

Directive 2002/20/EC of the European Parliament and of the Council  
of 7 March 2002 on the authorisation of electronic communications  
networks and services (Authorisation Directive) (repealed)

*Article 1*

**Objective and scope**

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

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

*Article 2*

**Definitions**

1 For the purposes of this Directive, the definitions set out in Article 2 of Directive 2002/21/EC (Framework Directive) shall apply.

[<sup>F12</sup> The following definition shall also apply:

‘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.]

**Textual Amendments**

- F1** Substituted by [Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services \(Text with EEA relevance\).](#)

*Article 3*

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

1 Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article 46(1) of the Treaty.

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 6(2) or rights of use referred to in Article 5, only be subject to a general authorisation. The

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undertaking concerned may be required to submit a notification but may not be required to obtain an explicit decision or any other administrative act by the national regulatory authority before exercising the rights stemming from the authorisation. Upon notification, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use in Articles 5, 6 and 7.

[<sup>F2</sup>Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall not be required to submit more than one notification per Member State concerned.]

3 The notification referred to in paragraph 2 shall not entail more than a declaration by a legal or natural person to the national regulatory authority of the intention to commence the provision of electronic communication networks or services and the submission of the minimal information which is required to allow the national regulatory authority to keep a register or list of providers of electronic communications networks and services. This information must be limited to what is necessary for the identification of the provider, such as company registration numbers, and the provider's contact persons, the provider's address, a short description of the network or service, and an estimated date for starting the activity.

#### Textual Amendments

- F2** Inserted by [Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services \(Text with EEA relevance\).](#)

### Article 4

#### Minimum list of rights derived from the general authorisation

- 1 Undertakings authorised pursuant to Article 3, 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 11 of Directive 2002/21/EC (Framework Directive).
- 2 When such undertakings provide electronic communications networks or services to the public the general authorisation shall also give them the right to:
  - a negotiate interconnection with and where applicable obtain access to or interconnection from other providers of publicly available communications networks and services covered by a general authorisation anywhere in the Community under the conditions of and in accordance with Directive 2002/19/EC (Access Directive);
  - b be given an opportunity to be designated to provide different elements of a universal service and/or to cover different parts of the national territory in accordance with Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)<sup>(1)</sup>.

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## *l<sup>F1</sup>* Article 5

### **Rights of use for radio frequencies and numbers**

1 Member States shall facilitate the use of radio frequencies under general authorisations. Where necessary, Member States may grant individual rights of use in order to:

- avoid harmful interference,
- ensure technical quality of service,
- safeguard efficient use of spectrum, or
- fulfil other objectives of general interest as defined by Member States in conformity with Community law.

2 Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking for the provision of networks or services under the general authorisation referred to in Article 3, subject to the provisions of Articles 6, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).

Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, the rights of use for radio frequencies and numbers shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with Community law.

When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provision shall be in accordance with Articles 9 and 9b of Directive 2002/21/EC (Framework Directive).

Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued taking due account of the need to allow for an appropriate period for investment amortisation.

Where individual rights to use radio frequencies are granted for 10 years or more and such rights may not be transferred or leased between undertakings pursuant to Article 9b of Directive 2002/21/EC (Framework Directive) the competent national authority shall ensure that the criteria to grant individual rights of use apply and are complied with for the duration of the licence, in particular upon a justified request of the holder of the right. If those criteria are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice and after a reasonable period, or shall be made transferable or leaseable between undertakings in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).

3 Decisions on the granting of rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific

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purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated to be used by electronic communications services within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

4 Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to a further three weeks.

With regard to competitive or comparative selection procedures for radio frequencies, Article 7 shall apply.

5 Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

6 Competent national authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Articles 8(2) and 9(2) of Directive 2002/21/EC (Framework Directive). They shall ensure competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. For such purposes, Member States may take appropriate measures such as mandating the sale or the lease of rights to use radio frequencies.]

#### Textual Amendments

- F1** Substituted by [Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services \(Text with EEA relevance\).](#)

### Article 6

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

[<sup>F1</sup> The general authorisation for the provision of electronic communications networks or services and the rights of use for radio frequencies and rights of use for numbers may be subject only to the conditions listed in the Annex. Such conditions shall be non-discriminatory, proportionate and transparent and, in the case of rights of use for radio frequencies, shall be in accordance with Article 9 of Directive 2002/21/EC (Framework Directive).]

2 Specific obligations which may be imposed on providers of electronic communications networks and services under Articles 5(1), 5(2), 6 and 8 of Directive 2002/19/EC (Access Directive) and [<sup>F1</sup>Article 17 of Directive 2002/22/EC (Universal Service Directive)] or on those designated to provide universal service under the said 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 Part A of the Annex and shall not duplicate conditions which are applicable to undertakings by virtue of other national legislation.

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4 Member States shall not duplicate the conditions of the general authorisation where they grant the right of use for radio frequencies or numbers.

