

Draft CA X

Spectrum

[Art 28 Radio spectrum coordination among MS addressed in separate CA but could be included here]

The CA covers Art 4, 18-19, 35-37, 42, 45-56, 59(3), AM 74 and related recitals. All relevant AMs, including AMs 36, 45-46, 60-67, 68-109, 113, 392-395, 420-428, 536-558, 582-589, 592-715, 784-790, as well as IMCO xx, CULT yy, LIBE zz, fall.

Recitals

- (9) In order to allow national regulatory authorities to meet the objectives set out in this Directive, in particular concerning end-to-end interoperability, the scope of the Directive should cover certain aspects of radio equipment as defined in Directive 2014/53/EU of the European Parliament and of the Council¹ and consumer equipment used for digital television, in order to facilitate access for disabled users. It is important for regulators to encourage network operators and equipment manufacturers to cooperate in order to facilitate access by disabled users to electronic communications services. The non-exclusive use of spectrum for the self-use of radio terminal equipment, although not related to an economic activity, should also be subject to this directive in order to guarantee a coordinated approach with regard to their authorisation regime.
- (12) The regulatory framework should cover the use of radio spectrum by all electronic communications networks, including the emerging self-use of radio spectrum by new types of networks consisting exclusively of autonomous systems of mobile radio equipment that is connected via wireless links without a central management or centralised network operator, and not necessarily within the exercise of any specific economic activity. In the developing fifth generation mobile communications environment, such networks are likely to develop in particular outside buildings and on the roads, for transport, energy, R&D, eHealth, public protection and disaster relief, Internet of Things, machine-to-machine and connected cars. As a result, the application by Member States, based on Article 7 of Directive 2014/53/EU, of additional national requirements regarding the putting into service or use of such radio equipment, or both, in relation to the effective and efficient use of spectrum and avoidance of harmful interference should reflect the principles of the internal market.
- (29) Electronic communications are becoming essential for an increasing number of sectors. The Internet of Things is an illustration of how the radio signal conveyance underpinning electronic communications continues to evolve and shape societal and

¹ Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).

business reality. To derive the greatest benefit from those developments, the introduction and accommodation of new wireless communications technologies and applications in spectrum management is essential. As other technologies and applications relying on spectrum are equally subject to growing demand, and can be enhanced by integration of or combination with electronic communications, spectrum management should adopt, where appropriate, a cross-sectorial approach to improve spectrum usage efficiency.

- (30) Strategic planning, coordination and, where appropriate, harmonisation at Union level can help ensure that spectrum users derive the full benefits of the internal market and that Union interests can be effectively defended globally. For these purposes, where appropriate, legislative multiannual radio spectrum policy programmes may be adopted, with the first one defined by Decision No 243/2012/EU of the European Parliament and of the Council², setting out policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in the Union. These policy orientations and objectives may refer to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market, in accordance with this Directive.
- (31) National borders are increasingly irrelevant in determining optimal radio spectrum use. Undue fragmentation amongst national policies regarding the management of radio spectrum, including unjustified different conditions for access to, and use of, radio spectrum according to the type of operator, may result in increased costs and lost market opportunities for spectrum users. It may slow down innovation, limit investment, reduce economies of scale for manufacturers and operators as well as create tensions between rights holders and discrepancies in the cost of access to spectrum. This fragmentation may overall result in a distortion of the functioning of the internal market and prejudice to consumers and the economy as a whole.
- (32) The spectrum management provisions of this Directive should be consistent with the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), so as to ensure the efficient management of and harmonisation of the use of spectrum across the Union and between the Member States and other members of the ITU.
- (53) Member States may need to amend rights, conditions, procedures, charges and fees relating to general authorisations and rights of use where this is objectively justified. Such changes should be duly notified to all interested parties in good time, giving them adequate opportunity to express their views on any such amendments. Taking into account the need to ensure legal certainty and to promote regulatory predictability, any restriction or withdrawal of existing rights of use for radio spectrum or to install facilities should be subject to predictable and transparent procedures; hence stricter requirements or a notification mechanism could be imposed where rights of use have been assigned pursuant to competitive or comparative procedures. ***Furthermore, in the case of individual rights of use for radio spectrum, the rights and conditions of such licenses should only be amended with the prior consent of the right holder. As restrictions or withdrawals of general authorisations or rights may have significant and unpredictable consequences for their holders, national competent authorities should take particular care and assess in advance the potential harm that such***

² OJ L 81, 21.3.2012, p. 7.

measures may cause before adopting such measures. Unnecessary procedures should be avoided in case of minor amendments to existing rights to install facilities or to use spectrum when such amendments do not impact on third parties' interests. The change in the use of spectrum as a result of the application of technology and service neutrality principles should not be considered a sufficient justification for a withdrawal of rights since it does not constitute the granting of a new right.³

- (54) Minor amendments to rights and obligations are those amendments which are mainly administrative, do not change the substantial nature of the general authorisations and the individual rights of use and thus cannot cause any comparative advantage to the other undertakings.
- (84) By virtue of their overall economic expertise and market knowledge, and of the objective and technical character of their assessments, and in order to ensure coherence with their other tasks of market regulation, national regulatory authorities should determine the elements of selection procedures and the conditions attached to the rights of use for spectrum which have the greatest impact on market conditions and the competitive situation, including conditions for entry and expansion. That includes for example the parameters for economic valuation of spectrum in compliance with this Directive, the specification of the regulatory and market-shaping measures such as the use of spectrum caps or reservation of spectrum or the imposition of wholesale access obligations, or the means to define the coverage conditions attached to rights of use. A more convergent use and definition of such elements would be favoured by a coordination mechanism whereby BEREC, the Commission and the national regulatory authorities of the other Member States would review draft measures in advance of the granting of rights of use by a given Member State in parallel to the national public consultation. The measure determined by the national regulatory authority can only be a subset of a wider national measure, which may more broadly consist of the granting, trade and lease, duration, renewal or the amendment of rights of use for radio spectrum as well as of the selection procedure or the conditions attached to the rights of use. Therefore, when notifying a draft measure, national regulatory authorities may provide information on other draft national measures related to the relevant selection procedure for limiting rights of use for radio spectrum which are not covered by the peer review mechanism.
- (85) Where the harmonised assignment of radio frequencies to particular undertakings has been agreed at European level, Member States should strictly implement such agreements in the granting of rights of use for radio frequencies from the national frequency usage plan.
- (86) Member States should be encouraged to consider joint authorisations as an option when issuing rights of use where the expected usage covers cross-border situations.
- (93) Where the provision of electronic communications relies on public resources whose use is subject to specific authorisation, Member States may grant the authority competent for issuance thereof the right to impose fees to ensure optimal use of those resources, in accordance with the procedures envisaged in this Directive. In line with the case-law of the Court of Justice, Member States cannot levy any charges or fees in relation to the provision of networks and electronic communications services other than those provided for by this Directive. In that regard, Member States should have a coherent approach in establishing those charges or fees in order not to provide an

³ DR AM 6

undue financial burden linked to the general authorisation procedure or rights of use for undertakings providing electronic communications networks and services.

- (94) To ensure optimal use of resources, fees should reflect the economic and technical situation of the market concerned as well as any other significant factor determining their value. At the same time, fees should be set in a manner that enables innovation in the provision of networks and services as well as competition in the market. Member States should therefore ensure that fees for rights of use are established on the basis of a mechanism which provides for appropriate safeguards against outcomes whereby the value of the fees is distorted as a result of revenue maximisation policies, anticompetitive bidding or equivalent behaviour. This Directive is without prejudice to the purpose for which fees for rights of use and rights to install facilities are employed. Such fees may for instance be used to finance activities of national regulatory authorities and competent authorities that cannot be covered by administrative charges. Where, in the case of competitive or comparative selection procedures, fees for rights of use for radio spectrum consist entirely or partly of a one-off amount, payment arrangements should ensure that such fees do not in practice lead to selection on the basis of criteria unrelated to the objective of ensuring optimal use of radio spectrum. The Commission may publish on a regular basis benchmark studies and other guidance as appropriate with regard to best practices for the assignment of radio spectrum, the assignment of numbers or the granting of rights of way.
- (95) **Fees imposed on undertakings for** rights of use for radio spectrum can influence decisions about whether to seek such rights and **how to make the best use of** radio spectrum resources. **With a view to ensuring optimal use, when** setting reserve prices Member States should therefore ensure that **they reflect the alternative use of the resource and** the additional costs associated with the fulfilment of authorisation conditions imposed to further policy objectives that would not reasonably be expected to be met pursuant to normal commercial standards, such as territorial coverage conditions.⁴
- (96) Optimal use of radio spectrum resources depends on the availability of appropriate networks and associated facilities. In that regard, fees for rights of use for radio spectrum and for rights to install facilities should take into consideration the need to facilitate continuous infrastructure development with a view to achieving the most efficient use of the resources. Member States should therefore provide for modalities for payment of the fees for rights of use for radio spectrum linked with the actual availability of the resource in a manner that facilitates the investments necessary to promote such development. The modalities should be specified in an objective, transparent, proportionate and non-discriminatory manner before opening procedures for the granting of rights of use for spectrum **and the fees clearly defined.**⁵
- (101) Radio spectrum is a scarce public resource with an important public and market value. It is an essential input for radio-based electronic communications networks and services and, in so far as it relates to such networks and services, should therefore be efficiently allocated and assigned by national regulatory authorities according to harmonised objectives and principles governing their action as well as to objective, transparent and non-discriminatory criteria, taking into account the democratic, social, linguistic and cultural interests related to the use of frequencies.. Decision No

⁴ DR AM 11

⁵ DR AM 12. Justif: *The text seeks to further increase certainty with respect to investment needs*

