***I
REPORT


Committee on Industry, Research and Energy

Rapporteur: Pilar del Castillo Vera

Rapporteur for the opinion (*): Dita Charanzová, Committee on the Internal Market and Consumer Protection

(*) Associated committee – Rule 54 of the Rules of Procedure

(Recast – Rule 104 of the Rules of Procedure)
### Symbols for procedures

* Consultation procedure
*** Consent procedure
****I Ordinary legislative procedure (first reading)
****II Ordinary legislative procedure (second reading)
****III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in **bold italics** in the left-hand column. Replacements are indicated in **bold italics** in both columns. New text is indicated in **bold italics** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in **bold italics**. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in **bold italics** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Ordinary legislative procedure – recast)

The European Parliament,

− having regard to Protocol (No 1) of the Treaty on the Functioning of the European Union (TFEU) on the role of national parliaments in the European Union,

− having regard to the Commission proposal to Parliament and the Council (COM(2016)0590),

− After transmission of the draft legislative act to the national parliaments, having regard to their reasoned opinions,

− having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0379/2016),

− having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

− having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,

− having regard to the opinion of the European Economic and Social Committee of 26 January 2017,\(^1\)

− having regard to the opinion of the Committee of the Regions of 8 February 2017,\(^2\)

− having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts,\(^3\)

− having regard to the letter of 17 October 2016 from the Committee on Legal Affairs to the Committee on Industry, Research and Energy in accordance with Rule 104(3) of its Rules of Procedure,

− having regard to Rules 104 and 59 of its Rules of Procedure,

− having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on the Internal Market and Consumer Protection, the

\(^1\) OJ C xx, 2.3.2017, p. xx.

\(^2\) OJ C xx, 2.3.2017, p. xx.

Committee on Culture and Education and the Committee on Civil Liberties, Justice and Home Affairs (A8-0318/2017),

A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

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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)

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 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 their reasoned opinions,

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

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

 Acting in accordance with the ordinary legislative procedure,

Whereas:


¹ OJ C, p. 1137459EN.docx
² OJ C, p. 1137459EN.docx
periodic review by the Commission, with a view, in particular, to determining the need for modification in the light of technological and market developments¹.

(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 effective protection of consumers, a level playing field for all market players and consistent application of the rules, as well as provide a more effective regulatory institutional framework. The Digital Single Market Strategy for Europe also announced the review of Directive 2002/58/EC in order to provide a high level of privacy protection for users of electronic communications services and a level playing field for all market players;

(4) This Directive is part of a "Regulatory Fitness" exercise the scope of which includes four of the Directives (Framework, Authorisation, Access and Universal Service Directive) and a Regulation (BEREC Regulation²). 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.

(5) This Directive 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 52 (1) of the Treaty, in particular measures regarding public policy, public security and public health, and with Article 52(1) of the Charter of Fundamental Rights of the European Union (‘the Charter’).

(6) The provisions of this Directive 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 and public security, and to permit the investigation, detection and prosecution of criminal offences, taking into account that such measures are to be provided for by law, respect the essence of the rights and freedom recognised by the Charter and be subject to the principle of proportionality, in accordance with Article 52(1) of the Charter.

(7) The convergence of the telecommunications, media and information technology sectors means that all 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. It is necessary to separate the regulation of electronic communications networks and services from the regulation of content. This 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 Union or national level in respect of such services, in compliance with 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 Directive 2010/13/EU of the European Parliament and of the Council\(^2\). 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. **Unless explicitly excluded from the scope of application of the Code, electronic communications networks and services are covered by this Code. Also**, the separation between the regulation of 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 **freedom of expression and information**, media pluralism, cultural diversity, **consumer protection, privacy and the protection of personal data.**

(7 a) **Member States should ensure that citizens of the Union have universal access to a wide range of information and high-quality and public value content, in the interest of media pluralism and cultural diversity, taking into account the rapid evolution of distribution systems and business models currently affecting the media sector.**

(8) This Directive does not affect the application to radio equipment of Directive 2014/53/EU, but does cover consumer equipment used for **radio and digital television.**

(9) In order to allow national regulatory authorities to meet the objectives set out in this Directive, in particular concerning end-to-end interoperability, the scope of the Directive should cover certain aspects of radio equipment as defined in Directive 2014/53/EU of the European Parliament and of the Council\(^1\) 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.

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(10) Certain electronic communications services under this Directive could also fulfil the definition of ‘information society service’ in Article 1 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services. The provisions governing Information Society Services apply to those electronic communications services to the extent that there are not more specific provisions applicable to electronic communications services in this Directive or in other Union acts. However, electronic communications services such as voice telephony, messaging services and electronic mail services are covered by this Directive. The same undertaking, for example an Internet service provider, can offer both an electronic communications service, such as access to the Internet, and services not covered under this Directive, such as the provision of web-based and not communications-related content.

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

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

Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development to ensure the non-discriminatory application of the present Directive to the different service providers. 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'. Conditions for the provision of a service should be separated from the actual definitional elements of a 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 service. Voice communications services also include means of communication specifically intended for end-users with disabilities using text or video relay or total conversation services, such as voice, video and real-time text, singly or in combination, within the same call.

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 and their rights 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 the perspective of end-users and the protection of their rights 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.

(16) In order to fall within the scope of the definition of electronic communications service, a service needs to be provided normally in exchange for remuneration. In the digital economy, market participants increasingly consider information about users as having a monetary value. Electronic communications services are often supplied to the end-user against counter-performance other than money, in particular against the provision of personal data or other data. The concept of remuneration should therefore encompass situations where the provider of a service requests and the end-user knowingly provides personal data as defined in Article 4(1) of Regulation (EU) 2016/679 or other data directly or indirectly to the provider. It should also encompass situations where the end-user allows access to information without 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\(^1\), remuneration exists within the meaning of the Treaty also if the service provider is paid by a third party and not by the service recipient. The concept of remuneration should therefore also encompass situations where the end-user is exposed to advertisements as a condition for gaining access to the service, or situations where the service provider monetises personal data it has collected.

(17) Interpersonal communications services are services that enable interpersonal and interactive exchange of information, covering services like traditional voice calls between two individuals but also all types of emails, messaging services, or group chats. Interpersonal communications services only cover communications between a finite, that is to say not potentially unlimited, number of natural persons which is determined by the sender of the communication. Communications involving legal persons should be within the scope of the definition where natural persons act on behalf of those legal persons or are involved at least on one side of the communication. Interactive communication entails that the service allows the recipient of the information to respond. Services which do not meet those requirements, such as

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\(^1\) Judgment of the Court of Justice of 26 April 1988, Bond van Adverteerders and Others v The Netherlands State, C-352/85, ECLI: EU:C:1988:196.
linear broadcasting, video on demand, websites, social networks, blogs, or exchange of information between machines, should not be considered as interpersonal communications services. Under exceptional circumstances, a 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 and for objective technical reasons cannot be used without that principal service, and its integration is not a means to circumvent the applicability of the rules governing electronic communications services. An example for such an exception could be, in principle, a communication channel in online games, depending on the features of the communication facility of the service.

(18) Interpersonal communications services using numbers from a national and international telephone numbering plan connect with the public (packet or circuit) switched telephone network. Those number-based interpersonal communications services comprise both services to which end-users numbers are assigned for the purpose of ensuring end-to-end connectivity and services enabling end-users to reach persons to whom such numbers have been assigned. The mere use of a number as an identifier should not be considered equivalent to the use of a number to connect with the public switched telephone network, and should therefore, in itself, not be considered sufficient to qualify a service as a number-based interpersonal communications service. In addition where the service provided does not rely on its own infrastructure and therefore does not have substantial control over the network used for enabling the communication, the use of the number should also be considered in a different manner as the obligations would not be proportionate to their ability to deliver a certain quality of service; Number-independent interpersonal communications services should be subject only to obligations, where public interests require applying specific regulatory obligations to all types of interpersonal communications services, regardless of whether they use numbers for the provision of their service. It is justified to treat number-based interpersonal communications services differently, as they participate in and hence also benefit from a publicly assured interoperable ecosystem.

(19) The network termination point represents a boundary for regulatory purposes between the regulatory framework for electronic 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. 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.

(20) Technical developments make it possible for end-users to access emergency services not only by voice calls but also by other interpersonal communications services. The concept of emergency communication should therefore cover all those interpersonal communications services that allow such emergency services access. It builds on the emergency system elements already enshrined in Union legislation, namely 'Public Safety Answering Point' ('PSAP') and 'most appropriate PSAP'\(^1\), and on 'emergency services'\(^2\).

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

(22) The activities of competent authorities established under this Directive contribute to the fulfilment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning.

(23) The framework should, in addition to the existing three primary objectives of promoting competition, internal market and end-user interests, pursue an additional objective, articulated in terms of outcomes: widespread access to and take-up of very high capacity networks for all Union citizens and businesses. Together with the existing general objectives, this will support the enhancement of the Union economy and in particular its industry, on the basis of reasonable price and choice, effective and fair competition, open innovation, efficient use of spectrum, common rules and predictable regulatory approaches in the internal market and the necessary

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\(^2\) As defined in Regulation (EU) 2015/758.
sector-specific rules to safeguard the interests of citizens. For the Member States, the national regulatory authorities and other competent authorities and the stakeholders, that connectivity objective translates on the one hand into aiming for the highest capacity networks and services economically sustainable in a given area, and on the other hand into pursuing territorial cohesion, in the sense of convergence in capacity available in different areas. Progress towards the achievement of the general objectives of this Directive should be supported by a robust system of continuous assessment and benchmarking of Member States with respect to the availability of very high capacity connectivity in all major socio-economic drivers such as schools, transport hubs and major providers of public services, and highly digitized business, uninterrupted 5G coverage for urban areas and major terrestrial transport paths and the availability of electronic communications networks which are capable of providing at least 100 Mb/s, and which are promptly upgradeable to gigabit speeds, to all households in each Member State. To that end, the Commission should promptly present detailed policy orientations, establishing methods and objective, concrete and quantifiable criteria for benchmarking the effectiveness of Member State measures towards achieving those objectives and identify best practices, as well as providing for a yearly qualitative and quantitative assessment of the state of progress of each Member State.

(24) The principle that Member States should apply EU law in a technologically neutral fashion, 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 differing physical characteristics and architectural features of electronic communications networks of relevance for other objectives of the framework.

(25) Both efficient investment and competition should be encouraged in tandem, in order to increase economic growth, innovation and consumer choice.

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

(27) It is necessary to give appropriate incentives for investment in new very high 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, as bottlenecks and physical barriers to entry remain at the infrastructure level, and boosting consumer choice through regulatory predictability and consistency.

(28) The aim is progressively to reduce ex ante sector-specific rules as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. Considering that the markets for electronic communications have shown strong competitive dynamics in recent years, it is essential that ex ante regulatory obligations only be imposed where there is no effective and sustainable competition on the markets concerned. The objective of ex ante regulatory intervention is to produce benefits for end-users by making retail markets effectively competitive on a sustainable basis. To that end, national regulatory authorities should take into account the interests of consumers and end-users, irrespective of the market in which the regulatory obligations are imposed, and consider whether an obligation imposed on a wholesale market also has the effect of promoting the interests of consumers and end-users on a retail market not identified as susceptible to ex ante regulation. Obligations at wholesale level should be imposed where otherwise one or more retail markets are not likely to become effectively competitive in the absence of those obligations. It is likely that national regulatory authorities will gradually, through the process of market analysis, be able to find retail markets to be competitive even in the absence of wholesale regulation, especially taking into account expected improvements in innovation and competition. In such a case, the national regulatory authority should conclude that regulation is no longer needed at wholesale level, and assess the corresponding relevant wholesale market with a view to withdrawing ex ante regulation. In doing so, it should take into account any leverage effects between wholesale and related retail markets which may require the
removal of barriers to entry at the infrastructure level in order to ensure long-term competition at the retail level.

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

(30) Strategic planning, coordination and, where appropriate, harmonisation at Union level can help ensure that spectrum users derive the full benefits of the internal market and that Union interests can be effectively defended globally. For these purposes, where appropriate, legislative multiannual radio spectrum policy programmes may be adopted, with the first one defined by Decision No 243/2012/EU of the European Parliament and of the Council\(^1\), setting out policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in the 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.

(31) National borders are increasingly irrelevant in determining optimal radio spectrum use. Undue fragmentation amongst national policies regarding the management of radio spectrum, including unjustified different conditions for access to, and use of, radio spectrum according to the type of operator, may result in increased costs and lost market opportunities for spectrum users. It may slow 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 of the internal market and prejudice to consumers and the economy as a whole.

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\(^1\) OJ L 81, 21.3.2012, p. 7.
(32) The spectrum management provisions of this Directive should be consistent with the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), so as to ensure the efficient management of and harmonisation of the use of spectrum across the Union and between the Member States and other members of the ITU.

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

(34) 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.

(35) The independence of the national regulatory authorities was strengthened in the 2009 review in order to ensure a more effective application of the regulatory framework and to increase their authority and the predictability of their decisions. To this end, express provision had to be made in national law to ensure that, in the exercise of its tasks, a national regulatory authority 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 had to be laid down at the outset regarding the grounds for the dismissal of the head of the
national regulatory authority in order to remove any reasonable doubt as to the neutrality of that body and its imperviousness to external factors. In order to avoid arbitrary dismissals, the dismissed member should have the right to request that the competent courts verify the existence of a valid reason to dismiss, among those foreseen in this Directive. Such dismissal should relate only to the personal or professional qualifications of the head or member. It is important that national regulatory authorities have their own budget allowing them, in particular, to recruit a sufficient number of qualified staff. In order to ensure transparency, this budget should be published annually. Within the limits of their budget, they should have autonomy in managing their resources, human and financial. In order to ensure impartiality, Member States who retain ownership of or control undertakings contributing to the budget of the national regulatory authority or other competent authorities through administrative charges should ensure that there is effective structural separation of activities associated with the exercise of ownership or control from the exercise of control over the budget.

(36) There is a need to further reinforce the independence of the national regulatory authorities to ensure the imperviousness of its head and members to external pressure, by providing minimum appointment qualifications, and a minimum duration for their mandate. Furthermore, the limitation of the possibility to renew more than once their mandate and the requirement for an appropriate rotation scheme for the board and the top management would address the risk of regulatory capture, ensure continuity, and enhance independence. To this end, Member States should also ensure that national regulatory authorities are legally distinct and functionally independent from the industry and government in that they neither seek nor take instructions from any body, they operate in a transparent and accountable manner in accordance with Union law and national law and they have sufficient powers.

(37) National regulatory authorities should be accountable for and should be required to report on the way they are exercising their tasks. That obligation should 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\(^1\), extensive or unconditional reporting obligations may indirectly affect the independence of an authority.

(38) Member States should notify to the Commission the identity of the national regulatory and other competent authorities. For authorities competent for granting rights of way, the notification requirement may be fulfilled by a reference to the single information point established pursuant to Article 7(1) of Directive 2014/61/EU of the European Parliament and of the Council\(^2\).

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

(40) 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\(^3\), without requiring any explicit decision or administrative act by the national regulatory authority.

(40a) **Any** procedural requirements **should be limited** to a single declaratory notification. Where Member States require notification by providers of electronic communications networks or services when they start their activities, **that** 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 **BEREC**. BEREC should forward in good time the notifications to the national regulatory authority in all Member States requiring notification 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.

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1 Case C-614/10 European Commission v Republic of Austria, EU:C:2012:631.
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, being the minimum information needed to facilitate a consistent implementation of this Directive as well as to provide the most relevant market knowledge to BEREC and national regulatory authorities. Member States should not impose additional or separate notification requirements.

A provider of any electronic communications services should be able to benefit from the general authorisation regime.

When granting rights of use for radio spectrum, numbers or rights to install facilities, the competent authorities should inform the undertakings to whom they grant such rights of the relevant conditions.

General authorisations should only contain conditions which are specific to the electronic communications sector. They should not be made subject to conditions which are already applicable by virtue of other existing national law, in particular regarding consumer protection, which is not specific to the communications sector and should be without prejudice to provisions of consumer contracts established in accordance with Regulation (EC) No 593/2008 of the European Parliament and of the Council. For instance, the national regulatory authorities may inform operators about applicable environmental and, town and country planning requirements.

The conditions that may be attached to general 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.

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 Union and to facilitate cross-border negotiation of interconnection between public communications networks.

The general authorisation entitles providers of electronic communications networks and services to the public to negotiate interconnection under the conditions of this Directive. Providers of electronic communications networks and services other than to the public can negotiate interconnection on commercial terms.
(47a) Providers of electronic communication services that operate in more than one Member State remain subject to different rules, requirements and reporting obligations despite having the freedom to provide electronic communications networks and services anywhere in the Union, which hinders the development and growth of the internal market for electronic communications. It should therefore be possible for such a provider, where it has a main establishment in the Union, to fall under a single general authorisation by the Member State of its main establishment in the Union. BEREC should facilitate the coordination and exchange of information. Providers of electronic communication services may still need to obtain specific authorisations for the rights of use for numbers, radio spectrum and for rights to install facilities.

(47b) It is necessary for the proper functioning of the internal market to avoid incentives for providers to seek to obtain a more favourable legal position to the detriment of end-users (fraudulent or abusive forum shopping). Therefore, the place of main establishment in the Union should reflect the central location where the provider has an effective establishment, adopts its strategic business decisions and performs substantial activities directly related to the provision of electronic communication services in the Union.

(48) In the case of electronic communications networks and services not provided to the public it is appropriate to impose fewer and lighter conditions than are justified for electronic communications networks and services provided to the public.

(49) Specific obligations which may be imposed on providers of electronic communications networks and electronic communications services in accordance with Union law by virtue of their significant market power as defined in this Directive should be imposed separately from the general rights and obligations under the general authorisation.

(50) Providers of electronic communications networks and services may need a confirmation of their rights under the general authorisation with respect to interconnection and rights of way, in particular to facilitate negotiations with other, regional or local, levels of government or with service providers in other Member States. For this purpose BEREC, which receives the notification to provide public or private communications networks or services, should provide declarations to undertakings 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.

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

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

(53) Member States may need to amend rights, conditions, procedures, charges and fees relating to general authorisations and rights of use where this is objectively justified. Such changes should be duly notified to all interested parties in good time, giving them adequate opportunity to express their views on any such amendments. Taking into account the need to ensure legal certainty and to promote regulatory predictability, any restriction or withdrawal of existing rights of use for radio spectrum
or to install facilities should be subject to predictable and transparent procedures; hence stricter requirements or a notification mechanism could be imposed where rights of use have been assigned pursuant to competitive or comparative procedures. **Furthermore, in the case of individual rights of use for radio spectrum, the rights and conditions of such licenses should only be amended following prior consultation of the right holder. As restrictions or withdrawals of general authorisations or rights may have significant consequences for their holders, national competent authorities should take particular care and assess in advance the potential harm that such measures may cause before adopting such measures.**

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.

(54) Minor amendments to rights and obligations are those amendments which are mainly administrative, do not change the substantial nature of the general authorisations and the individual rights of use and thus cannot cause any comparative advantage to the other undertakings.

(55) 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 on behalf of the Commission or BEREC, to allow them to fulfil their respective obligations under 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 Union and national law on business confidentiality.

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

(57) To alleviate reporting and information obligations for network and service providers and the competent authority concerned, such obligations should 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 and the systematic and regular proof of compliance with all conditions under a general authorisation or a right of use should be avoided. Reporting and information obligations for providers of electronic communication services operating in several Member States should, where the provider has a main establishment in the Union and falls under the general authorisation of the Member State of its main establishment, be coordinated through that Member State, without prejudice to information request related to the granting of rights of use for numbers, radio spectrum and for rights to install facilities. BEREC should facilitate the free flow of information between the Member States concerned. Such information should be requested in a common and standardised format provided by BEREC. Undertakings should know the intended use of the information sought. Provision of information should not be a condition for market access. For statistical purposes a notification may be required from providers of electronic communications networks or services when they cease activities.

(58) Member States' obligations to provide information for the defence of Union interests under international agreements as well as reporting obligations under legislation which is not specific to the electronic communications sector such as competition law should not be affected.

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

(60) Electronic communications broadband networks are becoming increasingly diverse in
terms of technology, topology, medium used and ownership, therefore, regulatory
intervention must rely on detailed information regarding network roll-out in order to
be effective and to target the areas where it is needed. That information is essential for
the purpose of promoting investment, increasing connectivity across the Union and
providing information to all relevant authorities and citizens. It should include
surveys 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.

Without prejudice to confidentiality requirements, the national regulatory authorities
should, where the information is not already available on the market, make
available in an open data format and without restrictions on reuse the information
gathered in such surveys and 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. Where the national regulatory authorities deem it to
be appropriate, they may also collect publicly available information on plans to
deploy very high capacity networks. In gathering any of that information, all
authorities concerned should respect the principle of confidentiality, and should
avoid causing competitive disadvantages to any operator.
Bridging the digital divide in the Union is essential to enable all citizens of the Union to have access to state-of-the-art internet and digital services. To that end, 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 in the area in question.

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

In order 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.

In the event of a dispute between undertakings in the same Member State in an area covered by this Directive, for example relating to obligations for access and interconnection or to the means of transferring 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 providers of electronic communications networks or services in a Member State should seek to ensure compliance with the obligations arising under this Directive.

(65) In addition to the rights of recourse granted under national or 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 between undertakings providing or authorised to provide electronic communications networks or services in different Member States.

(66) One important task assigned to BEREC is to adopt decisions in relation to cross-border disputes where appropriate. National regulatory authorities should therefore fully implement the decision taken by BEREC in their measures imposing any obligation on an undertaking or otherwise resolving the dispute in such cases.

(67) Lack of coordination between Member States with respect to their approaches to the assignment and authorisation for the use of radio spectrum as well as with respect to large-scale interference issues can have a severe impact on the development of the Digital Single Market. Member States should therefore cooperate with each other taking full advantage of the good offices of the Radio Spectrum Policy Group (RSPG). Furthermore, coordination between Member States to resolve harmful interference should be made more efficient, by using the RSPG as a means to facilitate dispute resolution. Taking into account the Union's specific concerns and objectives preference should be given to such a Union process of dispute settlement on cross border issues between Member States, in priority to any dispute settlement under international law.

(68) The Radio Spectrum Policy Group (RSPG) is a Commission high-level advisory group which was created by Commission Decision 2002/622/EC 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. For the purposes of its role in the further strengthening of cooperation between Member States the RSPG should be established in this Directive. It should be composed of the heads of the bodies that have overall political responsibility for strategic spectrum policy. It should assist and advise the Member States and the Commission with respect to
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.

(69) In the context of a competitive environment, the views of interested parties, including users and consumers, should be taken into account by national regulatory authorities when dealing with issues related to end-users' rights. Out-of-court dispute settlement procedures may constitute a fast and cost-efficient way end-users to enforce their rights, in particular for consumers and micro and small enterprises. For consumer disputes, effective, non-discriminatory and inexpensive procedures to settle their disputes with providers of publicly available electronic communications services are already ensured by Directive 2013/11/EU of the European Parliament and of the Council\(^1\) 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. Consumers should always be allowed to resolve their disputes with providers of electronic communications networks and services through sector-specific dispute resolution procedure, if they wish to do so. In view of the deep sectorial expertise of national regulatory authorities, Member States should enable the national regulatory authority to act as dispute settlement entity, through a separate body within that authority which should not be subject to any instructions. Dispute

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resolution procedures under this Directive that involve consumers should be subject to **clear and efficient procedures and** the quality requirements set out in Chapter II of Directive 2013/11/EU.

(70) Competent authorities should be able to monitor and secure compliance with the terms and conditions of the general authorisation and rights of use, and in particular to ensure effective and efficient use of spectrum and compliance with coverage and quality of service obligations, through 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.

(70a) **The granting of rights of use for radio spectrum for 25 years or more should be subject to conditions aimed at ensuring that general interest objectives, such as efficient and effective use and considerations relating to public order, security and defence, are safeguarded. Such rights of use should therefore be subject to a mid-term assessment after no longer than ten years.**

(71) The conditions, which may be attached to general authorisations and individual rights of use, should be limited to what is strictly necessary to ensure compliance with requirements and obligations under national law and Union law.

(72) Any party subject to a decision of a 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. That body 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. That appeal procedure 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.

(73) In order to ensure legal certainty for market players, appeal bodies should carry out their functions effectively; in particular, appeal proceedings should not be unduly lengthy. Interim measures suspending the effect of the decision of a 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.

(74) There has been a wide divergence in the manner in which appeal bodies have applied interim measures to suspend the decisions of the national regulatory authorities. In order to achieve greater consistency of approach common standards should be applied in line with 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 authorities in all the Member States and for the reporting of that information to the Commission and to BEREC. That mechanism should ensure that the Commission or BEREC can retrieve from Member States the text of the decisions and judgments with a view to developing a data-base.

(74a) Transparency in the application of the Union mechanism for consolidating the internal market for electronic communications should be increased in the interest of citizens and stakeholders and to enable parties concerned to make their views known, including by way of requiring national regulatory authorities to publish any draft measure at the same time as it is communicated to the Commission, BEREC, and the national regulatory authorities in other Member States. Any such draft measure should be reasoned and should contain a detailed analysis.

(75) The Commission should be able, after 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 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 2015/1535/EU and the Commission's prerogatives under the Treaty in respect of infringements of Union law.

(76) The national consultation provided for under Article 24 should be conducted prior to the Union law consultation provided for under Articles 34 and 35 of this Directive, in order to allow the views of interested parties to be reflected in the Union law consultation. This would also avoid the need for a second Union law consultation in the event of changes to a planned measure as a result of the national consultation.

(77) It is important that the regulatory framework is implemented in a timely manner. When the Commission has taken a decision requiring a national regulatory authority to withdraw a planned measure, national regulatory authorities should submit a revised measure to the Commission. A deadline should be laid down for the notification of the revised measure to the Commission under Article 34 in order to allow market players to know the duration of the market review and in order to increase legal certainty.

(78) The 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. The experience of the 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 under similar market conditions undermine the internal market in electronic communications. Therefore the Commission and BEREC should participate in ensuring, within their respective responsibilities, a higher level of consistency in the application of remedies 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.
Having regard to the short time-limits in the 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.

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.

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.

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.

In carrying out its review of the functioning of this Directive, 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 or whether those provisions should be amended or repealed.

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.

(85) 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 for radio frequencies from the national frequency usage plan.

(86) 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.

(87) Any Commission decision under Article 38(1) 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.
The 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.

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 Union level to in order to improve interoperability, freedom of choice for users and encourage interconnectivity in the single market. At national level, Member States are subject to the provisions of Directive 2015/1535/EU. Standardisation procedures under this Directive are without prejudice to the provisions of the Radio Equipment Directive 2014/53/EU, the Low Voltage Directive 2014/35/EU and the Electromagnetic Compatibility Directive 2014/30/EU.

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, and to prevent or minimise the impact of security incidents, including incidents caused by hijacking of devices. 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.

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 electronic communications services they provide. Given that providers of number-independent interpersonal communications services normally do not exercise actual control over the transmission of signals over
networks, the degree of risk for such services can be considered in some respects lower than for traditional electronic communications services. Therefore, whenever it is justified by the actual assessment of the security risks involved, the security requirements for number-independent interpersonal communications services should be lighter. In that context, the providers should be able to decide about the measures they consider appropriate to manage the risks posed to the security of their services. The same approach should apply *mutatis mutandis* to interpersonal communications services which make use of numbers and which do not exercise actual control over signal transmission.

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

(91b) *In order to safeguard security and integrity of networks and services, the use of end-to-end encryption should be promoted and, where necessary, should be mandatory in accordance with the principles of security and privacy by default and design;*

(92) Competent authorities should ensure that the integrity and availability of public communications networks are maintained. The European Network and Information Security Agency (‘ENISA’) should contribute to an enhanced level of security of electronic communications by, amongst other things, *assisting Member States in preventing and resolving potential internal market problems due to conflicting particular security measures; issue guidelines, in close cooperation with BEREC and the Commission on security criteria;* 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. 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.

(93) Where the provision of electronic communications relies on public resources whose use is subject to specific authorisation, Member States may grant the authority competent for issuance thereof the right to impose fees to ensure optimal use of those resources, 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 providers of electronic communications networks and services.

(94) To ensure optimal use of resources, fees should reflect the economic and technical situation of the market concerned as well as any other significant factor 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. 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 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 spectrum. The Commission may publish on a regular basis benchmark studies and

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other guidance as appropriate with regard to best practices for the assignment of radio spectrum, the assignment of numbers or the granting of rights of way.

(95) **Fees imposed on undertakings for** rights of use for radio spectrum can influence decisions about whether to seek such rights and **how to make the best use of** radio spectrum resources. **With a view to ensuring optimal, efficient use, when** setting reserve prices Member States should therefore ensure that **they reflect the alternative use of the resource and** 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.

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

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

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

(99) It is necessary to strengthen the powers of the Member States as regards holders of rights of way to ensure the entry or roll-out of a new network in a fair, efficient and environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. Improving facility sharing can lower the environmental cost of deploying electronic communications infrastructure and serve public health, public security and meet town and country planning objectives. Competent authorities should be empowered to require that the undertakings which have benefitted from rights to install facilities on, over or under public or private property share such facilities or property (including physical co-location) 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. 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.

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

(101) 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 to such networks and services, should therefore be efficiently allocated and assigned by national regulatory authorities according to 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 frequencies. 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)\(^1\) establishes a framework for harmonisation of radio spectrum.

(102) Radio spectrum policy activities in the Union should be without prejudice to measures taken, at Union or national level, in accordance with 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 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.

(103) Ensuring maximum coverage of the highest capacity networks in each Member State is essential for economic and social development, participation in public life and social and territorial cohesion. As use of electronic communications becomes an integral element to European society and welfare, EU-wide coverage to cover close to 100 percent of citizens of the Union 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. Seamless coverage of the territory should be maximised and reliable, with a view to promote services and applications such as connected cars and e-health. Therefore application by competent authorities of coverage obligations should be coordinated at Union level. Considering national specificities, such coordination should be limited to general criteria to be used to define and measure coverage obligations, such as population density or topographical and topological features.

(104) The need to ensure that citizens are not exposed to electromagnetic fields at a level harmful to public health 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, in order to ensure consistent deployment conditions. With respect to very high capacity networks, Member States should apply the procedure set out in Directive 2015/1535/EU where relevant with a view also to providing transparency to stakeholders and to allow other Member States and the Commission to react.

(105) Spectrum harmonisation and coordination and equipment regulation supported by standardisation are complementary need to be coordinated closely to meet their joint objectives effectively, with the support of the RSPG. Coordination between the content and timing of mandates to CEPT under the Radio Spectrum Decision and standardisation requests to standardisation bodies, such as the European Telecommunications Standards Institute, including with regard to radio receivers parameters, should facilitate the introduction of future systems, support spectrum sharing opportunities and ensure efficient spectrum management. Any standards, specifications or recommendations concerning network elements and associated facilities, whether fixed or mobile, should where feasible take into account any access obligations which may need to be imposed pursuant to this Directive.

(106) The demand for harmonised radio spectrum is not uniform in all parts of the Union. In cases where there is lack of demand for a harmonised band at regional or national level, Member States could 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

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not prejudice the harmonised use of the said band by other Member States and that it
cesses when demand for the harmonised use materialises.

(107) Flexibility in spectrum management and access to spectrum has been established
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 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.

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

(109) Spectrum users should also be able to freely choose the services they wish to offer
over the spectrum. 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 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 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.
(110) As the allocation of spectrum to specific technologies or services is an exception to the principles of technology and service neutrality and reduces the freedom to choose the service provided or technology used, any proposal for such allocation should be transparent and subject to public consultation.

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

(112) Radio 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. The ITU Radio Regulations define harmful interference, inter alia, as any interference which endangers the functioning of safety services, which are themselves defined as any radiocommunications services used permanently or temporarily for the safeguarding of human life or property; for the protection of life or property harmful interference should therefore be avoided in particular in critical situations whenever the functioning of a safety service is put in danger. While this includes, under the ITU definition, radiodetermination, which is essential to transport and navigation, it should cover any mission-critical aspects of the operation of electronic communications services or networks when life or property is at stake, also beyond the field of transport, such as in health services. 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.

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

(113a) General authorisations for the use of spectrum may facilitate the most effective use of spectrum and foster innovation in some cases whereas individual rights of use for spectrum are likely to be the most appropriate authorisation regime in the presence of certain specific circumstances. For instance, individual rights of use should be considered when favourable propagation characteristics of the radio spectrum or the envisaged power level of the transmission makes this a more efficient use. This should also be the case where the geographical density of use is high or where radio spectrum is continuously in use. Another situation where individual rights of use should be considered is where the required quality of service prevents general authorisations from addressing the interference concerns. Where technical measures to improve receiver resilience can enable the use of general authorisations or enable spectrum sharing, these should be applied and the systematic recourse to non-protection, non-interference provisions should be avoided.

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

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.

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.

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 spectrum is 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. 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 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, Member States 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 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.

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

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

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

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

(123) Transfer of spectrum usage rights can be an effective means of increasing the efficient use of spectrum. For the sake of flexibility and efficiency, and to allow valuation of spectrum by the market, Member States should by default allow spectrum users 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. In order to facilitate such transfers or leases, as long as harmonisation measures adopted under the Radio Spectrum Decision are respected, Member States should also consider requests to have spectrum rights partitioned or disaggregated and conditions for use reviewed.

(124) 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. *National authorities should, however, always ensure the effective and efficient use of spectrum and avoid competitive harms through anti-competitive hoarding.*

(125) Building on opinions from the RSPG, the adoption of a common deadline for allowing the use of a band which has been harmonised under the Radio Spectrum Decision 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. In addition to the 700 MHz band, such common maximum deadlines could in particular cover spectrum in the 3.4-3.8 GHz and the 24.25-27.5 GHz bands which have been identified by the RSPG in its opinion on spectrum related aspects for next-generation wireless systems (5G) as 'pioneer' bands for use by 2020, as well as additional bands above 24 GHz which the RSPG considers potentially usable for 5G in Europe such as 31.8-33.4 GHz and 40.5-43.5 GHz. Assignment conditions in additional bands above 24 GHz should take into account potential spectrum sharing scenarios with incumbent users.

(126) Where the demand for a radio spectrum band exceeds the 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 apply for the granting of such rights to avoid any discrimination and optimise the use of the scarce resource. 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 spectrum or for numbers with exceptional economic value. In administering such schemes, national regulatory authorities should take into account the 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.

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

(128) Since low power small-area wireless access points are very small and make use of unobtrusive equipment similar to that of domestic RLAN routers and considering their positive impact on the use of spectrum and on the development of wireless communications, their technical characteristics - such as power output - should be

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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.

(128a) Public buildings and other public infrastructure are visited and used daily by a significant number of end-users who need connectivity to consume eGovernance, eTransport and other services. Other public infrastructure (such as street lamps, traffic lights, etc.) offer very valuable sites for deploying small cells due to their density, etc. Operators should have access to these public sites for the purpose of adequately serving demand. Member States should therefore ensure that such public buildings and other public infrastructure are made available on reasonable conditions for the deployment of small-cells with a view to complement Directive 2014/61/EU. The latter follows a functional approach and imposes obligations of access to physical infrastructure only when it is part of a network and only if it is owned or used by a network operator, thereby leaving many buildings owned or used by public authorities outside its scope. On the contrary, a specific obligation is not necessary for physical infrastructure, such as ducts or poles, used for intelligent transport systems (ITS), which are owned by network operators (providers of transport services and/or providers of public communications networks), and host parts of a network, thus falling within the scope of Directive 2014/61/EU.

(129) 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. 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.

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

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

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

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

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

(135) Network operators who control access to their own customers do so on the basis of unique numbers or addresses from a published numbering or addressing range. Other network operators need to be able to deliver traffic to those customers, and so need to be able to interconnect directly or indirectly to each other. It is therefore appropriate to lay down rights and obligations to negotiate interconnection.
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.

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.

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. 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, and if so, impose proportionate obligations in accordance with the

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Commission implementing measures. To avoid creating barriers in the internal market, Member States should not impose obligations in addition to any such implementing measures.

(139) In situations where undertakings are deprived of access to viable alternatives to non-replicable assets up to the first distribution point and in order to promote competitive outcomes in the interest of end-users, 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. However as such obligations can be intrusive, undermine incentives for investments, and have the counterproductive effect of strengthening the position of dominant players, they should be taken only where justified and proportionate to achieving sustainable competition in the relevant markets. 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.

(139a) It should be possible to impose obligations to provide access to related complementary services, i.e. accessibility services to enable appropriate access for disabled end-users and data supporting connected television services and electronic programming guides, to the extent necessary to ensure accessibility for end-users of certain broadcasting services.

(140) 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.

(141) In such cases, in order to comply with the principle of proportionality, it can be appropriate for national regulatory authorities to exclude obligations going beyond the first distribution point, on the grounds that an access obligation not based on significant market power would risk compromising the business case for recently deployed network elements or due to the presence of viable alternative means of access suitable for the provision of very high capacity networks.

(142) Sharing of passive infrastructure used in the provision of wireless electronic communications services 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 localised roaming access, in compliance with Union law, *if that possibility has been clearly established in the original conditions for the granting of the right of use and* they demonstrate the benefits of such sharing in terms of overcoming *insurmountable economic or physical obstacles and access to networks or services is therefore severely deficient or absent*, and taking into account several elements, including in particular *the need for coverage along major transport paths, choice and higher quality of service for end-users as well as* the need to maintain infrastructure roll-out incentives. *In circumstances where there is no access by end-users, and sharing of passive infrastructure alone does not suffice to address the situation, the national regulatory authorities should be able to impose obligations on the sharing of active infrastructure.*

(143) While it is appropriate in some circumstances for a national regulatory authority to impose obligations on operators that do not have significant market power in order to achieve goals such as end-to-end connectivity or interoperability of services, it is however necessary to ensure that such obligations are imposed in conformity with the regulatory framework and, in particular, its notification procedures.

(144) Competition rules alone may not be sufficient to ensure cultural diversity and media pluralism in the area of digital television. Technological and market developments make it necessary to review 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 Union, in particular to determine whether there is justification for extending obligations to electronic programme guides (EPGs) and application programme interfaces (APIs), to the extent that is necessary to ensure accessibility for end-users to specified digital broadcasting services. Member States may specify the digital broadcasting services to which access by end-users must be ensured by any legislative, regulatory or administrative means that they deem necessary.

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

(146) There is a need for ex ante obligations in certain circumstances in order to ensure the development of a competitive market, the conditions of which favour the deployment and take-up of very high capacity networks and the maximisation of end-user benefits. The definition of significant market power used in this Directive is equivalent to the concept of dominance as defined in the case law of the Court of Justice.

(147) Two or more undertakings can be found to enjoy a joint dominant position not only where there exist structural or other links between them but also where the structure of the relevant market is conducive to coordinated effects, and enables them to behave to an appreciable extent independently of competitors, customers and ultimately consumers, that is, it encourages parallel or aligned anti-competitive behaviour on the market. Such a structure might be demonstrated by characteristics such as a high degree of concentration, a sufficient degree of market transparency which makes coordination or a common policy sustainable over time, and the existence of high barriers preventing entry from potential competitors and absence of choice preventing reaction from consumers. In the specific circumstances of ex ante regulation of electronic communications markets, where barriers to entry for new entrants are typically high, the refusal by network owners to provide wholesale access on reasonable terms which benefit competitive dynamics sustainably, observed or foreseen in the absence of ex ante regulation, in conjunction with a shared interest in sustaining significant rents on downstream or contiguous retail markets out of proportion to investments made and risks incurred, may be in itself an indicator of a common policy adopted by members of an uncompetitive oligopoly.

(148) It is essential that ex ante regulatory obligations should only be imposed on a wholesale market where there are one or more undertakings with significant market power, with a view to ensure sustainable competition, and where national and Union competition law remedies are not sufficient to address the problem. The Commission has drawn up guidelines at 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 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 ensuring 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.

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

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

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

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

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

(157) When assessing wholesale regulation to solve problems at the retail level, national regulatory authorities should take into account that several wholesale markets can provide wholesale upstream inputs for a particular retail market, and conversely, one wholesale market can provide wholesale upstream inputs for a variety of retail markets. Furthermore, competitive dynamics in a particular market can be influenced by markets that are contiguous but not in a vertical relationship, such as can be the case between certain fixed and mobile markets. National regulatory authorities should conduct that assessment for each individual wholesale market considered for regulation, starting with remedies for access to civil infrastructure, as such remedies are usually conducive to more sustainable competition including infrastructure competition, and thereafter analysing any wholesale markets considered susceptible to ex ante regulation in order of their likely suitability to address identified competition problems at retail level. When deciding on the specific remedy to be imposed, national regulatory authorities should assess its technical feasibility and carry out a cost-benefit analysis, having regard to its degree of suitability to address the identified competition problems at retail level, and enabling competition based on differentiation and technological neutrality. 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. In addition, the national regulatory authorities should provide incentives through the remedies imposed, and, where possible, before the roll-out of infrastructure, for the development of flexible and open network architecture, which would reduce eventually the burden and complexity of remedies imposed at a later stage. At each stage of the assessment, before the national regulatory authority determines whether any additional, more burdensome, remedy should be imposed on the significant market power operator, it should seek to determine whether the remedies already considered would suffice to make the market concerned effectively competitive, also taking into account 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. Such a staged assessment, aiming to ensure that only the most appropriate remedies necessary to effectively address any problems identified in the market analysis are imposed, does not preclude a national regulatory authority from finding that a mix of such remedies together, even if of differing intensity, offers the least intrusive way of addressing the problem. Even if such differences do not result in the definition of distinct geographic markets, they may justify differentiation in the appropriate remedies imposed in light of the differing intensity of competitive constraints.

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

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

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

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

(162) However, in the interest of greater stability and predictability of regulatory measures, the maximum period allowed between market analyses should be extended from three to five years in the case of stable or predictable markets, 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. In the case of dynamic markets, the maximum period allowed between market analyses should, however, remain three years. A market should be considered to be dynamic where the parameters used to determine whether to impose or remove obligations, including technological evolution and end-user demand patterns, are not unlikely to evolve in such a way that the conclusions of the analysis could change in periods of less than one year for a significant number of geographic areas representing at least 10% of the market.
(163) The imposition of a specific obligation on an undertaking with significant market power does not require an additional market analysis but a justification that the obligation in question is appropriate and proportionate in relation to the nature of the problem identified on the market in question.

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

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

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

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

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

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

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

(171) Accounting separation allows internal price transfers to be rendered visible, and allows national regulatory authorities to check compliance with obligations for non-discrimination where applicable. In this regard the Commission published Recommendation 2005/698/EC of 19 September 2005 on accounting separation and cost accounting systems.

(172) Civil engineering assets that can host an electronic communications network are crucial for the successful roll-out of new 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. An existing asset should not be considered to be available for reuse where technical or physical constraints prevent functional access to it. 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.

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

(174) Mandating access to network infrastructure, such as dark fibre, 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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(176) 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 27 and 28. An operator with mandated access obligations cannot be required to provide types of access which it is not within its power 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. National regulatory authorities may impose technical and operational conditions on the provider and/or beneficiaries of mandated access in accordance with Union law. In particular the imposition of technical standards should comply with Directive 1535/2015/EU.

(177) Price control may be necessary when market analysis in a particular market reveals inefficient competition. In particular, operators with significant market power should avoid a price squeeze whereby the difference between their retail prices and the interconnection and/or access prices charged to competitors who provide similar retail services is not adequate to ensure sustainable competition. When a national regulatory authority calculates costs incurred in establishing a service mandated under this Directive, it is appropriate to allow a reasonable return on the capital employed including appropriate labour and building costs, with the value of capital adjusted where necessary to reflect the current valuation of assets and efficiency of operations. The method of cost recovery should be appropriate to the circumstances taking account of the need to promote efficiency, sustainable competition and deployment of very high capacity networks and thereby maximise 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\(^1\).

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

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

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

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

(181) In order to reduce the regulatory burden in addressing the competition problems relating to wholesale voice call termination coherently across the Union, this Directive should lay down a common approach as a basis for setting price control obligations, to be completed by a binding common methodology to be determined by the Commission and by technical guidance which should be developed by BEREC.

(182) In order to simplify their setting and facilitate their imposition where appropriate, wholesale voice call termination rates in fixed and mobile markets in the Union shall 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. Termination rates across the Union have decreased consistently and are expected to continue to do so. When the Commission determines the maximum termination rates in the first delegated act that it adopts pursuant to this Directive, it should disregard any unjustified exceptional national deviation from that trend

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(184) Due to current uncertainty regarding the rate of materialisation of demand for very high capacity broadband services as well as general economies of scale and density, co-investment agreements can 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.

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

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

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

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

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

(190) Network owners that do not have retail market activities and whose business model is therefore limited to the provision of wholesale services to others, can be beneficial to the creation of a thriving wholesale market, with positive effects on retail competition downstream. Furthermore, their business model can be attractive to potential financial investors in less volatile infrastructure assets and with longer term perspectives on deployment of very high capacity networks. Nevertheless, the presence of a wholesale-only operator does not necessarily lead to effectively competitive retail markets, and wholesale-only operators can be designated with significant market power in particular product and geographic markets. The 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.

(191) To facilitate the migration from legacy copper networks to next-generation networks, which is in the interests of end-users, national regulatory authorities should be able to monitor network operators’ own initiatives in this respect and to establish, where necessary, an appropriate migration process, for example by means of prior notice, transparency and acceptable 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. Access seekers migrating from an access product based on legacy infrastructure to an access product based on a more advanced technology or medium should be able to upgrade their access to any regulated product with higher capacity, should they wish but should not be required to do so. In the case of an upgrade, access seekers should adhere to the regulatory conditions for access to the higher capacity access product, as determined by the national regulatory authority in its market analysis.

(192) The liberalisation of the telecommunications sector and increasing competition and choice for communications services go hand in hand with parallel action to create a harmonised regulatory framework which secures the delivery of universal service. The concept of universal service should evolve to reflect advances in technology, market developments and changes in user demand.

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

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

(195) Basic 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.

(196) A fundamental requirement of a universal service is to ensure that all consumers have access at an affordable price to available internet access and voice communications services, at least at a fixed location. However, there should be no limitations on the technical means by which the connection at a fixed location is provided, allowing for wired or wireless technologies, nor any limitations on the category of operators which provide part or all of universal service obligations. Particular attention should be paid in this context to ensure that end-users with disabilities have equivalent access. Member States should also have the possibility to ensure affordability to citizens on the move, where they deem this to be necessary to ensure full social and economic participation in society.

(197) 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 availability of affordable broadband internet access service provided under the universal service obligation should have sufficient capability to support access to and use of at least a minimum set of basic internet services and at least a minimum bandwidth that reflects the average use of such services by a majority of the population, with the aim of ensuring an adequate level of social inclusion and participation in the digital society and economy. It is for the national regulatory authorities, in accordance with BEREC guidelines, to establish the most appropriate way in which to ensure the delivering of the bandwidth necessary to support at least such a minimum list of services while seeking to reflect the internet access capability available to the majority of the population of a Member State’s territories or parts thereof. For instance, they may define capability in terms of the minimum quality of service requirements, including minimum bandwidth and data volumes. The requirements of Union law on open internet, in particular as provided for in Regulation (EU) No 2015/2120 of the European Parliament and of the Council¹, should apply to any

such internet access service, including any list of services or minimum bandwidth adopted under the universal service obligation.

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

(199) 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. 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 providers of such service.

(200) Affordable price means a price defined by Member States at national level in the light of specific national conditions, and should involve special social tariff options or packages to deal with the needs of low-income users or users with special social needs. These end-users may include older people, persons with disabilities and the consumers 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 and to ensure their right to access publicly available electronic communication services. Affordability for individual consumers should be founded upon their right to contract with a provider, availability of a number, continued connection of service and their ability to monitor and control their expenditure.

(201) It should no longer be possible to refuse consumers access to the minimum set of connectivity services. A right to contract with a provider should mean that consumers who might face refusal, in particular those with low incomes or special social needs, should have the possibility to enter into a contract for the provision of affordable functional internet access and voice communications services at least at a fixed location with any provider of such services in that location. In order to minimise the financial risks such as non-payment of bills, providers should be free to provide the contract under pre-payment terms, on the basis of affordable individual pre-paid units.

