements between operators which benefit competitive dynamics sustainably;

(b) all relevant competitive constraints, including at retail level, irrespective of whether the sources of such constraints are deemed to be electronic communications networks, electronic communications services, or other types of services or applications which are comparable from the perspective of the end-user, and irrespective of whether such constraints are part of the relevant market;

(c) other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period, including, without limitation, obligations imposed in accordance with Articles 44, 58 and 59; and

(d) regulation imposed on other relevant markets on the basis of this Article.

↓ 2002/21/EC (adapted)

⇒ new

3. Where a national regulatory authority concludes that ⇒ a relevant market may not be such as to justify the imposition of regulatory obligations in accordance with the procedure in paragraphs 1 and 2 of this Article, or where the conditions in paragraph 4 of this Article are not met ⇐ ~~the market is effectively competitive~~, it shall not impose or maintain any of the specific regulatory obligations ~~referred to in paragraph 2 of this Article~~ ⊗ in accordance with Article 66 ⊗. In cases where ⊗ there already are ⊗ sector specific regulatory obligations ⊗ imposed in accordance with Article 66 ⊗ ~~already exist~~, it shall withdraw such obligations

placed on undertakings in that relevant market. ~~An appropriate period of notice shall be given to parties affected by such a withdrawal of obligations.~~

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↓ new

National regulatory authorities shall ensure that parties affected by such a withdrawal of obligations receive an appropriate period of notice, defined by balancing the need to ensure a sustainable transition for the beneficiaries of these obligations and end-users, end-user choice, and that regulation does not continue beyond what is necessary. When setting such period of notice, national regulatory authorities may determine specific conditions and notice periods in relation to existing access agreements.

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↓ 2009/140/EC Art. 1.18(b)  
(adapted)  
⇒ new

4. Where a national regulatory authority determines that, ~~in a relevant market is not effectively competitive~~ ⇒ the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified ⇐, it shall identify ~~any~~ ~~undertakings~~ which individually or jointly have a significant market power on that ~~relevant~~ ~~market~~ in accordance with Article ~~14 61~~ and ~~the national regulatory authority shall~~ ~~impose~~ ~~appropriate specific regulatory obligations referred to in paragraph 2 of this Article~~ ~~in accordance with Article 66~~ ~~or maintain or amend such obligations where they already exist~~ ⇒ if it considers that one or more retail markets would not be effectively competitive in the absence of those obligations ⇐.

56. Measures taken in accordance with the provisions of paragraphs 3 and 4 shall be subject to the procedures referred to in Articles ~~623~~ and ~~732~~. National regulatory authorities shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with Article ~~327~~:

- (a) within ~~three~~ ⇒ five ⇐ years from the adoption of a previous measure ⇒ where the national regulatory authority has defined the relevant market and determined which undertakings have significant market power ⇐ ~~relating to that market~~. ~~However, e~~Exceptionally, that ~~five-year~~ ~~period~~ may be extended for up to ~~three~~ ⇒ one ⇐ additional years, where the national regulatory authority has notified a reasoned proposed extension to the Commission ⇒ no later than four months before the expiry of the five years period, ⇐ and the Commission has not objected within one month of the notified extension;
  - (b) within two years from the adoption of a revised Recommendation on relevant markets, for markets not previously notified to the Commission; or
  - (c) within ~~two~~ ⇒ three ⇐ years from their accession, for Member States which have newly joined the Union.
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↓ 2009/140/EC Art. 1.18(c)  
(adapted)  
⇒ new

76. Where a national regulatory authority ⇒ considers that it may not complete or ⇐ has not completed its analysis of a relevant market identified in the Recommendation within the time

limit laid down in paragraph 6, BEREC shall, upon request, provide assistance to the national regulatory authority concerned in completing the analysis of the specific market and the specific obligations to be imposed. With this assistance, the national regulatory authority concerned shall within six months ☒ of the limit laid down in paragraph 5 ☒ notify the draft measure to the Commission in accordance with Article ~~73~~2.

↓ 2002/19/EC Art. 8 (adapted)  
→<sub>1</sub> 2009/140/EC Art. 2.6(a)  
→<sub>2</sub> 2009/140/EC Art. 2.6(b)  
⇒ new

## CHAPTER IV

### ☒ ACCESS REMEDIES AND SIGNIFICANT MARKET POWER ☒

#### *Article ~~8~~66*

##### **Imposition, amendment or withdrawal of obligations**

1. Member States shall ensure that national regulatory authorities are empowered to impose the obligations identified in →<sub>1</sub> Articles ~~96~~7 to ~~13a~~78 ←.

2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article ~~16~~65 of this Directive 2002/21/EC (Framework Directive), national regulatory authorities shall ⇒ be able to ⇐ impose ⇒ any of ⇐ the obligations set out in Articles ~~9~~67 to ~~13~~75 and ~~77~~77 of this Directive as appropriate.

3. Without prejudice to:

- the provisions of →<sub>2</sub> Articles ~~59~~5(1) and ~~6~~60 ←,
- the provisions of Articles ~~12~~44 and ~~13~~17 of this Directive 2002/21/EC (Framework Directive), Condition 7 in Part ~~B~~D of the Annex I to Directive 2002/20/EC (Authorisation Directive) as applied by virtue of Article ~~6~~13(1) of that ☒ this ☒ Directive, Articles ~~27, 28~~91 and ~~30~~99 of this Directive 2002/22/EC (Universal Service Directive) and the relevant provisions of →<sub>2</sub> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)<sup>100</sup> ← containing obligations on undertakings other than those designated as having significant market power, or
- the need to comply with international commitments,

national regulatory authorities shall not impose the obligations set out in Articles ~~96~~7 to ~~13~~75 ☒ and ~~77~~77 ☒ on operators that have not been designated in accordance with paragraph 2.

<sup>100</sup> OJ L 201, 31.7.2002, p. 37.

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↓ 2009/140/EC Art. 2.6(b)  
(adapted)  
⇒ new

In exceptional circumstances, when a national regulatory authority intends to impose on operators with significant market power obligations for access or interconnection other than those set out in Articles ~~967~~ to ~~1375~~ ~~☒~~ and 77 ~~☒~~, it shall submit this request to the Commission. The Commission shall take utmost account of the opinion of BEREC. The Commission, acting in accordance with ~~⇒ the procedure referred to in~~ ~~☒~~ Article ~~14(2)~~ ~~☒~~ 110(3) ~~☒~~, shall take a decision authorising or preventing the national regulatory authority from taking such measures.

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↓ 2002/19/EC (adapted)  
⇒ new

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, ~~⇒ in particular at retail level and where appropriate taking into account the identification of transnational demand pursuant to Article 64.~~ They shall be ~~☒~~ proportionate ~~⇒~~, having regard to the costs and benefits ~~☒~~, and justified in the light of the objectives laid down in Article ~~83~~ of ~~☒~~ this ~~☒~~ Directive ~~2002/21/EC (Framework Directive)~~. Such obligations shall only be imposed following consultation in accordance with Articles ~~6 23~~ and ~~732 of that Directive~~.

5. In relation to the third indent of the first subparagraph of paragraph 3, national regulatory authorities shall notify decisions to impose, amend or withdraw obligations on market players to the Commission, in accordance with the procedure referred to in Article ~~732 of Directive 2002/21/EC (Framework Directive)~~.

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↓ new

6. National regulatory authorities shall consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, which have been concluded or unforeseeably breached or terminated affecting competitive dynamics. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

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↓ 2002/19/EC

*Article ~~967~~*

### **Obligation of transparency**

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↓ 2009/140/EC Art. 2.7(a)  
(adapted)

1. National regulatory authorities may, in accordance with the provisions of Article ~~866~~, impose obligations for transparency in relation to interconnection and/or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, including any conditions limiting access to and/or use of services and applications where such conditions are allowed by Member States in conformity with ~~Community~~  Union  law, and prices.

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↓ 2002/19/EC

2. In particular where an operator has obligations of non-discrimination, national regulatory authorities may require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices. The national regulatory authority shall, *inter alia*, be able to impose changes to reference offers to give effect to obligations imposed under this Directive.

3. National regulatory authorities may specify the precise information to be made available, the level of detail required and the manner of publication.

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↓ 2009/140/EC Art. 2.7(b)  
(adapted)  
⇒ new

4. ⇒ No later than [1 year after the adoption of this Directive], in order to contribute to the consistent application of transparency obligations, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, issue guidelines on the minimum criteria for a reference offer and shall review them whenever necessary in order to adapt them to technological and market developments. In providing such minimum criteria, BEREC shall pursue the objectives in Article 3, and shall have regard for the needs of the beneficiaries of access obligations and end-users that are active in more than one Member State as well as to any BEREC guidelines identifying transnational demand in accordance with Article 64 and to any related Commission Decision. ⇐

Notwithstanding paragraph 3, where an operator has obligations under Article ~~42~~  70 or 71  concerning wholesale network infrastructure access, national regulatory authorities shall ensure the publication of a reference offer ~~containing at least the elements set out in Annex II~~ ⇒ taking utmost account of the the BEREC guidelines on the minimum criteria for a reference offer ⇐.

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↓ 2009/140/EC Art. 2.7(c)

~~5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). In implementing the provisions of this paragraph, the Commission may be assisted by BEREC.~~

*Article ~~40~~68*

**Obligation of non-discrimination**

1. A national regulatory authority may, in accordance with the provisions of Article ~~66~~68, impose obligations of non-discrimination, in relation to interconnection and/or access.
2. Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners. ⇒ In particular, in cases where the operator is deploying new systems, national regulatory authorities may impose on that operator obligations to supply access products and services to all undertakings, including to itself, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes, in order to ensure equivalence of access. ⇐

*Article ~~41~~69*

**Obligation of accounting separation**

1. A national regulatory authority may, in accordance with the provisions of Article ~~86~~66, impose obligations for accounting separation in relation to specified activities related to interconnection and/or access.  
  
In particular, a national regulatory authority may require a vertically integrated company to make transparent its wholesale prices and its internal transfer prices *inter alia* to ensure compliance where there is a requirement for non-discrimination under Article ~~68~~40 or, where necessary, to prevent unfair cross-subsidy. National regulatory authorities may specify the format and accounting methodology to be used.
2. Without prejudice to Article ~~20 5 of Directive 2002/21/EC (Framework Directive)~~, to facilitate the verification of compliance with obligations of transparency and non-discrimination, national regulatory authorities shall have the power to require that accounting records, including data on revenues received from third parties, are provided on request. National regulatory authorities may publish such information as would contribute to an open and competitive market, while respecting national and ~~Community~~  Union  rules on commercial confidentiality.

*Article 70*

**Access to civil engineering**

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that

denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

2. National regulatory authorities may impose obligations on an operator to provide access in accordance with this Article, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that the obligation is necessary and proportionate to meet the objectives of Article 3.

