

Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (Text with EEA relevance)

PART II

NETWORKS

TITLE I

MARKET ENTRY AND DEPLOYMENT

CHAPTER III

Access to radio spectrum

Section 3

Procedures

Article 53

Coordinated timing of assignments

1 Member States shall cooperate in order to coordinate the use of harmonised radio spectrum for electronic communications networks and services in the Union taking due account of the different national market situations. This may include identifying one, or, where appropriate, several common dates by which the use of specific harmonised radio spectrum is to be authorised.

2 Where harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable the radio spectrum use for wireless broadband networks and services, Member States shall allow the use of that radio spectrum, as soon as possible and at the latest 30 months after the adoption of that measure, or as soon as possible after the lifting of any decision to allow alternative use on an exceptional basis pursuant to Article 45(3) of this Directive. This is without prejudice to Decision (EU) 2017/899 and to the Commission's right of initiative to propose legislative acts.

3 A Member State may delay the deadline provided for in paragraph 2 of this Article for a specific band under the following circumstances:

- a to the extent justified by a restriction to the use of that band based on the general interest objective provided in point (a) or (d) of Article 45(5);
- b in the case of unresolved cross-border coordination issues resulting in harmful interference with third countries, provided the affected Member State has, where appropriate, requested Union assistance pursuant to Article 28(5);
- c safeguarding national security and defence; or
- d force majeure.

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The Member State concerned shall review such a delay at least every two years.

4 A Member State may delay the deadline provided for in paragraph 2 for a specific band to the extent necessary and up to 30 months in the case of:

- a unresolved cross-border coordination issues resulting in harmful interference between Member States, provided that the affected Member State takes all necessary measures in a timely manner pursuant to Article 28(3) and (4);
- b the need to ensure, and the complexity of ensuring, the technical migration of existing users of that band.

5 In the event of a delay under paragraph 3 or 4, the Member State concerned shall inform the other Member States and the Commission in a timely manner, stating the reasons.

Article 54

Coordinated timing of assignments for specific 5G bands

1 By 31 December 2020, for terrestrial systems capable of providing wireless broadband services, Member States shall, where necessary in order to facilitate the roll-out of 5G, take all appropriate measures to:

- a reorganise and allow the use of sufficiently large blocks of the 3,4-3,8 GHz band;
- b allow the use of at least 1 GHz of the 24,25-27,5 GHz band, provided that there is clear evidence of market demand and of the absence of significant constraints for migration of existing users or band clearance.

2 Member States may, however, extend the deadline laid down in paragraph 1 of this Article, where justified, in accordance with Article 45(3) or Article 53(2), (3) or (4).

3 Measures taken pursuant paragraph 1 of this Article shall comply with the harmonised conditions set by technical implementing measures in accordance with Article 4 of Decision No 676/2002/EC.

Article 55

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

1 Without prejudice to Article 53, where a Member State concludes that a right to use radio spectrum cannot be subject to a general authorisation 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, as appropriate, the limitation at regular intervals or at the reasonable request of affected undertakings;
- b give all interested parties, including users and consumers, the opportunity to express their views on any limitation through a public consultation in accordance with Article 23.

2 When a Member State concludes that the number of rights of use is to be limited, it shall clearly establish, and give reasons for, the objectives pursued by means of a competitive or comparative selection procedure under this Article, and where possible quantify them, giving due weight to the need to fulfil national and internal market objectives. The objectives that the

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Member State may set out with a view to designing the specific selection procedure shall, in addition to promoting competition, be limited to one or more of the following:

- a promoting coverage;
- b ensuring the required quality of service;
- c promoting efficient use of radio spectrum, including by taking into account the conditions attached to the rights of use and the level of fees;
- d promoting innovation and business development.

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

3 Member States shall publish any decision on the selection procedure chosen and the related rules, clearly stating the reasons therefor. It shall also publish the conditions that are to be attached to the rights of use.

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

5 Where a Member State concludes that additional rights of use for radio spectrum or a combination of general authorisation and individual rights of use can be granted, 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 selection procedure which are objective, transparent, non-discriminatory and proportionate. Any such selection criteria shall give due weight to the achievement of the objectives and requirements of Articles 3, 4, 28 and 45.

7 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.

8 This Article is without prejudice to the transfer of rights of use for radio spectrum in accordance with Article 51.