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The new European electronic communications code

European telecom rules were last updated in 2009. To make them fit for the digital era the Commission proposed a new Electronic Communications Code in September 2016. The provisional agreement reached in June 2018 was adopted by the Parliament and then by the Council in November 2018. Member States have until 21 December 2020 to transpose the new directive into national legislation.

The new rules include measures to stimulate investment in and take-up of very high capacity networks in the EU as well as new spectrum rules for mobile connectivity and 5G. The Code also ensures that all citizens have access to affordable communication, including the internet. It increases consumer protection and security for users and facilitates regulatory intervention. Furthermore, it introduces a 'reverse 112 system' which would alert citizens by text message in case of imminent serious emergencies or disasters (from June 2022). During negotiations the Parliament secured for citizens cheaper caps for intra-EU calls and SMS from 15 May 2019.

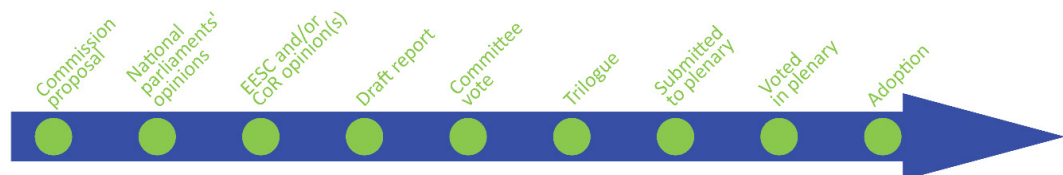
Proposal for a Directive of the European Parliament and of the Council establishing the European electronic communications code (Recast)

COM(2016) 590, 14.9.2016, 2016/0288(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

Committee responsible:	Industry, Research and Energy (ITRE)
Rapporteur:	Pilar del Castillo Vera (EPP, Spain)
Shadow rapporteurs:	Miapetra Kumpula-Natri (S&D, Finland); Evžen Tošenovský (ECR, Czech Republic); Kaja Kallas (ALDE, Estonia); Michel Reimon (Greens/EFA, Austria); David Borrelli (EFFD, Italy); Barbara Kappel (ENF, Austria)

Procedure completed. [Directive \(EU\) 2018/1972](#)
[OJ L 321, 17.12.2018, pp. 36–214](#)

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Introduction

According to the Commission, the overall [goal](#) of EU telecommunications policy is to enable European consumers to benefit from increased choice with lower prices, and the provision of high quality and innovative services. The existing legislative [framework](#) for the telecoms industry (often referred to as the electronic communications framework) was in large part set up in 2002, and amended in 2009. Markets, trends and technology have all significantly evolved since then. Furthermore, the [European Parliament](#) has been calling for the revision of the current framework since 2013. The overhaul of telecoms rules has been included in the priorities of the Commission for 2014-2019 and included in the [digital single market \(DSM\) strategy](#) adopted in 2015.

For the Commission, reaping the full benefits of the DSM will only be possible if **very high capacity networks**¹ are deployed throughout the European Union. The DSM in fact aims to create the right environment and conditions for their deployment. To that end, on 14 September 2016 the European Commission proposed a [set](#) of legislative and non-legislative [initiatives](#) accompanied by a [communication](#), 'Towards a European gigabit society', aimed at overhauling the existing telecoms framework. The Commission has also set new connectivity targets for 2025, arguing that continuing at the present pace of development would be insufficient to satisfy future demand. Reaching these new targets would require [€500 billion of investment](#) in the period up to 2025 (the investment shortfall is estimated to be around €155 billion). In order to meet connectivity needs in the medium and long term, the deployment of [fibre-optic infrastructure](#) is encouraged. To address these challenges the Commission proposes to modernise the current EU telecoms rules with a new rulebook, the [European electronic communications code](#) (the code) to stimulate competition, attract investment and strengthen the internal market and consumer rights.