↓ 2002/19/EC (adapted)  
⇒ new

### Article ~~12~~71

#### Obligations of access to, and use of, specific network facilities

1. ~~⊗~~ Only where ~~⊗~~ ~~⊗~~ a national regulatory authority ⇒ concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it ⇐ may, in accordance with the provisions of Article ~~86~~66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, ~~inter alia~~ in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, ~~⊗~~ and ~~⊗~~ ~~⊗~~ would not be in the end-user's interest.

Operators may be required *inter alia*:

↓ 2009/140/EC Art. 2.8(a)  
amended by Corrigendum, OJ L  
241, 10.9.2013, p. 8 (adapted)  
⇒ new

(a) to give third parties access to specified network elements and/or facilities, ⇒ as appropriate ⇐ including access to network elements which are ~~⊗~~ either ~~⊗~~ not active ⇒ or physical ⇐ and/or ⇒ active or virtual ⇐ unbundled access to the local loop, ~~to, inter alia, allow carrier selection and/or pre-selection and/or subscriber line resale offers;~~

↓ 2002/19/EC

(b) to negotiate in good faith with undertakings requesting access;

(c) not to withdraw access to facilities already granted;

~~(d) to provide specified services on a wholesale basis for resale by third parties;~~

~~(de)~~ to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;

↓ 2009/140/EC Art. 2.8(b)

~~(ef)~~ to provide co-location or other forms of associated facilities sharing;

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↓ 2002/19/EC  
⇒ new

(~~f~~) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for ⇒ software emulated networks ⇐ ~~intelligent network services~~ or roaming on mobile networks;

(~~g~~) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;

(~~h~~) to interconnect networks or network facilities;

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↓ 2009/140/EC Art. 2.8(c)

(~~i~~) to provide access to associated services such as identity, location and presence service.

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↓ 2002/19/EC

National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness and timeliness.

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↓ 2009/140/EC Art. 2.8(d)  
(adapted)  
⇒ new

2. When national regulatory authorities are considering ⇒ the appropriateness of imposing any of ⇐ the ⇒ possible specific ⇐ obligations referred in paragraph 1, and in particular when assessing ☒ , in conformity with the principle of proportionality, ☒ ☒ whether and ☒ how such obligations ☒ should ☒ ~~would~~ be imposed proportionate to the objectives set out in ~~Article 8 of Directive 2002/21/EC (Framework Directive)~~ , ⇒ they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or contemplated regulated access to other wholesale inputs pursuant to this Article. ⇐ ~~They~~ shall take account in particular of the following factors:

(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and/or access involved, including the viability of other upstream access products such as access to ducts;

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↓ new

(b) the expected technological evolution affecting network design and management

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↓ 2002/19/EC

(~~c~~) the feasibility of providing the access proposed, in relation to the capacity available;

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↓ 2009/140/EC Art. 2.8(e)  
⇒ new

(~~de~~) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment ⇒ with particular regard to investments in and risk levels associated with very high capacity networks ⇐ ;

(~~ed~~) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition ⇒ and to sustainable competition based on co-investment in networks ⇐ ;

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↓ 2002/19/EC

(~~fe~~) where appropriate, any relevant intellectual property rights;  
(g) the provision of pan-European services.

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↓ 2009/140/EC Art. 2.8(f)

3. When imposing obligations on an operator to provide access in accordance with the provisions of this Article, national regulatory authorities may lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with Article ~~39~~ ~~17~~ of Directive 2002/21/EC (Framework Directive).

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↓ 2002/19/EC

### Article ~~13~~72

#### Price control and cost accounting obligations

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↓ 2009/140/EC Art. 2.9 (adapted)  
⇒ new

1. A national regulatory authority may, in accordance with the provisions of Article ~~66~~8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users.

⇒ In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks. In particular, ⇐ ~~to~~ encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. ⇒ Where the national regulatory authorities deem price controls appropriate, they shall ⇐ ~~and~~ allow ☒ the operator ☒ ~~him~~ a reasonable rate of return on

adequate capital employed, taking into account any risks specific to a particular new investment network project.

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↓ new

National regulatory authorities shall not impose or maintain obligations pursuant to this Article, where they establish that a demonstrable retail price constraint is present and that any obligations imposed in accordance with Articles 67 to 71, including in particular any economic replicability test imposed in accordance with Article 68 ensures effective and non discriminatory access.

When national regulatory authorities consider it appropriate to impose price controls on access to existing network elements, they shall also take account of the benefits of predictable and stable wholesale prices in ensuring efficient entry and sufficient incentives for all operators to deploy new and enhanced networks.

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↓ 2002/19/EC  
⇒ new

2. National regulatory authorities shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote ⇒ the deployment of new and enhanced networks ⇐ efficiency and sustainable competition and maximise ⇒ sustainable ⇐ consumer benefits. In this regard national regulatory authorities may also take account of prices available in comparable competitive markets.

3. Where an operator has an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs including a reasonable rate of return on investment shall lie with the operator concerned. For the purpose of calculating the cost of efficient provision of services, national regulatory authorities may use cost accounting methods independent of those used by the undertaking. National regulatory authorities may require an operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

4. National regulatory authorities shall ensure that, where implementation of a cost accounting system is mandated in order to support price controls, a description of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. Compliance with the cost accounting system shall be verified by a qualified independent body. A statement concerning compliance shall be published annually.

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↓ new

### *Article 73*

#### **Termination rates**

1. Where a national regulatory authority imposes obligations relating to cost recovery and price controls on operators designated as having significant market power on a market for wholesale voice call termination, it shall set maximum symmetric termination rates based on the costs incurred by an efficient operator. The evaluation of efficient costs shall be based on

current cost values. The cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice call termination service to third parties.

The details of the cost methodology shall be set by a Commission decision, adopted pursuant to Article 38.

2. By [date] the Commission shall, after having consulted BEREC, adopt delegated acts in accordance with Article 109 concerning a single maximum termination rate to be imposed by national regulatory authorities on undertakings designated as having significant market power in fixed and mobile voice termination markets respectively in the Union.

When adopting these delegated acts, the Commission shall follow the principles laid down in the first subparagraph of paragraph 1 and shall comply with the criteria and parameters provided in Annex III.

4. In applying paragraph 2, the Commission shall ensure that the single voice call termination rate in mobile networks shall not exceed 1.23 €cent per minute and the single voice call termination rate in fixed networks shall not exceed 0.14 €cent per minute. The Commission shall take into account the weighted average of maximum termination rates in fixed and mobile networks established in accordance with the principles provided in the first subparagraph of paragraph 1 applied across the Union when setting the single maximum termination rate for the first time.

5. When adopting delegated acts pursuant to paragraph 2, the Commission shall take into account the total number of end-users in each Member State, in order to ensure a proper weighting of the maximum termination rates, as well as national circumstances which result in significant differences between Member States when determining the maximum termination rates in the Union

6. The Commission may request BEREC to develop an economic model in order to assist the Commission in determining the maximum termination rates in the Union. The Commission shall take into account market information provided by BEREC, national regulatory authorities or, directly, by undertakings providing electronic communications networks and services.

7. The Commission shall review the delegated acts adopted pursuant this Article every five years.

#### *Article 74*

##### **Regulatory treatment of new network elements**

1. A national regulatory authority shall not impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

(a) the deployment of the new network elements is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to

increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

(b) the deployment of the new network elements contributes significantly to the deployment of very high capacity networks;

(c) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

When assessing co-investment offers and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.

↓ 2002/19/EC

#### Article ~~13~~75

### Functional separation

1. Where the national regulatory authority concludes that the appropriate obligations imposed under Articles ~~67 to 72~~ ~~to 13~~ have failed to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access product markets, it may, as an exceptional measure, in accordance with the provisions of the second subparagraph of Article ~~86~~66(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in an independently operating business entity.

That business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes.

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a proposal to the Commission that includes:

(a) evidence justifying the conclusions of the national regulatory authority as referred to in paragraph 1;

(b) a reasoned assessment that there is no or little prospect of effective and sustainable infrastructure-based competition within a reasonable time frame;

(c) an analysis of the expected impact on the regulatory authority, on the undertaking, in particular on the workforce of the separated undertaking and on the electronic communications sector as a whole, and on incentives to invest in a sector as a whole, particularly with regard to the need to ensure social and territorial cohesion, and on other stakeholders including, in particular, the expected impact on competition and any potential consequential effects on consumers;

(d) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems/markets failures identified.

3. The draft measure shall include the following elements:

- (a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;
- (b) an identification of the assets of the separate business entity, and the products or services to be supplied by that entity;
- (c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;
- (d) rules for ensuring compliance with the obligations;
- (e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;
- (f) a monitoring programme to ensure compliance, including the publication of an annual report.

4. Following the Commission's decision on the draft measure taken in accordance with Article ~~866~~(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article ~~65 16~~ of ~~Directive 2002/21/EC (Framework Directive)~~. On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles ~~236~~ and ~~327~~ of ~~this Directive 2002/21/EC (Framework Directive)~~.

5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles ~~967~~ to ~~7213~~ in any specific market where it has been designated as having significant market power in accordance with Article ~~6516~~ of ~~Directive 2002/21/EC (Framework Directive)~~, or any other obligations authorised by the Commission pursuant to Article ~~8~~ ~~66~~(3).

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↓ 2002/19/EC

Article ~~136~~76

#### **Voluntary separation by a vertically integrated undertaking**

1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article ~~6516~~ of ~~this Directive 2002/21/EC (Framework Directive)~~ shall inform the national regulatory authority in advance and in a timely manner, in order to allow the national regulatory authority to assess the effect of the intended transaction, when they intend to transfer their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, fully equivalent access products.

Undertakings shall also inform the national regulatory authority of any change of that intent as well as the final outcome of the process of separation.

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↓ new

Undertakings may also offer commitments regarding access conditions that will apply to their network during an implementation period and after the proposed form of separation is implemented, with a view to ensuring effective and non-discriminatory access by third

parties. The offer of commitments shall include sufficient details, including in terms of timing of implementation and duration, so as to allow the national regulatory authority to conduct its tasks in accordance with paragraph 2 of this Article. Such commitments may extend beyond the maximum period for market reviews established in Article 65(6).

↓ 2002/19/EC (adapted)  
⇒ new

2. The national regulatory authority shall assess the effect of the intended transaction ⇒ together with the proposed commitments where applicable ⇐ on existing regulatory obligations under ☒ this ☒ Directive ~~2002/21/EC (Framework Directive)~~.

For that purpose, the national regulatory authority shall conduct an an ~~coordinated~~ analysis of the different markets related to the access network in accordance with the procedure set out in Article ~~65 16 of Directive 2002/21/EC (Framework Directive)~~.

↓ new

The national regulatory authority shall take into account any commitments offered by the undertaking, having regard in particular to the objectives in Article 3. In so doing, the national regulatory authority shall consult third parties in accordance with Article 23, and shall address in particular, without limitation, those third parties which are directly affected by the intended transaction.