676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)⁶ establishes a framework for harmonisation of radio spectrum.,

- (102) Radio spectrum policy activities in the Union should be without prejudice to measures taken, at Union or national level, in accordance with Union law, to pursue general interest objectives, in particular with regard to content regulation and audiovisual and media policies, and the right of Member States to organise and use their radio spectrum for public order, public security and defence. As use of spectrum for military and other national public security purposes impacts on the availability of spectrum for the internal market, radio spectrum policy should take into account all sectors and aspects of Union policies and balance their respective needs, while respecting Member States' rights.
- (103) Ensuring **maximum coverage of the highest capacity networks** in each Member State is essential for economic and social development, participation in public life and social and territorial cohesion. As **use of electronic communications** becomes an integral element to European society and welfare, EU-wide coverage should be achieved by relying on imposition by Member States of appropriate coverage requirements, which should be adapted to each area served and limited to proportionate burdens in order not to hinder deployment by service providers. **Seamless** coverage of the territory should be maximised and reliable, with a view to promote services and applications such as connected cars and e-health. Therefore, application by competent authorities of coverage obligations should be coordinated at Union level. Considering national specificities, such coordination should be limited to general criteria to be used to define and measure coverage obligations, such as population density or topographical and topological features.⁷
- (104) The need to ensure that citizens are not exposed to electromagnetic fields at a level harmful to public health should be approached in a consistent way across the Union, having particular regard to the precautionary approach taken in Council Recommendation No 1999/519/EC³⁴, in order to ensure consistent deployment conditions. **With respect to very high capacity networks, Member States should apply the procedure set out in Directive 2015/1525 where relevant with a view also to providing transparency to stakeholders and to allow other Member States and the Commission to react.**⁸
- (105) Spectrum harmonisation and coordination and equipment regulation supported by standardisation are complementary need to be coordinated closely to meet their joint objectives effectively, with the support of the RSPG. Coordination between the content and timing of mandates to CEPT under the Radio Spectrum Decision and standardisation requests to standardisation bodies, such as the European Telecommunications Standards Institute, including with regard to radio receivers parameters, should facilitate the introduction of future systems, support spectrum sharing opportunities and ensure efficient spectrum management.

⁶ Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) (OJ L 108, 24.4.2002).

⁷ DR AM 13. Justif: *Here, as elsewhere, there should be no confusion caused by the use of the vague "connectivity" in cases where a specific meaning is intended or where more precise usage is otherwise required. In this case, the text addresses territorial coverage, and is amended accordingly. Furthermore, "ubiquitous connectivity" implies complete coverage, which can be quite different from the appropriate coverage requirements, limitation to proportional burden etc outlined in the text.*

⁸ DR AM 14

- (106) The demand for harmonised radio spectrum is not uniform in all parts of the Union. In cases where there is lack of demand for a harmonised band at regional or national level, Member States could exceptionally be able to allow an alternative use of the band as long as such lack of demand persists and provided that the alternative use does not prejudice the harmonised use of the said band by other Member States and that it ceases when demand for the harmonised use materialises.
- (107) Flexibility in spectrum management and access to spectrum has been established through technology and service-neutral authorisations to allow spectrum users to choose the best technologies and services to apply in frequency bands declared available for electronic communications services in the relevant national frequency allocation plans in accordance with Union law (the ‘principles of technology and service neutrality’). The administrative determination of technologies and services should apply only when general interest objectives are at stake and should be clearly justified and subject to regular periodic review.
- (108) Restrictions on the principle of technology neutrality should be appropriate and justified by the need to avoid harmful interference, for example by imposing emission masks and power levels, to ensure the protection of public health by limiting public exposure to electromagnetic fields, to ensure the proper functioning of services through an adequate level of technical quality of service, while not necessarily precluding the possibility of using more than one service in the same frequency band, to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, to safeguard efficient use of spectrum, or to fulfil a general interest objective in conformity with Union law.
- (109) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum. On the other hand, measures should be allowed which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or the avoidance of the inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined by Member States in conformity with Union law. Except where necessary to protect safety of life or, exceptionally, to fulfil other general interest objectives as defined by Member States in accordance with Union law, exceptions should not result in certain services having exclusive use, but should rather grant them priority so that, in so far as possible, other services or technologies may coexist in the same band. It lies within the competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity and media pluralism.
- (110) As the allocation of spectrum to specific technologies or services is an exception to the principles of technology and service neutrality and reduces the freedom to choose the service provided or technology used, any proposal for such allocation should be transparent and subject to public consultation.
- (111) In exceptional cases where Member States decide to limit the freedom to provide electronic communications networks and services based on grounds of public policy, public security or public health, Member States should explain the reasons for such limitation.
- (112) Radio spectrum should be managed so as to ensure that harmful interference is avoided. This basic concept of harmful interference should therefore be properly defined to ensure that regulatory intervention is limited to the extent necessary to

prevent such interference, having regard also to the need for network equipment and end-user devices to incorporate resilient receiver technology. Transport has a strong cross-border element and its digitalisation brings challenges. Vehicles (metro, bus, cars, trucks, trains, etc) are becoming more and more autonomous and connected. In an EU single market, vehicles travel beyond national borders more easily. Reliable communications, and avoiding harmful interferences, are critical for the safe and good operation of vehicles and their on-board communications systems.

- (113) With growing spectrum demand and new varying applications and technologies which necessitate more flexible access and use of spectrum, Member States should promote the shared use of spectrum by determining the most appropriate authorisation regimes for each scenario and by defining appropriate and transparent rules and conditions therefor. Shared use of spectrum increasingly ensures its effective and efficient use by allowing several independent users or devices to access the same frequency band under various types of legal regimes so as to make additional spectrum resources available, raise usage efficiency and facilitate spectrum access for new users. Shared use can be based on general authorisations or licence-exempt use allowing, under specific sharing conditions, several users to access and use the same spectrum in different geographic areas or at different moments in time. It can also be based on individual rights of use under arrangements such as licenced shared access where all users (with an existing user and new users) agree on the terms and conditions for shared access, under the supervision of the competent authorities, in such a way as to ensure a minimum guaranteed radio transmission quality. When allowing shared use under different authorisation regimes, Member States should not set widely diverging durations for such use under different authorisation regimes.

(113a) Individual rights of use for spectrum are likely to be the most appropriate authorisation regime in the presence of certain circumstances. For instance, individual rights of use should be considered when favourable propagation characteristics of the radio spectrum or the envisaged power level of the transmission makes this a more efficient use. This should also be the case where the geographical density of use is high or where radio spectrum is continuously in use. Another situation where individual rights of use should be considered is where the required quality of service prevents general authorisations from addressing the interference concerns. Where technical measures to improve receiver resilience can enable the use of general authorisations or enable spectrum sharing, these should be applied and the systematic recourse to non-protection, non-interference provisions should be avoided.⁹

- (114) In order to ensure predictability and preserve legal certainty and investment stability, Member States should define in advance appropriate criteria to determine compliance with the objective of efficient use of spectrum by right holders when implementing the conditions attached to individual rights of use and general authorisations. Interested parties should be involved in the definition of such conditions and informed in a transparent manner about how the fulfilment of their obligations will be assessed.
- (115) Considering the importance of technical innovation, Member States should be able to provide for rights to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.

⁹ DR AM 15. Justif: *The recital sets out explicitly under which circumstances individual rights of use for radio spectrum is the most appropriate authorisation regime (thus giving greater assurance that general or sharing provisions are more focused on new higher bands), while also pointing to efforts to promote technical measures to improve receiver resilience. Inextricably linked to other admissible AMs.*

- (116) Network infrastructure sharing, and in some instances spectrum sharing, can allow for a more efficient and effective use of radio spectrum and ensure the rapid deployment of networks, especially in less densely populated areas. When defining the conditions to be attached to rights of use for radio spectrum, competent authorities should also consider authorising forms of sharing or coordination between undertakings with a view to ensure effective and efficient use of spectrum or compliance with coverage obligations, in compliance with competition law principles.
- (117) Market conditions as well as the relevance and number of players can differ amongst Member States. While the need and opportunity to attach conditions to rights of use for radio spectrum can be subject to national specificities which should be duly accommodated, the modalities of the application of such obligations should be coordinated at EU level through Commission implementing measures to ensure a consistent approach in addressing similar challenges across the EU.
- (118) The requirements of service and technology neutrality in granting rights of use, together with the possibility to transfer rights between undertakings, underpin the freedom and means to deliver electronic communications services to the public, thereby also facilitating the achievement of general interest objectives. This Directive does not prejudice whether radio spectrum is assigned directly to providers of electronic communications networks or services or to entities that use these networks or services. Such entities may be radio or television broadcast content providers. The responsibility for compliance with the conditions attached to the right to use a radio frequency and the relevant conditions attached to the general authorisation should in any case lie with the undertaking to whom the right of use for the radio spectrum has been granted. Certain obligations imposed on broadcasters for the delivery of audiovisual media services may require the use of specific criteria and procedures for the granting of spectrum usage rights to meet a specific general interest objective set out by Member States in conformity with Union law. However, the procedure for the granting of such right should in any event be objective, transparent, non-discriminatory and proportionate. The case law of the Court of Justice requires that any national restrictions on the rights guaranteed by Article 56 of the Treaty on the Functioning of the European Union should be objectively justified, proportionate and not exceed what is necessary to achieve those objectives. Moreover, spectrum granted without following an open procedure should not be used for purposes other than the general interest objective for which they were granted. In such case, the interested parties should be given the opportunity to comment within a reasonable period. As part of the application procedure for granting rights, Member States should verify whether the applicant will be able to comply with the conditions to be attached to such rights. These conditions should be reflected in eligibility criteria set out in objective, transparent, proportionate and non-discriminatory terms prior to the launch of any competitive selection procedure. For the purpose of applying these criteria, the applicant may be requested to submit the necessary information to prove his ability to comply with these conditions. Where such information is not provided, the application for the right to use a radio frequency may be rejected.
- (119) Member States should only impose, prior to the granting of right, the verification of elements that can reasonably be demonstrated by an applicant exercising ordinary care, taking due account of the important public and market value of radio spectrum as a scarce public resource. This is without prejudice to the possibility for subsequent verification of the fulfilment of eligibility criteria, for example through milestones, where criteria could not reasonably be met initially. To preserve effective and efficient

