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Subject:	Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) - Examination of the Presidency text (Governance)

Introduction

1. Following the discussions in WP TELE of 04/04/2017 and 05/04/2017, written comments from Member States and reflecting the discussion at TTE Council 09/06/2017, **the Presidency intends to hold, in WP TELE of 5 July, a discussion of the elements of the Code concerning governance and institutional arrangements.**
2. The discussion will be held **in three parts, focusing on key questions:**
 - A. **Division of Competencies:** a discussion seeking to establish a common position on which tasks should be exclusively carried out by the National Regulatory Authorities or assigned to Competent Authorities more broadly. This will be informed by the table in **Annex A.**

B. **General Authorisation Regime:** a discussion considering how the general authorisation regime would operate and what would be the impact of including or excluding different types of service from such authorisation. This will be informed by the background provided in **Annex B**.

C. **Coordinated Outcomes:** a discussion about how coordinated outcomes are to be achieved at Union level, and what mechanisms might be required in what areas, in particular with a view to supporting investment certainty. This will be informed by the table in **Annex C**.

3. **Based on the guidance received from the Member States and written input after the working party, the Presidency will prepare a compromise text for the articles concerning governance and institutional arrangements and also remove, as relevant, the square brackets from the other parts of the Code.**

Part A: Division of Competencies

4. In establishing the proper division of competencies between various bodies, it is important to be clear on the terminology used. The Presidency proposes that this should be standardised throughout the Code, wherever possible, using the following three descriptions:

- **National Regulatory Authority (NRA)** - a regulatory authority with specified minimum competences and characteristics, including independence from the sector and government, set out in Articles 5 and 8 of the Code.
- **Competent Authority** - this is a term used throughout the Code to refer to all authorities independent from the sector with relevant competence, including both NRAs and Ministries.
- **Member States** - this is a term used throughout the Code to indicate that a function is for the Member State to achieve without specifying an authority or body, and therefore may be achieved by other means.

5. The Commission's proposal is that a number of tasks currently permitted to be undertaken by a 'competent authority' would be performed by one or more NRAs, particularly where they intersect with the core function of the NRA in relation to market regulation. These are **set out in Annex A**. In some Member States these tasks are already being performed by NRAs, in others they reside with the Ministry or another body.
6. In a number of areas the Commission's proposal makes distinctions between the role of the NRA and tasks which may remain with other bodies, in order to allow the expertise of the NRA (for example in market analysis) to be used for decision making by other bodies.
7. The Presidency does not propose to discuss the Commission's proposals regarding the structure and description of NRAs. This will be discussed in future meetings. The discussion will also not address the detail of the policy proposals, including whether or not proposed new tasks should be included in the Code. For the purpose of this meeting it is assumed that the tasks are included.
8. The proposals regarding General Authorisation are not included as these will be discussed in Part B of the meeting.

The Presidency will focus on those areas where changes are proposed (highlighted in bold) in the following rounds: General Part , Spectrum, Access, Universal Services, Numbering and End User Rights.

Member States will be asked whether they can support the Presidency proposals in the final column, and to provide guidance where this is requested.

Part B: General Authorisation Regime and Notification

9. The general authorisation regime provides a legal framework for the rights and obligations of providers of Electronic Communications Services and Networks. A description of the regime and the competences as set out in the Commission proposal is **explained in Annex B**.

10. The proposed general authorisation regime remains largely unchanged compared to the current regulatory framework. Only the notification regime has been changed, requiring that any notification required needs to be addressed to BEREC, which would then provide it to the NRAs concerned.
11. A general authorisation regime can complement national law. With general authorisation the regulator has the additional tool of being able to withdraw the authorisation, preventing an undertaking from providing a service, in those areas that the general authorisation covers. The issues that general authorisation can address are set out in Annex I of the proposal and include such issues as personal data protection and disaster communications. The general authorisation can contain obligations which are also contained in national law.
12. The Commission proposal retains the current scope of the general authorisation, applying to ECS but excluding Number Independent ICS. This means that a regulator could not withdraw authorisation and prevent a NI-ICS from providing a service.

The Presidency will ask Member States whether they can support the notification process proposed, with BEREC as the recipient and coordinator of notifications.

The Presidency will ask Member States whether the proposed scope, excluding Number Independent ICS from general authorisation and notification, is appropriate.