↓ 2002/19/EC  
⇒ new

On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles ~~236~~ and ~~32 7 of Directive 2002/21/EC (Framework Directive)~~, ⇒ applying, if appropriate, the provisions of Article 77. In its decision, the national regulatory authority may make the commitments binding, wholly or in part. By way of exception to Article 65(6), the national regulatory authority may make some or all commitments binding for the entire period for which they are offered. ⇐

3. ⇒ Without prejudice to the provisions of Article 77, ⇐ ~~the~~ legally and/or operationally separate business entity may be subject ⇒ as appropriate ⇐ to any of the obligations identified in Articles ~~679~~ to ~~1372~~ in any specific market where it has been designated as having significant market power in accordance with Article ~~65 16 of Directive 2002/21/EC (Framework Directive)~~, or any other obligations authorised by the Commission pursuant to Article ~~866(3)~~ ⇒ and where any commitments offered are insufficient to meet the objectives of Article 3⇐ .

↓ new

4. The national regulatory authority shall monitor the implementation of the commitments offered by the undertakings that it has made binding in accordance with paragraph 2 of this Article and shall consider their extension when the period of time for which they are initially offered has expired.

## *Article 77*

### **Vertically separate undertakings**

1. A national regulatory authority that designates an undertaking which is absent from any retail markets for electronic communications services as having significant market power in one or several wholesale markets in accordance with Article 65 shall consider whether that undertaking has the following characteristics:

(a) all companies and business units within the undertaking, including all companies that are controlled but not necessarily wholly owned by the same ultimate owner(s), only have activities, current and planned for the future, in wholesale markets for electronic communications services and therefore do not have activities in any retail market for electronic communications services provided to end-users in the Union;

(b) the undertaking does not hold an exclusive agreement, or an agreement which de facto amounts to an exclusive agreement, with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to private or commercial end-users.

2. If the national regulatory authority concludes that the conditions laid down in points (a) and (b) of paragraph 1 of this Article are fulfilled, it may only impose on that undertaking obligations pursuant to Articles 70 or 71.

3. The national regulatory authority shall review obligations imposed on the undertaking in accordance with this Article at any time if it concludes that the conditions laid down in points (a) and (b) of paragraph 1 of this Article are no longer met and shall apply Articles 65 to 72, as appropriate.

4. The national regulatory authority shall also review obligations imposed on the undertaking in accordance with this Article if on the basis of evidence of terms and conditions offered by the undertaking to its downstream customers, the authority concludes that competition problems have arisen to the detriment of end-users which require the imposition of one or more obligations provided in Articles 67, 68, 69 or 72, or the modification of the obligations imposed in accordance with paragraph 2.

5. The imposition of obligations and their review in accordance with this Article shall be implemented in accordance with the procedures referred to in Articles 23, 32 and 33.

## *Article 78*

### **Migration from legacy infrastructure**

1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 65 shall inform the national regulatory authority in advance and in a timely manner when they plan to decommission parts of the network, including legacy infrastructure necessary to operate a copper network, which are subject to obligations pursuant to Articles 66 to 77.

2. The national regulatory authority shall ensure that the decommissioning process includes a transparent timetable and conditions, including inter alia an appropriate period of notice and for transition, and establishes the availability of alternative comparable products providing access to network elements substituting the decommissioned infrastructure if necessary to safeguard competition and the rights of end-users.

With regard to assets which are proposed for decommissioning, the national regulatory authority may withdraw the obligations after having ascertained:

(a) the access provider has demonstrably established the appropriate conditions for migration, including making available a comparable alternative access product enabling to reach the same end-users, as was available using the legacy infrastructure; and

(b) the access provider has complied with the conditions and process provided to the national regulatory authority in accordance with the present Article.

Such withdrawal shall be implemented in accordance with the procedures referred to in Articles 23, 32 and 33.

## **PART III. SERVICES**

### **TITLE I: UNIVERSAL SERVICE OBLIGATIONS**

#### *Article 79*

##### **Affordable universal service**

1. Member States shall ensure that all end-users in their territory have access at an affordable price, in the light of specific national conditions, to available functional internet access services and voice communications services at the quality specified in their territory, including the underlying connection, at least at a fixed location.

2. Member States shall define the functional internet access service referred to in paragraph 1 with a view to adequately reflect services used by the majority of end-users in their territory. To that end, the functional internet access service shall be capable of supporting the minimum set of services set out in Annex V.

3. When an end-user so requests, the connection referred to in paragraph 1 may be limited to support voice communications only.

#### *Article 80*

##### **Provision of affordable universal service**

1. National regulatory authorities shall monitor the evolution and level of retail tariffs of services identified in Article 79(1) available on the market, in particular in relation to national prices and national end-user income.

2. Where Member States establish that, in the light of national conditions, retail prices for services identified in Article 79(1) are not affordable, because low-income or special social needs end-users are prevented from accessing such services, they may require undertakings which provide such services to offer to those end-users tariff options or packages different from those provided under normal commercial conditions. To that end, Member States may require such undertakings to apply common tariffs, including geographic averaging, throughout the territory. Member States shall ensure that end-users entitled to such tariff options or packages have a right to contract with an undertaking providing the services identified in Article 79(1) and that such undertaking provides them with an adequate period of availability of a number and avoid unwarranted disconnection of service.

3. Member States shall ensure that undertakings which provide tariff options or packages to low-income or special social needs end-users pursuant to paragraph 2, keep the national regulatory authorities informed of the details of such offers. National regulatory authorities shall ensure that the conditions under which undertakings provide tariff options or packages pursuant to paragraph 2 are fully transparent and are published and applied in accordance with

the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.

4. Member States may, in the light of national conditions, ensure that support is provided to low-income or special social needs end-users in view of ensuring affordability of functional internet access service and voice communications service at least at a fixed location.

5. Member States shall ensure, in the light of national conditions, that support is provided as appropriate to end-users with disabilities, or that other specific measures are taken, in view of ensuring that related terminal equipment, specific equipment and specific services enhancing equivalent access are affordable.

6. When applying this Article, Member States shall seek to minimise market distortions.

↓ 2002/22/EC

### ~~Article 3~~

#### ~~Availability of universal service~~

~~1. Member States shall ensure that the services set out in this Chapter are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price.~~

~~2. Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.~~

↓ 2002/22/EC (adapted)

### ~~Article 8~~

#### ~~Designation of undertakings~~

~~1. Member States may designate one or more undertakings to guarantee the provision of universal service as identified in Articles 4, 5, 6 and 7 and, where applicable, Article 9(2) so that the whole of the national territory can be covered. Member States may designate different undertakings or sets of undertakings to provide different elements of universal service and/or to cover different parts of the national territory.~~

~~2. When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated. Such designation methods shall ensure that universal service is provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Article 12.~~

~~3. When an undertaking designated in accordance with paragraph 1 intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform in advance the national regulatory authority in a timely manner, in order to allow that authority to assess the effect of the intended transaction on the~~

~~provision of access at a fixed location and of telephone services pursuant to Article 4. The national regulatory authority may impose, amend or withdraw specific obligations in accordance with Article 6(2) of Directive 2002/20/EC (Authorisation Directive).~~

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↓ new

## Article 81

### Availability of universal service

1. Where a Member State has duly demonstrated, account taken of the results of the geographical survey conducted in accordance with Article 22(1), that the availability at a fixed location of functional internet access service as defined in Article 79(2) and voice communications services cannot be ensured under normal commercial circumstances or through other potential public policy tools, it may impose appropriate universal service obligations to meet all reasonable requests for accessing those services in its territory.

2. Member States shall determine the most efficient and appropriate approach for ensuring the availability at a fixed location of functional internet access service as defined in Article 79(2) and voice communications services, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

3. In particular, where Member States decide to impose obligations to ensure the availability at a fixed location of functional internet access service as defined in Article 79(2) and of voice communications services, they may designate one or more undertakings to guarantee the availability at a fixed location of functional internet access as identified in Article 79(2) and voice communications services in order to cover all the national territory. Member States may designate different undertakings or sets of undertakings to provide functional internet access and voice communications services at a fixed location and/or to cover different parts of the national territory.

4. When Member States designate undertakings in part or all of the national territory as undertakings having the obligation to ensure the availability at a fixed location of functional internet access as defined in Article 79(2) and of voice communications services, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated. Such designation methods shall ensure that functional internet access and voice communications services at a fixed location are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Article 84.

5. When an undertaking designated in accordance with paragraph 3 intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform in advance the national regulatory authority in a timely manner, in order to allow that authority to assess the effect of the intended transaction on the provision at a fixed location of functional internet access as defined in Article 79(2) and voice communications services. The national regulatory authority may impose, amend or withdraw specific obligations in accordance with Article 13(2).

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↓ 2002/22/EC

~~Article 4~~

~~Provision of access at a fixed location and provision of telephone services~~

~~1. Member States shall ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking.~~

~~2. The connection provided shall be capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.~~

~~3. Member States shall ensure that all reasonable requests for the provision of a publicly available telephone service over the network connection referred to in paragraph 1 that allows for originating and receiving national and international calls are met by at least one undertaking.~~

~~Article 5~~

~~Directory enquiry services and directories~~

~~1. Member States shall ensure that:~~

~~(a) at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year;~~

~~(b) at least one comprehensive telephone directory enquiry service is available to all end-users, including users of public pay telephones.~~

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↓ 2009/136/EC Art. 1.4

~~2. The directories referred to in paragraph 1 shall comprise, subject to the provisions of Article 12 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)<sup>101</sup>, all subscribers of publicly available telephone services.~~

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↓ 2002/22/EC

~~3. Member States shall ensure that the undertaking(s) providing the services referred to in paragraph 1 apply the principle of non-discrimination to the treatment of information that has been provided to them by other undertakings.~~

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<sup>101</sup> OJ L 201, 31.7.2002, p. 37.