use of radio spectrum, Member States should not grant rights where their review indicates applicants' inability to comply with the conditions, without prejudice to the possibility of facilitating time-limited experimental use. Sufficiently long duration of authorisations for the use of spectrum should increase investment predictability to contribute to faster network roll-out and better services, as well as stability to support spectrum trading and leasing. Unless use of spectrum is authorised for an unlimited period of time, such duration should both take account of the objectives pursued and be sufficient to facilitate recoupment of the investments made. While a longer duration can ensure investment predictability, measures to ensure effective and efficient use of radio spectrum, such as the power of the competent authority to amend or withdraw the right in case of non-compliance with the conditions attached to the rights of use, or the facilitation of radio spectrum tradability and leasing, will serve to prevent inappropriate accumulation of radio spectrum and support greater flexibility in distributing spectrum resources. Greater recourse to annualised fees is also a means to ensure a continuous assessment of the use of the spectrum by the holder of the right.

- (120) In deciding whether to renew already granted rights of use for radio spectrum, competent authorities should take into account the extent to which renewal would further the objectives of the regulatory framework and other objectives under national and Union law. Any such decision should be subject to an open, non-discriminatory and transparent procedure and based on a review of how the conditions attached to the rights concerned have been fulfilled. When assessing the need to renew rights of use, Member States should weigh the competitive impact of extending already assigned rights against the promotion of more efficient exploitation or of innovative new uses that might result if the band were opened to new users. Competent authorities may make their determination in this regard by allowing for only a limited extension in order to prevent severe disruption of established use. While decisions on whether to extend rights assigned prior to the applicability of this Directive should respect any rules already applicable, Member States should equally ensure that they do not prejudice the objectives of this Directive.
- (121) When renewing existing rights of use, Member States should, together with the assessment of the need to renew the right, review the fees attached thereto with a view to ensuring that those fees continue to promote optimal use, taking account amongst other things, of the stage of market and technological evolution. For reasons of legal certainty, it is appropriate for any adjustments to the existing fees to be based on the same principles as those applicable to the award of new usage rights.
- (122) Effective management of radio spectrum can be ensured by facilitating the continued efficient use of spectrum that has already been assigned. In order to ensure legal certainty to rights holders, the possibility of renewal of rights of use should be considered within an appropriate time-span prior to the expiry of the rights concerned. In the interest of continuous resource management, competent authorities should be able to undertake such consideration at their own initiative as well as in response to a request from the assignee. The renewal of the right to use may not be granted contrary to the will of the assignee.
- (123) Transfer of spectrum usage rights can be an effective means of increasing the efficient use of spectrum. For the sake of flexibility and efficiency, and to allow valuation of spectrum by the market, Member States should by default allow spectrum users to transfer or lease their spectrum usage rights to third parties following a simple procedure and subject to the conditions attached to such rights and to competition rules, under the supervision of the national regulatory authorities responsible. In order

to facilitate such transfers or leases, as long as harmonisation measures adopted under the Radio Spectrum Decision are respected, Member States should also consider requests to have spectrum rights partitioned or disaggregated and conditions for use reviewed.

- (124) Measures taken specifically to promote competition when granting or renewing rights of use for radio spectrum should be decided by national regulatory authorities, which have the necessary economic, technical and market knowledge. Spectrum assignment conditions can influence the competitive situation in electronic communications markets and conditions for entry. Limited access to spectrum, in particular when spectrum is scarce, can create a barrier to entry or hamper investment, network roll-out, the provision of new services or applications, innovation and competition. New rights of use, including those acquired through transfer or leasing, and the introduction of new flexible criteria for spectrum use can also influence existing competition. Where unduly applied, certain conditions used to promote competition, can have other effects; for example, spectrum caps and reservations can create artificial scarcity, wholesale access obligations can unduly constrain business models in the absence of market power, and limits on transfers can impede the development of secondary markets. Therefore, a consistent and objective competition test for the imposition of such conditions is necessary and should be applied consistently. The use of such measures should therefore be based on a thorough and objective assessment, by national regulatory authorities, of the market and the competitive conditions thereof.
- (125) Building on opinions from the RSPG, the adoption of a common deadline for allowing the use of a band which has been harmonised under the Radio Spectrum Decision can be necessary to avoid cross-border interferences and beneficial to ensure release of the full benefits of the related technical harmonisation measures for equipment markets and for the deployment of very high capacity electronic communications networks and services. In order to significantly contribute to the objectives of this framework and facilitate coordination, the establishment of such common deadlines should be subject to Commission implementing acts. ***In addition to the 700 MHz band, such common maximum deadlines could in particular cover spectrum in the 3.4-3.8 GHz and the 24.25-27.5 GHz bands which have been identified by the RSPG in its opinion on spectrum related aspects for next-generation wireless systems (5G) as 'pioneer' bands for use by 2020, as well as additional bands above 24 GHz which the RSPG considers potentially usable for 5G in Europe such as 31.8-33.4 GHz and 40.5-43.5 GHz. Assignment conditions in additional bands above 24 GHz should take into account potential spectrum sharing scenarios with incumbent users.***¹⁰
- (126) Where the demand for a radio spectrum band exceeds the availability and, as a result, a Member State concludes that the rights of use for radio spectrum must be limited, appropriate and transparent procedures should apply for the granting of such rights to avoid any discrimination and optimise the use of the scarce resource. Such limitation should be justified, proportionate and based on a thorough assessment of market conditions, giving due weight to the overall benefits for users and to national and internal market objectives. The objectives governing any limitation procedure should be clearly defined in advance. When considering the most appropriate selection procedure, and in compliance with coordination measures taken at Union level, Member States should timely and transparently consult all interested parties on the justification, objectives and conditions of the procedure. Member States may use, *inter*

¹⁰ DR AM 16. Justif: *To highlight the spectrum bands of most immediate importance to the roll-out of new advanced mobile networks.*

alia, competitive or comparative selection procedures for the assignment of radio spectrum or for numbers with exceptional economic value. In administering such schemes, national regulatory authorities should take into account the objectives of this Directive. If a Member State finds that further rights can be made available in a band, it should start the process therefor.

- (127) Massive growth in radio spectrum demand, and in end-user demand for wireless broadband capacity, calls for solutions allowing alternative, complementary, spectrally efficient access solutions, including low-power wireless access systems with a small-area operating range such as radio local area networks (RLAN) and networks of low-power small-size cellular access points. Such complementary wireless access systems, in particular publicly accessible RLAN access points, increase access to the internet for end-users and mobile traffic off-loading for mobile operators. RLANs use harmonised radio spectrum without requiring an individual authorisation or spectrum usage right. Most RLAN access points are so far used by private users as local wireless extension of their fixed broadband connection. End-users, within the limits of their own internet subscription, should not be prevented from sharing access to their RLAN with others, so as to increase the number of available access points, particularly in densely populated areas, maximise wireless data capacity through radio spectrum re-use and create a cost-effective complementary wireless broadband infrastructure accessible to other end-users. Therefore, unnecessary restrictions to the deployment and interlinkage of RLAN access points should also be removed. Public authorities or public service providers, who use RLANs in their premises for their personnel, visitors or clients, for example to facilitate access to e-Government services or for information on public transport or road traffic management, could also provide access to such access points for general use by citizens as an ancillary service to services they offer to the public on such premises, to the extent allowed by competition and public procurement rules. Moreover, the provider of such local access to electronic communications networks within or around a private property or a limited public area on a non-commercial basis or as an ancillary service to another activity that is not dependant on such access (such as RLAN hotspots made available to customers of other commercial activities or to the general public in that area) can be subject to compliance with general authorisations for rights of use for radio spectrum but should not be subject to any conditions or requirements attached to general authorisations applicable to providers of public communications networks or services or to obligations regarding end-users or interconnection. However, such provider should remain subject to the liability rules of Article 12 of Directive 2000/31/EC on electronic commerce¹¹. Further technologies such as LiFi are emerging that will complement current radio spectrum capabilities of RLANs and wireless access point to include optical visible light-based access points and lead to hybrid local area networks allowing optical wireless communication.
- (128) Since low power small-area wireless access points are very small and make use of unobtrusive equipment similar to that of domestic RLAN routers and considering their positive impact on the use of spectrum and on the development of wireless communications, their technical characteristics - such as power output- should be specified at Union level in a proportionate way for local deployment and their use should be subject to general authorisations only – to the exception of RLAN which should not be subject to any authorisation requirement beyond what is necessary for

¹¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), (OJ L 178, 17.7.2000, p.1).

the use of radio spectrum - and any additional restrictions under individual planning or other permits should be limited to the greatest extent possible.