Part C: Coordinated Outcomes

13. One of the main functions of the Code is to improve coordinated outcomes within the Union in order to strengthen the single market and increase investment certainty. There are a number of mechanisms by which this is achieved, including full harmonisation of measures and Commission implementing decisions. In this meeting, the Presidency will focus on those aspects of the Code in which the Commission proposes increased coordination through such bodies as RSPG and BEREC.

14. Member States have expressed a desire to improve coordination, but also concern about the mechanisms proposed to achieve this. This reflects the balance that must be struck between consistency to support investment and flexibility to address national specific issues such as consumer protection and competition.
15. The Commission's proposals for which mechanisms are appropriate for coordinating outcomes are **set out in Annex C**.

The Presidency will focus on those areas where changes are proposed (highlighted in bold) in the following rounds: Objectives, General Authorisation, Provision of Information and Consultations, Internal Market Procedures, Spectrum Assignment, Access and Interconnection and Services.

The Presidency will ask Member States where they would support the proposed mechanisms in order to improve coordinated outcomes at the Union level.

Where Member States do not support the proposed mechanism, the Presidency would like to know whether another mechanism would be preferred.

DIVISION OF COMPETENCE TABLE

- This table provides a summary of the tasks allocated to the NRA or Competent Authorities under the Commission's proposal
- Those tasks where the responsibility has changed have been highlighted in bold and the Presidency's proposed way forward has been included in the final column.
- Under the current framework a number of tasks are described as being performed by the 'National Regulatory Authority'. The proposed new notion of an NRA is stricter than the current framework, meaning the terms are not necessarily equivalent. As such, where a task under the current framework says NRA, but can in practice be performed by an authority that does not have the characteristics and competences now ascribed to NRAs, it is listed as a Competent Authority, noting that it uses the 'old NRA' definition.
- Under the current framework some tasks must be conducted by an authority which meets the standards of independence, but does not describe them as an NRA. These are listed as NRA by interpretation in the 'current' column.
- A list of acronyms can be found at the end of the table.

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
General Part	Dispute resolution	Out-of-Court dispute resolution, Article 25	MS & CA (USD 34)	NRA	Consumers and undertakings could benefit by having only one authority to deal with the application of EU law in the electronic communications sector. Vesting the NRAs with this task ensures that it is independent of	Revert to CA. Can consider other proposals to improve consumer access to

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
					government and the sector and gives the NRA access to an important source of information, consumer complaints, and may therefore more effectively apply the provisions.	information (e.g. single point of contact for consumers) and to avoid double sanction.
		Article 26, Dispute resolution between undertakings	NRA (FD 20)	NRA	Core task only for politically independent NRAs	
		Resolution of cross-border disputes, Article 27	NRA (FD 21)	NRA		

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
	Harmonisation procedures	Article 33, Procedure for the consistent application of remedies	COM & BEREC opinion (FD 7a)	COM & BEREC veto	The new rules aim at ensuring a more consistent application of regulatory approaches by individual NRAs. They kick-in where the majority of NRAs and the Commission agree that the proposed draft measure by an individual NRA is contrary to the regulatory framework. Past case law on Art.7 has shown, that the imposition of different remedies under similar market conditions can also have a significant detrimental effect on the development of the single market I	Revert to COM & BEREC opinion.
General Authorisation	General Part	General Authorisation addressed in Annex B.				

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
Security and integrity		Security of networks and services (Articles 40 & 41)	CA (old NRA) (FD 13a and 13b)	CA		
Access to land		Article 43, Rights of way	CA (FD 11)	CA		
		Article 44, Co-location	CA (old NRA) (FD 12 except FD 12(3))	CA		
Access to Radio-Spectrum	Peer Review	Article 35, Peer Review	n/a	MS & NRA	Selection procedures have a direct long-term impact on the competitive situation in the market (including market entry or exit). Pro-competitive or market-shaping measures taken when granting, amending or renewing rights of use for radio spectrum can have a great impact on the dynamics and competitive structure of the market.	TBC: related to discussion 4 July

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
	Authorisations	Article 45, Management of radio spectrum	MS & CA (AuD 5)	MS & CA		
		Article 46, Authorisation for the use of radio spectrum	MS & CA (AuD 5)	MS & CA		
		Article 47, Conditions attached to GA and to rights of use for radio spectrum	MS & CA (AuD 6)	CA		
	Rights of use	Article 48, Granting of individual rights of use for radio spectrum	MS & CA (AuD 7)	MS & CA		
		Article 49, Duration of rights	MS & CA (AuD 5)	MS		
		Article 50, conditions for renewal of rights	n/a	MS & CA		