## ~~Article 6~~

↓ 2009/136/EC Art. 1.5

### ~~Public pay telephones and other public voice telephony access points~~

~~1. Member States shall ensure that national regulatory authorities may impose obligations on undertakings in order to ensure that public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other access points, accessibility to disabled end-users and the quality of services.~~

↓ 2002/22/EC

~~2. A Member State shall ensure that its national regulatory authority can decide not to impose obligations under paragraph 1 in all or part of its territory, if it is satisfied that these facilities or comparable services are widely available, on the basis of a consultation of interested parties as referred to in Article 33.~~

~~3. Member States shall ensure that it is possible to make emergency calls from public pay telephones using the single European emergency call number '112' and other national emergency numbers, all free of charge and without having to use any means of payment.~~

↓ 2009/136/EC Art. 1.6

## ~~Article 7~~

### ~~Measures for disabled end-users~~

~~1. Unless requirements have been specified under Chapter IV which achieve the equivalent effect, Member States shall take specific measures to ensure that access to, and affordability of, the services identified in Article 4(3) and Article 5 for disabled end-users is equivalent to the level enjoyed by other end-users. Member States may oblige national regulatory authorities to assess the general need and the specific requirements, including the extent and concrete form of such specific measures for disabled end-users.~~

~~2. Member States may take specific measures, in the light of national conditions, to ensure that disabled end-users can also take advantage of the choice of undertakings and service providers available to the majority of end-users.~~

~~3. In taking the measures referred to in paragraphs 1 and 2, Member States shall encourage compliance with the relevant standards or specifications published in accordance with Articles 17 and 18 of Directive 2002/21/EC (Framework Directive).~~

↓ 2002/22/EC

## ~~Article 9~~

### ~~Affordability of tariffs~~

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↓ 2009/136/EC Art. 1.8

~~1. National regulatory authorities shall monitor the evolution and level of retail tariffs of the services identified in Articles 4 to 7 as falling under the universal service obligations and either provided by designated undertakings or available on the market, if no undertakings are designated in relation to those services, in particular in relation to national consumer prices and income.~~

~~2. Member States may, in the light of national conditions, require that designated undertakings provide to consumers tariff options or packages which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing the network referred to in Article 4(1) or from using the services identified in Article 4(3) and Articles 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings.~~

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↓ 2002/22/EC

~~3. Member States may, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes or special social needs.~~

~~4. Member States may require undertakings with obligations under Articles 4, 5, 6 and 7 to apply common tariffs, including geographical averaging, throughout the territory, in the light of national conditions or to comply with price caps.~~

~~5. National regulatory authorities shall ensure that, where a designated undertaking has an obligation to provide special tariff options, common tariffs, including geographical averaging, or to comply with price caps, the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.~~

#### Article 11

#### **Quality of service of designated undertakings**

~~1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III. The published information shall also be supplied to the national regulatory authority.~~

~~2. National regulatory authorities may specify, *inter alia*, additional quality of service standards, where relevant parameters have been developed, to assess the performance of undertakings in the provision of services to disabled end-users and disabled consumers. National regulatory authorities shall ensure that information concerning the performance of undertakings in relation to these parameters is also published and made available to the national regulatory authority.~~

~~3. National regulatory authorities may, in addition, specify the content, form and manner of information to be published, in order to ensure that end-users and consumers have access to comprehensive, comparable and user-friendly information.~~

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↓ 2009/136/EC Art. 1.9

~~4. National regulatory authorities shall be able to set performance targets for undertakings with universal service obligations. In so doing, national regulatory authorities shall take account of views of interested parties, in particular as referred to in Article 33.~~

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↓ 2002/22/EC

~~5. Member States shall ensure that national regulatory authorities are able to monitor compliance with these performance targets by designated undertakings.~~

~~6. Persistent failure by an undertaking to meet performance targets may result in specific measures being taken in accordance with Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)<sup>102</sup>. National regulatory authorities shall be able to order independent audits or similar reviews of the performance data, paid for by the undertaking concerned, in order to ensure the accuracy and comparability of the data made available by undertakings with universal service obligations.~~

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↓ new

#### Article 82

##### Status of existing universal services

Member States may continue to ensure the availability or affordability of other services than functional internet access as defined in Article 79(2) and voice communication services at a fixed location that were in force prior to [set date], if the need for such services is duly demonstrated in the light of national circumstances. When Member States designate undertakings in part or all of the national territory for the provision of those services, Article 81 shall apply. Financing of these obligations shall comply with Article 85.

Member States shall review the obligations imposed pursuant to this Article at the latest 3 years after the entry into force of this Directive and thereafter once every year.

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↓ 2002/22/EC (adapted)  
⇒ new

#### Article ~~10~~83

##### Control of expenditure

1. Member States shall ensure that ~~designated undertakings~~, in providing facilities and services additional to those referred to in ~~Articles 4, 5, 6, 7 and 9(2)~~ ☒ Article 79 ☒ , ☒ those undertakings providing the services in accordance with Article 79, 81 and 82 ☒ establish terms and conditions in such a way that the ~~subscriber~~ ⇒ end-user ⇐ is not obliged

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<sup>102</sup> [See page 21 of this Official Journal.](#)

to pay for facilities or services which are not necessary or not required for the service requested.

2. Member States shall ensure that ~~designated~~ ☒ those ☒ undertakings ~~with obligations under Articles 4, 5, 6, 7 and 9(2)~~ ☒ providing the voice communications services referred to in Article 79 and implemented pursuant to Article 80 ☒ provide the specific facilities and services set out in Annex VI, Part A, in order that subscribers ⇒ end-users ⇐ can monitor and control expenditure and ⇒ put in place a system to ⇐ avoid unwarranted disconnection of ⇒ voice communications ⇐ service ⇒ for the end-users who are entitled thereto, including an appropriate mechanism to check continued interest in using the service ⇐.

3. Member States shall ensure that the ~~relevant~~ ⇒ competent ⇐ authority is able to waive the requirements of paragraph 2 in all or part of its national territory if it is satisfied that the facility is widely available.

#### Article ~~12~~ 84

### Costing of universal service obligations

1. Where national regulatory authorities consider that the provision of ~~universal service~~ ⇒ functional internet access as defined in Article 79(2) and voice communications services; ⇐ as set out in Articles ☒ 79, 80 and 81 or the continuation of existing universal services as set out in Article 82 ☒ ~~3 to 10~~ may represent an unfair burden on undertakings ~~designated to provide universal service~~, ⇒ providing such services and requesting for compensation ⇐, they shall calculate the net costs of its provision.

For that purpose, national regulatory authorities shall:

(a) calculate the net cost of the universal service obligation, taking into account any market benefit which accrues to an undertaking ⇒ providing functional internet access as defined in Article 79(2) and voice communications services; as set out in Articles 79, 80 and 81 or the continuation of existing universal services as set out in Article 82 ⇐ ~~designated to provide universal service~~, in accordance with Annex ~~IV~~ VII ~~Part A~~; or

(b) make use of the net costs of providing universal service identified by a designation mechanism in accordance with Article ~~8(2)~~ 81(3), 81(4) and 81(5).

2. The accounts and/or other information serving as the basis for the calculation of the net cost of universal service obligations under paragraph 1(a) shall be audited or verified by the national regulatory authority or a body independent of the relevant parties and approved by the national regulatory authority. The results of the cost calculation and the conclusions of the audit shall be publicly available.

#### Article ~~13~~ 85

### Financing of universal service obligations

~~1~~ Where, on the basis of the net cost calculation referred to in Article ~~84~~ 84, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States shall, upon request from ☒ the ☒ ~~a designated~~ undertaking ☒ concerned ☒, decide:

~~(a) to~~ introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds, ~~and/or~~ ⇒ Only the net cost, as determined in accordance with Article 84, of the obligations laid down in Articles 79, 81 and 82 may be financed. ⇐

~~(b) to share the net cost of universal service obligations between providers of electronic communications networks and services.~~

~~2. Where the net cost is shared under paragraph 1(b), Member States shall establish a sharing mechanism administered by the national regulatory authority or a body independent from the beneficiaries under the supervision of the national regulatory authority. Only the net cost, as determined in accordance with Article 12, of the obligations laid down in Articles 3 to 10 may be financed.~~

~~3. A sharing mechanism shall respect the principles of transparency, least market distortion, non-discrimination and proportionality, in accordance with the principles of Annex IV, Part B. Member States may choose not to require contributions from undertakings whose national turnover is less than a set limit.~~

~~4. Any charges related to the sharing of the cost of universal service obligations shall be unbundled and identified separately for each undertaking. Such charges shall not be imposed or collected from undertakings that are not providing services in the territory of the Member State that has established the sharing mechanism.~~

#### *Article ~~14~~86*

### **Transparency**

1. Where a mechanism for sharing the net cost of universal service obligations as referred to  is to be calculated   in accordance with  Article ~~13~~ 85  is established, national regulatory authorities shall ensure that the principles for ~~cost sharing~~  net cost calculation, including the  and details of the mechanism  methodology to be  used, are publicly available.

2. Subject to ~~Community~~  Union  and national rules on business confidentiality, national regulatory authorities shall ensure that an annual report is published ~~giving~~  providing  the  details of  calculated cost of universal service obligations, ~~identifying the contributions made by all the undertakings involved, and identifying~~  including  any market benefits that may have accrued to the undertaking(s) designated  pursuant  to provide universal service, where a fund is actually  obligations laid down  in  Articles 79, 81 and 82  place and working.

↓ 2002/22/EC (adapted)

## **CHAPTER V**

### **GENERAL AND FINAL PROVISIONS**

#### *Article 32*

#### **Additional mandatory services**

~~Member States may decide to make additional services, apart from services within the universal service obligations as defined in Chapter II, publicly available in its own territory but, in such circumstances, no compensation mechanism involving specific undertakings may be imposed.~~

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↓ 2002/21/EC (adapted)

⊗ TITLE II: NUMBERS ⊗

Article ~~1087~~

**Numbering resources**

1. Member States shall ensure that national regulatory authorities control the granting of rights of use of ⊗ for ⊗ all national numbering resources and the management of the national numbering plans. ~~Member States shall ensure ⊗ and ⊗ that ⊗ they provide ⊗ adequate numbers and numbering ranges are provided~~ for all publicly available electronic communications services. National regulatory authorities shall establish objective, transparent and non-discriminatory procedures for granting rights of use for national numbering resources.

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↓ new

2. National regulatory authorities may grant rights of use for numbers from the national numbering plans for the provision of specific services to undertakings other than providers of electronic communications networks or services, provided that those undertakings demonstrate their ability to manage those numbers and sufficient and adequate numbering resources are made available to satisfy current and foreseeable future demand. National regulatory authorities may suspend the granting of numbering resources to such undertakings if it is demonstrated that there is a risk of exhaustion of numbering resources. By [entry into force plus 18 months] in order to contribute to the consistent application of this paragraph, BEREC shall adopt, after consulting stakeholders and in close cooperation with the Commission, guidelines on common criteria for the assessment of the ability to manage numbering resources and the risk of exhaustion of numbering resources.

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↓ 2002/21/EC

⇒ new

~~23~~. National regulatory authorities shall ensure that national numbering plans and procedures are applied in a manner that gives equal treatment to all providers of publicly available electronic communications services ⇒ and other undertakings if they are eligible in accordance with paragraph 2 ⇐. In particular, Member States shall ensure that an undertaking to which the right of use for a range of numbers has been granted does not discriminate against other providers of electronic communications services as regards the number sequences used to give access to their services.

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↓ new

4. Each Member State shall determine a range of its non-geographic numbering resources which may be used for the provision of electronic communications services other than interpersonal communications services, throughout the territory of the Union, without prejudice to Regulation (EU) No 531/2012 and implementing acts based thereon, and Article 91 (2) of this Directive. Where rights of use for numbers have been granted in accordance with paragraph 2 to undertakings other than providers of electronic communications networks or services, this paragraph shall apply to the specific services provided by those undertakings.