(202) In order to ensure that citizens are reachable by voice communications services, Member States should ensure the availability of a telephone number for a reasonable period also during periods of non-use of voice communications service. Providers should be able to put in place mechanisms to check the continued interest of the consumer in keeping the availability of the number.
(203) Compensating providers of such services in such circumstances need not result in distortion of competition, provided that such undertakings are compensated for the specific net cost involved and provided that the net cost burden is recovered in a competitively neutral way.

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

(205) Where additional measures beyond the social tariff options or packages provided by providers are insufficient alone for ensuring affordability for all consumers with low incomes or special needs, Member States should be able to grant direct additional support to such consumers, such as for example vouchers to such consumers or direct payments to providers. This can be an appropriate alternative to other measures, having regard to the need to minimise market distortions.

(206) Member States should introduce measures to promote the creation of a market for affordable products and services incorporating facilities for consumers with disabilities, following a universal design approach, including, where appropriate, equipment with assistive technologies that is interoperable with publically available electronic communication equipment and services. This can be achieved, inter alia, by referring to European standards, such as European Standard EN 301 549 V1.1.2 (2015-04) or by introducing requirements in accordance with Directive xxx/YYYY/EU of the European Parliament and of the Council. 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 consumers with disabilities under normal economic conditions. The average cost of the relay services for consumers with disabilities should be equivalent to that of voice communication services in order not to prejudice consumers with disabilities. The net costs of providers of relay services should be compensated based on Article 84.

(207) For data communications at data rates that are sufficient to permit Internet access, fixed-line connections are nearly universally available and used by a majority of

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1 Directive xxx/YYYY/EU of the European Parliament and of the Council of ... on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (OJ L ... , ... , p. ...).
citizens across the Union. The standard fixed broadband coverage and availability in the Union stands at 97% of homes in 2015, with an average take-up rate of 72%, and services based on wireless technologies have even greater reach. However, there are differences between Member States as regards availability and affordability of fixed broadband across urban and rural areas.

(208) The market has a leading role to play in ensuring availability of broadband internet access with constantly growing capacity. In areas where the market would not deliver, other public policy tools to support availability of 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. **However, this Directive should still give Member States the option of applying universal service obligations as a potential measure to ensure the availability of internet access if the Member State concerned considers this to be necessary.**

(209) 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 **consumers** in certain areas with a connection capable of delivering internet access service as defined by Member States in accordance with Article 79(2) and voice communications services at a fixed location, the Member State should be able to exceptionally designate different **providers** or sets of **providers of** these services in the different relevant parts of the national territory. Universal service obligations in support of availability of functional internet access service may be restricted by Member States to **consumer’s** primary location or residence. There should be no constraints on the technical means by which the functional internet access and voice communications services at a fixed location are provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations.

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

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

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

(213) When a provider designated to ensure the availability at a fixed location of functional internet access or voice communications services, as identified in Article 81 of this 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 provider in advance of the disposal. The assessment of the national regulatory authority should not prejudice the completion of the transaction.

(214) In order to provide stability and support a gradual transition, Member States should be able to continue to ensure the provision of universal services in their territory, other than internet access and voice communications services at a fixed location, that are included in the scope of their universal obligations on the basis of Directive 2002/22/EC at the entry into force of this Directive, provided the services or comparable services are not available under normal commercial circumstances. Member States should be able to provide public pay telephones and communications access points in the main entry points of the country, such as airports or train and
bus stations, as well as places used by people in cases of emergencies, such as hospitals, police stations and highway emergency areas, to meet the reasonable needs of end-users, including end-users with disabilities. Allowing the continuation of the provision of public payphones, directories and directory enquiry services under the universal service regime, as long as the need is still demonstrated, would give Member States the flexibility necessary to duly take into account the varying national circumstances. However, the financing of such services should be done via public funds as for the other universal service obligations.

(215) Member States should monitor the situation of consumers with respect to their use of internet access and voice communications services and in particular with respect to affordability. The affordability of internet access and voice communications services is related to the information which consumers receive regarding usage expenses as well as the relative cost of 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 providers. 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.

(216) Except in cases of persistent late payment or non-payment of bills, consumers entitled to affordable tariffs should be protected from immediate disconnection from the network on the grounds of an unpaid bill and, particularly in the case of disputes over high bills for premium-rate services, should continue to have access to essential 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.

(217) Where the provision of internet access and voice communications services or the provision of other universal services in accordance with Article 82 result in an unfair burden on a provider, taking due account of the costs and revenues as well as the intangible benefits resulting from the provision of the services concerned, that unfair burden can be included in any net cost calculation of universal obligations.
(218) Member States should, where necessary, establish mechanisms for financing the net cost of universal service obligations in cases where it is demonstrated that the obligations can only be provided at a loss or at a net cost which falls outside normal commercial standards. It is important to ensure that the net cost of universal service obligations is properly calculated and that any financing is undertaken with minimum distortion to the market and to undertakings, and is compatible with the provisions of Articles 107 and 108 of the Treaty on the Functioning of the European Union.

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

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

(221) When a universal service obligation represents an unfair burden on an undertaking, it is appropriate to allow Member States to establish mechanisms for efficiently recovering net costs. The net costs of universal service obligations should be recovered via public funds. In exceptional cases, Member States might adopt or maintain mechanisms to share the net cost of universal service obligations between providers of electronic communications networks or services and providers of information society services. Such mechanisms should be reviewed at least every three years with a view to determining which net costs should continue to be shared and which should be compensated from 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.

(222) 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. 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.

(223) In order to effectively support the free movement of goods, services and persons
within the Union, it should be possible to use certain national numbering resources, in
particular certain non-geographic numbers, in an extraterritorial manner, that is to say
outside the territory of the assigning Member State throughout the territory of the
Union. In view of the considerable risk of fraud with respect to interpersonal
communications, such extraterritorial use should 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. **Member states should therefore not impose additional**
requirements on extraterritorial use of such numbers as it would hinder their
**crossborder use and create a barrier to the internal market**, 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.

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

(225) Access to numbering resources on the basis of transparent, objective and non-
discriminatory criteria is essential for undertakings to compete in the electronic
communications sector. Member States should be able to grant rights of use for
numbers 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 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 can take implementing measures with the assistance of BEREC.

(226) The requirement to publish decisions on the granting of rights of use for numbers may be fulfilled by making these decisions publicly accessible via a website.

(227) Considering the particular aspects related to reporting missing children, Member States should maintain their commitment to ensure that a well-functioning service for reporting missing children is actually available in their territories under the number '116000'. Member States should ensure that a review of their national system is carried out regarding transposition and implementation of the Directive, taking into account the measures needed to achieve a sufficient level of service quality in operating the 116 000 number as well as engaging the financial resources necessary to operate the hotline. The definition of missing children falling under the 116000 number should include the following categories children: runaways, international child abductions, missing children, parental abductions, missing migrant children, criminal abductions and lost, sexual abuses and where the life of a child is at risk.

(227a) Even though efforts have been made to raise awareness since the first hotlines became operational after the EC Decision of 2007, hotlines still struggle with varying and often very low awareness in their countries. Strengthening the hotlines' efforts in raising awareness of the number and the services provided is an important step to better protecting, supporting and preventing missing children. To that end Member States and the Commission should continue to support efforts promoting the 116 000 number among the general public and among relevant stakeholders in national child protection systems.

(228) A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States and to access services using non-geographic numbers, including freephone and premium-rate numbers, within the Union, 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 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.

(229) The completion of the single market for electronic communications requires the removal of barriers for end-users to have cross-border access to electronic communications services across the Union. Providers of electronic communications to the public should not deny or restrict access or discriminate against end-users on the basis of their nationality, Member State of residence or of establishment. 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.

(229a) Very significant price differences continue to prevail, both for fixed and mobile communications, between domestic voice and SMS communications and those terminating in another Member State. While there are substantial variations between countries, operators and tariff packages, and between mobile and fixed services, this continues to affect more vulnerable customer groups and to pose barriers to seamless communication within the EU. Any significant retail price differences between electronic communications services terminating in the same Member State and those terminating in another Member State should therefore be justified by reference to objective criteria.

(230) Divergent implementation of the rules on end-user protection has created significant internal market barriers affecting both providers of electronic communications services and end-users. Those barriers should be reduced by the applicability of the same rules ensuring a high common level of protection across the Union. A calibrated full harmonisation of the end-user rights covered by this Directive should considerably increase legal certainty for both end-users and providers of electronic communications services, and should significantly lower entry barriers and unnecessary compliance burden stemming from the fragmentation of the rules. Full harmonisation helps to overcome barriers to the single market resulting from such national end-user provisions which at the same time protect national providers against competition from
other Member States. In order to 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. Similarly, providers of electronic communications services should be assured that end-user provisions and general authorisation conditions are the same with regard to end-user provisions. Member States should maintain the possibility to have a higher level of end-user protection where an explicit derogation is provided for in this Directive, and to act in areas not covered by this Directive.

(231) Contracts are an important tool for end-users to ensure transparency of information and legal 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 Union consumer protection legislation relating to contracts, in particular Directive 2011/83/EU of the European Parliament and of the Council on consumer rights 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. The inclusion of information requirements in this Directive, which might also be required pursuant to Directive 2011/83/EU, should not be lead to duplications of the same information within pre-contractual and contractual documents. Information provided in respect of this Directive, including any more prescriptive and more detailed informational requirements, should be deemed to fulfil any such requirements pursuant to Directive 2011/83/EU.

(232) Provisions on contracts in this Directive should apply not only to consumers but also to micro and small enterprises as defined in Commission Recommendation 2003/361/EC and not-for-profit organisation as defined in Member States law, whose bargaining position is comparable to that of consumers and which should therefore benefit from the same level of protection. The provisions on contracts,
including those contained in Directive 2011/83/EU on consumer rights, should apply automatically to those undertakings unless they prefer negotiating individualised contract terms with providers of electronic communications services. 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. "Not-for-profit organisations" are legal entities that do not earn profits for their owners or members. Typically, not-for-profit organisations are charities or other types of public interest organisations. Hence, as the situation of not-for-profit organisations is similar to micro and small enterprises, it is legitimate to treat such organisations in the same way as micro or small enterprises under this Directive, insofar as end-user rights are concerned.

(233) The specificities of the electronic communications sector require, beyond horizontal contract rules, a limited number of additional end-user protection provisions. End-users should inter alia be informed of any quality of service levels offered, conditions for promotions and termination of contracts, applicable tariff plans and tariffs for services subject to particular pricing conditions. That information is relevant for internet access services, publicly available interpersonal communications services and transmission services used for broadcasting. A provider of publicly available electronic communications services should not be subject to the obligations on information requirements for contracts where the provider, and affiliated companies or persons, do not receive any remuneration directly or indirectly linked to the provision of electronic communications services. Such a situation could, for example, concern a university giving visitors free access to its Wi-Fi network on the campus without receiving any kind of remuneration for the provision of its electronic communications service, neither through payment from the users nor through advertising revenues. 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, the Commission should, after consulting BEREC, adopt a template for such contract summaries. The pre-contractual information as well as the summary template should constitute an integral part of the final contract.

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

(235) With respect to terminal equipment, the customer contract should specify any restrictions 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. Where the end-user chooses to retain terminal equipment bundled at the moment of the contract conclusion, any compensation due should not exceed its pro rata temporis value at the moment of the contract conclusion or on the remaining part of the service fee until the end of the contract, whichever amount is smaller. Member States may choose other methods of calculating the compensation rate, where such a rate is equal to or less than that compensation calculated. Any restriction on the usage of terminal equipment on other networks should be lifted, free of charge, by the provider at the latest upon payment of such compensation.

(236) Without prejudice to the substantive obligation on the provider related to security by virtue of this Directive, the contract should specify the type of action the provider might take in case of security incidents, threats or vulnerabilities.

(237) The availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets where several providers offer services. End-users 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 providers of electronic communications networks and/or internet access service, publicly available interpersonal communications services and transmission services used for broadcasting greater transparency as regards information (including tariffs, quality of service, restrictions on terminal equipment supplied, and other relevant statistics). Any
such requirements should take due account of the characteristics of those networks or services. They should also ensure that third parties have the right to use, without charge, publicly available information published by such undertakings, in view of providing comparison tools.

(238) End-users are often not aware of the cost of their consumption behaviour or have difficulties to estimate their time or data consumption when using electronic communications services. In order to increase transparency and to allow better control of their communications budget it is important to provide end-users with facilities that enable them to track their consumption in a timely manner.

(239) Independent comparison tools, such as websites, are an effective means for end-users to assess the merits of different providers of publicly available electronic communications services other than number-independent interpersonal communications services, and to obtain impartial information, in particular by comparing prices, tariffs, and quality parameters in one place. Such tools should aim at providing information that is both clear and concise and complete and comprehensive. They should also aim at including the broadest possible range of offers, so as to give a representative overview and cover a significant part of the market. The information given on such tools should be trustworthy, impartial and transparent. End-users should be informed of the availability of such tools. Member States should ensure that end-users have free access to at least one such tool in their respective territories.

(240) Independent comparison tools should be operationally independent from providers of publicly available electronic communications services. They can be operated by private undertakings, or by or on behalf of competent authorities, however they should be operated in accordance with specified quality criteria including the requirement to provide details of their owners, provide accurate and up-to-date information, state the time of the last update, set out clear, objective criteria on which the comparison will be based and include a broad range of offers on publicly available electronic communications services other than number-independent interpersonal communications services, covering a significant part of the market. No service provider should be given favourable treatment in search results other than as based on those clear objective criteria. Member States should be able to determine how often comparison tools are required to review and update the information they provide to end-users, taking into account the frequency with which providers of publicly
available electronic communications services other than number-independent interpersonal communications services, generally update their tariff and quality information. Where there is only one tool in a Member State and that tool ceases to operate or ceases to comply with the quality criteria, the Member State should ensure that end-users have access within a reasonable time to another comparison tool at national level.

(241) In order to address public interest issues with respect to the use of publicly available electronic communications services and to encourage protection of the rights and freedoms of others, the 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, 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 this Directive. Such public interest information should be updated whenever necessary and should be presented in easily comprehensible 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. Dissemination of such information should however not impose an excessive burden on providers. Member States should require this dissemination by the means used by providers in communications with end-users made in the ordinary course of business.

(242) In the absence of relevant rules of 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. This Directive and the 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), which, inter alia, contains a ‘mere conduit’ rule for intermediary service providers, as defined therein.

(243) National regulatory authorities should be empowered 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. Providers of 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.

*Where a provider of an electronic communications service does not, for reasons related to the technical delivery of the service, have control over the quality of the service or does not offer a minimum quality of service, it should not be required to provide quality of service information.* 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 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.

(244) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their best interest. It is essential to ensure that they are able to do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges etc. That does not preclude providers 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 and providers should offer at least one contract of a duration of 12 months or less. Independently from the electronic communications service contract, consumers might prefer and benefit from a longer reimbursement period for physical connections. Such consumer

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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 and such contracts should not cover terminal or internal access equipment, such as handsets, routers or modems.

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

(246) Any changes to the contractual conditions proposed by providers of publicly available internet access services or number-based interpersonal communications services and transmission services used for broadcasting, 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. End-users should be notified of any changes to the contractual conditions in a durable medium, such as paper, a USB stick, a CD-ROM, a DVD, a memory card, the hard disk of a computer or an e-mail.

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

(248) Number portability is a key facilitator of consumer choice and effective competition in competitive electronic communications markets. End-users who so request should be able to retain their number(s) on the public telephone network independently of the provider of service and for a limited time between the switching of providers of 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.
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.

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.

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

The right to port numbers should not be restricted by contractual conditions.

In order to ensure that switching and porting take place within the time-limits provided for in this Directive, Member States should be able to impose compensational measures from a provider where an agreement with an end-user is not respected. Such measures should be proportionate to the length of the delay in complying with the agreement.

Bundles comprising at least publicly available electronic communications services other than number-independent interpersonal communications services, and other services such as linear broadcasting, or terminal equipment such as devices offered by
the same provider and contracted jointly, have become increasingly widespread and are an important element of competition. A bundle for the purpose of this article is to be understood as consisting of an internet access service provided together with a number-based interpersonal communications services or of an internet access service and/or a number-based interpersonal communications service with different but complementary services with the exception of transmission services used for the provision of machine-to-machine services and/or terminal equipment provided by the same provider either i) under the same contract, or ii) under the same and subordinate contracts or iii) under the same and under linked contracts provided for a single combined price. While bundles often bring about benefits for consumers, 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 contract period. Member States should retain the discretion to further legislative elements related to a bundle in cases where their nature implies different regulatory treatment, for example because those elements are addressed by other sector-specific regulation or in order to adapt to changes in market practices.

(253) Providers of number-based interpersonal communications services 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. Such providers
should provide their customers with clear and transparent information in the initial contract and update it in the event of any change in the provision of access to emergency services, for example in invoices. 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 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 connection, taking into account current technology and quality standards, as well as any quality of service parameters specified under this Directive.

(254) In line with the objectives of the Charter and the United Nations Convention on the Rights of Persons with Disabilities, the regulatory framework should ensure that all end-users, including end-users with disabilities, older people, and users with special social needs, have easy and equal access to affordable and accessible high quality services regardless of their place of residence within the Union. Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the Union shall take account of the needs of persons with disabilities in drawing up measures under Article 114 of the TFEU.

(255) End-users should be able to access emergency services through emergency communications free of charge and without having to use any means of payment, from any device which enables number-based interpersonal communications services, including when using roaming services in a Member State or through a private telecommunications networks. Emergency communications are means of communication, that include not only voice communications but also real-times text, video or other types of communications, including through the use of third party relay services, 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 Council1. It should, however, be for the Member States to decide which number-based interpersonal communications services are appropriate for

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emergency services, including the possibility to limit those options to voice communications and their equivalent for end-users with disabilities or to add additional options as agreed with national PSAPs. In order to take into account future technological developments or an increased use of number-independent interpersonal communications services, the Commission should assess the feasibility of providing accurate and reliable access to emergency services through number-independent interpersonal communications services, after consultation with national regulatory authorities, emergency services, standardisation bodies and other relevant stakeholders.

(256) Member States should ensure that providers of end-users with number-based interpersonal communications services provide reliable and accurate access to emergency services, taking into account national specifications and criteria and the capabilities of national PSAPs. 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 providers, namely providers which are not integrated with a public communications network provider, providing caller location information may not always be technically feasible. Member States should ensure that standards ensuring accurate and reliable routing and connection to the emergency services are implemented as soon as possible in order to allow network-independent providers of number-based interpersonal communications services to fulfil the obligations related to access to emergency services and caller location information provision at a level comparable to that required of other providers of such communications services. Where such standards and the related PSAP systems have not yet been implemented, network-independent number-based interpersonal communications services should not be required to provide access to emergency services except in a manner that is technically feasible or economically viable. As an example, this may include the designation by a Member State of a single, central PSAP for receiving emergency communications. Nonetheless, such providers should inform end-users when access to 112 or to caller location information is not supported.
There is a current existing deficit when it comes to the reporting and performance measurement by Member States with respect to the answering and handling of emergency calls. Therefore, the Commission, having consulted the national regulatory authorities and emergency services, shall adopt performance indicators applicable to the Member States emergency services and report back to the European Parliament and the Council on the effectiveness of the implementation of the European emergency call number "112" and on the functioning of the performance indicators.

Member States should take specific measures to ensure that emergency services, including ‘112’, are equally accessible to end-users with disabilities, in particular deaf, hearing-impaired, speech-impaired and deaf-blind users through total conversation services or the use of third party relay services interoperable with the telephony networks across the EU. This could also involve the provision of special terminal devices for people with disabilities when the abovementioned ways of communication are not suitable for them.

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, end-user and billing material, that ‘112’ can be used as a single emergency number throughout the 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.

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, which includes both network-based location information and where available, enhanced handset caller location information should comply with relevant Union law on the processing of personal data and security measures. 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, where feasible. The establishment and transmission of caller location information should be free of charge for both the end-user and the authority handling the emergency communication irrespective of the means of establishment, for example through the handset or the network, or the means of transmission, for example through voice channel, SMS or Internet Protocol-based.

(260) In order to respond to technological developments concerning accurate caller location information, equivalent access for end-users with disabilities 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 number-based 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.

(260a) Currently, a citizen in Country A who has a need to contact the emergency services in Country B cannot do so because the emergency services have no facility to contact each other. The solution is to have an EU-wide, secure database of telephone numbers for a lead emergency service(s) in each country. Therefore, the Commission shall maintain a secure database of E.164 European emergency service numbers in order to ensure that they can be contacted in one Member State from another.

(260b) Recent terrorist attacks in Europe have highlighted the lack of efficient public warning systems in the Member States and across Europe. It is crucial that Member
States can inform all the population in a determined area of on-going disasters/attacks or upcoming threats, through the use of electronic communications networks and services, the establishment of national efficient 'Reverse-112' communication system for warning and alerting citizens, in case of imminent or developing natural and/or man-made major emergencies and disasters, taking into account existing national and regional systems and without hindering privacy and data protection rules. The Commission should also assess if it is feasible to set up a universal, accessible, cross-border EU-wide "Reverse 112 communication system" in order to alert the public in the event of an imminent or developing disaster or major state of emergency across different Member States.

(261) Member States should ensure that end-users with disabilities enjoy equivalent access and choice to electronic communication services, in line with the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and the universal design approach. In particular, in order to ensure that end-users with disabilities 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, and after consulting representative organisations of persons with disabilities, consumer protection requirements for end-users with disabilities to be met by providers of publicly available electronic communications services and related terminal equipment. Such requirements can include, in particular, that providers ensure that end-users with disabilities take advantage of their services on equivalent terms and conditions, including prices, tariffs and quality, and access to related terminal equipment as those offered to their other end-users, irrespective of any additional costs incurred by these providers. Other requirements can relate to wholesale arrangements between providers. 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.

(262)  

(262a) National regulatory authorities should ensure that providers of publicly available electronic communications services make available information about the functioning of the services offered and about its accessibility characteristics in an accessible format. This means that the information content should be available in
text formats that could be used to generate alternative assistive format and alternatives to non-text content.

(262b) With regard to end-users with disabilities, this Directive should seek to reflect other Union law implementing the United Nations Convention of the Rights of Persons with Disabilities. Those measures include the principles and standards set out in Directive (EU) 2016/2102 of the European Parliament and of the Council\(^1\). The four principles of accessibility are: perceivability, meaning that information and user interface components must be presentable to users in ways they can perceive; operability, meaning that user interface components and navigation must be operable; understandability, meaning that information and the operation of the user interface must be understandable; and robustness, meaning that content must be robust enough to be interpreted reliably by a wide variety of user agents, including assistive technologies. Those principles of accessibility are translated into testable success criteria, such as those forming the basis of the European standard EN 301 549 VI.1.2 'Accessibility requirements suitable for public procurement of ICT products and services in Europe' (2015-04) (European standard EN 301 549 VI.1.2 (2015-04)), via harmonised standards and a common methodology to test the conformity of content on websites and mobile applications with those principles. That European standard was adopted on the basis of mandate M/376 issued by the Commission to the European standardisation organisations. Pending publication of the references to harmonised standards, or of parts thereof, in the Official Journal of the European Union, the relevant clauses of European standard EN 301 549 VI.1.2 (2015-04) should be considered as the minimum means of putting those principles into practice in regards to this Directive and equivalent access and choice for end-users with disabilities.

(263) Effective competition has developed in the provision of directory enquiry services and directories pursuant inter alia to Article 5 of Commission Directive 2002/77/EC\(^2\). In order to maintain this effective competition, all service providers which assign telephone numbers to their end-users should continue to be obliged to make relevant information available in a fair, cost-oriented and non-discriminatory manner.

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

(265) End-users should be able to enjoy a guarantee of interoperability in respect of all equipment sold in the Union for the reception of digital radio and 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.

(266) It is desirable to enable consumers to achieve the fullest connectivity possible to radio and 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 is not limited by network operators, service providers or equipment manufacturers and continue to evolve in line with technological developments. For display and presentation of 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. Consumer radio equipment should be capable of receiving radio at least by analogue and digital broadcasting in order to ensure cross-border interoperability. This provision should not apply to low-cost consumer radio equipment or to radio equipment where the receipt of radio broadcasts is merely an ancillary function, such as for instance a mobile telephone with an FM receiver. It should also not be applicable to radio equipment used by radio amateurs,
including for instance radio kits for assembly and use by radio amateurs or equipment constructed by individual radio amateurs for experimental and scientific purposes related to amateur radio.

(267) 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) 2016/679\(^1\) 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, which has largely allowed enabling the removal of retail regulation from these services and the provision of offers of directory services under reasonable and transparent conditions.

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

(269) Member States should be able to lay down proportionate 'must carry' obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Union law and should be proportionate and transparent. '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, such as media pluralism and cultural diversity. Member States should provide an objective

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\(^1\) 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
justification for the ‘must carry’ obligations that they impose in their national law so as to ensure that such obligations are transparent, proportionate and clearly defined. The obligations should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. Obligations should be subject to periodic review at least every five years in order to keep them up-to-date with technological and market evolution and in order to ensure that they continue to be proportionate to the objectives to be achieved. Obligations could, where appropriate, entail a provision for proportionate remuneration.

(269a) Since the majority of consumer digital television and radio equipment in use today accepts both analogue and digital transmissions, there is no longer an economic or a social reason for Member States to continue to impose 'must carry' obligations on both analogue and digital television transmissions. This, however, should not preclude such analogue transmission obligations where a significant number of users still use an analogue channel or where the analogue broadcast is the sole means of broadcast.

(270) Electronic communications Networks and services 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 should include the transmission of services specifically designed to enable equivalent access by users with disabilities. Accordingly complementary services include, amongst others, services designed to improve accessibility for end-users with disabilities, such as videotext, subtitling for the deaf and hard of hearing, audio description, spoken subtitles and sign language interpretation. 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 necessary to support the functionalities of providing electronic programme guides, teletext and programme-related IP addresses can be included in must carry obligations.

(271) Calling line identification facilities are normally available on modern telephone exchanges and can therefore increasingly be provided at little or no expense. Member States are not required to impose obligations to provide these facilities when they are already available. Directive 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.

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

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

(274) In order to determine the correct application of 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.

(275) 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.
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.

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.

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. In view of the risk of emergence of uncompetitive oligopolistic market structures in the place of monopolistic market structures, the provisions relating to the powers of national regulatory authorities to impose access obligations...
on operators with significant market power, individual or joint, applied in conjunction with other obligations that can be imposed on them, should be given particular attention in the reviews, so as to ensure that the powers are sufficient for the effective achievement of the objectives of this Directive.

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

(280) The Commission should monitor the transition from the existing framework to the new framework.

(281) Since the objectives of the proposed action, namely achieving a harmonised and simplified framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, of the conditions for the authorisation of networks and services, of spectrum use and of numbers, of the regulation of access to and interconnection of electronic communications networks and associated facilities and of end-user protection cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the 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.

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

(283) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(284) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the dates of application of the Directives set out in Annex XI, Part B.

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HAVE ADOPTED THIS DIRECTIVE:

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

TITLE I: SCOPE, AIM & OBJECTIVES, DEFINITIONS

CHAPTER I

SUBJECT MATTER, AIM AND DEFINITIONS

Article 1

Subject matter and aim

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment. It lays down tasks of national regulatory and, where applicable, for other competent authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Union.

2. The aim of this Directive is on the one hand to implement an internal market in electronic communications networks and services that will result in deployment and take-up of very high capacity secured networks, sustainable competition, interoperability of electronic communications services, accessibility and end-user benefits. On the other hand, it is to ensure the provision throughout the Union of good-quality, affordable, publicly available services through effective competition and choice, to deal with circumstances in which the needs of end-users, including users with disabilities in order to access the services on an equal basis with others, are not satisfactorily met by the market and to lay down the necessary end-user rights.

3. This Directive is without prejudice to:
   - obligations imposed by national law in accordance with Union law or by Union law in respect of services provided using electronic communications networks and services; - measures taken at Union or national level, in compliance with Union law, to pursue general
interest objectives, in particular relating to the protection of personal data and privacy, content regulation and audio-visual policy;

- measures taken at Union or national level, in compliance with Union law, to pursue general interest objectives, in particular relating to the protection of personal data and privacy, content regulation and audio-visual policy.


3a. Where information contains personal data, the Commission, BEREC and the authorities concerned shall ensure the compliance of data processing with Union data protection rules.

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

Article 2

Definitions

For the purposes of this Directive:

(1) ‘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; it does not include network elements managed by individuals in the context of not-for-profit activities;

(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 any other type of network 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 shall be assessed on the basis of technical parameters regardless of whether the end-user
experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point.

(3) ‘transnational markets’ means markets identified in accordance with Article 63 covering the Union or a substantial part thereof located in more than one Member State;

(4) ‘electronic communications service’ means a service provided for remuneration via electronic communications networks, which 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 such as transmission services used for the provision of machine-to-machine services and for broadcasting, but excludes services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; as well as not-for-profit-services provided by individuals;

(5) ‘interpersonal communications service’ means a service 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, and where the provider of the service has substantial control over the network used for enabling the communication;

(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;

(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;
(9) ‘network termination point ’ or 'NTP' means the physical point at which 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 an end-user's number or name.

(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;

(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 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 as well as other services such as identity, location and presence service;

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

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

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

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

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

(17) ‘enhanced digital television equipment’ means set-top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;
(18) ‘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;
(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, Union or national regulations;
(21) ‘call’ means a connection established by means of a publicly available interpersonal communications service allowing two-way voice communication;
(22) ‘security’ of networks and services means the ability of electronic communications networks and services to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of stored or transmitted or processed data or the related services offered by, or accessible via, those networks or services.
(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, excluding not-for-profit-services provided by individuals.
(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 competent 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).
(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, in particular for roaming; access to conditional access systems for digital
television services and access to virtual network services;
(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;
(31) ‘local loop’ means the physical path used by electronic communications signals
connecting the network termination point to a distribution frame or equivalent facility in the
fixed public electronic communications network.
(31a) ‘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;

(32) ‘voice communications’ means 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, and comprising other means of communication as an alternative to voice communication and intended specifically for end-users with disabilities, such as total conversation services (voice, video and real time text) and text based and video based relay services;

(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);

(34) ‘non-geographic number’ means a number from the national telephone numbering plan that is not a geographic number, such as mobile, freephone and premium-rate numbers;

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

(35a) ‘relay services’ means services that enable people who are deaf or hard of hearing or who have a speech impairment, to communicate by phone through an interpreter that uses text or sign language with another person in a manner that is functionally equivalent to the ability of an individual without a disability;

(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;

(36a) ‘real time text’ means communication using the transmission of text where characters are transmitted by a terminal as they are typed in such a way that the communication is perceived by the user as being not delayed;

(37) ‘emergency communication’: communication by means of voice communication services and relevant number-based 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.

(38a) ‘caller location information’ means in a public mobile network the data processed, both from network infrastructure and handset-derived, indicating the geographic position of an end-user's mobile terminal and in a public fixed network the data about the physical address of the termination point.

CHAPTER II

OBJECTIVES

Article 3

General objectives

1. Member States shall ensure that in carrying out the regulatory tasks specified in this Directive, the national regulatory and other competent authorities take all reasonable measures which are necessary and proportionate for achieving the objectives set out in paragraph 2. Member States, the Commission and BEREC shall also contribute to the achievement of these objectives.

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

2. The national regulatory and other competent authorities as well as BEREC, the Commission and the Member States shall pursue each of the general objectives listed below, without the order in which they are listed indicating any order of priority:

(a) promote access to, and take-up of, very high capacity networks, 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 provision, availability and interoperability of pan-European services, and end-to-end connectivity;

(d) promote the interests of the citizens of the Union by ensuring widespread availability and take-up of very high capacity networks and of electronic 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, by ensuring equivalent access and choice for end-users with disabilities and by addressing the needs, such as for affordable prices, of specific social groups, in particular users with disabilities, elderly users and users with special social needs.

2 a. The Commission may submit detailed policy orientations for achieving the objectives of paragraph 2, establish methods and objective, concrete and quantifiable criteria for benchmarking the effectiveness of Member State measures towards achieving those objectives and identify best practices. The policy orientations shall also provide for a yearly qualitative and quantitative assessment of the state of progress of each Member State. They shall be without prejudice to the independence of national regulatory authorities and other competent authorities.

3. The national regulatory and other competent authorities shall, in pursuit of the policy objectives referred to in paragraph 2, and specified in this paragraph inter alia:

(a) promote 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) ensure that, in similar circumstances, there is no discrimination in the treatment of providers of electronic communications networks and services;

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

(d) promote 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) take due account of the variety of conditions relating to infrastructure, competition, end-user and consumer circumstances that exist in the various geographic areas within a Member State including local infrastructure managed by individuals on a not-for-profit basis;

(f) impose ex ante regulatory obligations only to the extent necessary to secure effective and sustainable competition in the end-user interest and relaxing or lifting such obligations as soon as that condition is fulfilled.

Member States shall ensure that the national regulatory and other competent authorities act impartially, objectively, transparently and in a non-discriminatory and proportionate manner.

Article 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 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 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 with each other and with the Commission, and the Radio Spectrum Policy Group shall assist and advise the European Parliament and the Council on request, in support of the strategic planning and coordination of radio spectrum policy approaches in the Union. BEREC shall be associated on issues relating to regulation and competition.

4. The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group, may submit legislative proposals to the European Parliament and the Council for
establishing multiannual radio spectrum policy programmes as well as for the release of spectrum for shared and unlicensed uses. 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.

**TITLE II: INSTITUTIONAL SET-UP AND GOVERNANCE**

**CHAPTER I**

**NATIONAL REGULATORY AND OTHER COMPETENT AUTHORITIES**

*Article 5*

National regulatory and other competent authorities

1. Member States shall ensure that each of the tasks laid down in this Directive is undertaken by a competent authority. 

*Under the scope of this Directive* 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;
- 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 *within the remit of their competences under the sectorial regulation, and cooperating with relevant competent authorities wherever applicable*;
- monitoring closely the development of the Internet of Things in order to ensure competition, consumer protection and cybersecurity;
- 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;
ensuring compliance with rules related to open internet access in accordance with Regulation (EU) 2015/2120;

– 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 enter into cooperative arrangements with each other to foster regulatory cooperation where necessary.

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

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

Article 6

Independence of national regulatory and other competent authorities

1. Member States shall guarantee the independence of national regulatory authorities and of other competent authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of providers of electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
2. Member States shall ensure that national regulatory authorities and other competent authorities exercise their powers impartially, transparently and in a timely manner. Member States shall ensure that they have adequate technical, financial and human resources to carry out the tasks assigned to them.

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 and transparent 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.

2. 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 or their replacements may be dismissed during their term only if they no longer fulfil the conditions 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
1. Without prejudice to the provisions of Article 10, national regulatory authorities shall act independently and objectively, **operate in a transparent and accountable manner in accordance with Union law and national law, have sufficient powers** and shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 31 shall have the power to suspend or overturn decisions by the national regulatory authorities.

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.

**Article 9**

*Regulatory capacity of national regulatory authorities*

1. Member States shall ensure that national regulatory authorities have separate annual budgets with autonomy in the implementation of the allocated budget. The budgets shall be made public.

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.

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)\(^1\).

**Article 10**

*Participation of national regulatory authorities in BEREC*

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.

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

2a. Member States shall ensure that national regulatory authorities apply Regulation 2015/2120 and BEREC Guidelines adopted pursuant to Article 5 (3) of the abovementioned Regulation and coordinate within BEREC with other national regulatory authorities when implementing it.

Article 11

Cooperation with national authorities

1. National regulatory authorities, other competent authorities under this Directive, and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive. In respect of the information exchanged, Union data protection rules shall apply, and the receiving authority shall ensure the same level of confidentiality as the originating authority.

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 52 (1) of the Treaty. Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned, shall be in compliance with the Charter of Fundamental Rights of the European Union and shall be notified to the Commission.
2. The provision of electronic communications networks or the provision of electronic communications services may, without prejudice to the specific obligations referred to in Article 13(2) or rights of use referred to in Articles 46 and 88, only be subject to a general authorisation. *The undertaking may not be subject to prior authorisation or any other administrative act.*

2a. Where an undertaking providing electronic communication services in more than one Member State has a main establishment in the Union, it shall be subject to the general authorisation of that Member State and have the right to provide electronic communications services in all Member States.

*For the purposes of this Directive, the main establishment corresponds to the place where the undertaking meets all of the following criteria:*

   a) it performs its substantial activities other than purely administrative such as business development, accounting and personnel departments;
   b) it takes its strategic business decisions as to the provision of electronic communications services in the Union; and
   c) it produces a significant part of its turnover.

2b. The competent authority of the Member State of the main establishment, also acting on the request of the competent authorities of another Member State, shall undertake measures necessary to monitor and supervise compliance with the conditions of the general authorisation and provide information under Article 21. Where necessary, BEREC shall facilitate and coordinate that exchange of information.

*In the case of a demonstrated breach of the relevant rules in a Member State other than the one of the main establishment, the competent authorities of the Member State of the main establishment shall decide on the appropriate measures in accordance with Article 30.*

*In the case of disagreement with the measures taken by the authorities of the Member State of main establishment or related to conflicting views as regards the main place of establishment, BEREC may act as mediator and, if necessary in the case of an unresolved dispute, issue a decision, acting by a two-thirds majority of members of the Board of Regulators.*

3. Where a Member State deems that a notification requirement is justified, that Member State may only require undertakings to submit a notification to BEREC but it may not require them 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. **Member States shall provide the Commission and the other Member States with a reasoned notification within 12 months after ... [transposition date] if they consider a notification requirement to be justified.** The Commission shall examine the notification and, where appropriate, adopt a decision within three months of the date of notification requesting the Member State in question to revoke the notification requirement.

**Member States requiring notification shall allow but shall not require a provider of electronic communications services offered in fewer than [three] Member States and with an aggregate group Union turnover of less than EUR [100] million to submit a notification.**

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. **If a notification does not identify one or more Member States concerned, it shall be deemed to cover all the Member States.** 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].

4. The notification referred to in paragraph 3 shall not entail more than a declaration by a legal or natural person to BEREC of the intention to commence the provision of electronic 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:

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 and, where applicable, any secondary branch in a Member State;\(^1\)
4. the provider's website, where existing, associated with the provision of electronic communications networks and/or services;

\(^1\) BEREC (as amended)
(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.

**Article 13**

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

-1. Unless otherwise provided in this Directive, providers of electronic communications services having a main establishment in a Member State and active in more than one Member State shall be subject only to the conditions attached to the general authorisation applicable in the Member State of their main establishment. The national regulatory authority of that Member State shall be responsible for exercising the enforcement powers related to the general authorisation conditions without prejudice to other obligations not covered by this Directive and to the provider's obligation to comply with the laws of the Member States where it provides electronic communication services.

1. The general authorisation for the provision of electronic communications networks or services and the rights of use for radio spectrum and rights of use for numbers may be subject only to the conditions listed in Annex I. Such conditions shall be non-discriminatory, adapted to the specifics of the network or service, proportionate and transparent and, in the case of rights of use for radio spectrum, shall be in accordance with Articles 45 and 51 in the case of rights of use for numbers, shall be in accordance with Article 88.

2. Specific obligations which may be imposed on providers of electronic communications networks and services under Articles 36, 46(1), 48(2) and 59(1) or on those designated to provide universal service under 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 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.

_Article 14_

_Declarations to facilitate the exercise of rights to install facilities and rights of interconnection_

BEREC shall issue standardised declarations, confirming, where applicable, that the undertaking has submitted a notification under Article 12(3) 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. Those declarations shall be issued as an automatic reply following the notification referred to in Article 12(3).

**SECTION 2 GENERAL AUTHORISATION RIGHTS AND OBLIGATIONS**

_Article 15_

_Minimum list of rights derived from the general authorisation_

1. Undertakings authorised pursuant to Article 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 43 of this Directive
   (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.
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 Union under the conditions of and in accordance with this 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 Article 81 or 82.

Article 16

Administrative charges
1. Any administrative charges imposed on providers of 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 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; 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. Member States may not apply any administrative charges on providers of electronic communications services present in fewer than [three] Member States and with an aggregate Union turnover of less than EUR [100] million over and above a maximum one-off charge not exceeding EUR [10].
2. Where national regulatory authorities or other competent authorities impose administrative charges, they shall publish a yearly overview of their administrative costs and of the total sum of the charges collected. In the light of the difference between the total sum of the charges and the administrative costs, appropriate adjustments shall be made.
Article 17

Accounting separation and financial reports

1. Member States shall require **providers of** 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 **providers of** 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 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 Union and national rules. This requirement shall also apply to the separate accounts required under paragraph 1(a).

SECTION 3 AMENDMENT AND WITHDRAWAL

Article 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 spectrum and for numbers.

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

Any amendment shall be published stating the reasons thereof.

Article 19

Restriction or withdrawal of rights

1. Member States shall not restrict or withdraw rights to install facilities or rights of use for radio 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.

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 the restriction or withdrawal of rights granted after ... [the date set out in Article 115], by the competent national authority, based on detailed procedures laid down in advance, and with clearly defined usage conditions and thresholds at the time of award or renewal 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 without the consent of the right holder shall be subject to a public consultation in accordance with Article 23.

CHAPTER III

PROVISION OF INFORMATION, SURVEYS AND CONSULTATION MECHANISM

Article 20
Information request to undertakings

1. Member States shall ensure that providers of 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. 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.

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. 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.

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

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 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 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 Union law.

3. Where information is considered confidential by a national regulatory or other competent authority in accordance with Union and national rules on business confidentiality, national security, or the protection of personal data, the Commission, BEREC and the 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 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.

Article 21

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

1. Without prejudice to any information requested pursuant to Article 20 and information and reporting obligations under national legislation other than the general authorisation, national regulatory and other competent authorities may require undertakings to provide information under the general authorisation, for rights of use or the specific obligations referred to in Article 13(2) that is proportionate and objectively justified for in particular:
   (a) systematic or case-by-case verification of compliance with condition 1 of Part A, conditions 2 and 6 of Part D and conditions 2 and 7 of Part E of Annex I and of compliance with obligations as referred to in Article 13 (2);
   (b) case-by-case verification of compliance with conditions as set out in Annex I where a complaint has been received or where the competent authority has other
reasons to believe that a condition is not complied with or in case of an investigation by the 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, reports or studies purposes;

(f) market analysis for the purposes of this Directive including data on the downstream or retail markets associated with or related to the markets subjects to market analysis;

(g) safeguarding the efficient use and ensuring the effective management of radio 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 territorial coverage connectivity available to end-users or on the designation of digital exclusion areas;

(ha) conducting geographical studies;

(hb) responding to reasoned requests for information by BEREC.

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.

BEREC shall, by [date], develop standardised formats for information requests.

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.

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

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)]

4a. Without prejudice to information and reporting obligations for rights of use and for specific obligations, where an undertaking provides electronic communication services in

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more than one Member State, and has a main establishment in the Union, only the national regulatory authority of the Member State of the main establishment may request the information referred to in paragraph 1. The national regulatory authorities of other Member States concerned may request information from the first national regulatory authority or from BEREC. BEREC shall facilitate the coordination and exchange of information between the national regulatory authorities concerned through the exchange of information established pursuant to Article 30 of Regulation [xxxx/xxxx/EC (BEREC Regulation).

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 at least 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 survey of the current geographic reach of such networks within their territory, as required for the tasks under this Directive and for surveys for the application of State aid rules.

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.

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 survey.
conducted in accordance with paragraph 1 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 and inform the parties which provided the information. These results shall also be made available to BEREC and the Commission upon their request and under the same conditions.

6. If the relevant information is not available on the market, the national regulatory authorities shall make data from the geographical surveys which is not subject to confidentiality directly accessible online in an open and machine readable format to allow for its reuse. They shall also, where such tools are not available on the market, make available information tools enabling end-users to determine the availability of connectivity in different areas, with a level of detail which is useful to support their choice of operator or service provider, without prejudice to 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.

Article 22a

Geographical forecasts

1. In conducting a geographical survey pursuant to Article 22, national regulatory authorities may include a three-year forecast of the reach of very high capacity networks within their territory.

That forecast may also include information on planned deployments by any undertaking or public authority, in particular to include very high capacity networks and significant upgrades or extensions of legacy broadband networks to at least the performance of next-generation access networks.

The information collected shall be at an appropriate level of local detail and 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. 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.

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 excluded a priori.

Article 23

Consultation and transparency mechanism

Except in cases falling within Articles 32(9), 26, or 27, Member States shall ensure that, where national regulatory authorities or other competent authorities intend to take measures in accordance with this Directive, or where they intend to provide for restrictions in accordance with Article 45(4) and 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, except in the case of confidential information in accordance with Union and national law on business confidentiality.
Article 24

Consultation with interested parties

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, consumers with disabilities), manufacturers and undertakings that provide electronic communications networks and/or services on issues related to all end-user and consumer rights, including equivalent access and choice for end-users with disabilities, 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, accessible for persons with disabilities, 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.

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

3. Without prejudice to national rules in conformity with 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 providers of electronic communications networks and/or services and sectors interested in the promotion of lawful content in electronic communications networks and services. That cooperation may also include coordination of the public interest information to be provided pursuant to Article 96(3) and Article 95(1).

Article 25

Out-of-court dispute resolution

1. Member States shall ensure that consumers, including persons with disabilities have access to transparent, non-discriminatory, simple, fast, fair and inexpensive out-of-court procedures for their unresolved disputes with providers of publicly available electronic communications networks and 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. **Providers of publicly available electronic communications networks and services shall not refuse consumer’s request to resolve a dispute with the consumer through an out-of-court dispute resolution on the basis of clear and efficient procedures and guidelines.** Such procedures shall comply with the quality requirements set out in Chapter II of Directive 2013/11/EU. Member States may grant access to such procedures to other end-users, in particular micro and small enterprises.

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. **Where the national regulatory authority has been listed in accordance with Article 20(2) of Directive 2013/11/EU, the provisions of Regulation (EU) 524/2013 shall apply to disputes as referred to in paragraph 1 of this Article that stem from online contracts.**

3. Without prejudice to the provisions of Directive 2013/11/EU, 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.

**Article 26**

Dispute resolution between undertakings

1. In the event of a dispute arising in connection with existing obligations under this Directive between providers of 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 providers of electronic communications networks or services in a Member State and providers of associated facilities, the national regulatory authority concerned shall, at the request of either party, and without prejudice to paragraph 2, issue a binding decision to resolve the dispute in the shortest possible time frame on the basis of clear and efficient procedures and guidelines and in any case within four months, except in exceptional circumstances. The Member State concerned shall require that all parties cooperate fully with the national regulatory authority.

2. Member States may make provision for national regulatory authorities to decline to resolve a dispute through a binding decision where other mechanisms, including mediation, exist and
would better contribute to resolution of the dispute in a timely manner in accordance with Article 3. The national regulatory authority shall inform the parties without delay. If after four months the dispute is not resolved, and if the dispute has not been brought before the courts by the party seeking redress, the national regulatory authority shall issue, at the request of either party, a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months.

3. In resolving a dispute, the national regulatory authority shall take decisions aimed at achieving the objectives set out in Article 3. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive.

4. The decision of the national regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.

5. The procedure referred to in paragraphs 1, 3 and 4 shall not preclude either party from bringing an action before the courts.

Article 27

Resolution of cross-border disputes

1. In the event of a dispute arising under this Directive between undertakings in different Member States 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 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 3.

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.

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.

4a. In cases of crossborder disputes of which the resolution involves more than one national regulatory authority and where competent national regulatory authorities have not been able to reach an agreement within a period of 3 months, after the case in question was referred to the last of those regulatory authorities, BEREC shall be empowered to adopt binding decisions to ensure a consistent resolution of the dispute.

5. Any obligations imposed on an undertaking by the national regulatory authority as part of the resolution of the dispute shall comply with this Directive, take the utmost account of the opinion adopted by BEREC, and be adopted within one month from such opinion.

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

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 from allowing on its territory the use of radio spectrum, in particular of harmonised radio spectrum, in accordance with Union legislation, especially due to harmful cross-border interference between Member States.

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

2. Member States shall cooperate with each other, and through the Radio Spectrum Policy Group established pursuant to paragraph 4a, 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;

(ba) contribute to the development of the internal market.

2a. Member States shall also cooperate with each other, and through the Radio Spectrum
Policy Group, with respect to aligning their approaches to the assignment and authorisation of use of radio spectrum.

