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The new European Electronic Communications Code in broad strokes

Open stakeholder forum – Reykjavik, 30 August 2019

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Outline

- Aims and policy context
- Scope of the key EECC provisions:
  - Market analysis
  - Access regulation and co -investment
  - Spectrum management
  - End-user rights and OTTs
  - Universal service
- Next steps

Aims and policy context

Policy context: DSM strategy 2015-2020

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First EU telecoms framework review since 2009

Review	Regulatory package	Achievements
1992	1995-1997	Paving the way for liberalisation
1999	2002	Market analysis and deregulation
2007	2009	Consumer rights and institutional matters
(2012)	*(2015)*	*(TSM - net neutrality and roaming)*
2015	2018	EECC – 'The Code'

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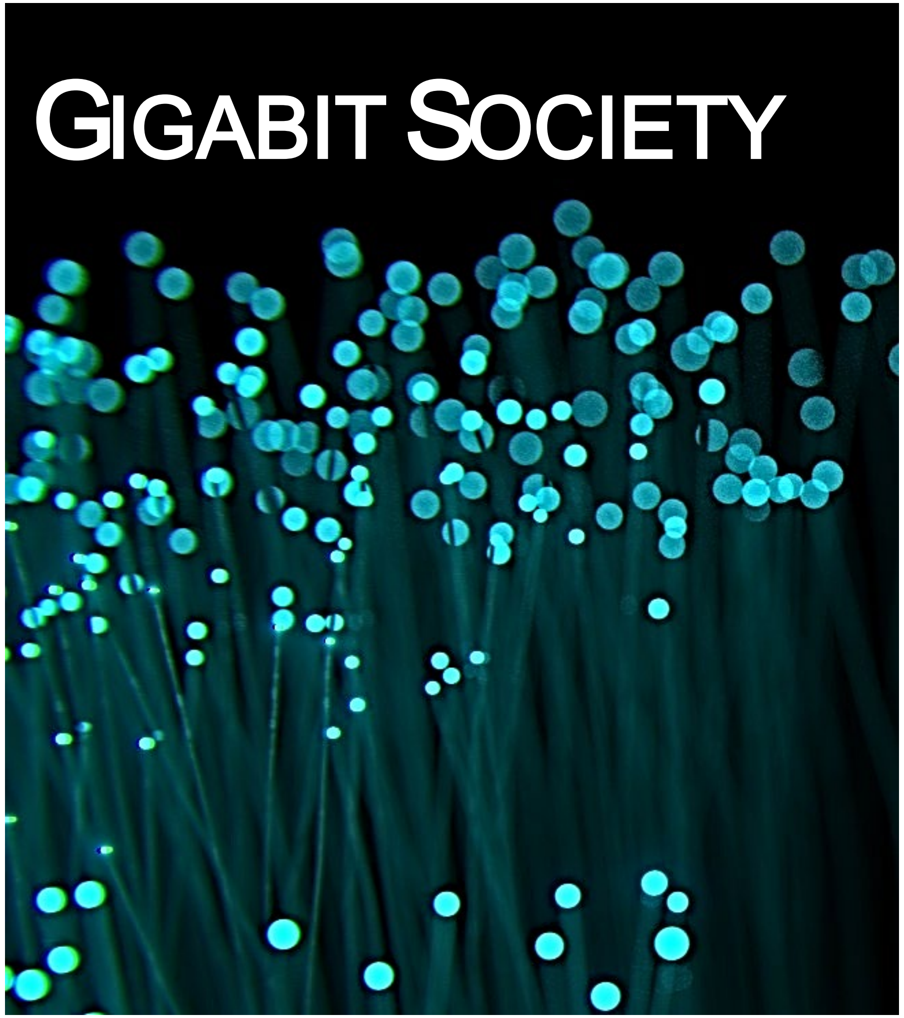
New policy objectives: Gigabit Society & 5G Action Plan



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New common EU broadband targets for 2025

By 2025

- At least **100 Mbps** downlink for **all European households**, rural or urban
- Upgradable to **Gigabit** speed
- **1 Gbps** for all **'main socio-economic drivers'** and **'digitally intensive enterprises'**

- **2018**: first **commercial introduction**
- **2020**: 'fully-fledged commercial service' in at least **one major city** in **each member state**
- **2025**: **uninterrupted** 5G coverage for **all urban areas** and all **'major terrestrial transport paths'**