National regulatory authorities shall ensure that the conditions for the right of use for numbers used for the provision of services outside the Member State of the country code, and their enforcement, are not less stringent than the conditions and enforcement applicable to services provided within the Member State of the country code. National regulatory authorities shall also ensure that providers using numbers of their country code in other Member States comply with consumer protection and other national rules related to the use of numbers applicable in those Member States where the numbers are used. This obligation is without prejudice to the enforcement powers of the competent authorities of those Member States.

BEREC shall assist national regulatory authorities in coordinating their activities to ensure an efficient management of numbering resources and extraterritorial use in compliance with the regulatory framework.

BEREC shall establish a central registry on the numbers with a right of extraterritorial use, to which national regulatory authorities shall transmit the relevant information.

5. Member States shall ensure that the '00' code is the standard international access code. Special arrangements for making calls between locations adjacent to one another across borders between Member States may be established or continued. End-users in the locations concerned shall be fully informed of such arrangements.

Member States may agree to share a common numbering plan for all or specific categories of numbers.

6. Member States shall promote the over-the-air provisioning of numbering resources, - where technically feasible - to facilitate change of providers of electronic communications networks or services by end-users other than consumers, in particular providers and users of machine-to-machine services.

↓ 2002/21/EC

~~37.~~ Member States shall ensure that the national numbering plans, and all subsequent additions or amendments thereto, are published, subject only to limitations imposed on the grounds of national security.

↓ 2009/140/EC Art. 1.12(b)  
(adapted)  
⇒ new

~~48.~~ Member States shall support the harmonisation of specific numbers or numbering ranges within the ~~Community~~  Union  where it promotes both the functioning of the internal market and the development of pan-European services. The Commission  shall continue to monitor market developments and participate in international organisations and fora where numbering decisions are taken. Where the Commission considers it justified and appropriate, it shall  ~~may~~ take appropriate technical implementing measures  in the interest of the Single Market, to address unmet cross-border or pan-European demand for numbers, which would otherwise constitute an obstacle to trade between Member States  ~~on this matter~~.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 110(4).  ~~These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).~~

↓ 2002/21/EC

~~5. Where this is appropriate in order to ensure full global interoperability of services, Member States shall coordinate their positions in international organisations and forums in which decisions are taken on issues relating to the numbering, naming and addressing of electronic communications networks and services.~~

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

## Article 88

### ⊗ Granting of ⊗ Rights of use for radio frequencies and numbers

~~1. Member States shall facilitate the use of radio frequencies under general authorisations. Where necessary, Member States may grant individual rights of use in order to:~~

~~— avoid harmful interference,~~

~~— ensure technical quality of service,~~

~~— safeguard efficient use of spectrum, or~~

~~— fulfil other objectives of general interest as defined by Member States in conformity with Community law.~~

~~21. Where it is necessary to grant individual rights of use for radio frequencies and numbers, ⇒ national regulatory authorities ⇐ Member States shall grant such rights, upon request, to any undertaking for the provision of ⊗ electronic communications ⊗ networks or services under the ⊗ covered by a ⊗ general authorisation referred to in Article 312, subject to the provisions of Articles 613, 7 and 11 21(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with this Directive 2002/21/EC (Framework Directive). ⇒ National regulatory authorities may also grant rights of use for numbers to undertakings other than providers of electronic communications networks or services in accordance with Article 87(2). ⇐2. Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, †The rights of use for radio frequencies and numbers shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with Community law.~~

~~When granting rights of use ⇒ for numbers ⇐, ⇒ national regulatory authorities ⇐ Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provision shall be in accordance with Articles 9 and 9b of Directive 2002/21/EC (Framework Directive).~~

~~Where ⇒ national regulatory authorities ⇐ Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the~~

objective pursued taking due account of the need to allow for an appropriate period for investment amortisation.

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

3. Decisions on the granting of rights of use ~~⇒ for numbers ⇐~~ 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 frequencies that have been allocated to be used by electronic communications services within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.~~

4. Where it has been decided, after consultation with interested parties in accordance with Article ~~623 of Directive 2002/21/EC (Framework Directive)~~, that rights for ~~⊗~~ of ~~⊗~~ use of ~~⊗~~ for ~~⊗~~ numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, ~~⇒ national regulatory authorities ⇐ ⇒ Member States ⇐~~ may extend the maximum period of three weeks by up to a further three weeks.

~~With regard to competitive or comparative selection procedures for radio frequencies, Article 7 shall apply.~~

5. ~~Member States~~ ~~⇒~~ National regulatory authorities ~~⇐~~ shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of ~~⇒ numbering resources ⇐~~ ~~radio frequencies in accordance with Article 7.~~

~~6. Competent national authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Articles 8(2) and 9(2) of Directive 2002/21/EC (Framework Directive). They shall ensure competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. For such purposes, Member States may take appropriate measures such as mandating the sale or the lease of rights to use radio frequencies.~~

↓ new

6. Where the right of use for numbers includes their extraterritorial use within the Union in accordance with Article 87(4), the national regulatory authority shall attach to the right of use specific conditions in order to ensure compliance with all the relevant national consumer protection rules and national laws related to the use of numbers applicable in the Member States where the numbers are used.

Upon request from a national regulatory authority of another Member State demonstrating a breach of relevant consumer protection rules or number-related national law of that Member State, the national regulatory authority of the Member State where the rights of use for the numbers have been granted, shall enforce the conditions attached under subparagraph 1 in

accordance with Article 30, including in serious cases by withdrawing the right of extraterritorial use for the numbers granted to the undertaking concerned.

BEREC shall facilitate and coordinate the exchange of information between the national regulatory authorities of the different Member States involved and ensure the appropriate coordination of work among them.

↓ 2002/20/EC (adapted)  
⇒ new

#### Article 1389

### **Fees for rights of use for numbers**

Member States may allow the ~~relevant~~ ⇒ national regulatory ⇐ authority to impose fees for the rights of use for ~~radio frequencies or numbers or rights to install facilities on, over or under public or private property~~ which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees ~~shall be~~ ⊗ are ⊗ objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article ~~3 8 of Directive 2002/21/EC (Framework Directive)~~.

↓ 2002/22/EC

#### Article 27

### **~~European telephone access codes~~**

~~1. Member States shall ensure that the '00' code is the standard international access code. Special arrangements for making calls between locations adjacent to one another across borders between Member States may be established or continued. End users in the locations concerned shall be fully informed of such arrangements.~~

~~2. A legal entity, established within the Community and designated by the Commission, shall have sole responsibility for the management, including number assignment, and promotion of the European Telephony Numbering Space (ETNS). The Commission shall adopt the necessary implementing rules.~~

~~3. Member States shall ensure that all undertakings that provide publicly available telephone services allowing international calls handle all calls to and from the ETNS at rates similar to those applied for calls to and from other Member States.~~

↓ 2002/22/EC

#### Article 27a

### **~~Harmonised numbers for harmonised services of social value, including the missing children hotline number~~**

~~1. Member States shall promote the specific numbers in the numbering range beginning with '116' identified by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised~~

~~services of social value<sup>103</sup>. They shall encourage the provision within their territory of the services for which such numbers are reserved.~~

~~2. Member States shall ensure that disabled end-users are able to access services provided under the '116' numbering range to the greatest extent possible. Measures taken to facilitate disabled end-users' access to such services whilst travelling in other Member States shall be based on compliance with relevant standards or specifications published in accordance with Article 17 of Directive 2002/21/EC (Framework Directive).~~

~~3. Member States shall ensure that citizens are adequately informed of the existence and use of services provided under the '116' numbering range, in particular through initiatives specifically targeting persons travelling between Member States.~~

~~4. Member States shall, in addition to measures of general applicability to all numbers in the '116' numbering range taken pursuant to paragraphs 1, 2, and 3, make every effort to ensure that citizens have access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number '116000'.~~

~~5. In order to ensure the effective implementation of the '116' numbering range, in particular the missing children hotline number '116000', in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted BEREC, may adopt technical implementing measures. However, these technical implementing measures shall be adopted without prejudice to, and shall have no impact on, the organisation of these services, which remains of the exclusive competence of Member States.~~

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).~~

↓ new

## Article 90

### The missing children hotline number

1. Member States shall ensure that citizens have access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number '116000'.

2. Member States shall ensure that disabled end-users are able to access services provided under the number '116000' numbering range to the greatest extent possible. Measures taken to facilitate disabled end-users' access to such services whilst travelling in other Member States shall be based on compliance with relevant standards or specifications published in accordance with Article 39.

<sup>103</sup> [OJ L 49, 17.2.2007, p. 30.](#)

*Article ~~28~~91*

**Access to numbers and services**

1. Member States shall ensure that, where technically and economically feasible, and except where a called ~~subscriber~~ ⇒ end-user ⇐ has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, national regulatory authorities take all necessary steps to ensure that end-users are able to:

(a) access and use services using non-geographic numbers within the ~~Community~~ ⇔ Union ⇔; and

(b) access all numbers provided in the ~~Community~~ ⇔ Union ⇔, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States, ~~those from the ETNS~~ and Universal International Freephone Numbers (UIFN).

2. Member States shall ensure that the ~~relevant~~ ⇒ national regulatory ⇐ authorities are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block, on a case-by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues.

**~~CHAPTER III~~**

**~~REGULATORY CONTROLS ON UNDERTAKINGS WITH  
SIGNIFICANT MARKET POWER IN SPECIFIC RETAIL MARKETS~~**

*~~Article 17~~*

**~~Regulatory controls on retail services~~**

~~1. Member States shall ensure that national regulatory authorities impose appropriate regulatory obligations on undertakings identified as having significant market power on a given retail market in accordance with Article 14 of Directive 2002/21/EC (Framework Directive) where:~~

~~— (a) as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), a national regulatory authority determines that a given retail market identified in accordance with Article 15 of that Directive is not effectively competitive; and~~

~~— (b) the national regulatory authority concludes that obligations imposed under Articles 9 to 13 of Directive 2002/19/EC (Access Directive) would not result in the achievement of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive).~~

~~2. Obligations imposed under paragraph 1 shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). The obligations imposed may include~~

~~requirements that the identified undertakings do not charge excessive prices, inhibit market entry or restrict competition by setting predatory prices, show undue preference to specific end-users or unreasonably bundle services. National regulatory authorities may apply to such undertakings appropriate retail price cap measures, measures to control individual tariffs, or measures to orient tariffs towards costs or prices on comparable markets, in order to protect end-user interests whilst promoting effective competition.~~

~~4. National regulatory authorities shall ensure that, where an undertaking is subject to retail tariff regulation or other relevant retail controls, the necessary and appropriate cost accounting systems are implemented. National regulatory authorities may specify the format and accounting methodology to be used. Compliance with the cost accounting system shall be verified by a qualified independent body. National regulatory authorities shall ensure that a statement concerning compliance is published annually.~~

~~5. Without prejudice to Article 9(2) and Article 10, national regulatory authorities shall not apply retail control mechanisms under paragraph 1 of this Article to geographical or user markets where they are satisfied that there is effective competition.~~

↓ new

### **TITLE III: END-USER RIGHTS**

#### *Article 92*

#### **Non-discrimination**

Providers of electronic communications networks or services shall not apply any discriminatory requirements or conditions of access or use to end-users based on the end-user's nationality or place of residence unless such differences are objectively justified.