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, including where the problem or dispute involves third countries. Member States shall refer any unresolved dispute between them to the Radio Spectrum Policy Group, in priority to any available dispute settlement process provided under international law.

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).

4a. An advisory group on radio spectrum policy, called the Radio Spectrum Policy Group, consisting of one high level governmental expert from each Member State as well as of a high-level representative from the Commission is hereby established. The group shall assist and advise Member States and the Commission on cross-border coordination of the use of radio spectrum, on aligning their approaches to the assignment and authorisation of use of radio spectrum and on other radio spectrum policy and coordination issues.

The secretariat shall be provided by [the BEREC Office/BEREC].

TITLE III: IMPLEMENTATION

Article 29

Penalties and compensation

1. Member States shall lay down rules on penalties, including fines and periodic penalties, where necessary, in order to prevent infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. Without prejudice to Article 30, those rules shall ensure that the national regulatory
authorities and other competent authorities have the power, if appropriate when imposing an obligation, to impose predetermined financial penalties to be paid to the relevant authority, to end-users, and/or to other undertakings for the infringement of the relevant obligation. The penalties provided for must be appropriate, effective, proportionate and dissuasive.

2. Member States shall ensure that any user who has suffered material or non-material damage as a result of an infringement of this Directive has the right to receive compensation from the infringer for the damage suffered, unless the infringer proves that it is not in any way responsible for the event giving rise to the damage. Any predetermined financial penalties payable to the user pursuant to paragraph 1 shall be deducted from the compensation referred to in this paragraph.

3. A holder of rights of use for radio spectrum shall be compensated with regard to investments made following any amendment, restriction or withdrawal of such rights in infringement of Article 18 or 19.

Article 30

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

1. Member States shall ensure that their national regulatory and other competent authorities monitor and supervise compliance with the conditions of the general authorisation or of rights of use for radio spectrum and for numbers, with the specific obligations referred to in Article 13(2) 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 covered by the general authorisation or enjoying rights of use for radio spectrum 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 13(2) or Article 47(1) and (2), in accordance with Article 21.

2. Where a national 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 13(2), it shall notify the undertaking of those findings and give the undertaking the opportunity to state its views, within a reasonable time limit.
3. The relevant 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 65.

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.

4. Notwithstanding 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 21(1)(a) or (b) and Article 67 within a reasonable period stipulated by the national competent authority.

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 13(2) or Article 47 (1) or (2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, Member States shall ensure that national regulatory and other competent authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use.

Member States shall empower the relevant authority to impose 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.

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 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.

7. Undertakings shall have the right to appeal against measures taken under this Article in accordance with the procedure referred to in Article 31 of this Directive.

**Article 31**

**Right of appeal**

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 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 authority shall stand, unless interim measures are granted in accordance with national law.

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.

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

Article 32

Consolidating the internal market for electronic communications

1. In carrying out their tasks under this Directive, national regulatory authorities shall take the utmost account of the objectives set out in Article 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. To this end, they shall, in particular, work with the Commission and BEREC to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

3. Except where otherwise provided in recommendations or guidelines adopted pursuant to Article 34 upon completion of the consultation referred to in Article 23, where a national regulatory authority intends to take a measure which:
   (a) falls within the scope of Articles 59, 62, 65 or 66 of this Directive; and
   (b) would affect trade between Member States;

it shall publish the draft measure and make it accessible to the Commission, BEREC, and the national regulatory authorities in other Member States, at the same time, together with the reasoning and detailed analysis on which the measure is based, in accordance with Article 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 62(1); or
   (b) deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 65(3) or (4);

and would affect trade between Member States, and the Commission has notified 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 Union law and in particular the objectives referred to in Article 3, the draft measure shall not be adopted for a further two months. This period may not be extended. The Commission shall inform BEREC and national regulatory authorities of its reservations in such a case and simultaneously make them public.

4a. Within six weeks from the beginning of the two month period referred to in paragraph 4, BEREC shall issue an opinion on the Commission’s notification referred to in paragraph 4, indicating whether it considers that the draft measure should be amended or withdrawn and shall, where appropriate, provide specific proposals to that end. The opinion shall be reasoned and made public.

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 23, and shall re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

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

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

9a. A national regulatory authority may withdraw a draft measure at any time.

Article 33

Procedure for the consistent application of remedies

1. Where an intended measure covered by Article 32(3) aims at imposing, amending or withdrawing an obligation on an operator in application of Article 65 in conjunction with Article 59 and Articles 67 to 74, the Commission may, within the period of one month provided for by Article 32(3), 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 Union law. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.

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

2. Within the three month period referred to in paragraph 1, the Commission, BEREC and the national regulatory authority concerned shall cooperate closely to identify the most appropriate and effective measure in the light of the objectives laid down in Article 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 two-thirds majority of members of the Board of Regulators, 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. 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, where relevant, specific proposals for amending the draft measure and providing reasons justifying its recommendation, in particular where BEREC does not share the serious doubts of the Commission;
   (b) take a decision to lift its reservations indicated in accordance with paragraph 1.
   (c) take a decision requiring the national regulatory authority concerned to withdraw the draft measure, where BEREC shares the serious doubts of the Commission. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted, together with specific proposals for amending the draft measure. In this case, the procedure referred to in Article 32 (6) shall apply mutatis mutandis.

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 withdraw the draft measure or adopt, publish and 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 23.

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

8. The national regulatory authority may withdraw the proposed draft measure at any stage of the procedure.
Article 34

Implementing provisions

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 32 that define the form, content and level of detail to be given in the notifications required in accordance with Article 32(3), the circumstances in which notifications would not be required, and the calculation of the time-limits.

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 need to cooperate with national regulatory authorities of other Member States, the Commission and BEREC in order to ensure consistency across the Union, 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. **In order to facilitate cross-border coordination, and efficient use of radio spectrum,** 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 **public and accessible,** together with the reasoning on which the measure is based, **and inform** BEREC, the Radio Spectrum Policy Group, the Commission and national regulatory authorities in other Member States **thereof** at the same time.

3. Within **three months of the draft measure being made public** 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, **including the cross-border provision of services,** as well as competition and maximise the benefits for the consumer, and overall achieve the objectives 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.

**BEREC shall adopt and make public the criteria it will apply in evaluating any draft measure.**

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;
\((ca)\) *the principles of service and technological neutrality*;
(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 *in particular regarding the effective and efficient use of radio spectrum*.

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 *and the Radio Spectrum Policy Group*.

7. BEREC, the *Radio Spectrum Policy Group, 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 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. *In the case of a risk of significant cross-border harmful interference, two* or several Member States *shall, and in other cases they may*, cooperate with each other and with the Commission, the Radio Spectrum Policy Group 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.

*Any market participant may request the conduct of a joint selection process upon providing sufficient evidence that a lack of coordination creates a significant barrier to the internal market.*

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

Article 38

Harmonisation procedures

1. Without prejudice to Article s 37, 45, 46(3), 47(3), 53, 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 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 in order to further the achievement of the objectives set out in Article 3.

2. Member States shall ensure that national regulatory and other competent authorities take the utmost account of recommendations pursuant to paragraph 1 in carrying out their tasks. Where a national regulatory authority or other competent authority chooses not to follow a recommendation, it shall inform the Commission, giving the reasons for its position.

3. The decisions adopted pursuant to paragraph 1 may include only the identification of a harmonised or coordinated approach for the purposes of addressing the following matters:

(a) the inconsistent implementation of general regulatory approaches by national regulatory authorities on the regulation of electronic communications markets in the application of Articles 62 and 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 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, shall be adopted in accordance with the examination procedure referred to in Article 110(4).

5. BEREC may on its own initiative, including following a complaint lodged by an undertaking providing electronic communications networks or services, advise the Commission on whether a measure should be adopted pursuant to paragraph 1.

5a. Without prejudice to the Commission's powers under paragraphs 1, 2 and 3 and the Treaty on the Functioning of the European Union, where BEREC adopts an opinion indicating the existence of divergences in the implementation by the national regulatory authorities or by other competent authorities of the regulatory tasks specified in this Directive, and such divergences could create a barrier to the internal market, the Commission shall either adopt a recommendation pursuant to paragraph 1 or, where it has adopted a recommendation on the same matter more than two years earlier, adopt a decision in accordance with paragraph 3, without requesting a further opinion from BEREC.

If the Commission has not, pursuant to the first subparagraph, either adopted a recommendation or a decision within one year from the date of adoption of the opinion by BEREC, it shall inform the European Parliament and the Council of its reasons for not doing so, and make those reasons public.

Where the Commission has adopted a recommendation but the inconsistent implementation creating barriers to the internal market persists for two years thereafter, the Commission shall either, within a further year, adopt a decision in accordance with paragraph 3 or, where the Commission chooses not to adopt a decision, shall inform the European Parliament and the Council of its reasons for not doing so, and make those reasons public.
Article 39

Standardisation

1. The Commission shall draw up and publish in the Official Journal of the European Union a list of 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, following consultation of the Committee established by Directive 2015/1535/EU, 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 and interconnectivity of services, end-to-end connectivity, facilitation of switching in order 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. 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).

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.

Any standards referred to in paragraph 1 or this paragraph shall facilitate access as may be required under this Directive where feasible.

3. If the standards and/or specifications referred to in paragraph 1 have not been adequately implemented so that interoperability of services in one or more Member States cannot be ensured, the implementation of such standards and/or specifications may be made compulsory under the procedure laid down in paragraph 4, to the extent strictly necessary to ensure such interoperability and to improve freedom of choice for users.
4. Where the Commission intends to make the implementation of certain standards and/or specifications compulsory, it shall publish a notice in the *Official Journal of the European Union* and invite public comment by all parties concerned. The Commission shall take appropriate implementing measures and make implementation of the relevant standards compulsory by making reference to them as compulsory standards in the list of standards and/or specifications published in the *Official Journal of the European Union*.

5. Where the Commission considers that standards and/or specifications referred to in paragraph 1 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall remove them from the list of standards and/or specifications referred to in paragraph 1.

6. Where the Commission considers that standards and/or specifications referred to in paragraph 4 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall 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.

7. The implementing measures referred to in paragraphs 4 and 6, shall be adopted in accordance with the examination procedure referred to in Article 110(4).

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

**TITLE V: SECURITY AND INTEGRITY**

*Article 40*

**Security of networks and services**

1. Member States shall ensure that *providers of* public communications networks or publicly available electronic communications services take appropriate *and proportionate* technical and organisational measures to appropriately manage the risks posed to security of networks and services. Having regard to the state of the art, these measures shall ensure a level of security appropriate to the risk presented. In particular, measures shall be taken to ensure
that, when necessary for confidentiality, electronic communications content is encrypted from end-to-end by default, in order to prevent and minimise the impact of security incidents on users, other networks or services.

1a. Member States shall not impose any obligation on providers of public communications networks or publicly available electronic communications services that would result in a weakening of the security of their networks or services.

Where Member States impose additional security requirements on providers of public communications networks or publicly available electronic communications services in more than one Member State, they shall notify those measures to the Commission and the European Network and Information Security Agency (ENISA). ENISA shall assist Member States in coordinating the measures taken to avoid duplication or diverging requirements that may create security risks and barriers to the internal market.

2. Member States shall ensure that providers of 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 providers of public communications networks or publicly available electronic communications services notify without undue delay the competent authority of a security incident or loss of integrity that has had a significant impact on the operation of networks or services.

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

(a) the number of users affected by the incident;

(b) the duration of the incident;

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

(d) the extent to which the functioning of the network or service is affected;

(e) the impact on economic and societal activities.

Where appropriate, the competent authority concerned shall inform the competent authorities in other Member States and ENISA. The competent authority concerned may inform the public or require the providers to do so, where it determines that disclosure of the incident is in the public interest.
Once a year, the 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.

Member States shall ensure that, in the case of a particular risk of a security incident in public communications networks or publicly available electronic communications services, providers of such networks or services inform their users of such a risk and of any possible protective measures or remedies which can be taken by the users.

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

5. The Commission, 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. The first such delegated acts shall be adopted by [insert date].

5a. In order to contribute to the consistent application of measures for the security of networks and services, ENISA shall, by...[date], after consulting stakeholders and in close cooperation with the Commission and BEREC, issue guidelines on minimum criteria and common approaches for the security of networks and services and the promotion of the use of end-to-end encryption.

Article 41

Implementation and enforcement

1. Member States shall ensure that in order to implement Article 40, the competent authorities have the power to issue binding instructions, including those regarding the measures required to prevent or remedy an incident and time-limits for implementation, to providers of public communications networks or publicly available electronic communications services.
2. Member States shall ensure that competent authorities have the power to require providers of public communications networks or publicly available electronic communications services to:

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

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

3. Member States shall ensure that the competent authorities have all the powers necessary to investigate cases of non-compliance and the effects thereof on the security of the networks and services.

4. Member States shall ensure that, in order to implement Article 40, the competent authorities have the power to obtain the assistance of 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.

PART II. NETWORKS

TITLE I: MARKET ENTRY AND DEPLOYMENT

Article 42

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

Member States may allow the competent authority to impose fees for the rights of use for radio spectrum 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 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), as well as:
(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;

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

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

2. Member States shall ensure that reserve prices established as minimum fees for rights of use for radio spectrum take into account the value of the rights in their possible alternative use and 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.

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 providers of electronic communications networks and services and to incentivise optimal use of the allocated resources.

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

CHAPTER I

ACCESS TO LAND

Article 43

Rights of way

1. Member States shall ensure that when a competent authority considers:
– an application for the granting of rights to install facilities on, over or under public or private property to an undertaking authorised to provide public communications networks, or
– an application for the granting of rights to install facilities on, over or under public property to an undertaking authorised to provide electronic communications networks other than to the public,

the competent authority:
– acts on the basis of simple, efficient, transparent and publicly available procedures, applied without discrimination and without delay, and in any event makes its decision within six months of the application, except in cases of expropriation, and
– follows the principles of transparency and non-discrimination in attaching conditions to any such rights.

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

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

2a. Member States shall designate or establish an effective mechanism 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. That body shall take its decision within a reasonable time.

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.

2. Measures taken by a 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 national regulatory authorities.

CHAPTER II

ACCESS TO RADIO SPECTRUM

SECTION 1 AUTHORISATIONS

Article 45

Management of radio spectrum

1. Taking due account of the fact that radio spectrum is a public good that has an important social, cultural and economic value, Member States shall ensure the effective management of radio spectrum for electronic communications services and networks in their territory in accordance with Articles 3 and 4. They shall ensure that radio spectrum allocation used for electronic communications services and networks and issuing general authorisations or individual rights of use for such radio spectrum by competent authorities are based on objective, transparent, pro-competitive, 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 spectrum across the Union, consistent with the need to ensure effective and efficient use thereof and in pursuit of competition and other 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 4 and with Decision 676/2002/EC by inter alia:

(a) ensuring coverage of their national territory and population at high quality and speed, both indoors and outdoors, as well as coverage of major national and European transport paths, including the trans-European transport network as defined in Regulation 1315/2013;

(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;

(ca) ensuring predictability and consistency in the granting, renewal, amendment, restriction and withdrawal of rights in order to promote long-term investments;

(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 shall, 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 shall 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 when made available for use pursuant and subject to a 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, including a forward-looking assessment of market demand;

   (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 in the absence of market demand for the band at the time it is first made available for use. Any decision to allow alternative use on an exceptional basis shall be subject to a review every three years, or promptly 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.
4. 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 spectrum, declared available for electronic communications services in their National Frequency Allocation Plan in accordance with 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 only 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/EC1;
(c) ensure technical quality of service;
(d) ensure maximisation of shared use of radio spectrum, in accordance with Union law;
(e) safeguard efficient use of radio spectrum; or
(f) ensure the fulfilment of a general interest objective in accordance with paragraph 5.

5. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of electronic communications services may be provided in the radio spectrum, declared available for electronic communications services in their National Frequency Allocation Plan in accordance with 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.

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

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(da) the promotion of very high quality connectivity along major transport paths.

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 the Union or by Member States in accordance with Union law.

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

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

Article 46

Authorisation of the use of radio spectrum

1. Member States shall decide on the most appropriate regime for authorising the use of radio spectrum in order to facilitate the use of radio spectrum, including shared use, under general authorisations and limit the granting of individual rights of use for radio spectrum to situations where necessary in order to:

(a) avoid or protect against harmful interference;

(b) ensure technical quality of communications or service;

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

(ea) safeguard efficient use of spectrum.

When appropriate, Member States shall consider the possibility to authorise the use of radio spectrum based on a combination of general authorisation and individual rights of use, taking into account the likely effects on competition, innovation and market entry of different combinations and of gradual transfers from one category to the other.
Member States shall minimise restrictions to the use of radio spectrum by taking full account of technological solutions for managing harmful interference so as to impose the least onerous authorisation regime possible.

2. Member States shall ensure that the rules and conditions for the shared use of radio spectrum, where shared use is applied, are clearly set out and concretely specified in the acts of authorisation. Such rules and conditions shall facilitate efficient use, competition and innovation and include fair and non-discriminatory wholesale access conditions.

3. The Commission shall, 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). These measures shall be adopted by [insert date].

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 optimal, 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. In the case of individual rights any such conditions must be clearly defined before the award, assignment or renewal. The conditions may be amended by the competent authority in the mid-term review if necessary for achieving general interest objectives in accordance with Article 3.

Conditions attached to renewals of right of use for radio spectrum may not provide undue advantages to existing holders of those rights.

Any such conditions shall specify any applicable parameters, including the period for putting the rights into use, the non-fulfilment of which would entitle the competent authority to withdraw the right of use or impose other measures, such as shared use.

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 shall 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. These measures shall be adopted by [insert date].
SECTION 2 RIGHTS OF USE

Article 48

Granting of individual rights of use for radio spectrum

1. Where it is necessary to grant individual rights of use for radio 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 12, subject to the provisions of Articles 13, 54 and 21(1)(c) and any other rules ensuring the efficient use of those resources in accordance with this Directive.

2. Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use for radio spectrum to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Union law, the rights of use for radio 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 45.

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

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.

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 spectrum, such provision shall be in accordance with Articles 45 and 51 of this Directive.
6. Decisions on the granting of rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within six weeks in the case of radio spectrum declared available for electronic communications services in their national frequency allocation plan. This time limit shall be without prejudice to any applicable international agreements relating to the use of radio spectrum or of orbital positions.

Article 49

Duration of rights

1. Where Member States authorise the use of radio spectrum through individual rights of use for a limited period of time, they shall ensure that the authorisation is granted for a period that is appropriate in view of the objective pursued taking due account of the need to ensure competition as well as effective and efficient use and promote efficient investments, including by allowing for an appropriate period for investment amortisation, and innovation.

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, subject to Article 47, be valid for a duration of at least 25 years, subject to a mid-term review no later than after 10 years of granting the rights of use, except in the case of temporary rights, temporary extension of rights pursuant to paragraph 3 and rights for secondary use in harmonised bands. Rights of use may be withdrawn or adjusted by the Member States after the mid-term assessment if such rights prevent:

(a) ensuring the efficient and effective use of radio spectrum in particular in light of technological and market evolutions,

(b) pursuing a general interest objective, such as the achievement of the Union connectivity targets, or

(c) organising and using radio spectrum for public order, public security purposes or defence.

The rights of use shall be revoked only after a transitional period.

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. Without prejudice to renewal clauses applicable to existing rights, competent authorities shall **consider** the renewal of individual rights of use for harmonised radio spectrum, at their own initiative or upon request by the right holder.

2. ▌

3. When considering possible renewal of individual rights of use for **harmonised** radio spectrum, competent authorities:

   (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) **have regard to the following considerations:**

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

   ii. implementation of a measure adopted pursuant to Article 4 of Decision No 676/2002/EC;

   iii. review of the appropriate implementation of the conditions attached to the right concerned;

   iv. the need to promote, or avoid any distortion of, competition pursuant to Article 52;

   v. rendering the use of radio spectrum more efficient in light of technological or market evolution;

   vi. the need to avoid severe service disruption;

   vii. existence of market demand from undertakings other than those holding rights of use for spectrum in the band concerned;

   viii. the need to limit the number of rights in line with article 46.

▌

At least 3 years before expiry of the rights involved, the competent authority shall decide whether to renew the existing rights based on the outcome of the public consultation and the review of the considerations under sub-paragraph 3(b) and shall provide reasons for its decision accordingly.

Where the competent authority decides that the spectrum rights are not to be renewed, and that the number of rights has to be limited, the competent authority shall grant the rights pursuant to Article 54.
Article 51

Transfer or lease of individual rights of use for radio spectrum

1. Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights of use for radio spectrum.

2. Member States shall ensure that an undertaking's intention to transfer rights of use for radio spectrum, as well as the effective transfer thereof is notified in accordance with national procedures to the national regulatory authority and to the competent authority responsible for granting individual rights of use if different and is made public by entry on the register kept pursuant to paragraph 3. Where the use of radio spectrum has been harmonised through the application of the Decision No 676/2002/EC (Radio Spectrum Decision) or other Union measures, any such transfer shall comply with such harmonised use.

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 transfers and leases to the least onerous procedure possible;

   (b) Not refuse the lease of rights of use for radio spectrum where the lessor undertakes to remain liable for meeting the original conditions attached to the rights of use;

   (c) Not refuse the transfer of rights of use for radio spectrum unless there is a clear risk that the new holder is unable to meet the original conditions for the right of use;

   (ca) Not refuse a transfer or lease to an existing holder of rights of use for radio spectrum.

Any administrative charge imposed on undertakings in connection with processing an application for the transfer or lease of rights of use for radio spectrum shall, in total, cover only the administrative costs, including any necessary ancillary steps, incurred in processing the application, and comply with Article 16.
Points (a) to (ca) 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 current as long as the rights exist.

4. The Commission shall adopt appropriate implementing measures to identify the bands for which rights 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 shall be adopted in accordance with the examination procedure referred to in Article 110(4). These measures shall be adopted by [insert date].

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 shall, taking into utmost account the guidelines for market analysis and the assessment of significant market power published by the Commission pursuant to Article 62(2), conduct an objective and forward-looking assessment of the market competitive conditions, and shall take one of the measures set out in points (a) to (e) only where such a measure is necessary to maintain or achieve effective competition:

(a) limiting the amount of radio spectrum for which rights of use are granted to any undertaking, or, in exceptional circumstances, 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.

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 *ensure efficient and coordinated* use of harmonised radio spectrum in the Union and taking due account of the different national market situations, the Commission *shall*, 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. These measures shall be adopted by [insert date].

Article 54

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

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 whether to limit the number of rights of use to be granted for radio spectrum, it shall inter alia:

   (a) clearly state the reasons for limiting the rights of use, in particular by giving due weight to the need to maximise benefits for users and to facilitate the development of competition, and review the limitation as appropriate or at the reasonable request of affected undertakings;

   (b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation through a public consultation in accordance with Article 23. 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;

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.

3. Member States shall publish any decision on the selection procedure chosen and the related elements, 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.

4. After having determined the procedure, the Member State shall invite applications for rights of use.

5. Where a Member State concludes that further rights of use for radio spectrum 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 such rights.

6. Where the granting of rights of use for radio spectrum 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 and requirements of Articles 3, 4, 28 and 45.

7. The Commission shall 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. These measures shall be adopted by [insert date].

8. 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) 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 and satellite coordination.

9. This Article is without prejudice to the transfer of rights of use for radio spectrum in accordance with Article 51 of this Directive.
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,¹ 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;

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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).

Article 56

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/EU¹ and take account of the thresholds defined in Council Recommendation No 1999/519/EC.² 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.³ Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 110(4).

2a. Member States shall, applying where relevant the procedures adopted in conformity with Directive 2014/61, ensure that operators have the right to access any physical infrastructure controlled by public national, regional or local authorities, which is technically suitable to host small-area wireless access points or which is necessary to connect such access points to a backbone network, including street furniture, such as light poles, street signs, traffic lights, billboards, bus and tramway stops and metro stations. Public authorities shall meet all reasonable requests for access on fair, reasonable and non-discriminatory terms and conditions, which shall be made transparent at a central access point. Any financial charge shall only reflect costs incurred by the public authority from the provision of such access.

Article 56a

Technical regulations on electromagnetic fields

The procedures laid down in Directive 2015/1535 (EU) shall apply with respect to any draft Member State measure that would impose more stringent requirements with respect to electromagnetic fields than those provided for in Council Recommendation No 1999/519/EC.

TITLE II: ACCESS

CHAPTER I

GENERAL PROVISIONS, ACCESS PRINCIPLES

Article 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 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, 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 Annex I of this Directive.

Article 58

Rights and obligations for undertakings

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 15 of this 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 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.

2. Without prejudice to Article 21 of this 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.

2a. Member States may provide for negotiations to be conducted through neutral intermediaries when conditions of competition so require.

CHAPTER II

ACCESS AND INTERCONNECTION

Article 59

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

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

In particular, without prejudice to measures that may be taken regarding undertakings with significant market power in accordance with Article 66, national regulatory authorities shall be able to impose, while not undermining security standards:

(a) to the extent that is necessary to ensure end-to-end connectivity, obligations on those undertakings that are subject to general authorisation, except number-
independent interpersonal communications services, and that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case;
(b) in justified cases and to the extent that is necessary, obligations on those undertakings that are subject to general authorisation, except number-independent interpersonal communications services, and that control access to end-users to make their services interoperable;
(c) in justified cases, where the reach, coverage, quality of service and user uptake corresponds to that of number-based services and as strictly necessary in order to ensure end-to-end connectivity between end-users, obligations on relevant categories of providers of number-independent interpersonal communications services to make their services interoperable;
(d) to the extent that is necessary to ensure accessibility for end-users to digital radio and television broadcasting services and related complementary services specified by the Member State, obligations on operators to provide access to the other facilities referred to in Annex II, Part II on fair, reasonable and non-discriminatory terms.

The obligations referred to in point (c) of the second subparagraph may only be imposed:
(i) to the extent necessary to ensure interoperability of interpersonal communications services and may include proportionate obligations on the provider of the interpersonal communications service to publish and allow the use, modification and redistribution of any relevant information or an obligation to use or implement standards or specifications listed in Article 39(1) or of any other relevant European or international standards; and
(ii) where the Commission, after consulting BEREC and taking the utmost account of its opinion, has found an appreciable threat to end-to-end connectivity between end-users 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). Member States shall not impose obligations with respect to the nature and scope of any obligations going beyond those implementing measures.

2. Without prejudice to Article 59(1), national regulatory authorities shall impose obligations to meet reasonable requests for 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 and access to such elements is necessary to foster sustainable competition. The access conditions imposed shall be objective, transparent, non-discriminatory, proportionate, consistent with Directive 2014/61 and may include specific rules on access, transparency and non-discrimination and for apportioning the costs of access, taking 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 either:

(a) a viable alternative means of access to end users, suitable for the provision of very high capacity networks, is provided by the network operator, provided that such access is offered on fair and reasonable terms and conditions; or

(b) in the case of recently deployed network elements, in particular by smaller local projects where 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 infrastructure or obligations to conclude localised roaming access agreements for the provision of very high capacity networks, in both cases if directly necessary for the local provision of services which rely on the use of spectrum, in compliance with Union law and provided that no viable and similar alternative means of access to end-users is made available to any undertaking on fair and reasonable terms and conditions. National regulatory authorities may impose such obligations provided that this possibility has been clearly provided for when granting the rights of use for radio spectrum and only where justified on the grounds that, in the area subject to such obligations, the market-driven deployment of infrastructure for the provision of services or networks which rely on the use of radio spectrum is subject to insurmountable economic or physical obstacles and therefore access to networks or services by end-users is severely
deficient or absent. In those circumstances where access and sharing of passive infrastructure alone does not suffice to address the situation, national regulatory authorities may impose obligations on sharing of active infrastructure. National regulatory authorities shall have regard to:

(a) the need to maximise connectivity throughout the Union, *along major transport paths* and in particular territorial areas, *and to the possibility to significantly increase choice and higher quality of service for end-users*;

(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;

(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.

4. Obligations and conditions imposed in accordance with paragraph 1, 2 and 3 shall be objective, transparent, proportionate and non-discriminatory, they shall be implemented in accordance with the procedures referred to in Articles 23, 32 and 33. 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.

5. 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, in accordance with the provisions of this Directive and the procedures referred to in Articles 23 and 32, 26 and 27.

6. By [entry into force plus 18 months] in order to contribute to a consistent definition of the location of network termination points by national regulatory authorities, BEREC shall, after
consulting stakeholders and in close cooperation with the Commission, adopt guidelines on common approaches to the identification of the network termination point in different network topologies. National regulatory authorities shall take utmost account of those guidelines when defining the location of network termination points.

Article 60

Conditional access systems and other facilities

1. Member States shall ensure that the conditions laid down in Annex II, Part I, apply in relation to conditional access to digital television and radio services broadcast to viewers and listeners in the Union, irrespective of the means of transmission.

2. In the light of market and technological developments, the Commission shall be empowered to adopt delegated acts in accordance with Article 109 to amend Annex II.

3. Notwithstanding the provisions of paragraph 1, Member States may permit their national regulatory authority, as soon as possible after the entry into force of this Directive and periodically thereafter, to review the conditions applied in accordance with this Article, by undertaking a market analysis in accordance with the first paragraph of Article 65 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 23 and 32, 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 would not be adversely affected by such amendment or withdrawal, and

(b) the prospects for effective competition in the markets for:

(i) retail digital television and radio broadcasting services, and

(ii) conditional access systems and other associated facilities,

would not be adversely affected by such amendment or withdrawal.

An appropriate period of notice shall be given to parties affected by such amendment or withdrawal of conditions.
4. Conditions applied in accordance with this Article are without prejudice to the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides and similar listing and navigation facilities.

CHAPTER III

MARKET ANALYSIS AND SIGNIFICANT MARKET POWER

Article 61

Undertakings with significant market power

1. Where this Directive requires national regulatory authorities to determine whether operators have significant market power in accordance with the procedure referred to in Article 65, paragraph 2 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 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 62.

Two or more undertakings may be found in a joint dominant position, even in the absence of structural or other links between them, when the market structure enables them to behave to an appreciable extent independently of competitors, customers and ultimately consumers. This is likely to be the case where the market exhibits a number of characteristics such as:

(a) a high degree of concentration,

(b) a high degree of market transparency providing incentives for parallel or aligned anti-competitive behaviour,

(c) the existence of high barriers to entry,
(d) the foreseeable reaction of competitors and consumers would not jeopardise parallel or aligned anti-competitive behaviour.

National regulatory authorities shall evaluate such market characteristics in light of relevant principles of competition law while taking into account the specific context of ex ante regulation and the objectives set out in Article 3.

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 aiming to prevent such leverage may be applied in the second market pursuant to this Directive.

Article 62

Procedure for the identification and definition of markets

1. After public consultation including with national regulatory authorities and taking the utmost account of the opinion of BEREC, the Commission shall 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 this Directive, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.

The Commission shall include product and service markets in the Recommendation where, after observing overall trends in the Union, it finds that each of the criteria listed in paragraph 1 of Article 65 is met.

The Recommendation shall be reviewed at the latest by [transposition date]. The Commission shall thereafter regularly review the Recommendation.

2. After consultation with BEREC, 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 relevant principles of competition law.
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 **including by taking into account the degree of infrastructure competition in those areas**, in accordance with the principles of competition law. They shall follow the procedures referred to in Articles 23 and 32 before defining the markets that differ from those identified in the Recommendation.

**Article 63**

**Procedure for the identification of transnational markets**

1. After consulting stakeholders and in close cooperation with the Commission, BEREC may adopt, *acting by a two-thirds majority of members of the Board of Regulators*, 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.

2. In the case of transnational markets identified 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 Article 65(4). The national regulatory authorities concerned shall jointly notify to the Commission with their draft measures regarding the market analysis and any regulatory obligations pursuant to Articles 32 and 33.

Two or more national regulatory authorities may also jointly notify their draft measures regarding the market analysis and any regulatory obligations in the absence of transnational markets, where they consider that market conditions in their respective jurisdictions are sufficiently homogeneous.

**Article 64**

**Procedure for the identification of transnational demand**

1. BEREC shall conduct an analysis of transnational demand for products and services, if it receives a reasoned request providing supporting evidence from the Commission or from at
least two of the national regulatory authorities, or upon a reasoned request from market participants, indicating that existing wholesale or retail products and services do not allow to meet a transnational demand, and considers there is a serious demand problem to be addressed.

On the basis of that analysis, the national regulatory authorities shall consider in subsequent market analyses conducted in accordance with Article 63(2) or Article 65, whether to amend regulated wholesale access products in order to enable the transnational demand to be met.

2. BEREC may, after consulting stakeholders and in close cooperation with the Commission issue guidelines for the national regulatory authorities on common approaches to meeting the transnational demand identified, providing the basis for convergence of wholesale access products across the Union. National regulatory authorities shall take those guidelines into utmost account when performing their regulatory tasks within their jurisdiction, without prejudice to their decision on the appropriateness of wholesale access products that should be imposed in specific local circumstances.

Article 65

Market analysis procedure

1. National regulatory authorities shall 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 an analysis is carried out, where appropriate, in collaboration with the national competition authorities. National regulatory authorities shall take utmost account of the SMP guidelines and shall follow the procedures referred to in Articles 23 and 32 when conducting such analysis.

A market may be such as to justify the imposition of regulatory obligations set out in this Directive if the following three criteria are cumulatively met:

(a) high and non-transitory structural, legal or regulatory barriers to entry are present;
(b) there is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry;
(c) competition law alone is insufficient to adequately address the identified market failure(s).
Where a national regulatory authority conducts an analysis of a market that is included in the Recommendation, it shall consider that points (a), (b) and (c) of the second subparagraph have been met, unless the national regulatory authority determines that one or more of such criteria is not met in the specific national circumstances.

2. Where a national regulatory authority 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;
(b) all relevant competitive constraints, on wholesale and retail level, irrespective of whether the sources of such constraints are deemed to be electronic communications networks, electronic communications services, or other types of services or applications which are comparable from the perspective of the end-user, and irrespective of whether such constraints are part of the relevant market;
(c) other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period, including, without limitation, obligations imposed in accordance with Articles 44, 58 and 59; and
(d) regulation imposed on other relevant markets on the basis of this Article.

3. Where a national regulatory authority concludes that a relevant market may not be such as to justify the imposition of regulatory obligations in accordance with the procedure in paragraphs 1 and 2 of this Article, or where the conditions in paragraph 4 of this Article are not met, it shall not impose or maintain any specific regulatory obligations in accordance with Article 66. In cases where there already are sector specific regulatory obligations imposed in accordance with Article 66, it shall withdraw such obligations placed on undertakings in that relevant market.

National regulatory authorities shall ensure that parties affected by such a withdrawal of obligations receive an appropriate period of notice, defined by balancing the need to ensure a sustainable transition for the beneficiaries of these obligations and end-users, end-user choice, and that regulation does not continue beyond what is necessary. When setting such period of notice, national regulatory authorities may determine specific conditions and notice periods in relation to existing access agreements.

4. Where a national regulatory authority determines that, in a relevant market 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 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist if it considers that one or more markets would not be effectively competitive in the absence of those obligations.

5. Measures taken in accordance with the provisions of paragraphs 3 and 4 shall be subject to the procedures referred to in Articles 23 and 32. National regulatory authorities shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with Article 32:

(a) within 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. Exceptionally, that five-year period may be extended for up to one additional year, 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. In the case of markets characterised by rapid change in technology and demand patterns the market analysis shall be carried out every three years, subject to the same possibility of a one-year 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 three years from their accession, for Member States which have newly joined the Union.

6. Where a national regulatory authority considers that it may not complete or has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in paragraph 6, 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 32.
CHAPTER IV

ACCESS REMEDIES AND SIGNIFICANT MARKET POWER

Article 66

Imposition, amendment or withdrawal of obligations

1. Member States shall ensure that national regulatory authorities are empowered to impose the obligations identified in Articles 67 to 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 65 of this Directive, national regulatory authorities shall impose any of the obligations set out in Articles 67 to 75 and 77 of this Directive as appropriate. In accordance with the principle of proportionality, a national regulatory authority shall not impose obligations involving a higher degree of intervention if less burdensome obligations are sufficient to address problems identified in the market analysis.

3. Without prejudice to:
   – the provisions of Articles 59 and 60,
   – the provisions of Articles 44 and 17 of this Directive, Condition 7 in Part D of Annex I as applied by virtue of Article 13(1) of this Directive, Articles 91 and 99 of this Directive and the relevant provisions of Directive 2002/58/EC\(^1\) 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 67 to 75 and 77 on operators that have not been designated in accordance with paragraph 2.

In exceptional circumstances, when a national regulatory authority intends to impose on operators with significant market power obligations for access or interconnection other than those set out in Articles 67 to 75 and 77, it shall submit this request to the Commission. The Commission shall take utmost account of the opinion of BEREC. The Commission, acting in

accordance with the procedure referred to in Article 110(3), shall take a decision authorising or preventing the national regulatory authority from taking such measures.

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified in the relevant markets to safeguard long term sustainable competition and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

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 32.

6. National regulatory authorities shall consider the impact of new market developments which are reasonably likely to affect competitive dynamics.

If the developments are not sufficiently important in order to require a new market analysis in accordance with Article 65, the national regulatory authority shall assess without delay whether it is necessary to review the obligations and amend any previous decision, including by withdrawing obligations or imposing new obligations on operators designated with significant market power in order to ensure that such obligations continue to meet the requirements of this Directive, and, following a consultation in accordance with Articles 23 and 32, whether to impose no, fewer or less onerous obligations.

Article 67

Obligation of transparency

1. National regulatory authorities may, in accordance with the provisions of Article 66, impose obligations for transparency in relation to interconnection and/or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, 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 Union law, and prices.

2. In particular where an operator has obligations of non-discrimination, national regulatory authorities may require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not
necessary for the service requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices. The national regulatory authority shall, *inter alia*, be able to impose changes to reference offers to give effect to obligations imposed under this Directive.

3. National regulatory authorities may specify the precise information to be made available, the level of detail required and the manner of publication.

3a. *Where an operator has obligations of access to civil engineering and/or obligations of access to, and use of, specific network facilities, national regulatory authorities shall specify key performance indicators as well as corresponding service level agreements and associated financial penalties, to be made available on the access provided, to the operator’s own downstream activities and to beneficiaries of the access obligations.*

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 70 or 71 concerning wholesale network infrastructure access, national regulatory authorities shall ensure the publication of a reference offer taking utmost account of the BEREC guidelines on the minimum criteria for a reference offer.

*Article 68*

Obligation of non-discrimination

1. A national regulatory authority may, in accordance with the provisions of Article 66, 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 *providers of* 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. 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 69

Obligation of accounting separation

1. A national regulatory authority may, in accordance with the provisions of Article 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 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, 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 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 and would not be in the end-user's interest.
2. National regulatory authorities may impose obligations on an operator to provide access in accordance with this Article, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that the obligation is necessary and proportionate to meet the objectives of Article 3.

Article 71
Obligations of access to, and use of, specific network facilities
1. A national regulatory authority may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, and would not be in the end-user's interest. Before imposing such obligations, the national regulatory authorities shall assess whether the sole imposition of obligations in accordance with Article 70 would be sufficient to address problems identified in the market analysis.
Operators may be required inter alia:

(a) to give third parties appropriate, including physical (other than pursuant to Art 70), access to, and use of, entire specific physical network elements and/or associated facilities, as appropriate including unbundled access to the metallic local loop and sub-loop as well as unbundled access to fibre loops and terminating segments;
(b) to share with third parties specified network elements, including shared access to the metallic local loop and sub-loop as well as shared access to fibre loops and terminating segments including wavelength division multiplexing and similar sharing obligations;
(c) to give third parties access to specified active or virtual network elements and services;
(d) to negotiate in good faith with undertakings requesting access;
(e) not to withdraw access to facilities already granted;
(f) to provide specified services on a wholesale basis for resale by third parties;
(g) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;

(h) to provide co-location or other forms of associated facilities sharing;

(i) to provide specified services needed to ensure interoperability of end-to-end services to users, or roaming on mobile networks;

(j) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;

(k) to interconnect networks or network facilities;

(l) to provide access to associated services such as identity, location and presence service.

National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness and timeliness.

2. When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, 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. The assessment shall include 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;

   (b) the expected technological evolution affecting network design and management

   (ba) the need to ensure technology neutrality enabling the parties to design and manage their own networks;

   (c) the feasibility of providing the access proposed, in relation to the capacity available;

   (d) 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;

   (e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and innovative commercial
business models which support sustainable competition such as those based on co-investment in networks;

(f) where appropriate, any relevant intellectual property rights;

(g) the provision of pan-European services.

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.

Article 72

Price control and cost accounting obligations

1. A national regulatory authority may, in accordance with the provisions of Article 66, 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 allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

National regulatory authorities shall not impose or maintain obligations pursuant to this Article, 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.

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.

Article 73

Termination rates

1. By [transposition date] the Commission shall, after consulting BEREC, adopt delegated acts in accordance with Article 109 concerning single maximum termination rates 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.
2. The termination rates referred to in paragraph 1 shall be set as maximum symmetric termination rates based on the costs incurred by an efficient operator and shall comply with the criteria and parameters set out in Annex III. 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. When adopting such delegated acts the Commission shall take into account national circumstances which result in significant differences between Member States. The maximum termination rates in the first delegated acts shall not be higher than the highest rates in force in any Member State, after any necessary adjustment for exceptional national circumstances, [six] months before the adoption of delegated acts.

7. The Commission shall review the delegated acts adopted pursuant this Article every five years.

Article 74

Regulatory treatment of new very high capacity network elements

1. Without prejudice to the assessment by national regulatory authorities of co-investment in other types of networks, a national regulatory authority may determine not to impose obligations as regards new very high capacity networks which, if fixed, extend to the premises or, if mobile, to the base station, that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 70, 71 and 72 and that a relevant operator has deployed or is planning to deploy, if it concludes that the following cumulative conditions are met:

(a) the deployment of the new network elements is open to co-investment at any point during their lifetime by any operator according to a transparent process and on terms which ensure sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;
(aa) at least one co-investment agreement based on an offer made pursuant to (a) has been concluded and the co-investors are or intend to be service providers, or to host such providers, in the relevant retail market and have a reasonable prospect of competing effectively; 

(c) access seekers not participating in the co-investment can benefit from fair, reasonable and non-discriminatory access conditions, taking appropriate account of the risk incurred by the co-investors either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

National regulatory authorities shall determine whether the conditions above are met, including by consulting with relevant market participants in accordance with the provisions of Article 65(1) and (2).

When assessing co-investment offers, processes and agreements referred to in the first subparagraph, national regulatory authorities shall ensure that those offers, processes and agreements comply with the criteria set out in Annex IV.

2. Paragraph 1 is without prejudice to the power of a national regulatory authority to take decisions pursuant to the first paragraph of Article 26 in the event of a dispute arising between undertakings in connection with a co-investment agreement deemed by it to comply with the conditions set out in that paragraph and with the criteria set out in Annex IV.

Article 75

Functional separation

1. Where the national regulatory authority concludes that the appropriate obligations imposed under Articles 67 to 72 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 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 66(3), the national regulatory authority shall conduct a coordinated analysis of the different
markets related to the access network in accordance with the procedure set out in Article 65. On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 23 and 32 of this Directive.

5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 67 to 72 in any specific market where it has been designated as having significant market power in accordance with Article 65, or any other obligations authorised by the Commission pursuant to Article 66(3).

Article 76

Voluntary separation by a vertically integrated undertaking

1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 65 of this 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.

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(5).

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.

For that purpose, the national regulatory authority shall conduct an analysis of the different markets related to the access network in accordance with the procedure set out in Article 65.
The national regulatory authority shall take into account any commitments offered by the undertaking, having regard in particular to the objectives in Article 3. In so doing, the national regulatory authority shall consult third parties in accordance with Article 23, and shall address in particular, without limitation, those third parties which are directly affected by the intended transaction.

On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 23 and 32, 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(5), 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 67 to 72 in any specific market where it has been designated as having significant market power in accordance with Article 65, or any other obligations authorised by the Commission pursuant to Article 66(3) and where any commitments offered are insufficient to meet the objectives of Article 3.

4. The national regulatory authority shall monitor the implementation of the commitments offered by the undertakings that it has made binding in accordance with paragraph 2 of this Article and shall consider their extension when the period of time for which they are initially offered has expired.

*Article 77*

**Wholesale-only undertakings**

1. A national regulatory authority that designates an undertaking which is absent from any retail markets for electronic communications services as having significant market power in one or several wholesale markets in accordance with Article 65 shall consider whether that undertaking has the following characteristics:

   (a) all companies and business units within the undertaking, including 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 products of at least comparable quality providing access to upgraded network infrastructure substituting the decommissioned elements 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 an alternative access product of at least comparable quality 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. **Those provisions shall be without prejudice to the availability of regulated products imposed by the national regulatory authority on the upgraded network infrastructure in accordance with the procedures in Articles 65 and 66.**

**Article 78a**

*Demand aggregation*

*Member States shall not impose more onerous provisions, whether with respect to duration, interest rates or otherwise, on operator financing of the deployment of a very high capacity physical connection to the premises of an end-user than they do on financial institutions, including where such operator financing is by way of an instalment contract.*

**Article 78b**

*BEREC guidelines on very high capacity networks*

*By [transposition date], BEREC shall, after consulting stakeholders and in close cooperation with the Commission, issue guidelines on the criteria a network has to fulfil in order to be considered a very high capacity network. The national regulatory authorities shall take those guidelines into utmost account. BEREC shall update the guidelines by 31 December 2025, and thereafter every [three years].*
PART III. SERVICES

TITLE I: UNIVERSAL SERVICE OBLIGATIONS

Article 79

Affordable universal service

1. Member States shall ensure that all consumers in their territory have access at an affordable price, in the light of specific national conditions, to an available broadband internet access and voice communications services at the quality specified in their territory, including the underlying connection, at least at a fixed location.

In addition, Member States may also ensure affordability of services not provided at a fixed location, where they deem this to be necessary to ensure a consumer's full social and economic participation in society.

2. In accordance with BEREC guidelines, national regulatory authorities shall define the minimum capability of the internet access service referred to in paragraph 1 with a view to reflect the services used by the majority of consumers at a fixed location in their territory or relevant parts of their territory, which are indispensable to ensure social and economic participation in society. To that end, the internet access service shall be capable of delivering the bandwidth necessary for supporting at least the minimum set of services set out in Annex V.

By ... [18 months after the date of entry into force of this Directive], BEREC shall, in order to contribute towards a consistent application of this Article, after consulting stakeholders and in close cooperation with the Commission, taking into account available Commission (Eurostat) data, adopt guidelines which allow national regulatory authorities to define the minimum quality of service requirements, including minimum bandwidth, to support at least the minimum set of services set out in Annex V and reflecting the average bandwidth availability to the majority of the population in each Member State. Those guidelines shall be updated every two years to reflect technological advances and changes in consumer usage patterns.

3. When a consumer so requests, the connection referred to in paragraphs 1 and 1a may be limited to support voice communications only.

3a. Member States may extend the provisions of this Article to micro and small enterprises and not-for-profit organisations as end-users.
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 consumer 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 consumers are prevented from accessing such services, they shall require providers of such services to offer to those consumers tariff options or packages different from those provided under normal commercial conditions. To that end, Member States shall require such undertakings to apply common tariffs, including geographic averaging, throughout the territory. Member States shall ensure that consumers entitled to such tariff options or packages have a right to contract with an undertaking providing the services identified in Article 79(1). Member States shall also ensure 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 consumers pursuant to paragraph 2, keep the national regulatory authorities informed of the details of such offers. Without prejudice to the freedom of the consumers to choose any provider, 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 Article 92 and 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 further support is provided to low-income or special social needs consumers in view of ensuring affordability of functional internet access and voice communications services at least at a fixed location. In addition, Member States may also ensure support is provided to low-income or special social needs consumers for mobile services, where they deem this to be necessary to ensure a consumer's full social and economic participation in society.

