

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 II

**INSTITUTIONAL SET-UP AND GOVERNANCE**

*CHAPTER III*

*Provision of information, surveys and consultation mechanism*

*Article 20*

**Information request to undertakings**

1 Member States shall ensure that undertakings providing electronic communications networks and services, associated facilities, or associated services, provide all the information, including financial information, necessary for national regulatory authorities, other competent authorities and BEREC to ensure conformity with the provisions of, or decisions or opinions adopted in accordance with, this Directive and Regulation (EU) 2018/1971 of the European Parliament and of the Council<sup>(1)</sup>. In particular, national regulatory authorities and, where necessary for performing their tasks, other competent authorities shall have the power to require those undertakings to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors, as well as information on electronic communications networks and associated facilities, which is disaggregated at local level and sufficiently detailed to enable the geographical survey and designation of areas in accordance with Article 22.

Where the information collected in accordance with the first subparagraph is insufficient for national regulatory authorities, other competent authorities and BEREC to carry out their regulatory tasks under Union law, such information may be inquired from other relevant undertakings active in the electronic communications or closely related sectors.

Undertakings designated as having significant market power on wholesale markets may also be required to submit accounting data on the retail markets that are associated with those wholesale markets.

National regulatory and other competent authorities may request information from the single information points established pursuant to Directive 2014/61/EU.

Any request for information shall be proportionate to the performance of the task and shall be reasoned.

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Undertakings shall provide the information requested promptly and in accordance with the timescales and level of detail required.

2 Member States shall ensure that national regulatory and other competent authorities provide the Commission, after a reasoned request, with the information necessary for it to carry out its tasks under the TFEU. The information requested by the Commission shall be proportionate to the performance of those tasks. Where the information provided refers to information previously provided by undertakings at the request of the authority, such undertakings shall be informed thereof. To the extent necessary, and unless the authority that provides the information has made an explicit and reasoned request to the contrary, the Commission shall make the information provided available to another such authority in another Member State.

Subject to the requirements of paragraph 3, Member States shall ensure that the information submitted to one authority can be made available to another such authority in the same or different Member State and to BEREC, after a substantiated request, where necessary to allow either authority, or BEREC, to fulfil its responsibilities under Union law.

3 Where information gathered pursuant to paragraph 1, including information gathered in the context of a geographical survey, is considered to be confidential by a national regulatory or other competent authority in accordance with Union and national rules on commercial confidentiality, the Commission, BEREC and any other competent authorities concerned shall ensure such confidentiality. Such confidentiality shall not prevent the sharing of information between the competent authority, the Commission, BEREC and any other competent authorities concerned in a timely manner for the purposes of reviewing, monitoring and supervising the application of this Directive.

4 Member States shall ensure that, acting in accordance with national rules on public access to information and subject to Union and national rules on commercial confidentiality and protection of personal data, national regulatory and other competent authorities publish information that contributes to an open and competitive market.

5 National regulatory and other competent authorities shall publish the terms of public access to information as referred to in paragraph 4, including the procedures for obtaining such access.

#### *Article 21*

#### **Information required with regard to the general authorisation, rights of use and specific obligations**

1 Without prejudice to any information requested pursuant to Article 20 and information and reporting obligations under national law other than the general authorisation, national regulatory and other competent authorities may require undertakings to provide information with regard to the general authorisation, the rights of use or the specific obligations referred to in Article 13(2), which is proportionate and objectively justified in particular for the purposes of:

- a verifying, on a systematic or case-by-case basis, compliance with condition 1 of Part A, conditions 2 and 6 of Part D, and conditions 2 and 7 of Part E, of Annex I and of compliance with obligations as referred to in Article 13(2);
- b verifying, on a case-by-case basis, compliance with conditions as set out in Annex I where a complaint has been received or where the competent authority has other reasons to believe that a condition is not complied with or in the case of an investigation by the competent authority on its own initiative;

- c carrying out procedures for and the assessment of requests for granting rights of use;
- d publishing comparative overviews of quality and price of services for the benefit of consumers;
- e collating clearly defined statistics, reports or studies;
- f carrying out market analyses for the purposes of this Directive, including data on the downstream or retail markets associated with or related to the markets which are the subject of the market analysis;
- g safeguarding the efficient use and ensuring the effective management of radio spectrum and of numbering resources;
- h evaluating future network or service developments that could have an impact on wholesale services made available to competitors, on territorial coverage, on connectivity available to end-users or on the designation of areas pursuant to Article 22;
- i conducting geographical surveys;
- j responding to reasoned requests for information by BEREC.