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
		Article 51, conditions related to transfer or lease of RoU	MS & CA (FD 9b)	MS, NRA & CA		TBC: related to discussion 4 July
		Article 52, Competition	n/a	NRA		TBC: related to discussion 4 July
	Procedures	Article 54, Procedure for the limiting the number of RoU	MS & CA (AuD 7)	MS & CA		
		Article 54(2), Procedure for the limiting the number of RoU, choice of the selection procedure as per article 35(1)	MS & CA (AuD 7)	NRA		TBC: related to discussion 4 July
Wireless Network Equipment		Article 55, Access to local area networks	n/a	CA		
		Article 56, Deployment and operation of small-	n/a	CA		

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
		area wire				
Access	General Provisions, Access Principles	Article 57, General framework for access and interconnection	MS (AcD 3)	MS	It is the corner stone of the RF that ex ante market regulation is only undertaken by politically independent NRAs.	
		Article 58, Rights and obligations for undertakings	NRA (AcD 4)	NRA		
	Access and Interconnections	Article 59, Powers and responsibilities of the NRAs with regard to access and interconnection	NRA (AcD 5)	NRA		
		Article 60, Conditional access systems and other facilities	MS (AcD 6)	MS		

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
		Article 60(3) , review of conditions and market analysis, subsequent to permission given by the Member State	NRA (AcD 6(3))	NRA		
	Market Analysis and Significant Market Power	Articles 61-78 on market analysis and regulatory remedies except from Article 64, under which 2 NRAs can nevertheless formulate the reasoned request	NRA (FD 14-16 and AcD 8-13b)	NRA		
Services	USO	Article 79, Affordable Universal Service	n/a	MS		
		Article 80, Provision of affordable Universal Service: monitoring the evolution and level of retail tariffs, ensuring transparency and non-	MS & CA (old NRA) (USD 9)	NRA	NRAs in view of their role in market analysis have these data or retrieve them from the market	Agree move to NRA

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
		discrimination, to request modifications or withdrawal				
		Article 80, other tasks	MS (USD 9)	MS		
		Article 81, Availability of universal service	MS (USD 3)	MS		
		Article 81(5), Availability of universal service: assessing the effect of intended transaction of a designated undertaking	CA (old NRA) (USD 8(3))	NRA	The paragraph 81(5) refers to situation where the designation process might have to be restarted. The situation will be analysed by the NRA with a view to examining whether USO still need to be applied.	Agree move to NRA
		Article 82, Status of existing Universal Services	n/a	MS		
		Article 83, Control of expenditure	MS & CA (USD 10)	MS & CA		

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
		Article 84, Cost of universal service obligations	CA (old NRA) (USD 12)	NRA	The financing regime of the universal service is determined by the Code itself. The tasks of calculating the net-cost and assessing the unfair burden of the universal service obligations have usually been attributed to independent NRAs because of their expertise, experience and access to necessary information for the calculations.	Agree move to NRA
		Article 85, Financing of Universal Service obligations	MS & CA (old NRA) (USD 13)	MS		Agree move to NRA
		Article 86, Transparency	CA (old NRA) (USD 14)	NRA		Agree move to NRA
	Numbers	Article 87, Numbering resources	MS & CA (old NRA) (FD 10)	NRA	Numbering resources are necessary for the provision of certain ECS. Their granting impacts on market entry and competition.	Agree move to NRA
		Article 88, Granting of rights of use for numbers	MS (AuD 5)	NRA		Agree move to NRA
		Article 89, Fees for	MS & CA (AuD)	NRA		Agree move to NRA

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
		rights of use for numbers	13)			
		Article 90, The missing children hotline number	MS (USD 27a)	MS		
		Article 91, Access to numbers and services	MS & CA (USD 28)	NRA		Agree move to NRA
	End-user rights	Article 93, Fundamental rights safeguard	MS (USD 1(3))	MS	Certain provisions which are relevant for consumer protection serve more than one objective. This is the case of facilitating the change of provider, the comparison of offers, the bundled offers, which have a significant impact on competition. Some of them, in particular number portability, require technical knowledge.	
		Article 94, Level of harmonisation	n/a	MS		
		Article 95, Information requirements for contracts	MS (USD 20)	NRA & BEREC		Change to CA, but note NRA role in provision of information
		Article 96 (1, 2), Transparency, comparison of offers and publication of information	CA (old NRA) (USD 21)	NRA		Agree move to NRA

