

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 I

FRAMEWORK (GENERAL RULES FOR THE ORGANISATION OF THE SECTOR)

TITLE IV

INTERNAL MARKET PROCEDURES

CHAPTER I

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.

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, in order to ensure the consistent application, in all Member States, 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 market.

3 Except where otherwise provided in recommendations or guidelines adopted pursuant to Article 34 upon completion of the public consultation, if required under Article 23, where a national regulatory authority intends to take a measure which:

- a falls within the scope of Article 61, 64, 67, 68 or 83; and
- b would affect trade between Member States,

it shall publish the draft measure and communicate it to the Commission, to BEREC, and to the national regulatory authorities in other Member States, at the same time, stating the reasons for the measure, in accordance with Article 20(3). National regulatory authorities, BEREC and the Commission may comment on that draft measure within one month. The one-month period shall not be extended.

4 The draft measure referred to in paragraph 3 of this Article shall not be adopted for a further two months, where that measure aims to:

- a define a relevant market which is different from those defined in the recommendation referred to in Article 64(1); or
- [^Xb decide whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 67(3) or (4);]

and it would affect trade between Member States, and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the internal market or if it has serious doubts as to its compatibility with Union

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law and in particular the objectives referred to in Article 3. That two-month period shall not be extended. The Commission shall inform BEREC and national regulatory authorities of its reservations in such a case and simultaneously make them public.

5 BEREC shall publish an opinion on the Commission's reservations referred to in paragraph 4, indicating whether it considers that the draft measure should be maintained, amended or withdrawn and shall, where appropriate, provide specific proposals to that end.

6 Within the two-month period referred to in paragraph 4, the Commission may either:

- a take a decision requiring the national regulatory authority concerned to withdraw the draft measure; or
- b take a decision to lift its reservations referred to in paragraph 4.

The Commission shall take utmost account of the opinion of BEREC before taking a decision.

Decisions referred to in point (a) of the first subparagraph shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure is not to be adopted, together with specific proposals for amending it.

7 Where the Commission has adopted a decision in accordance with point (a) of the first subparagraph of paragraph 6 of this Article 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. Where the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with Article 23, and shall notify the amended draft measure to the Commission in accordance with paragraph 3 of this Article.

8 The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, of BEREC and of the Commission and may, except in the cases covered by paragraph 4 and point (a) of paragraph 6, adopt the resulting draft measure and shall, where it does so, communicate it to the Commission.

9 The national regulatory authority shall communicate to the Commission and to BEREC all adopted final measures which fall under points (a) and (b) of paragraph 3.

10 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, to the other national regulatory authorities, and to BEREC. A decision of the national regulatory authority to render such measures permanent or extend the period for which they are applicable shall be subject to paragraphs 3 and 4.

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

Editorial Information

- X1** Substituted by [Corrigendum to Directive \(EU\) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code \(Official Journal of the European Union L 321 of 17 December 2018\)](#).