Context

Since the 2009 regulatory revision, the telecommunications sector has undergone substantial changes, and become increasingly important in facilitating the growth of the digital economy. The Commission argues that the monopolistic market power previously held by many large telecoms companies has been significantly weakened. The operators' data indicate that the sector's overall [revenues](#) in Europe have been decreasing since 2008: fixed telephony has lost as much as 45 % and mobile services 16 %. However data and internet recorded revenue growth of 19 %. This quite possibly reflects changing trends in consumption and needs of consumers and businesses, which increasingly prefer data and internet access services over telephony and other long-established communication services. Hence, telecoms now have to compete with service providers offering applications and services online (e.g. fixed/mobile telephony competing with WhatsApp). This digital [transformation](#) touches upon most industry sectors and is a worldwide phenomenon. The demand for high-quality fixed and wireless connectivity is indeed rising constantly, due also to new content services such as [cloud computing](#) and [the internet of things](#). Over the 2015-2020 period, global [IP traffic](#) is expected to grow almost threefold, while [mobile data traffic](#) in Europe is expected to grow by more than 700 %.

¹ These are the [networks](#) with best-in-class performance in terms of speed (i.e. significantly above 100 mbps)!

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Existing situation

The Commission proposal addresses four existing directives: on the [Framework](#), [Access](#), [Authorisation](#) and [Universal Service](#). The code would amend these directives and integrate all four into a single new legal text.

The Framework Directive

The [directive](#) outlines the scope (telecommunications as well as all electronic communications networks) and sets general principles, basic definitions, general provisions for the national regulatory authorities (NRAs), the concept of significant market power (SMP), and rules for granting certain indispensable resources such as radio frequencies or numbers.

The Access Directive

The [directive](#) harmonises the regulation of access to, and interconnection of, electronic communications networks and associated facilities in the European Union. It establishes a regulatory framework for the relationships between suppliers of networks and services, with a view to promoting sustainable competition and interoperability of services. The NRAs regularly monitor the market power of undertakings and may impose obligations on entities with significant power, such as on transparency, non-discrimination, as well as obligations to share some of their networks and facilities with third parties.

The Authorisation Directive

This [directive](#) establishes a legal framework to ensure the freedom to provide electronic communications networks and services throughout the European Union. Its scope covers authorisations for all electronic communications networks and services, and concerns the granting of rights to use radio frequencies for that purpose. The directive introduced the replacement of individual licences with a general authorisation for all electronic communications networks or services, as well as a dedicated scheme for attributing frequencies and numbers. It streamlined the procedure to obtaining only a general authorisation, without the need for other permits issued by the NRAs.

The Universal Service Directive

The [directive](#) aims to guarantee the availability of a minimum set of good quality electronic communications services. All users should be able to access these at an affordable price. The directive stipulates obligations on the supply of [universal services](#) and companies providing them (such as providing transparent information to users), as well as the rights of end-users (e.g. to change fixed or mobile operator in one day, while maintaining the same phone number).

Parliament's starting position

In its 2013 [resolution](#) on the digital agenda, the EP called on the Commission to propose a comprehensive overview of the legal framework for the telecoms market in order to drive forward investment in fixed and mobile networks. Subsequently, in its 2014 [resolution](#) on a connected continent, the EP supported improving the coordination of radio spectrum management in Europe to develop 4G and 5G mobile

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networks. It proposed measures to make it easier to transfer and lease spectrum rights and asked for a minimum duration of 25 years for rights to spectrum use. In its 2016 [resolution](#), 'Towards a Digital Single Market Act', MEPs underlined the importance of incentivising private investment in communications networks, the need to ensure strong and modern end-user rights, and prioritising a harmonised, effective and pro-competitive framework for spectrum allocation.



Proposal

Preparation of the proposal

The Commission carried out an [evaluation](#) of the framework for electronic communications² covering the period from May 2011 until the end of May 2016. The evaluation demonstrated that the objectives of the framework – promoting competition (assessed in the document as stronger than would have been possible or likely at national level), realising the single market and protecting consumer interests – remain as valid as before. The role of spectrum management and connectivity has become even more critical. However the Commission also argued that competition has been delivered more at service than at network level, investments in very high capacity networks have been uneven across the Member States, and progress in spectrum management and achieving the single market has been below expectations. In addition, even though the framework furthered protection of end-users and availability of universal services, progress in consumer satisfaction is relatively slow. The evaluation concluded that a review is necessary to address the need for increased connectivity.