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
		Article 96(3), Transparency, comparison of offers and publication of information	CA (old NRA) (USD 21(2))	MS		
		Article 97, Quality of service (not mandatory)	CA (old NRA) (USD 22)	NRA		Agree move to NRA
		Article 98 (1, 2,3), Contract duration and termination	MS (USD 30(5&6))	MS		
		Article 99(1, 3, 4 and 5), Change of provider and number portability	CA (old NRA) (USD 30)	NRA	Both number portability and change of provider include technical elements and coordination between operators and should be dealt with by the NRA, who can also establish a global process of switching and porting of numbers. They also have an impact on competition. These	Agree move to NRA

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
					measures ensure that end-users can actually benefit from the competition on the market, and therefore have an impact on the contestability of the market and in general on competition.	
		Article 99 (2 and 6), Change of provider and number portability	MS (USD 30)	MS		
		Article 101, Availability of services	MS (USD 23)	MS		
		Article 102, Emergency Communications and the single European emergency call number	MS (USD 26)	MS		
		Article 103 (2), Equivalent access and choice for disabled end-users	CA (USD 23a)	CA		

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
		Article 104, Telephone directory enquiry services (except 2)	MS (USD 25)	MS		
		Article 104(2), Telephone directory enquiry services, impose obligations	NRA (by interpretation) (USD 25)	NRA	The obligations that may be imposed under this Article are access and interconnection obligations and as such should be undertaken only by NRAs	
		Article 105, Interoperability of consumer digital television equipment	MS (USD 24)	MS		
		Article 106, Must carry obligations	MS (USD 31)	MS		
		Article 107(1), Provision of additional facilities	NRA (by interpretation) (USD 29(1))	NRA	As obligations imposed on all providers in the market they have an impact on competition	
		Article 107(2), Provision	MS (USD 29(2))	MS		

Chapters	Sections	Tasks	Current	Commission Proposal	Justification	Presidency Plan
		of additional facilities				
	Open Internet		NRA (by interpretation) (TSM 5)	NRA	The link between open internet access and competition in the electronic communications markets implies this competence to be entrusted to NRAs . It also requires very technical knowledge that NRAs have.	

- MS: Member State
- CA: Competent Authority
- NRA: National Regulatory Authority
- CA (old NRA): The current framework says NRA, but does not require the authority to have the level of independence ascribed to NRAs by the Code.
- NRA (by interpretation): The current framework requires the task to be conducted by an authority with the independence ascribed to NRAs by the Code.
- AcD: Access Directive
- AuD: Authorisation Directive
- FD: Framework Directive
- TSM: Telecoms Single Market
- USD: Universal Services Directive

General Authorisation, and related notification

The general authorisation for the provision of electronic communications networks and/or services is **a legal framework** ensuring rights and laying down obligations. The most important of the rights is the entitlement of all undertakings to provide ECS and deploy ECN, subject to certain rules. It is a form of licensing, in the sense of 'permission to do business', but unlike individual licensing, it does not require an explicit prior decision or administrative act.

The general authorisation process is set out in a **diagram** and a **table** setting out the proposed competences at both national and Union level at the end of this Annex.

The general authorisation rules are laid down in laws, regulations or generally applicable decisions of regulators. They must be established on the basis of objective, non-discriminatory, proportionate and transparent criteria. In practice, the general authorisation contains a list of criteria which providers must fulfil when they provide a service or network. National regulatory authorities monitor compliance with these criteria (ex post) and are empowered to sanction the infringement of the rules (penalties, fines, and **as ultima ratio withdrawal of the general authorisation**). Under the general authorisation regime, Member States are not allowed to delay entry: respecting the conditions of the general authorisation is verified only ex post and not prior to starting activities.

Member States can choose to require undertakings to notify their intention to commence the provision of electronic communications networks or services. However, any **notification** potentially required by a Member State **has only a declaratory purpose**. The notification is aimed at identification purposes and is not linked to a control of fulfilment of eligibility criteria.

Under the proposal for the Code, this notification would be addressed to BEREC, which would provide it to the NRA(s) concerned. This is intended to facilitate both a Union-wide view of ECN/S and to improve consistency across the Union through more standardised notification processes, reducing the burden of notification for undertakings operating cross-border.