The information referred to in points (a) and (b), and (d) to (j) of the first subparagraph shall not be required prior to, or as a condition for, market access.

BEREC may develop templates for information requests, where necessary, to facilitate consolidated presentation and analysis of the information obtained.

2 As regards the rights of use for radio spectrum, the information referred to in paragraph 1 shall refer in particular to the effective and efficient use of radio spectrum as well as to compliance with any coverage and quality of service obligations attached to the rights of use for radio spectrum and their verification.

3 Where national regulatory or other competent 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.

4 National regulatory or other competent authorities shall not duplicate requests of information already made by BEREC pursuant to Article 40 of Regulation (EU) 2018/1971 where BEREC has made the information received available to those authorities.

## *Article 22*

### **Geographical surveys of network deployments**

1 National regulatory and/or other competent authorities shall conduct a geographical survey of the reach of electronic communications networks capable of delivering broadband ('broadband networks') by 21 December 2023 and shall update it at least every three years thereafter.

The geographical survey shall include a survey of the current geographic reach of broadband networks within their territory, as required for the tasks of national regulatory and/or other competent authorities under this Directive and for the surveys required for the application of State aid rules.

The geographical survey may also include a forecast for a period determined by the relevant authority of the reach of broadband networks, including very high capacity networks, within their territory.

Such forecast shall include all relevant information, including information on planned deployments by any undertaking or public authority, of very high capacity networks and significant upgrades or extensions of networks to at least 100 Mbps download speeds.

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For this purpose, national regulatory and/or other competent authorities shall request undertakings and public authorities to provide such information to the extent that it is available and can be provided with reasonable effort.

The national regulatory authority shall decide, with respect to tasks specifically attributed to it under this Directive, the extent to which it is appropriate to rely on all or part of the information gathered in the context of such forecast.

Where a geographical survey is not conducted by the national regulatory authority, it shall be done in cooperation with that authority to the extent it may be relevant for its tasks.

The information collected in the geographical survey shall be at an appropriate level of local detail and shall include sufficient information on the quality of service and parameters thereof and shall be treated in accordance with Article 20(3).

2 National regulatory and/or other competent authorities may designate an area with clear territorial boundaries where, on the basis of the information gathered and any forecast prepared pursuant to paragraph 1, it is determined that, for the duration of the relevant forecast period, no undertaking or public authority has deployed or is planning to deploy a very high capacity network or significantly upgrade or extend its network to a performance of at least 100 Mbps download speeds. National regulatory and/or other competent authorities shall publish the designated areas.

3 Within a designated area, the relevant authorities may invite undertakings and public authorities to declare their intention to deploy very high capacity networks over the duration of the relevant forecast period. Where this invitation results in a declaration by an undertaking or public authority of its intention to do so, the relevant authority may require other undertakings and public authorities to declare any intention to deploy very high capacity networks, or significantly upgrade or extend its network to a performance of at least 100 Mbps download speeds in this area. The relevant authority shall specify the information to be included in such submissions, in order to ensure at least a similar level of detail as that taken into consideration in any forecast pursuant to paragraph 1. It shall also inform any undertaking or public authority expressing its interest whether the designated area is covered or likely to be covered by a next-generation access network offering download speeds below 100 Mbps on the basis of the information gathered pursuant to paragraph 1.

4 Measures pursuant to paragraph 3 shall be taken in accordance with an efficient, objective, transparent and non-discriminatory procedure, whereby no undertaking is excluded a priori.

5 Member States shall ensure that national regulatory and other competent authorities, and local, regional and national authorities with responsibility for the allocation of public funds for the deployment of electronic communications networks, for the design of national broadband plans, for defining coverage obligations attached to rights of use for radio spectrum and for verifying availability of services falling within the universal service obligations in their territory take into account the results of the geographical survey and of any designated areas pursuant to paragraphs 1, 2 and 3.

Member States shall ensure that the authorities conducting the geographical survey shall supply those results subject to the receiving authority ensuring the same level of confidentiality and protection of business secrets as the originating authority and inform the parties which provided the information. Those results shall also be made available to BEREC and the Commission upon their request and under the same conditions.