#### Textual Amendments

- F1** Substituted by [Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services \(Text with EEA relevance\).](#)

### Article 7

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

[<sup>F1</sup> Where a Member State is considering whether to limit the number of rights of use to be granted for radio frequencies or whether to extend the duration of existing rights other than in accordance with the terms specified in such rights, it shall inter alia:]

- a give due weight to the need to maximise benefits for users and to facilitate the development of competition;
- b give all interested parties, including users and consumers, the opportunity to express their views on any limitation in accordance with Article 6 of Directive 2002/21/EC (Framework Directive);
- [<sup>F1</sup> c publish any decision to limit the granting of rights of use or the renewal of rights of use, stating the reasons therefor;]
- d after having determined the procedure, invite applications for rights of use; and
- e review the limitation at reasonable intervals or at the reasonable request of affected undertakings.

2 Where a Member State concludes that further rights of use for radio frequencies can be granted, it shall publish that conclusion and invite applications for such rights.

[<sup>F13</sup> Where the granting of rights of use for radio frequencies needs to be limited, Member States shall grant such rights on the basis of selection criteria which must be objective, transparent, non-discriminatory and proportionate. Any such selection criteria must give due weight to the achievement of the objectives of Article 8 of Directive 2002/21/EC (Framework Directive) and of the requirements of Article 9 of that Directive.]

4 Where competitive or comparative selection procedures are to be used, Member States may extend the maximum period of six weeks referred to in Article 5(3) for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than eight months.

These time limits shall be without prejudice to any applicable international agreements relating to the use of radio frequencies and satellite coordination.

5 This Article is without prejudice to the transfer of rights of use for radio frequencies in accordance with [<sup>F1</sup> Article 9b] of Directive 2002/21/EC (Framework Directive).

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#### *Article 8*

### **Harmonised assignment of radio frequencies**

Where the usage of radio frequencies has been harmonised, access conditions and procedures have been agreed, and undertakings to which the radio frequencies shall be assigned have been selected in accordance with international agreements and Community 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 9*

### **Declarations to facilitate the exercise of rights to install facilities and rights of interconnection**

At the request of an undertaking, national regulatory authorities shall, within one week, issue standardised declarations, confirming, where applicable, that the undertaking has submitted a notification under Article 3(2) and detailing under what circumstances any undertaking providing electronic communications networks or services under the general authorisation has the right to apply for rights to install facilities, negotiate interconnection, and/or obtain access or interconnection in order to facilitate the exercise of those rights for instance at other levels of government or in relation to other undertakings. Where appropriate such declarations may also be issued as an automatic reply following the notification referred to in Article 3(2).

#### *Article 10*

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

[<sup>F1</sup>] National regulatory authorities shall monitor and supervise compliance with the conditions of the general authorisation or of rights of use and with the specific obligations referred to in Article 6(2), in accordance with Article 11.

National regulatory authorities shall have the power to require undertakings providing electronic communications networks or services covered by the general authorisation or enjoying rights of use for radio frequencies or numbers to provide all information necessary to verify compliance with the conditions of the general authorisation or of

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rights of use or with the specific obligations referred to in Article 6(2), in accordance with Article 11.

2 Where a national regulatory 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 6(2), it shall notify the undertaking of those findings and give the undertaking the opportunity to state its views, within a reasonable time limit.

3 The relevant authority shall have the power to require the cessation of the breach referred to in paragraph 2 either immediately or within a reasonable time limit and shall take appropriate and proportionate measures aimed at ensuring compliance.

In this regard, Member States shall empower the relevant authorities to impose:

- a dissuasive financial penalties where appropriate, which may include periodic penalties having retroactive effect; and
- b orders to cease or delay provision of a service or bundle of services which, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive).

The measures and the reasons on which they are based shall be communicated to the undertaking concerned without delay and shall stipulate a reasonable period for the undertaking to comply with the measure.]

[<sup>F14</sup> Notwithstanding the provisions of paragraphs 2 and 3, Member States shall empower the relevant authority to impose financial penalties where appropriate on undertakings for failure to provide information in accordance with the obligations imposed under Article 11(1)(a) or (b) of this Directive and Article 9 of Directive 2002/19/EC (Access Directive) within a reasonable period stipulated by the national regulatory authority.]

[<sup>F15</sup> In cases of serious or repeated breaches of the conditions of the general authorisation or of the rights of use, or specific obligations referred to in Article 6(2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, national regulatory authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use. Sanctions and penalties which are effective, proportionate and dissuasive may be applied to cover the period of any breach, even if the breach has subsequently been rectified.]

[<sup>F16</sup> 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 rights of use or of the specific obligations referred to in Article 6(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 4 of Directive 2002/21/EC (Framework Directive).