5. Member States shall ensure, in the light of national conditions, that support is provided as appropriate to consumers with disabilities, and that other specific measures are taken, in view of ensuring that related terminal equipment is accessible for persons with disabilities, and
specific equipment and specific services enhancing equivalent access are available and affordable. *The average cost of the relay services for consumers with disabilities shall be equivalent to that of voice communication services pursuant to Article 79.*

6. When applying this Article, Member States shall seek to minimise market distortions.

6a. *Member States may extend the provisions of this Article to micro and small enterprises and not-for-profit organisations as end-users.*

**Article 81**

**Availability of universal service**

1. Where a Member State has *established, taking into* account taken of the results of the geographical survey, *where available,* conducted in accordance with Article 22(1), *or where the national regulatory authority is satisfied with alternative evidence,* that the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service cannot be ensured under normal commercial circumstances or through other potential public policy tools *in its national territory or different parts thereof,* it may impose appropriate universal service obligations to meet all reasonable requests for accessing those services in *the relevant parts of* its territory.

2. Member States shall determine the most efficient and appropriate approach for ensuring the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. *This may include making available internet access service and voice communications service through wired or wireless technologies.* 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 internet access service as defined in accordance with Article 79(2) and of voice communications service, they may designate one or more undertakings to guarantee the availability at a fixed location of functional internet access service as identified in accordance with Article 79(2) and of voice communications service in order to cover all the national territory. Member States may designate different undertakings or sets of undertakings...
to provide 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 providers in part or all of the national territory as providers having the obligation to ensure the availability at a fixed location of internet access service as defined in accordance with Article 79(2) and of voice communications service, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no provider is a priori excluded from being designated. Such designation methods shall ensure that 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 a provider 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 internet access service as defined in accordance with Article 79(2) and of voice communications service. The national regulatory authority may impose, amend or withdraw specific obligations in accordance with Article 13(2).

Article 82

Status of existing universal services

1. Member States may continue to ensure the availability or affordability of other services than internet access service as defined in accordance with Article 79(2) and voice communications service at a fixed location that were in force prior to [set date], if the need for such services is established in the light of national circumstances. When Member States designate providers 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.

2. Member States shall review the obligations imposed pursuant to this Article by ... [3 years after the entry into force of this Directive] and thereafter at least once every three years.

Article 83

Control of expenditure
1. Member States shall ensure that in providing facilities and services additional to those referred to in Article 79, providers of the voice communications and internet access services in accordance with Article 79, 81 and 82 establish terms and conditions in such a way that the end-user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

2. Member States shall ensure that those providers of 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 consumers can monitor and control expenditure and put in place a system to avoid unwarranted disconnection of voice communications service for the consumers who are entitled thereto, including an appropriate mechanism to check continued interest in using the service.

3. Member States shall ensure that the 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 84**

**Costing of universal service obligations**

1. Where national regulatory authorities consider that the provision of internet access service as defined in accordance with Article 79(2) and of voice communications service; as set out in Articles 79, 80 and 81 or the continuation of existing universal services as set out in Article 82 may represent an unfair burden on providers of 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 a provider of internet access service as defined in accordance with Article 79(2) and voice communications service; as set out in Articles 79, 80 and 81 or the continuation of existing universal services as set out in Article 82, in accordance with Annex VII; or

   (b) make use of the net costs of providing universal service identified by a designation mechanism in accordance with Article 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 85

Financing of universal service obligations

Where, on the basis of the net cost calculation referred to in Article 84, national regulatory
authorities find that an undertaking is subject to an unfair burden, Member States shall, upon
request from the undertaking concerned, decide to introduce a mechanism to compensate that
undertaking for the determined net costs under transparent conditions from public funds.

1a. By way of exception to paragraph 1, Member States may adopt or maintain a
mechanism to share the net cost of universal service obligations stemming from the
obligations set out in Article 81 between providers of electronic communications networks
and services and those undertakings providing information society services as defined in
Directive 2000/31/EC.

1b. Member States adopting or maintaining such a mechanism shall review its
functioning at least every three years in order to determine which net costs should continue
to be shared under the mechanism and those which should be transferred to compensation
from public funds.

1c. 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.

1d. Where the net cost is shared under paragraph 1a, Member States shall ensure that a
sharing mechanism is in place, administered by the national regulatory authority or a body
independent from the beneficiaries under the supervision of the national regulatory
authority.

1e. 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 certain
types of undertaking or from undertakings whose national turnover is less than a set limit.

1f. 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 86

Transparency

1. Where the net cost of universal service obligations is to be calculated in accordance with Article 84, national regulatory authorities shall ensure that the principles for net cost calculation, including the details of methodology to be used are publicly available.

2. Subject to Union and national rules on business confidentiality, national regulatory authorities shall ensure that an annual report is published providing the details of calculated cost of universal service obligations including any market benefits that may have accrued to the undertaking(s) pursuant to universal service obligations laid down in Articles 79, 81 and 82.

TITLE II: NUMBERS

Article 87

Numbering resources

1. Member States shall ensure that national regulatory authorities control the granting of rights of use for all national numbering resources and the management of the national numbering plans and that they provide adequate numbers and numbering ranges 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.

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.

3. 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.

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.

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 switching of providers of electronic communications networks or services by end-users, in particular providers and users of machine-to-machine services.

7. Member States shall ensure that the national numbering plans, and all subsequent additions or amendments thereto, are published, subject only to limitations imposed on the grounds of national security.

8. Member States shall support the harmonisation of specific numbers or numbering ranges within the 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 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.

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

Article 88

Granting of rights of use for numbers

1. Where it is necessary to grant individual rights of use for numbers, national regulatory authorities shall grant such rights, upon request, to any undertaking for the provision of electronic communications networks or services covered by a general authorisation referred to in Article 12, subject to the provisions of Articles 13 and 21(1)(c) and any other rules ensuring the efficient use of those resources in accordance with this 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. The rights of use for numbers shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures.
When granting rights of use for numbers, national regulatory authorities shall specify whether those rights can be transferred by the holder of the rights, and under which conditions.

Where national regulatory authorities 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.

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.

4. Where it has been decided, after consultation with interested parties in accordance with Article 23, that rights of use for numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, national regulatory authorities may extend the maximum period of three weeks by up to a further three weeks.

5. 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.

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. Member states may not impose additional obligations to these rights of use thereafter.

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.
**Article 89**

**Fees for rights of use for numbers**

Member States may allow the national regulatory authority to impose fees for the rights of use for numbers which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 3.

**Article 90**

**Missing children and child helpline hotlines**

1. Member States shall ensure that citizens have access to a service operating a hotline to report cases of missing children **free of charge**. The hotline shall be available on the number '116000'. **Member States shall ensure that children have access to a child-friendly service operating a helpline. The helpline shall be available on the number '116111'.**

2. Member States shall ensure that end-users with disabilities are able to access services provided under the numbers '116000' and '116111' on equal basis with other end-users, including through total conversation services. Measures taken to facilitate the access of end-users with disabilities 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.

3. **Member States shall ensure that appropriate measures needed to achieve a sufficient level of service quality in operating the 116 000 number as well as engaging necessary financial resources to operate the hotline are implemented.**

4. Member States and the Commission shall ensure that citizens are adequately informed of the existence and use of services provided under the '116 000' and '116111' numbers.

**Article 91**

**Access to numbers and services**

1. Member States shall ensure that, where technically and economically feasible, and except where a called 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 Union; and
(b) access all numbers provided in the Union, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States and Universal International Freephone Numbers (UIFN).

2. Member States shall ensure that the national regulatory authorities are able to require providers of 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.

**TITLE III: END-USER RIGHTS**

**Article 91a**

*Exemption clause*

*Title III, with the exception of Articles 92 and 93, shall not apply to number-independent interpersonal communications services, which are micro enterprises as defined in Commission Recommendation 2003/361/EC.*

**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 *in the Union* based on the end-user's nationality or place of residence or establishment unless such differences are objectively justified.

**Article 92a**

1. Providers of publicly available number based interpersonal communication services shall not apply tariffs to intra-Union fixed and mobile communications services terminating in another Member State, which are higher from tariffs for services terminating in the same Member State, unless it is justified by the difference in termination rates.

2. By ... (six months after the entry into force of this Directive), BEREC after consulting stakeholders and in close cooperation with the Commission shall adopt guidelines on the recovery of such objectively justified different costs pursuant to paragraph 1. Such
guidelines shall ensure that any differences are strictly based on existent direct costs that provider incur by providing the cross-border services;

3. By ... (one year after the entry into force of this Directive and annually thereafter), the European Commission shall provide a report on the application of the obligations of paragraph 1, including an assessment of the evolution of intra-Union communication tariffs.

Article 93

Fundamental rights safeguard

1. National measures regarding end-users’ access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms, as guaranteed by the Charter of Fundamental Rights of the Union and general principles of Union 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 are provided for by law and respect the essence of those rights or freedoms, are appropriate, proportionate and necessary, and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others in line with Article 52(1) of the Charter of Fundamental Rights of the European Union and with general principles of Union 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 Charter of Fundamental Rights of the European Union. The right to effective and timely judicial review shall be guaranteed.

2a. In accordance with Articles 7, 8 and 11 and Article 52(1) of the Charter of Fundamental Rights of the European Union, Member States shall not impose general and indiscriminate retention of all traffic and location data of all subscribers and registered users relating to their electronic communications.
**Article 94**

**Level of harmonisation**

Member States shall not maintain or introduce in their national law end-user protection provisions or *general authorisation conditions* 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.

**Article 95**

**Information requirements for contracts**

-1. The information requirements set out in this Article including the contract summary shall constitute an integral part of the contract and is in addition to the information requirements laid down in Directive 2011/83/EU. Member States shall ensure that the information referred to in this Article is provided in a clear, comprehensive and easily accessible manner. On a request made by the consumer or other end-users, a copy of the information shall also be provided on a durable medium and in accessible formats for end-users with disabilities.

1. Before a consumer is bound by a contract or any corresponding offer *which is subject to any kind of remuneration*, providers of internet access services, publicly available interpersonal communications services and transmission services used for broadcasting shall provide, *where applicable*, the following information to the consumer, to the extent that such information pertains to a service they provide.

   (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 *pursuant Article 97(2)* 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 *in accordance with Annex IX of this Directive* and

   – for services other than internet access services within the meaning of Article 3(5) of Regulation 2015/2120/EU: the specific quality parameters assured.
Where no minimum service quality levels are offered, a statement to this effect shall be made.

(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 fees and restrictions imposed by the provider on the use of terminal equipment supplied and, where appropriate, brief technical information for the proper functioning of the equipment chosen by the consumer;

(b) any compensation and refund arrangements, including where applicable, explicit reference to statutory rights of consumers, which apply if contracted service quality levels are not met or if a security incident, notified to the provider, takes place due to known software or hardware vulnerabilities for which patches have been issued by the manufacturer or developer and the service provider has not applied those patches or taken any other appropriate counter-measure;

(c) as part of the information on price and means of remuneration:

(i) details of specific tariff plan or plans under the contract and, for each such tariff plan the types of services offered, including where applicable, the volumes of communications (MB, minutes, SMS) included per billing period, and the price for additional communication units,

(ia) in the case of tariff plan or plans with a pre-set volume of communications, the possibility for consumers to defer any unused volume from the preceding billing period to the following billing period, where this option is included in the contract,

(ib) facilities to safeguard bill transparency and monitor the level of consumption,

(ic) without prejudice to Article 13 of the Regulation 2016/679, information on what personal data is required before the performance of the service or collected in the context of the provision of the service,

(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 and customer support 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 procedures and 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 information on unlocking the terminal equipment and any cost recovery with respect to terminal equipment,
   (iv) for bundled services the conditions of termination of the bundle or of elements thereof, where applicable,
(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, including national and cross-border 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, insofar as the service allows end-users to originate national calls to a number in a national telephone numbering plan;
3. Paragraphs 1, 2 and 6 shall apply also to micro or small enterprises and not-for-profit organisations as end-users unless they have expressly 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], the Commission, after consulting BEREC, shall adopt 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 summary information on:

   (a) the name, address and contact information of the provider and, if different, the contact information for any complaint,
   (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.

That template shall not be longer than one single-sided A4 page. It shall be easily readable. Where a number of different services are bundled into a single contract, additional pages may be necessary, but the document shall be limited to a total of three pages.

The Commission may adopt an implementing act specifying the template referred to in this paragraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 110(4).

Providers subject to the obligations under paragraphs 1-4 shall duly complete this contract summary template with the applicable information and provide it to consumers, micro and small enterprises and not-for-profit organisations, where appropriate, prior to the conclusion of the contract or, where this is not possible, without undue delay thereafter.
6. Providers of internet access services and providers of publicly available number-based interpersonal communications services shall offer consumers 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. Providers of internet access services and of publicly available number-based interpersonal communications services shall give consumers best-tariff advice relating to their services upon request and, at the latest, 3 months prior to the termination of the contract period.

6a. Member States may maintain or introduce in their national law additional requirements applicable to internet access services and number-based interpersonal communications services and transmission services used for broadcasting to ensure a higher level of consumer protection in relation to the information requirements set out in paragraphs (1) and (2) of this Article. Member States may also maintain or introduce in their national law provisions to temporarily prevent further usage of the relevant service in excess of a financial or volume limit determined by the competent authority.

Article 96

Transparency, comparison of offers and publication of information

1. National regulatory authorities shall ensure that, where the provision of relevant services is subject to terms and conditions, the information referred to in Annex VIII is published in a clear, comprehensive, machine-readable and easily accessible form, including in particular for end-users with disabilities, by the providers of internet access services, providers of publicly available interpersonal communications services and transmission services used for broadcasting. Such information shall be updated regularly. National regulatory authorities may maintain or introduce in their national law additional requirements in relation to the transparency requirements set out in this paragraph.

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, where appropriate, indicative figures addressing the quality of service performance of different internet access services and publicly available number-based 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 the owners and operators of the comparison tool;

(c) set out clear, objective criteria on which the comparison will be based;

(d) use plain and unambiguous language;

(e) provide accurate and up-to-date information and state the time of the last update;

(f) 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.

(ga) include prices and tariffs, and the quality of service performance for both end-users who are businesses and end-users who are consumers.

Comparison tools fulfilling the requirements in points (a) to (g) shall, upon the request of the provider of the tool, be certified by national regulatory authorities. Third parties shall have a right to use, free of charge and in open data formats, the information published by providers of internet access services or publicly available number-based interpersonal communications services for the purposes of making available such independent comparison tools.

3. Member States may require that both national authorities and the providers of internet access services, publicly available number-based interpersonal communications services, or both, 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 data protection rights, copyright and related rights, and their legal consequences; and the means of protection against risks to personal security, privacy and personal data when using internet access services and publicly available number-based interpersonal communications services.
Article 97

Quality of service

1. National regulatory authorities may require providers of internet access services and of publicly available interpersonal communications services to publish comprehensive, comparable, reliable, user-friendly and up-to-date information for end-users on the quality of their services to the extent that they offer minimum levels of service quality 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. Such measures to ensure quality of service shall be in compliance with Regulation (EU) 2015/2120. Providers of publicly available interpersonal communication services shall inform the consumer, if the quality of services they provide depends on any external factors, such as control of signal transmission or network connectivity.

2. National regulatory authorities shall specify, taking utmost account of BEREC guidelines, 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. Where appropriate, the parameters, definitions and measurement methods set out in Annex IX shall be used.

By [entry into force plus 18 months], in order to contribute to a consistent application of this paragraph and of Annex IX, BEREC shall adopt, after consultation of stakeholders and in close cooperation with the Commission, guidelines detailing the relevant quality of service parameters, including parameters relevant for end-users with disabilities, the applicable measurement methods, the content and format of publication of the information, and quality certification mechanisms.

Article 98

Contract duration and termination

1. Member States shall ensure that conditions and procedures for contract termination are not a disincentive against changing service provider and that contracts concluded between consumers and providers of publicly available internet access services, number-based interpersonal communications services and transmission services used for broadcasting, do not mandate a commitment period longer than 24 months. Member States may adopt or maintain shorter maximum durations for the contractual commitment period. Member States
may also require that providers offer consumers the possibility to subscribe to a contract with a maximum duration of 12 months or less. 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 to very high capacity connectivity networks. An instalment contract for the deployment of a physical connection shall not include terminal equipment or internet access service equipment, such as a router or modem and shall not preclude consumers from exercising their rights under this Article.

2. Where a contract or national law provides for a fixed duration contract to be automatically prolonged, the Member State shall ensure that, after such an automatic prolongation, consumers are entitled to terminate the contract at any time with a maximum one-month notice period and without incurring any costs except the charges for receiving the service during the notice. Before the contract is automatically prolonged, providers shall inform the consumer in a prominent way about the end of the initial contract period and about the means to terminate the contract, if so requested. Providers shall use the same means as those normally used in their communications with consumers.

2a. Paragraphs 1 and 2 shall also apply to end-users that are micro and small enterprises or not-for-profit organisations unless they have expressly agreed to waive those provisions.

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 internet access services, publicly available number-based interpersonal communications services and transmission services used for broadcasting, unless the proposed changes are exclusively to the benefit of the end-user or are of a purely technical nature and have a neutral effect on 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 change in the contractual conditions, 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 by the same means as the provider ordinarily uses in its communications with consumers.

3a. Any significant discrepancy, continued or regularly recurring, between the actual performance of an electronic communication service and the performance indicated in the contract, shall be considered as non-conformity of performance for the purposes of
triggering the remedies available to the consumer in accordance with national law, including the right to terminate the contract without any cost.

4. Where an **end-user has the right to terminate** a contract for a publicly available **internet access services, number-based interpersonal communications service and transmission services used for broadcasting, before the end of the agreed contract term pursuant to** this Directive, other provisions of Union law or national law, **no penalties and no compensation shall be due by** the end-user other than for **retained subsidised terminal equipment. Where the end-user chooses to retain terminal** equipment bundled at the moment of the contract conclusion, **any compensation due shall not exceed its pro rata temporis value at the moment of the contract conclusion or on the remaining part of the service fee until the end of the contract, whichever amount is smaller. Member States may choose other methods of calculating the compensation rate, where such a rate is equal to or less than the compensation calculated above.** 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. **Member States may adopt or maintain additional requirements in relation to this paragraph to ensure a higher level of consumer protection.**

**Article 99**

**Change of provider and number portability**

1. In the 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 **lead the switching process to** ensure that the activation of the service shall occur on the date and **within the timeframe expressly** 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 **where both providers use the same technological means. Where the providers use different technological means, they shall endeavour to limit loss of service during the switching process to one working day, unless a longer period, which shall not exceed two working days, is duly justified.**

National regulatory authorities shall ensure the efficiency **and simplicity** of the switching process for the end-user.
2. Member States shall ensure that all end-users with numbers from the national telephone numbering plan who so request shall have the right to retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Part C of Annex VI.

2a. Where an end-user terminates a contract with a provider, the end-user shall retain the right to port a number to another provider for six months after the date of termination, unless that right is renounced by the end-user.

3. 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.

4. 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.

5. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, consumers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day from the agreed date. The transferring provider shall continue to provide its services on the same terms until the services of the receiving provider are activated.

This paragraph shall apply also to micro or small enterprises and not-for-profit organisations as end-users unless they have expressly agreed to waive all or parts of those provisions.

5a. The receiving provider shall lead the switching and porting process and both the receiving and transferring providers shall cooperate in good faith. 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 end-user. This shall include, where available, a requirement for the porting to be completed through over-the-air provisioning, unless an end-user requests otherwise.

In any event, loss of service during the process of porting shall not exceed one working day. The end-users' contracts with the transferring provider shall be terminated automatically upon conclusion of the switching process. Transferring providers shall refund any remaining credit to the consumers using pre-paid services. Refund may be subject to a fee only if stated in the contract. Any such fee shall be proportionate and commensurate with the actual costs incurred by the transferring provider in offering the refund. In case of
failure of the porting process, the transferring provider shall reactivate the number or service of the end-user, on the same terms and conditions as the end-user was on prior to the switching process being initialised, until the porting or switching process is successful. National regulatory authorities shall also take appropriate measures ensuring that end-users are adequately informed and protected throughout the switching and porting processes and are not switched to another provider against their will.

6. Member States shall ensure that appropriate sanctions on undertakings are provided for, in case of delay in porting or abuse of porting by them or on their behalf.

6a. Member States shall ensure that end-users are entitled to receive compensation from providers in the case of delay in porting or switching or abuse of porting or switching. The minimum compensation for a delay shall be:

(a) where porting is delayed for longer than one or two working days as laid down in Article 99(1) and Article 99(5) respectively, an amount per additional day;
(b) where there is a loss of service exceeding one working day, an amount per additional day;
(c) where there is a delay in activating a service, an amount per day for every day after the agreed day for activation; and
(d) where a service appointment is missed or cancelled with less than 24 hours' notice, an amount per appointment.

National regulatory authorities shall set out the amounts due under this paragraph.

6b. The compensation referred to in paragraph 6a shall be paid by way of deduction from the following invoice, in cash, by electronic transfer or, in agreement with the end-user, in service vouchers.

6c. Paragraph 6a shall be without prejudice to any right to further compensation pursuant to national law or Union law. Member States may lay down additional rules ensuring that any end-user who has suffered material or non-material damage pursuant to this article can seek and receive compensation from an undertaking for the damages suffered. The minimum compensation paid pursuant to paragraph 6a may be deducted from any such compensation. Payment of compensation pursuant to paragraph 6a shall not prevent the receiving provider from seeking compensation from a transferring provider where appropriate.
Article 100

Bundled offers

1. If a bundle of services or a bundle of services and terminal equipment offered to a consumer comprises at least an internet access service or a publicly available number-based interpersonal communications services, Articles 95, 96 (1), 98 and 99 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 consumer.

2. Any subscription to additional services or terminal equipment provided or distributed by the same provider of internet access services or of publicly available number-based interpersonal communications services shall not extend the term of the contract unless the consumer expressly agrees otherwise when subscribing to the additional services or terminal equipment.

2a. Providers of electronic communications services other than number independent interpersonal communications service shall give consumers the possibility to cancel or switch individual parts of the bundled contract, where this option is included in the contract.

2b. Paragraphs 1 and 2 shall also apply to end-users who are micro or small enterprises, or not-for-profit organisations unless they have explicitly agreed to waive all or parts of those provisions.

2c. Member States may broaden the application of paragraph 1 to bundles of services or bundles of services and terminal equipment offered to a consumer, which comprise at least a publicly available electronic communication service. Member States may also apply paragraph 1 as regards other provisions laid down in this Title.

Article 101

Availability of services

Member States shall take all necessary measures to ensure the fullest possible availability of voice communications and internet access service provided over public communications networks in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that providers of voice communications and internet access service take all necessary measures to ensure uninterrupted access to emergency services.
Article 102

Emergency communications and the single European emergency call number

1. Member States shall ensure that all end-users of the service referred to in paragraph 2, including users of public pay telephones and of private electronic communication networks, are able to 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 number ‘112’ and any national emergency 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 providers of end-users with number-based interpersonal communications, where that service allows end-users to originate national calls to a number in a national or international telephone numbering plan, provide access to emergency services through emergency communications to the most appropriate PSAP using location information that is available to number-based interpersonal communications service providers and in a manner that is consistent with Member States’ emergency calling infrastructures.

Providers of number-independent interpersonal communications services that do not offer 112 access shall inform end-users that access to the emergency number 112 is not supported.

3. Member States shall ensure that all emergency communications to the single European emergency number ‘112’ are appropriately answered and handled in the manner best suited to the national organisation of emergency systems, considering the need to handle calls in a multilingual manner. Such emergency communications shall be answered and handled at least as expeditiously and effectively as emergency communications to the national emergency number or numbers, where these continue to be in use.

3a. The Commission, having consulted the national regulatory authorities and emergency services, shall adopt performance indicators applicable to the Member States’ emergency services. The Commission shall every two years submit a report to the European Parliament and the Council on the effectiveness of the implementation of the European emergency call number ”112″ and on the functioning of the performance indicators.

4. Member States shall ensure that access for end-users with disabilities to emergency services is available through emergency communications and equivalent to that enjoyed by other end-users, including through total conversation services or third-party relay services.
The Commission and the national regulatory and other competent authorities shall take appropriate measures to ensure that end-users with disabilities can access emergency services on an equivalent basis with others, whilst travelling in another Member State, where feasible, without any pre-registration. These measures shall seek to ensure interoperability across Member States and shall be based to the greatest extent possible on European standards or specifications published in accordance with the provisions of Article 39, 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 caller location information is made available to the most appropriate PSAP without delay after the emergency communication is set up. This shall include both network-based location information and, where available, handset-derived caller location information. Member States shall ensure that the establishment and the transmission of the end-user location information are free of charge for the end-user and to the PSAP with regard to all emergency communications to the single European emergency number ’112’. Member States may extend that obligation to cover emergency communications to national emergency numbers. This shall not prevent competent authorities, after consulting BEREC, from laying 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 number ‘112’, as well as its accessibility features, including through initiatives specifically targeting persons travelling between Member States, and persons with disabilities. That information shall be provided in accessible formats, addressing different types of disabilities. The Commission shall support and complement Member States’ action.

7. In order to ensure effective access to emergency services through emergency communications to ‘112’ services in the Member States, the Commission shall, after consulting BEREC, adopt 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 end-users, accessibility for persons with disabilities and routing to the most appropriate PSAP. The first such delegated acts shall be adopted by [insert date].
The Commission shall maintain a database of E.164 numbers of European emergency services to ensure that they are able to contact each other from one Member State to another.

Those measures shall be adopted without prejudice to, and shall have no impact on, the organisation of emergency services, which remains in the exclusive competence of Member States.

**Article 102 a**

**Reverse “112” system**

1. Member States shall ensure, through the use of electronic communications networks and services, the establishment of national efficient 'Reverse-112' communication systems for warning and alerting citizens, in case of imminent or developing natural and/or man-made major emergencies and disasters, taking into account existing national and regional systems and without hindering privacy and data protection rules.

**Article 103**

**Equivalent access and choice for end-users with disabilities**

1. Member States shall ensure that the competent authorities specify requirements to be met by providers of publicly available electronic communications services to ensure that end-users with disabilities:

   (a) have access to electronic communications services, including the related contractual information provided pursuant to Article 95, equivalent to that enjoyed by the majority of end-users; and Member States shall also ensure that providers of publicly available electronic communications services take the necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust.

   (b) benefit from the choice of undertakings and services available to the majority of end-users.

To that end, Member States shall ensure, to the extent that this does not impose a disproportionate burden on providers of terminal equipment and of electronic communication services, the availability of specialised equipment offering the necessary services and functions intended specifically for end-users with disabilities. The assessment of what is considered a disproportionate burden shall follow the procedure set out in article 12 of Directive xxx/YYY/EU.
2. In taking the measures referred to in paragraph 1, Member States shall encourage compliance with relevant standards or specifications published in accordance with Article 39.

Insofar as the provisions of this Article conflict with the provisions of Directive xxx/YYYY/EU of the European Parliament and of the Council¹, the provisions of Directive xxx/YYYY/EU shall prevail.

Article 104

Telephone directory enquiry services

1. Member States shall ensure that all providers of voice communication services 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.

2. 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. Such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

3. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS, and shall take measures to ensure such access in accordance with Article 91.

4. Paragraphs 1 to 3 shall apply subject to the requirements of Union legislation on the protection of personal data and privacy and, in particular, Article 12 of Directive 2002/58/EC.

Article 105

Interoperability of consumer radio and television equipment

In accordance with the provisions of Annex X, Member States shall ensure the interoperability of the consumer radio and television equipment referred to therein.

Providers of digital television services shall ensure interoperability of terminal equipment so that where technically feasible the terminal equipment is reusable with other providers

¹ Directive xxx/YYYY/EU of the European Parliament and of the Council of ... on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (OJ L ..., ..., p. ...).
and if this is not consumers need to be given the possibility through a free and easy process to return the terminal equipment.

Article 106

‘Must carry’ obligations

1. Member States may impose reasonable ‘must carry’ obligations, for the transmission of specified radio and television broadcast channels and related complementary services, particularly accessibility services to enable appropriate access to content and electronic programming guide for end-users with disabilities and data supporting connected TV services and electronic programme guides, on undertakings under their jurisdiction providing electronic communications networks and services used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks and services 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.

Member States shall only impose ‘must carry’ obligations on analogue television broadcast transmissions where a lack of such an obligation would cause a significant disturbance for a significant number of end-users or where there are no other transmission means for specified television broadcast channels.

‘Must carry’ obligations referred to in the first subparagraph 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.

1a. The obligations referred to in the first paragraph shall be reviewed by the Member States at the latest within one year of [date of entry into force of this Directive], except where Member States have carried out such a review within the previous four years.

Member States shall review ‘must carry’ obligations at least every five years.

1b. Member States may additionally impose reasonable ‘must offer’ entitlements, in respect of specified radio and television broadcast channels of general interest, to the undertakings subject to must-carry obligations under their jurisdiction

2. Neither paragraph 1 of this Article nor Article 57(2) shall prejudice the ability of Member States to determine in their legislation 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 providers of electronic communications networks and services. If remuneration is to be provided for, the requirement for remuneration and its amount may be laid down by law and such remuneration shall be applied in a proportionate and transparent manner.

Article 107

Provision of additional facilities

1. Without prejudice to Article 83(2), Member States shall ensure that national regulatory authorities are able to require all providers that provide internet access services and/or publicly available number-based interpersonal communications services to make available free of charge, where relevant, all or part of the additional facilities listed in Part B of Annex VI, subject to technical feasibility, as well as all or part of the additional facilities listed in Part A of Annex VI.

2. A Member State may decide to 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.

Article 108

Adaptation of annexes

The Commission is empowered to adopt delegated acts in accordance with Article 109 concerning the adaptations of Annexes V, VI, VIII, IX, and X in order to take account of technological and social developments or changes in market demand.

PART IV. FINAL PROVISIONS

Article 109

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 40, 60, 73, 102 and 108 shall be conferred on the Commission for an indeterminate period of time from... [date of entry into force of the basic legislative act or any other date set by the co-legislators].

3. The delegation of power referred to in Articles 40, 60, 73, 102 and 108 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article(s) 40, 60, 73, 102, and 108 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 110

Committee

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

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

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

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

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

Article 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 Union’s electronic communications policy, foster the exchange of information between the Member States and between the Member States and the Commission on the situation and the development of regulatory activities regarding electronic communications networks and services.

Article 112

Publication of information

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

4. Where information as referred to in paragraph 3 is held at different levels of government, in particular information regarding procedures and conditions on rights to install facilities, the national regulatory authority shall make all reasonable efforts, bearing in mind the costs involved, to create a user-friendly overview of all such information, including information on the relevant levels of government and the responsible authorities, in order to facilitate applications for rights to install facilities.

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

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

**Article 113**

**Notification and monitoring**

1. National regulatory authorities shall notify to the Commission by at the latest the date of application referred to in Article 115(1), second subparagraph, and immediately in the event of any change thereafter in the names of undertakings designated as having universal service obligations under Article 81.

   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.

2. National regulatory authorities shall notify to the Commission the names of operators deemed to have significant market power for the purposes of this Directive, and the obligations imposed upon them under this Directive. Any changes affecting the obligations imposed upon undertakings or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.
Article 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 five years after the date of application referred to in Article 115 (1), second subparagraph and thereafter every fifth year. Those reviews shall evaluate in particular whether the ex ante intervention powers pursuant to this Directive are sufficient to enable national regulatory authorities to ensure that, to the presence of uncompetitive oligopolistic market structures, and together with the proportionate application of other obligations in accordance with this Directive, competition in electronic communications markets continues to thrive to the benefit of end-users in terms of quality, choice and price and that wholesale markets providing access to electronic communications infrastructures develop and thrive, as necessary to ensure competitive outcomes for end-users and very high capacity connectivity.

For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay.

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.

Article 5 of Decision 243/2012/EU is repealed with effect from […].

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 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

EXPLANATORY STATEMENT

This is a decisive moment to maximize the opportunities that more advanced digital technologies bring. Since the 2009 review, the market has dramatically changed. New players have emerged as consumers and businesses increasingly rely on data services.
Today's smart cars, cities, energy, industry, health, banking, education, research, public services etc need increased connectivity and wavelengths, that means very high capacity fixed and mobile networks (VHCN). The framework is vital for making the EU a gigabit society built on a backbone of connectivity. But the necessary investment is estimated to €500-600 billion; up to 90% must be provided by the private sector. Crucially, that requires a framework ensuring predictability and rewarding risk-taking and long-term investment. Thus, the Commission proposal to add infrastructure at the core of the framework is the right approach.

Investment, competition and regulation must form a virtuous circle for the rollout of ubiquitous VHCN and 5G broadband infrastructure. This requires the full development of the Digital Single Market, leveraging the power of a €16.5 trillion economy, representing 23% of global GDP, 500 million consumers, and a strong global competitive industrial sector. These are the necessary assets and economies of scale for cloud computing, big data, data-driven science, robotics, artificial intelligence and the internet of things to fully develop.

With VHCN, the EU will be perfectly equipped to be a data economy leader, the key competitive advantage of this century.

It is not wishful thinking, it is a real opportunity.

**SCOPE & OBJECTIVES**

a) **Very High Capacity Networks**
The role of electronic communications as an enabler of the economy has hugely increased. Data services replace traditional services as key products for all users. This means that the sector must meet increased demand and socio-economic development needs.

The Rapporteur supports introducing deployment and take-up of VHCN, including rollout of mobile networks using enhanced air interfaces and increased density, as one of the general objectives of the framework, on par with the existing competition, internal market and end-user benefit objectives. She embraces this aim.

The Rapporteur proposes to add clarity and enhance the visibility of the tools specifically addressing VHCN via a new Title of the Code.

The VHCN definition should be changed to increase technological neutrality and make it more future-proof, by shifting the primary focus to the dynamic ability of networks to meet demand for unconstrained use as it evolves. This links to performance parameters that are capable of meeting the connectivity goals by 2025 and to BEREC guidelines for requirements thereafter.

b) **Electronic communication services (ECS)**
Today, "OTT" services, such as Voice over IP, messaging etc substitute for traditional voice telephony, SMS etc.

This extraordinary evolution has very positive effects for competition, innovation and growth. It also presents challenges: the new services are either de facto not subject to the current rules, or they are not consistently applied across the EU. Therefore, the definitions should be
clarified to build on a functional approach from the user perspective. The Commission's proposed definition of ECS (Art 2(4)) provides a first balanced approach for debate.

c) General authorisation
The general authorisation ensures freedom to provide electronic communications networks and services across the EU. No ECS should be deprived of that benefit and incur the risk of being subject to 28 different regimes.

Therefore, the Rapporteur proposes to include all ECS, while taking account of their diversity and the innovative character of many of them. This calls for a threshold excluding small services from unnecessary burdens. Borrowing from the competition law concept of "community dimension", that could exclude ECS with a limited EU presence and turnover from notification obligations, while allowing them to benefit, should they so wish, from the general authorisation in Member States requiring notification at a nominal fee.

ACCESS

a) General approach
The framework rests on three main objectives: competition, internal market and end-user interest. That remains guiding principles for the Code. The competition approach, based on significant market power (SMP), has proven successful in the liberalisation process since the 90ies and must remain at the core of the Code. The complete toolbox of remedies, from transparency obligations to functional separation, must remain available to National Regulatory Authorities (NRAs).

However, the Rapporteur embraces the proposal of the Commission that the current objectives are encompassed by the new VHCN connectivity objective. Consequently the new objective makes the Code instrumental to achieve a more predictable investment environment, including through further measures to overcome deployment challenges.

Ex ante regulation is not an end in itself - proportionality requires imposition of access obligations only if retail markets would otherwise not be effectively competitive, similarly to the current framework.

The Rapporteur supports market solutions by way of commercial agreements, such as co-investment or access agreements, where positive for competition.

b) Ladder of remedies
Proportionality and the Charter protections of property and freedom to conduct a business, demand that obligations be limited to the minimum necessary for the problem addressed. At each stage of the assessment, before an NRA imposes any additional, more burdensome, remedy, it should thus consider its necessity for the retail market to be effectively competitive, all relevant aspects taken into account.

c) Market review
The proposal amends the current market analysis procedure i.a. by extending it from 3 to 5 years. The extra years may not achieve much regulatory stability for investments with very long payback periods, and could result in regulation persisting beyond its "best by" date, with negative effects on investments.
The Rapporteur thus deems the 5-year review cycle as too long for highly dynamic markets, and proposes an obligation for NRAs to conduct a full review in a shorter timeframe for such markets.

In addition, the flexibility element introduced by NRAs ex officio considering market developments should be matched by an obligation for NRAs to re-assess on a reasoned request by an operator.

To avoid uncertainty and lingering obligations due to delay in completing a market review, any prior obligations should lapse if the market review is not done in time. To give effect to the Code sooner and in a uniform fashion across the EU, all NRAs should review existing obligations against the new legal framework promptly after the transposition date.

d) Geographical surveys
Geographical surveys of networks are valuable instruments already at NRAs disposal. Imposing an obligation on operators to present investment forecasts, with a potential for penalties, is disproportionate and incognisant of market-driven investment decisions. The Rapporteur proposes to delete those provisions.

e) Symmetric obligations
Expanding symmetric obligations in certain circumstances, to facilitate alternative network deployment in sparsely populated areas where infrastructure competition is unlikely, is useful and supported by the Rapporteur. However, symmetric obligations should not apply if the economics of the original deployment would be compromised.

f) Termination rates
To avoid unjustified levels of charges and fragmented approaches resulting in differing international call costs merely due to where it terminates, the Commission should set maximum fixed and mobile termination rates under a simplified mechanism taking into account the highest rates in force in any Member State.

g) “Double-lock”
Introducing a "double-lock" on remedies has considerable logic. The Commission currently has a veto over NRAs market definition and assessment of SMP, both based on the application of European competition law and economic principles, as is the framework overall. The ultimate aim is to abolish ex ante regulation once competition is assured, leaving the market regulated by competition law alone. The Commission would then have full powers also over remedies.

SPECTRUM

a) General approach
Spectrum is an essential resource for the provision of electronic communications relied on by an increasing numbers of actors. Future demand will increase exponentially. Connectivity for 5th generation mobile will require up to 56 GHz of additional spectrum. This calls for timely release of spectrum and targeted improvements in its management.
The Rapporteur thus supports the proposals to ensure advanced connectivity by timely release of spectrum, simplified regulatory intervention, greater consistency and predictability in assignment, and more responsiveness to spectrum management challenges.

b) Investment certainty
The 30-year minimum duration proposed by the Rapporteur ensures return on investment and provides predictability to incentivise more rapid rollout of advanced networks. In order to avoid speculation risk, the increased duration is flanked by more rigorous requirements and means to ensure that spectrum is used effectively and efficiently, through 'use it or lose it' mechanisms.

To further guarantee optimal use and investment certainty the Rapporteur proposes amendments to ensure that conditions to individual rights are not changed without agreement, delete undue sharing obligations, strengthen spectrum trading, and ensure that fees and reserve prices are based on a proper assessment of market conditions. To guarantee a competitive spectrum landscape and avoid inconsistent approaches, the guidelines for market analysis and the assessment of significant market power should be taken into account also in this context.

c) Access to public buildings
To ensure that public buildings, which are socio-economic enablers paid via taxes, can be used for VHCN the Rapporteur proposes to add an access obligation for deploying small-cells, to complement the Cost Reduction Directive.

d) RSPG
The Rapporteur reinforces the role of the Radio Spectrum Policy Group (RSPG) to strengthen cooperation between Member States on spectrum management more generally, not just with respect to resolving harmful interference. This enhanced role of the RSPG requires it to be created in the Code itself, and the secretariat (currently provided by the Commission) should be discussed.
ANNEXES

to the

establishing the European Electronic Communications Code

ANNEX I

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

The conditions listed in this Annex provide the maximum list of conditions which may be attached to general authorisations for electronic communications networks and services (Part A), electronic communications networks (Part B), electronic communications services (Part C), rights to use radio frequencies (Part D) and rights to use numbers (Part E).

A. GENERAL CONDITIONS WHICH MAY BE ATTACHED TO A GENERAL AUTHORISATION

1. Administrative charges in accordance with Article 16 of this Directive.
3. Information to be provided under a notification procedure in accordance with Article 12 of this Directive and for other purposes as included in Article 21 of this Directive.
5. Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.
6. Terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities.
7. Access obligations other than those provided for in Article 13(2) of this Directive applying to providers of electronic communications networks or services.
8. Measures designed to ensure compliance with the standards and/or specifications referred to in Article 39.
9. Transparency obligations on public communications network providers providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in Article 3 and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure.

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

1. Interconnection of networks in conformity with this Directive.
2. ‘Must carry’ obligations in conformity with this Directive.
3. Measures for the protection of public health against electromagnetic fields caused by electronic communications networks in accordance with Union law, taking utmost account of Council Recommendation No 1999/519/EC.
6. Conditions for the use of radio spectrum, in conformity with Article 7 of Directive 2014/53/EU, where such use is not made subject to the granting of individual rights of use in accordance with Articles 46(1) and 48 of this Directive.

C. SPECIFIC CONDITIONS WHICH MAY BE ATTACHED TO A GENERAL AUTHORISATION FOR THE PROVISION OF ELECTRONIC COMMUNICATIONS SERVICES

1. Interoperability of services in conformity with this Directive.
2. Accessibility by end users of numbers from the national numbering plan, numbers from the Universal International Freephone Numbers and, where technically and economically feasible, from numbering plans of other Member States, and conditions in conformity with this Directive.
3. Consumer protection rules specific to the electronic communications sector.

D. CONDITIONS WHICH MAY BE ATTACHED TO RIGHTS OF USE FOR RADIO SPECTRUM

1. Obligation to provide a service or to use a type of technology within the limits of Article 49 of this Directive including, where appropriate, coverage and quality of service requirements.
2. Effective and efficient use of spectrum in conformity with this Directive.
3. Technical and operational conditions necessary for the avoidance of harmful interference and for the protection of public health against electromagnetic fields, taking utmost account of Council Recommendation No 1999/519/EC where such conditions are different from those included in the general authorisation.


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4. **Duration and conditions** in conformity with Article 49 of this Directive.
5. Transfer or leasing of rights at the initiative of the right holder and conditions for such transfer in conformity with this Directive.
6. Usage fees in accordance with Article 42 of this Directive.
7. Any commitments which the undertaking obtaining the usage right has made in the framework of an authorisation or authorisation renewal process prior to the authorisation being granted or, where applicable, to the invitation for application for rights of use.
8. Obligations to pool or share radio spectrum or allow access to radio spectrum for other users in specific regions or at national level.
9. Obligations under relevant international agreements relating to the use of frequencies.
10. Obligations specific to an experimental use of radio frequencies.

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

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with Article 3(2)(d) of this Directive.
2. Effective and efficient use of numbers in conformity with this Directive.
3. Number portability requirements in conformity with this Directive.
4. Obligation to provide public directory end user information for the purposes of Article 104 of this Directive.
5. Maximum duration in conformity with Article 46 of this Directive, subject to any changes in the national numbering plan.
6. Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with this Directive.
7. Usage fees in accordance with Article 42 of this Directive.
8. Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
9. Obligations under relevant international agreements relating to the use of numbers.
10. Obligations concerning the extraterritorial use of numbers within the Union to ensure compliance with consumer protection and other number-related rules in Member States other than that of the country code.
ANNEX II

CONDITIONS FOR ACCESS TO DIGITAL TELEVISION AND RADIO SERVICES
BROADCAST TO VIEWERS AND LISTENERS IN THE UNION

PART I: CONDITIONS FOR CONDITIONAL ACCESS SYSTEMS TO BE APPLIED IN
ACCORDANCE WITH ARTICLE 60(1)

In relation to conditional access to digital television and radio services broadcast to viewers and listeners in the Union, irrespective of the means of transmission, Member States must ensure in accordance with Article 60 that the following conditions apply:

(a) all operators of conditional access services, irrespective of the means of transmission, who provide access services to digital television and radio services and whose access services broadcasters depend on to reach any group of potential viewers or listeners are to:

– offer to all broadcasters, on a fair, reasonable and non-discriminatory basis compatible with Union competition law, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers or listeners authorised by means of decoders administered by the service operators, and comply with Union competition law,

– keep separate financial accounts regarding their activity as conditional access providers.

(b) when granting licences to manufacturers of consumer equipment, holders of industrial property rights to conditional access products and systems are to ensure that this is done on fair, reasonable and non-discriminatory terms. Taking into account technical and commercial factors, holders of rights are not to subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of:

– a common interface allowing connection with several other access systems, or

– means specific to another access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as he is concerned, the security of transactions of conditional access system operators.

PART II: OTHER FACILITIES TO WHICH CONDITIONS MAY BE APPLIED UNDER ARTICLE
59(1)(d)

(a) Access to application program interfaces (APIs);

(b) Access to electronic programme guides (EPGs).
(c) Access related complementary services, i.e. accessibility services enabling appropriate access for disabled end-users and data supporting connected television services and electronic programming guides.
ANNEX III
CRITERIA FOR THE DETERMINATION OF WHOLESALE CALL TERMINATION RATES

Criteria and parameters for the determination of rates for wholesale call termination on fixed and mobile markets, referred to in Article 73 (4):

(c) the relevant incremental costs of the wholesale voice call termination service shall be determined by the difference between the total long-run costs of an operator providing its full range of services and the total long-run costs of that operator not providing a wholesale voice call termination service to third parties;

(d) only those traffic related costs which would be avoided in the absence of a wholesale voice call termination service being provided shall be allocated to the relevant termination increment;

(e) costs related to additional network capacity shall be included only to the extent that they are driven by the need to increase capacity for the purpose of carrying additional wholesale voice call termination traffic;

(f) radio spectrum fees shall be excluded from the mobile termination increment;

(g) only those wholesale commercial costs shall be included which are directly related to the provision of the wholesale voice call termination service to third parties;

(h) all fixed network operators shall be deemed to provide voice call termination services at the same unit costs as the efficient operator, regardless of their size;

(i) for mobile network operators, the minimum efficient scale shall be set at a market share not below 20%;

(j) the relevant approach for asset depreciation shall be economic depreciation; and

(k) the technology choice of the modelled networks shall be forward looking, based on an IP core network, taking into account the various technologies likely to be used over the period of validity of the maximum rate. In the case of fixed networks, calls shall be considered to be exclusively packet switched.
ANNEX IV

CRITERIA FOR ASSESSING CO-INVESTMENT OFFERS

When assessing a co-investment pursuant to Article 74 (1), the national regulatory authority shall verify whether the following criteria have been met:

(l) The co-investment shall be open to any undertaking over the lifetime of the network built under a co-investment offer on a non-discriminatory basis. The SMP operator may stipulate reasonable conditions regarding the financial capacity of any undertaking, so that for instance potential co-investors need to demonstrate their ability to deliver phased payments on the basis of which the deployment is planned, the acceptance of a strategic plan on the basis of which medium-term deployment plans are prepared, etc.

(m) The co-investment shall be transparent:

- terms and conditions must be available and easily identified on the website of the SMP operator;
- full detailed terms must be made available without undue delay to any potential bidder that has expressed an interest, including the legal form of the co-investment agreement and - when relevant - the heads of term of the governance rules of the co-investment vehicle; and
- The process, like the road map for the establishment and development of the co-investment project must be set in advance, it must clearly explained in writing to any potential co-investor, and all significant milestones be clearly communicated to all undertakings without any discrimination.

(n) The co-investment shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:

- All undertakings have to be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the co-investors by those rights both during the building phase and during the exploitation phase, for example by granting indefeasible rights of use (IRUs) for the expected lifetime of the co-invested network and in terms of the conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all potential co-investors must be offered exactly the same terms, including financial terms, but that all variations of the terms offered must be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end user lines committed for.
- It must allow flexibility in terms of the value and timing of the commitment provided by each co-investor, for example by means of an agreed and potentially increasing percentage of the total end user lines in a given area, to
which co-investors have the possibility to commit gradually and which shall be set at a unit level enabling smaller co-investors to gradually increase their participation while ensuring adequate levels of initial commitment. The determination of the financial consideration to be provided by each co-investor needs to reflect the fact that early investors accept greater risks and engage capital sooner.

- A premium increasing over time has to be considered as justified for commitments made at later stages and for new co-investors entering the co-investment after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages.

- The co-investment agreement has to allow the assignment of acquired rights by co-investors to other co-investors, or to third parties willing to enter into the co-investment agreement subject to the transferee undertaking being obliged to fulfil all original obligations of the transferor under the co-investment agreement.