↓ 2015/2120 Art. 8 (adapted)

#### *Article 93*

#### **⊗ Fundamental rights safeguard ⊗**

~~31.~~ National measures regarding end-users' access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, including in relation to privacy and due process, as defined ⊗ guaranteed by ⊗ in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ⊗ the Charter of Fundamental Rights of the Union and general principles of Union law ⊗.

↓ 2009/140/EC Art. 1.1(b)  
(adapted)  
⇒ new

~~3a Measures taken by Member States regarding end-users access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law.~~

2. Any of these measures regarding end-users' access to, or use of, services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may only be imposed if they  $\Rightarrow$  are provided for by law and respect the essence of those rights or freedoms,  $\Leftarrow$  are appropriate, proportionate and necessary ~~within a democratic society~~, and ~~their implementation shall be subject to adequate procedural safeguards~~  $\Rightarrow$  genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others  $\Leftarrow$  ~~in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms~~  $\boxtimes$  in line with Article 52(1) of the Charter of Fundamental Rights of the European Union  $\boxtimes$  and with general principles of ~~Community~~  $\boxtimes$  Union  $\boxtimes$  law, including effective judicial protection and due process. Accordingly, these measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the ~~European Convention for the Protection of Human Rights and Fundamental Freedoms~~  $\boxtimes$  Charter of Fundamental Rights of the European Union  $\boxtimes$ . The right to effective and timely judicial review shall be guaranteed.

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$\Downarrow$  new

#### Article 94

#### Level of harmonisation

Member States shall not maintain or introduce in their national law end-user protection provisions on the subject-matters covered by this Title and diverging from the provisions laid down in this Title, including more or less stringent provisions to ensure a different level of protection, unless otherwise provided for in this Title.

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$\Downarrow$  2002/22/EC

#### Article 20

#### Contracts

~~1. Member States shall ensure that, when subscribing to services providing connection to a public communications network and/or publicly available electronic communications services, consumers, and other end-users so requesting, have a right to a contract with an undertaking or undertakings providing such connection and/or services. The contract shall specify in a clear, comprehensive and easily accessible form at least:~~

~~(a) the identity and address of the undertaking;~~

~~(b) the services provided, including in particular,~~

~~whether or not access to emergency services and caller location information is being provided, and any limitations on the provision of emergency services under Article 26;~~

~~information on any other conditions limiting access to and/or use of services and applications, where such conditions are permitted under national law in accordance with Community law;~~

~~the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities;~~

~~information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link, and information on how those procedures could impact on service quality;~~

~~the types of maintenance service offered and customer support services provided, as well as the means of contacting these services;~~

~~any restrictions imposed by the provider on the use of terminal equipment supplied;~~

~~(e) where an obligation exists under Article 25, the subscriber's options as to whether or not to include his or her personal data in a directory, and the data concerned;~~

~~(d) details of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, payment methods offered and any differences in costs due to payment method;~~

~~(e) the duration of the contract and the conditions for renewal and termination of services and of the contract, including:~~

~~any minimum usage or duration required to benefit from promotional terms;~~

~~any charges related to portability of numbers and other identifiers;~~

~~any charges due on termination of the contract, including any cost recovery with respect to terminal equipment, (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met;~~

~~(g) the means of initiating procedures for the settlement of disputes in accordance with Article 34;~~

~~(h) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.~~

~~Member States may also require that the contract include any information which may be provided by the relevant public authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data, referred to in Article 21(4) and relevant to the service provided.~~

~~2. Member States shall ensure that subscribers have a right to withdraw from their contract without penalty upon notice of modification to the contractual conditions proposed by the undertakings providing electronic communications networks and/or services. Subscribers shall be given adequate notice, not shorter than one month, of any such modification, and shall be informed at the same time of their right to withdraw, without penalty, from their contract if they do not accept the new conditions. Member States shall ensure that national regulatory authorities are able to specify the format of such notifications.~~

*Article 95*

**Information requirements for contracts**

1. Before a consumer is bound by a contract or any corresponding offer, providers of publicly available electronic communications services other than number-independent interpersonal communications services, shall provide the information required pursuant to Articles 5 and 6 of Directive 2011/83/EU, irrespective of the amount of any payment to be made, and the following information in a clear and comprehensible manner:

(a) as part of the main characteristics of each service provided:

(i) any minimum service quality levels to the extent that these are offered, and in accordance with BEREC guidelines to be adopted after consultation of stakeholders and in close cooperation with the Commission, regarding:

- for internet access services: at least latency, jitter, packet loss,
- for publicly available number-based interpersonal communications services: at least the time for the initial connection, failure probability, call signalling delays and
- for services other than internet access services within the meaning of Article 3(5) of Regulation 2015/2120: the specific quality parameters assured,

(ii) without prejudice to the right of end-users to use terminal equipment of their choice in accordance with Article 3(1) of Regulation 2015/2120/EC, any restrictions imposed by the provider on the use of terminal equipment supplied;

(b) any compensation and refund arrangements, which apply if contracted service quality levels are not met;

(c) as part of the information on price:

(i) details of tariff plans under the contract and, where applicable, the volumes of communications (MB, minutes, SMS) included per billing period, and the price for additional communication units,

(ii) tariff information regarding any numbers or services subject to particular pricing conditions; with respect to individual categories of services, NRAs may require such information to be provided immediately prior to connecting the call,

(iii) for bundled services and bundles including both services and equipment the price of the individual elements of the bundle to the extent they are also marketed separately,

(iv) details of after-sales service and maintenance charges, and

(v) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

(d) as part of the information on the duration of the contract and the conditions for renewal and termination of the contract:

(i) any minimum usage or duration required to benefit from promotional terms,

(ii) any charges related to switching and the portability of numbers and other identifiers and compensation and refund arrangements for delay or abuse of switching,

(iii) any charges due on early termination of the contract, including any cost recovery with respect to terminal equipment and other promotional advantages,

(iv) for bundled services the conditions of termination of the bundle or of elements thereof,

(e) details on products and services designed for disabled end-users and how updates on this information can be obtained;

(f) the means of initiating procedures for the settlement of disputes in accordance with Article 25;

(g) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.

2. In addition to the requirements set out in paragraph 1 providers of publicly available number-based interpersonal communications services shall provide the following information in a clear and comprehensible manner:

– any constraints on access to emergency services and/or caller location information due to a lack of technical feasibility;

– the end-user's right to determine whether or not to include his or her personal data in a directory, and the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC;

3. Paragraphs 1 and 2 shall apply also to micro or small enterprises as end-users unless they have explicitly agreed to waive all or parts of those provisions,

4. Providers of internet access services shall provide the information mentioned in paragraphs 1 and 2 in addition to the information required pursuant to Article 4(1) of Regulation (EU) 2015/2120.

5. By [entry into force + 12 months], BEREC shall issue a decision on a contract summary template, which identifies the main elements of the information requirements in accordance with paragraphs 1 and 2. Those main elements shall include at least complete information on:

(a) the name and address of the provider,

(b) the main characteristics of each service provided,

(c) the respective prices,

(d) the duration of the contract and the conditions for its renewal and termination,

(e) the extent to which the products and services are designed for disabled end-users.

(f) with respect to internet access services, the information required pursuant to Article 4 (1) of Regulation (EU) 2015/2120.

Providers subject to the obligations under paragraphs 1-4 shall duly complete this contract summary template with the required information and provide it to consumers, and micro and small enterprises, prior to the conclusion of the contract. The contract summary shall become an integral part of the contract.

6. Providers of internet access services and providers of publicly available number-based interpersonal communications services shall offer end-users the facility to monitor and control the usage of each of those services which is billed on the basis of either time or volume

consumption. This facility shall include access to timely information on the level of consumption of services included in a tariff plan.

↓ 2002/22/EC

#### *Article 21*

### **Transparency and publication of information**

~~1. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to publish transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, on any charges due on termination of a contract and on standard terms and conditions in respect of access to, and use of, services provided by them to end users and consumers in accordance with Annex II. Such information shall be published in a clear, comprehensive and easily accessible form. National regulatory authorities may specify additional requirements regarding the form in which such information is to be published.~~

~~2. National regulatory authorities shall encourage the provision of comparable information to enable end users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques. Where such facilities are not available on the market free of charge or at a reasonable price, Member States shall ensure that national regulatory authorities are able to make such guides or techniques available themselves or through third party procurement. Third parties shall have a right to use, free of charge, the information published by undertakings providing electronic communications networks and/or publicly available electronic communications services for the purposes of selling or making available such interactive guides or similar techniques.~~

~~3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to inter alia:~~

~~(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;~~

~~(b) inform subscribers of any change to access to emergency services or caller location information in the service to which they have subscribed;~~

~~(c) inform subscribers of any change to conditions limiting access to and/or use of services and applications, where such conditions are permitted under national law in accordance with Community law;~~

~~(d) provide information on any procedures put in place by the provider to measure and shape traffic so as to avoid filling or overfilling a network link, and on how those procedures could impact on service quality;~~

~~(e) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and~~

~~(f) regularly inform disabled subscribers of details of products and services designed for them.~~

~~If deemed appropriate, national regulatory authorities may promote self- or co-regulatory measures prior to imposing any obligation.~~

~~4. Member States may require that the undertakings referred to in paragraph 3 distribute public interest information free of charge to existing and new subscribers, where appropriate, by the same means as those ordinarily used by them in their communications with subscribers. In such a case, that information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:~~

~~(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences; and~~

~~(b) the means of protection against risks to personal security, privacy and personal data when using electronic communications services.~~

↓ new

## Article 96

### **Transparency, comparison of offers and publication of information**

1. National regulatory authorities shall ensure that the information referred to in Annex VIII is published in a clear, comprehensive and easily accessible form by the undertakings providing publicly available electronic communications services other than number-independent interpersonal communications services, or by the national regulatory authority itself. National regulatory authorities may specify additional requirements regarding the form in which such information is to be published.

2. National regulatory authorities shall ensure that end-users have access free of charge to at least one independent comparison tool which enables them to compare and evaluate prices and tariffs, and the quality of service performance of different publicly available electronic communications services other than number-independent interpersonal communications services.

The comparison tool shall:

- (a) be operationally independent by ensuring that service providers are given equal treatment in search results;
- (b) clearly disclose their owners and operators;
- (c) set out clear, objective criteria on which the comparison will be based;
- (d) use plain and unambiguous language;
- (e) provide accurate and up-to-date information and state the time of the last update;
- (f) include a broad range of offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results;
- (g) provide an effective procedure to report incorrect information.