(128a) Public buildings and other public infrastructure are visited and used daily by a significant number of end-users who need connectivity to consume eGovernance, eTransport and other services. Other public infrastructure (such as street lamps, traffic lights, etc.) offer very valuable sites for deploying small cells due to their density, etc. Operators should have access to these public sites for the purpose of adequately serving demand. For this reason Member States should ensure that such public buildings and other public infrastructure are made available on reasonable conditions for the deployment of small-cells with a view to complement the Broadband Cost Reduction Directive 2014/61/EU. The latter follows a functional approach and imposes obligations of access to physical infrastructure only when the latter is part of a network and only if it is owned or used by a network operator, thereby leaving many buildings owned or used by public authorities outside its scope. On the contrary, a specific obligation is not necessary for physical infrastructure, such as ducts or poles, used for intelligent transport systems (ITS), which are owned by network operators (providers of transport services and/or providers of public communications networks), and host parts of a network, thus falling within the scope of Directive 2014/61/EU.¹²

(142) *deleted*¹³

¹² DR AM 17. Justif: *Inextricably linked to other admissible amendments.*

¹³ DR AM 19

Articles

Art 2(19)-(20), (24)-27 (Definitions)

(19) 'spectrum allocation' means the designation of a given frequency band for use by one or more types of radio communications services, where appropriate, under specified conditions;

[(20) 'harmful interference' [covered by the draft CA on Art 28 - spectrum coordination]]

(24) 'small-area wireless access point' means a low power wireless network access equipment of small size operating within a small range, using licenced radio spectrum or licence-exempt radio spectrum or a combination thereof, which may or may not be part of a public terrestrial mobile communications network, and be equipped with one or more low visual impact antennae, which allows wireless access by users to electronic communications networks regardless of the underlying network topology be it mobile or fixed;

(25) 'radio local area network' (RLAN) means a low power wireless access system, operating within a small range, with a low risk of interference to other such systems deployed in close proximity by other users, using on a non-exclusive basis, radio spectrum for which the conditions of availability and efficient use for this purpose are harmonised at Union level;

(26) 'shared use of radio spectrum' means access by two or more users to use the same frequencies under a defined sharing arrangement, authorised by a [national regulatory competent](#)¹⁴ authority on the basis of a general authorisation, individual rights of use or a combination thereof, including regulatory approaches such as licenced shared access aiming to facilitate the shared use of a frequency band, subject to a binding agreement of all parties involved, in accordance with sharing rules as included in their rights of use so as to guarantee to all users predictable and reliable sharing arrangements, and without prejudice to the application of competition law;

[(27) 'harmonised radio spectrum' [covered by the draft CA on Art 28 - spectrum coordination]]

¹⁴ [To correct what appears to be an error in the COM proposal. Cf 47\(2\).](#)

Article 4

Strategic planning and coordination of radio spectrum policy

1. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the Union. To this end, they shall take into consideration, inter alia, the economic, safety, health, public interest, public security and defence, freedom of expression, cultural, scientific, social and technical aspects of EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.
2. By cooperating with each other and with the Commission, Member States shall promote the coordination of radio spectrum policy approaches in the European Union and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in electronic communications.
3. Member States shall cooperate through the Radio Spectrum Policy Group, ~~established by Commission Decision 2002/622/EC,~~¹⁵ with each other and with the Commission, and **the Radio Spectrum Policy Group shall assist and advise** the European Parliament and the Council **on request**, in support of the strategic planning and coordination of radio spectrum policy approaches in the Union.¹⁶
4. The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group, may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy programmes ***as well as for the release of spectrum for shared and unlicensed uses***. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of this Directive.¹⁷

Article 18

Amendment of rights and obligations

1. Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use for radio spectrum or for numbers or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio spectrum and for numbers. **Amendments regarding individual rights of use for radio spectrum will only be valid if taken with the prior agreement of the right holder.**¹⁸
2. Except where proposed amendments are minor, and have been agreed with the holder of the rights or general authorisation, and without prejudice to Article 35 notice shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their

¹⁵ [The CA on Art 28 would establish the RSPG.](#)

¹⁶ DR AM 36

¹⁷ [AM 603 Reimon \(adapted\).](#)

¹⁸ DR AM 45. Justif: *From the perspective of foreseeability, an individual right of use, once awarded, should not be subject to amendment not provided for in the original conditions for its grant except with the consent of the rightholder. Inextricably linked to other admissible AMs.*

views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances.

Any amendment shall be published stating the reasons thereof.

Article 19

Restriction or withdrawal of rights

1. Member States shall not restrict or withdraw rights to install facilities or rights of use for radio spectrum or numbers before expiry of the period for which they were granted except where justified pursuant to paragraph 2 and where applicable in conformity with the Annex I and relevant national provisions regarding compensation for withdrawal of rights.

2. In line with the need to ensure the effective and efficient use of radio spectrum or the implementation of harmonised conditions adopted under Decision No 676/2002/EC, Member States may allow **the restriction or** withdrawal of rights **granted after the date set out in Article 115, including those with a 30-year minimum duration by the competent national authority**,¹⁹ based on **detailed**²⁰ procedures laid down in advance, **and with clearly defined usage conditions and thresholds at the time of award or renewal** in compliance with the principles of proportionality and non-discrimination.²¹

3. A modification in the use of radio spectrum as a result of the application of paragraphs 4 or 5 of Article 45 shall not justify by itself the withdrawal of a right to use radio spectrum.

4. Any intention to restrict or withdraw authorisations or individual rights of use for radio spectrum or numbers shall be subject to a public consultation in accordance with Article 23.

Article 35

Peer review process

1. As regards the management of radio spectrum, national regulatory authorities shall be entrusted with the powers to at least adopt the following measures:+

- (a) in case of individual rights of use for radio spectrum, the selection process, in relation to Article 54;
- (b) the criteria regarding the eligibility of the bidder, where appropriate, in relation to Article 48 (4);
- (c) the parameters of spectrum economic valuation measures, such as the reserve price, in relation to Article 42;
- (d) the duration of the rights of use and the conditions for renewal in line with Articles 49 and Article 50;
- (e) any measures to promote competition pursuant to Article 52, when necessary;²²

¹⁹ [AM 426 Kumpula-Natri](#)

²⁰ [id](#)

²¹ DR AM 46. Justif: *This is a horizontal amendment with respect to the 30 year minimum duration introduced in order to promote legal certainty.*

²² [AM 541 Kumpula-Natri proposes an "including" addition, but that would depend on the outcome of Art 52 and need not be exemplified here.](#)

- (f) the conditions related to the assignment, transfer, including trade and lease of rights of use for radio spectrum in relation to Article 51, ~~sharing of spectrum or wireless infrastructure in relation to Article 59 paragraph 3~~ or the accumulation of rights of use in relation to Article 52 paragraph 2 (c) and (e); and²³
- (g) the parameters of coverage conditions pursuant to overall Member State policy objectives in this respect, in relation to Article 47.

When adopting these measures, the national regulatory authority shall take into account the relevant national policy objectives set out by the Member State as well as other relevant national measures in regard to the management of radio spectrum in compliance with Union law and shall base its measure on a thorough and objective assessment of the competitive, technical and economic situation of the market.

2. Where a national regulatory authority intends to take a measure which falls within the scope of paragraph 1 (a) to (g), it shall make the draft measure **publicly available and accessible**, together with the reasoning on which the measure is based, ~~to~~ **and inform** BEREC, **[the Radio Spectrum Policy Group](#)**,²⁴ the Commission and national regulatory authorities in other Member States, ~~thereof~~ at the same time.^{25 26}

3. Within **three months**, BEREC shall issue a reasoned opinion on the draft measure, which shall analyse whether that measure would be the most appropriate in order to:²⁷

- (a) ~~promote the development of the internal market as well as competition and maximise the benefits for the consumer, and~~ overall achieve the objectives and principles set in Articles 3 and 45(2),^{28 29}
- (b) ensure effective and efficient use of radio spectrum; and
- (c) ensure stable and predictable investment conditions for existing and prospective radio spectrum users when deploying networks for the provision of electronic communications services which rely on radio spectrum.

The reasoned opinion shall state if the draft measure should be amended or withdrawn. Where appropriate, BEREC shall provide specific recommendations to that end. National regulatory authorities and the Commission may also make comments on the draft decision to the national regulatory authority concerned.

[BEREC shall adopt and make public the criteria it will apply in evaluating any draft measure](#).³⁰

4. When carrying out their tasks pursuant to this Article, BEREC and national regulatory authorities shall have regard in particular to:

- (a) the objectives and principles provided in this Directive; as well as to any relevant Commission implementing decision adopted in accordance with this Directive as well as Decisions 676/2002/EC and 243/2012/EC;

²³ DR AM 60. Justif: *This AM is introduced for consistency with the deletion of Article 59(3).*

²⁴ [AM 544 \(Hokmark\) \(part\)](#)

²⁵ DR AM 61

²⁶ [AM 546 Kumpula-Natri](#)

²⁷ DR AM 62. Justif: *The peer review process should be efficient, and not extended for unlimited time.*

²⁸ DR AM 63. Justif: *The objectives mentioned here are already established in Articles 3 and 45(2) but in slightly different wordings, and "principles" are different from "objectives". The deletion minimises possible confusion.*

²⁹ [AM 549 Kallas proposes to add crossborder provision of services, but that's included in 3\(2\)\(c\) \("...provision of...\[ECS\] throughout the Union"\)](#).

³⁰ [AM 542 \(Boni\) \(adapted\)](#)

- (b) any specific national objectives established by the Member State consistent with Union law;
- (c) the need to avoid that competition is distorted when adopting such measures;
- (ca) the principles of service and technological neutrality;**³¹
- (d) the results of the most recent geographical survey of networks pursuant to Article 22;
- (e) the need to ensure coherence with recent and pending assignment procedures in other Member States, and possible effects on trade between Member States; and
- (f) any relevant opinion of the Radio Spectrum Policy Group ***in particular regarding the effective and efficient use of radio spectrum.***³²

5. The national regulatory authority concerned shall take utmost account of the opinion of BEREC and of comments made by the Commission and other national regulatory authorities before adopting its final decision. It shall communicate the final decision adopted to BEREC and the Commission.