- Co-investors have to grant each other reciprocal rights on fair and reasonable terms and conditions to access the co-invested infrastructure for the purposes of providing services downstream, including to end-users, according to transparent conditions which have to be made transparent in the co-investment offer and subsequent agreement, in particular where co-investors are individually and separately responsible for the deployment of specific parts of the network. If a co-investment vehicle is created, it has to provide access to the network to all co-investors, whether directly or indirectly, on an equivalence of inputs basis and according to fair and reasonable terms and conditions, including financial conditions that reflect the different levels of risk accepted by the individual co-investors.

(o) The co-investment shall ensure a sustainable investment likely to meet future needs, by deploying new network elements that contribute significantly to the deployment of very high capacity networks.
ANNEX V
LIST OF SERVICES WHICH THE INTERNET ACCESS SERVICE IN ACCORDANCE WITH ARTICLE 79(2) SHALL BE CAPABLE OF SUPPORTING

(2) E-mail

(3) search engines enabling search and finding of all type of information

(4) basic training and education online tools

(5) online newspapers/news

(6) buying/ordering goods or services online

(7) job searching and job searching tools

(8) professional networking

(9) internet banking

(10) eGovernment service use

(11) social media and instant messaging

(12) calls and video calls (standard quality)

ANNEX VI
DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 83 (CONTROL OF EXPENDITURE), ARTICLE 107 (ADDITIONAL FACILITIES) AND ARTICLE 99 (CHANGE OF PROVIDER AND NUMBER PORTABILITY)

PART A: FACILITIES AND SERVICES REFERRED TO IN ARTICLE 83

(a) Itemised billing

Member States are to ensure that national regulatory authorities, subject to the requirements of relevant legislation on the protection of personal data and privacy, may lay down the basic level of itemised bills which are to be provided by undertakings to end-users free of charge in order that they can:

(i) allow verification and control of the charges incurred in using the public communications network at a fixed location and/or voice communications services, or number-based interpersonal communications services in the case of Article 107; and

(ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

Where appropriate, additional levels of detail may be offered to end-users at reasonable tariffs or at no charge.
Such itemised bills shall include an explicit mention of the identity of the supplier, the typology and the duration of the services charged by any premium numbers to the end-user. Calls which are free of charge to the calling end-users, including calls to helplines, are not to be identified in the calling end user’s itemised bill, but may be made available through other means, such as online interfaces.

National regulatory authorities may require operators to provide calling-line identification (CLI) free of charge.

(b) Selective barring for outgoing calls or premium SMS or MMS, or, where technically feasible, other kinds of similar applications, free of charge
i.e. the facility whereby the end-users can, on request to the undertaking that provides voice communications services, or number-based interpersonal communications services in the case of Article 107, bar outgoing calls or premium SMS or MMS or other kinds of similar applications of defined types or to defined types of numbers free of charge.

(c) Pre-payment systems
Member States are to ensure that national regulatory authorities may require undertakings to provide means for consumers to pay for access to the public communications network and use of voice communications services, or number-based interpersonal communications services in the case of Article 107, on pre-paid terms.

(d) Phased payment of connection fees
Member States are to ensure that national regulatory authorities may require undertakings to allow consumers to pay for connection to the public communications network on the basis of payments phased over time.

(e) Non-payment of bills
Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills issued by undertakings. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the end-users beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures are to ensure, as far as is technically feasible that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the end-users. Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the end-users (e.g. ‘112’ calls) are permitted.

(f) Tariff advice
i.e. the facility whereby end-users may request the undertaking to provide information regarding alternative lower-cost tariffs, if available.

(g) Cost control
i.e. the facility whereby undertakings offer other means, if determined to be appropriate by national regulatory authorities, to control the costs of voice communications services, or number-based interpersonal communications services in the case of Article 107, including free-of-charge alerts to consumers in case of abnormal or excessive consumption patterns.

Part B: Facilities referred to in Article 107

Calling-line identification
i.e. the calling party’s number is presented to the called party prior to the call being
established. This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, in particular Directive 2002/58/EC (Directive on privacy and electronic communications).

To the extent technically feasible, operators should provide data and signals to facilitate the offering of calling-line identity and tone dialling across Member State boundaries.

PART C: IMPLEMENTATION OF THE NUMBER PORTABILITY PROVISIONS REFERRED TO IN ARTICLE 99

The requirement that all end-users with numbers from the national numbering plan, who so request can retain their number(s) independently of the undertaking providing the service shall apply:

(a) in the case of geographic numbers, at a specific location; and

(b) in the case of non-geographic numbers, at any location.

This Part does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.
ANNEX VII
CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS AND ESTABLISHING ANY RECOVERY OR SHARING MECHANISM IN ACCORDANCE WITH ARTICLES 84 AND 85

PART A: CALCULATION OF NET COST

Universal service obligations refer to those obligations placed upon an undertaking by a Member State which concern the provision of universal service as set out in Articles 79, 81 and 82.

National regulatory authorities are to consider all means to ensure appropriate incentives for undertakings (designated or not) to provide universal service obligations cost efficiently. In undertaking a calculation exercise, the net cost of universal service obligations is to be calculated as the difference between the net cost for any undertaking of operating with the universal service obligations and operating without the universal service obligations. Due attention is to be given to correctly assessing the costs that any undertaking would have chosen to avoid had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator. The calculation is to be based upon the costs attributable to:

(i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards.

This category may include service elements such as access to emergency telephone services, provision of certain public pay telephones, provision of certain services or equipment for disabled people, etc;

(ii) specific end-users or groups of end-users who, taking into account the cost of providing the specified network and service, the revenue generated and any geographical averaging of prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those end-users or groups of end-users which would not be served by a commercial operator which did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any undertaking is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the national regulatory authority.

PART B: RECOVERY OF ANY NET COSTS OF UNIVERSAL SERVICE OBLIGATIONS

The recovery or financing of any net costs of universal service obligationsrequires designated undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such a compensation involves financial transfers, Member States are to ensure that these are undertaken in an
objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result in the least distortion to competition and to user demand.

In accordance with Article 85(3), a sharing mechanism based on a fund should use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due and/or administrative payments to the undertakings entitled to receive payments from the fund.
ANNEX VIII

INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH ARTICLE 96
(TRANSPARENCY AND PUBLICATION OF INFORMATION)

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 96. It is for the national regulatory authority to decide which information is relevant to be published by the providers of internet access services and providers of publicly available number-based interpersonal communications services and which information is to be published by the national regulatory authority itself, so as to ensure that all end-users are able to make informed choices. If deemed appropriate, national regulatory authorities may promote self- or co-regulatory measures prior to imposing any obligation.

1. Contact details of the undertaking

2. Description of the services offered

2.1. Scope of the services offered and the main characteristics of each service provided, including any minimum service quality levels offered and any restrictions imposed by the provider on the use of terminal equipment supplied, and accessible information about the functioning of the service and its accessibility characteristics and facilities.

2.2. Tariffs of the services offered, including information on communications volumes (such as restrictions of data usage, numbers of voice minutes, numbers of SMSs) of specific tariff plans and the applicable tariffs for additional communication units, numbers or services subject to particular pricing conditions, charges for access and maintenance, all types of usage charges, special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment.

2.3. After-sales and maintenance services offered and their contact details.

2.4. Standard contract conditions, including contract duration, charges due on early termination of the contract, rights related to the termination of bundled offers or of elements thereof, and procedures and direct charges related to the portability of numbers and other identifiers, if relevant.

2.5. Provide end-users with information on access to emergency services and caller location. If the undertaking is a provider of number-based interpersonal communications services, information on access to or on any limitations on the provision of emergency services and caller location information.

2.6. Details of products and services designed for users with disabilities, including functions, practices, policies and procedures and alterations in the operation of the service targeted to address the needs of persons with functional limitations.

(2.6a.) Accessible information to facilitate complementarities with assistive services.
3. Dispute settlement mechanisms, including those developed by the undertaking.
# ANNEX IX

## QUALITY OF SERVICE PARAMETERS

Quality-of-Service Parameters, Definitions and Measurement Methods referred to in Article 97

For providers of access to a public communications network

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<th>MEASUREMENT METHOD</th>
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For number-based interpersonal communications services

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Version number of ETSI EG 202 057-1 is 1.3.1 (July 2008)

For Internet access services

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Note 1

Parameters should allow for performance to be analysed at a regional level (i.e. no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat).

Note 2

Member States may decide not to require up-to-date information concerning the performance for these two parameters to be kept if evidence is available to show that performance in these two areas is satisfactory.
ANNEX X
INTEROPERABILITY OF CONSUMER EQUIPMENT REFERRED TO IN ARTICLE 105

1. COMMON SCRAMBLING ALGORITHM AND FREE-TO-AIR RECEPTION

All consumer equipment intended for the reception of conventional digital television signals (i.e. broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C or DVB-S), for sale or rent or otherwise made available in the Union, capable of descrambling digital television signals, is to possess the capability to:

– allow the descrambling of such signals according to a common European scrambling algorithm as administered by a recognised European standards organisation, currently ETSI,

– display signals that have been transmitted in the clear provided that, in the event that such equipment is rented, the renter is in compliance with the relevant rental agreement.

2. INTEROPERABILITY FOR DIGITAL TELEVISION SETS

Any digital television set with an integral screen of visible diagonal greater than 30 cm which is put on the market for sale or rent in the Union is to be fitted with at least one open interface socket (either standardised by, or conforming to a standard adopted by, a recognised European standards organisation, or conforming to an industry-wide specification) permitting simple connection of peripherals, and able to pass all relevant elements of a digital television signal, including information relating to interactive and conditionally accessed services. Terminal equipment of digital television sets needs to be interoperable where technically feasible so that it can be easily reusable with other providers.

2a. FUNCTIONALITY FOR RADIO SETS

Any radio set which is put on the market in the Union from [date of transposition] shall be capable of receiving digital and analogue terrestrial radio broadcasts. This paragraph shall not apply to low value, small consumer radio equipment or products where a receiver is purely ancillary. It shall also not apply to radio equipment used by radio amateurs within the meaning of Article 1, definition 56, of the International Telecommunications Union (ITU) Radio Regulations.
ANNEX XI

Part A

Repealed Directives

with [list of the successive amendments thereto/the amendment thereto]
(referred to in Article 116)


  (OJ L 171, 29.6.2007, p. 32)


  (OJ L 310, 26.11.2015, p. 1)

Part B

Time-limits for transposition into national law [and date(s) of application]
(referred to in Article 116)

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## ANNEX XII

### CORRELATION TABLE

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8.9.2017

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council establishing the European Electronic Communications Code

Rapporteur (*): Dita Charanzová

(*) Associated committee – Rule 54 of the Rules of Procedure

SHORT JUSTIFICATION

I. Introduction

In response to significant structural changes, characterised by a slow transition from copper to fibre, more complex competition with the convergence of fixed and mobile networks, the rise of retail bundles, the emergence of new online players along the value chains, and not least changing end-user expectations and requirements, including an explosion in demand for wireless data, the Commission has put forward an overhaul of the EU telecoms rules in September 2016.

The proposed European Electronic Communications Code puts forward new initiatives to meet Europe’s growing connectivity needs and to encourage investment in high-capacity networks, whilst maintaining the regulatory framework’s objective to ensure that markets operate more competitively, bringing lower prices and better quality of service to consumers and businesses. The Code also puts forward a revision of the sector-specific consumer protection rules, including on emergency communications, and the universal services regime. These provisions of the Code are deliberated under exclusive IMCO leadership, who acts as associated committee under Rule 54.

II. Position of the Rapporteur

The Rapporteur shares the overall objectives of the Commission’s proposal, its emphasis on increased connectivity and the need to boost investment. In particular, the Rapporteur shares the Commission’s view that there is a continued need for sector-specific consumer protection provisions, in addition to the horizontal EU consumer acquis. The Commission proposal is seen as a welcome step in the right direction.
At the same time, however, the Rapporteur has identified a number of elements that require further discussion. First, the rapporteur questions the need to extend the provisions of the telecoms framework to number-independent interpersonal communication services. Secondly, the Rapporteur puts forward a number of improvements as regards the universal service obligation. Finally, the Rapporteur suggests additional provisions to protect the rights of end-users in the market.

1. Scope - regulation of “new online players”

Whilst the Rapporteur agrees with the overall Commission’s intent to establish a future-proof framework, she does not believe that the proposal accomplishes this objective. The distinction between number-based and non-number based interpersonal communication services and the dividing line between what would be considered a communication services and what would be seen as digital content may lead to legal uncertainty and confusion of end-users. Furthermore, the Rapporteur does not see any substantive reasons for regulating non-number based services within the telecoms framework and stresses the substantial differences from a consumer perspective in terms of connectivity, devices, functionality, interoperability and price and payments. She therefore considers it more appropriate to ensure that number-independent interpersonal communication services are addressed within the scope of the digital content directive, currently under negotiation, and other EU legislation, such as the Consumer Rights Directive.

To address this, the Rapporteur proposes a series of amendments to limit the scope of the end-user provisions and, inter alia, to set out the relationship between the sector-specific telecoms framework and the horizontal consumer acquis.

2. Universal Service Obligation

On Universal Services Obligations, the Rapporteur supports the Commission’s overall approach, including its emphasis on the affordability of internet access service for all, and the proposal that Member States bear the cost of any USO. She puts forward a number of improvements to the current draft, including in particular:

- Limiting the scope to consumers (rather than end-users)
- Obliging national regulatory authorities to further define the minimum internet access service functionality on the basis of BEREC guidelines with a view to ensuring a consistent EU-wide approach, whilst offering Member States the necessary flexibility
- Setting a fixed deadline of 9 years for the phasing out of legacy USO, i.e. public payphones, directories and directory enquiry services
- Strengthening the obligations concerning the availability of social tariffs if retail prices are found to be unaffordable.

3. End-user rights

The Rapporteur agrees with the Commission that there is a continued need for sector-specific regulation and supports the Commission’s proposal for maximum harmonisation, with a limited number of exceptions such as on maximum contract lengths. The Rapporteur puts forward two additional provisions, notably:

- A right to compensation for end-users in case of delays or material/non-material damage related to switching
• A provision to address the discriminatory and abusive practices concerning intra-EU calls and messaging services

In addition, the Rapporteur proposes a number of simplifications/clarifications as well as some strengthened provisions based on COM proposal, including:

• Handset Based location for 112
• Better coverage for persons with disabilities.
AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) The convergence of the telecommunications, media and information technology sectors means that all 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. It is necessary to separate the regulation of electronic communications networks and services from the regulation of content. This 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 Union or national level in respect of such services, in compliance with 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 Directive 2010/13/EU of the European Parliament and of the Council.

Amendment

(7) The convergence of the telecommunications, media and information technology sectors means that all 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. It is necessary to separate the regulation of electronic communications networks and services from the regulation of content. This 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 Union or national level in respect of such services, in compliance with 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 Directive 2010/13/EU of the European Parliament and of the Council.

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 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.


Amendment 2
Proposal for a directive
Recital 8

Text proposed by the Commission

(8) This Directive does not affect the application to radio equipment of Directive 2014/53/EU, but does cover consumer equipment used for digital television.

Amendment

(8) This Directive does not affect the application to radio equipment of Directive 2014/53/EU, but does cover consumer equipment used for radio and digital television.

Amendment 3
Proposal for a directive
Recital 10

Text proposed by the Commission

(10) Certain electronic communications services under this Directive could also fulfil the definition of ‘information society

Amendment

(10) Certain electronic communications services under this Directive could also fulfil the definition of ‘information society
service’ in Article 1 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services. The provisions governing Information Society Services apply to those electronic communications services to the extent that there are not more specific provisions applicable to electronic communications services in this Directive or in other Union acts. However, electronic communications services such as voice telephony, messaging services and electronic mail 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.

Amendment 4
Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. Technological and market evolution has brought networks to move to internet protocol technology, and enabled end-users to choose between a range of competing voice service providers. Therefore, the term 'publicly available telephone service', exclusively used in Directive 2002/22/EC and widely perceived as referring to traditional analogue telephone services should be replaced by the more current and technological neutral term 'voice service’ in Article 1 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services. The provisions governing Information Society Services apply to those electronic communications services to the extent that there are not more specific provisions applicable to electronic communications services in this Directive or in other Union acts. However, electronic communications services such as voice telephony, messaging services and electronic mail 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 and other vertically integrated services including machine-to-machine.

Amendment

(14) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development to ensure the non-discriminatory application of the present Directive to the different service providers. 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
communications'. Conditions for the provision of a service should be separated from the actual definitional elements of a 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 service. Voice communications services also include means of communication specifically intended for **disabled end-users** using text relay or total conversation services.

**Amendment 5**

**Proposal for a directive**

**Recital 15**

*Text proposed by the Commission*

(15) The services used for communications purposes, and the technical means of their delivery, have evolved considerably. End-users increasingly substitute traditional voice telephony, text messages (SMS) and electronic mail conveyance services by functionally equivalent online services such as Voice over IP, messaging services and web-based e-mail services. In order to ensure that end-users are effectively and equally protected when using functionally analogue telephone services should be replaced by the more current and technological neutral term 'voice communications'. Conditions for the provision of a service should be separated from the actual definitional elements of a 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 service. Voice communications services also include means of communication specifically intended for **end-users with disabilities** using text or video relay or total conversation services, such as voice, video and real-time text, singly or in combination, within the same call).

*Amendment*

(15) The services used for communications purposes, and the technical means of their delivery, have evolved considerably. End-users increasingly substitute traditional voice telephony, text messages (SMS) and electronic mail conveyance services by functionally equivalent online services such as Voice over IP, messaging services and web-based e-mail services, although they still do not consider them as substitutes to traditional voice services,
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 processing of personal data by 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.

due to a perception of different levels of quality, security and interoperability. 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 to the extent possible. The existing differences between services should however be acknowledged, online services such as Voice over IP being provided in most cases without having substantial control over the network used for enabling the communication but on the other hand allowing end-user to switch from service to service in an easier manner than from traditional communication services. 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 in a proportionate manner to deliver the best outcomes for end-users. 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, therefore these services should not be defined on the basis of the technology used, but on the legitimate expectations end-users have for the service provided depending for instance on the price paid or the ease of terminating the contract. 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. This last category
should not include services where connectivity is provided as an input product into connected devices or 'smart goods' or where the provision of connectivity with such products is subject to a contract with the end-user, as they would be considered as embedded digital content or services according to the Directive concerning contracts for the supply of digital content. As said types of services may partly overlap, it is likely that services which only meet the criteria of the conveyance of signals category would be limited to transmission services used for the provision of machine-to-machine services and broadcasting. Similarly to the case of broadcasting, where the transmitted content does not fall within the definition of an electronic communications service, a distinction between a machine-to-machine service and its underlying transmission should be made. Only the transmission should be considered as conveyance of signals, whereas the application part of a machine-to-machine service (such as e.g. the consumption recording and analysis in smart metering) should not. 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.
such data, and repealing Directive 95/46/EC (General Data Protection Regulation); OJ L 119, 4.5.2016, p. 1

Amendment 6
Proposal for a directive
Recital 16

Text proposed by the Commission

(16) In order to fall within the scope of the definition of electronic communications service, a service needs to be provided normally in exchange for remuneration. In the digital economy, market participants increasingly consider information about users as having a monetary value. Electronic communications services are often supplied against counter-performance other than money, for instance by giving access to personal data or other data. The concept of remuneration should therefore encompass situations where the provider of a service requests and the end-user actively provides personal data, such as name or email address, or other data directly or indirectly to the provider. It should also encompass situations where the provider collects information without the end-user actively supplying it, such as personal data, including the IP address, or other automatically generated information, such as information collected and transmitted by a cookie). In line with the jurisprudence of the Court of Justice of the European Union on Article 57 TFEU, 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 service provider intends to monetise personal data it has collected or received.
monetises personal data it has collected.

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

Amendment 7

Proposal for a directive
Recital 17

Text proposed by the Commission

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

Amendment

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

Amendment 8
Proposal for a directive
Recital 22

Text proposed by the Commission

(22) The activities of competent authorities established under this Directive contribute to the fulfilment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning.

Amendment

(22) The activities of competent authorities established under this Directive contribute to the fulfilment of broader policies in the areas of culture and cultural diversity, media pluralism, employment, the environment, social cohesion and town and country planning.

Amendment 9
Proposal for a directive
Recital 40

Text proposed by the Commission

(40) 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, 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 communications networks or services when they start their activities, this notification should be submitted to BEREC

Amendment

(40) The benefits of the single market to service providers and end-users can be best achieved by general authorisation of electronic communications networks, of internet access services and of number-based interpersonal communications 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 communications networks or services when they start their activities, this notification should be submitted to BEREC which acts as a single
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.

Amendment 10
Proposal for a directive
Recital 49

Text proposed by the Commission

(49) Specific obligations which may be imposed on providers of electronic communications networks and electronic communications services other than number-independent interpersonal communications services in accordance with Union law by virtue of their significant market power as defined in this Directive should be imposed separately from the general rights and obligations under the general authorisation.

Amendment

(49) Specific obligations which may be imposed on providers of electronic communications networks, of internet access services and of number-based interpersonal communications services in accordance with Union law by virtue of their significant market power as defined in this Directive should be imposed separately from the general rights and obligations under the general authorisation.

Amendment 11
Proposal for a directive
Recital 69
(69) In the context of a competitive environment, the views of interested parties, including users and consumers, should be taken into account by national regulatory authorities when dealing with issues related to end-users' rights. Out-of-court dispute settlement procedures may constitute a fast and cost-efficient way end-users to enforce their rights, in particular for consumers and micro and small enterprises. For consumer disputes, effective, non-discriminatory and inexpensive procedures to settle their disputes with providers of publicly available electronic communications services are already ensured by Directive 2013/11/EU of the European Parliament and of the Council31 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. In view of the deep sectorial expertise of national regulatory authorities, Member States should enable the national regulatory authority to act as dispute settlement entity, through a separate body within that authority which should not be subject to any instructions. Dispute resolution procedures under this Directive that involve consumers should be subject to the quality requirements set out in Chapter II of Directive 2013/11/EU.
Amendment 12

Proposal for a directive
Recital 89

Text proposed by the Commission

(89) Standardisation should remain primarily a market-driven process. However there may still be situations where it is appropriate to require compliance with specified standards at Union level to ensure interoperability in the single market. At national level, Member States are subject to the provisions of Directive 2015/1535/EU. Standardisation procedures under this Directive are without prejudice to the provisions of the Radio Equipment Directive 2014/53/EU, the Low Voltage Directive 2014/35/EU and the Electromagnetic Compatibility Directive 2014/30/EU.

Amendment

(89) Standardisation should remain primarily a market-driven process. However there may still be situations where it is appropriate to require compliance with specified standards at Union level to in order to improve interoperability, freedom of choice for users and encourage interconnectivity in the single market. At national level, Member States are subject to the provisions of Directive 2015/1535/EU. Standardisation procedures under this Directive are without prejudice to the provisions of the Radio Equipment Directive 2014/53/EU, the Low Voltage Directive 2014/35/EU and the Electromagnetic Compatibility Directive 2014/30/EU.

Amendment 13

Proposal for a directive
Recital 90

Text proposed by the Commission

(90) Providers of public electronic communications networks or publicly

Amendment

(90) Providers of public electronic communications networks or publicly
available electronic communications services, or of both, should be required to take measures to safeguard the security of their networks and services, respectively. Having regard to the state of the art, those measures should ensure a level of security of networks and services appropriate to the risks posed. Security measures should take into account, as a minimum, all the relevant aspects of the following elements: as regards security of networks and facilities: physical and environmental security, security of supplies, access control to networks and integrity of networks; as regards incident handling: incident 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.

Amendment 14
Proposal for a directive
Recital 91 a (new)

Text proposed by the Commission

Amendment

(91a) In order to safeguard the security and integrity of networks and services, the use of end-to-end encryption should be promoted and, where necessary, be mandatory in accordance with the principles of security and privacy by design; in particular, Member States should not impose any obligation to encryption providers, providers of
Amendment 15
Proposal for a directive
Recital 127

Text proposed by the Commission

(127) Massive growth in radio spectrum demand, and in end-user demand for wireless broadband capacity, calls for solutions allowing alternative, complementary, spectrally efficient access solutions, including low-power wireless access systems with a small-area operating range such as radio local area networks (RLAN) and networks of low-power small-size cellular access points. Such complementary wireless access systems, in particular publicly accessible RLAN access points, increase access to the internet for end-users and mobile traffic off-loading for mobile operators. RLANs use harmonised radio spectrum without requiring an individual authorisation or spectrum usage right. Most RLAN access points are so far used by private users as local wireless extension of their fixed broadband connection. End-users, within the limits of their own internet subscription, should not be prevented from sharing access to their RLAN with others, so as to increase the number of available access points, particularly in densely populated areas, maximise wireless data capacity through radio spectrum re-use and create a cost-effective complementary wireless broadband infrastructure accessible to other end-users. **Therefore, unnecessary restrictions to the deployment and interlinkage of RLAN access points should also be removed.** Public authorities

Amendment

(127) Massive growth in radio spectrum demand, and in end-user demand for wireless broadband capacity, calls for solutions allowing alternative, complementary, spectrally efficient access solutions, including low-power wireless access systems with a small-area operating range such as radio local area networks (RLAN) and networks of low-power small-size cellular access points. Such complementary wireless access systems, in particular publicly accessible RLAN access points, increase access to the internet for end-users and mobile traffic off-loading for mobile operators. RLANs use harmonised radio spectrum without requiring an individual authorisation or spectrum usage right. Most RLAN access points are so far used by private users as local wireless extension of their fixed broadband connection. End-users, within the limits of their own internet subscription, should not be prevented from sharing access to their RLAN with others, so as to increase the number of available access points, particularly in densely populated areas, maximise wireless data capacity through radio spectrum re-use and create a cost-effective complementary wireless broadband infrastructure accessible to other end-users. **Providers shall ensure that such access is given with the explicit consent of end-users, is not detrimental to the conditions of an end-users’ own**
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\(^{35}\). Further technologies such as LiFi are emerging that will complement current radio spectrum capabilities of RLANs and wireless access point to include optical visible light-based access points and lead to hybrid local area networks allowing optical wireless communication.

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\(^{35}\) 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 access and liability is not born by the end-user giving the access to their network located at the end-user's premises. In addition, 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\(^{35}\). Further technologies such as LiFi are emerging that will complement current radio spectrum capabilities of RLANs and wireless access point to include optical visible light-based access points and lead to hybrid local area networks allowing optical wireless communication.

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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. 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.


Justification

This amendment is necessary to ensure the internal logic and cohesion of the text

Amendment 18

Proposal for a directive

Recital 143
(143) While it is appropriate in some circumstances for a national regulatory authority to impose obligations on operators that do not have significant market power in order to achieve goals such as end-to-end connectivity or interoperability of services, it is however necessary to ensure that such obligations are imposed in conformity with the regulatory framework and, in particular, its notification procedures.

Amendment 19

Proposal for a directive
Recital 194

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

Amendment

(194) Universal service is a safety net to ensure that a set of minimum services is available to all consumers 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.

Amendment 20

Proposal for a directive
Recital 196

(196) A fundamental requirement of universal service is to ensure that all end-

Amendment

(196) A fundamental requirement of a universal service is to ensure that all
users have access at an affordable price to available functional internet access and voice communications services, at least at a fixed location. 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. There should be no limitations on the technical means by which the connection is provided, allowing for wired or wireless technologies, nor any limitations on the category of operators which provide part or all of universal service obligations.

Proposal for a directive
Recital 197

Text proposed by the Commission

(197) 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 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.

Amendment

Amendment

(197) 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 availability of affordable broadband internet access service provided under the universal service obligation should have sufficient capability to support access to and use of at least a minimum set of basic internet services and at least a minimum bandwidth that reflects the average use of such services by a majority of the population, with the aim of ensuring an adequate level of social inclusion and participation in the digital society and economy. It is for the national regulatory authorities, in accordance with BEREC guidelines, to establish the most appropriate way in which to ensure the delivering of the bandwidth necessary to
support at least such a minimum list of services while seeking to reflect the internet access capability available to the majority of the population of a Member State’s territories or parts thereof. For instance, they may define capability in terms of the minimum quality of service requirements, including minimum bandwidth and data volumes. The requirements of Union law on open internet, in particular as provided for in Regulation (EU) No 2015/2120 of the European Parliament and of the Council1a, should apply to any such internet access service, including any list of services or minimum bandwidth adopted under the universal service obligation.


Amendment 22

Proposal for a directive
Recital 198

Text proposed by the Commission

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

Amendment

(198) Consumers should not be obliged to access services they do not want and it should therefore be possible for eligible consumers to limit, on request, the affordable universal service to voice communications service only.
Amendment 23
Proposal for a directive
Recital 200

Text proposed by the Commission

(200) Affordable price means a price defined by Member States at national level in the light of specific national conditions, and may involve 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 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.

Amendment

(200) Affordable price means a price defined by Member States at national level in the light of specific national conditions, and should involve special social tariff options or packages to deal with the needs of low-income users or users with special social needs. These end-users may include older people, persons with disabilities and the consumers 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 and to ensure their right to access publicly available electronic communication services. Affordability for individual consumers should be founded upon their right to contract with a provider, availability of a number, continued connection of service and their ability to monitor and control their expenditure.

Amendment 24
Proposal for a directive
Recital 201

Text proposed by the Commission

(201) 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 affordable functional internet access and voice communications services at least at a fixed location with any undertaking providing such services in that location. In order to minimise the

Amendment

(201) It should no longer be possible to refuse consumers access to the minimum set of connectivity services. A right to contract with a provider should mean that consumers who might face refusal, in particular those with low incomes or special social needs, should have the possibility to enter into a contract for the provision of affordable internet access and voice communications services at least at a fixed location with any provider of such services in that location. In order to minimise the financial risks such as non-
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.

**Amendment 25**

**Proposal for a directive**

**Recital 202**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 26**

**Proposal for a directive**

**Recital 204**

*Text proposed by the Commission*

(204) 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.

*Amendment*

(204) 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 **consumers** with low incomes or special social needs.

**Amendment 27**

**Proposal for a directive**

**Recital 205**

*Text proposed by the Commission*

(205) 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.

the social tariff options or packages provided by providers are insufficient alone for ensuring affordability for all consumers with low incomes or special needs, Member State should be able to grant direct additional support to such consumers, such as for example vouchers to such consumers or direct payments to providers. This can be appropriate alternative to other measures, having regard to the need to minimise market distortions.

Amendment 28
Proposal for a directive
Recital 206

Text proposed by the Commission

(206) Member States should introduce measures to promote the creation of a market for affordable 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 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. 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.

Amendment

(206) Member States should introduce measures to promote the creation of a market for affordable products and services incorporating facilities for consumers with disabilities, following a universal design approach, including, where appropriate, equipment with assistive technologies that is interoperable with publically available electronic communication equipment and services. This can be achieved, inter alia, by referring to European standards, such as European standard EN 301 549 V1.1.2 (2015-04) or by introducing requirements in accordance with Directive xxx/YYYY/EU of the European Parliament and of the Council. 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 consumers with disabilities under normal economic conditions. The average cost of the relay services for consumers with disabilities should be equivalent to that of voice communication services in order not to prejudice consumers with disabilities.
The net costs of providers of relay services should be compensated based on Article 84.

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38 OJ C […] , […] , p. […] .


Amendment 29
Proposal for a directive
Recital 207

Text proposed by the Commission

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

Amendment

(207) For data communications at data rates that are sufficient to permit 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.

Amendment 30
Proposal for a directive
Recital 208

Text proposed by the Commission

(208) The market has a leading role to play in ensuring availability of broadband internet access with constantly growing capacity. In areas where the market would

Amendment

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

**Amendment 31**

**Proposal for a directive**

**Recital 209**

(209) 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 service as defined by Member States in accordance with Article 79 (2) and voice communications services at a fixed location, the Member State should be able to exceptionally designate different **undertakings** or sets of **undertakings to provide** these services in the different relevant parts of the national territory. Universal service obligations in support of availability of **functional** internet access service may be restricted by...
service may be restricted by Member States to the end-user’s primary location or residence. There should be no constraints on the technical means by which the functional internet access and voice communications services at a fixed location are provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations. Member States to the consumer’s primary location or residence. There should be no constraints on the technical means by which the internet access and voice communications services at a fixed location are provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations.

Justification

see earlier rapporteur amendments

Amendment 32
Proposal for a directive
Recital 211

Text proposed by the Commission

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

Amendment

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

Amendment 33
Proposal for a directive
Recital 213

Text proposed by the Commission

(213) When an undertaking designated to ensure the availability at a fixed location of functional internet access or voice communications services, as identified in Article 81 of this Directive, chooses to

Amendment

(213) When a provider designated to ensure the availability at a fixed location of internet access or voice communications services, as identified in Article 81 of this Directive, chooses to dispose of a
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.

Amendment 34
Proposal for a directive
Recital 214

Text proposed by the Commission

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

Amendment

(214) In order to provide stability and support a gradual transition, Member States should be able to continue to ensure the provision of universal services in their territory, other than internet access and voice communications services at a fixed location, that are included in the scope of their universal obligations on the basis of Directive 2002/22/EC at the entry into force of this Directive, provided the services or comparable services are not available under normal commercial circumstances. **Member States should be able to provide public pay telephones and communications access points in the main entry points of the country, such as airports or train and bus stations, as well as places used by people in cases of emergencies, such as hospitals, police stations and highway emergency areas, to meet the reasonable needs of end-users, including end-users with disabilities.** 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.

Amendment 35

Proposal for a directive
Recital 215

Text proposed by the Commission

(215) Member States should monitor the situation of end-users with respect to their use of functional internet access and voice communications services and in particular with respect to affordability. The affordability of functional internet access and voice communications services is related to the information which users receive regarding usage expenses as well as the relative cost of 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. 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.

Amendment

(215) Member States should monitor the situation of consumers with respect to their use of internet access and voice communications services and in particular with respect to affordability. The affordability of internet access and voice communications services is related to the information which consumers receive regarding usage expenses as well as the relative cost of 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 providers. 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.

Amendment 36

Proposal for a directive
Recital 217
Text proposed by the Commission

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

Amendment

(217) Where the provision of internet access and voice communications services or the provision of other universal services in accordance with Article 82 result in an unfair burden on a provider, 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.

Amendment 37

Proposal for a directive
Recital 221

Text proposed by the Commission

(221) When a universal service obligation represents an unfair burden on an undertaking, it is appropriate to allow Member States to establish mechanisms for efficiently recovering net costs. 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

Amendment

(221) When a universal service obligation represents an unfair burden on an undertaking, it is appropriate to allow Member States to establish mechanisms for efficiently recovering net costs. The net costs of universal service obligations should be recovered via public funds. In exceptional cases, Member States might adopt or maintain mechanisms to share the net cost of universal service obligations between providers of electronic communications networks or services and undertakings providing information society services. Such mechanisms should be reviewed at least every three years with a view to determining which net costs should continue to be shared and which should be compensated from 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
budgets. 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.

Amendment 38
Proposal for a directive
Recital 227

Text proposed by the Commission

(227) Considering the particular aspects related to reporting missing children, Member States should maintain their commitment to ensure that a well-functioning service for reporting missing children is actually available in their territories under the number ‘116000’

Amendment

(227) Considering the particular aspects related to reporting missing children, Member States should maintain their commitment to ensure that a well-functioning service for reporting missing children is actually available in their territories under the number ‘116000’. Member States should ensure that a review of their national system is carried out regarding transposition and implementation of the Directive, taking into account the measures needed to achieve a sufficient level of service quality in operating the 116 000 number as well as engaging the financial resources necessary to operate the hotline. The definition of missing children falling under the 116000 number should include the following categories children: runaways, international child abductions, missing children, parental abductions, missing migrant children, criminal abductions and lost, sexual abuses and where the life of a child is at risk.
Amendment 39

Proposal for a directive
Recital 227 a (new)

Text proposed by the Commission

Even though efforts have been made to raise awareness since the first hotlines became operational after the EC Decision of 2007, hotlines still struggle with varying and often very low awareness in their countries. Strengthening the hotlines' efforts in raising awareness of the number and the services provided is an important step to better protecting, supporting and preventing missing children. To that end Member States and the Commission should continue to support efforts promoting the 116 000 number among the general public and among relevant stakeholders in national child protection systems.

Amendment 40

Proposal for a directive
Recital 229

Text proposed by the Commission

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.

anomalous use of regulated retail roaming services.

Amendment 41

Proposal for a directive
Recital 229 a (new)

Text proposed by the Commission

(229a) Very significant price differences continue to prevail, both for fixed and mobile communications, between domestic voice and SMS communications and those terminating in another Member State. While there are substantial variations between countries, operators and tariff packages, and between mobile and fixed services, this continues to affect more vulnerable customer groups and to pose barriers to seamless communication within the EU. Any significant retail price differences between electronic communications services terminating in the same Member State and those terminating in another Member State should therefore be justified by reference to objective criteria.

Amendment 42

Proposal for a directive
Recital 230

Text proposed by the Commission

(230) Divergent implementation of the rules on end-user protection has created significant internal market barriers affecting both providers of electronic communications services and end-users. Those barriers should be reduced by the applicability of the same rules ensuring a high common level of protection across the Union. A calibrated full harmonisation of the end-user rights covered by this Directive should considerably increase
legal certainty for both end-users and providers of electronic communications services, and should significantly lower entry barriers and unnecessary compliance burden stemming from the fragmentation of the rules. Full harmonisation helps to overcome barriers to the single market resulting from such national end-user provisions which at the same time protect national providers against competition from other Member States. In order to 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.

Amendment 43
Proposal for a directive
Recital 231

Text proposed by the Commission

(231) Contracts are an important tool for end-users to ensure transparency of information and legal 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

Amendment

(231) Contracts are an important tool for end-users to ensure transparency of information and legal 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

The inclusion of information requirements in this Directive, which might also be required pursuant to Directive 2011/83/EU, should not lead to duplications of the same information within pre-contractual and contractual documents. Information provided in respect of this Directive, including any more prescriptive and more detailed informational requirements, should be deemed to fulfil any such requirements pursuant to Directive 2011/83/EU.

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Amendment 44

Proposal for a directive
Recital 232

Text proposed by the Commission

(232) Provisions on contracts in this Directive should apply irrespective the amount of any payment to be made by the customer. They should apply not only to consumers but also to micro and small enterprises as defined in Commission Recommendation 2003/361/EC and not-for-profit organisation as defined in

Amendment

(232) Provisions on contracts in this Directive should apply not only to consumers but also to micro and small enterprises as defined in Commission Recommendation 2003/361/EC and not-for-profit organisation as defined in
Recommendation 2003/361/EC, whose bargaining position is comparable to that of consumers and which should therefore benefit from the same level of protection. The provisions on contracts, including those contained in Directive 2011/83/EU on consumer rights, should apply automatically to those undertakings unless they prefer negotiating individualised contract terms with providers of electronic communications services. 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.

Member State law, whose bargaining position is comparable to that of consumers and which should therefore benefit from the same level of protection. The provisions on contracts, including those contained in Directive 2011/83/EU on consumer rights, should apply automatically to those undertakings unless they prefer negotiating individualised contract terms with providers of electronic communications services. 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.

"Not-for-profit organisations" are legal entities that do not earn profits for their owners or members. Typically, not-for-profit organisations are charities or other types of public interest organisations. Hence, as the situation of not-for-profit organisations is similar to micro and small enterprises, it is legitimate to treat such organisations in the same way as micro or small enterprises under this Directive, insofar as end-user rights are concerned.

Amendment 45
Proposal for a directive
Recital 233

Text proposed by the Commission

(233) The specificities of the electronic communications sector require, beyond horizontal contract rules, a limited number of additional end-user protection provisions. End-users should inter alia be informed of any quality of service levels offered, conditions for promotions and termination of contracts, applicable tariff

Amendment

(233) The specificities of the electronic communications sector require, beyond horizontal contract rules, a limited number of additional end-user protection provisions. End-users should inter alia be informed of any quality of service levels offered, conditions for promotions and termination of contracts, applicable tariff
plans and tariffs for services subject to particular pricing conditions. 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.

Amendment 46
Proposal for a directive
Recital 235

Text proposed by the Commission

(235) 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

Amendment

(235) 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. 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.

Amendment 47
Proposal for a directive
Recital 237

(237) 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 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

Amendment

(237) 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 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 providers of electronic communications networks and/or internet access service, publicly available interpersonal communications services and transmission services used for broadcasting greater transparency as
transparency as regards information (including tariffs, quality of service, restrictions on terminal equipment supplied, and other relevant statistics). Any such requirements should take due account of the characteristics of those networks or services. They should also ensure that third parties have the right to use, without charge, publicly available information published by such undertakings, in view of providing comparison tools.

Amendment 48

Proposal for a directive
Recital 240

Text proposed by the Commission

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

Amendment

(240) Independent comparison tools should be operationally independent from providers of publicly available electronic communications services. They can be operated by private undertakings, or by or on behalf of competent authorities, however they should be operated in accordance with specified quality criteria including the requirement to provide details of their owners, provide accurate and up-to-date information, state the time of the last update, set out clear, objective criteria on which the comparison will be based and include a broad range of offers on publicly available electronic communications services other than number-independent interpersonal communications services, covering a significant part of the market. No service provider should be given favourable treatment in search results other than as based on those clear objective criteria. 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
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.

**Amendment 49**

**Proposal for a directive**

**Recital 241**

**Text proposed by the Commission**

(241) In order to address public interest issues with respect to the use of publicly available electronic communications services and to encourage protection of the rights and freedoms of others, the 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 this Directive. Such public interest information should be updated whenever necessary and should be presented in easily comprehensible formats, as determined by each Member State, and on national public authority websites. National regulatory authorities should be able to oblige providers to 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.

**Amendment**

(241) In order to address public interest issues with respect to the use of publicly available electronic communications services and to encourage protection of the rights and freedoms of others, the 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, 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 this Directive. Such public interest information should be updated whenever necessary and should be presented in easily comprehensible formats, as determined by each Member State, and on national public authority websites. National regulatory authorities should be able to oblige providers to
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. 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 end-users made in the ordinary course of business.

Amendment 50
Proposal for a directive
Recital 243

Text proposed by the Commission

(243) National regulatory authorities should be empowered 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 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, disseminate this standardised information to all their customers in a manner deemed appropriate by the national regulatory authorities. Dissemination of such information should however not impose an excessive burden on providers. Member States should require this dissemination by the means used by providers in communications with end-users made in the ordinary course of business.

Amendment

(243) National regulatory authorities should be empowered 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. Where a provider of an electronic communications service does not, for reasons related to the technical delivery of the service, have control over the quality of the service or does not offer a minimum quality of service, it should not be required to provide quality of service information. National regulatory authorities should nonetheless be able to require publication of such information where it is demonstrated that such
BEREC should adopt guidelines on relevant quality of service parameters which national regulatory authorities should take into utmost account.

Information is not effectively available to the public. National regulatory 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.

Amendment 51
Proposal for a directive
Recital 244

Text proposed by the Commission

(244) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their best interest. It is essential to ensure that they are able to do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges etc. That does not preclude undertakings 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.

Amendment

(244) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their best interest. It is essential to ensure that they are able to do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges etc. That does not preclude providers 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 and providers should offer at least one contract of a duration of 12 months or less. 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.

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 and such contracts should not cover terminal or internal access equipment, such as handsets, routers or modems.

Amendment 52

Proposal for a directive
Recital 245

Text proposed by the Commission

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

Amendment

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

Amendment 53

Proposal for a directive
Recital 246

Text proposed by the Commission

(246) 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.

Amendment

(246) Any changes to the contractual conditions proposed by providers of publicly available internet access services or number-based interpersonal communications services and transmission services used for broadcasting 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. End-users should be notified of any changes to the
contractual conditions in a durable medium, such as paper, a USB stick, a CD-ROM, a DVD, a memory card, the hard disk of a computer or an e-mail.

Amendment 54
Proposal for a directive
Recital 248

Text proposed by the Commission

(248) Number portability is a key facilitator of consumer choice and effective competition in competitive electronic communications markets. End-users who so request should be able to retain their number(s) on the public telephone network independently of the 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.

Amendment

(248) Number portability is a key facilitator of consumer choice and effective competition in competitive electronic communications markets. End-users who so request should be able to retain their number(s) on the public telephone network independently of the provider of service and for a limited time between the switching of providers of 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.

Amendment 55
Proposal for a directive
Recital 251

Text proposed by the Commission

(251) 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

Amendment

(251) Number portability should be implemented with the minimum delay, so that the number is functionally activated within one working day and the consumer does not experience a loss of service lasting longer than one working day from the agreed date. In order to facilitate a one-stop-shop enabling a seamless switching experience for consumers, the switching process should be led by the receiving
enabling a seamless switching experience for end-users, the switching process should be led by the receiving provider of electronic communications to the public. 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.

**Amendment 56**

Proposal for a directive
Recital 251 a (new)

*Text proposed by the Commission*

(251a) In order to ensure that switching and porting take place within the time-limits provided for in this Directive, Member States should be able to impose compensational measures from a provider where an agreement with an end-user is not respected. Such measures should be proportionate to the length of the delay in complying with the agreement.

**Amendment 57**

Proposal for a directive
Recital 252
(252) 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.

Amendment

(252) Bundles comprising at least publicly available electronic communications services other than number-independent interpersonal communications services, and other services such as linear broadcasting, or terminal equipment such as devices offered by the same provider and contracted jointly, have become increasingly widespread and are an important element of competition. A bundle for the purpose of this article is to be understood as consisting of an internet access service provided together with a number-based interpersonal communications services or of an internet access service and/or a number-based interpersonal communications service with different but complementary services with the exception of transmission services used for the provision of machine-to-machine services and/or terminal equipment provided by the same provider either i) under the same contract, or ii) under the same and subordinate contracts or iii) under the same and under linked contracts provided for a single combined price. While bundles often bring about benefits for consumers, 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 contract period. Member States should retain the discretion to further legislative elements related to a bundle in cases where their nature implies different regulatory treatment, for example because those elements are addressed by other sector-specific regulation or in order to adapt to changes in market practices.

Amendment 58
Proposal for a directive
Recital 254

Text proposed by the Commission

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

Amendment

(254) In line with the objectives of the Charter and the United Nations Convention on the Rights of Persons with Disabilities, the regulatory framework should ensure that all end-users, including end-users with disabilities, older people, and users with special social needs, have easy and equal access to affordable and accessible high quality services regardless of their place of residence within the Union. Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the Union shall take account of the needs of persons with disabilities in drawing up measures under Article 114 of the TFEU.
Amendment 59
Proposal for a directive
Recital 255

Text proposed by the Commission

(255) End-users should be able to access emergency services through emergency communications free of charge and without having to use any means of payment, from any device which enables number-based interpersonal communications services, including when using roaming services in a Member State. Emergency communications are means of communication, that include not only voice communications but also SMS, messaging, video or other types of communications, that are enabled in a Member State to access emergency services. Emergency communication can be triggered on behalf of a person by the eCall in-vehicle system as defined by Regulation 2015/758/EU of the European Parliament and of the Council. It should, however, be for the Member States to decide which number-based interpersonal communications services are appropriate for emergency services, including the possibility to limit those options to voice communications and their equivalent for end-users with disabilities or to add additional options as agreed with national PSAPs. In order to take into account future technological developments or an increased use of number-independent interpersonal communications services, the Commission should assess the feasibility of providing accurate and reliable access to emergency services through number-independent interpersonal communications services, after consultation with national regulatory authorities, emergency services, standardisation bodies and other relevant stakeholders.

Amendment

(255) End-users should be able to access emergency services through emergency communications free of charge and without having to use any means of payment, from any device which enables number-based interpersonal communications services, including when using roaming services in a Member State or through a private telecommunications networks. Emergency communications are means of communication, that include not only voice communications but also real-time text, video or other types of communications, including through the use of third party relay services, 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.
Amendment 60

Proposal for a directive
Recital 256

Text proposed by the Commission

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

Amendment

(256) Member States should ensure that
providers of end-users with number-based
interpersonal communications services
provide reliable and accurate access to
emergency services, taking into account
national specifications and criteria and the
capabilities of national PSAPs. 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 providers,
which are not integrated with a public
communications network provider,
providing caller location
information may not always be technically
feasible. Member States should ensure that
standards ensuring accurate and reliable
routing and connection to the emergency
services are implemented as soon as
possible in order to allow network-
independent providers of number-based
interpersonal communications services to
fulfil the obligations related to access to
emergency services and caller location
information provision at a level
comparable to that required of other
providers of such communications.
services. Where such standards and the related PSAP systems have not yet been implemented, network-independent number-based interpersonal communications services should not be required to provide access to emergency services except in a manner that is technically feasible or economically viable. As an example, this may include the designation by a Member State of a single, central PSAP for receiving emergency communications. Nonetheless, such providers should inform end-users when access to 112 or to caller location information is not supported.