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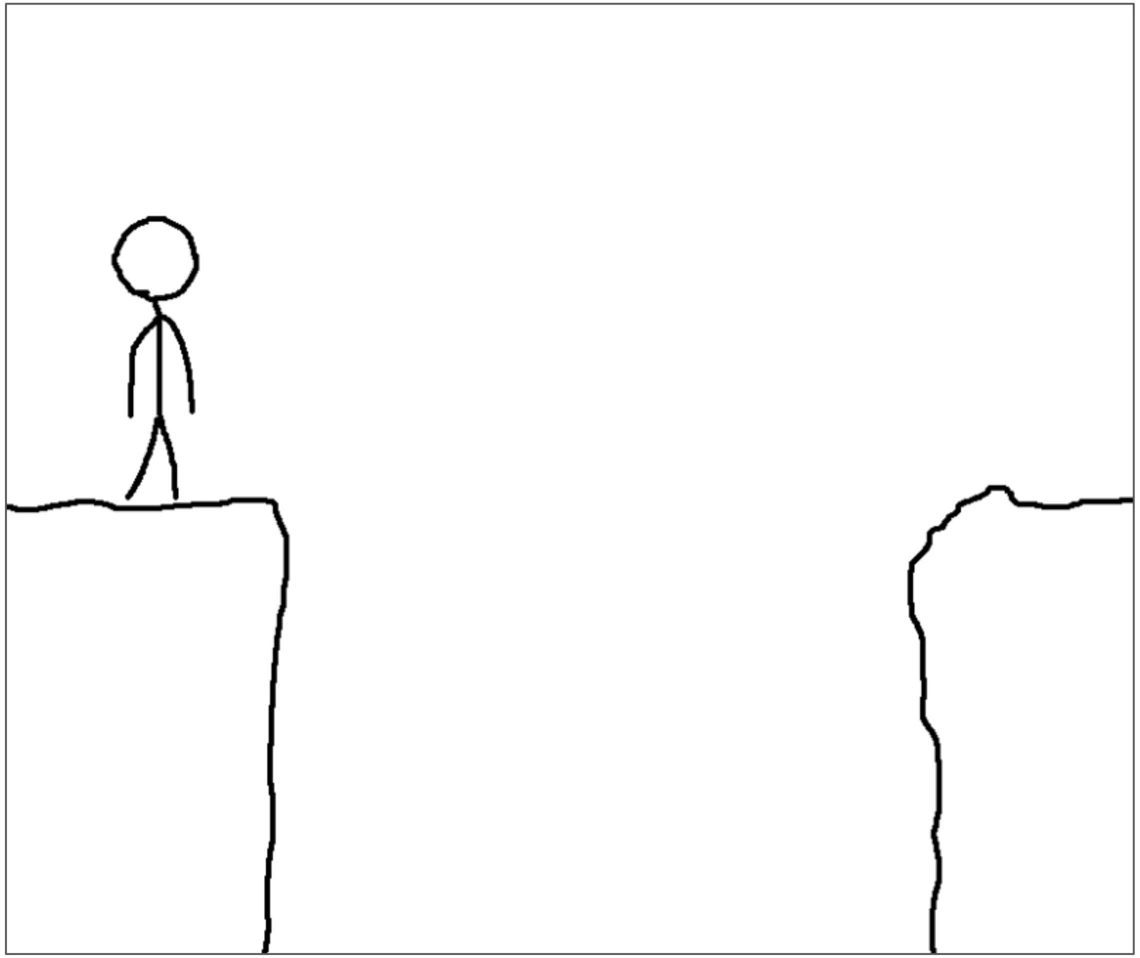
Investment gap



*European Commission Gigabit Society communication – 12 September 2016

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European Electronic Communications Code

2018/1972/EC

General Objectives

article 3 | EECC

2\. (a) *promote connectivity and access to, and take-up of,* ***very high capacity networks****, including fixed, mobile and wireless networks…*

(b) promote competition

(c) contribute to the development of the internal market

(d) promote the interests of the citizens of the Union

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Scope

2009 EU regulatory framework

Five Directives

- Framework
- Access & Interconnection
- Authorisation
- Universal Service
- E-Privacy

One Regulation

- BEREC 2009

Implementing measures

- Article 7/7a
- Relevant markets
- Termination rates
- NGA
- Non-discrimination

More and more regulations…

Directives	Regulations	Implementing measures
Framework	BEREC 2009	Article 7/ 7a
Access & Interconnection		Relevant markets
Authorisation		Termination rates
Universal Service	Roaming I, II, III, IV	NGA
E-Privacy	Telecoms Single Market	Non-discrimination
Broadband Cost Reduction	Funding (CEF, EFSI)	Roam Like At Home