Where the national regulatory authority decides not to amend or withdraw the draft measure on the basis of the reasoned opinion issued pursuant to paragraph 2 of this Article, it shall provide a reasoned justification.

The national regulatory authority concerned may withdraw its draft measure at any stage of the procedure.

6. When preparing their draft measure pursuant to this Article, national regulatory authorities may seek support from BEREC ***and the Radio Spectrum Policy Group.***³³

7. BEREC, the ***Radio Spectrum Policy Group***, the Commission and the national regulatory authority concerned shall cooperate closely to identify the most appropriate and effective solution in the light of the regulatory objectives and principles laid down in this Directive whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.³⁴

8. The final decision adopted by the national regulatory authority shall be published.

Article 36

Harmonised assignment of radio frequencies

Where the usage of radio frequencies has been harmonised, access conditions and procedures have been agreed, and undertakings to which the radio frequencies shall be assigned have been selected in accordance with international agreements and Union rules, Member States shall grant the right of use for such radio frequencies in accordance therewith. Provided that all national conditions attached to the right to use the radio frequencies concerned have been satisfied in the case of a common selection procedure, Member States shall not impose any

³¹ [AM 552 \(Buzek et al\) \(part\)](#)

³² DR AM 64

³³ DR AM 65

³⁴ DR AM 66

further conditions, additional criteria or procedures which would restrict, alter or delay the correct implementation of the common assignment of such radio frequencies.

Article 37

Joint authorisation process to grant individual rights of use for radio spectrum

1. In cases of significant risk of large scale crossborder harmful interference, ~~two~~ or several Member States ~~may shall, and in other cases they may,~~ cooperate with each other and with the Commission, **the Radio Spectrum Policy Group** and BEREC to meet their obligations under Articles 13, 46 and 54, by jointly establishing the common aspects of an authorisation process and also jointly conducting the selection process to grant individual rights of use for radio spectrum in line, where applicable, with any common timetable established in accordance with Article 53.

Any market participant may request the conduct of a joint selection process upon providing sufficient evidence that a lack of coordination creates a significant barrier to the internal market.³⁵

The joint authorisation process shall meet the following criteria:³⁶

- (a) the individual national authorisation processes shall be initiated and implemented by the competent authorities according to a jointly agreed schedule;
- (b) it shall provide where appropriate for common conditions and procedures for the selection and granting of individual rights among the Member States concerned;
- (c) it shall provide where appropriate for common or comparable conditions to be attached to the individual rights of use among the Member States concerned inter alia allowing users to be assigned similar radio spectrum blocks;
- (d) it shall be open at any time until the authorisation process has been conducted to other Member States.

2. Where the measures taken for the purposes of paragraph (1) fall in the scope of Article 35(1), the procedure provided in that Article shall be followed by the national regulatory authorities concerned simultaneously.

Article 42

Fees for rights of use for radio spectrum and rights to install facilities

Member States may allow the competent authority to impose fees for the rights of use for radio spectrum or rights to install facilities on, over or under public or private property that are used for the provision of electronic communications services or networks and associated facilities which ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose ~~and shall take into account the objectives in Articles 3, 4 and 45(2)~~, as well as:³⁷

³⁵ [AM 559 Kallas \(as amended\)](#)

³⁶ DR AM 67

³⁷ DR AM 68. Justif: "Optimal use" is the purpose of the fees, as stated a few lines above in the paragraph and in the recital, not also e.g. maintaining security (Art 3(2)(d)), strategic planning and coordination between MS

- (a) being service and technology neutral, subject only to limitations in line with Article 45(4) and (5), ~~while promoting the effective and efficient use of spectrum and maximising social and economic utility of spectrum;~~³⁸
- (a) taking into account the need to foster the development of innovative services; and
- (b) taking into account possible alternative uses of the resources.

2. Member States shall ensure that reserve prices established as minimum fees for rights of use for radio spectrum **take into account the value of the rights in their possible alternative use and** reflect the additional costs entailed by conditions attached to these rights in pursuit of the objectives under Articles 3, 4 and 45(2), such as coverage obligations that would fall outside normal commercial standards.³⁹

3. Member States shall apply payment modalities linked to the actual availability of the radio spectrum in question, which do not unduly burden any additional investments in networks and associated facilities necessary for the efficient use of the radio spectrum and the provision of related services.

4. Member States shall ensure that where competent authorities impose fees, they take into account other fees or administrative charges linked to the general authorisation or rights of use established pursuant to this Directive, in order not to create undue financial burden to undertakings providing electronic communications networks and services and to incentivise optimal use of the allocated resources.

5. The imposition of fees pursuant to this Article shall comply with the requirements of Article 23 and, where applicable, Articles 35, 48(6) and 54.

Article 45

Management of radio spectrum

1. Taking due account of the fact that radio spectrum is a public good that has an important social, cultural and economic value, Member States shall ensure the effective management of radio spectrum for electronic communications services and networks in their territory in accordance with Articles 3 and 4. They shall ensure that radio spectrum allocation used for electronic communications services and networks and issuing general authorisations or individual rights of use for such radio spectrum by competent authorities are based on objective, transparent, **pro-competitive**,⁴⁰ non-discriminatory and proportionate criteria.

In applying this Article, Member States shall respect relevant international agreements, including the ITU Radio Regulations and other agreements adopted in the framework of the ITU, and may take public policy considerations into account.

(Art 4) or preventing interference (Art 45(2)(d)). Further specific purposes are set out in points (a)-(c) in any event. Inextricably linked to other admissible AMs.

³⁸ DR AM 69

³⁹ DR AM 70. Justif: Fees imposed on undertakings for the rights of use for radio spectrum can influence decisions about whether to seek such rights and how to make the best use of radio spectrum resources. With a view of ensuring optimal use, when setting reserve prices representing the minimum valuation, Member States should make sure that these are based on a thorough assessment of the market conditions at the moment of the assignment, taking into account the value of the rights in their second-best use.

⁴⁰ [AM 593 Kumpula-Natri](#)

2. Member States shall promote the harmonisation of use of radio spectrum across the Union, consistent with the need to ensure effective and efficient use thereof and in pursuit of benefits for the consumer such as economies of scale and interoperability of services and networks. In so doing, they shall act in accordance with Article 4 and with Decision 676/2002/EC by inter alia:

- (a) ensuring coverage of their national territory and population at high quality and speed, both indoors and outdoors, including along major transport paths, including the trans-European transport network;⁴¹
- (b) ensuring that areas with similar characteristics, in particular in terms of network deployment or population density, are subject to consistent coverage conditions;
- (c) facilitating the rapid development in the Union of new wireless communications technologies and applications, including, where appropriate, in a cross-sectorial approach;
- (ca) ensuring predictability and consistency in the granting, renewal, amendment, restriction and withdrawal of rights in order to promote long-term investments;⁴²
- (d) ensuring the prevention of cross-border or national harmful interference in accordance with Articles 28 and 46 respectively, and taking appropriate preventive and remedial measures to that end;
- (e) promoting the shared use of radio spectrum between similar and/or different uses of spectrum through appropriate established sharing rules and conditions, including the protection of existing rights of use, in accordance with Union law;^{43 44}
- (f) applying the most appropriate and least onerous authorisation system possible in accordance with Article 46 in such a way as to maximise flexibility, sharing and efficiency in the use of radio spectrum;
- (g) ensuring that rules for the granting, transfer, renewal, modification and withdrawal of rights to use radio spectrum are clearly and transparently defined and applied in order to guarantee regulatory certainty, consistency and predictability;
- (h) ensuring consistency and predictability throughout the Union regarding the way the use of radio spectrum is authorised in protecting public health against harmful electromagnetic fields.

When adopting technical harmonisation measures under Decision No 676/2002/EC, the Commission may, taking utmost account of the opinion of Radio Spectrum Policy Group, adopt an implementing measure setting out whether, pursuant to Article 46 of this Directive, rights in the harmonised band shall be subject to a general authorisation or to individual rights of use. Those implementing measures shall be adopted in accordance with the examination procedure referred to in Article 110(4).

⁴¹ [AM 597 Kumpula-Natri, 596 Reimon - railroad issue](#)

⁴² [AM 599 Kumpula-Natri \(suggested amended\)](#)

⁴³ [AM 601 Kumpula-Natri would add "promoting competition". Cf AM 593, 550 and fn 29 above](#)

⁴⁴ [AM 603 Reimon, cf Art 4\(4\).](#)

Where the Commission is considering acting to provide for measures in accordance with Article 39, it may shall⁴⁵ seek the advice of the Radio Spectrum Policy Group with regard to the implications of any such standard or specification for the coordination, harmonisation and availability of radio spectrum. The Commission shall take utmost account of the advice of the Radio Spectrum Policy Group in taking any subsequent steps.

3. In case of a national or regional lack of market demand, based on a three-year forecast,⁴⁶ for the use of a harmonised band, and subject to the harmonisation measure adopted under Decision No 676/2002/EC, Member States may allow an alternative use of all or part of that band, including the existing use, in accordance with paragraphs 4 and 5, provided that:

- (a) the finding of a lack of market demand for the use of the harmonised band is based on a public consultation in line with Article 23;
- (b) such alternative use does not prevent or hinder the availability or the use of the harmonised band in other Member States; and
- (c) the Member State concerned takes due account of the long-term availability or use of the harmonised band in the Union and the economies of scale for equipment resulting from using the harmonised radio spectrum in the Union.⁴⁷

The alternative use shall only be allowed on an exceptional basis. It shall be subject to a review every three years, or upon request to the competent authority for use of the band in accordance with the harmonisation measure by a prospective user. The Member State shall inform the Commission and the other Member States of the decision taken as well as of the outcome of any review, together with its reasoning.

4. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of technology used for electronic communications services or networks may be used in the radio spectrum, declared available for electronic communications services in their National Frequency Allocation Plan in accordance with Union law.

Member States may shall only,⁴⁸ however, provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to:

- (a) avoid harmful interference;
- (b) protect public health against electromagnetic fields, taking utmost account of Council Recommendation No 1999/519/EC⁴⁹;
- (c) ensure technical quality of service;
- (d) ensure maximisation of shared use of radio spectrum resources, in accordance with Union law;
- (e) safeguard efficient use of radio spectrum; or
- (f) ensure the fulfilment of a general interest objective in accordance with paragraph 5.

⁴⁵ [AM 605 Kumpula-Natri](#)

⁴⁶ [AM 610 Kallas - attempt to capture the idea, while aligning to the three-year review in the last subpar. But query whether it might not be better to require more frequent reviews than every three years, e.g. yearly.](#)

⁴⁷ [AM 607 Kumpula-Natri would add a w/o prejudice to the RSPP and the 700Mhz Decision. But query how that aligns to this par, which refers to lack of demand for a harmonised band and is subject to the harmonisation measures?](#)

⁴⁸ [AM 611 Reimon and 612 Kumpula-Natri \(amended\)](#)

⁴⁹ Recommendation 1999/519/EC of the Council of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) (OJ L 1999, 30.7.1999, p. 59).

5. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of electronic communications services may be provided in the radio spectrum, declared available for electronic communications services in their National Frequency Allocation Plan in accordance with Union law. Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, including, where necessary, to fulfil a requirement under the ITU Radio Regulations.

Measures that require an electronic communications service to be provided in a specific band available for electronic communications services shall be justified in order to ensure the fulfilment of a general interest objective as defined by Member States in conformity with Union law, such as, and not limited to:

- (a) safety of life;
- (b) the promotion of social, regional or territorial cohesion;
- (c) the avoidance of inefficient use of radio spectrum; or
- (d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.

⁵⁰

A measure which prohibits the provision of any other electronic communications service in a specific band may only be provided for where justified by the need to protect safety of life services. Member States may, exceptionally, also extend such a measure in order to fulfil other general interest objectives as defined by *the Union or by*⁵¹ Member States in accordance with Union law.

6. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 4 and 5, and shall make the results of these reviews public.

7. Restrictions established prior to 25 May 2011 shall comply with paragraphs 4 and 5 by the date of application of this Directive.

Article 46

Authorisation of the use of radio spectrum

1. Member States shall *decide on the most appropriate regime for authorising the use of radio spectrum*,⁵² 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 necessary *in order to*:⁵³

~~To this end, Member States shall decide on the most appropriate regime for authorising the use of radio spectrum, taking account:~~⁵⁴

- ~~(a) the specific characteristics of the radio spectrum concerned;~~

⁵⁰ [AM 613 Kumpula-Natri and 616 Reimon would add promotion of interconnection along major transport paths. Covered, more strongly, by 45\(2\)\(a\) and 59\(1\)?](#)

⁵¹ [AM 617 Reimon and 618 Kumpula-Natri, proposed amended](#)

⁵² [AM 621 Kumpula-Natri](#)

⁵³ DR AM 71. Justif: *The AMs to Art 46 form a block intended primarily to simplify the Article and bring it closer to its current wording.*

⁵⁴ DR AM 72. [AM72 deletes the entire subparagraph, in order for AMs 73-76 to rephrase it.]

- (b) **avoid** harmful interference;⁵⁵
 - ~~(c) the requirements for a reliable sharing arrangement, where appropriate;~~
 - ~~(d) the appropriate level of receiver resilience to ensure technical quality of communications or service;⁵⁶~~
 - (e) **fulfil other** objectives of general interest as defined by Member States in conformity with Union law.⁵⁷
- (ea) **maximise efficient use of spectrum.**^{58 59}

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.⁶⁰

- ~~deleted~~⁶¹
- ~~deleted~~⁶²
- ~~deleted~~⁶³
- ~~deleted~~⁶⁴

Member States shall minimise restrictions to the use of radio spectrum by taking full account of technological solutions for managing harmful interferences so as to impose the least onerous authorisation regime possible.^{65 66}

2. **Member States** shall ensure that the rules and conditions for the shared use of radio spectrum, **where shared use is applied**, are clearly set out and specified in the acts of authorisation.^{67 68}

⁵⁵ DR AM 73. Justif: *Inextricably linked to other admissible AMs.*

⁵⁶ DR AM 74. (Same justif as to AM 73.)

⁵⁷ DR AM 75. (Same justif as to AM 73.)

⁵⁸ DR AM 76. (Same justif as to AM 73.)

⁵⁹ [AM 621 Kumpula-Natri and AM 632 Reimon would add mobile coverage along railroads. Addressed in 45\(2\) \(a\).](#)

⁶⁰ DR AM 77

⁶¹ DR AM 78

⁶² DR AM 79

⁶³ DR AM 80

⁶⁴ DR AM 81

⁶⁵ DR AM 82. (Same justif as to AM 73.)

⁶⁶ [AM 636 Kallas on gradual transfer from general authorisation to individual rights? But cf 46\(1\), favouring general authorisations and not changed in that respect by AM 620 Kallas.](#)

⁶⁷ DR AM 83

⁶⁸ [AM 646 Kumpula-Natri suggests text on wholesale access](#)

[2a. When authorising the shared use of spectrum, Member States shall minimise the restrictions to the use of radio spectrum to what is necessary to avoid harmful interference, including by limiting to the best extent possible the application of the non-interference, non-protection principle. Where such principles shall apply, Member States shall take measures to ensure protection against out-of-and interference from adjacent bands.]⁶⁹

3. The Commission **shall**, taking utmost account of the opinion of the Radio Spectrum Policy Group, adopt implementing measures on the modalities of application of the criteria, rules and conditions referred to in paragraphs 1 and 2 with regard to harmonised radio spectrum. It shall adopt these measures in accordance with the examination procedure referred to in Article 110(4). **These measures shall be adopted by [insert date].**⁷⁰

Article 47

Conditions attached to general authorisations and to rights of use for radio spectrum

1. Competent authorities shall attach conditions to individual rights and general authorisations to use radio spectrum in accordance with Article 13(1) in such a way as to ensure **optimal** use of radio spectrum by the beneficiaries of the general authorisation or the holders of individual rights or by any third party to which an individual right or part thereof has been traded or leased. They shall clearly define any such conditions including the level of use required and the possibility to trade and lease in relation to this obligation in order to ensure the implementation of those conditions in line with Article 30. **In the case of individual rights any such conditions must be clearly defined before the award, assignment or renewal.** Conditions attached to renewals of right of use for radio spectrum may not provide undue advantages to existing holders of those rights.⁷¹

Any such conditions shall specify any applicable parameters, including the period for putting the rights into use, the non-fulfilment of which would entitle the Member State to consider withdrawal of the right of use or the imposition of other measures, such as shared use.⁷²

In order to maximise radio spectrum efficiency, when determining the amount and type of radio spectrum to be assigned, the competent authority shall have regard in particular to:

- a. the possibility to combine complementary bands in a single assignment process; and
- b. the relevance of the size of radio spectrum blocks or of the possibility to combine such blocks in relation to the possible uses thereof, considering in particular the needs of new emerging communications systems.

Competent authorities shall timely consult and inform interested parties regarding conditions attached to individual usage rights and general authorisations in advance of their imposition. They shall determine in advance and inform interested parties in a transparent manner of the criteria for the assessment of the fulfilment of these conditions.

⁶⁹ [645 Kallas. Needs further explanation](#)

⁷⁰ DR AM 84. Justif: *Horizontal AM applicable to all mandates to the Commission. Any mandate given to the Commission should be necessary. In order to enable scrutiny, mandates should lead to measures by a date certain.*

⁷¹ DR AM 85

⁷² [AM 423 Del Castillo \("use it or lose it"\)](#)

2. When attaching conditions to individual rights of use for radio spectrum, competent authorities may authorise the sharing of passive or active infrastructure, or of radio spectrum, as well as commercial roaming access agreements, or the joint roll-out of infrastructures for the provision of services or networks which rely on the use of radio spectrum, in particular with a view to ensuring effective and efficient use of radio spectrum or promoting coverage. Conditions attached to the rights of use shall not prevent the sharing of radio spectrum. Implementation by undertakings of conditions attached pursuant to this paragraph shall remain subject to competition law.⁷³

3. The Commission may adopt implementing measures in order to specify the modalities of applying the conditions that Member States may attach to authorisations to use **harmonised**⁷⁴ radio spectrum in accordance with paragraphs 1 and 2, with the exception of fees pursuant to Article 42.

With regard to the coverage requirement under Part D of Annex I, any implementing measure shall be limited to specifying criteria to be used by the competent authority to define and measure coverage obligations, taking into account similarities of regional geographical characteristics, population density, economic development or network development for specific types of electronic communications and evolution of demand. Implementing measures shall not extend to the definition of specific coverage obligations.

Those implementing measures shall be adopted in accordance with the examination procedure referred to in Article 110(4), taking utmost account of any opinion of the Radio Spectrum Policy Group.

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 networks or services under the general authorisation referred to in Article 12, subject to the provisions of Articles 13, 54 and 21(1)(c) and 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 rights of use for radio spectrum to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Union law, the rights of use for radio spectrum shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 45.

