

## FINAL

### CA7

#### Article 3 General objectives

The CA covers Art 3 and related recitals. All relevant AMs, including AMs 2-3, 31-35, 178-185, 337-391 as well as IMCO xx, CULT ~~yy~~[23-27](#), LIBE ~~zz~~[18](#), fall.

- (21) National regulatory and other competent authorities should have a harmonised set of objectives and principles to underpin their work, and should, where necessary, coordinate their actions with the authorities of other Member States and with BEREC in carrying out their tasks under this regulatory framework.
- (22) The activities of competent authorities established under this Directive contribute to the fulfilment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning.
- (23) ~~In order to translate the political aims of the Digital Single Market strategy into regulatory terms,~~ The framework should, in addition to the existing three primary objectives of promoting competition, internal market and end-user interests, pursue an additional connectivity objective, articulated in terms of outcomes: widespread access to and take-up of very high capacity ~~fixed and mobile connectivity~~ **networks** for all Union citizens and businesses. ***Together with the existing general objectives, this will support the enhancement of the [Union European economy](#) and in particular its industry,*** on the basis of reasonable price and choice, ~~enabled by~~ effective and fair competition, ~~by efficient investment and open innovation<sup>1</sup>,~~ by efficient use of spectrum, by common rules and predictable regulatory approaches in the internal market and by the necessary sector-specific rules to safeguard the interests of citizens. For the Member States, the national regulatory authorities and other competent authorities and the stakeholders, that connectivity objective translates on the one hand into aiming for the highest capacity networks and services economically sustainable in a given area, and on the other hand into pursuing territorial cohesion, in the sense of convergence in capacity available in different areas. ***Progress towards the achievement of the general objectives of this Directive should be supported by a robust system of continuous assessment and benchmarking of Member States with respect to the availability of very high capacity connectivity in all major socio-economic drivers such as schools, transport hubs and major providers of public services, and highly digitized business, uninterrupted 5G coverage for urban areas and major terrestrial transport paths and the availability of electronic communications networks which are capable to provide at least 100 Mbps downlink,<sup>2</sup> and which are promptly upgradeable to gigabit speeds, to all households***

1 ALDE comment, [DLA input](#).

2 id

*in each Member State. To that end, the Commission should promptly present a legislative proposal, which should include detailed policy orientations, establishing methods and objective, concrete and quantifiable criteria for benchmarking the effectiveness of Member State measures towards achieving those objectives and identify best practices, as well as providing for a yearly qualitative and quantitative assessment of the state of progress of each Member State.*<sup>3</sup>

- (24) The principle that Member States should apply EU law in a technologically neutral fashion, that is to say that a national regulatory or other competent authority neither imposes nor discriminates in favour of the use of a particular type of technology, does not preclude the taking of proportionate steps to promote certain specific services where this is justified in order to attain the objectives of the regulatory framework, for example digital television as a means for increasing spectrum efficiency. Furthermore, it does not preclude taking into account that certain transmission media have *differing* physical characteristics and architectural features that can be superior in terms of quality of service, capacity, maintenance cost, energy efficiency, management flexibility, reliability, robustness and scalability, and ultimately in terms of performance, which can be reflected in actions taken in view of pursuing the various regulatory objectives *of electronic communications networks of relevance for other objectives of the framework.*<sup>4</sup>
- (25) Both efficient investment and competition should be encouraged in tandem, in order to increase economic growth, innovation and consumer choice.
- (26) Competition can best be fostered through an economically efficient level of investment in new and existing infrastructure, complemented by regulation, wherever necessary, to achieve effective competition in retail services. An efficient level of infrastructure-based competition is the extent of infrastructure duplication at which investors can reasonably be expected to make a fair return based on reasonable expectations about the evolution of market shares.
- (27) It is necessary to give appropriate incentives for investment in new very high capacity networks that will support innovation in content-rich Internet services and strengthen the international competitiveness of the European Union. Such networks have enormous potential to deliver benefits to consumers and businesses across the European Union. It is therefore vital to promote sustainable investment in the development of these new networks, while safeguarding competition, *as bottlenecks and physical barriers to entry remain at the infrastructure level,*<sup>5</sup> and boosting consumer choice through regulatory predictability and consistency.
- (28)<sup>6</sup> The aim is progressively to reduce *ex ante* sector-specific rules as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. Considering that the markets for electronic communications have shown strong competitive dynamics in recent years, it is essential that *ex ante* regulatory obligations only be imposed where there is no effective and sustainable competition on the retail markets concerned. *The objective of ex ante regulatory intervention is to produce benefits for end-users by making retail markets*