6 If the relevant information is not available on the market, competent authorities shall make data from the geographical surveys which are not subject to commercial confidentiality directly accessible in accordance with Directive 2003/98/EC to allow for its reuse. They shall also, where such tools are not available on the market, make available information tools enabling end-users to determine the availability of connectivity in different areas, with a level of detail which is useful to support their choice of operator or service provider.

7 By 21 June 2020, in order to contribute to the consistent application of geographical surveys and forecasts, BEREC shall, after consulting stakeholders and in close cooperation with the Commission and relevant national authorities, issue guidelines to assist national regulatory and/or other competent authorities on the consistent implementation of their obligations under this Article.

### *Article 23*

#### **Consultation and transparency mechanism**

1 Except in cases falling within Article 26 or 27 or Article 32(10), Member States shall ensure that, where national regulatory or other competent authorities intend to take measures in accordance with this Directive, or where they intend to provide for restrictions in accordance with Article 45(4) and (5), which have a significant impact on the relevant market, they give interested parties the opportunity to comment on the draft measure within a reasonable period, having regard to the complexity of the matter and, except in exceptional circumstances, in any event not shorter than 30 days.

2 For the purposes of Article 35, the competent authorities shall inform the RSPG at the moment of publication about any draft measure which falls within the scope of the comparative or competitive selection procedure pursuant to Article 55(2) and relates to the use of radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC in order to enable its use for wireless broadband electronic communications networks and services ('wireless broadband networks and services').

3 National regulatory and other competent authorities shall publish their national consultation procedures.

Member States shall ensure the establishment of a single information point through which all current consultations can be accessed.

4 The results of the consultation procedure shall be made publicly available, except in the case of confidential information in accordance with Union and national rules on commercial confidentiality.

### *Article 24*

#### **Consultation of interested parties**

1 Member States shall ensure, as appropriate, that competent authorities in coordination, where relevant, with national regulatory authorities take account of the views of end-users, in particular consumers, and end-users with disabilities, manufacturers and undertakings that provide electronic communications networks or services on issues related to all end-user and consumer rights, including equivalent access and choice for end-users with disabilities,

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concerning publicly available electronic communications services, in particular where they have a significant impact on the market.

Member States shall ensure that competent authorities in coordination, where relevant, with national regulatory authorities establish a consultation mechanism, accessible for end-users with disabilities, ensuring that in their decisions on issues related to end-user and consumer rights concerning publicly available electronic communications services, due consideration is given to consumer interests in electronic communications.

2 Interested parties may develop, with the guidance of competent authorities in coordination, where relevant, with national regulatory authorities, mechanisms, involving consumers, user groups and service providers, to improve the general quality of service provision by, inter alia, developing and monitoring codes of conduct and operating standards.

3 Without prejudice to national rules in accordance with Union law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, competent authorities in coordination, where relevant, with national regulatory authorities may promote cooperation between undertakings providing electronic communications networks or services and sectors interested in the promotion of lawful content in electronic communications networks and services. That cooperation may also include coordination of the public-interest information to be provided pursuant to Article 103(4).

#### *Article 25*

### **Out-of-court dispute resolution**

1 Member States shall ensure that the national regulatory authority or another competent authority responsible for, or at least one independent body with proven expertise in, the application of Articles 102 to 107 and Article 115 of this Directive is listed as an alternative dispute resolution entity in accordance with Article 20(2) of Directive 2013/11/EU with a view to resolving disputes between providers and consumers arising under this Directive and relating to the performance of contracts. Member States may extend access to alternative dispute resolution procedures provided by that authority or body to end-users other than consumers, in particular microenterprises and small enterprises.

2 Without prejudice to Directive 2013/11/EU, where such disputes involve parties in different Member States, Member States shall coordinate their efforts with a view to bringing about a resolution of the dispute.

#### *Article 26*

### **Dispute resolution between undertakings**

1 In the event of a dispute arising in connection with existing obligations under this Directive between providers of electronic communications networks or services in a Member State, or between such undertakings and other undertakings in the Member State benefiting from obligations of access or interconnection or between providers of electronic communications networks or services in a Member State and providers of associated facilities, the national regulatory authority concerned shall, at the request of either party, and without prejudice to paragraph 2, issue a binding decision to resolve the dispute in the shortest possible time-frame on the basis of clear and efficient procedures, and in any case within four months except in exceptional circumstances. The Member State concerned shall require that all parties cooperate fully with the national regulatory authority.