Comparison tools fulfilling the requirements in points (a) to (g) shall, upon request, be certified by national regulatory authorities. Third parties shall have a right to use, free of charge, the information published by undertakings providing publicly available electronic communications services, other than number-independent interpersonal communications services, for the purposes of making available such independent comparison tools.

3. Member States may require that the undertakings providing internet access services or publicly available number-based interpersonal communications services distribute public interest information free of charge to existing and new end-users, where appropriate, by the same means as those they ordinarily use in their communications with end-users. In such a case, that public interest information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:

- (a) the most common uses of internet access services and publicly available number-based interpersonal communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences; and
- (b) the means of protection against risks to personal security, privacy and personal data when using internet access services and publicly available number-based interpersonal communications services.

↓ 2009/136/EC Art. 1.14  
(adapted)  
⇒ new

#### Article ~~97~~<sup>22</sup>

#### Quality of service

1. ~~Member States shall ensure that national regulatory authorities are, after taking account of the views of interested parties, able to~~  may  require ~~undertakings that provide~~  providers of  ⇒ internet access services and of  publicly available ~~electronic~~ ⇒ number-based interpersonal  communications ~~networks and/or~~ services to publish ⇒ comprehensive,  comparable, ~~adequate~~ ⇒ reliable, user-friendly  and up-to-date information for end-users on the quality of their services and on measures taken to ensure equivalence in access for disabled end-users. That information shall, on request, be supplied to the national regulatory authority in advance of its publication.

2. National regulatory authorities ~~may~~ ⇒ shall  specify, ⇒ taking utmost account of BEREC guidelines  ~~inter alia~~, the quality of service parameters to be measured ⇒ and the applicable measurement methods,  and the content, form and manner of the information to be published, including possible quality certification mechanisms, ~~in order to ensure that end-users, including disabled end-users, have access to comprehensive, comparable, reliable and user-friendly information.~~ Where appropriate, the parameters, definitions and measurement methods set out in Annex ~~II~~ <sup>IX</sup> ~~may~~ ⇒ shall  be used.

~~3. In order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.~~

~~National regulatory authorities shall provide the Commission, in good time before setting any such requirements, with a summary of the grounds for action, the envisaged requirements and the proposed course of action. This information shall also be made available to the Body of European Regulators for Electronic Communications (BEREC). The Commission may, having examined such information, make comments or recommendations thereupon, in particular to ensure that the envisaged requirements do not adversely affect the functioning of the internal market. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations when deciding on the requirements.~~

By [entry into force plus 18 months], in order to contribute to a consistent application of this paragraph, BEREC shall adopt, after consultation of stakeholders and in close cooperation with the Commission, guidelines on the relevant quality of service parameters, including parameters relevant for disabled end-users, the applicable measurement methods, the content and format of publication of the information, and quality certification mechanisms.

↓ new

## Article 98

### **Contract duration and termination**

1. Member States shall ensure that conditions and procedures for contract termination are not a disincentive against changing service provider and that contracts concluded between consumers and undertakings providing publicly available electronic communications services, other than number-independent interpersonal communications services, do not mandate an initial commitment period longer than 24 months. Member States may adopt or maintain shorter maximum durations for the initial commitment period.

This paragraph shall not apply to the duration of an instalment contract where the consumer has agreed in a separate contract to instalment payments for deployment of a physical connection.

2. Where a contract or national law provides for a fixed duration contract to be automatically prolonged, the Member State shall ensure that, after the expiration of the initial period and unless the consumer has explicitly agreed to the extension of the contract, consumers are entitled to terminate the contract at any time with a one-month notice period and without incurring any costs except the cost of providing the service during the notice period.

3. End-users shall have the right to terminate their contract without incurring any costs upon notice of changes in the contractual conditions proposed by the provider of publicly available electronic communications services other than number-independent interpersonal communications services, unless the proposed changes are exclusively to the benefit of the end-user or they are strictly necessary to implement legislative or regulatory changes. Providers shall notify end-users, at least one month in advance, of any such change, and shall inform them at the same time of their right to terminate their contract without incurring any costs if they do not accept the new conditions. Member States shall ensure that notification is made in a clear and comprehensible manner on a durable medium and in a format chosen by the end-user at the time of concluding the contract.

4. Where an early termination of a contract on a publicly available electronic communications service by the end-user is possible in accordance with this Directive, other provisions of Union law or national law, no compensation shall be due by the end-user other than for the *pro rata temporis* value of subsidised equipment bundled with the contract at the moment of the contract conclusion and a *pro rata temporis* reimbursement for any other promotional

advantages marked as such at the moment of the contract conclusion. Any restriction on the usage of terminal equipment on other networks shall be lifted, free of charge, by the provider at the latest upon payment of such compensation.

↓ 2002/22/EC (adapted)

Article ~~30~~99

**Facility Change of provider ☒ and number portability ☒**

↓ new

1. In case of switching between providers of internet access services, the providers concerned shall provide the end-user with adequate information before and during the switching process and ensure continuity of the service. The receiving provider shall ensure that the activation of the service shall occur on the date agreed with the end-user. The transferring provider shall continue to provide its services on the same terms until the services of the receiving provider are activated. Loss of service during the switching process shall not exceed one working day.

National regulatory authorities shall ensure the efficiency of the switching process for the end-user.

↓ 2002/22/EC  
⇒ new

~~12.~~ Member States shall ensure that all ~~subscribers~~ ⇒ end-users ⇐ with numbers from the national telephone numbering plan who so request can retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Part C of Annex ~~VI~~.

~~23.~~ National regulatory authorities shall ensure that pricing between operators and/or service providers related to the provision of number portability is cost-oriented, and that ⇒ no ⇐ direct charges ⇒ are applied ⇐ to ⇒ end-users ⇐ ~~subscribers if any, do not act as a disincentive for subscribers against changing service provider.~~

~~34.~~ National regulatory authorities shall not impose retail tariffs for the porting of numbers in a manner that would distort competition, such as by setting specific or common retail tariffs.

~~45.~~ Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, ~~subscribers~~ ⇒ end-users ⇐ who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day ⇒ from the conclusion of such an agreement ⇐.

⇒ The receiving provider shall lead the switching and porting process. ⇐ ~~Without prejudice to the first subparagraph, competent n~~ National ⇒ regulatory ⇐ authorities may establish the global process of ⇒ switching and of ⇐ porting of numbers, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the ~~subscriber~~ ⇒ end-user ⇐. In any event, loss of service during the process of porting shall not exceed one working day. ⇒ In case of failure of the porting process, the transferring provider shall reactivate the number of the end-user until the porting is successful ⇐ ~~Competent n~~ National ⇒ regulatory ⇐ authorities shall also take ~~into account, where necessary,~~ ⇒ appropriate ⇐ measures ensuring that ~~subscribers~~ ⇒ end-users ⇐ are

⇒ adequately informed and ⇐ protected throughout the switching process and are not switched to another provider against their will.

56. Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate subscribers ⇒ end-users ⇐ in case of delay in porting or abuse of porting by them or on their behalf.

~~5. Member States shall ensure that contracts concluded between consumers and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months. Member States shall also ensure that undertakings offer users the possibility to subscribe to a contract with a maximum duration of 12 months.~~

~~6. Without prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing service provider.~~

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↓ new

#### Article 100

#### **Bundled offers**

1. If a bundle of services or a bundle of services and goods offered to an end-user comprises at least a publicly available communications service other than number-independent interpersonal communications services, Articles 95, 96 (1), 98 and 99 (1) shall apply *mutatis mutandis* to all elements of the bundle except where the provisions applicable to another element of the bundle are more favourable to the end-user.

2. Any subscription to additional services or goods provided or distributed by the same provider of publicly available communications services other than number-independent interpersonal communications services shall not re-start the contract period of the initial contract unless the additional services or goods are offered at a special promotional price available only on the condition that the existing contract period is re-started.

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↓ 2002/22/EC

#### Article ~~23~~101

#### **Availability of services**

Member States shall take all necessary measures to ensure the fullest possible availability of publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all necessary measures to ensure uninterrupted access to emergency services.

↓ 2009/136/EC Art. 1.17  
(adapted)  
⇒ new

Article ~~26~~102

**Emergency services ~~services~~  communications ~~and~~  and the single European emergency call number**

1. Member States shall ensure that all end-users of the service referred to in paragraph 2, including users of public pay telephones, are able to ~~call~~ ⇒ access ⇐ the emergency services ⇒ through emergency communications ⇐ free of charge and without having to use any means of payment, by using the single European emergency ~~call~~ number ‘112’ and any national emergency ~~call~~ number specified by Member States.

2. Member States, in consultation with national regulatory authorities  and  emergency services and providers ⇒ of electronic communications services ⇐, shall ensure that undertakings providing end-users with ~~an electronic~~ ⇒ number-based interpersonal ⇐ communications service ~~for originating national calls to a number or numbers in a national telephone numbering plan~~ provide access to emergency services ⇒ through emergency communications to the most appropriate PSAP. In case of an appreciable threat to effective access to emergency services the obligation for undertakings may be extended to all communications services in accordance with the conditions and procedure set out in Article 59 (1) (c). ⇐

3. Member States shall ensure that ⇒ all emergency communications ⇐ ~~calls~~ to the single European emergency ~~call~~ number ‘112’ are appropriately answered and handled in the manner best suited to the national organisation of emergency systems. Such ~~calls~~ ⇒ emergency communications ⇐ shall be answered and handled at least as expeditiously and effectively as ~~calls~~ ⇒ emergency communications ⇐ to the national emergency number or numbers, where these continue to be in use.

4. Member States shall ensure that access for disabled end-users to emergency services is ⇒ available through emergency communications and ⇐ equivalent to that enjoyed by other end-users. Measures taken to ensure that disabled end-users are able to access emergency services ⇒ through emergency communications ⇐ whilst travelling in other Member States shall be based to the greatest extent possible on European standards or specifications published in accordance with the provisions of Article 39 ~~17 of Directive 2002/21/EC (Framework Directive)~~, and they shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in this Article.

5. Member States shall ensure that ~~undertakings concerned make~~ caller location information is ⇒ available to the PSAP ⇐ ~~available free of charge~~ ⇒ without delay after the emergency communication is set up. ⇐ ~~to the authority handling emergency calls as soon as the call reaches that authority.~~ ⇒ Member States shall ensure that the establishment and the transmission of the caller location information are free of charge for the end-user and to the authority handling the emergency communication ⇐ ~~This shall apply~~  with regard  to all ~~calls~~ ⇒ emergency communications ⇐ to the single European emergency ~~call~~ number ‘112’. Member States may extend ~~this~~  that  obligation to cover ~~calls~~ ⇒ emergency communications ⇐ to national emergency numbers. Competent regulatory authorities shall lay down criteria for the accuracy and reliability of the caller location information provided.

6. Member States shall ensure that citizens are adequately informed about the existence and use of the single European emergency ~~call~~ number '112', in particular through initiatives specifically targeting persons travelling between Member States.