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3 DR AM 2. Justif: A mechanism for measuring and benchmarking Member State progress with respect to the general objectives should be established, which among other things requires the setting of objective, concrete and quantifiable criteria. As discussed 7/7

4 DR AM 3.

5 ALDE comment (w/o "long-term")

6 Agreed techmeet 14/7 to request DLA to recommend textual improvements and distribution of text between this recital and recital 155 in the Access CA.

~~effectively competitive on a sustainable basis. It is likely that national regulatory authorities will gradually be able to find retail markets to be competitive even in the absence of wholesale regulation, especially taking into account expected improvements in innovation and competition.<sup>7</sup> To that end, national regulatory authorities should take into account the interests of consumers and end-users, irrespective of the market in which the regulatory obligations are imposed, and consider whether an obligation imposed on a wholesale market also has the effect of promoting the interests of consumers and end-users on a retail market not identified as susceptible to ex ante regulation. Obligations at wholesale level should therefore only be imposed where otherwise one or more retail markets are not likely to become would not, in a forward-looking perspective, be effectively competitive in the absence of those obligations.<sup>8</sup> It is likely that national regulatory authorities will gradually, through the process of market analysis, be able to find retail markets to be competitive even in the absence of wholesale regulation, especially taking into account expected improvements in innovation and competition. In such a case, the national regulatory authority should conclude that regulation is no longer needed at wholesale level, and assess the corresponding relevant wholesale market with a view to withdrawing ex ante regulation. In doing so, it should take into account any leverage effects between wholesale and related retail markets which may require the removal of barriers to entry at the infrastructure level in order to ensure long-term competition at the retail level. For national regulatory authorities the starting point for the identification of wholesale markets susceptible to ex ante regulation is likely to be the analysis of corresponding retail markets, although it is not necessary to formally define the retail markets in the market analysis procedure given that a wholesale market might correspond to more than one retail market. The analysis of effective competition at the retail and at the wholesale level is conducted from a forward-looking perspective over a given time horizon, and is guided by competition law, including the relevant case-law of the Court of Justice, as appropriate.<sup>9</sup> If the market analysis demonstrates that the retail market concerned is would be effectively competitive from a forward-looking perspective in the absence of ex ante wholesale regulation on the corresponding relevant market(s), this should lead the national regulatory authority to conclude that regulation is no longer needed at wholesale level. In such a case, the corresponding relevant wholesale market(s) should be assessed with a view to withdrawing ex ante regulation, taking into account any leverage effects between wholesale and related retail markets which may require the removal of barriers to entry at the infrastructure level to ensure long-term competition on the retail level.<sup>10</sup> Since end-users and consumers are not present on the wholesale markets, it is essential that their interests are taken into account in the analyses of those markets. National regulatory authorities must therefore take their interests into account irrespective of the market in which the regulatory obligations are imposed, and consider whether an obligation imposed on~~

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7 Cf recital 2 of the 2014 Market Recommendation for preceding two sentences. The COM reproduces substantially identical text in recital 154 (in the Access part), which could be deleted. ALDE comment. Cf also EFDD input

8 Cf BEREC in their paper on the market review process

9 -251 Kallas (amended). Moved to here from the Access CA following 11/7 Shadows.

