

**FINAL**  
**CA11**  
**Harmonisation procedures**

The CA covers Art 38 and related recitals. All relevant AMs, including AMs 559-562, as well as IMCO xx, CULT yy, LIBE zz, fall.

Recital

- (87) Any Commission decision under Article 38(1) should be limited to regulatory principles, approaches and methodologies. For the avoidance of doubt, it should not prescribe detail which will normally need to reflect national circumstances, and it should not prohibit alternative approaches which can reasonably be expected to have equivalent effect. Such a decision should be proportionate and should not have an effect on decisions taken by national regulatory authorities that do not create a barrier to the internal market.

Article

*Article 38*

**Harmonisation procedures**

1. Without prejudice to Articles 37, 45, 46(3), 47(3), 53, where the Commission finds that divergences in the implementation by the national regulatory authorities or by other competent authorities of the regulatory tasks specified in this Directive may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of BEREC, issue a recommendation or a decision on the harmonised application of the provisions in this Directive and in order to further the achievement of the objectives set out in Article 3.
2. Member States shall ensure that national regulatory and other competent authorities take the utmost account of recommendations pursuant to paragraph 1 in carrying out their tasks. Where a national regulatory authority or other competent authority chooses not to follow a recommendation, it shall inform the Commission, giving the reasons for its position.
3. The decisions adopted pursuant to paragraph 1 may include only the identification of a harmonised or coordinated approach for the purposes of addressing the following matters:
  - (a) the inconsistent implementation of general regulatory approaches by national regulatory authorities on the regulation of electronic communications markets in the application of Articles 62 and 65, where it creates a barrier to the internal market. Such decisions shall not refer to specific notifications issued by the national regulatory authorities pursuant to Article 33;

In such a case, the Commission shall propose a draft decision only:

- after at least two years following the adoption of a Commission Recommendation dealing with the same matter, and
  - taking utmost account of an opinion from BEREC on the case for adoption of such a decision, which shall be provided by BEREC within three months of the Commission's request;
- (a) numbering, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to 112 emergency services.

4. The decision referred to in paragraph 1, shall be adopted in accordance with the examination procedure referred to in Article 110(4).

5. BEREC may on its own initiative, ***including following a complaint lodged by an undertaking providing electronic communications networks or services***, advise the Commission on whether a measure should be adopted pursuant to paragraph 1.

***5a. Without prejudice to the Commission's powers under paragraphs 1, 2 and 3 and the Treaty on the Functioning of the European Union, where BEREC adopts an opinion indicating the existence of divergences in the implementation by the national regulatory authorities or by other competent authorities of the regulatory tasks specified in this Directive, and such divergences could create a barrier to the internal market, the Commission shall either adopt a recommendation pursuant to paragraph 1 or, where it has adopted a recommendation on the same matter more than two years earlier, adopt a decision in accordance with paragraph 3, without requesting a further opinion from BEREC.***

***If the Commission has not, pursuant to the first subparagraph, either adopted a recommendation or a decision within one year from the date of adoption of the opinion by BEREC, it shall inform the European Parliament and the Council of its reasons for not doing so, and make those reasons public.***

***Where the Commission has adopted a recommendation but the inconsistent implementation creating barriers to the internal market persists for two years thereafter, the Commission shall either, within a further year, adopt a decision in accordance with paragraph 3 or, where the Commission chooses not to adopt a decision, shall inform the European Parliament and the Council of its reasons for not doing so, and make those reasons public.***