Amendment 61
Proposal for a directive
Recital 256 b (new)

Text proposed by the Commission

Amendment

(256b) There is a current existing deficit when it comes to the reporting and performance measurement by Member States with respect to the answering and handling of emergency calls. Therefore, the Commission, having consulted the national regulatory authorities and emergency services, shall adopt performance indicators applicable to the Member States emergency services and report back to the European Parliament and the Council on the effectiveness of the implementation of the European emergency call number "112" and on the functioning of the performance indicators.

Amendment 62
Proposal for a directive
Recital 257
(257) Member States should take specific measures to ensure that emergency services, including ‘112’, are equally accessible to disabled end-users, in particular deaf, hearing-impaired, speech-impaired and deaf-blind users. This could involve the provision of special terminal devices.

(257) Member States should take specific measures to ensure that emergency services, including ‘112’, are equally accessible to end-users with disabilities, in particular deaf, hearing-impaired, speech-impaired and deaf-blind users through total conversation services or the use of third party relay services interoperable with the telephony networks across the EU. This could also involve the provision of special terminal devices for people with disabilities when the abovementioned ways of communication are not suitable for them.

Amendment

63

Proposal for a directive
Recital 259

(259) Caller location information improves the level of protection and the security of end-users and assists the emergency services in the discharge of their duties, provided that the transfer of emergency communication and associated data to the emergency services concerned is guaranteed by the national system of PSAPs. The reception and use of caller location information should comply with relevant Union law on the processing of personal data. Undertakings that provide network-based location should make caller location information available to emergency services as soon as the call reaches that service, independently of the technology used. However handset-based location technologies have proven to be significantly more accurate and cost effective due to the availability of data provided by the EGNOS and Galileo Satellite system and other Global Navigation Satellite Systems and Wi-Fi.

(259) Caller location information improves the level of protection and the security of end-users and assists the emergency services in the discharge of their duties, provided that the transfer of emergency communication and associated data to the emergency services concerned is guaranteed by the national system of PSAPs. The reception and use of caller location information, which includes both network-based location information and where available, enhanced handset caller location information should comply with relevant Union law on the processing of personal data and security measures. 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.
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.

Amendment 64
Proposal for a directive
Recital 260

Text proposed by the Commission

(260) In order to respond to technological developments concerning accurate caller location information, equivalent access for disabled end-users and call routing to the most appropriate PSAP, the Commission should be empowered to adopt measures necessary to ensure the compatibility, interoperability, quality and continuity of emergency communications in the Union. Those measures may consist of functional provisions determining the role of various parties within the communications chain, for example interpersonal communications service providers, electronic communications network operators and PSAPs, as well as technical provisions determining the technical means to fulfil the functional provisions. Such measures 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, where feasible. 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.

Amendment (260) In order to respond to technological developments concerning accurate caller location information, equivalent access for end-users with disabilities 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 number-based 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.

to fulfil the functional provisions. Such measures should be without prejudice to the organisation of emergency services of Member States.

Amendment 65
Proposal for a directive
Recital 260 a (new)

Text proposed by the Commission

(260a) Currently, a citizen in Country A who has a need to contact the emergency services in Country B cannot do so because the emergency services have no facility to contact each other. The solution is to have an EU-wide, secure database of telephone numbers for a lead emergency service(s) in each country. Therefore, the Commission shall maintain a secure database of E.164 European emergency service numbers in order to ensure that they can be contacted in one Member State from another.

Amendment 66
Proposal for a directive
Recital 260 b (new)

Text proposed by the Commission

(260b) Recent terrorist attacks in Europe have highlighted the lack of efficient public warning systems in the Member States and across Europe. It is crucial that Member States can inform all the population in a determined area of on-going disasters/attacks or upcoming threats, through the use of electronic communications networks and services, the establishment of national efficient 'Reverse-112' communication system for warning and alerting citizens, in case of imminent or developing natural and/or man-made major emergencies and
disasters, taking into account existing national and regional systems and without hindering privacy and data protection rules. The Commission should also assess if it is feasible to set up a universal, accessible, cross-border EU-wide "Reverse 112 communication system" in order to alert the public in the event of an imminent or developing disaster or major state of emergency across different Member States.

Amendment 67

Proposal for a directive
Recital 261

Text proposed by the Commission

(261) In order to ensure that disabled end-users benefit from competition and the choice of service providers enjoyed by the majority of end-users, relevant national 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 can include, in particular, that undertakings ensure that disabled end-users take advantage of their services on equivalent terms and conditions, including prices, tariffs and quality, as those offered to their other end-users, irrespective of any additional costs incurred by these undertakings. Other requirements 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.

Amendment

(261) Member States should ensure that end-users with disabilities enjoy equivalent access and choice to electronic communication services, in line with the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and the universal design approach. In particular, in order to ensure that end-users with disabilities 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, and after consulting representative organisations of persons with disabilities, consumer protection requirements for end-users with disabilities to be met by providers of publicly available electronic communications services and related terminal equipment. Such requirements can include, in particular, that providers ensure that end-users with disabilities take advantage of their services on equivalent terms and conditions, including prices, tariffs and quality, and access to related terminal equipment as those offered to their other end-users, irrespective of any additional costs incurred by these
providers. Other requirements can relate to wholesale arrangements between providers. 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.

Amendment 68
Proposal for a directive
Recital 262

**Text proposed by the Commission**

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

Amendment 69
Proposal for a directive
Recital 262 a (new)

**Text proposed by the Commission**

(262a) National regulatory authorities should ensure that undertakings providing publicly available electronic communications services make available...
information about the functioning of the services offered and about its accessibility characteristics in an accessible format. This means that the information content should be available in text formats that could be used to generate alternative assistive format and alternatives to non-text content.

Amendment 70
Proposal for a directive
Recital 262 b (new)

Text proposed by the Commission

(262b) With regard to end-users with disabilities, this Directive should seek to reflect other Union law implementing the United Nations Convention of the Rights of Persons with Disabilities. Those measures include the principles and standards set out in Directive (EU) 2016/2102 of the European Parliament and of the Council 1a. The four principles of accessibility are: perceivability, meaning that information and user interface components must be presentable to users in ways they can perceive; operability, meaning that user interface components and navigation must be operable; understandability, meaning that information and the operation of the user interface must be understandable; and robustness, meaning that content must be robust enough to be interpreted reliably by a wide variety of user agents, including assistive technologies. Those principles of accessibility are translated into testable success criteria, such as those forming the basis of the European standard EN 301 549 V1.1.2 'Accessibility requirements suitable for public procurement of ICT products and services in Europe' (2015-04) (European standard EN 301 549 V1.1.2 (2015-04)), via harmonised standards and a common methodology to test the conformity of content on websites.
and mobile applications with those principles. That European standard was adopted on the basis of mandate M/376 issued by the Commission to the European standardisation organisations. Pending publication of the references to harmonised standards, or of parts thereof, in the Official Journal of the European Union, the relevant clauses of European standard EN 301 549 V1.1.2 (2015-04) should be considered as the minimum means of putting those principles into practice in regards to this Directive and equivalent access and choice for end-users with disabilities.


Amendment 71
Proposal for a directive
Recital 265

**Text proposed by the Commission**

(265) End-users should be able to enjoy a guarantee of interoperability in respect of all equipment sold in the 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.

**Amendment**

(265) End-users should be able to enjoy a guarantee of interoperability in respect of all equipment sold in the Union for the reception of digital radio and 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.

Amendment 72
Proposal for a directive
Recital 266
Text proposed by the Commission

(266) It is desirable to enable consumers to achieve the fullest connectivity possible to digital television sets. Interoperability is an evolving concept in dynamic markets. Standards bodies should do their utmost to ensure that appropriate standards evolve along with the technologies concerned. It is likewise important to ensure that connectors are available on digital television sets that are capable of passing all the necessary elements of a digital signal, including the audio and video streams, conditional access information, service information, application program interface (API) information and copy protection information. This Directive should therefore ensure that the functionality associated to and/or implemented in connectors is not limited by network operators, service providers or equipment manufacturers and continue to evolve in line with technological developments. For display and presentation of 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.

Amendment

(266) It is desirable to enable consumers to achieve the fullest connectivity possible to radio and 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 is not limited by network operators, service providers or equipment manufacturers and continue to evolve in line with technological developments. For display and presentation of 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. Consumer radio equipment should be capable of receiving radio at least by analogue and digital broadcasting in order to ensure cross-border interoperability. This provision should not apply to low-cost consumer radio equipment or to radio equipment where the receipt of radio broadcasts is merely an ancillary function, such as for instance a mobile telephone with an FM receiver. It should also not be applicable to radio equipment used by radio amateurs, including for instance radio kits for assembly and use by radio amateurs or equipment constructed by individual radio amateurs for
experimental and scientific purposes related to amateur radio.

Amendment 73

Proposal for a directive

Recital 269

Text proposed by the Commission

(269) 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 Union law and should be proportionate and transparent. ‘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 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. Obligations could, where appropriate, entail a provision for proportionate remuneration.

Amendment

(269) Member States should be able to lay down proportionate 'must carry' obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Union law and should be proportionate and transparent. ‘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, such as media pluralism and cultural diversity. Member States should provide an objective justification for the ‘must carry’ obligations that they impose in their national law so as to ensure that such obligations are transparent, proportionate and clearly defined. The obligations should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. Obligations should be subject to periodic review at least every five years in order to keep them up-to-date with technological and market evolution and in order to ensure that they continue to be proportionate to the objectives to be achieved. Obligations could, where appropriate, entail a provision for proportionate remuneration.
Amendment 74
Proposal for a directive
Recital 269 a (new)

Text proposed by the Commission

(269a) Since the majority of consumer digital television and radio equipment in use today accepts both analogue and digital transmissions, there is no longer an economic or a social reason for Member States to continue to impose 'must carry' obligations on both analogue and digital television transmissions. This, however, should not preclude such analogue transmission obligations where a significant number of users still use an analogue channel or where the analogue broadcast is the sole means of broadcast.

Amendment 75
Proposal for a directive
Recital 270

Text proposed by the Commission

(270) Networks used for the distribution of radio or television broadcasts to the public include cable, IPTV, satellite and terrestrial broadcasting networks. They might also include other networks to the extent that a significant number of end-users use such networks as their principal means to receive radio and television broadcasts. Must carry obligations should 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

Amendment

(270) Electronic communications Networks and services 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 should include the transmission of services specifically designed to enable equivalent access by users with disabilities. Accordingly complementary services include, amongst others, services designed to improve accessibility for end-users with disabilities, such as videotext, subtitling for the deaf and hard of hearing, audio description, spoken subtitles and sign language interpretation.
guides for user choice the transmission of programme-related data supporting those functionalities can be included in must carry obligations.

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 necessary to support the functionalities of providing electronic programme guides, teletext and programme-related IP addresses can be included in must carry obligations.

Amendment 76

Proposal for a directive
Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

On the other hand, it is to ensure the provision throughout the Union of good-quality, affordable, publicly available services through effective competition and choice, 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.

Amendment

On the other hand, it is to ensure the provision throughout the Union of good-quality, affordable, publicly available services through effective competition and choice, to deal with circumstances in which the needs of end-users, including users with disabilities in order to access the services on an equal basis with others, are not satisfactorily met by the market and to lay down the necessary end-user rights.

Amendment 77

Proposal for a directive
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(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

Amendment

(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 person(s) initiating or participating in the communication determine its recipient(s). It is the nature of such a service that it is bidirectional;
communication merely as a minor ancillary feature that is intrinsically linked to another service;

Amendment 78
Proposal for a directive
Article 2 – paragraph 1 – point 31 a (new)

Text proposed by the Commission

(31a) ‘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;

Amendment 79
Proposal for a directive
Article 2 – paragraph 1 – point 32

Text proposed by the Commission

(32) ‘voice communications’ means 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, and comprising other means of communication as an alternative to voice communication and intended specifically for end-users with disabilities, such as total conversation services (voice, video and real time text) and text based and video based relay services;

Amendment 80
Proposal for a directive
Article 2 – paragraph 1 – point 35 a (new)
Text proposed by the Commission

(35a) ‘relay services’ means services that enable people who are deaf or hard of hearing or who have a speech impairment, to communicate by phone through an interpreter that uses text or sign language with another person in a manner that is functionally equivalent to the ability of an individual without a disability;

Amendment 81
Proposal for a directive
Article 2 – paragraph 1 – point 36 a (new)

Text proposed by the Commission

(36a) ‘real time text’ means communication using the transmission of text where characters are transmitted by a terminal as they are typed in such a way that the communication is perceived by the user as being not delayed;

Amendment 82
Proposal for a directive
Article 2 – paragraph 1 – point 37

Text proposed by the Commission

(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;

Amendment

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

(See Amendment 61 of the Rapporteur)
Amendment 83

Proposal for a directive
Article 2 – paragraph 1 – point 38 a (new)

Text proposed by the Commission

(38a) ‘caller location information’ means in a public mobile network the data processed, both from network infrastructure and handset-derived, indicating the geographic position of an end-user's mobile terminal and in a public fixed network the data about the physical address of the termination point.

Amendment 84

Proposal for a directive
Article 3 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) promote the availability and affordability of and access to very high capacity data connectivity, both fixed and mobile, by all Union citizens and businesses;

Amendment 85

Proposal for a directive
Article 3 – paragraph 2 – point d

Text proposed by the Commission

(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-

Amendment

(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.

Amendment 86

Proposal for a directive
Article 5 – paragraph 1 – subparagraph 2 – indent 5 a (new)

Text proposed by the Commission

Amendment

– monitoring closely the development of the Internet of Things in order to ensure competition, consumer protection and cybersecurity;

Amendment 87

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

Amendment

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 13(2) or rights of use referred to in Articles 46 and 88, only be subject to a general authorisation.

Amendment 88

Proposal for a directive
Article 20 – paragraph 3

Text proposed by the Commission

Amendment

3. Where information is considered
confidential by a national regulatory or other competent authority in accordance with Union and national rules on business confidentiality or the protection of personal data, the Commission, BEREC and the 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.

Amendment 89

Proposal for a directive
Article 21 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

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 13(2) that is proportionate and objectively justified for:

Amendment

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, in a common and standardised format, for rights of use or the specific obligations referred to in Article 13(2) that is proportionate and objectively justified for:

Amendment 90

Proposal for a directive
Article 22 – paragraph 6
Text proposed by the Commission

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.

Amendment

6. National regulatory authorities **shall** 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.

Amendment 91

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

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

Amendment 92

Proposal for a directive
Article 24 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In particular, Member States shall ensure that national regulatory authorities establish a consultation mechanism

Amendment

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.

Amendment 93

Proposal for a directive
Article 25 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that consumers have access to transparent, non-discriminatory, simple, fast, fair and inexpensive out-of-court procedures for their unresolved disputes with undertakings providing 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 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. Member States may grant access to such procedures to other end-users, in particular micro and small enterprises.

Amendment

1. Member States shall ensure that consumers, including persons with disabilities, have access to transparent, non-discriminatory, simple, fast, fair and inexpensive out-of-court procedures for their unresolved disputes with undertakings providing publicly available electronic communications networks and 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. Providers of publicly available electronic communications networks and services shall not refuse consumer's request to resolve a dispute with the consumer through an out-of-court dispute resolution on the basis of clear and efficient procedures and guidelines. Member States shall 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. Member States may grant access to such procedures to other end-users, in particular micro and small enterprises.

Amendment 94

Proposal for a directive
Article 25 – paragraph 2
Text proposed by the Commission

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.

Amendment

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. Where the national regulatory authority has been listed in accordance with Article 20(2) of Directive 2013/11/EU, the provisions of Regulation (EU) 524/2013 shall apply to disputes as referred to in paragraph 1 of this Article that stem from online contracts.

Amendment 95

Proposal for a directive
Article 38 – paragraph 3 – point b

Text proposed by the Commission

(b) numbering, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to 112 emergency services.

Amendment

(b) numbering, including number ranges, portability of numbers and identifiers, number and address translation systems, interoperability of Total Conversation services and access to 112 emergency services, including for persons with disabilities.

Amendment 96

Proposal for a directive
Article 39 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

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 and interconnectivity of services in order to
for users. improve freedom of choice for users and facilitate switching.

Amendment 97

Proposal for a directive
Article 40 – paragraph 1

Text proposed by the Commission

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 on other networks and services.

Amendment

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 their 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 ensure that electronic communications content are encrypted from end-to-end by default, in order to prevent and minimise the impact of security incidents on users and on other networks and services.

Amendment 98

Proposal for a directive
Article 40 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify without undue delay the competent authority of a breach of security that has had a significant impact on the operation of networks or services.

Amendment

Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify without undue delay the competent authority of a security incident or loss of integrity that has had a significant impact on the operation of networks or services and thus a high impact on economic and societal activities. Providers of number-independent interpersonal
communications services and providers of electronic communication services subject to general authorization that have notified as cross-border operators shall only have to notify the competent authority of the Member State of their main establishment.

Amendment 99
Proposal for a directive
Article 40 – paragraph 3 – subparagraph 2 – point a

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the number of users affected by the breach;</td>
<td>(a) the number of users affected by the incident;</td>
</tr>
</tbody>
</table>

Amendment 100
Proposal for a directive
Article 40 – paragraph 3 – subparagraph 2 – point b

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) the duration of the breach;</td>
<td>(b) the duration of the incident;</td>
</tr>
</tbody>
</table>

Amendment 101
Proposal for a directive
Article 40 – paragraph 3 – subparagraph 2 – point c

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(c) the geographical spread of the area affected by the breach;</td>
<td>(c) the geographical spread of the area affected by the incident;</td>
</tr>
</tbody>
</table>

Amendment 102
Proposal for a directive
Article 40 – paragraph 3 – subparagraph 2 – point d

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(d) the extent to which the functioning</td>
<td>(d) the extent to which the functioning</td>
</tr>
</tbody>
</table>
of the service is *disrupted*;

of the *network or* service is *affected*;

**Amendment 103**

Proposal for a directive  
**Article 40 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

Where appropriate, the *competent* authority concerned shall inform the competent authorities in other Member States and the European Network and Information Security Agency (ENISA). The 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.

*Amendment*

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

**Amendment 104**

Proposal for a directive  
**Article 40 – paragraph 3 – subparagraph 4 a (new)**

*Text proposed by the Commission*

Member States shall ensure that in case of a particular security incident in public communication networks or publicly available electronic communication services, providers of such networks or services shall inform their end-users of the security incident, potential risks and of any possible protective measures or remedies which can be taken by the end-users.

*Amendment*

**Amendment 105**

Proposal for a directive  
**Article 40 – paragraph 5**
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.

Amendment

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, Member States shall only adopt additional requirements to the extent necessary to safeguard their essential state functions, in particular national security, and to maintain law and order. Providers of number-independent interpersonal communications services and providers of electronic communication services subject to general authorization that have notified as cross-border operators shall only have to comply with any additional national requirements as imposed by the competent authority of the member State of their main establishment.

Amendment 106

Proposal for a directive
Article 40 – paragraph 5 a (new)

Text proposed by the Commission

5a. By ...[date] in order to contribute to the consistent application of measures for the security of networks and services, ENISA, shall, after consulting stakeholders and in close cooperation with the Commission and BEREC, issue guidelines on minimum criteria and common approaches for the security of networks and services and for the use and application of end-to-end encryption.

Amendment

5a. By ...[date] in order to contribute to the consistent application of measures for the security of networks and services, ENISA, shall, after consulting stakeholders and in close cooperation with the Commission and BEREC, issue guidelines on minimum criteria and common approaches for the security of networks and services and for the use and application of end-to-end encryption.
1. Member States shall ensure that in order to implement Article 40, the competent 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. For providers of number-independent interpersonal communications services and providers of electronic communication services subject to general authorization that have notified as cross-border operators, the competent authority shall be that of the Member State of main establishment.

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

(b) submit to a security audit carried out by an internal or qualified external body and make the results thereof available to the competent authority. The cost of the audit shall be paid by the undertaking.

(ba) for undertakings providing
publicly available electronic communications services, remedy any failure to meet the requirements laid down in article 40.

Amendment 110
Proposal for a directive
Article 41 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Following the assessment of information or results of security audits referred to in paragraph 2, the competent authority may issue binding instructions to the undertakings providing public communications networks, to remedy the deficiencies identified, including those regarding the measures required to remedy an incident and time-limits for implementation.

Amendment 111
Proposal for a directive
Article 41 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Following the assessment of the application of paragraph 2, the competent authorities may take action, if necessary, through ex post supervisory measures, when provided with evidence that an undertaking providing publicly available communication services does not meet the requirements laid down in Article 40. Such evidence may be submitted by a competent authority of another Member State where the service is provided.

Amendment 112
Proposal for a directive
Article 41 – paragraph 2 c (new)
2c. If an undertaking providing publicly available communication services has its main establishment or a representative in a Member State, but its network and information systems are located in one or more other Member States, the competent authority of the Member State of the main establishment or of the representative and the competent authorities of those other Member States shall cooperate and assist each other as necessary. Such assistance and cooperation may cover information exchanges between the competent authorities concerned and requests to take the supervisory measures referred to in paragraph 2b.

Amendment

Proposal for a directive
Article 41 – paragraph 3 a (new)

3a. The competent authority shall work in close cooperation with data protection authorities when addressing incidents resulting in personal data breaches.

Amendment

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 2

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

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 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). Individuals providing such access not-for-profit shall not be liable for information transmitted by third parties over such access.

Amendment 115

Proposal for a directive
Article 55 – paragraph 2

*Text proposed by the Commission*

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.

*Amendment*

2. Competent authorities **may** 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 to the prior informed and explicit agreement of the end-user and to the condition that the bandwidth contracted by the end-user shall not be impacted/reduced. End-users that agree to make available publicly available radio local area networks deliver through their terminal equipment and/or that use the electronic communication service they are a subscriber of, shall never be deemed liable for any activity undertaking by another person or legal entity connected through the radio local area network.
Amendment 116
Proposal for a directive
Article 55 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Providers shall ensure that such access to third parties is not detrimental to the conditions of an end-user's own access and shall ensure that the information continues to comply with the requirements provided for in Article 95.

Amendment 117
Proposal for a directive
Article 55 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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.

Amendment 118
Proposal for a directive
Article 55 – paragraph 3 a (new)

Text proposed by the Commission

3a. In line, in particular, with recital (19) of Directive 2014/53/EU of the European Parliament and of the Council, manufacturers of radio equipment are exempted from demonstrating the
compliance of the combination of the radio equipment and software, where such software may be freely used, studied, modified and distributed, even after been modified, by anyone. These manufacturers shall not restrict the rights of users to load such software into their radio equipment.

Amendment 119
Proposal for a directive
Article 59 – paragraph 1 – subparagraph 1

Text proposed by the Commission

National regulatory authorities shall, acting in pursuit of the objectives set out in Article 3, 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.

Amendment

National regulatory authorities shall, acting in pursuit of the objectives set out in Article 3, encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and the interoperability of Internet Access, number-based Interpersonal Communications Services, including total conversation services, and of electronic Communication Networks, 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. They shall ensure that interoperability obligations remain proportionate and do not hinder the innovation potential of ECS providers that invest in the development of new technologies.

Amendment 120
Proposal for a directive
Article 59 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) in justified cases and to the extent that is necessary, obligations to make services that connect with the publicly switched telephone network by means of an assigned numbering resource or that enable communication with a number or numbers in national or international telephone numbering plans interoperable, including for real time text and video calls;

Amendment 121

Proposal for a directive
Article 59 – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

(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.

Amendment

(c) in justified cases, and where technically feasible, obligations on providers of interpersonal communications services to make their services interoperable, namely where effective competition, or end-to-end connectivity between end-users is endangered due to a lack of interoperability between interpersonal communications services.

Amendment 122

Proposal for a directive
Article 59 – paragraph 1 – subparagraph 2 – point d

Text proposed by the Commission

(d) 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

Amendment

(d) to the extent that is necessary to ensure accessibility for end-users, including for end-users with disabilities, 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-
terms.

discriminatory terms.

Amendment 123

Proposal for a directive
Article 59 – paragraph 1 – subparagraph 3 – point ii

Text proposed by the Commission

(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).

Amendment

(ii) where the Commission, on the basis of a report that it had requested from BEREC, has found an appreciable threat to effective or to end-to-end connectivity between end-users, related to a lack of interoperability of number-independent interpersonal communication services with a particularly broad customer base, 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).

Access to emergency services or end-to-end connectivity between end-users will not be considered endangered if the provider does not have a particularly substantial reach or customer base.

Amendment 124

Proposal for a directive
Article 63 – paragraph 1

Text proposed by the Commission

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

Amendment

1. After consulting stakeholders and national regulatory authorities the Commission may, taking utmost into account the opinion of BEREC and proceeding in accordance with the principles of competition law and taking utmost account of the Recommendation and SMP Guidelines adopted in accordance with Article 62, adopt a Decision
potential transnational market if the Commission or at least two national regulatory authorities concerned submit a reasoned request providing supporting evidence.

Amendment 125

Proposal for a directive
Article 63 – paragraph 2 – subparagraph 1

Text proposed by the Commission

In the case of transnational markets identified 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 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.

Amendment

In the case of transnational markets identified in the Decision referred to in 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 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.

Amendment 126

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

Amendment

When assessing co-investment agreements referred to in the first paragraph, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.
Amendment 127

Proposal for a directive
Article 79 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that all end-users in their territory have access at an affordable price, in the light of specific national conditions, to available functional internet access and voice communications services at the quality specified in their territory, including the underlying connection, at least at a fixed location.

Amendment

1. Member States shall ensure that all consumers in their territory have access at an affordable price, in the light of specific national conditions, to an available broadband internet access and voice communications services at the quality specified in their territory, including the underlying connection, at a fixed location.

Amendment 128

Proposal for a directive
Article 79 – paragraph 1 a (new)

Text proposed by the Commission

1a. In addition, Member States may also ensure affordability of services not provided at a fixed location, where they deem this to be necessary to ensure a consumer's full social and economic participation in society.

Amendment

1a. In addition, Member States may also ensure affordability of services not provided at a fixed location, where they deem this to be necessary to ensure a consumer's full social and economic participation in society.

Amendment 129

Proposal for a directive
Article 79 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. In accordance with BEREC guidelines, national regulatory authorities shall define the minimum capability of the internet access service referred to in paragraph 1 with a view to reflect the services used by the majority of consumers at a fixed location in their territory or relevant parts of their territory, which are indispensable to ensure social and
economic participation in society. To that end, the internet access service shall be capable of delivering the band with necessary for supporting at least the minimum set of services set out in Annex V.

By ... [18 months after the date of entry into force of this Directive], BEREC shall, in order to contribute towards a consistent application of this Article, after consulting stakeholders and in close cooperation with the Commission, taking into account available Commission (Eurostat) data, adopt guidelines which allow national regulatory authorities to define the minimum quality of service requirements, including minimum bandwidth, to support at least the minimum set of services set out in Annex V and reflecting the average bandwidth availability to the majority of the population in each Member State. Those guidelines shall be updated every two years to reflect technological advances and changes in consumer usage patterns.

Amendment 130

Proposal for a directive
Article 79 – paragraph 3

Text proposed by the Commission

3. When an end-user so requests, the connection referred to in paragraph 1 may be limited to support voice communications only.

Amendment

3. When a consumer so requests, the connection referred to in paragraphs 1 and 1a may be limited to support voice communications only.

(linked to amendment on paragraph 1a.)

Amendment 131

Proposal for a directive
Article 79 – paragraph 3 a (new)
Text proposed by the Commission

Amendment

3a. Member States may extend the provisions of this Article to micro and small enterprises and not-for-profit organisations as end-users.

Amendment 132

Proposal for a directive
Article 80 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 consumer income.

Amendment 133

Proposal for a directive
Article 80 – paragraph 2

Text proposed by the Commission

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

Amendment

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 consumers are prevented from accessing such services, they shall require providers of such services to offer to those consumers tariff options or packages different from those provided under normal commercial conditions. To that end, Member States shall require such undertakings to apply common tariffs, including geographic averaging, throughout the territory. Member States shall ensure that consumers entitled to such tariff options or packages have a right to contract with an undertaking providing
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.

Member States shall also ensure that such undertaking provides them with an adequate period of availability of a number and avoid unwarranted disconnection of service.

Amendment 134

Proposal for a directive
Article 80 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Member States shall ensure that undertakings which provide tariff options or packages to low-income or special social needs consumers pursuant to paragraph 2, keep the national regulatory authorities informed of the details of such offers. Without prejudice on the freedom of the consumer to choose any provider, 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 Article 92 and with the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.

Amendment 135

Proposal for a directive
Article 80 – paragraph 4

Text proposed by the Commission

4. Member States may, in the light of national conditions, ensure that support is provided to low-income or special social needs end-users in view of ensuring affordability of functional internet access and voice communications services at least

Amendment

4. Member States may, in the light of national conditions, ensure that further support is provided to low-income or special social needs consumers in view of ensuring affordability of internet access and voice communications services at least at a fixed location. In addition, Member
at a fixed location.

States may also ensure support is provided to low-income or special social needs consumers for mobile services, where they deem this to be necessary to ensure a consumer's full social and economic participation in society.

Amendment 136

Proposal for a directive
Article 80 – paragraph 5

Text proposed by the Commission

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.

Amendment

5. Member States shall ensure, in the light of national conditions, that support is provided as appropriate to consumers with disabilities, and that other specific measures are taken, in view of ensuring that related terminal equipment is accessible for persons with disabilities, and specific equipment and specific services enhancing equivalent access are available and affordable. The average cost of the relay services for consumers with disabilities shall be equivalent to that of voice communication services pursuant to Article 79.

Amendment 137

Proposal for a directive
Article 80 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States may extend the provisions of this Article to micro and small enterprises and not-for-profit organisations as end-users.

Amendment 138

Proposal for a directive
Article 81 – paragraph 1
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 accordance with Article 79(2) and of voice communications service 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.

Amendment

1. Where a Member State has established, taking into account of the results of the geographical survey, where available, conducted in accordance with Article 22(1), or where the national regulatory authority is satisfied with alternative evidence, that the availability at a fixed location of internet access service as defined in accordance with Article 79(2) and of voice communications service cannot be ensured under normal commercial circumstances or through other potential public policy tools in its national territory or different parts thereof, it may impose appropriate universal service obligations to meet all reasonable requests for accessing those services in the relevant parts of its territory.

Amendment 139

Proposal for a directive
Article 81 – paragraph 2

Text proposed by the Commission

2. Member States shall determine the most efficient and appropriate approach for ensuring the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

Amendment

2. Member States shall determine the most efficient and appropriate approach for ensuring the availability at a fixed location of internet access service as defined in accordance with Article 79(2) and of voice communications service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. This may include making available internet access service and voice communications service through wired or wireless technologies. 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.
Amendment 140

Proposal for a directive
Article 81 – paragraph 3

Amendment

3. In particular, where Member States decide to impose obligations to ensure the availability at a fixed location of *functional* internet access service as defined in accordance with Article 79(2) and of voice communications service, they may designate one or more undertakings to guarantee the availability at a fixed location of functional internet access service as identified in accordance with Article 79(2) and of voice communications service in order to cover all the national territory. Member States may designate different undertakings or sets of undertakings to provide *functional* internet access and voice communications services at a fixed location and/or to cover different parts of the national territory.

Amendment 141

Proposal for a directive
Article 81 – paragraph 4

Amendment

4. When Member States designate *providers* in part or all of the national territory as *providers* having the obligation to ensure the availability at a fixed location of *functional* internet access service as defined in accordance with Article 79(2) and of voice communications service, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no *undertaking* is a priori excluded from being designated. Such designation methods shall ensure that *functional* internet access and voice communications services at a fixed location are provided in...
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.

Amendment 142

Proposal for a directive
Article 81 – paragraph 5

Text proposed by the Commission

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 service as defined in accordance with Article 79(2) and of voice communications service. The national regulatory authority may impose, amend or withdraw specific obligations in accordance with Article 13(2).

Amendment

5. When a provider 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 internet access service as defined in accordance with Article 79(2) and of voice communications service. The national regulatory authority may impose, amend or withdraw specific obligations in accordance with Article 13(2).

Amendment 143

Proposal for a directive
Article 82 – paragraph 1

Text proposed by the Commission

Member States may continue to ensure the availability or affordability of other services than internet access service as defined in accordance with Article 79(2) and voice communications service at a fixed location that were in force prior to [set date], if the need for such services is duly demonstrated in the light of national circumstances. When Member

Amendment

1. Member States may continue to ensure the availability or affordability of other services than internet access service as defined in accordance with Article 79(2) and voice communications service at a fixed location that were in force prior to [set date], if the need for such services is established in the light of national circumstances. When Member States
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.

designate *providers* 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.

**Amendment 144**

**Proposal for a directive**
**Article 82 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

2. Member States shall review the obligations imposed pursuant to this Article *by ... [3 years after the entry into force of this Directive] and thereafter at least* every *three years*.

**Amendment 145**

**Proposal for a directive**
**Article 83 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall ensure that in providing facilities and services additional to those referred to in 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 end-user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

*Amendment*

1. Member States shall ensure that in providing facilities and services additional to those referred to in Article 79, *providers of the voice communications and internet access* services in accordance with Article 79, 81 and 82 establish terms and conditions in such a way that the end-user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

**Amendment 146**

**Proposal for a directive**
**Article 83 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall ensure that those *undertakings providing the* voice

*Amendment*

2. Member States shall ensure that those *providers of* voice communications
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 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.

Amendment 147

Proposal for a directive
Article 84 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where national regulatory authorities consider that the provision of functional internet access service as defined in accordance with Article 79(2) and of voice communications service; as set out in Articles 79, 80 and 81 or the continuation of existing universal services as set out in Article 82 may represent an unfair burden on undertakings providing such services and requesting for compensation, they shall calculate the net costs of its provision.

Amendment

Where national regulatory authorities consider that the provision of internet access service as defined in accordance with Article 79(2) and of voice communications service as set out in Articles 79, 80 and 81 or the continuation of existing universal services as set out in Article 82 may represent an unfair burden on providers of such services and requesting for compensation, they shall calculate the net costs of its provision.

Amendment 148

Proposal for a directive
Article 84 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) calculate the net cost of the universal service obligation, taking into account any market benefit which accrues to an undertaking providing functional internet access service as defined in accordance with Article 79(2) and voice communications service; as set out in Articles 79, 80 and 81 or the continuation

Amendment

(a) calculate the net cost of the universal service obligation, taking into account any market benefit which accrues to a provider of internet access service as defined in accordance with Article 79(2) and voice communications service; as set out in Articles 79, 80 and 81 or the continuation of existing universal services
of existing universal services as set out in Article 82, in accordance with Annex VII; or

Amendment 149
Proposal for a directive
Article 85 – paragraph 1

Text proposed by the Commission
Where, on the basis of the net cost calculation referred to in Article 84, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States shall, upon request from the undertaking concerned, decide to introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds. 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.

Amendment
Where, on the basis of the net cost calculation referred to in Article 84, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States shall, upon request from the undertaking concerned, decide to introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds.

Amendment 150
Proposal for a directive
Article 85 – paragraph 1 a (new)

Text proposed by the Commission

Ia. By way of exception to paragraph 1, Member States may adopt or maintain a mechanism to share the net cost of universal service obligations stemming from the obligations set out in Article 81 between providers of electronic communications networks and services and those undertakings providing information society services as defined in Directive 2000/31/EC.

Amendment

Amendment 151
Proposal for a directive
Article 85 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Member States adopting or maintaining such a mechanism shall review its functioning at least every three years in order to determine which net costs should continue to be shared under the mechanism and those which should be transferred to compensation from public funds.

Amendment 152

Proposal for a directive
Article 85 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. 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.

Amendment 153

Proposal for a directive
Article 85 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

1d. Where the net cost is shared under paragraph 1a, Member States shall ensure that a sharing mechanism is in place, administered by the national regulatory authority or a body independent from the beneficiaries under the supervision of the national regulatory authority.

Amendment 154

Proposal for a directive
Article 85 – paragraph 1 e (new)
Amendment 155

Proposal for a directive
Article 85 – paragraph 1 f (new)

1. Where the net cost of universal service obligations is to be calculated in accordance with Article 85, national regulatory authorities shall ensure that the principles for net cost calculation, including the details of methodology to be used are publicly available.

Amendment 156

Proposal for a directive
Article 86 – paragraph 1

1. Where the net cost of universal service obligations is to be calculated in accordance with Article 84, national regulatory authorities shall ensure that the principles for net cost calculation, including the details of methodology to be used are publicly available.
**Amendment 157**

**Proposal for a directive**  
**Article 87 – paragraph 6**

*Text proposed by the Commission*

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..

*Amendment*

6. Member States shall promote the over-the-air provisioning of numbering resources, where technically feasible, to facilitate switching of providers of electronic communications networks or services by end-users, in particular providers and users of machine-to-machine services..

**Amendment 158**

**Proposal for a directive**  
**Title III – Article 91 a (new)**

*Text proposed by the Commission*

**Article 91a**

Exemption clause

*Title III, with the exception of Articles 92 and 93, shall not apply to number-independent interpersonal communications services, which are micro enterprises as defined in Commission Recommendation 2003/361/EC.*

**Amendment**

Providers of electronic communications networks or services shall not apply any discriminatory requirements or conditions of access or use to end-users in the Union based on the end-user's nationality or place of residence or establishment unless such differences are objectively unequal.

**Amendment 159**

**Proposal for a directive**  
**Article 92 – paragraph 1**

*Text proposed by the Commission*

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 unequal.
justified. differences are objectively justified.

Amendment 160

Proposal for a directive
Article 92 a (new)

Text proposed by the Commission

1. Providers of publicly available number based interpersonal communication services shall not apply tariffs to intra-Union fixed and mobile communications services terminating in another Member State, which are higher from tariffs for services terminating in the same Member State, unless it is justified by the difference in termination rates.

2. By ... (six months after the entry into force of this Directive), BEREC after consulting stakeholders and in close cooperation with the Commission shall adopt guidelines on the recovery of such objectively justified different costs pursuant to paragraph 1. Such guidelines shall ensure that any differences are strictly based on existent direct costs that provider incur by providing the cross-border services;

3. By ... (one year after the entry into force of this Directive and annually thereafter), the European Commission shall provide a report on the application of the obligations of paragraph 1, including an assessment of the evolution of intra-Union communication tariffs.

Amendment 161

Proposal for a directive
Article 93 – paragraph 1
Text proposed by the Commission

1. National measures regarding end-users’ access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms, as guaranteed by the Charter of Fundamental Rights of the Union and general principles of Union law.

Amendment

1. National measures regarding end-users’ access to, or use of, services and applications through electronic communications networks shall respect fundamental rights and freedoms, as guaranteed by the Charter of Fundamental Rights of the Union (‘the Charter’) and general principles of Union law.

Amendment 162

Proposal for a directive
Article 93 – paragraph 2

Text proposed by the Commission

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 are provided for by law and respect the essence of those rights or freedoms, are appropriate, proportionate and necessary, and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others in line with Article 52(1) of the Charter of Fundamental Rights of the European Union and with general principles of Union 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 Charter.

Amendment

2. Any measures regarding end-users' access to, or use of, services and applications through electronic communications networks liable to limit the exercise of rights or freedoms recognised by the Charter may only be imposed if they are provided for by law and respect those rights or freedoms, are appropriate, proportionate, and necessary, and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others in line with Article 52(1) of the Charter and with general principles of Union law, including the right to an 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 Charter. The right to effective and timely judicial review shall
Amendment 163

Proposal for a directive
Article 93 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In accordance with Articles 7, 8 and 11 and Article 52(1) of the Charter of Fundamental Rights of the European Union, Member States shall not impose general and indiscriminate retention of all traffic and location data of all subscribers and registered users relating to their electronic communications.

Amendment 164

Proposal for a directive
Article 94 – paragraph 1

Text proposed by the Commission

Amendment

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.

Amendment 165

Proposal for a directive
Article 95 – paragraph -1 (new)

Text proposed by the Commission

Amendment

–1. The information requirements set out in this Article including the contract summary shall constitute an integral part of the contract and is in addition to the
information requirements laid down in Directive 2011/83/EU. Member States shall ensure that the information referred to in this Article is provided in a clear, comprehensive and easily accessible manner. On a request made by the consumer or other end-users, a copy of the information shall also be provided on a durable medium and in accessible formats for end-users with disabilities.

Amendment 166

Proposal for a directive
Article 95 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

1. Before a consumer is bound by a contract or any corresponding offer which is subject to any kind of remuneration, providers of internet access services, publicly available interpersonal communications services and transmission services used for broadcasting shall provide, where applicable, the following information to the consumer, to the extent that such information pertains to a service they provide.

Amendment 167

Proposal for a directive
Article 95 – paragraph 1 – point a – point i

Text proposed by the Commission

(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,

Amendment

(i) any minimum service quality levels to the extent that these are offered, and in accordance with BEREC guidelines to be adopted pursuant Article 97(2), 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,

– for publicly available interpersonal communications services at least the time for the initial connection, failure probability, call signalling delays in accordance with Annex IX of this Directive and

– for services other than internet access services within the meaning of Article 3(5) of Regulation 2015/2120: the specific quality parameters assured,

Where no minimum service quality levels are offered, a statement to this effect shall be made.

Amendment 168

Proposal for a directive
Article 95 – paragraph 1 – point a – point ii

Text proposed by the Commission

(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;

Amendment

(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 fees and restrictions imposed by the provider on the use of terminal equipment supplied and, where appropriate, brief technical information for the proper functioning of the equipment chosen by the consumer;

Amendment 169

Proposal for a directive
Article 95 – paragraph 1 – point b

Text proposed by the Commission

(b) any compensation and refund arrangements, which apply if contracted service quality levels are not met;

Amendment

(b) any compensation and refund arrangements, including where applicable, explicit reference to statutory rights of consumers, which apply if contracted service quality levels are not met or if a security incident, notified to the provider, takes place due to known software or hardware vulnerabilities for which
patches have been issued by the manufacturer or developer and the service provider has not applied those patches or taken any other appropriate counter-measure;

Amendment 170
Proposal for a directive
Article 95 – paragraph 1 – point c – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>(c) as part of the information on price:</td>
<td>(c) as part of the information on price and means of remuneration:</td>
</tr>
</tbody>
</table>

Amendment 171
Proposal for a directive
Article 95 – paragraph 1 – point c – point i

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>(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,</td>
<td>(i) details of specific tariff plan or plans under the contract and, for each such tariff plan the types of services offered, including where applicable, the volumes of communications (MB, minutes, SMS) included per billing period, and the price for additional communication units,</td>
</tr>
</tbody>
</table>

Amendment 172
Proposal for a directive
Article 95 – paragraph 1 – point c – point i a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>(ia) in the case of tariff plan or plans with a pre-set volume of communications, the possibility for consumers to defer any unused volume from the preceding billing period to the following billing period, where this option is included in the contract,</td>
<td></td>
</tr>
</tbody>
</table>
Amendment 173

Proposal for a directive
Article 95 – paragraph 1 – point c – point i b (new)

Text proposed by the Commission

Amendment

(ib) facilities to safeguard bill transparency and monitor the level of consumption,

Amendment 174

Proposal for a directive
Article 95 – paragraph 1 – point c – point i c (new)

Text proposed by the Commission

Amendment

(ic) without prejudice to Article 13 of the Regulation 2016/679, information on what personal data is required before the performance of the service or collected in the context of the provision of the service;

Amendment 175

Proposal for a directive
Article 95 – paragraph 1 – point c – point iv

Text proposed by the Commission

Amendment

(iv) details of after-sales service and maintenance charges, and (iv) details of after-sales, maintenance and customer support service and maintenance charges, and,

Amendment 176

Proposal for a directive
Article 95 – paragraph 1 – point d – point ii

Text proposed by the Commission

Amendment

(ii) any charges related to switching and the portability of numbers and other (ii) any procedures and charges related to switching and the portability of numbers
identifiers and compensation and refund arrangements for delay or abuse of switching, and other identifiers and compensation and refund arrangements for delay or abuse of switching,

**Amendment 177**

**Proposal for a directive**
**Article 95 – paragraph 1 – point d – point iii**

*Text proposed by the Commission*

(iii) any charges due on early termination of the contract, including any cost recovery with respect to terminal equipment and other promotional advantages,

*Amendment*

(iii) any charges due on early termination of the contract, including information on unlocking the terminal equipment and any cost recovery with respect to terminal equipment,

**Amendment 178**

**Proposal for a directive**
**Article 95 – paragraph 1 – point d – point iv**

*Text proposed by the Commission*

(iv) for bundled services the conditions of termination of the bundle or of elements thereof,

*Amendment*

(iv) for bundled services the conditions of termination of the bundle or of elements thereof, where applicable,

**Amendment 179**

**Proposal for a directive**
**Article 95 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) the means of initiating procedures for the settlement of disputes in accordance with Article 25;

*Amendment*

(f) the means of initiating procedures for the settlement of disputes, including national and cross-border disputes, in accordance with Article 25;

**Amendment 180**

**Proposal for a directive**
**Article 95 – paragraph 2 – indent 1**
Text proposed by the Commission
- any constraints on access to emergency services and/or caller location information due to a lack of technical feasibility;

Amendment
- any constraints on access to emergency services and/or caller location information due to a lack of technical feasibility, insofar as the service allows end-users to originate national calls to a number in a national telephone numbering plan;

Amendment 181

Proposal for a directive
Article 95 – paragraph 3

Text proposed by the Commission
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,

Amendment
3. Paragraphs 1, 2 and 6 shall apply also to micro or small enterprises and not-for-profit organisations as end-users unless they have expressly agreed to waive all or parts of those provisions,

Amendment 182

Proposal for a directive
Article 95 – paragraph 5

Text proposed by the Commission
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,

Amendment
5. By [entry into force + 12 months], the Commission, after consulting BEREC, shall adopt 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 summary information on:

(a) the name, address and contact information of the provider and, if different, the contact information for any complaint.

(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.

That template shall not be longer than one single-sided A4 page. It shall be easily readable. Where a number of different services are bundled into a single contract, additional pages may be necessary, but the document shall be limited to a total of three pages.

The Commission may adopt an implementing act specifying the template referred to in this paragraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 110(4).

Providers subject to the obligations under paragraphs 1-4 shall duly complete this contract summary template with the required information and provide it 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.

Amendment 183

Proposal for a directive

Article 95 – paragraph 6

Text proposed by the Commission

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

Amendment

6. Providers of internet access services and providers of publicly available number-based interpersonal communications services shall offer consumers the facility to monitor and
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.

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. Providers of internet access services and of publicly available number-based interpersonal communications services shall give consumers best-tariff advice relating to their services upon request and, at the latest, 3 months prior to the termination of the contract period.

Amendment 184
Proposal for a directive
Article 95 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States may maintain or introduce in their national law additional requirements applicable to internet access services and number-based interpersonal communications services and transmission services used for broadcasting to ensure a higher level of consumer protection in relation to the information requirements set out in paragraphs (1) and (2) of this Article. Member States may also maintain or introduce in their national law provisions to temporarily prevent further usage of the relevant service in excess of a financial or volume limit determined by the competent authority.

Amendment 185
Proposal for a directive
Article 96 – paragraph 1

Text proposed by the Commission

Amendment

1. National regulatory authorities shall ensure that the information referred to in

1. National regulatory authorities shall ensure that, where the provision of
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**.

**relevant services is subject to terms and conditions**, the information referred to in Annex VIII is published in a clear, comprehensive, **machine-readable** and easily accessible form, **including in particular for end-users with disabilities**, by the **providers of internet access services, providers of publicly available interpersonal communications services and transmission services used for broadcasting. Such information shall be updated regularly.** National regulatory authorities may **maintain or introduce in their national law additional requirements in relation to the transparency requirements set out in this paragraph**.

**Amendment 186**

**Proposal for a directive**

**Article 96 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

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**.

**(Amendment)**

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, **where appropriate, indicative figures addressing the quality of service performance of different internet access services and publicly available number-based interpersonal communications services**.