In the process of preparing the proposal, the Commission launched a [public consultation](#) which attracted a broad response from stakeholders. The respondents agreed that good connectivity is essential to achieve the DSM and recognised the need to adjust the regulatory framework to market dynamics. National authorities supported a flexible and voluntary approach to further spectrum allocation while industry preferred a more coordinated approach. The [impact assessment](#) accompanying the proposal noted that incumbent operators and ‘Over the top’ (OTT) suppliers preferred options with less regulation, while consumers, alternative operators and NRAs supported more regulation. Member States and NRAs were doubtful about radical pan-EU governance solutions.

The changes the proposal would bring

Deployment and take-up of high capacity networks in competitive markets

The code adds a **new regulatory objective** of promoting access to, and take-up of, very high capacity connectivity (fixed and mobile) across the European Union to the existing objectives of promotion of competition, contributing to development of the internal market and promoting the interests of EU citizens.

The proposal seeks to make the access rules more focused and legally certain. It limits the conditions under which **market access** obligations can be imposed (only to address the shortcomings of markets) and gives regulators the possibility to review markets every five years (currently every three years). In order to support **infrastructure competition** the NRAs may oblige operators with significant market power (SMP) to meet reasonable requests for access to their civil infrastructure, such as antennae, towers and poles. However, access to non-replicable network assets is limited in order to safeguard investment incentives, and can

2 The scope also included, apart from 4 directives considered under the code, the BEREC [Regulation 1211/2009](#), the Radio Spectrum [Decision 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).



Preparation of the proposal

The changes the proposal would bring

be widened only in limited circumstances (e.g. to enable alternative network deployment in sparsely populated areas).

In the proposal the Commission also promotes deployment of **very high capacity networks** (of fibre-optic cables at least up to the distribution point, or other networks of similar performance). SMP operators which make investments in such networks may benefit from lighter price regulation. New network elements contributing to network deployment may be exempted from SMP obligations if they are open to **co-investment** from other operators. SMP operators who do not have retail activities but fund networks privately and sell or rent access to them to operators (**wholesale-only networks**) also gain the possibility to benefit from lighter market-access obligations and pricing flexibility. The code requires national regulators to examine the state of broadband networks and investment plans so that their interventions and analyses are based on a good understanding of local specificities. The NRAs are obliged to identify '**digital exclusion areas**' without high-capacity networks and may organise calls for interest to deploy networks there. Regulators may take action against operators who deviate from their declared plan in these areas. The proposal also modifies the current system of **voice termination fees** payable by the operator of the person making the call.

Spectrum rules for mobile connectivity and 5G

The code aims to further increase coordination and coherence of spectrum management in Europe. To do so, the Commission proposes **harmonisation measures and procedures** as well as common objectives and principles to guide spectrum management at national level. New provisions include giving more prominence to general authorisations rather than individual licences, promoting shared use of spectrum, obligations on sharing infrastructure, and coordinating the timing of spectrum assignments. The revenue from auctions is to remain exclusively with Member States.

The code also contains common provisions on **spectrum authorisation** such as minimum licence durations of 25 years, a streamlined process for spectrum trading and leasing, criteria for the application of measures to promote competition, coverage obligations in licences, more consistent and predictable processes for granting or renewing existing usage rights, and clearer conditions for restriction or withdrawal of existing rights. Operators should commit to using their allocated spectrum effectively. The code also introduces a mechanism for allowing temporary alternative uses of harmonised spectrum under certain conditions.

The code also contains provisions which aim at making **spectrum-sharing** in 5G networks easier and promoting end-user access to wi-fi-based connectivity. The code simplifies conditions for **access to wi-fi** and for the deployment of low-power wireless broadband access ([small cells](#)) in order to meet the ever-growing demand for connectivity and reduce costs associated with very dense networks. Furthermore, the Commission proposes measures which address cross-border **spectrum interference** problems.

The consistency of spectrum assignment will be safeguarded by a **peer-review process** which requires national authorities to inform the Commission, the [Body of European Regulators for Electronic Communications](#) (BEREC) and other NRAs of planned radio spectrum measures. BEREC is tasked with delivering a reasoned (though non-binding) opinion on the draft measures within one month. Under the new regulation the Commission would have powers to adopt measures setting maximum deadlines for harmonised spectrum authorisation in all Member States as well as coordinating the main elements of selection processes and criteria for their design. It also empowers NRAs to enforce a wider range of



obligations. They could for example impose exceptional measures on network and spectrum sharing to cover spots without connectivity.