10 Cf recital 10 of the 2014 Market Recommendation for preceding two sentences. The COM reproduces substantially identical text in the last sentence of recital 155 (in the Access part), which sentence could be deleted. ALDE comment

~~a wholesale market also has the effect of promoting the interests of end-users on a retail market not earmarked for regulation.<sup>44</sup> -~~

- (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 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.

### Article 3

#### General objectives

1. Member States shall ensure that in carrying out the regulatory tasks specified in this Directive, the national regulatory and other competent authorities take all reasonable measures which are necessary and proportionate for achieving the objectives set out in paragraph 2. Member States, **the Commission** and BEREC shall also contribute to the achievement of these objectives.<sup>12</sup>

National regulatory and other competent authorities ~~may~~ **shall**<sup>13</sup> contribute within their competencies to ensuring the implementation of policies aimed at the promotion of **freedom of expression and information**,<sup>14</sup> cultural and linguistic diversity, as well as media pluralism.

2. The national regulatory and other competent authorities as well as BEREC, **the Commission and the Member States** shall **pursue each of the general objectives listed below, without the order in which they are listed indicating any order of priority**:<sup>15 16</sup>

(a) promote access to, and, ~~as far as practicable~~,<sup>17</sup> take-up of, very high capacity ~~data~~ connectivity, ~~both fixed and mobile~~ **networks**, by all Union citizens and businesses,<sup>18 19</sup>

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11 ~~CF the ECJ in case C-28/15 for preceding two sentences. DLA 19/7 input incorporated.~~

12 DR AM 31.

13 AM 345 Reimon

14 AM 343 Kallas

15 DR AM 32

16 AM 349/350 Kumpula-Natri/Reimon (using the shorter form of AM 353 as amended to express that the list does not indicate any priority between the objectives).

17 ECR comment

18 DR AM 33. Justif: "This addresses what appears to have been an inadvertent error in the proposal. Very high capacity networks is a defined term which includes both fixed and mobile networks and those networks offer correspondingly high capacity connectivity (in a broad sense). To not use the defined term in the new general objective would appear liable to cause confusion."

19 AM 356/357 Reimon/Kumpula-Natri would add availability and affordability. But provision throughout the Union and affordability in general is addressed in Art 1(2); "access" covers "availability"; "availability" is addressed from the citizen perspective in 3(2)(d), as well as affordability for specific groups. AM 356 Reimon would also add provision of interpersonal ECS, but this point is about infrastructure, and provision of all ECS is addressed in Art 1(2). ALDE would keep "both fixed and mobile", but both are included in the definition of VHCN

(b) promote competition in the provision of electronic communications networks and associated facilities, including efficient infrastructure-based competition, and in the provision of electronic communications services and associated services;

(c) contribute to the development of the internal market by removing remaining obstacles to, and facilitating convergent conditions for, investment in and the provision of electronic communications networks, associated facilities and services and electronic communications services throughout the Union, by developing common rules and predictable regulatory approaches, by favouring the effective, efficient and coordinated use of spectrum, open innovation, the establishment and development of trans-European networks, the **provision**,<sup>20</sup> availability and interoperability of pan-European services, and end-to-end connectivity;<sup>21</sup>

(d) promote the interests of the citizens of the Union, ~~including in the long term~~, by ensuring widespread availability and, ~~as far as practicable~~,<sup>22</sup> take-up of very high capacity **networks** connectivity, ~~both fixed and mobile~~, and of interpersonal **electronic** communications services, by enabling maximum benefits in terms of choice, price and quality on the basis of effective competition, by maintaining security of networks and services, by ensuring a high and common level of protection for end-users through the necessary sector-specific rules, **by ensuring equivalent access and choice for end-users with disabilities** and by addressing the needs, such as for affordable prices, of specific social groups, in particular ~~disabled~~ users **with disabilities**,<sup>23</sup> elderly users and users with special social needs.<sup>24</sup>