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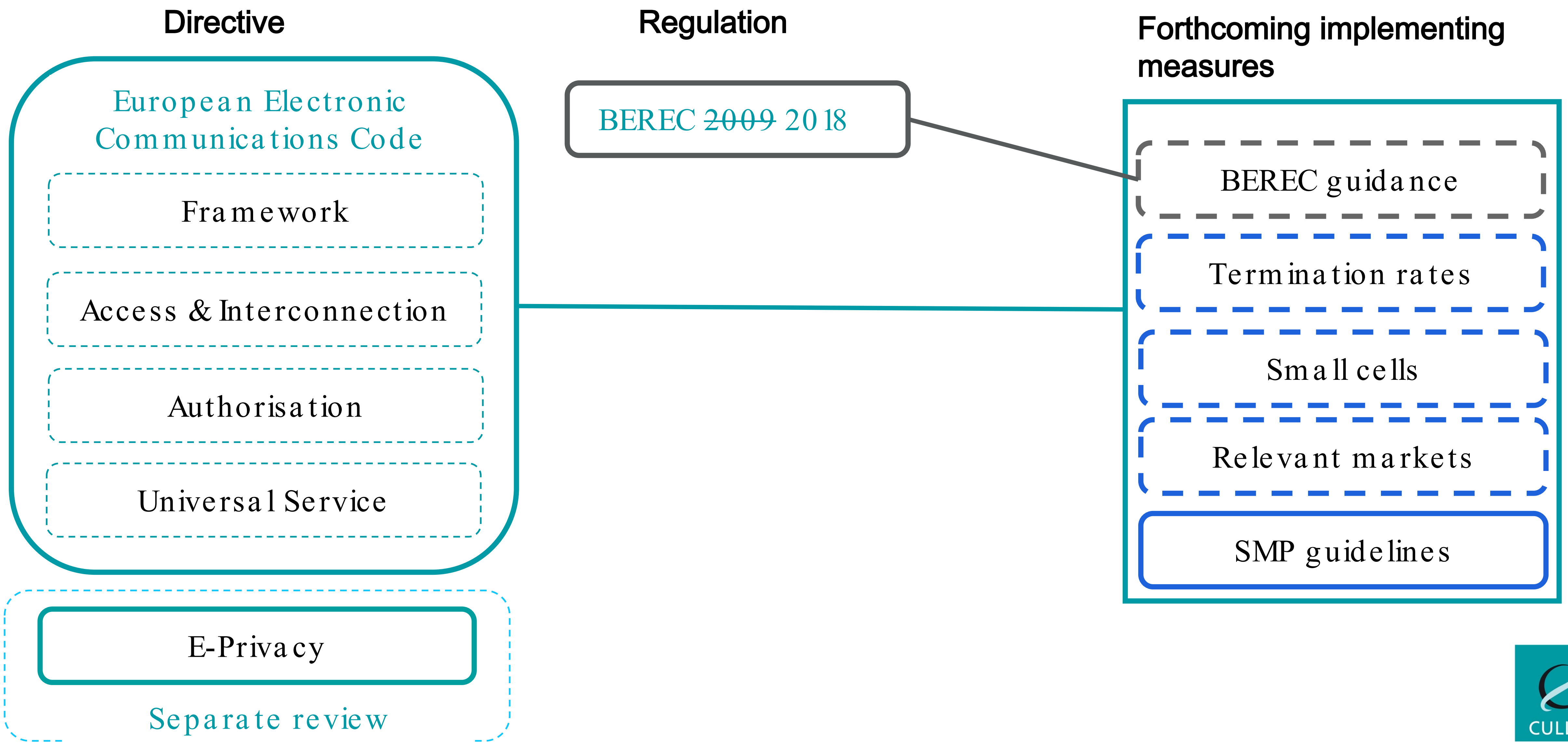
2018: from four directives to one code…



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Market analysis

Market analysis procedure – main changes

Market review period – article 67

market analysis period extended from three to five years

longer periods for co-investment and vertical separation commitments

Consistent application of remedies – article 61 (3) and 76 (2)

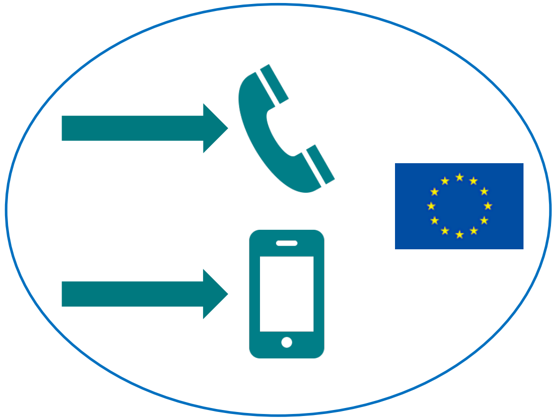
Commission wanted veto on remedies

only for co-investment and symmetric access

physical access beyond first concentration point or active/virtual access

New remedies

Single EU-wide caps for FTRs and MTRs - article 75 and annex III



European Commission

weighted average of efficient costs (pure BU-LRIC)

not higher than highest rate in force

Capping of intra-EU calls and SMS – article 5a TSM (amended by BEREC regulation)