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## Article 11

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

1 Without prejudice to information and reporting obligations under national legislation other than the general authorisation, national regulatory authorities may only require undertakings to provide information under the general authorisation, for rights of use or the specific obligations referred to in Article 6(2) that is proportionate and objectively justified for:

- [<sup>F1</sup>a systematic or case-by-case verification of compliance with conditions 1 and 2 of Part A, conditions 2 and 6 of Part B and conditions 2 and 7 of Part C of the Annex and of compliance with obligations as referred to in Article 6(2);]
- b case-by-case verification of compliance with conditions as set out in the Annex where a complaint has been received or where the national regulatory authority has other reasons to believe that a condition is not complied with or in case of an investigation by the national regulatory authority on its own initiative;
- c procedures for and assessment of requests for granting rights of use;
- d publication of comparative overviews of quality and price of services for the benefit of consumers;
- e clearly defined statistical purposes;
- f market analysis for the purposes of Directive 2002/19/EC (Access Directive) or Directive 2002/22/EC (Universal Service Directive)[<sup>F1</sup>;
- [<sup>F2</sup>g safeguarding the efficient use and ensuring the effective management of radio frequencies;
- h evaluating future network or service developments that could have an impact on wholesale services made available to competitors.]

[<sup>F1</sup>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.]

2 Where national regulatory 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.

### Textual Amendments

- F1** Substituted by [Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services \(Text with EEA relevance\).](#)



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**F2** Inserted by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (Text with EEA relevance).

## Article 12

### Administrative charges

1 Any administrative charges imposed on undertakings providing a service or a network under the general authorisation or to whom a right of use has been granted shall:

- a in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of specific obligations as referred to in Article 6(2), which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection; and
- b be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.

2 Where national regulatory 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 13

### Fees for rights of use and rights to install facilities

Member States may allow the relevant authority to impose fees for the rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 8 of Directive 2002/21/EC (Framework Directive).

## [<sup>F1</sup>Article 14

### Amendment of rights and obligations

1 Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies. Except where proposed amendments are minor and have been agreed with the holder of the rights or general authorisation, 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

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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.

2 Member States shall not restrict or withdraw rights to install facilities or rights of use for radio frequencies before expiry of the period for which they were granted except where justified and where applicable in conformity with the Annex and relevant national provisions regarding compensation for withdrawal of rights.]

#### **Textual Amendments**

- F1** Substituted by [Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services \(Text with EEA relevance\).](#)

### *Article 15*

#### **Publication of information**

[<sup>F1</sup> 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.]

2 Where information as referred to in paragraph 1 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.

#### **Textual Amendments**

- F1** Substituted by [Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services \(Text with EEA relevance\).](#)

### *Article 16*

#### **Review procedures**

The Commission shall periodically review the functioning of the national authorisation systems and the development of cross-border service provision within the Community and report to the European Parliament and to the Council on the first occasion not later than three years after the date of application of this Directive referred to in Article 18(1), second subparagraph. For this purpose, the Commission may request from the Member States information, which shall be supplied without undue delay.

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## Article 17

### Existing authorisations

[<sup>F1</sup> Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States shall bring general authorisations and individual rights of use already in existence on 31 December 2009 into conformity with Articles 5, 6, 7, and the Annex of this Directive 19 December 2011 at the latest.

2 Where application of paragraph 1 results in a reduction of the rights or an extension of the general authorisations and individual rights of use already in existence, Member States may extend the validity of those authorisations and rights until 30 September 2012 at the latest, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefor.]

3 Where the Member State concerned can prove that the abolition of an authorisation condition regarding access to electronic communications networks, which was in force before the date of entry into force of this Directive, creates excessive difficulties for undertakings that have benefited from mandated access to another network, and where it is not possible for these undertakings to negotiate new agreements on reasonable commercial terms before the date of application referred to in Article 18(1), second subparagraph, Member States may request a temporary prolongation of the relevant condition(s). Such requests shall be submitted by the date of application referred to in Article 18(1), second subparagraph, at the latest, and shall specify the condition(s) and period for which the temporary prolongation is requested.

The Member State shall inform the Commission of the reasons for requesting a prolongation. The Commission shall consider such a request, taking into account the particular situation in that Member State and of the undertaking(s) concerned, and the need to ensure a coherent regulatory environment at a Community level. It shall take a decision on whether to grant or reject the request, and where it decides to grant the request, on the scope and duration of the prolongation to be granted. The Commission shall communicate its decision to the Member State concerned within six months after receipt of the application for a prolongation. Such decisions shall be published in the *Official Journal of the European Communities*.

#### Textual Amendments

- F1** Substituted by [Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services \(Text with EEA relevance\).](#)

## Article 18

### Transposition

1 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 24 July 2003 at the latest. They shall forthwith inform the Commission thereof.

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They shall apply those measures from 25 July 2003.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2 Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive and of any subsequent amendments to those provisions.

#### *Article 19*

#### **Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

#### *Article 20*

#### **Addressees**

This Directive is addressed to the Member States.

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(1) See page 51 of this Official Journal.