

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 2*

*Rights of use*

*Article 48*

**Granting of individual rights of use for radio spectrum**

1 Where it is necessary to grant individual rights of use for radio spectrum, Member States shall grant such rights, upon request, to any undertaking for the provision of electronic communications networks or services under the general authorisation referred to in Article 12, subject to Article 13, to point (c) of Article 21(1) and to Article 55 and to any other rules ensuring the efficient use of those resources in accordance with this Directive.

2 Without prejudice to specific criteria and procedures adopted by Member States to grant individual rights of use for radio spectrum to providers of radio or television broadcast content services with a view to pursuing general interest objectives in accordance with Union law, the individual rights of use for radio spectrum shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and in accordance with Article 45.

3 An exception to the requirement of open procedures may apply where the granting of individual rights of use for radio spectrum to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as laid down by Member States in accordance with Union law.

4 Competent authorities shall consider applications for individual rights of use for radio spectrum in the context of selection procedures pursuant to objective, transparent, proportionate and non-discriminatory eligibility criteria that are set out in advance and reflect the conditions to be attached to such rights. Competent authorities shall be able to request all necessary information from applicants in order to assess, on the basis of those criteria, their ability to

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comply with those conditions. Where the competent authority concludes that an applicant does not possess the required ability, it shall provide a duly reasoned decision to that effect.

5 When granting individual rights of use for radio spectrum, Member States shall specify whether those rights can be transferred or leased by the holder of the rights, and under which conditions. Articles 45 and 51 shall apply.

6 The competent authority shall take, communicate and make public the decisions on the granting of individual rights of use for radio spectrum as soon as possible after the receipt of the complete application and within six weeks in the case of radio spectrum declared available for electronic communications services in their National Frequency Allocation Plan. That time limit shall be without prejudice to Article 55(7) and to any applicable international agreements relating to the use of radio spectrum or of orbital positions.

#### *Article 49*

#### **Duration of rights**

1 Where Member States authorise the use of radio spectrum through individual rights of use for a limited period, they shall ensure that the right of use is granted for a period that is appropriate in light of the objectives pursued in accordance with Article 55(2), taking due account of the need to ensure competition, as well as, in particular, effective and efficient use of radio spectrum, and to promote innovation and efficient investments, including by allowing for an appropriate period for investment amortisation.

2 Where Member States grant individual rights of use for 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 services ('wireless broadband services') for a limited period, they shall ensure regulatory predictability for the holders of the rights over a period of at least 20 years regarding conditions for investment in infrastructure which relies on the use of such radio spectrum, taking account of the requirements referred to in paragraph 1 of this Article. This Article is subject, where relevant, to any modification of the conditions attached to those rights of use in accordance with Article 18.

To that end, Member States shall ensure that such rights are valid for a duration of at least 15 years and include, where necessary to comply with the first subparagraph, an adequate extension thereof, under the conditions laid down in this paragraph.

Member States shall make available the general criteria for an extension of the duration of rights of use, in a transparent manner, to all interested parties in advance of granting rights of use, as part of the conditions laid down under Article 55(3) and (6). Such general criteria shall relate to:

- a the need to ensure the effective and efficient use of the radio spectrum concerned, the objectives pursued in points (a) and (b) of Article 45(2), or the need to fulfil general interest objectives related to ensuring safety of life, public order, public security or defence; and
- b the need to ensure undistorted competition.

At the latest two years before the expiry of the initial duration of an individual right of use, the competent authority shall conduct an objective and forward-looking assessment of the general criteria laid down for extension of the duration of that right of use in light of point (c) of Article 45(2). Provided that the competent authority has not initiated enforcement action for non-compliance with the conditions of the rights of use pursuant to Article 30, it shall grant the extension of the duration of the right of use unless it

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concludes that such an extension would not comply with the general criteria laid down in point (a) or (b) of the third subparagraph of this paragraph.

On the basis of that assessment, the competent authority shall notify the holder of the right as to whether the extension of the duration of the right of use is to be granted.

If such extension is not to be granted, the competent authority shall apply Article 48 for granting rights of use for that specific radio spectrum band.

Any measure under this paragraph shall be proportionate, non-discriminatory, transparent and reasoned.

By way of derogation from Article 23, interested parties shall have the opportunity to comment on any draft measure pursuant to the third and the fourth subparagraphs of this paragraph for a period of at least three months.

This paragraph is without prejudice to the application of Articles 19 and 30.

When establishing fees for rights of use, Member States shall take account of the mechanism provided for under this paragraph.

3 Where duly justified, Member States may derogate from paragraph 2 of this Article in the following cases:

- a in limited geographical areas, where access to high-speed networks is severely deficient or absent and this is necessary to ensure achievement of the objectives of Article 45(2);
- b for specific short-term projects;
- c for experimental use;
- d for uses of radio spectrum which, in accordance with Article 45(4) and (5), can coexist with wireless broadband services; or
- e for alternative use of radio spectrum in accordance with Article 45(3).

4 Member States may adjust the duration of rights of use laid down in this Article to ensure the simultaneous expiry of the duration of rights in one or several bands.

#### *Article 50*

### **Renewal of individual rights of use for harmonised radio spectrum**

1 National regulatory or other competent authorities shall take a decision on the renewal of individual rights of use for harmonised radio spectrum in a timely manner before the duration of those rights expired, except where, at the time of assignment, the possibility of renewal has been explicitly excluded. For that purpose, those authorities shall assess the need for such renewal at their own initiative or upon request by the holder of the right, in the latter case not earlier than five years prior to expiry of the duration of the rights concerned. This shall be without prejudice to renewal clauses applicable to existing rights.