3. An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use for radio spectrum to the providers of radio or television broadcast

⁷³ [AM 655 Kumpula-Natri refers to close to 100% population coverage. However, this par is a "may" and relates solely to individual rights. Perhaps consider in recital relating to Art 1 \("ensure provision throughout the Union"\) and/or in Art 3\(2\)?](#)

⁷⁴ [AM 659 Kumpula-Natri would delete "harmonised".](#)

content services is necessary to achieve a general interest objective as defined by [the Union or by](#)⁷⁵ Member States in conformity 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. They shall be able to request all necessary information from applicants to assess, on the basis of said criteria, applicants' ability to comply with the conditions. Where on the basis of the assessment, the authority concludes that an applicant does not possess the required ability, it shall provide a duly reasoned decision to that effect.

5. When granting rights of use, Member States shall specify whether those rights can be transferred or leased by the holder of the rights, and under which conditions. In the case of radio spectrum, such provision shall be in accordance with Articles 45 and 51 of this Directive.

6. Decisions on the granting of rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within six weeks in the case of radio spectrum declared available for electronic communications services in their national frequency allocation plan. This time limit shall be without prejudice 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 of time, they shall ensure that the authorisation is granted for a period that is appropriate in view of the objective pursued taking due account of the need to ensure effective and efficient use and promote efficient investments, including by allowing for an appropriate period for investment amortisation.⁷⁶

2. Where Member States grant rights of use for harmonised radio spectrum those rights of use for harmonised radio spectrum shall, [subject to Article 47](#), be valid for a duration of at least [30-25](#) years, except in the case of temporary rights, temporary extension of rights pursuant to paragraph 3 and rights for secondary use in harmonised bands.⁷⁷

3. Member States may extend the duration of rights of use for a short period of time to ensure the simultaneous expiry of rights in one or several bands.

Article 50

Renewal of rights

⁷⁵ [AM 662 Reimon, as proposed amended](#)

⁷⁶ [AM 663 Kallas would add promote innovation etc, but cf Art 3\(2\). 664 Kumpula-Natri refers to competition, cf again Art 3\(2\)](#)

⁷⁷ DR AM 86

1. **Without prejudice to renewal clauses applicable to existing rights**, competent authorities shall **consider** the renewal of **existing** individual rights of use for harmonised radio spectrum at their own initiative or upon request by the right holder, ~~in the latter case not earlier than 5 years prior to expiry of the rights concerned.~~^{78 79}

2. **deleted**⁸⁰

3. When considering possible renewal of individual rights of use for **harmonised** radio spectrum, competent authorities shall:⁸¹

(a) give all interested parties, including users and consumers, the opportunity to express their views through a public consultation in accordance with article 23; and

(b) **have regard to the following considerations:**

1. fulfilment of the objectives of Articles 3, 45(2) and 48(2), as well as public policy objectives under national or Union law;

2. implementation of a measure adopted pursuant to Article 4 of Decision No 676/2002/EC;

3. review of the appropriate implementation of the conditions attached to the right concerned;

4. the need to promote, or avoid any distortion of, competition pursuant to Article 52;⁸²

5. rendering the use of radio spectrum more efficient in light of technological or market evolution;

6. the need to avoid severe service disruption;

7. existence of market demand from undertakings other than those holding rights of use for spectrum in the band concerned;

8. the need to limit the number of rights in line with article 46.⁸³

deleted⁸⁴

3 a. At least 3 years before the expiry of the rights involved, the competent authority shall decide whether to renew the existing rights based on the outcome of the public consultation and the review of the considerations under sub-paragraph 2(b) and justify its decision accordingly.

Where the competent authority decides that the spectrum rights shall not be renewed, and that the number of rights has to be limited, the competent authority shall grant the rights pursuant to Article 54.⁸⁵

4. A decision to grant a renewal of rights shall be accompanied by a review of the fees attached thereto. Where appropriate, competent authorities may adjust the fees for the rights of use in compliance with the principles set out in Article 42(1) and (2).

⁷⁸ DR AM 87. Justif: *Clarity and predictability in the possibility to have spectrum usage rights renewed is essential in supporting and encouraging investments. The AM further clarifies the conditions and the procedure for renewal.*

⁷⁹ [AM 676 Tosenovsky \(partly\)](#)

⁸⁰ DR AM 88

⁸¹ DR AM 89

⁸² [AM 679 Kumpula-Natri?](#)

⁸³ DR AM 90. Justif: *Inextricably linked to other admissible AMs.*

⁸⁴ DR AM 91

⁸⁵ DR AM 92. (Same justif as to AM 90.)

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 ~~in accordance with conditions attached to the rights of use for radio spectrum and in accordance with national procedures~~ individual rights of use for radio spectrum ~~in the bands for which this is provided in the implementing measures adopted pursuant to paragraph 4 or by any other Union measure such as the a radio spectrum policy programme adopted pursuant to Article 4(4).~~⁸⁶

~~deleted~~⁸⁷

~~deleted~~⁸⁸

~~deleted~~⁸⁹

2. Member States shall ensure that an undertaking's intention to transfer rights of use for radio spectrum, as well as the effective transfer thereof is notified in accordance with national procedures to the national regulatory authority and to the competent authority responsible for granting individual rights of use if different and is made public **by entry on the register kept pursuant to paragraph 3**. Where the use of radio spectrum has been harmonised through the application of the Decision No 676/2002/EC (Radio Spectrum Decision) or other Union measures, any such transfer shall comply with such harmonised use.⁹⁰

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 of this Directive, Member States shall:

(a) submit **transfers and leases** to the least onerous procedure possible;⁹¹

(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;⁹²

(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 conditions for the right of use;⁹³

(ca) not refuse a transfer or lease to an existing holder of rights of use for radio spectrum.⁹⁴

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, in total, cover only the administrative costs, including any necessary ancillary steps, incurred in processing the application, and comply with Article 16.⁹⁵

⁸⁶ DR AM 93. Justif: *The AMs to Art 51 aim at further strengthening the possibility to trade spectrum, with a view to enabling its optimal use. They are inextricably linked to other admissible AMs.*

⁸⁷ DR AM 94

⁸⁸ DR AM 95

⁸⁹ DR AM 96

⁹⁰ DR AM 97

⁹¹ DR AM 98

⁹² DR AM 99

⁹³ DR AM 100

⁹⁴ DR AM 101

⁹⁵ DR AM 102

Points (a) to **(ca)** are without prejudice to the Member States' competence to enforce compliance with the conditions attached to the rights of use at any time.⁹⁶

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

In view of any transfer or lease of rights of use for radio spectrum, competent authorities shall make all details relating to tradable individual rights publicly available in a standardised electronic format when the rights are created and keep those details **current** as long as the rights exist.⁹⁷

4. The Commission may adopt appropriate implementing measures to identify the bands for which rights of use for radio frequencies may be transferred or leased between undertakings. These measures shall not cover frequencies which are used for broadcasting.

These technical implementing measures shall be adopted in accordance with the examination procedure referred to in Article 110(4).

Article 52

Competition

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

2. When Member States grant, amend or renew rights of use for radio spectrum, their national regulatory authorities **shall, taking into utmost account the guidelines for market analysis and the assessment of significant market power published by the Commission pursuant to Article 62(2), conduct an objective and forward-looking assessment of the market competitive conditions, and shall only take any of the measures set out in points (a) to (e) where such a measure is necessary to maintain or achieve effective competition and will not have undue negative effects on existing and future investments by operators in particular for network roll-out.**⁹⁸

(a) limiting the amount of radio spectrum for which rights of use are granted to any undertaking, or, **in exceptional 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;^{99 100}

⁹⁶ DR AM 103

⁹⁷ DR AM 104

⁹⁸ DR AM 105. Justif: *In order avoid inconsistent approaches, the guidelines for market analysis and the assessment of significant market power should be duly taken into account also in this context, as well as the need to safeguard investment.*

⁹⁹ DR AM 106. Justif: *Conditions of rights of use for spectrum should only involve access obligations etc in exceptional cases in order not to discourage investment.*

¹⁰⁰ [AM 689 Kumpula-Natri?](#)

- (b) reserving, if appropriate in regard to an exceptional situation in the national market, a certain part of a frequency band or group of bands for assignment to new entrants;¹⁰¹
- (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 radio spectrum uses, in order to avoid the distortion of competition by any assignment, transfer or accumulation of rights of use;
- (d) prohibiting or imposing conditions on transfers of rights of use for radio spectrum, not subject to national or Union 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.

*deleted*¹⁰²

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

SECTION 3 PROCEDURES

Article 53

Coordinated timing of assignments

In order to *ensure efficient and coordinated*¹⁰³ ~~the~~ use of harmonised radio spectrum in the Union and taking due account of the different national market situations, the Commission may, by way of an implementing measure:

- (a) establish one, or, where appropriate, several common maximum dates by which the use of specific harmonised radio spectrum bands shall be authorised;
- (b) where necessary to ensure the effectiveness of coordination, adopt any transitional measure regarding the duration of rights pursuant to Article 49, such as an extension or a reduction of their duration, in order to adapt existing rights or authorisations to such harmonised date.

Those implementing measures shall be adopted in accordance with the examination procedure referred to in Article 110(4), taking utmost account of the opinion of the Radio Spectrum Policy Group.

Article 54

Procedure for limiting the number of rights of use to be granted for radio spectrum

¹⁰¹ [AM 693 Kumpula-Natri unclear](#)

¹⁰² DR AM 107. Justif: Amended and integrated into the introductory part of Art 52(2).