Universal service

The proposal updates the Universal Service Directive by removing from its scope legacy services (such as public payphones and user directories³) and focusing instead on **basic universal service broadband**. Universal service would be defined by a list of online services⁴ which use the broadband connection. Member State intervention should concern primarily the affordability of these services.⁵

Under the code, Member States are obliged to ensure that all end-users have affordable access to functional broadband as well as voice communications, at least at a fixed location. They are empowered to demand that undertakings provide special tariffs for vulnerable users (those with low income or special social needs), who under the new law have the right to contract.

Services and end-user protection rules

The Commission proposes to redefine the term '**electronic communications service**' to include three types: (i) internet access, (ii) interpersonal communications, divided into two sub-categories: number-based⁶ and number-independent, and (iii) services consisting wholly or mainly of the conveyance of signals, such as transmission services used for broadcasting.

The code envisages that **end-user-related** provisions (notably, those regarding contracts) are to be applied mainly to internet access services and number-based interpersonal communication services (e.g. Skype). This means that similar rules that apply to traditional telecoms operators (offering voice telephony, text messages and internet) would apply to new online players providing equivalent communications services. The new code clarifies that these services will have to respect the rules on end-user contracts, provide contractual information to their customers, apply switching rules (e.g. facilitate the switching process) and allow users to call emergency services.

Regulatory obligations for **number-independent services** (e.g. WhatsApp) will mostly be limited to security requirements. These services must however ensure that disabled users can have access, and that their users can reach the emergency number 112 if technically possible. Furthermore, under specific circumstances and to make these services interoperable (i.e. to enable access to emergency services), the Commission may identify a need for measures such as standardisation, imposed by the NRAs.

The NRAs are to ensure that end-users have free-of-charge access to at least one **independent tool** comparing quality, prices and tariffs. The Commission also proposes to **lift and simplify** certain regulatory

3 The Member States may still mandate if they demonstrate the need and adapt the financial regime.

4 E-mail, search engines, news, basic training and education online tools, job-search tools, professional networking, social media, e-government service use, buying services, internet banking, calls and video calls (standard quality).

5 The code only enables the Member States to include the provision of availability (connection at a fixed location) if it can be demonstrated that under normal commercial circumstances or through other policy tools available such a connection cannot be provided.

6 Those which connect to the public switched telephone network.



Preparation of the proposal

The changes the proposal would bring

obligations which overlap with horizontal rules or have other redundancies. These include repealing the power of NRAs to directly impose retail price regulation on SMPs, and streamlining specific provisions on contracts, transparency, equivalence of access by disabled users, directory services and interoperability of consumer digital television equipment.

Numbering and emergency communication provisions

The proposed code would give NRAs the possibility of assigning numbers to undertakings other than providers of electronic communications networks and services. The code deems it the Member States' responsibility to ensure that citizens have access to the missing children hotline number, and adds legal clarity concerning access to emergency services by all number-based interpersonal communications providers.

Governance

The Commission proposes to strengthen the role of NRAs, by establishing a list of their minimum competences and introducing enhanced independence requirements. Under the proposal, BEREC is to act as single contact point for operators who submit notifications for access, and to establish a register at EU level. The newly introduced **double-lock system** gives the Commission the possibility, with the consent of BEREC, to demand amendment or withdrawal of draft market-regulation measures. BEREC will also be tasked with the **determination of a single maximum termination rate** for the European Union. The new directive would also empower BEREC to identify **transnational markets** as well as transnational demand, and give guidelines to NRAs encouraging a common approach when giving remedies to help to meet such demand. In order to avoid hampering the internal market, the Commission, supported by BEREC, may establish harmonised technical specifications to meet demand for cross-border communications.

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Views

Advisory committees

On 26 January 2017, the European Economic and Social Committee (EESC) adopted an [opinion](#) on the Code. It broadly endorsed the proposal but regretted that the issues concerning privacy of users had been excluded from the scope and that the Commission opted for a directive rather than regulation, thus leaving many key aspects to Member States to decide upon.