2 In taking a decision pursuant to paragraph 1 of this Article, competent authorities shall consider, inter alia:

- a the fulfilment of the objectives set out in Article 3, Article 45(2) and Article 48(2), as well as public policy objectives under Union or national law;
- b the implementation of a technical implementing measure adopted in accordance with Article 4 of Decision No 676/2002/EC;
- c the review of the appropriate implementation of the conditions attached to the right concerned;
- d the need to promote, or avoid any distortion of, competition in line with Article 52;

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- e the need to render the use of radio spectrum more efficient in light of technological or market evolution;
- f the need to avoid severe service disruption.

3 When considering possible renewal of individual rights of use for harmonised radio spectrum for which the number of rights of use is limited pursuant to paragraph 2 of this Article, competent authorities shall conduct an open, transparent and non-discriminatory procedure, and shall, inter alia:

- a give all interested parties the opportunity to express their views through a public consultation in accordance with Article 23; and
- b clearly state the reasons for such possible renewal.

The national regulatory or other competent authority shall take into account any evidence arising from the consultation pursuant to the first subparagraph of this paragraph of market demand from undertakings other than those holding rights of use for radio spectrum in the band concerned when deciding whether to renew the rights of use or to organise a new selection procedure in order to grant the rights of use pursuant to Article 55.

4 A decision to renew the individual rights of use for harmonised radio spectrum may be accompanied by a review of the fees as well as of the other terms and conditions attached thereto. Where appropriate, national regulatory or other competent authorities may adjust the fees for the rights of use in accordance with Article 42.

#### *Article 51*

#### **Transfer or lease of individual rights of use for radio spectrum**

1 Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights of use for radio spectrum.

Member States may determine that this paragraph does not apply where the undertaking's individual right of use for radio spectrum was initially granted free of charge or assigned for broadcasting.

2 Member States shall ensure that an undertaking's intention to transfer or lease rights of use for radio spectrum, as well as the effective transfer thereof is notified in accordance with national procedures to the competent authority and is made public. In the case of harmonised radio spectrum, any such transfer shall comply with such harmonised use.

3 Member States shall allow the transfer or lease of rights of use for radio spectrum where the original conditions attached to the rights of use are maintained. Without prejudice to the need to ensure the absence of a distortion of competition, in particular in accordance with Article 52, Member States shall:

- a submit transfers and leases to the least onerous procedure possible;
- b not refuse the lease of rights of use for radio spectrum where the lessor undertakes to remain liable for meeting the original conditions attached to the rights of use;
- c not refuse the transfer of rights of use for radio spectrum unless there is a clear risk that the new holder is unable to meet the original conditions for the right of use.

Any administrative charge imposed on undertakings in connection with processing an application for the transfer or lease of rights of use for radio spectrum shall comply with Article 16.

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Points (a), (b) and (c) of the first subparagraph are without prejudice to the Member States' competence to enforce compliance with the conditions attached to the rights of use at any time, both with regard to the lessor and the lessee, in accordance with their national law.

Competent authorities shall facilitate the transfer or lease of rights of use for radio spectrum by giving consideration to any request to adapt the conditions attached to the rights in a timely manner and by ensuring that those rights or the relevant radio spectrum may to the best extent be partitioned or disaggregated.

In light of any transfer or lease of rights of use for radio spectrum, competent authorities shall make relevant details relating to tradable individual rights publicly available in a standardised electronic format when the rights are created and keep those details for as long as the rights exist.

The Commission may adopt implementing acts specifying those relevant details.

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

## *Article 52*

### **Competition**

1 National regulatory and other competent authorities shall promote effective competition and avoid distortions of competition in the internal market when deciding to grant, amend or renew rights of use for radio spectrum for electronic communications networks and services in accordance with this Directive.

2 When Member States grant, amend or renew rights of use for radio spectrum, their national regulatory or other competent authorities upon the advice provided by national regulatory authority may take appropriate measures such as:

- a limiting the amount of radio spectrum bands for which rights of use are granted to any undertaking, or, in justified circumstances, attaching conditions to such rights of use, such as the provision of wholesale access, national or regional roaming, in certain bands or in certain groups of bands with similar characteristics;
- b reserving, if appropriate and justified with regard to a specific situation in the national market, a certain part of a radio spectrum band or group of bands for assignment to new entrants;
- c refusing to grant new rights of use for radio spectrum or to allow new radio spectrum uses in certain bands, or attaching conditions to the grant of new rights of use for radio spectrum or to the authorisation of new uses of radio spectrum, in order to avoid the distortion of competition by any assignment, transfer or accumulation of rights of use;
- d including conditions prohibiting, or imposing conditions on, transfers of rights of use for radio spectrum, not subject to Union or national merger control, where such transfers are likely to result in significant harm to competition;
- e amending the existing rights in accordance with this Directive where this is necessary to remedy ex post a distortion of competition by any transfer or accumulation of rights of use for radio spectrum.

National regulatory and other competent authorities shall, taking into account market conditions and available benchmarks, base their decisions on an objective and forward-looking assessment of the market competitive conditions, of whether such measures are necessary to maintain or achieve effective competition, and of the likely effects of such measures on existing and future investments by market participants in particular

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for network roll-out. In doing so, they shall take into account the approach to market analysis as set out in Article 67(2).

3 When applying paragraph 2 of this Article, national regulatory and other competent authorities shall act in accordance with the procedures provided in Articles 18, 19, 23 and 35.