**Amendment 187**

**Proposal for a directive**

**Article 96 – paragraph 2 – subparagraph 2 – point b**

*Text proposed by the Commission*

(b) clearly disclose their owners and operators;

**(Amendment)**

(b) clearly disclose the owners and operators of the comparison tool;
Amendment 188

Proposal for a directive
Article 96 – paragraph 2 – subparagraph 2 – point g a (new)

Text proposed by the Commission

(ga) include prices and tariffs, and the quality of service performance for both end-users who are businesses and end-users who are consumers.

Amendment 189

Proposal for a directive
Article 96 – paragraph 2 – subparagraph 3

Text proposed by the Commission

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.

Amendment

Comparison tools fulfilling the requirements in points (a) to (g) shall, upon the request of the provider of the tool, be certified by national regulatory authorities. Third parties shall have a right to use, free of charge and in open data formats, the information published by providers of internet access services or publicly available number-based interpersonal communications services for the purposes of making available such independent comparison tools.

Amendment 190

Proposal for a directive
Article 96 – introductory part

Text proposed by the Commission

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

Amendment

3. Member States may require that both national authorities and the providers of internet access services, publicly available number-based interpersonal communications services, or both, distribute public interest information free of charge to existing and new end-users, where appropriate, by the same
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:

Amendment 191
Proposal for a directive
Article 96 – paragraph 3 – point a

Text proposed by the Commission

(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

Amendment

(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 data protection rights, copyright and related rights, and their legal consequences; and

Amendment 192
Proposal for a directive
Article 97 – paragraph 1

Text proposed by the Commission

1. National regulatory authorities may require providers of internet access services and of publicly available number-based interpersonal communications services to publish comprehensive, comparable, 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.

Amendment

1. National regulatory authorities may require providers of internet access services and of publicly available interpersonal communications services to publish comprehensive, comparable, reliable, user-friendly and up-to-date information for end-users on the quality of their services to the extent that they offer minimum levels of service quality 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. Such measures
to ensure quality of service shall be in compliance with Regulation (EU) 2015/2120.

Providers of publicly available interpersonal communication services shall inform the consumer, if the quality of services they provide depends on any external factors, such as control of signal transmission or network connectivity.

Amendment 193

Proposal for a directive
Article 97 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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.

Amendment

By [entry into force plus 18 months], in order to contribute to a consistent application of this paragraph and of Annex IX, BEREC shall adopt, after consultation of stakeholders and in close cooperation with the Commission, guidelines detailing the relevant quality of service parameters, including parameters relevant for end-users with disabilities, the applicable measurement methods, the content and format of publication of the information, and quality certification mechanisms.

Justification

technical corrections

Amendment 194

Proposal for a directive
Article 98 – paragraph 1

Text proposed by the Commission

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

Amendment

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 providers of publicly available internet
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.

Amendment 195

Proposal for a directive
Article 98 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Where a contract or national law provides for a fixed duration contract to be automatically prolonged, the Member State shall ensure that, after such an automatic prolongation, consumers are entitled to terminate the contract at any time with a maximum one-month notice period and without incurring any costs except the charges for receiving the service during the notice. Before the contract is automatically prolonged, providers shall inform the consumer in a prominent way about the end of the initial contract period and about the means to terminate the
contract, if so requested. Providers shall use the same means as those normally used in their communications with consumers.

Amendment 196

Proposal for a directive
Article 98 – paragraph 2 a (new)

Text proposed by the Commission

2a. Paragraphs 1 and 2 shall also apply to end-users that are micro and small enterprises or not-for-profit organisations unless they have expressly agreed to waive those provisions.

Amendment 197

Proposal for a directive
Article 98 – paragraph 3

Text proposed by the Commission

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. durable medium \textit{by the same means as the provider ordinarily uses in its communications with consumers.}

**Amendment 198**

Proposal for a directive
Article 98 – paragraph 3 a (new)

\textit{Text proposed by the Commission}

\textit{Amendment}

3a. Any significant discrepancy, continued or regularly recurring, between the actual performance of an electronic communication service and the performance indicated in the contract, shall be considered as non-conformity of performance for the purposes of triggering the remedies available to the consumer in accordance with national law, including the right to terminate the contract without any cost.

**Amendment 199**

Proposal for a directive
Article 98 – paragraph 4

\textit{Text proposed by the Commission}

\textit{Amendment}

4. Where an \textit{end-user has the right to terminate} a contract for a publicly available internet access services, number-based interpersonal communications service and transmission services used for broadcasting, before the end of the agreed contract term pursuant to this Directive, other provisions of Union law or national law, \textit{no penalties and no compensation} shall be due by the end-user other than for retained subsidised terminal equipment. Where the end-user chooses to retain terminal equipment bundled at the moment of the contract conclusion, \textit{any compensation due shall not exceed its pro rata temporis value at the moment of the contract conclusion or on the remaining
latest upon payment of such compensation. part of the service fee until the end of the contract, whichever amount is smaller. Member States may choose other methods of calculating the compensation rate, where such a rate is equal to or less than the compensation calculated above. 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. Member States may adopt or maintain additional requirements in relation to this paragraph to ensure a higher level of consumer protection.

Amendment 200
Proposal for a directive
Article 99 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. In the 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 lead the switching process to ensure that the activation of the service shall occur on the date and within the timeframe expressly 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 where both providers use the same technological means. Where the providers use different technological means, they shall endeavour to limit loss of service during the switching process to one working day, unless a longer period, which shall not exceed two working days, is duly justified.

National regulatory authorities shall ensure the efficiency of the switching process for National regulatory authorities shall ensure the efficiency and simplicity of the
the end-user. switching process for the end-user.

Amendment 201

Proposal for a directive
Article 99 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that all 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.

Amendment

2. Member States shall ensure that all end-users with numbers from the national telephone numbering plan who so request shall have the right to retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Part C of Annex VI.

Amendment 202

Proposal for a directive
Article 99 – paragraph 2 a (new)

Text proposed by the Commission

2a. Where an end-user terminates a contract with a provider, the end-user shall retain the right to port a number to another provider for six months after the date of termination, unless that right is renounced by the end-user.

Amendment

2a. Where an end-user terminates a contract with a provider, the end-user shall retain the right to port a number to another provider for six months after the date of termination, unless that right is renounced by the end-user.

Amendment 203

Proposal for a directive
Article 99 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, 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

Amendment

5. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, consumers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day from the
The conclusion of such an agreement. agreed date. The transferring provider shall continue to provide its services on the same terms until the services of the receiving provider are activated.

This paragraph shall apply also to micro or small enterprises and not-for-profit organisations as end-users unless they have expressly agreed to waive all or parts of those provisions.

Amendment 204

Proposal for a directive
Article 99 – paragraph 5 – subparagraph 2

Text proposed by the Commission

The receiving provider shall lead the switching and porting process. 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 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 National regulatory authorities shall also take appropriate measures ensuring that end-users are adequately informed and protected throughout the switching process and are not switched to another provider against their will.

Amendment

5a. The receiving provider shall lead the switching and porting process and both the receiving and transferring providers shall cooperate in good faith. 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 end-user. This shall include, where available, a requirement for the porting to be completed through over-the-air provisioning, unless an end-user requests otherwise.

In any event, loss of service during the process of porting shall not exceed one working day.

The end-users' contracts with the transferring provider shall be terminated automatically upon conclusion of the switching process. Transferring providers shall refund any remaining credit to the consumers using pre-paid services.
Refund may be subject to a fee only if stated in the contract. Any such fee shall be proportionate and commensurate with the actual costs incurred by the transferring provider in offering the refund. In case of failure of the porting process, the transferring provider shall reactivate the number or service of the end-user, on the same terms and conditions as the end-user was on prior to the switching process being initialised, until the porting or switching process is successful. National regulatory authorities shall also take appropriate measures ensuring that end-users are adequately informed and protected throughout the switching and porting processes and are not switched to another provider against their will.

Amendment 205

Proposal for a directive
Article 99 – paragraph 6

Amend 6.

Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate end-users in case of delay in porting or abuse of porting by them or on their behalf.

Amendment 206

Proposal for a directive
Article 99 – paragraph 6 a (new)

6a.

Member States shall ensure that end-users are entitled to receive compensation from providers in the case of delay in porting or switching or abuse of porting or switching. The minimum compensation for a delay shall be:
(a) where porting is delayed for longer than one or two working days as laid down in Article 99(1) and Article 99(5) respectively, an amount per additional day;

(b) where there is a loss of service exceeding one working day, an amount per additional day;

(c) where there is a delay in activating a service, an amount per day for every day after the agreed day for activation; and

(d) where a service appointment is missed or cancelled with less than 24 hours’ notice, an amount per appointment.

National regulatory authorities shall set out the amounts due under this paragraph.

Amendment 207

Proposal for a directive

Article 99 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6b. The compensation referred to in paragraph 6a shall be paid by way of deduction from the following invoice, in cash, by electronic transfer or, in agreement with the end-user, in service vouchers.

Amendment 208

Proposal for a directive

Article 99 – paragraph 6 c (new)

Text proposed by the Commission

Amendment

6c. Paragraph 6a shall be without prejudice to any right to further compensation pursuant to national law or Union law. Member States may lay down additional rules ensuring that any end-
user who has suffered material or non-material damage pursuant to this article can seek and receive compensation from an undertaking for the damages suffered. The minimum compensation paid pursuant to paragraph 6a may be deducted from any such compensation. Payment of compensation pursuant to paragraph 6a shall not prevent the receiving provider from seeking compensation from a transferring provider where appropriate.

Amendment 209

Proposal for a directive
Article 100 – paragraph 1

1. If a bundle of services or a bundle of services and goods offered to an end-user comprises at least a publicly available electronic 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.

Amendment 210

Proposal for a directive
Article 100 – paragraph 2

2. Any subscription to additional services or goods provided or distributed by the same provider of publicly available electronic 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

Amendment

2. Any subscription to additional services or terminal equipment provided or distributed by the same provider of internet access services or of publicly available number-based interpersonal communications services shall not extend the term of the contract unless the consumer expressly agrees otherwise.
offered at a special promotional price available only on the condition that the existing contract period is re-started.

when subscribing to the additional services or terminal equipment.

Amendment 211

Proposal for a directive
Article 100 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Providers of electronic communications services other than number independent interpersonal communications service shall give consumers the possibility to cancel or switch individual parts of the bundled contract, where this option is included in the contract.

Amendment 212

Proposal for a directive
Article 100 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Paragraphs 1 and 2 shall also apply to end-users who are micro or small enterprises, or not-for-profit organisations unless they have explicitly agreed to waive all or parts of those provisions.

Amendment 213

Proposal for a directive
Article 100 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Member States may broaden the application of paragraph 1 to bundles of services or bundles of services and terminal equipment offered to a consumer, which comprise at least a
publicly available electronic communication service. Member States may also apply paragraph 1 as regards other provisions laid down in this Title.

Amendment 214
Proposal for a directive
Article 101 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall take all necessary measures to ensure the fullest possible availability of **voice communications and internet access service** provided over public communications networks in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that **providers of voice communications and internet access service** take all necessary measures to ensure uninterrupted access to emergency services.

Justification

The term "publicly available telephone service" is replaced in the directive by "voice communications" and therefore seems to have remained here in error. Internet access service was not seen as an essential service when this article was originally drafted and therefore it should be open to amendment during this recast.

Amendment 215
Proposal for a directive
Article 102 – paragraph 1

Text proposed by the Commission

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 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

Amendment

1. Member States shall ensure that all end-users of the service referred to in paragraph 2, including users of public pay telephones and of private electronic communication networks, are able to access the emergency services through emergency communications free of charge and without having to use any means of
number ‘112’ and any national emergency number specified by Member States.

payment, by using the single European emergency number ‘112’ and any national emergency number specified by Member States.

Amendment 216

Proposal for a directive
Article 102 – paragraph 2

Text proposed by the Commission

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 number-based interpersonal communications service 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 interpersonal communications services in accordance with the conditions and procedure set out in Article 59 (1) (c).

Amendment

2. Member States, in consultation with national regulatory authorities and emergency services and providers of electronic communications services, shall ensure that providers of end-users with number-based interpersonal communications, where that service allows end-users to originate national calls to a number in a national or international telephone numbering plan, provide access to emergency services through emergency communications to the most appropriate PSAP using location information that is available to number-based interpersonal communications service providers and in a manner that is consistent with Member States' emergency calling infrastructures.

Providers of number-independent interpersonal communications services that do not offer 112 access shall inform end-users that access to the emergency number 112 is not supported.

Amendment 217

Proposal for a directive
Article 102 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that all emergency communications to the single European emergency number ‘112’ are appropriately answered and handled in the

Amendment

3. Member States shall ensure that all emergency communications to the single European emergency number ‘112’ are appropriately answered and handled in the
manner best suited to the national organisation of emergency systems. Such emergency communications shall be answered and handled at least as expeditiously and effectively as emergency communications to the national emergency number or numbers, where these continue to be in use.

Amendment 218

Proposal for a directive
Article 102 – paragraph 3 a (new)

_text proposed by the Commission_

Amendment

3a. The Commission, having consulted the national regulatory authorities and emergency services, shall adopt performance indicators applicable to the Member States’ emergency services. The Commission shall every two years submit a report to the European Parliament and the Council on the effectiveness of the implementation of the European emergency call number "112" and on the functioning of the performance indicators.

Amendment 219

Proposal for a directive
Article 102 – paragraph 4

_text proposed by the Commission_

Amendment

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, and they shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in this Article. Users with disabilities can access emergency services on an equivalent basis with others, whilst travelling in another Member State, where feasible, without any pre-registration. These measures shall seek to ensure interoperability across Member States and shall be based to the greatest extent possible on European standards or specifications published in accordance with the provisions of Article 39, and they shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in this Article.

Amendment 220

Proposal for a directive
Article 102 – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that caller location information is available to the PSAP without delay after the emergency communication is set up. 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 with regard to all emergency communications to the single European emergency number ‘112’. Member States may extend that obligation to cover emergency communications to national emergency numbers. Competent regulatory authorities shall lay down criteria for the accuracy and reliability of the caller location information provided.

Amendment

5. Member States shall ensure that caller location information is made available to the most appropriate PSAP without delay after the emergency communication is set up. This shall include both network-based location information and, where available, handset-derived caller location information. Member States shall ensure that the establishment and the transmission of the end-user location information are free of charge for the end-user and to the PSAP with regard to all emergency communications to the single European emergency number ‘112’. Member States may extend that obligation to cover emergency communications to national emergency numbers. This shall not prevent competent authorities, after consulting BEREC, from laying down criteria for the accuracy and reliability of the caller location information provided.
Amendment 221

Proposal for a directive
Article 102 – paragraph 6

**Text proposed by the Commission**

6. Member States shall ensure that citizens are adequately informed about the existence and use of the single European emergency number ‘112’, *in particular* through initiatives specifically targeting persons travelling between Member States.

**Amendment**

6. Member States shall ensure that citizens are adequately informed about the existence and use of the single European emergency number ‘112’, *as well as its accessibility features, including* through initiatives specifically targeting persons travelling between Member States, *and persons with disabilities*. *That information shall be provided in accessible formats, addressing different types of disabilities. The Commission shall support and complement Member States’ action.*

Amendment 222

Proposal for a directive
Article 102 – paragraph 7 – subparagraph 1

**Text proposed by the Commission**

In order to ensure effective access to emergency services through emergency communications to ‘112’ services in the Member States, the Commission shall be empowered to adopt 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.

**Amendment**

In order to ensure effective access to emergency services through emergency communications to ‘112’ services in the Member States, the Commission shall, *after consulting BEREC*, be empowered to adopt 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 *end-users, accessibility for persons with disabilities* and routing to the most appropriate PSAP.

*The Commission shall maintain a database of E.164 numbers of European emergency services to ensure that they are able to contact each other from one Member State to another.*
Amendment 223

Proposal for a directive
Article 102 a (new)

Text proposed by the Commission

Amendment

Article 102a
Reverse "112" system

1. Member States shall ensure, through the use of electronic communications networks and services, the establishment of national efficient 'Reverse-112' communication systems for warning and alerting citizens, in case of imminent or developing natural and/or man-made major emergencies and disasters, taking into account existing national and regional systems and without hindering privacy and data protection rules.

Amendment 224

Proposal for a directive
Article 102 b (new)

Text proposed by the Commission

Amendment

Article 102 b
Missing children and child helpline hotlines

1. Member States shall ensure that citizens have access to a service operating a hotline to report cases of missing children free of charge. The hotline shall be available on the number '116000'. Member States shall ensure that children have access to a child-friendly service operating a helpline. The helpline shall be available on the number '116111'.

2. Member States shall ensure that end-users with disabilities are able to access services provided under the number '116000' and '116111' on equal basis with other end-users, including
through total conversation services. Measures taken to facilitate the access of end-users with disabilities 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.

3. Member States shall ensure that appropriate measures needed to achieve a sufficient level of service quality in operating the 116 000 number as well as engaging necessary financial resources to operate the hotline are implemented.

4. Member States and the Commission shall ensure that citizens are adequately informed of the existence and use of services provided under the '116 000' and '116111' number.

Amendment 225

Proposal for a directive
Article 103 – title

Text proposed by the Commission

Equivalent access and choice for disabled end-users

Amendment

Equivalent access and choice for end-users with disabilities

Amendment 226

Proposal for a directive
Article 103 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that the competent authorities specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communications services to ensure that disabled end-users:

Amendment

1. Member States shall ensure that the competent authorities specify requirements to be met by providers of publicly available electronic communications services to ensure that end-users with disabilities:
Amendment 227

Proposal for a directive
Article 103 – paragraph 1 – point a

Text proposed by the Commission

(a) have access to electronic communications services equivalent to that enjoyed by the majority of end-users; and

Amendment

(a) have access to electronic communications services, including the related contractual information provided pursuant to Article 95, equivalent to that enjoyed by the majority of end-users; and

Member States shall also ensure that providers of publicly available electronic communications services take the necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust.

Amendment 228

Proposal for a directive
Article 103 – paragraph 1 a (new)

Text proposed by the Commission

1a. To that end, Member States shall ensure, to the extent that this does not impose a disproportionate burden on providers of terminal equipment and of electronic communication services, and of special equipment offering the necessary services and functions intended specifically for end-users with disabilities. The assessment of what is considered a disproportionate burden shall follow the procedure set out in article 12 of Directive xxx/YYYY/EU.

Amendment 229

Proposal for a directive
Article 103 – paragraph 2
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.

Insofar as the provisions of this Article conflict with the provisions of Directive xxx/YYYY/EU of the European Parliament and of the Council\(^{1a}\), the provisions of Directive xxx/YYYY/EU shall prevail.

\(^{1a}\) Directive xxx/YYYY/EU of the European Parliament and of the Council of ... on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (OJ L ... , ..., p. ...).

Amendment 230

Proposal for a directive
Article 104 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that all undertakings which assign telephone numbers to 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.

Amendment

1. Member States shall ensure that all undertakings providing voice communication services 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.

Amendment 231

Proposal for a directive
Article 105 – title
Proposal for a directive
Article 105 – paragraph 1

Text proposed by the Commission

In accordance with the provisions of Annex X, Member States shall ensure the interoperability of the consumer digital television equipment referred to therein.

Amendment

In accordance with the provisions of Annex X, Member States shall ensure the interoperability of the consumer radio and television equipment referred to therein.

Proposal for a directive
Article 105 – paragraph 1 a (new)

Text proposed by the Commission

1a. Providers of digital television services shall ensure interoperability of terminal equipment so that where technically feasible the terminal equipment is reusable with other providers and if this is not consumers need to be given the possibility through a free and easy process to return the terminal equipment.

Amendment

Proposal for a directive
Article 106 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States may impose reasonable 'must carry' obligations, for the transmission of specified radio and television broadcast channels and related services.

Amendment

I. Member States may impose reasonable 'must carry' obligations, for the transmission of specified radio and television broadcast channels and related services.
complementary services, particularly accessibility services to enable appropriate access for \textit{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.

**Member States shall only impose 'must carry' obligations on analogue television broadcast transmissions where a lack of such an obligation would cause a significant disturbance for a significant number of end-users or where there are no other transmission means for specified television broadcast channels.**

'Must carry' obligations referred to in the first subparagraph 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.

\textbf{Amendment 235}

\textbf{Proposal for a directive}
\textbf{Article 106 – paragraph 1 – subparagraph 2}

\textit{Text proposed by the Commission}

The obligations referred to in the first \textbf{subparagraph} shall be reviewed by the Member States at the latest within one year of [date of entry into force of this Directive], except where Member States

\textbf{Amendment}

1a. The obligations referred to in the first paragraph shall be reviewed by the Member States at the latest within one year of [date of entry into force of this Directive], except where Member States
have carried out such a review within the previous four years.

have carried out such a review within the previous four years.

Amendment 236

Proposal for a directive
Article 106 – paragraph 1 b (new)

Text proposed by the Commission

1b. Member States may additionally impose reasonable 'must offer' entitlements, in respect of specified radio and television broadcast channels of general interest, to the undertakings subject to must-carry obligations under their jurisdiction.

Amendment 237

Proposal for a directive
Article 106 – paragraph 2

Text proposed by the Commission

(2) Neither paragraph 1 of this Article nor Article 57(2) 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.

Amendment 238

Proposal for a directive
Article 107 – paragraph 1

(2) Neither paragraph 1 of this Article nor Article 57(2) shall prejudice the ability of Member States to determine in their legislation 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 and services. If remuneration is to be provided for, the requirement for remuneration and its amount may be laid down by law and such remuneration shall be applied in a proportionate and transparent manner.
1. Without prejudice to Article 83(2), Member States shall ensure that national regulatory authorities are able to require all undertakings that provide internet access services and/or publicly available number-based interpersonal communications services to make available all or part of the additional facilities listed in Part B of Annex VI, subject to technical feasibility and economic viability, as well as all or part of the additional facilities listed in Part A of Annex VI.

1. Without prejudice to Article 83(2), Member States shall ensure that national regulatory authorities are able to require all providers that provide internet access services and/or publicly available number-based interpersonal communications services to make available free of charge, where relevant, all or part of the additional facilities listed in Part B of Annex VI, subject to technical feasibility, as well as all or part of the additional facilities listed in Part A of Annex VI.

Amendment 239

Proposal for a directive
Article 107 – paragraph 2

Text proposed by the Commission

2. A Member State 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.

Amendment

2. A Member State may decide to 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.

Amendment 240

Proposal for a directive
Annex I – part A – point 4

Text proposed by the Commission


Amendment

deleted

54
Amendment 241

Proposal for a directive
Annex V – subheading 1

*Text proposed by the Commission*  Amendment

LIST OF SERVICES WHICH THE  LIST OF SERVICES WHICH THE
FUNCTIONAL INTERNET ACCESS  INTERNET ACCESS SERVICE IN
SERVICE SHALL BE CAPABLE OF  ACCORDANCE WITH ARTICLE 79(2)
SUPPORTING  SHALL BE CAPABLE OF
IN ACCORDANCE  SUPPORTING
WITH ARTICLE 79(2)

*Justification*

Aligns the title to the removal of the word 'functional' from the text

Amendment 242

Proposal for a directive
Annex VI – part A – point a – paragraph 1 a (new)

*Text proposed by the Commission*  Amendment

Such itemised bills shall include an
explicit mention of the identity of the
supplier, the typology and the duration of
the services charged by any premium
numbers to the end-user.

Amendment 243

Proposal for a directive
Annex VI – part A – point a – paragraph 3

*Text proposed by the Commission*  Amendment

Calls which are free of charge to the
calling end-users, including calls to
helplines, are not to be identified in the
calling end user's itemised bill.

Calls which are free of charge to the
calling end-users, including calls to
helplines, are not to be identified in the
calling end user's itemised bill, *but may be made available through other means, such as online interfaces.*
Justification

while it should not be in the itemised bill, it can be made available to end-users via a website, for example.

Amendment 244

Proposal for a directive
Annex VI – part A – point a – paragraph 3 a (new)

Text proposed by the Commission

Amendment

National regulatory authorities may require operators to provide calling-line identification (CLI) free of charge.

Justification

It should be free of charge

Amendment 245

Proposal for a directive
Annex VII – title 1

Text proposed by the Commission

Amendment

CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS IN ACCORDANCE WITH ARTICLES 84 AND 85

CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS AND ESTABLISHING ANY RECOVERY OR SHARING MECHANISM IN ACCORDANCE WITH ARTICLES 84 AND 85

Amendment 246

Proposal for a directive
Annex VII – subtitle 1 a (new)

Text proposed by the Commission

Amendment

PART A: CALCULATION OF NET COST

PE601.017v02-00  406/493  RR\1137459EN.docx
PART B: RECOVERY OF ANY NET COSTS OF UNIVERSAL SERVICE OBLIGATIONS

The recovery or financing of any net costs of universal service obligations requires designated undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such a compensation involves financial transfers, Member States are to ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result in the least distortion to competition and to user demand.

In accordance with Article 85(3), a sharing mechanism based on a fund should use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due and/or administrative payments to the undertakings entitled to receive payments from the fund.
The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 96. It is for the national regulatory authority to decide which information is to be published by the undertakings providing publicly available electronic communications services, except number-independent interpersonal communications services and which information is to be published by the national regulatory authority itself, so as to ensure that consumers are able to make informed choices. If deemed appropriate, national regulatory authorities may promote self- or co-regulatory measures prior to imposing any obligation.

Amendment 249

Proposal for a directive
Annex VIII – point 2 – point 2.1

2.1. Scope of the services offered and the main characteristics of each service provided, including any minimum service quality levels offered and any restrictions imposed by the provider on the use of terminal equipment supplied.

Justification

Includes coverage for persons with disabilities

Amendment 250

Proposal for a directive
Annex VIII – point 2 – point 2.2
2.2. Tariffs of the services offered, including information on communications volumes of specific tariff plans and the applicable tariffs for additional communication units, numbers or services subject to particular pricing conditions, charges for access and maintenance, all types of usage charges, special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment.

**Justification**

As 'volumes' is not defined, general examples are needed in order to mirror the text of Article 95.

**Amendment 251**

**Proposal for a directive**

Annex VIII – point 2 – point 2.5

2.5. **If the undertaking is a provider of number-based interpersonal communications services, information on access to emergency services and caller location information.**

**Amendment**

2.5. Provide end-users with information on access to emergency services and caller location. If the undertaking is a provider of number-based interpersonal communications services, information on access to or on any limitations on the provision of emergency services and caller location information.

**Amendment 252**

**Proposal for a directive**

Annex VIII – point 2 – point 2.6

2.6. **Details of products and services designed for disabled users.**

**Amendment**

2.6. Details of products and services designed for users with disabilities,
including functions, practices, policies and procedures and alterations in the operation of the service targeted to address the needs of persons with functional limitations.

Justification

Based on the wording of the EAA Directive on telecoms, Annex I.

Amendment 253

Proposal for a directive
Annex VIII – point 2 – point 2.6 a (new)

Text proposed by the Commission

Amendment

2.6a. Accessible information to facilitate complementarities with assistive services.

Justification

Based on the wording of the EAA Directive on telecoms

Amendment 254

Proposal for a directive
Annex IX – table 3

Text proposed by the Commission

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<tr>
<th>PARAMETER</th>
<th>DEFINITION</th>
<th>MEASUREMENT METHOD</th>
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<td>Packet loss</td>
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Amendment

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<th>MEASUREMENT METHOD</th>
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<td>Packet loss</td>
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Amendment 255
Proposal for a directive
Annex X – title 1

*Text proposed by the Commission*

INTEROPERAIBILITY OF **DIGITAL**
CONSUMER EQUIPMENT REFERRED TO IN ARTICLE 105

*Amendment*

INTEROPERAIBILITY OF CONSUMER EQUIPMENT REFERRED TO IN ARTICLE 105

Amendment 256
Proposal for a directive
Annex X – point 2 – paragraph 1

*Text proposed by the Commission*

Any digital television set with an integral screen of visible diagonal greater than 30 cm which is put on the market for sale or rent in the Union is to be fitted with at least one open interface socket (either standardised by, or conforming to a standard adopted by, a recognised European standards organisation, or conforming to an industry-wide specification) permitting simple connection of peripherals, and able to pass all relevant elements of a digital television signal, including information relating to interactive and conditionally accessed services.

*Amendment*

Any digital television set with an integral screen of visible diagonal greater than 30 cm which is put on the market for sale or rent in the Union is to be fitted with at least one open interface socket (either standardised by, or conforming to a standard adopted by, a recognised European standards organisation, or conforming to an industry-wide specification) permitting simple connection of peripherals, and able to pass all relevant elements of a digital television signal, including information relating to interactive and conditionally accessed services. **Terminal equipment of digital television sets needs to be interoperable where technically feasible so that it can be easily reusable with other providers.**

Amendment 257
Proposal for a directive
Annex X – point 2 a (new)

*Text proposed by the Commission*

2a. **FUNCTIONALITY FOR RADIO SETS**
Any radio set which is put on the market in the Union from [date of transposition] shall be capable of receiving digital and analogue terrestrial radio broadcasts. This paragraph shall not apply to low value, small consumer radio equipment or products where a receiver is purely ancillary. It shall also not apply to radio equipment used by radio amateurs within the meaning of Article 1, definition 56, of the International Telecommunications Union (ITU) Radio Regulations.
## PROCEDURE – COMMITTEE ASKED FOR OPINION

<table>
<thead>
<tr>
<th>Title</th>
<th>European Electronic Communications Code (Recast)</th>
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<tbody>
<tr>
<td>Committee responsible</td>
<td>ITRE 24.10.2016</td>
</tr>
<tr>
<td>Date announced in plenary</td>
<td></td>
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<tr>
<td>Opinion by</td>
<td>IMCO 24.10.2016</td>
</tr>
<tr>
<td>Date announced in plenary</td>
<td></td>
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<tr>
<td>Associated committees - date announced in plenary</td>
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<tr>
<td>Rapporteur</td>
<td>Dita Charanzová 11.10.2016</td>
</tr>
<tr>
<td>Date appointed</td>
<td></td>
</tr>
<tr>
<td>Date adopted</td>
<td>4.9.2017</td>
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| Result of final vote | +: 31  
| | --: 1  
| | 0: 2 |
| Members present for the final vote | Dita Charanzová, Carlos Coelho, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Dennis de Jong, Pascal Durand, John Flack, Evelyne Gebhardt, Liisa Jaakonsaari, Philippe Juvin, Morten Løkkegaard, Marlene Mizzi, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Jasenko Selimovic, Ivan Štefanec, Richard Sulík, Róža Gráfin von Thun und Hohenstein, Mylène Troszczyński, Marco Zullo |
| Substitutes present for the final vote | Birgit Collin-Langen, Julia Reda, Marc Tarabella, Lambert van Nistelrooij |
| Substitutes under Rule 200(2) present for the final vote | Jonathan Arnott, Paul Brannen, Isabella De Monte, Karoline Graswander-Hainz, Dennis Radtke, Esther de Lange |
**FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION**

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</table>

**Key to symbols:**
+ : in favour
- : against
0 : abstention
OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Industry, Research and Energy


Rapporteur: Curzio Maltese

SHORT JUSTIFICATION

I. Introductory remarks

On September 14, 2016, the Commission, within the framework of its Digital Single Market Strategy (DSM), adopted its recast proposal for a new European code of electronic communications. The proposal reviews the existing legislative framework for telecommunications by amending four Directives: Framework, Authorisation, Access and Universal services Directives.

The code is designed to take into account of the significant changes in the markets, consumer trends and technologies since 2009 when the framework was last modified.

In this respect the Commission’s proposal includes measures to stimulate investment and employment in the Union in very high capacity networks, new rules for the distribution of spectrum for mobile and 5G connectivity, as well as changes to governance, spectrum management, universal service regime, services and end-user protection rules, numbering and emergency communications.

The recast proposal addresses a wide variety of issues, which aim to allow European consumers to benefit from a greater selection of products at lower prices and a supply of innovative and high quality services.

II. Position of the Rapporteur

The Rapporteur welcomes the proposal's objective of simplifying and clarifying the current legal framework on electronic communications. However, the Rapporteur would like to address specific issues such as media pluralism and cultural diversity, aspects relating to
accessibility to users with disabilities, pluralism of information, end-users protection, radio access, better access for remote regions, and makes several suggestions accordingly.

The main two points of the opinion are:

(i) General objectives (Article 3)

The Rapporteur considers it to be essential that national regulatory and other competent authorities contribute within their competencies to ensure the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism. In that regard, the Rapporteur suggest to replace “may” by “shall” so as to make that objective a legal imperative.

(ii) Powers and responsibilities of the national regulatory authorities with regard to access and interconnection (Article 59)

The Rapporteur suggests including media pluralism in the list of the policy objectives that national regulatory agencies should pursue in imposing access obligations. This is legally consistent with the objective referred to in Article 3, paragraph 1.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive
Recital 7 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member States should ensure that citizens of the Union have universal access to a wide range of information and high-quality and public value content, in the interest of media pluralism and cultural diversity, taking into account the rapid evolution of distribution systems and business models currently affecting the media sector.</td>
<td></td>
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</tbody>
</table>

PE601.017v02-00 416/493 RR\1137459EN.docx
Justification

This new recital is needed to reinforce one of the main purposes of this recast which is to ensure that this Directive can properly safeguard media pluralism and cultural diversity in respect of the changes that have taken place in the media sector. This addition is necessary to ensure the internal logic of the text.

Amendment 2
Proposal for a directive
Recital 8

Text proposed by the Commission

(8) This Directive does not affect the application to radio equipment of Directive 2014/53/EU, but does cover consumer equipment used for digital television.

Amendment

(8) This Directive does not affect the application to radio equipment of Directive 2014/53/EU, but does cover consumer equipment used for radio and digital television.

Justification

This amendment is needed to ensure the internal logic and coherence of the text. It is important for regulators to encourage network operators and terminal equipment manufacturers to cooperate in order to facilitate access by disabled users to electronic communications services included radio services.

Amendment 3
Proposal for a directive
Recital 9

Text proposed by the Commission

(9) In order to allow national regulatory authorities to meet the objectives set out in this Directive, in particular concerning end-to-end interoperability, the scope of the Directive should cover certain aspects of radio equipment as defined in Directive 2014/53/EU of the European Parliament and of the Council and consumer equipment used for digital television, in order to facilitate access for disabled users. It is important for regulators to encourage

Amendment

(9) In order to allow national regulatory authorities to meet the objectives set out in this Directive, in particular concerning end-to-end interoperability, the scope of the Directive should cover certain aspects of radio equipment as defined in Directive 2014/53/EU of the European Parliament and of the Council 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.


**Amendment 4**

**Proposal for a directive**

**Recital 13**

**Text proposed by the Commission**

(13) The requirements concerning the capabilities of electronic communications networks are constantly increasing. While in the past the focus was mainly on growing bandwidth available overall and to each individual user, other parameters like latency, availability and reliability are becoming increasingly important. The current response towards this demand is bringing optical fibre closer and closer to the user and future 'very high capacity networks' will require performance parameters which are equivalent to **what a network based on optical fibre elements** at least up to the distribution point at the serving location can deliver. This corresponds in the fixed-line connection case to network performance equivalent to what is achievable by an optical fibre installation up to a multi-dwelling building,

**Amendment**

(13) The requirements concerning the capabilities of electronic communications networks are constantly increasing. While in the past the focus was mainly on growing bandwidth available overall and to each individual user, other parameters like latency, availability and reliability are becoming increasingly important. The current response towards this demand is bringing optical fibre closer and closer to the user and future 'very high capacity networks' will require performance parameters which are equivalent to **those on optical fibre networks** at least up to the distribution point at the serving location can deliver **such as fibre to the home networks**. This corresponds in the fixed-line connection case to network performance equivalent to what is achievable by an optical fibre installation.
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.

Amendment 5

Proposal for a directive

Recital 21

Text proposed by the Commission

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

Amendment

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

This recast is designed to simplify and update the current legal framework. Considering that the promotion of media pluralism and cultural diversity is intrinsic part of this legal framework, this addition is needed to ensure that coordination between national authorities must take place at regulatory level. This addition is therefore necessary to ensure the internal logic of the text.

Amendment 6

Proposal for a directive
Recital 22

Text proposed by the Commission

(22) The activities of competent authorities established under this Directive contribute to the fulfilment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning.

Amendment

(22) The activities of competent authorities established under this Directive contribute to the fulfilment of broader policies in the areas of culture and cultural diversity, media pluralism, employment, the environment, social cohesion and town and country planning.

Justification

This amendment is needed to align the text with the objectives in Article 3. This amendment is therefore necessary to ensure the internal logic of the text.

Amendment 7

Proposal for a directive
Recital 23

Text proposed by the Commission

(23) In order to translate the political aims of the Digital Single Market strategy into regulatory terms, the framework should, in addition to the existing three primary objectives of promoting competition, internal market and end-user interests, pursue an additional connectivity objective, articulated in terms of outcomes: widespread access to and take-up of very high capacity fixed and mobile connectivity for all Union citizens and

Amendment

(23) In order to translate the political aims of the Digital Single Market strategy into regulatory terms, the framework should, in addition to the existing three primary objectives of promoting sustainable 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
businesses on the basis of reasonable price and choice, enabled by effective and fair competition, by efficient investment and open innovation, by efficient use of spectrum, by common rules and predictable regulatory approaches in the internal market and by the necessary sector-specific rules to safeguard the interests of citizens. For the Member States, the national regulatory authorities and other competent authorities and the stakeholders, that connectivity objective translates on the one hand into aiming for the highest capacity networks and services economically sustainable in a given area, and on the other hand into pursuing territorial cohesion, in the sense of convergence in capacity available in different areas.

Amendment 8
Proposal for a directive
Recital 25

Text proposed by the Commission

(25) Both efficient investment and competition should be encouraged in tandem, in order to increase economic growth, innovation and consumer choice.

Amendment

(25) Both efficient investment and sustainable competition should be encouraged in tandem, in order to increase economic growth, innovation and consumer choice, in order to guarantee the accessibility of consumers to services of high quality and at an affordable price.

Justification

The addition of 'sustainable' is needed in order to ensure consistency with the amendment to Recital 23. Moreover the further addition is justified because one of the main purposes of the proposal is to improve consumers' access to universal services, and therefore this change is therefore necessary to ensure the internal logic of the text.

Amendment 9
Proposal for a directive
Recital 101
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 to such networks and services, should therefore be efficiently allocated and assigned by national regulatory authorities according to 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 frequencies. 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) establishes a framework for harmonisation of radio spectrum.

This amendment is needed to align the text with the rest of the Articles. This amendment is therefore necessary to ensure the internal logic of the text.

Amendment 10
Proposal for a directive
Recital 102

Radio spectrum policy activities in the Union should be without prejudice to measures taken, at Union or national level, in accordance with 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 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.

**Justification**

This amendment is needed to align the text with the rest of the Articles.

**Amendment 11**

**Proposal for a directive**

**Recital 144**

*Text proposed by the Commission*

(144) Competition rules alone may not be sufficient to ensure cultural diversity and media pluralism in the area of digital television. Technological and market developments make it necessary to review 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 Union, in particular to determine whether there is justification for extending obligations to electronic programme guides (EPGs) and application programme interfaces (APIs), to the extent

*Amendment*

(144) Competition rules alone may not be sufficient to ensure cultural diversity and media pluralism in the area of digital television. Technological and market developments make it necessary to review 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 Union, in particular to determine whether there is justification for extending obligations to 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.

The concept of the electronic programme guide needs to be defined in a future-proof and dynamic way, with respect both to emerging navigation and listing facilities on platforms and to developments in connected television and radio services.

Justification

The concept of the electronic programme guide needs to be future-proof. This amendment is therefore necessary to ensure the internal logic of the text.

Amendment 12

Proposal for a directive
Recital 196

Text proposed by the Commission

(196) A fundamental requirement of universal service is to ensure that all end-users have access at an affordable price to available functional internet access and voice communications services, at least at a fixed location. 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. There should be no limitations on the technical means by which the connection is provided, allowing for wired or wireless technologies, nor any limitations on the category of operators which provide part or all of universal service obligations.

Amendment

(196) A fundamental requirement of universal service is to ensure that all end-users have access at an affordable price to available functional internet access and voice communications services, at a fixed location and by way of mobile connection. Member States should also have the ensure affordability of services not provided at a fixed location but to citizens on the move, as this necessary to ensure their full social and economic participation in society. There should be no limitations on the technical means by which the connection is provided, allowing for wired or wireless technologies, nor any limitations on the category of operators which provide part or all of universal service obligations.

Amendment 13

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Proposal for a directive
Recital 201

Text proposed by the Commission

(201) 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 affordable functional internet access and voice communications services 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.

Amendment

Proposal for a directive
Recital 206

Text proposed by the Commission

(206) Member States should introduce measures to promote the creation of a market for affordable and accessible 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 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. Member States should define appropriate measures according to national circumstances, which gives flexibility for

Amendment

(206) Member States should introduce measures to promote the creation of a market for affordable and accessible products and services incorporating facilities for end-users with disabilities, including when necessary assistive technologies interoperable with publicly available electronic communication equipment and services. This can be achieved, inter alia, by referring to European standards, or by introducing 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
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.

requirements for products and services 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 and accessible products and services incorporating facilities for end-users with disabilities under normal economic conditions.

38 OJ C […], […], p. […].

Justification

This amendment is needed for further alignment of the text with the rest of the amendments and in particular to clarify the difference between accessible mainstream products and assistive technologies (e.g. special devices for deaf-blind persons).

Amendment 15
Proposal for a directive
Recital 211

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

Amendment
(211) The costs of ensuring the availability of a connection capable of delivering functional internet access service as identified in accordance with Article 79 (2) and voice communications service at a fixed location and by way of mobile connection 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.

Amendment 16
Proposal for a directive
Recital 213

Text proposed by the Commission

Amendment

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When an undertaking designated to ensure the availability at a fixed location of functional internet access or voice communications services, as identified in Article 81 of this 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.

Amendment 17
Proposal for a directive
Recital 214

Text proposed by the Commission

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

Amendment

(214) In order to provide stability and support a gradual transition, Member States should be able to continue to ensure the provision of universal services in their territory, other than functional internet access and voice communications services at a fixed location and by way of mobile connection, 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
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.

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.

Amendment 18

Proposal for a directive
Recital 254

Text proposed by the Commission

(254) In line with the objectives of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of Persons with Disabilities, the regulatory framework should ensure that all users, including disabled end-users, the elderly, and users with special social needs, have easy access to affordable high quality services.

Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the Union shall take account of the needs of persons with a disability in drawing up measures under Article 114 of the TFEU.

Justification

This amendment is needed for further alignment of the text with the rest of the amendments. This amendment is therefore necessary to ensure the internal logic of the text.

Amendment 19

Proposal for a directive
Recital 265

Text proposed by the Commission

(265) End-users should be able to enjoy a guarantee of interoperability in respect of all equipment sold in the Union for the reception of digital television. Member

Amendment

(265) End-users should be able to enjoy a guarantee of interoperability in respect of all equipment sold in the Union for the reception of radio and digital television.
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.

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.

**Justification**

The addition of ‘radio’ is justified because one of the main purposes of the proposal is to improve consumers' access to universal services as well as interoperability of the related equipment - in both these respects, radio should be regarded as equally important as digital television. This change is therefore necessary to ensure the internal logic of the text.

**Amendment 20**

**Proposal for a directive**

**Recital 269**

**Text proposed by the Commission**

(269) 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 Union law and should be proportionate and transparent. ‘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 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

**Amendment**

(269) 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 Union law and should be proportionate and transparent. ‘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, for instance, media pluralism and cultural diversity. Member States should provide an objective justification for the ‘must carry’ obligations that they impose in their national law so as to ensure that such obligations are transparent, proportionate and clearly defined. 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
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. Obligations could, where appropriate, entail a provision for proportionate remuneration.

Justification

The legitimacy of ‘must carry’ rules should not be reduced to whether they can help to generate investment in infrastructure. These objectives are not only economic in nature, but also relate to social and cultural policy. They help ensure media pluralism, cultural diversity and democratic participation. This amendment is therefore necessary to ensure the internal logic of the text.

Amendment 21

Proposal for a directive

Recital 270

Text proposed by the Commission

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

Amendment

(270) Electronic communications networks and services 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 and services to the extent that a significant number of end-users use such networks 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 and other navigation facilities for user choice the transmission of programme-related data supporting those functionalities can be included in must
carry obligations.

Justification

These changes are to ensure that the wording is future-proof. Users now also access content via electronic communications services and not solely via electronic communications networks. Furthermore, communications networks are no longer used as the ‘principal means’. This amendment is necessary to ensure the internal logic of the text.

Amendment 22

Proposal for a directive
Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(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.

Amendment

(2) 'very high capacity network' means an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location under a fibre to the home configuration or any other type of network 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 will be assessed solely on the basis of technical parameters.

Justification

The Commission has proposed to use regulatory incentives to foster investment in very high capacity networks that will be rolled-out in order for Europe to have the best communications infrastructure possible. The cultural and audio-visual sector is very advanced in the process of digitisation. It will benefit immensely from such high speed fibre to the home and 5G mobile networks or any other network that can deliver the same or a better performance.

Amendment 23

Proposal for a directive
Article 3 – paragraph 1 – subparagraph 1
Member States shall ensure that in carrying out the regulatory tasks specified in this Directive, the national regulatory and other competent authorities take all reasonable measures which are necessary and proportionate for achieving the objectives set out in paragraph 2. Member States and BEREC shall also contribute to the achievement of these objectives.

Justification

This Article is essential because it defines the grand objectives that all public action should aim to achieve in the sector. In doing so, all public institutions play an important role, including the European Commission.

Amendment 24
Proposal for a directive
Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission
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.

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

Justification

Properly safeguarding media pluralism and cultural diversity, should be one of the main purposes of this recast. The term 'may' should therefore be replaced by 'shall' to ensure internal logic of the text.

Amendment 25
Proposal for a directive
Article 3 – paragraph 2 – introductory part
2. The national regulatory and other competent authorities as well as BEREC shall:

Amendment 26

Proposal for a directive
Article 3 – paragraph 2 – point c

(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;

Amendment 27

(c) contribute to the development of the internal market in particular by ensuring effective and fair competition, as well as social and territorial cohesion 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 and equivalent access for all end-users;
Proposal for a directive
Article 3 – paragraph 3 – point e

Text proposed by the Commission
Amendment
(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;
(e) taking due account of the variety of conditions relating to infrastructure, as well as service competition and end-users' circumstances that exist in the various geographic areas within a Member State;

Amendment 28

Proposal for a directive
Article 4 – paragraph 4 a (new)

Text proposed by the Commission
Amendment
4a. The provisions of this Directive shall be without prejudice to existing Union law and to measures taken at national level for the allocation of radio spectrum as a valuable public asset which aims to pursue general interest objectives to organise and use spectrum for public order, security and defence and to promote media pluralism and cultural, linguistic and media diversity.

Amendment 29

Proposal for a directive
Article 5 – paragraph 1 – subparagraph 2 – indent 8

Text proposed by the Commission
Amendment
– dealing with issues related to open internet access;
– ensuring compliance with rules related to open internet access;

Amendment 30

Proposal for a directive
Article 26 – paragraph 1
1. In the event of a dispute arising in connection with existing obligations under this Directive 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, the national regulatory authority concerned shall, at the request of either party, and without prejudice to 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.

Justification

This recast is designed to simplify and update the current legal framework. The proposed addition would help clarify the dispute resolution procedure and therefore ensure the internal logic of the text.

Amendment 31

Proposal for a directive

Article 28 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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.

**Justification**

Radio spectrum is used for different types of wireless transmissions (radio, TV, mobile telecommunications, Wi-Fi, wireless microphones) the uses of which are not all harmonised in the meaning of the proposed Directive. To ensure that all uses can benefit for the principle of no cross-border harmful interference, ‘harmonised’ is removed.

**Amendment 32**

**Proposal for a directive**

**Article 28 – paragraph 1 – subparagraph 2**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>They shall take all necessary measures to this effect whilst taking into account their national needs without prejudice to their obligations under international law and relevant international agreements such as the ITU Radio Regulations.</td>
</tr>
</tbody>
</table>

**Justification**

Member states should be able to decide upon spectrum harmonisation/coordination taking into account their national needs such as for instance spectrum requirements for broadcasting services.