National parliaments

The deadline for the [submission](#) of reasoned opinions on the grounds of subsidiarity was 19 December 2016. The Swedish Parliament sent a reasoned opinion saying that the proposal is in breach of the principle of subsidiarity. Austria, Cyprus, the Czech Republic, Germany, Italy, Luxembourg, Portugal and Romania also made contributions.

Stakeholders' views⁷

[BEREC](#) welcomed the proposed enhancement of the NRAs' toolbox and argued that the new rules should be as simple as possible while ensuring legal predictability. [ETNO](#), the European Telecommunications Network Operators' Association, called for a timely legislative process and asked for the final rules to be technology neutral. ETNO asked for a consistent and effective boost to network investment, including the EU's largest investors in broadband, and simplification of sector-specific regulation. [GSMA](#), the association representing mobile operators, supported the spectrum-policy reform proposals and called on the Member States and the European Parliament to introduce further improvements to achieve profound change in connectivity investment. [ECTA](#), the European Competitive Telecommunications Association that represents new market entrants, welcomed the proposal (particularly its SMP and co-investment provisions), but asked for more focus to be put on physical access to networks of SMPs.

[CCIA](#), the Computer and Communications Industry Association, called for technology-neutral solutions and argued that including online communication services in the scope of the regulation will lead to undesirable fragmentation of the internal market. [Digital Europe](#), which represents digital technology industry firms, underlined that extending the EU rules to online communication services (such as WhatsApp or Skype) should take into account what is feasible and possible with online technologies.

[Cable Europe](#), an association of broadband cable TV operators and national cable associations, argued that the proposal achieves a good balance between the pace of change in industry and maintaining the regulatory stability necessary for stimulating investment. [Fibre to the Home Council Europe](#), which represents the views of the high-speed fibre broadband industry, underlined that the proposal signals a

⁷ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

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policy and regulatory shift towards prioritising fibre investments which is the only future-proof infrastructure capable of meeting the new connectivity targets. According to the [Financial Times](#) the telecoms sector welcomed the focus of the regulation on stimulating investments through securing returns rather than, as previously, on prioritising low prices for consumers. However, some companies which plan to deploy copper-enhanced technologies may find it challenging to move to fibre.

A number of stakeholders have reacted to the report adopted by the ITRE committee in October 2017, as well as the Council's general approach.

[ETNO](#) argued that the Commission's proposals to grant incentives for co-investment have been weakened. It also deemed interim reviews of spectrum licences as a setback for long-term investment, and called retail price regulation for intra-EU calls 'unjustified'. According to ETNO, economic regulation beyond the concept of single or joint dominance needs to be rejected. It also advocated regulatory simplification, avoiding harmful regulation of bundles, and [called](#) for empowering telecoms operators to compete on the same terms as the internet players.

[ECTA](#) welcomed the 'overall pro-competitive compromise reached between the different political groups' in the ITRE report. On the other hand, ECTA considered that the Estonian Presidency [proposal](#) for the code allows excessive deregulation when the mere existence of an offer by the dominant player is present, therefore granting SMP operators 'regulatory holidays' which is likely to be detrimental to competition. ECTA called for strong protection of co-investment and smaller business-to-business operators and ensuring transparent offers for network-access seekers. ECTA has also [criticised](#) the Council mandate for allowing Member States to stop NRAs from imposing obligations for a minimum period not longer than seven years, in the context of co-investment. It also argued that the Council's introduction of commercial access agreements as an alternative to co-investment increases legal uncertainty.

[Digital Europe](#) welcomed ITRE's support for 25-year licence durations with regular reviews, and the mandatory peer exchange of views between the relevant national spectrum agencies. It also supported amendments on a home market regime and the distinction on the application of consumer protection rules regarding consumers and businesses ([B2C and B2B](#)). Digital Europe has, however, argued that the committee report weakens the original co-investment provisions.

[Cable Europe](#) commended the committee for its work, but warned that competition rules applying to joint dominance may not be justified or proportionate. A similar view was reportedly expressed by [telecom lawyers](#) who argued that the provisions on joint dominance may not be compatible with competition law.

The [European Consumer Organisation](#) welcomed the amendments on retail price for intra-EU calls, stressing that after the recent abolition of roaming charges consumers expect the same to happen on this market.