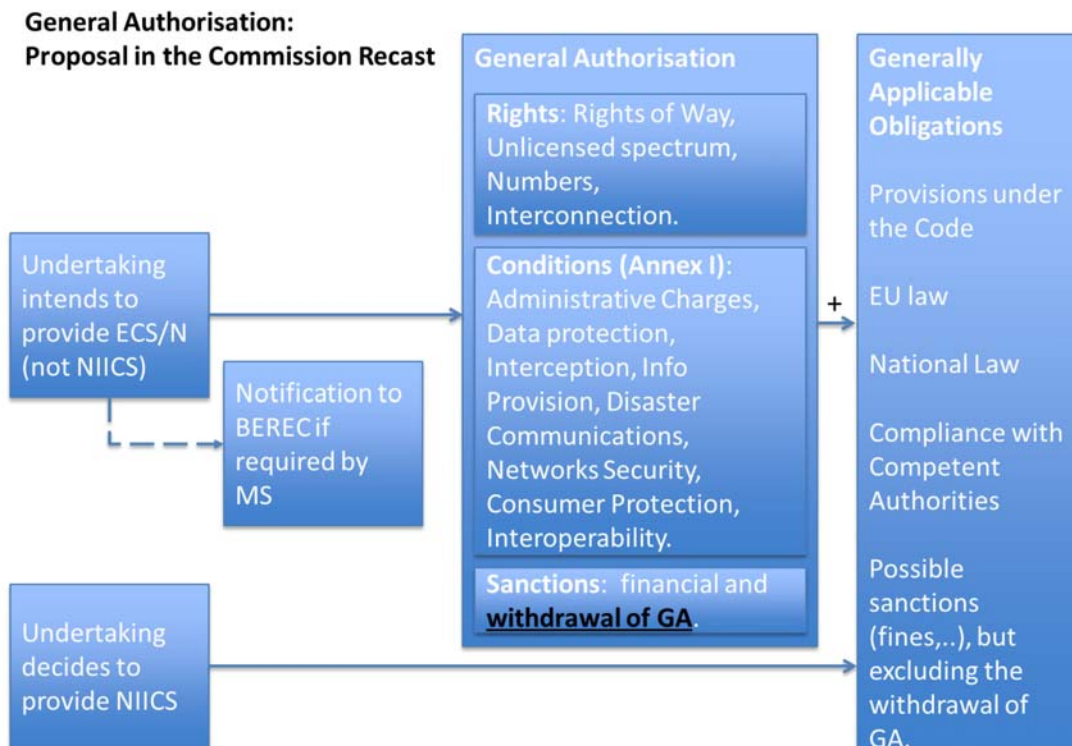
The **rights** which derive from the general authorisation are *inter alia* to provide electronic communications networks and services, apply for rights of way, use radio spectrum (when it is not subject to an individual right), apply for numbers, and negotiate interconnection.

The list of possible **conditions** which may be attached to the general authorisation is harmonised and limited in EU law; however, Member States have a certain margin of discretion regarding the precise implementation. Amongst the conditions which may be attached to the general authorisation for the provision of networks are conditions for the use of spectrum, where such use is not made subject to individual rights of use. **Conditions** attached to the general authorisation for the use of services **include restrictions in relation to the transmission of illegal content, interoperability of services, consumer protection rules specific to the electronic communications sector.**

The general authorisation conditions are without prejudice to other obligations that a provider must respect. **Other obligations may be imposed** either on the basis of the framework (asymmetric, symmetric obligations) or of generally applicable laws (fiscal, environmental, data protection, legal interception). Those other obligations are enforced by the authorities competent for those areas (tax authorities etc.). **However, only the breach of the conditions to the general authorisation may ultimately lead to preventing an undertaking from providing a service.**

NRAs monitor the respect of the general authorisation criteria and may impose sanctions on providers which do not comply. **As an ultimate sanction, NRAs may withdraw the general authorisation, i.e. prevent the undertaking from continuing to provide the network or service.** The inclusion of certain conditions (those mentioned in Annex I of the EECC) in the general authorisation therefore facilitates enforcement of certain obligation by giving an additional leverage to Member States.

Under the proposal for the Code, **the provision of NI-ICS is not subject to general authorisation.** It does not prevent, however, Member States from imposing obligations on the providers of NI-ICS by means of generally applicable national law (in compliance with Union law, in particular the E-Commerce Directive) and sanction them when they do not abide by those. However, because of the exclusion of NI-ICS from the general authorisation regime proposed in the Code, **Member States cannot withdraw authorisation and thereby prevent any NI-ICS from providing electronic communications services.**



NB: conditions and rights in this diagram are indicative only.

