

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 1

Authorisations

Article 46

Authorisation of the use of radio spectrum

1 Member States shall 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 such rights are necessary to maximise efficient use in light of demand and taking into account the criteria set out in the second subparagraph. In all other cases, they shall set out the conditions for the use of radio spectrum in a general authorisation.

To that end, Member States shall decide on the most appropriate regime for authorising the use of radio spectrum, taking account of:

- a the specific characteristics of the radio spectrum concerned;
- b the need to protect against harmful interference;
- c the development of reliable conditions for radio spectrum sharing, where appropriate;
- d the need to ensure technical quality of communications or service;
- e objectives of general interest as laid down by Member States in accordance with Union law;
- f the need to safeguard efficient use of radio spectrum.

When considering whether to issue general authorisations or to grant individual rights of use for the harmonised radio spectrum, taking into account technical implementing measures adopted in accordance with Article 4 of Decision No 676/2002/EC, Member States shall seek to minimise problems of harmful interference, including in cases of shared use of radio spectrum on the basis of a combination of general authorisation and individual rights of use.

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Where 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 of different combinations of general authorisations and individual rights of use and of gradual transfers from one category to the other on competition, innovation and market entry.

Member States shall seek to minimise restrictions on the use of radio spectrum by taking appropriate account of technological solutions for managing harmful interference in order to impose the least onerous authorisation regime possible.

2 When taking a decision pursuant to paragraph 1 with a view to facilitating the shared use of radio spectrum, the competent authorities shall ensure that the conditions for the shared use of radio spectrum are clearly set out. Such conditions shall facilitate efficient use of radio spectrum, competition and innovation.