2 Member States may make provision for national regulatory authorities to decline to resolve a dispute where other mechanisms, including mediation, exist that would better contribute to resolution of the dispute in a timely manner in accordance with the objectives set out in Article 3. The national regulatory authority shall inform the parties thereof without delay. If, after four months, the dispute is not resolved, and if the dispute has not been brought before the courts by the party seeking redress, the national regulatory authority shall issue, at the request of either party, a binding decision to resolve the dispute in the shortest possible time-frame and in any case within four months.

3 In resolving a dispute, the national regulatory authority shall take decisions aimed at achieving the objectives set out in Article 3. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall comply with this Directive.

4 The decision of the national regulatory authority shall be made available to the public, having regard to the requirements of commercial confidentiality. The national regulatory authority shall provide the parties concerned with a full statement of the reasons on which the decision is based.

5 The procedure referred to in paragraphs 1, 3 and 4 shall not preclude either party from bringing an action before the courts.

#### *Article 27*

#### **Resolution of cross-border disputes**

1 In the event of a dispute arising under this Directive between undertakings in different Member States, paragraphs 2, 3 and 4 of this Article shall apply. Those provisions shall not apply to disputes relating to radio spectrum coordination covered by Article 28.

2 Any party may refer the dispute to the national regulatory authority or authorities concerned. Where the dispute affects trade between Member States, the competent national regulatory authority or authorities shall notify the dispute to BEREC in order to bring about a consistent resolution of the dispute, in accordance with the objectives set out in Article 3.

3 Where such a notification has been made, BEREC shall issue an opinion inviting the national regulatory authority or authorities concerned to take specific action in order to resolve the dispute or to refrain from action, in the shortest possible time-frame, and in any case within four months except in exceptional circumstances.

4 The national regulatory authority or authorities concerned shall await BEREC's opinion before taking any action to resolve the dispute. In exceptional circumstances, where there is an urgent need to act, in order to safeguard competition or protect the interests of end-users, any of the competent national regulatory authorities may, either at the request of the parties or on its own initiative, adopt interim measures.

5 Any obligations imposed on an undertaking by the national regulatory authority as part of the resolution of the dispute shall comply with this Directive, take the utmost account of the opinion adopted by BEREC, and be adopted within one month of such opinion.

6 The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.

## Article 28

### Radio Spectrum Coordination among Member States

1 Member States and their competent authorities shall ensure that the use of radio spectrum is organised on their territory in a way that no other Member State is prevented from allowing on its territory the use of harmonised radio spectrum in accordance with Union law, especially due to cross-border harmful interference between Member States.

Member States shall take all necessary measures to this effect without prejudice to their obligations under international law and relevant international agreements such as the ITU Radio Regulations and the ITU Radio Regional Agreements.

2 Member States shall cooperate with each other, and, where appropriate, through the RSPG, in the cross-border coordination of the use of radio spectrum in order to:

- a ensure compliance with paragraph 1;
- b resolve any problem or dispute in relation to cross-border coordination or cross-border harmful interference between Member States, as well as with third countries, which prevent Member States from using the harmonised radio spectrum in their territory.

3 In order to ensure compliance with paragraph 1, any affected Member State may request the RSPG to use its good offices to address any problem or dispute in relation to cross-border coordination or cross-border harmful interference. Where appropriate, the RSPG may issue an opinion proposing a coordinated solution regarding such a problem or dispute.

4 Where the actions referred to in paragraph 2 or 3 have not resolved the problem or dispute, and at the request of any affected Member State, the Commission may, taking utmost account of any opinion of the RSPG recommending a coordinated solution pursuant to paragraph 3, adopt decisions addressed to the Member States concerned by the unresolved harmful interference issue by means of implementing acts to resolve cross-border harmful interference between two or more Member States which prevent them from using the harmonised radio spectrum in their territory.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 118(4).

5 The Union shall, upon the request of any affected Member State, provide legal, political and technical support to resolve radio spectrum coordination issues with countries neighbouring the Union, including candidate and acceding countries, in such a way that the Member States concerned can observe their obligations under Union law. In the provision of such assistance, the Union shall promote the implementation of Union policies.

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- (1) Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (see page 1 of this Official Journal).