

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 III

SERVICES

TITLE I

UNIVERSAL SERVICE OBLIGATIONS

Article 84

Affordable universal service

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

2 In addition, Member States may also ensure the affordability of the services referred to in paragraph 1 that are not provided at a fixed location where they consider this to be necessary to ensure consumers' full social and economic participation in society.

3 Each Member State shall, in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers within the territory of that Member State, and taking into account the BEREC report on best practices, define the adequate broadband internet access service for the purposes of paragraph 1 with a view to ensuring the bandwidth necessary for social and economic participation in society. The adequate broadband 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 21 June 2020, 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, draw up a report on Member States' best practices to support the defining of adequate broadband internet access service pursuant to the first subparagraph. That report shall be updated regularly to reflect technological advances and changes in consumer usage patterns.

4 When a consumer so requests, the connection referred to in paragraph 1 and, where applicable, in paragraph 2 may be limited to support voice communications services.

5 Member States may extend the scope of application of this Article to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations.

Article 85

Provision of affordable universal service

1 National regulatory authorities in coordination with other competent authorities shall monitor the evolution and level of retail prices of the services referred to in Article 84(1) available on the market, in particular in relation to national prices and national consumer income.

2 Where Member States establish that, in light of national conditions, retail prices for the services referred to in Article 84(1) are not affordable, because consumers with a low income or special social needs are prevented from accessing such services, they shall take measures to ensure affordability for such consumers of adequate broadband internet access service and voice communications services at least at a fixed location.

To that end, Member States may ensure that support is provided to such consumers for communication purposes or require providers of such services to offer to those consumers tariff options or packages different from those provided under normal commercial conditions, or both. For that purpose, Member States may require such providers to apply common tariffs, including geographic averaging, throughout the territory.

In exceptional circumstances, in particular where the imposition of obligations under the second subparagraph of this paragraph on all providers would result in a demonstrated excessive administrative or financial burden for providers or the Member State, a Member State may, on an exceptional basis, decide to impose the obligation to offer those specific tariff options or packages only on designated undertakings. Article 86 shall apply to such designations *mutatis mutandis*. Where a Member State designates undertakings, it shall ensure that all consumers with a low-income or special social needs benefit from a choice of undertakings offering tariff options addressing their needs, unless ensuring such choice is impossible or would create an excessive additional organisational or financial burden.

Member States shall ensure that consumers entitled to such tariff options or packages have a right to conclude a contract either with a provider of the services referred to in Article 84(1), or with an undertaking designated in accordance with this paragraph, and that their number remains available to them for an adequate period and unwarranted disconnection of the service is avoided.

3 Member States shall ensure that undertakings which provide tariff options or packages to consumers with a low income or special social needs pursuant to paragraph 2 keep the national regulatory and other competent authorities informed of the details of such offers. National regulatory authorities in coordination with other competent 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 in coordination with other competent authorities may require such tariff options or packages to be modified or withdrawn.

4 Member States shall ensure, in light of national conditions, that support is provided, as appropriate, to consumers with disabilities, and that other specific measures are taken, where appropriate, with a view to ensuring that related terminal equipment, and specific equipment and specific services that enhance equivalent access, including where necessary total conversation services and relay services, are available and affordable.

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

6 Member States may extend the scope of application of this Article to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations.

Article 86

Availability of universal service

1 Where a Member State has established, taking into account the results, where available, of the geographical survey conducted in accordance with Article 22(1), and any additional evidence where necessary, that the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services 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 by end-users 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 an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. Member States 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 for end-users the availability at a fixed location of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services, they may designate one or more undertakings to guarantee such availability throughout the national territory. Member States may designate different undertakings or sets of undertakings to provide an adequate broadband internet access service and voice communications services at a fixed location or to cover different parts of the national territory.

4 When Member States designate undertakings in part or all of the national territory to ensure availability of services in accordance with paragraph 3 of this Article, they shall use 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 an adequate broadband internet access service 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 obligations in accordance with Article 89.

5 When an undertaking designated in accordance with paragraph 3 of this Article 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 the national regulatory or other competent authority in advance and 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 an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services. The national regulatory or other competent authority may impose, amend or withdraw specific obligations in accordance with Article 13(2).