**Amendment 33**

**Proposal for a directive**

**Article 28 – paragraph 2 – introductory part**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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:</td>
<td>2. Member States shall cooperate with each other, in particular through the Radio Spectrum Policy Group, in the cross-border coordination of the use of radio spectrum in order to:</td>
</tr>
</tbody>
</table>
Amendment 34

Proposal for a directive
Article 30 – paragraph 3 – subparagraph 2 – point b

Text proposed by the Commission

(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 65.

Amendment

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

Justification

Fair competition is an essential element in ensuring that media pluralism and cultural diversity are properly safeguarded. This addition is therefore necessary to ensure the internal logic of the text.

Amendment 35

Proposal for a directive
Article 32 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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 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.

Amendment

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 20(3), and inform the Commission, BEREC and other national regulatory authorities and stakeholders 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.
Amendment 36
Proposal for a directive
Article 33 – paragraph 5 – point c

Text proposed by the Commission

(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.

Amendment

Justification

This amendment is needed to ensure that the text is logical and coherent. Indeed, we believe it is crucial that NRBs continue to be able to regulate national markets and for them to be able, therefore, to adopt the necessary corrective measures against companies dominating the market, bearing specific national circumstances in mind (which the Commission itself recognises as fundamental, above all in relation to regulations on wholesale access).

Amendment 37
Proposal for a directive
Article 35 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) ensure effective and efficient use of radio spectrum, but at the same time taking into account the public interest and the social, cultural and economic value of spectrum as a whole; and

Amendment 38
Proposal for a directive
Article 35 – paragraph 4 – point f a (new)
Text proposed by the Commission

Amendment

(fa) the principles of services and technological neutrality and of effective and efficient use of spectrum;

Justification

It is important to stress the neutrality principle and the efficient use of spectrum.

Amendment  39

Proposal for a directive
Article 45 – paragraph 2 – subparagraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) ensuring that any change in policy with regard to the efficient use of spectrum takes account of its impact on the public interest in terms of interference and costs;

Amendment  40

Proposal for a directive
Article 45 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

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:

__________

1a Decision No 243/2012/EU of the


Amendment 41

Proposal for a directive
Article 46 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) the specific characteristics of the radio spectrum concerned and the current and planned use of different available radio spectrum bands;

Amendment 42

Proposal for a directive
Article 59 – paragraph 1 – subparagraph 1

Text proposed by the Commission

National regulatory authorities shall, acting in pursuit of the objectives set out in Article 3, 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

Amendment

National regulatory authorities shall, acting in pursuit of the objectives set out in Article 3, 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, media pluralism, the deployment of very high capacity networks, efficient investment and innovation, and gives the maximum benefit to end-users. They shall provide guidance
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.

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.

**Justification**

*Media pluralism should be explicitly included in the list of policy objectives that NRAs may pursue in imposing access obligations. Such reference to media pluralism is in line with the provision of Article 3(1), and ensures legal consistency in the implementation of the European Electronic Communications Code by Member States. One of the main purposes of this recast is to ensure that this Directive can properly safeguard media pluralism. This addition is necessary to ensure the internal logic of the text.*

**Amendment 43**

**Proposal for a directive**
**Article 59 – paragraph 1 – subparagraph 2 – introductory wording**

**Text proposed by the Commission**

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

**Amendment**

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

**Justification**

*This recast is designed to update the current legal framework. This change grants greater latitude to national regulatory authorities to impose obligations as referred to in Article 59, paragraph 1. This addition is necessary to ensure the internal logic of the text.*

**Amendment 44**

**Proposal for a directive**
**Article 59 – paragraph 3 – subparagraph 1**
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,

Justification

In so called ‘white areas’ where no operator invested to roll-out a network, mandatory network deployment and sharing is needed to provide end-users with optimum coverage. In other areas where one or more operator(s) invested to roll-out a network, mandatory network sharing would be strongly deterrent to pursue the deployment. Operators which deploys in areas where investment is hardly profitable would not invest any more if as a result of its effort, it would be forced to share its network.

Amendment 45

Proposal for a directive
Article 60 – paragraph 4

Text proposed by the Commission

(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.

Amendment

(4) Conditions applied in accordance with this Directive are without prejudice to the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides and other listing and navigation facilities.

Justification

The wording in relation to listing and navigation facilities needs to be future-proof and technologically neutral, and it should not refer solely to this Article. The concept of the electronic programme guide needs to be future-proof. This amendment is therefore necessary to ensure the internal logic of the text.
Amendment 46

Proposal for a directive
Article 62 – paragraph 3

Text proposed by the Commission

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 23 and 32 before defining the markets that differ from those identified in the Recommendation.

Amendment

3. National regulatory authorities shall, taking the utmost account of, inter alia, 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 23 and 32 before defining the markets that differ from those identified in the Recommendation.

Justification

This recast is designed to update the current legal framework. This change grants greater latitude to national regulatory authorities to take account of national specificities in order to define markets susceptible to ex ante access rules, as deciding whether an entity holds SMP depends on how the relevant market is defined. This addition is therefore necessary to ensure the internal logic of the text.

Amendment 47

Proposal for a directive
Article 70 – paragraph 1

Text proposed by the Commission

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

Amendment

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, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection
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.

Amendment 48

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*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 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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.*

*Amendment*

A national regulatory authority may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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.

Amendment 49

Proposal for a directive
Article 79 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that all end-users in their territory have access at an affordable price, in the light of specific national conditions, to available functional internet access and voice communications services at the quality specified in their

*Amendment*

1. Member States shall ensure that all end-users in their territory have access at an affordable price, in the light of specific national conditions, to available functional internet access and voice communications services at the quality specified in their
territory, including the underlying connection, at least at a fixed location. territory, including the underlying connection, both at a fixed location and by way of mobile connection.

Amendment 50
Proposal for a directive
Article 80 – paragraph 4

Text proposed by the Commission
4. Member States may, in the light of national conditions, ensure that support is provided to low-income or special social needs end-users in view of ensuring affordability of functional internet access and voice communications services at least at a fixed location.

Amendment
4. Member States may, in the light of national conditions, ensure that support is provided to low-income or special social needs end-users in view of ensuring affordability of functional internet access and voice communications services at a fixed location and by way of mobile connection.

Amendment 51
Proposal for a directive
Article 81 – paragraph 3

Text proposed by the Commission
3. In particular, where Member States decide to impose obligations to ensure the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service, they may designate one or more undertakings to guarantee the availability at a fixed location of functional internet access service as identified in accordance with Article 79(2) and of voice communications service in order to cover all the national territory. Member States may designate different undertakings or sets of undertakings to provide functional internet access and voice communications services at a fixed location and/or to cover different parts of the national territory.

Amendment
3. In particular, where Member States decide to impose obligations to ensure the availability at a fixed location and by way of mobile connection of functional internet access service as defined in accordance with Article 79(2) and of voice communications service, they may designate one or more undertakings to guarantee the availability at a fixed location of functional internet access service as identified in accordance with Article 79(2) and of voice communications service in order to cover all the national territory. Member States may designate different undertakings or sets of undertakings to provide functional internet access and voice communications services at a fixed location and by way of mobile connection and/or to cover different parts of the national territory.
of the national territory.

Amendment 52
Proposal for a directive
Article 81 – paragraph 4

Text proposed by the Commission

4. When Member States designate undertakings in part or all of the national territory as undertakings having the obligation to ensure the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated. Such designation methods shall ensure that functional internet access and voice communications services at a fixed location are provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Article 84.

Amendment 53
Proposal for a directive
Article 81 – paragraph 5

Text proposed by the Commission

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 service as defined in accordance with Article 79(2) and of voice communications service. The national regulatory authority may impose, amend or withdraw specific obligations in accordance with Article 13(2).

Amendment 54
Proposal for a directive
Article 82 – paragraph 1

Text proposed by the Commission

Member States may continue to ensure the availability or affordability of other services than functional internet access service as defined in accordance with Article 79(2) and voice communications service at a fixed location that were in force prior to [set date], if the need for such services is duly demonstrated 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.

Amendment

Member States may continue to ensure the availability or affordability of other services than functional internet access service as defined in accordance with Article 79(2) and voice communications service at a fixed location and by way of mobile connection 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.

Amendment 55
Proposal for a directive
Article 97 – paragraph 2

Text proposed by the Commission

2. National regulatory authorities shall specify, taking utmost account of BEREC guidelines, the quality of service parameters to be measured and the applicable measurement methods, and the

Amendment

2. National regulatory authorities shall specify, taking utmost account of BEREC guidelines, 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. Where appropriate, the parameters, definitions and measurement methods set out in Annex IX shall be used.

**Amendment 56**

Proposal for a directive
Article 103 – paragraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>2. <strong>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.</strong></td>
<td>deleted</td>
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**Amendment 57**

Proposal for a directive
Article 105 – title

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>Interoperability of consumer digital television equipment</td>
<td>Interoperability of consumer digital television and radio equipment</td>
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</table>

**Amendment 58**

Proposal for a directive
Article 105 – paragraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>In accordance with the provisions of Annex X, Member States shall ensure the</td>
<td>In accordance with the provisions of Annex X, Member States shall ensure the</td>
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</tbody>
</table>
interoperability of the consumer digital television equipment referred to therein.

Justification

This amendment is needed to ensure the internal logic and coherence of the text. In accordance with the provisions of Annex X, Member States shall ensure the interoperability of the consumer radio equipment referred to therein.

Amendment  59

Proposal for a directive
Article 106 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Justification

This amendment is necessary for the internal logic of the text. Users now also access content via electronic communications services and not solely via electronic communications networks. Users can access content via a wide variety of terminal devices and communications infrastructures. The wording here needs to be up-to-date and future-proof. Communications networks are no longer used as the ‘principal means’ and the reference to
Amendment 60

Proposal for a directive
Article 106 – paragraph 2

Text proposed by the Commission

2. Neither paragraph 1 of this Article nor Article 57(2) 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.

Amendment

2. Neither paragraph 1 of this Article nor Article 57(2) shall prejudice the ability of Member States to determine appropriate remuneration, if any, by legal provisions, 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 and services. Where remuneration is provided for, Member States shall ensure that it is applied in a proportionate and transparent manner.

Justification

Member States need to provide clarity and legal certainty in relation to remuneration uncertainties to the must-carry rules if they decide that remuneration is going to be provided. This amendment is therefore necessary to ensure the internal logic of the text.

Amendment 61

Proposal for a directive
Annex II – part 2 – point b

Text proposed by the Commission

(b) Access to electronic programme guides (EPGs).

Amendment

(b) Access to electronic programme guides (EPGs), including data for connected television services and data to access these services.

Justification

The concept of the electronic programme guide needs to be future-proof.
Amendment 62
Proposal for a directive
Annex V – point 11

Text proposed by the Commission
(11) calls and video calls (standard quality)

Amendment
(11) calls and video calls (standard quality *suitable for sign language use*)

Amendment 63
Proposal for a directive
Annex V – point 11 a (new)

Text proposed by the Commission
(11a) radio services

Justification
This amendment is needed to ensure the internal logic and coherence of the text. In accordance with Article 79(2) radio services have to be included in the list of services which the functional internet access service shall be capable of supporting.

Amendment 64
Proposal for a directive
Annex X – part 2 a (new)

Text proposed by the Commission
2a. **INTEROPERABILITY FOR ANALOGUE AND DIGITAL RADIO RECEIVING DEVICES**

Amendment
All consumer equipment enabling the reception of radio and/or audio signals made available in the Union, is to possess the capability to receive radio in a technology neutral manner, by analogue
and digital broadcasting, and via IP networks.
## PROCEDURE – COMMITTEE ASKED FOR OPINION

<table>
<thead>
<tr>
<th>Title</th>
<th>European Electronic Communications Code (Recast)</th>
</tr>
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<tbody>
<tr>
<td>Committee responsible</td>
<td>ITRE</td>
</tr>
<tr>
<td>Date announced in plenary</td>
<td>24.10.2016</td>
</tr>
<tr>
<td>Opinion by</td>
<td>CULT</td>
</tr>
<tr>
<td>Date announced in plenary</td>
<td>24.10.2016</td>
</tr>
<tr>
<td>Rapporteur</td>
<td>Curzio Maltese</td>
</tr>
<tr>
<td>Date appointed</td>
<td>1.12.2016</td>
</tr>
<tr>
<td>Discussed in committee</td>
<td>22.3.2017</td>
</tr>
<tr>
<td>Date adopted</td>
<td>4.5.2017</td>
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<td>Result of final vote</td>
<td>+: 24, -: 0, 0: 4</td>
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<tr>
<td>Members present for the final vote</td>
<td>Isabella Adinolfi, Andrea Bocskor, Silvia Costa, Angel Dzhambazki, María Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerevert, Svetoslav Hristov Malinov, Curzio Maltese, Luigi Morgano, John Procter, Michaela Šojdrová, Yana Toom, Helga Trüpel, Sabine Verheyen, Julie Ward, Bogdan Brunon Wenta, Bogdan Andrzej Zdrojewski, Milan Zver</td>
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<td>Substitutes present for the final vote</td>
<td>Norbert Erdős, Eider Gardiazábal Rubial, Sylvie Guillaume, Emma McClarkin, Marlene Mizzi, Liadh Ní Riada, Algirdas Saudargas, Remo Sernagiotto</td>
</tr>
<tr>
<td>Substitutes under Rule 200(2) present for the final vote</td>
<td>Florent Marcellesi</td>
</tr>
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</table>
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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<td><strong>24</strong></td>
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<tr>
<td>ALDE</td>
<td>María Teresa Giménez Barbat, Yana Toom</td>
</tr>
<tr>
<td>EFDD</td>
<td>Isabella Adinolfi</td>
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<td>GUE/NGL</td>
<td>Curzio Maltese, Liadh Ní Riada</td>
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<tr>
<td>PPE</td>
<td>Andrea Bocskor, Norbert Erdős, Svetoslav Hristov Malinov, Algirdas Saudargas, Sabine Verheyen, Bogdan Brunon Wenta, Bogdan Andrzej Zdrojewski, Milan Zver, Michaela Šojdrová</td>
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<tr>
<td>S&amp;D</td>
<td>Silvia Costa, Eider Gardiazabal Rubial, Giorgos Grammatikakis, Sylvie Guillaume, Petra Kammerevert, Marlene Mizzi, Luigi Morgano, Julie Ward</td>
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<tr>
<td>Verts/ALE</td>
<td>Florent Marcellesi, Helga Trüpel</td>
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<td><strong>0</strong></td>
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<tr>
<td>ECR</td>
<td>Angel Dzhambazki, Emma McClarkin, John Procter, Remo Sernagiotto</td>
</tr>
</tbody>
</table>

**Key:**
- +: in favour
- -: against
- 0: abstentions
12.6.2017

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Industry, Research and Energy


Rapporteur: Morten Helveg Petersen

SHORT JUSTIFICATION

The successful implementation of an updated regulatory framework for electronic communication in the EU should also imply the guarantee of freedom of expression and information, media pluralism, cultural diversity, consumer protection, privacy and the protection of personal data. The rapporteur therefore recommends to further amend the Commission proposal in order to meet this objective, also taking into account the links and interaction with the new proposals for a regulation on Privacy and Electronic Communications.

The rapporteur notably believes that while ensuring a level playing field among all service providers, the aim of the Directive should also be to guarantee common minimum standards when it comes to the security of networks and services, as well as the privacy of end-users. It is therefore essential to include all type of interpersonal communications services, even when an interpersonal and interactive communication facility is an ancillary feature to another service, also taking into future developments and synergies of services.

As per the Parliament position adopted with its resolution of 14th March 2017 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement, the rapporteur also insists that in order to ensure a safeguard the security and integrity of networks and services, the use of end-to-end encryption should be promoted and, where necessary, mandatory in accordance with the principles of data protection by design and privacy by design. In particular, Member States should not impose any obligation to encryption providers, communications service providers and all other organisations (at all levels of the supply chain) that would result in the weakening of the security of their networks and services, such as the allowing or facilitation of "backdoors". While such new provision
relates to the security of networks and services, it is essential to guarantee the right to the protection of personal data and the privacy of electronic communications.

Another key element in order to strengthen the security of network and services and the fundamental rights safeguards is the new tasks conferred to BEREC for the development of guidelines in this specific field in order to ensure a consistent and compliant implementation. Furthermore, the independence of BEREC also relies on the guarantee that national regulatory authorities are legally distinct and functionally independent from the industry and government in that they neither seek nor take instructions from anybody, they operate in a transparent and accountable manner as set out in a law and they have sufficient powers.

The rapporteur introduces specific wording regarding possible limitations imposed by Member States on grounds of public policy, public security or public health to ensure that, in line with the Charter and the related CJEU Case law, any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive
Recital 3

Text proposed by the Commission

(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

Amendment

(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 an effective protection of consumers, a level playing field for all market players and consistent application of the rules, as well as provide a more effective regulatory institutional
framework. In its Digital Single Market strategy, the Commission also announced a review of Directive 2002/58/EC in order to ensure a high level of privacy protection for users of electronic communications services and a level playing field for all market players.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative proposals, in particular the proposal for a regulation on ePrivacy (COM(2017)10)

Amendment 2

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) **this** Directive 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 52 (1) of the Treaty, in particular measures regarding public policy, public security and public health.

Amendment

(5) **This** Directive 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 52 (1) of the Treaty, in particular measures regarding public policy, public security and public health, and with Article 52(1) of the Charter of Fundamental Rights of the European Union (’the Charter’).

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary because it is inextricably linked to other admissible amendments, in particular Amendment 20 on Article 12.

Amendment 3

Proposal for a directive
Recital 6
Text proposed by the Commission

(6) The provisions of this Directive 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.

Amendment

(6) The provisions of this Directive 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 and public security, and to permit the investigation, detection and prosecution of criminal offences, taking into account that such measures are to be provided for by law, respect the essence of the rights and freedom recognised by the Charter and be subject to the principle of proportionality, in accordance with Article 52(1) of the Charter.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary because it is inextricably linked to other admissible amendments, in particular Amendment 20 on Article 12.

Amendment 4

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) The convergence of the telecommunications, media and information technology sectors means that all 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. It is necessary to separate the regulation of electronic communications networks and services from the regulation of content.

Amendment

(7) The convergence of the telecommunications, media and information technology sectors means that all 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. It is necessary to separate the regulation of electronic communications networks and services from the regulation of content.
This 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 Union or national level in respect of such services, in compliance with 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 Directive 2010/13/EU of the European Parliament and of the Council\footnote{21}.

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 electronic communications and the regulation of content does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection.

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Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.
Amendment 5

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) The services used for communications purposes, and the technical means of their delivery, have evolved considerably. End-users increasingly substitute traditional voice telephony, text messages (SMS) and electronic mail conveyance services by functionally equivalent online services such as Voice over IP, messaging services and web-based e-mail services. In order to ensure that end-users are effectively and equally protected when using functionally equivalent services, a future-oriented definition of electronic communications services should not be purely based on technical parameters but rather build on a functional approach. The scope of necessary regulation should be appropriate to achieve its public interest objectives. While "conveyance of signals" remains an important parameter for determining the services falling into the scope of this Directive, the definition should cover also other services that enable communication. From an end-user's perspective it is not relevant whether a provider conveys signals itself or whether the communication is delivered via an internet access service. The amended definition of electronic communications services should therefore contain three types of services which may partly overlap, that is to say internet access services according to the definition in Article 2(2) of Regulation (EU) 2015/2120, interpersonal communications services as defined in this Directive, and services consisting wholly or mainly in the conveyance of signals. The definition of electronic communications service should eliminate

Amendment

(15) The services used for communications purposes, and the technical means of their delivery, have evolved considerably. End-users increasingly substitute traditional voice telephony, text messages (SMS) and electronic mail conveyance services by functionally equivalent online services such as Voice over IP, messaging services and web-based e-mail services. In order to ensure that end-users and their rights 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 the perspective of end-users and the protection of their rights 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 2018.23

23 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

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary because it is inextricably linked to other admissible amendments, in particular Amendment 13 on Article 2.

Amendment 6

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) In order to fall within the scope of the definition of electronic communications service, a service needs to be provided normally in exchange for remuneration. In the digital economy, market participants increasingly consider information about users as having a monetary value. Electronic communications services are often supplied against counter-performance other

Amendment

(16) In order to fall within the scope of the definition of electronic communications service, a service needs to be provided normally in exchange for remuneration. In the digital economy, market participants increasingly consider information about users as having a monetary value. Electronic communications services are often supplied to the end-user against counter-
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\textsuperscript{24}, remuneration exists within the meaning of the Treaty also if the service provider is paid by a third party and not by the service recipient. The concept of remuneration should therefore also encompass situations where the end-user is exposed to advertisements as a condition for gaining access to the service, or situations where the service provider monetises personal data it has collected.

\textsuperscript{24} Case C-352/85 Bond van Adverteerders and Others vs The Netherlands State, EU:C:1988:196.

Amendment 7

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) Interpersonal communications services are services that enable interpersonal and interactive exchange of information, covering services like traditional voice calls between two

Amendment

(17) Interpersonal communications services are services that enable interpersonal and interactive exchange of information, covering services like traditional voice calls between two

individuals but also all types of emails, messaging services, or group chats. Interpersonal communications services only cover communications between a finite, that is to say not potentially unlimited, number of natural persons which is determined by the sender of the communication. Communications involving legal persons should be within the scope of the definition where natural persons act on behalf of those legal persons or are involved at least on one side of the communication. Interactive communication entails that the service allows the recipient of the information to respond. Services which do not meet those requirements, such as linear broadcasting, video on demand, websites, social networks, blogs, or exchange of information between machines, should not be considered as interpersonal communications services.

*Under exceptional circumstances, a 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 and for objective technical reasons cannot be used without that principal service, and its integration is not a means to circumvent the applicability of the rules governing electronic communications services. An example for such an exception could be, in principle, a communication channel in online games, depending on the features of the communication facility of the service.*

**Justification**

While ensuring a level playing field among all service providers, the aim of the Directive should also be to guarantee common minimum standards when it comes to the security of networks and services, as well as the privacy of end-users. It is therefore essential to include all type of interpersonal communications services, even when an interpersonal and interactive communication facility is an ancillary feature to another service, also taking into future developments and synergies of services.
Amendment 8
Proposal for a directive
Recital 36

Text proposed by the Commission

(36) There is a need to further reinforce the independence of the national regulatory authorities to ensure the imperviousness of its head and members to external pressure, by providing minimum appointment qualifications, and a minimum duration for their mandate. Furthermore, the limitation of the possibility to renew more than once their mandate and the requirement for an appropriate rotation scheme for the board and the top management would address the risk of regulatory capture, ensure continuity, and enhance independence.

Amendment

(36) There is a need to further reinforce the independence of the national regulatory authorities to ensure the imperviousness of its head and members to external pressure, by providing minimum appointment qualifications, and a minimum duration for their mandate. Furthermore, the limitation of the possibility to renew more than once their mandate and the requirement for an appropriate rotation scheme for the board and the top management would address the risk of regulatory capture, ensure continuity, and enhance independence. To that end, Member States should ensure that national regulatory authorities are legally distinct and functionally independent from industry and government, neither seeking nor taking instructions from any body, operating in a transparent and accountable manner in accordance with Union and national law and having sufficient powers.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative proposals, in particular the proposal for a regulation on BEREC (COM(2016)0591).

Amendment 9
Proposal for a directive
Recital 91 a (new)

Text proposed by the Commission

(91a) In order to ensure a safeguard to the security and integrity of networks and services, the use of end-to-end encryption should be promoted and, where
technically feasible, be mandatory in accordance with the principles of data protection by design and privacy by design. In particular, Member States should not impose any obligation to encryption providers, providers of electronic communications services and all other organisations at all levels of the supply chain that would result in the weakening of the security of their networks and services, such as allowing or facilitating "backdoors".

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the coherence of this text with the position of the European Parliament, notably the resolutions of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens’ fundamental rights and on transatlantic cooperation in Justice and Home Affairs, and of 14th March 2016 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement.

Amendment 10

Proposal for a directive
Recital 111

Text proposed by the Commission

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

Amendment

(111) In exceptional cases where Member States decide to limit the freedom to provide electronic communications networks and services based on grounds of public policy, public security or public health, **such limitations should be duly reasoned, provided for by law, respect the essence of the rights and freedoms recognised by the Charter and be subject to the principle of proportionality, in accordance with Article 52 (1) of the Charter. Furthermore, any national law allowing public authorities to obtain access to networks or the content of electronic communications on a generalised basis should be regarded as
compromising the essence of the fundamental right to respect for private life, as guaranteed by Article 7 of the Charter and taking into account the judgments of the Court of Justice in Case C-362/14\(^a\) and Joined Cases C-293/12 and C-594/12\(^b\) and the order of the Court of Justice in Case C-557/07\(^c\).

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\(^a\) Judgment of the Court of Justice of 6 October 2015, Maximillian, Schrems v Data Protection Commissioner, C-362/14, ECLI:EU:C:2015:650

\(^b\) Judgment of the Court of Justice of 8 April 2014, Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others, Joined Cases C-293/12 and C-594/12, ECLI:EU:C:2014:238.


Justification

Aside from the reference to the fact that all legislation adopted must respect the freedoms and principles enshrined within the Charter of Fundamental Rights, reference is also made to the Max Schrems v Data Protection, the Tele2 and the Digital Rights Ireland cases which all provide for the legal basis behind the belief that legislation that permits public authorities to have access on a generalised basis to the content of electronic communications must be regarded as compromising the essence of the fundamental right to respect for private life.

Amendment  11

Proposal for a directive
Recital 227

Text proposed by the Commission

(227) Considering the particular aspects related to reporting missing children,

Amendment

(227) Considering the particular aspects related to reporting missing children,
Member States should maintain their commitment to ensure that a well-functioning service for reporting missing children is actually available in their territories under the number ‘116000’.

Justification

Focusing only on the missing children hotline we lose references to the 116111 child helplines which are important for all children who are vulnerable or at risk, e.g. any child experiencing violence, so a far bigger target group than missing children.

Amendment 12

Proposal for a directive
Recital 227 a (new)

Text proposed by the Commission

(227 a) It is often the case that while citizens are travelling between Member States they need to call or use a helpline or a hotline operated in their home Member State, which is not possible today. Citizens should have access to their home helplines and hotlines by adding the country code to deal with urgent challenges or in need to mediate help to anyone in their home Member State when the services operated in the host Member State cannot provide effective help for geographic or linguistic reasons.

Justification

Adding a new recital was for reasons of consistency with amendment to Article 90 paragraph 2a (new). While citizens are travelling between different Member States they are still in need to contact different hotlines and helplines in their home countries to solve or to mediate urgent issues. Having access to these lines by dialling a country code would help them to reach help or advice.
Amendment 13
Proposal for a directive
Recital 254

Text proposed by the Commission

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

Amendment

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

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.

Amendment 14
Proposal for a directive
Article 1 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The aim of this Directive is on the one hand to implement an internal market in electronic communications networks and services that will result in deployment and take-up of very high capacity networks, sustainable competition, interoperability of electronic communications services and end-user benefits.

Amendment

The aim of this Directive is on the one hand to implement an internal market in electronic communications networks and services that will result in deployment and take-up of very high capacity secured networks, sustainable competition, interoperability of electronic communications services, accessibility and end-user benefits.
Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.

Amendment 15
Proposal for a directive
Article 1 – paragraph 3 – indent 2

Text proposed by the Commission
- measures taken at Union or national level, in compliance with Union law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy

Amendment
- measures taken at Union or national level, in compliance with Union law, to pursue general interest objectives, in particular relating to the protection of personal data and privacy, content regulation and audio-visual policy

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.

Amendment 16
Proposal for a directive
Article 2 – paragraph 1 – point 5

Text proposed by the Commission
(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

Amendment
(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);
linked to another service;

Justification

While ensuring a level playing field among all service providers, the aim of the Directive should also be to guarantee common minimum standards when it comes to the security of networks and services, as well as the privacy of end-users. It is therefore essential to include all type of interpersonal communications services, even when an interpersonal and interactive communication facility is an ancillary feature to another service, also taking into future developments and synergies of services.

Amendment 17

Proposal for a directive

Article 2 – paragraph 1 – point 22

Text proposed by the Commission

‘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.

Amendment

‘security’ of networks and services means the technical and structural 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.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary because it is inextricably linked to other admissible amendments, in particular Amendment 22 on Article 40.

Amendment 18

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for
pressing reasons related to the internal logic of the text as well as the coherence with other
related legislative instruments, in particular the General Data Protection Regulation and the
proposal for a regulation on ePrivacy.

Amendment 19

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

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 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.

Amendment

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 Union. To this end, they shall take into consideration, inter alia, the economic,
safety, health, public interest, public security and defence, 
data protection and
privacy, 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.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for
pressing reasons related to the internal logic of the text as well as the coherence with other
related legislative instruments, in particular the General Data Protection Regulation and the
proposal for a regulation on ePrivacy.

Amendment 20

Proposal for a directive
Article 7 – paragraph 1
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.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative proposals, in particular proposal for a regulation on BEREC.

Proposal 21

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

1. Without prejudice to the provisions of Article 10, national regulatory authorities shall act independently and objectively, and shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent

Amendment

1. Without prejudice to the provisions of Article 10, national regulatory authorities shall act independently and objectively, shall be legally distinct and functionally independent from the government, shall operate in a transparent and accountable manner in accordance with Union and national law,
supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 31 shall have the power to suspend or overturn decisions by the national regulatory authorities. shall have sufficient powers and shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 31 shall have the power to suspend or overturn decisions by the national regulatory authorities.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy and the proposal on BEREC. It is also connected to AM 19 as it seeks to ensure the independence of the supervisory bodies.

Amendment 22

Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

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

Amendment

1. National regulatory authorities, other competent authorities under this Directive, and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive. In respect of the information exchanged, Union data protection rules shall apply, and the receiving authority shall ensure the same level of confidentiality as the originating authority.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy.
Amendment 23

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

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 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.

Amendment

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 52 (1) of the Treaty. Any such limitation to the freedom to provide electronic communications networks and services shall be duly reasoned, provided for by law, respect the essence of the rights and freedoms recognised by the Charter and be subject to the principle of proportionality, in accordance with Article 52(1) of the Charter and notified to the Commission.

Justification

In line with the Charter and the related CJEU Case law, any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

Amendment 24

Proposal for a directive
Article 20 – paragraph 3 a (new)

Text proposed by the Commission

3a. Where information contains personal data, the Commission, BEREC and the authorities concerned shall ensure the compliance of data processing with Union data protection rules.

Amendment

3a. Where information contains personal data, the Commission, BEREC and the authorities concerned shall ensure the compliance of data processing with Union data protection rules.
Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative instruments, in particular the General Data Protection Regulation and the proposal for a regulation on ePrivacy. The recast proposal entails data processing in several cases and there is no provision providing for compliance with Union data protection law.

Amendment 25

Proposal for a directive
Article 39 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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.

Amendment

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 and interconnectivity of services in order to improve freedom of choice for users and facilitate switching.

Justification

The Shadow Rapporteur believes that this amendment is necessary as it will strengthen the freedom of choice for users and contribute to the Digital Single Market strategy for the EU.

Amendment 26

Proposal for a directive
Article 40 – paragraph 1

Text proposed by the Commission

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

Amendment

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 on other networks and services.

justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the coherence of this text with the position of the European Parliament, notably the resolutions of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens’ fundamental rights and on transatlantic cooperation in Justice and Home Affairs, and of 14th March 2016 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement.

Amendment 27

Proposal for a directive
Article 40 – paragraph 1 a (new)

Text proposed by the Commission

1 a. Member States shall not impose any obligation on providers of public communications networks or publicly available electronic communications services that would result in a weakening of the security of their networks or services.

Where Member States impose additional security requirements on providers of public communications networks or publicly available electronic communications services in more than one Member State, they shall notify those measures to the Commission and ENISA. ENISA shall assist Member States in coordinating the measures taken to avoid duplication or diverging requirements that may create security risks and barriers to the internal market.
Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the coherence of this text with the position of the European Parliament, notably the resolutions of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens’ fundamental rights and on transatlantic cooperation in Justice and Home Affairs, and of 14th March 2016 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement.

Amendment 28

Proposal for a directive
Article 40 – paragraph 3 – subparagraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify without undue delay the competent authority of a breach of security that has had a significant impact on the operation of networks or services.</td>
<td>Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify without undue delay the competent authority of a security incident or loss of integrity that has had a significant impact on the operation of networks or services.</td>
</tr>
</tbody>
</table>

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary because it is inextricably linked to other admissible amendments on Article 40. The first part is necessary because it is aligned to the amendment on subparagraph 3.

Amendment 29

Proposal for a directive
Article 40 – paragraph 3 – subparagraph 2 – point a

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the number of users affected by the breach;</td>
<td>(a) the number of users affected by the incident;</td>
</tr>
</tbody>
</table>

Amendment 30

Proposal for a directive
Article 40 – paragraph 3 – subparagraph 2 – point b

*Text proposed by the Commission*

(b) the duration of the *breach*;

*Amendment*

(b) the duration of the *incident*;

Amendment 31

Proposal for a directive

Article 40 – paragraph 3 – subparagraph 2 – point c

*Text proposed by the Commission*

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

*Amendment*

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

Amendment 32

Proposal for a directive

Article 40 – paragraph 3 – subparagraph 2 – point d

*Text proposed by the Commission*

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

*Amendment*

(d) the extent to which the functioning of the network or service is *affected*;

Amendment 33

Proposal for a directive

Article 40 – paragraph 3 – subparagraph 3

*Text proposed by the Commission*

Where appropriate, the competent authority concerned shall inform the competent authorities in other Member States and the European Network and Information Security Agency (ENISA). The 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.

*Amendment*

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

*Justification*

The first part of this amendment is necessary for pressing reasons related to the coherence of
this text with the position of the EP, notably the resolutions of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens’ fundamental rights and on transatlantic cooperation in JHA, and of 14th March 2016 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement. The second part is of this amendment is necessary because it is inextricably linked to other admissible amendments on Article 40.

Amendment 34
Proposal for a directive
Article 40 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. By ...[date] in order to contribute to the consistent application of measures for the security of networks and services, BEREC shall, after consulting stakeholders and in close cooperation with the Commission and other Union Agencies, issue guidelines on minimum criteria and common approaches for the security of networks and services and the promotion of the use of end-to-end encryption

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative proposals, in particular the proposal for a regulation on BEREC. The amendment strengthens security of networks and information services.

Amendment 35
Proposal for a directive
Article 41 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that in order to implement Article 40, the competent 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

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public communications networks or publicly available electronic communications services.

Amendment 36
Proposal for a directive
Article 90 – title

Text proposed by the Commission

The missing children hotline number

Amendment

The missing children and child helpline hotlines

Amendment 37
Proposal for a directive
Article 90 – paragraph 1

Text proposed by the Commission

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’.

Amendment

1. Member States shall ensure that citizens have access to a service operating a missing children hotline. The hotline shall be child-friendly, available on the number ‘116000’.

Amendment 38
Proposal for a directive
Article 90 – paragraph 1 a (new)

Text proposed by the Commission

I a. Member States shall ensure that children have access to a child-friendly service operating a helpline. The helpline shall be available on the number '116111'.

Amendment

Justification

Helplines are essential services, have an advisory function too. Children may feel safer contacting the 116111 helpline than contacting people at services who they don’t know or trust. If a child (or someone else) calls the child helpline indicating a child is at risk, there are cases where this must be reported to child protection authorities/the police. Helplines support
hundreds of thousands of children who are troubled or are in need.

Amendment 39

Proposal for a directive
Article 90 – paragraph 1 b (new)

Text proposed by the Commission

1 b. Member States shall ensure that citizens are informed of the existence and use of and able to access services provided under the numbers '116000' and '116111' to the greatest extent possible.

Justification

Hotlines for missing children have been set up by EC Decision 2007/116/EC, reachable across Europe through the same number, 116 000. Currently only 13% of the EU population is aware of the 116 000 service according to a Eurobarometer survey. EU is facing the same problem with the number 116 111 which was set up by the EC Directive 2009/136/EC. (Universal Service Directive). Ensuring that citizens are informed about the existence and availability of these services help to implement the law.

Amendment 40

Proposal for a directive
Article 90 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that disabled end-users are able to access services provided under the number '116000' 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.

Amendment 41
Proposal for a directive
Article 90 – paragraph 2 a (new)

Text proposed by the Commission

2a. Member States shall ensure that citizens have access to hotlines and helplines operated in their home Member State by adding the country code while they are travelling between Member States.

Justification

While citizens are travelling between different Member States they are still in need to contact different hotlines and helplines in their home countries to solve or to mediate urgent issues. Having access to these lines by dialling a country code would help them to reach help or advice.

Amendment 42

Proposal for a directive
Article 92 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 and in compliance with the scope and interpretation of fundamental rights as provided for in Article 52 of the Charter.

Justification

In line with the Charter and the related CJEU Case law, any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
Amendment 43

Proposal for a directive
Article 93 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. By ...[date] in order to contribute to the consistent application of fundamental rights safeguard, BEREC shall, after consulting stakeholders and in close cooperation with the Commission and the European Union Agency for Fundamental Rights (FRA), issue guidelines on common approaches to ensure that national measures regarding end-users' access to, or use of, services and applications through electronic communications networks respect the fundamental rights and freedoms, as guaranteed by the Charter and general principles of Union law.

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text as well as the coherence with other related legislative proposals, in particular proposal for a regulation on BEREC.

Amendment 44

Proposal for a directive
Article 114 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. By ... [5 years after the date of application referred to in the second subparagraph of Article 115(1)] and every five years thereafter, the Commission shall review the application of the fundamental rights safeguard referred to in Article 93.
## PROCEDURE – COMMITTEE ASKED FOR OPINION

| Title | European Electronic Communications Code (Recast) |
| Committee responsible | ITRE 24.10.2016 |
| Committee responsible Date announced in plenary | ITRE 24.10.2016 |
| Opinion by Date announced in plenary | LIBE 15.12.2016 |
| Discussed in committee | 25.4.2017 8.6.2017 |
| Date adopted | 8.6.2017 |
| Result of final vote | +: 26  --: 14  0: 1 |
| Members present for the final vote | Jan Philipp Albrecht, Malin Björk, Michal Boni, Caterina Chinnici, Rachida Dati, Monika Flašíková Beňová, Kinga Gál, Ana Gomes, Nathalie Griesbeck, Sylvie Guillaume, Monika Hohlmeier, Brice Hortefeux, Filiz Hyusmenova, Sophia in ’t Veld, Dietmar Köster, Barbara Kudrycka, Cécile Kassetu Kyenge, Marju Lauristin, Juan Fernando López Aguilar, Roberta Metsola, Claude Moraes, József Nagy, Birgit Sippel, Branislav Škripka, Csaba Sógor, Sergei Stanishev, Helga Stevens, Traian Ungureanu, Bodil Valero, Josef Weidenholzer, Kristina Winberg, Tomáš Zdechovský, Auke Zijlstra |
| Substitutes present for the final vote | Pál Csáky, Gérard Deprez, Teresa Jiménez-Becerril Barrio, Ska Keller, Andrejs Mamikins, Maite Pagazaurtundúa Ruiz, Christine Revault D’Albonnes Bonnefoy, Barbara Spinelli |
**FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION**

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<td>Helga Stevens, Branislav Škripek</td>
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<td>GUE/NGL Group</td>
<td>Malin Björk, Barbara Spinelli</td>
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<td>S&amp;D Group</td>
<td>Caterina Chinnici, Monika Flaššková Beňová, Ana Gomes, Sylvie Guillaume, Cécile Kashetu Kyenge, Dietmar Köster, Marju Lauristin, Juan Fernando López Aguilar, Andrejs Mamikins, Claude Moraes, Christine Revault D’Allonnes Bonnefoy, Birgit Sippel, Sergei Stanishev, Josef Weidenholzer</td>
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<td>EFDD Group</td>
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<td>ENF Group</td>
<td>Auke Zijlstra</td>
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<td>PPE Group</td>
<td>Michał Boni</td>
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</tbody>
</table>

Key to symbols:
+ : in favour
- : against
0 : abstention
ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

D(2017)23299

Jerzy Buzek
Chair, Committee on Industry, Research and Energy
PHS 08B046
Brussels


Dear Chair,

The Committee on Legal Affairs has examined the proposal referred to above, pursuant to Rule 104 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

“If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible. In such a case, over and above the conditions laid down in Rules 169 and 170, amendments shall be admissible within the committee responsible for the subject-matter only if they concern those parts of the proposal which contain changes. However, amendments to parts of the proposal which remain unchanged may, by way of exception and on a case-by-case basis, be accepted by the Chair of the committee responsible for the subject matter if he or she considers that this is necessary for pressing reasons relating to the internal logic of the text or because the amendments are inextricably linked to other admissible amendments. Such reasons must be stated in a written justification to the amendments.”

Following the opinion of the Consultative Working Party of the legal services of the Parliament, the Council and the Commission, which has examined the recast proposal, and in keeping with the recommendations of the rapporteur, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and by the Consultative Working Party and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, at its meeting of 30 May 2017, the Committee on Legal Affairs, by 20 votes in
favour, 0 votes against and 2 abstentions\(^\text{1}\), recommends that the Committee on Industry, research and Energy, as the committee responsible, can proceed to examine the above proposal in accordance with Rule 104.

Yours sincerely,

Pavel Svoboda

Encl.: Report signed by the President of the Consultative Working Party.

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\(^{1}\) The following Members were present: Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Mady Delvaux, Pascal Durand, Angel Dzhambazki, Rosa Estarás Ferragut, Evelyne Gebhardt, Lidia Joanna Geringer de Oedenberg, Danuta Jazłowiecka, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Virginie Rozière, Pavel Svoboda, József Szájer, Axel Voss, Jarosław Wałęsa, Josef Weidenholzer, Tadeusz Zwiefka, Kosma Złotowski
Brussels, 3 May 2017

OPINION

FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION

Proposal for a directive of the European Parliament and of the Council establishing the European Electronic Communications Code

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 27 October and 1, 7 and 14 December 2016 and on 6 February and 3 March 2017 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.


1. The following should have been marked with the grey-shaded type generally used for identifying substantive changes:

\(^1\) The Consultative Working Party worked on the basis of the English language version of the proposal, being the master-copy language version of the text under discussion.
- in recital 30, the replacement of the word 'should' with 'may';

- in recital 118, the replacement of the word 'may' with 'should';

- in recital 126, the replacement of the words 'radio frequencies in a specific range' with 'radio spectrum band;

- in recital 176, the adding of the words 'and/or higher performance and end-user benefits';

- in recital 206, the replacement of the words 'widely available' with the word 'affordable' and the adding of the words 'including equipment with assistive technologies';

- in recital 251, the adding of sentence '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';

- the deletion of the entire text of recital 27 of Directive 2002/19/EC;

- the deletion of the entire text of recital 52 of Directive 2002/22/EC;

- in Article 8(1), the replacement of the current reference to 'paragraphs 4 and 5' with a reference to 'Article 10';


- in Article 30(1), (5) and (6), the adding of the words 'or Article 47(1) and (2)';

- the deletion of Article 7b(2) of Directive 2002/22/EC;

- in Article 38(1), the replacement of the current reference to 'Article 9 of this Directive and Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive)' with a reference to 'Articles 37, 45, 46(3), 47(3), 53';

- the deletion of Article 19(2), first subparagraph, and of Article 13a(4) of Directive 2002/21/EC;

- in Article 51(1), third subparagraph, the adding of the initial words 'Without prejudice to paragraph 3';

- in Article 54(1), the adding of the initial words 'Without prejudice to any implementing act adopted pursuant to Article 53';

- in Article 66(1), the replacement of the current reference to 'Articles 9 to 13a' with a reference to 'Articles 67 to 78';

- in Article 66(2) and (3), the words 'to 75 and 77';

- in Article 67(4), second subparagraph, the article number '70';
- in Article 75(1) and (5) and in Article 76(3), the words 'to 72';

- in Article 83(1), the replacement of the current reference to 'Articles 4, 5, 6, 7 and 9(2)' with a reference to 'Article 79' and the adding of the words 'in accordance with Article 79, 81 and 82';

- in Article 83(2), the replacement of the words 'with obligations under Articles 4, 5, 6, 7 and 9(2)' with the words 'providing the voice communications services referred to in Article 79 and implemented pursuant to Article 80';

- in Article 84(1), first subparagraph, the replacement of the words 'as set out in Articles 3 to 10' with the words 'as set out in Articles 79, 80 and 81 or the continuation of existing universal services as set out in Article 82';

- in Article 84(1), second subparagraph, the deletion of the indications '81(3)' and 'and 81(5)';

- in Article 86(2), the replacement of the words 'designated to provide universal service, where a fund is actually in place and working' with the words 'pursuant to universal service obligations laid down in Articles 79, 81 and 82';

- the deletion of the entire text of Article 17 of Directive 2002/22/EC;

- the entire wording of Article 106(1), second subparagraph;

- in Article 106(1), third subparagraph, the replacement of the words 'on a regular basis' with the words 'at least every five years';

- in Article 107(2), the replacement of the words 'may decide to' with the word 'shall';

- in Article 113(1), first subparagraph, the replacement of the current reference to 'Article 8(1)' with a reference to 'Articles 84(1) or 85';

- in Annex I, introductory wording, the deletion of the final words 'within the limits allowed under Articles 5, 6, 7, 8 and 9 of Directive 2002/21/EC (the Framework Directive');

- in point D(1) of Annex I, introductory wording, the replacement of the words 'for which the rights of use for the frequency has been granted' with the words 'within the limits of Article 45 of this Directive'.

2. The text of recital 48 of Directive 2002/22/EC should have been present in the preamble to the proposed new act, and should have been identified with a 'substantive deletion' marker.

3. The texts of recitals 34 and 49 of Directive 2002/22/EC should have been present in the preamble to the proposed new act, and should have been marked with 'double strikethrough'.

4. In recital 62, the reference made to 'Articles 24 and 34' should be adjusted so as to read as a reference to Articles 23 and 32.

5. In recital 76, the reference made to 'Article 24' should be adjusted so as to read as a reference to Article 23, and the reference made to 'Articles 34 and 35' should be adjusted so as to read as a reference to Articles 32 and 33.
6. In recital 77, the reference made to 'Article 34' should be adjusted so as to read as a reference to Article 32.

7. In recital 87, the reference made to 'Article 40(1)' should be adjusted so as to read as a reference to Article 38(1).

8. In recital 176, the reference made to 'Articles 27 and 28' should be adjusted so as to read as a reference to Articles 26 and 27.

9. In recital 185, the reference made to 'Article 67' should be adjusted so as to read as a reference to Article 65.

10. A typographical mistake is present in Article 54, where the current point number '(d)' should have apparently been replaced by a paragraph number '4'.

11. In Article 54(6), the indication '459' should be adjusted so as to read as a reference to Article 45.

12. In Article 113(1), first subparagraph, the reference made to 'Article 118' should be adjusted so as to read as a reference to Article 115.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

F. DREXLER  H. LEGAL  L. ROMERO REQUENA
Jurisconsult  Jurisconsult  Director General
## PROCEDURE – COMMITTEE RESPONSIBLE

| Title | European Electronic Communications Code (Recast) |
| Committee responsible | ITRE 24.10.2016 |
| Associated committees | IMCO 16.3.2017 |
| Rapporteurs | Pilar del Castillo Vera 26.10.2016 |
| Discussed in committee | 6.2.2017 22.3.2017 22.6.2017 |
| Date adopted | 2.10.2017 |
| Result of final vote | +: 52  
−: 2  
0: 8 |
| Substitutes present for the final vote | Pilar Ayuso, Pervenche Berès, Michal Boni, Rosa D’Amato, Jens Geier, Françoise Grossetête, Werner Langen, Olle Ludvigsson, Dennis Radtke, Dominique Riquet |
| Substitutes under Rule 200(2) present for the final vote | Claudia Schmidt, Jasenko Selimovic |
| Date tabled | 23.10.2017 |
## Final Vote by Roll Call in Committee Responsible

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<td>Adam Gierek, Carlos Zorrinho, Csaba Molnár, Dan Nica, Edouard Martin, Jens Geier, José Blanco López, Kathleen Van Brempt, Martina Werner, Miapetra Kumpula-Natri, Miroslav Poche, Olle Ludvigsson, Patrizia Toia, Pervenche Berès, Peter Kouroumbashev, Theresa Griffin</td>
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Key to symbols:
+ : in favour
- : against
0 : abstention