7. In order to ensure effective access ~~to~~ to emergency services through emergency communications ~~to~~ to '112' services in the Member States, the Commission ~~, having consulted BEREC, may~~  shall be empowered to  adopt ~~delegated acts~~  delegated acts in accordance with Article 109 on the measures necessary to ensure the compatibility, interoperability, quality, reliability and continuity of emergency communications in the Union with regard to caller location solutions, access for disabled end-users and routing to the most appropriate PSAP ~~technical implementing measures~~.

~~However, these technical implementing~~  Those  measures shall be adopted without prejudice to, and shall have no impact on, the organisation of emergency services, which remains ~~of~~  in  the exclusive competence of Member States.

~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).~~

↓ 2002/22/EC (adapted)  
⇒ new

#### Article ~~23a~~103

##### ~~Ensuring equivalence in~~ **Equivalent** access and choice for disabled end-users

1. Member States shall ~~enable~~  ensure that the competent  ~~relevant national~~ authorities ~~to~~ specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communications services to ensure that disabled end-users:

- (a) have access to electronic communications services equivalent to that enjoyed by the majority of end-users; and
- (b) benefit from the choice of undertakings and services available to the majority of end-users.

~~2. In order to be able to adopt and implement specific arrangements for disabled end-users, Member States shall encourage the availability of terminal equipment offering the necessary services and functions.~~

↓ new

2. In taking the measures referred to in paragraph 1, Member States shall encourage compliance with the relevant standards or specifications published in accordance with Article 39.

↓ 2002/22/EC Art.25  
→<sub>1</sub> 2009/136/EC Art. 1.16(a)

#### Article ~~25~~104

##### →<sub>1</sub> Telephone directory enquiry services ←

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↓ 2009/136/EC Art. 1.16(b)

~~1. Member States shall ensure that subscribers to publicly available telephone services have the right to have an entry in the publicly available directory referred to in Article 5(1)(a) and to have their information made available to providers of directory enquiry services and/or directories in accordance with paragraph 2.~~

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↓ 2002/22/EC  
⇒ new

21. Member States shall ensure that all undertakings which assign telephone numbers to ~~subscribers~~ ⇒ end-users ⇐ meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format on terms which are fair, objective, cost oriented and non-discriminatory.

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↓ 2009/136/EC Art. 1.16(c)  
(adapted)

~~32. Member States shall ensure that all end-users provided with a publicly available telephone service can access directory enquiry services.~~ National regulatory authorities shall be able to impose obligations and conditions on undertakings that control access of end-users for the provision of directory enquiry services in accordance with the provisions of Article ~~59~~ 5 of ~~Directive 2002/19/EC (Access Directive)~~. Such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

43. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS, and shall take measures to ensure such access in accordance with Article ~~91~~ 94.

54. Paragraphs 1 to ~~4~~ 3 shall apply subject to the requirements of ~~Community~~ ⇔ Union ⇔ legislation on the protection of personal data and privacy and, in particular, Article 12 of Directive 2002/58/EC (~~Directive on privacy and electronic communications~~).

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↓ 2002/22/EC

Article ~~24~~ 105

### **Interoperability of consumer digital television equipment**

In accordance with the provisions of Annex ~~VIX~~, Member States shall ensure the interoperability of the consumer digital television equipment referred to therein.

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↓ 2002/22/EC Art.31

Article ~~31~~ 106

### **‘Must carry’ obligations**

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↓ 2009/136/EC Art. 1.22  
(adapted)  
⇒ new

1. Member States may impose reasonable ‘must carry’ obligations, for the transmission of specified radio and television broadcast channels and ⇒ related ⇐ complementary services, particularly accessibility services to enable appropriate access for disabled end-users ⇒ and data supporting connected TV services and electronic programme guides ⇐ , on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcast channels. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.

The obligations referred to in the first subparagraph shall be reviewed by the Member States at the latest within one year of ~~25 May 2011~~ [X] date of entry into force of this Directive [X] , except where Member States have carried out such a review within the previous ~~two~~ [X] four [X] years.

Member States shall review ‘must carry’ obligations ~~on a regular basis~~ [X] at least every five years [X] .

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↓ 2002/22/EC

2. Neither paragraph 1 of this Article nor Article ~~357(2) of Directive 2002/19/EC (Access Directive)~~ shall prejudice the ability of Member States to determine appropriate remuneration, if any, in respect of measures taken in accordance with this Article while ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks. Where remuneration is provided for, Member States shall ensure that it is applied in a proportionate and transparent manner.

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↓ 2002/22/EC

#### Article ~~29~~107

### Provision of additional facilities

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↓ 2009/136/EC Art. 1.20(a)  
⇒ new

1. Without prejudice to Article ~~8340~~(2), Member States shall ensure that national regulatory authorities are able to require all undertakings that provide ⇒ internet access services ⇐ ~~publicly available telephone services~~ and/or ⇒ publicly available telephone number-based interpersonal communications services ⇐ ~~access to public communications networks~~ to make available all or part of the additional facilities listed in Part B of Annex ~~IV~~VI, subject to technical feasibility and economic viability, as well as all or part of the additional facilities listed in Part A of Annex ~~IV~~VI.

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↓ 2002/22/EC (adapted)

2. A Member State ~~may decide to~~ shall  waive paragraph 1 in all or part of its territory if it considers, after taking into account the views of interested parties, that there is sufficient access to these facilities.

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↓ 2002/22/EC (adapted)

⇒ new

~~Article 35~~108

### Adaptation of annexes

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

## PART IV. FINAL PROVISIONS

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↓ 2002/21/EC

~~Article 22~~

### ~~Committee~~

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

↓ 2009/140/EC Art. 1.25(a)

- ~~3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~
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↓ 2002/19/EC (adapted)

## ~~CHAPTER IV~~

### ~~PROCEDURAL PROVISIONS~~

~~Article 14~~

### ~~Committee~~

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

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

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

↓ 2009/136/EC Art. 1.27

#### ~~Article 37~~

##### ~~Committee procedure~~

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

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

↓ new

#### *Article 109*

##### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Articles 40, 60, 73, 102 and 108 shall be conferred on the Commission for an indeterminate period of time from ... [date of entry into force of the basic legislative act or any other date set by the co-legislators].

3. The delegation of power referred to in Articles 40, 60, 73, 102 and 108 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article(s) 40, 60, 73, 102, and 108 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

#### *Article 110*

##### **Committee**

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

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

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

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

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

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↓ 2002/21/EC (adapted)

*Article ~~23~~111*

**Exchange of information**

1. The Commission shall provide all relevant information to the Communications Committee on the outcome of regular consultations with the representatives of network operators, service providers, users, consumers, manufacturers and trade unions, as well as third countries and international organisations.

2. The Communications Committee shall, taking account of the ~~Community's~~  Union's  electronic communications policy, foster the exchange of information between the Member States and between the Member States and the Commission on the situation and the development of regulatory activities regarding electronic communications networks and services.

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↓ 2002/21/EC (adapted)

*Article ~~24~~112*

**Publication of information**

1. Member States shall ensure that up-to-date information pertaining to the application of this Directive ~~and the Specific Directives~~ is made publicly available in a manner that guarantees all interested parties easy access to that information. They shall publish a notice in their national official gazette describing how and where the information is published. The first such notice shall be published before the date of application referred to in Article ~~118~~<sup>118</sup>(1), second subparagraph, and thereafter a notice shall be published whenever there is any change in the information contained therein.

2. Member States shall send to the Commission a copy of all such notices at the time of publication. The Commission shall distribute the information to the Communications Committee as appropriate.

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↓ 2009/140/EC Art. 3.9

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

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↓ 2002/20/EC

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

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↓ 2002/19/EC

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

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

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↓ 2002/22/EC

#### Article ~~36~~113

### Notification and monitoring

1. National regulatory authorities shall notify to the Commission by at the latest the date of application referred to in Article ~~118~~38(1), second subparagraph, and immediately in the event of any change thereafter in the names of undertakings designated as having universal service obligations under Articles ~~8(1)~~ 84(1) or 85.

The Commission shall make the information available in a readily accessible form, and shall distribute it to the Communications Committee referred to in Article ~~111~~37.

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↓ 2009/136/EC Art. 1.26

~~2. National regulatory authorities shall notify to the Commission the universal service obligations imposed upon undertakings designated as having universal service obligations.~~

~~Any changes affecting these obligations or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.~~

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↓ 2002/22/EC

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

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↓ 2002/19/EC Art.16

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

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

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↓ 2002/21/EC  
⇒ new

#### Article ~~25~~114

#### Review procedures

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

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↓ 2002/19/EC

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

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↓ 2002/20/EC

~~3. The Commission shall periodically review the functioning of the national authorisation systems and the development of cross border service provision within the Community and report to the European Parliament and to the Council on the first occasion not later than three years after the date of application of this Directive referred to in Article 18(1), second~~

~~subparagraph. For this purpose, the Commission may request from the Member States information, which shall be supplied without undue delay.~~

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↓ 2002/22/EC (adapted)  
⇒ new

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

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

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↓ 2002/19/EC

#### ~~Article 17~~

##### ~~Review procedures~~

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

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↓ 2002/21/EC (adapted)

#### ~~Article 26~~

##### ~~Repeal~~

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

- ~~– Directive 2002/19/EC,~~
  - ~~– Directive 2002/20/EC,~~
  - ~~– Directive 2002/21/EC,~~
  - ~~– Directive 2002/22/EC,~~
- 

↓ 2002/21/EC (adapted)

#### ~~Article 28~~

##### ~~Transposition~~

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

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

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

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

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↓ 2002/20/EC (adapted)

#### ~~Article 18~~

##### ~~Transposition~~

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

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

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

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

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↓ 2002/19/EC (adapted)

#### ~~Article 18~~

##### ~~Transposition~~

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

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

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

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

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↓ 2002/22/EC (adapted)

~~Article 38~~

~~Transposition~~

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

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

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

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↓ 2002/19/EC (adapted)

~~Article 19~~

~~Entry into force~~

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

~~Article 20~~

~~Addressees~~

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

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↓ 2002/20/EC (adapted)

~~Article 19~~

~~Entry into force~~

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

~~Article 20~~

~~Addressees~~

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

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↓ 2002/21/EC (adapted)

~~Article 29~~

~~Entry into force~~

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

~~Article 30~~

~~Addressees~~

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

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↓ 2002/22/EC

~~Article 39~~

~~Entry into force~~

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

~~Article 40~~

~~Addressees~~

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

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Article 115

**Transposition**

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

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

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

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

Article 116

**Repeal**

Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC [,listed in Annex [XI], Part A,] are repealed with effect from [...], without prejudice to the obligations of the Member States

relating to the time-limits for the transposition into national law and the dates of application of the Directives set out in Annex XI, Part B.

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

*Article 117*

**Entry into force**

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

*Article 118*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*