¹⁰³ [AM 696 Hokmark \(adapted\)](#)

1. Without prejudice to any implementing act adopted pursuant to Article 53, where a Member State concludes that a right to use radio spectrum cannot be granted pursuant to Article 46 and where it considers whether to limit the number of rights of use to be granted for radio spectrum, it shall inter alia:

(a) clearly state the reasons for limiting the rights of use, in particular by giving due weight to the need to maximise benefits for users and to facilitate the development of competition, ~~and review the limitation at regular intervals or at the reasonable request of affected undertakings;~~¹⁰⁴

(b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation through a public consultation in accordance with Article 23. In the case of harmonised radio spectrum, this public consultation shall start within six months of the adoption of the implementing measure under Decision No 676/2002/EC unless technical reasons therein require a longer deadline;

2. When a Member State concludes that the number of rights of use has to be limited, it shall clearly define and justify the objectives pursued with the selection procedure, and where possible quantify them, giving due weight to the need to fulfil national and internal market objectives. The objectives that the Member State may set out with a view to design the specific selection procedure shall be limited to one or more of the following:

(a) promoting coverage;

(b) required quality of service;

(c) promoting competition;

(d) promoting innovation and business development; and

(e) ensuring that fees promote optimal use of radio spectrum in accordance with Article 42;

The national regulatory authority shall clearly define and justify the choice of the selection procedure, including any preliminary phase to access the selection procedure. It shall also clearly state the outcome of any related assessment of the competitive, technical and economic situation of the market and provide reasons for the possible use and choice of measures pursuant to Article 35.

3. Member States shall publish any decision on the selection procedure chosen and the related elements, clearly stating the reasons therefor and how it has taken into account the measure adopted by the national regulatory authority in accordance with Article 35. It shall also publish the conditions that will be attached to the rights of use.

4. After having determined the procedure, the Member State shall invite applications for rights of use.

5. Where a Member State concludes that further rights of use for radio spectrum or a combination of different types of rights can be granted, taking into consideration advanced methods for protection against harmful interference, it shall publish that conclusion and initiate the process of granting such rights.

6. Where the granting of rights of use for radio spectrum needs to be limited, Member States shall grant such rights on the basis of selection criteria and a procedure determined by their national regulatory authorities pursuant to Article 35, which must be objective, transparent, non-discriminatory and proportionate. Any such selection criteria must give due weight to the achievement of the objectives and requirements of Articles 3, 4, 28 and 45.

¹⁰⁴

7. The Commission may adopt implementing measures setting criteria in order to coordinate the implementation of the obligations under paragraphs 1 to 3 by Member States. The implementing measures shall be adopted in accordance with the procedure referred to in Article 110(4) and taking utmost account of the opinion of the Radio Spectrum Policy Group.

8. Where competitive or comparative selection procedures are to be used, Member States may extend the maximum period of six weeks referred to in Article 48(6) for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than eight months, subject to any specific timetable established pursuant to Article 53.

Those time limits shall be without prejudice to any applicable international agreements relating to the use of radio spectrum and satellite coordination.

9. This Article is without prejudice to the transfer of rights of use for radio spectrum in accordance with Article 51 of this Directive.

CHAPTER III

DEPLOYMENT AND USE OF WIRELESS NETWORK EQUIPMENT

Article 55

Access to radio local area networks

1. Competent authorities shall allow the provision of access through radio local area networks to a public communications network as well as the use of the harmonised radio spectrum for that provision, subject only to applicable general authorisation conditions.

Where that provision is not commercial in character or is ancillary to another commercial activity or public service which is not dependent on the conveyance of signals on those networks, any undertaking, public authority or end-user¹⁰⁵ providing such access shall not be subject to any general authorisation for the provision of electronic communications networks or services pursuant to Article 12, to obligations regarding end-users rights pursuant to Title III of Part III of this Directive nor to obligations to interconnect their networks pursuant to Article 59 (1).

1a. For the avoidance of doubt, article 12 ('mere conduit') of Directive 2000/21 shall apply to provision of access pursuant to paragraph 1.¹⁰⁶

2. Competent authorities shall not prevent providers of public communications networks or publicly available electronic communications services from allowing access to their networks to the public, through radio local area networks, which may be located at an end-user's premises, subject to compliance with the applicable general authorisation conditions and the prior informed agreement of the end-user.

3. In line in particular with Article 3(1) of Regulation 2015/2120 of the European Parliament and of the Council,¹⁰⁷ competent authorities shall ensure that providers of public

¹⁰⁵ [AM 702 Reimon would change "end-user" to "user" throughout Art 55. But "user" is defined in 2\(13\) to include other operators, and this subpar is about non-commercial/ancillary provision of access.](#)

¹⁰⁶ [AM 702 Reimon, 703 Kallas, as proposed amended.](#)

¹⁰⁷ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users'

communications networks or publicly available electronic communications services do not unilaterally restrict:

- a) the right of end-users to accede to radio local area networks of their choice provided by third parties;
- b) the right of end-users to allow reciprocally or more generally access to the networks of such providers by other end-users through radio local area networks, including on the basis of third-party initiatives which aggregate and make publicly accessible the radio local area networks of different end-users.¹⁰⁸

To that end, providers of public communications networks or publicly available electronic communications services shall make available and actively offer, clearly and transparently, products or specific offers allowing its end-users to provide access to third parties through a radio local area network.¹⁰⁹

4. Competent authorities shall not restrict the right of end-users to allow reciprocally or more generally access to their radio local area networks by other end-users, including on the basis of third-party initiatives which aggregate and make the radio local area networks of different end-users publicly accessible.

5. Competent authorities shall not restrict the provision of access to radio local area networks to the public:

- (a) by public authorities on or in the immediate vicinity of premises occupied by such public authorities, when that provision is ancillary to the public services provided on those premises;
- (b) by initiatives of non-governmental organisations or public authorities to aggregate and make reciprocally or more generally accessible the radio local area networks of different end-users, including, where applicable, the radio local area networks to which public access is provided in accordance with point (a).

Article 56

Deployment and operation of small-area wireless access points

1. Competent authorities shall allow the deployment, connection and operation of unobtrusive small-area wireless access points under the general authorisation regime and shall not unduly restrict that deployment, connection or operation through individual town planning permits or in any other way, whenever such use is in compliance with implementing measures adopted pursuant to paragraph 2. The small-area wireless access points shall not be subject to any fees or charges going beyond the administrative charge that may be associated to the general authorisation in accordance with Article 16.

This paragraph is without prejudice to the authorisation regime for the radio spectrum employed to operate small-area wireless access points.

2. In order to ensure the uniform implementation of the general authorisation regime for the deployment, connection and operation of small-area wireless access points, the Commission

rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, OJ L 310, 26.11.2015, p. 1

¹⁰⁸ [AM 710 \(to delete point b\) Tosenovsky?](#)

¹⁰⁹ [AM 712 Tosenovsky and 713 Reimon?](#)

may, by means of an implementing act, specify technical characteristics for the design, deployment and operation of small-area wireless access points, which shall at a minimum comply with the requirements of Directive 2013/35/EU¹¹⁰ and take account of the thresholds defined in Council Recommendation No 1999/519/EC.¹¹¹ The Commission shall specify those technical characteristics by reference to the maximum size, power and electromagnetic characteristics, as well as the visual impact, of the deployed small-area wireless access points. Compliance with the specified characteristics shall ensure that small-area wireless access points are unobtrusive when in use in different local contexts.

The technical characteristics specified in order for the deployment, connection and operation of small-area wireless access point to benefit from paragraph 1 shall be without prejudice to the essential requirements of Directive 2014/53/EU.¹¹²

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 110(4).

2a. Member States shall ensure that operators have the right to access any physical infrastructure controlled by public national, regional or local authorities, which is technically suitable to host small-area wireless access points or which is necessary to connect such access points to a backbone network, including street furniture, such as light poles, street signs, traffic lights, billboards, bus, tramway stops, metro stations. Public authorities shall meet all reasonable requests for access on fair reasonable and non-discriminatory terms and conditions, which shall be made transparent at a central access point. Any financial charge shall only reflect costs incurred by the public authority from the provision of such access.¹¹³

¹¹⁰ Directive 2013/35/EU of the European Parliament and of the Council of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (20th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and repealing Directive 2004/40/EC (OJ L 179, 29.6.2013, p. 1).

¹¹¹ Recommendation 1999/519/EC of the Council of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) (OJ L 1999, 30.7.1999, p. 59).

¹¹² Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p.62)

¹¹³ DR AM 109. Justif: *The AM establishes an obligation and conditions for accessing public building and other public infrastructure for deploying small-cells with a view to complement the Cost Reduction Directive. This obligation will ensure that these public buildings, which are socio-economic enablers, can be equipped with very high capacity connectivity. Inextricably linked to other admissible AMs.*

CHAPTER II

ACCESS AND INTERCONNECTION

Article 59

Powers and responsibilities of the national regulatory authorities with regard to access and interconnection

3. *deleted*¹¹⁴

Poss new Title III

Article 78i

Technical regulations on electromagnetic fields

The procedures under Directive 2015/1535 shall apply with respect to any draft Member State measure that would impose more stringent requirements with respect to electromagnetic fields than provided for in Council Recommendation No 1999/519/EC.¹¹⁵

¹¹⁴ DR AM 113. Justif: *Unnecessary and unpredictable sharing obligations should be avoided in favour of investment certainty. Compare the AM to Article 18.*

¹¹⁵ DR AM 142. Justif: *This AM aims to ensure, subject to any necessary further technical work, that the well-established process under Directive 2015/1535 (which codified Directive 98/34) on a procedure for the provision of information in the field of technical regulations and of rules on Information Society services would also apply with respect to protection against electromagnetic fields. This provides transparency as MS measures in this respect (which may also constitute an obstacle to trade) are notified to other MS and the Commission, and enables the Commission and other MS to comment. It would thereby also allow an overview at Union level of the implementation of Council Recommendation No 1999/519/EC.*