Table of Competence for General Authorisation

Sections	Tasks	Current	Commission Proposal	Justification
General Part	Article 12, Notifications	CA (AuD 3)	BEREC	This article is particularly necessary for cross-border providers. The notification to BEREC through the NRA portal and on the basis of a template ensures that BEREC has information about the ECNS providers in the EU.
	Article 14, Declarations	CA (AuD 9)	BEREC	The automatic issuing of declarations ensures that there are no obstacles to the freedom to provide services and to market entry (e.g. establishment requirements).
	Conditions (Article 13)	CA (AuD 6(1-4))	BEREC	The general authorisation is linked to market entry and therefore such decisions should be for the NRA.
Rights & procedures	Administrative charges (Article 16)	CA (AuD 12)	NRA	
Amendment and withdrawal	Amendments of rights and obligations (Article 18)	CA (AuD 14(1))	NRA	
	Restriction or withdrawal of rights (Article 19)	CA (AuD 14(2))	NRA	

Table of proposed guidance/harmonisation under the Code (new and already existing powers)

<i>Chapters</i>	<i>Article</i>	<i>Harmonised Tasks</i>	<i>Current</i>	<i>Code</i>	<i>Justification</i>
Objectives	Strategic planning and coordination of radio spectrum policy, Article 4	RSPG to provide opinion to the Commission in developing multiannual radio spectrum policy programmes	The Commission, taking into account the RSPG opinion, to propose common policy objectives to the EP and Council, in order to ensure the coordination of the interests of the EU in international organisations. (FD 8a)	Cooperate through the RSPG with each other and the Commission (& EP and Council) in support of the strategic planning and coordination of radio spectrum policy approaches	The new article ensures support from RSPG both for the RSPG and for the preparation of WRCs.
	General Authorisation Article 12	<u>Optional notification</u> for the purposes of the General authorisation	CAs (AuD 3)	BEREC	This article is particularly necessary for cross-border providers. The notification to BEREC through the NRA portal and on the basis of a template ensures that BEREC has information about the ECNS providers in the EU.
	Declarations to facilitate the exercise	Declarations for the exercise of the rights deriving from the	CAs (AuD 9)	BEREC	The automatic issuing of declarations ensures that there are no obstacles to the

Chapters	Article	Harmonised Tasks	Current	Code	Justification
	of the rights of the GA, Article 14	general authorisation			freedom to provide services and to market entry (such as for instance through establishment requirements).
Provision of information and consultations	Geographic surveys, Article 22	Issue guidelines for the consistent application of geographic surveys	n/a (new)	BEREC	Assist NRAs to conduct the mapping exercise and share best practices from NRAs that already have significant experience in this field.
	Resolution of cross-border disputes, Article 27	BEREC to issue an opinion indicating to the NRA to take specific action to resolve the dispute	Optional request for BEREC opinion. Non-binding opinion (FD 21)	Mandatory request for BEREC opinion. Non-binding opinion.	BEREC should be able to issue an opinion to bring about a consistent resolution of the dispute in line with the objectives of Article 3. Irrespective of whether this is required by the relevant NRAs, BEREC should be given the occasion to express a view on the impact of the dispute to the development of the internal market.
	Radio Spectrum Coordination among Member States, Article 28	Use good offices and where appropriate propose a coordinated solution in an opinion. Commission to adopt implementing measures to	n/a (new)	RSPG	This task is currently performed by the RSPG, within the WG on cross-border coordination. It has proven very useful within the limits of a voluntary cooperation, but the current format can neither enforce

Chapters	Article	Harmonised Tasks	Current	Code	Justification
		resolve the dispute			any solution nor resolve disputes.
Internal market procedures	Consolidating the internal market, Article 32	BEREC to express an opinion on the draft market definition and SMP designation,	The Commission shall take utmost account of the opinion (FD 7)	no change	
	Procedure for the consistent application of remedies, Article 33	BEREC to express an opinion on the draft regulatory remedies/	The Commission may issue a recommendation to the NRA to amend or withdraw the draft measure; or lift its reservations (FD 7a)	if in its opinion BEREC shares the serious doubts of the Commission, the latter may veto the remedies.	The new rules aim at ensuring a more consistent application of regulatory approaches by individual NRAs. They kick-in where the majority of NRAs and the Commission agree that the proposed draft measure by an individual NRA is contrary to the regulatory framework. Past case law on Art. 7 has shown, that the imposition of different remedies under similar market conditions can also have a significant detrimental effect on the development of the single market.
	Implementing provisions, Article 34	Opinion of BEREC for the harmonisation of form, content, level of detail of notifications	(FD 7b)	no change	