~~2 a. The Commission may submit legislative proposals to the European Parliament and the Council for establishing programmes for enhanced cooperation between Member States. Such programmes shall include detailed policy orientations for achieving the objectives referred to in of paragraph 2, establish methods and objective, concrete and quantifiable criteria for benchmarking the effectiveness of Member State measures towards achieving those objectives and identify best practices. They shall also provide for a yearly qualitative and quantitative assessment of the state of progress of each Member State. The programmes shall be without prejudice to the independence of national regulatory authorities and other competent authorities.~~<sup>25</sup>

3. The national regulatory and other competent authorities shall, in pursuit of the policy objectives referred to in paragraph 2, and specified in this paragraph, ~~apply objective, transparent, non-discriminatory and proportionate regulatory principles, by~~, inter alia:

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20 AM 365 Kallas.

21 AM 364 Reimon would remove references to investment, regulatory approaches and open innovation

22 ECR comment

23 IMCO

24 DR AM 34. Justif: "Promotion of the interests of citizens automatically includes the long term without that needing to be said. Promotion of investment and competition are already addressed in e.g. 3(2)(b)-(c) and should otherwise be addressed directly in the relevant provisions, not indirectly through an emphasis of a particular time horizon. Regardless of the outcome of the discussion on ECS and possible subcategories thereof, it is clear that the interest of citizens extend to electronic communications services generally." AM 367 Reimon similar, but would also add "**minimum** level of" end-user/consumer protection, as would 369 Kumpula-Natri. However, the level of harmonisation of consumer protection is for IMCO.

25 DR AM 35. Justif: "This AM follows the model of the 2009 framework review providing the basis for the Radio Spectrum Policy Programme. The Commission proposal would be for a decision by the European Parliament and Council establishing a co-operative method towards the general objectives of the Directive, providing for the necessary level of detail to enable benchmarking of progress. The achievement in particular of the new objective relating to very high capacity networks ultimately depends on demand and supply, which are factors beyond the powers of the NRAs and other relevant authorities. It should be made clear that the programme for cooperation envisaged by this AM in no way prejudices their independence. Inextricably linked to other admissible AMs." [DLA input](#).

- (a) promoting regulatory predictability by<sup>26</sup> ensuring a consistent regulatory approach over appropriate review periods and through cooperation with each other, with BEREC and with the Commission;<sup>27</sup>
- (b) ensuring that, in similar circumstances, there is no discrimination in the treatment of ~~undertakings providing~~ **providers of**<sup>28</sup> electronic communications networks and services;
- (c) applying EU law in a technologically neutral fashion, to the extent that this is consistent with the achievement of the objectives of paragraph 1;
- (d) promoting efficient investment and innovation in new and enhanced infrastructures, including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, whilst ensuring that competition in the market and the principle of non-discrimination are preserved;
- (e) taking due account of the variety of conditions relating to infrastructure, competition, **end-user** and consumer **circumstances** that exist in the various geographic areas within a Member State **including local infrastructure managed by individuals on a not-for-profit basis**;<sup>29</sup>
- (f) imposing *ex ante* regulatory obligations only to the extent necessary to secure effective and sustainable competition **in the end-user interest**<sup>30</sup> ~~on the retail market concerned~~ and relaxing or lifting such obligations as soon as that condition is fulfilled.<sup>31</sup>

**Member States shall ensure that the national regulatory authorities and other competent authorities act impartially, objectively, transparently and in a non-discriminatory and proportionate manner.**<sup>32</sup>

26 AM 373/374 Reimon/Kumpula-Natri. ECR comment to keep

27 AM 375 Reimon would add a new item about safeguarding competition etc. But compare 3(2)(b)

28 AM 376 Tosenovsky (horizontal change)

29 AM 381 Reimon (amended), also 298, 316, 333 Reimon

30 As discussed at 28/6 Shadows

31 AM 382 Reimon, 384 Kumpula-Natri, 385 Kallas. Also 389 Reimon and 390 Kumpula-Natri

32 DLA input.