Article 87

Status of the existing universal service

Member States may continue to ensure the availability or affordability of other services than adequate broadband internet access service as defined in accordance with Article 84(3) and voice communications services at a fixed location that were in force on 20 December 2018, if the need for such services is established in light of national circumstances. When Member States designate undertakings in part or all of the national territory for the provision of those services, Article 86 shall apply. Financing of those obligations shall comply with Article 90.

Member States shall review the obligations imposed pursuant to this Article by 21 December 2021, and every three years thereafter.

Article 88

Control of expenditure

1 Member States shall ensure that, in providing facilities and services additional to those referred to in Article 84, providers of an adequate broadband internet access service and of voice communications services in accordance with Articles 84 to 87 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 the providers of an adequate broadband internet access service and of voice communications services referred to in Article 84 that provide services pursuant to Article 85 offer the specific facilities and services set out in Part A of Annex VI as applicable, in order that consumers can monitor and control expenditure. Member States shall ensure that such providers put in place a system to avoid unwarranted disconnection of voice communications services or of an adequate broadband internet access service with regard to consumers as referred to in Article 85, including an appropriate mechanism to check continued interest in using the service.

Member States may extend the scope of application of this paragraph to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations.

3 Each Member State shall ensure that the competent authority is able to waive the requirements of paragraph 2 in all or part of its national territory if the competent authority is satisfied that the facility is widely available.

Article 89

Cost of universal service obligations

1 Where national regulatory authorities consider that the provision of an adequate broadband internet access service as defined in accordance with Article 84(3) and of voice communications services as set out in Articles 84, 85 and 86 or the continuation of the existing universal service as set out in Article 87 may represent an unfair burden on providers of such services that request compensation, national regulatory authorities shall calculate the net costs of such provision.

For that purpose, national regulatory authorities shall:

- a calculate the net cost of the universal service obligations, taking into account any market benefit which accrues to a provider of an adequate broadband internet access service as defined in accordance with Article 84(3) and voice communications services as set out in Articles 84, 85 and 86 or the continuation of the existing universal service as set out in Article 87, 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 86(4).

2 The accounts and other information serving as the basis for the calculation of the net cost of universal service obligations under point (a) of the second subparagraph of paragraph 1 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 90

Financing of universal service obligations

1 Where, on the basis of the net cost calculation referred to in Article 89, national regulatory authorities find that a provider is subject to an unfair burden, Member States shall, upon request from the provider concerned, decide to do one or both of the following:

- a introduce a mechanism to compensate that provider for the determined net costs under transparent conditions from public funds;
- b share the net cost of universal service obligations between providers of electronic communications networks and services.

2 Where the net cost is shared in accordance with point (b) of paragraph 1 of this Article, Member States shall establish a sharing mechanism administered by the national regulatory authority or a body independent from the beneficiaries under the supervision of the national regulatory authority. Only the net cost, as determined in accordance with Article 89, of the obligations laid down in Articles 84 to 87 may be financed.

The sharing mechanism shall respect the principles of transparency, least market distortion, non-discrimination and proportionality, in accordance with the principles set out in Part B of Annex VII. Member States may choose not to require contributions from undertakings the national turnover of which is less than a set limit.

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 on, or collected from, undertakings that are not providing services in the territory of the Member State that has established the sharing mechanism.

Article 91

Transparency

1 Where the net cost of universal service obligations is to be calculated in accordance with Article 89, national regulatory authorities shall ensure that the principles for net cost calculation, including the details of methodology to be used are publicly available.

Where a mechanism for sharing the net cost of universal service obligations as referred to in Article 90(2) is established, national regulatory authorities shall ensure that the principles for cost sharing and compensation of the net cost are publicly available.

2 Subject to Union and national rules on commercial confidentiality, national regulatory authorities shall publish an annual report providing the details of calculated cost of universal service obligations, identifying the contributions made by all undertakings involved, including any market benefits that may have accrued to the undertakings pursuant to universal service obligations laid down in Articles 84 to 87.

Article 92

Additional mandatory services

Member States may decide to make services additional to those included in the universal service obligations referred to in Articles 84 to 87, publicly available on their territories. In such cases, no compensation mechanism involving specific undertakings shall be imposed.