Chapters	Article	Harmonised Tasks	Current	Code	Justification
Consistent spectrum assignment	Peer review process, Article 35	Issue reasoned opinion on whether the draft measure promotes the internal market, ensures effective and efficient use of radio spectrum and stable and predictable investment decisions.	n/a (new)	BEREC	'peer review' system within BEREC is introduced as a new coordination mechanism. This mechanism will require NRAs to notify their draft measures in regard to these aspects of spectrum assignment for review by BEREC and issuance of a non-binding opinion.
	Harmonisation procedures, Article 38	Commission to adopt a decision or recommendation taking utmost account of BEREC's opinion	In case of divergences in the implementation by NRAs of the regulatory tasks in the Directive (FD 19)	Extension to CAs, since they may be vested with regulatory tasks	The extension of the rule to cover CAs derives from the deletion of the definition of NRA and the possibility to assign regulatory tasks to CAs.
Access & Interconnection	Powers and responsibilities of the NRAs with regard to access and interconnection, Article 59	Guidelines on common approaches to the identification of the network termination point (NTP) in different network topologies	n/a ¹ (AcD 5)	BEREC to issue guidelines	The location of the NTP is important in particular to define whether a provider may impose the use of specific terminal equipment. Here a consistent approach throughout the EU is needed since this impacts on competition.

¹ BEREC may issue reports and provide advice upon reasoned request of the Commission or on its own initiative.

<i>Chapters</i>	<i>Article</i>	<i>Harmonised Tasks</i>	<i>Current</i>	<i>Code</i>	<i>Justification</i>
	Identification of transnational markets, Article 63	Identifying transnational markets in accordance with the principles of competition law.	Commission decision (new)	BEREC	BEREC is the most appropriate body to undertake such analysis, benefiting from the extensive collective experience of NRAs when defining markets on a national level.
	Identification of transnational demand, Article 64	Conduct an analysis of transnational end-user demand for products and services	n/a (new)	BEREC	If transnational demand is not sufficiently met by suppliers, a potential internal market barrier arises. Therefore, BEREC should be empowered to provide guidelines to NRAs on common regulatory approaches to ensure that transnational demand can be met.
	Market analysis procedure, Article 65	Provide assistance to NRAs in completing delayed market reviews	BEREC (FD 16)	no change	
	Obligation of transparency, Article 67	Issue guidelines on minimum criteria for a reference offer	n/a (AcD 9)	BEREC	Due to the variety of network topologies, access products and market circumstances, BEREC should provide guidelines on the minimum criteria for a

Chapters	Article	Harmonised Tasks	Current	Code	Justification
					reference offer and update it periodically.
Services	Numbering, Article 87	Establish a central registry on numbers with a right for extra-territorial use	n/a (FD 10)	BEREC	Due to increasing demand for extraterritorial use of numbering resources in particular for M2M applications, there is a need for cross-border coordination and exchange of information. This should be managed by an EU agency/body.
	Granting rights of use for numbers, Article 88	Facilitate and coordinate the exchange of information between NRAs concerned by the extra-territorial use of numbers	n/a (AuD 5)	BEREC	
	Information requirements for contracts, Article 95(5)	Issue a decision on a contract summary template which identifies the main elements of the information requirements	n/a (new)	BEREC	In order to enable the end-user to make a well informed choice and to facilitate comparability and reduce compliance cost a template for contract summaries should be issued. The form of a binding decision is needed for undertakings to comply.
	Quality of service, Article 97	Adopt guidelines on the relevant quality of service parameters.	n/a (22 USD)	BEREC	There are currently no guidelines specifically addressing the measurement of quality of service of internet access service

Chapters	Article	Harmonised Tasks	Current	Code	Justification
					and of publicly available number-based interpersonal communications services. NRAs should set out the measurement methods to be applied by the service providers in order to improve the comparability of the data provided. In order to facilitate comparability across the Union and to reduce compliance cost, BEREC should adopt guidelines on relevant quality of service parameters which NRAs should take into utmost account.