Legislative process

On 11 October 2017, the Council granted the Estonian Presidency a [mandate](#) to begin negotiations with the EP. The Council wishes to include services provided over the internet within the scope of electronic communications services, based on characteristics such as whether the service is a paid one. It also proposes to include a review mechanism which would keep end-users' rights updated in a fast-changing digital environment. The Council welcomes increased cooperation among Member States in spectrum management but underlines that spectrum usage varies across the EU and that flexibility for national governments must be ensured. Changes to access to networks include measures to promote investment, in remote areas too, which allow a reduced level of regulation when competition is sufficient. These are accompanied by safeguards aiming to ensure effectiveness of regulation. The main existing SMP principle is supported in the mandate and complemented with symmetric regulation of all network providers (in certain situations), in an effort to update rules to reflect the increasing complexity of market players. In addition, the Council proposes that BEREC, not NRAs, issue standardised declarations for service providers, that the NRAs continue to have the lead role in general authorisation, and that the peer review of national spectrum assignments is led by the RSPG, not BEREC.

In the EP, the rapporteur's [draft report](#) on the code was published on 17 March 2017. Amendments to the proposal were tabled in the ITRE committee, as well as to the opinions of the CULT, LIBE, IMCO and JURI committees (around 1 500 amendments in total).

On 2 October 2017, the ITRE committee voted on its [report](#). Regarding co-investment, it proposed that investment plans meet stricter criteria before regulation can be significantly reduced. Furthermore, telecoms operators will be obliged to justify charging additional fees to users calling from mobiles or landlines to another Member State (MEPs aim to bring intra-EU prices to domestic levels). BEREC is to set out guidelines for providers on how to recuperate related costs. The committee introduces a 'reverse 112' system, enabling national authorities to send alerts to citizens in case of imminent disasters and emergencies. End-to-end encryption is to become mandatory, to protect users from having their information hacked.

The ITRE report also supports 25-year spectrum licence durations, with a transparent review process at least every 10 years, as well as mandatory peer exchange of views between the national spectrum agencies to increase harmonisation and transparency of the licensing framework. The committee introduced provisions ensuring that cross-border service providers will be regulated by the home market regime, and increasing certainty that consumer protection rules apply to consumer contracts only.

The ITRE committee also voted to open trilogue negotiations (a decision confirmed in the October II plenary session). The co-legislators provisionally agreed on the Code on 6 June 2018 and the Parliament adopted the agreed text in plenary on 14 November 2018. Importantly, in the framework of the parallel negotiations on the Code and [BEREC](#), legislators agreed that from 15 May 2019 the fees for intra-EU calls would be capped at 19 cents for phone calls and 6 cents for text messages. In the end, these provisions are found in the [BEREC regulation](#). To facilitate the deployment of 5G across Europe the new directive offers 20 years of investment predictability for spectrum licences, new measures to release spectrum in a timely and coordinated manner, facilitates regulatory intervention, and introduces peer review of planned radio spectrum assignment procedures.



The Code introduced new co-investment rules aiming to stimulate the use of existing civil engineering infrastructure wherever possible, and to encourage risk sharing and agreements between operators which are beneficial for competition. Operators without a network will be able to offer their services, and there is a lighter regulatory regime for wholesale-only operators.

The new rules also stipulate that all citizens should have access to affordable communications including access to services such as those of government, online banking and video calls. Telecom providers will need to use encryption to better protect users against security incidents. The agreement improves monitoring of the use of time or volume billed by users, ensures equal access for disabled consumers, facilitates comparison of offers and switching operators, and enables compensation in case the switch takes too long. Furthermore, it increases contract transparency, enables transfer of remaining credits to a new operator and easier retention of an old number, and strengthens compensation and refund arrangements. The EP introduced a 'reverse 112 system', based on improved geo-location localisation tools, which will ensure citizens can be alerted by text message in case of imminent serious emergencies or disasters, from June 2022. BEREC is to help to ensure consistent implementation of new rules particularly those on symmetric regulation and co-investments.

BEREC shall monitor the market and technological developments concerning the different types of electronic communications services and shall, by 21 December 2021 and every three years thereafter, or upon a reasoned request from at least two of its members, publish an opinion on these developments and on their impact on the application of provisions on end-user rights.

The Code entered into force on 20 December 2018 and Member States have until 21 December 2020 to transpose the directive into national law.



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