European Commission

from 15 May 2019, for five years
- €0.19/min – for voice calls
- €0.06/SMS

NRAs can grant derogations

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Access regulation and co-investment

Main changes

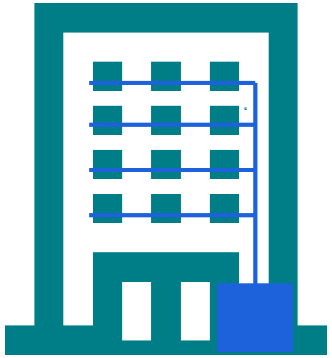
Objective: to facilitate the roll-out of VHCN through increased infrastructure competition and predictability for investment

- Adjustments to SMP access regime
- More powers for NRAs to impose symmetric obligations
- Regulatory incentives for incumbents and competitors to invest and co-invest in VHCN
- More targeted SMP remedies

Symmetric access obligations – article 61(3)

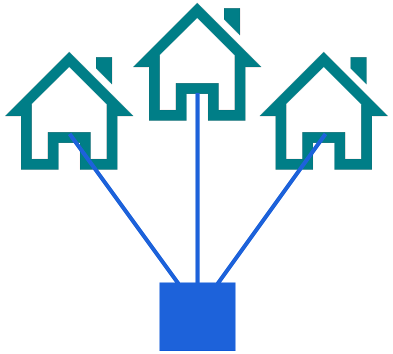
up to the first concentration point

Access to wiring, cables and associated facilities



inside the building

or



outside the building

Where replication of such network elements

economically inefficient

or

physically impractical

Symmetric access obligations – article 61(3)

On who?

- ECS providers
- owners of wiring and cables

exemptions for smaller local projects and wholesale-only already offering access

Up to where?

- up to the first concentration point
- extension beyond the first concentration point or active/ virtual access under very strict conditions

- 'high and non-transitory barriers'
- hosting a sufficient number of end-user connections
- subject to 'double lock' veto mechanism

On what conditions?

- access
- transparency
- non-discrimination
- apportioning costs

BEREC guidelines within 2 years:

- Define first concentration point
- How many end-user connections are viable

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Access to civil engineering – article 72

- Emphasis on access to civil engineering, such as masts, ducts and cabinets, to lower deployment costs and stimulate infrastructure -based competition

- Could be imposed as a stand-alone remedy, irrespective of the market definition

- To be considered by NRAs as the first and potentially sufficient option before any other access obligations

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Co-investments in VHCN – article 76

- Incentivising deployment of VHCN by allowing rival operators to **share risk** and **deregulating** the SMP's deployments

- Subject to binding co-investment commitments and at least one established agreement with a potential co-investor
- Co-ownership or long-term risk sharing through co-financing or through purchase agreements giving rise to specific rights of a structural character

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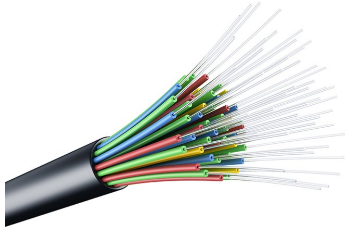
What kind of a VHCN ?

co-investment conditions
only apply to this kind of VHCN!

Electronic communications network that

- consists of optical fibre elements up to the end-user premises or base station



or

- capable of delivering similar network performance

Technology neutral but …

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Criteria for co-investment offers

Open

- throughout lifetime of network
- to any ECS or ECN provider
- made public at least 6 month before

Sustainable

- fair, reasonable, non-discriminatory terms
- access to full capacity of the network
- flexible participation – value, timing
- can increase participation in future
- reciprocal rights for co-investors

allow co-investors to compete in downstream markets effectively and sustainably

Access for non-participants

- access to VHCN
- on non-discriminatory terms
- taking into account risks of co-investors
- initially to legacy capacity and adapted over time to more advanced capabilities of the network

Co-investment commitments procedure – article 79

Market test

- public consultation
- potential co-investors or access seekers may propose changes
- SMP has a chance to revise proposals

Binding commitments

- for a minimum period of seven years
- with a possible extension

subject to ‘double lock’ veto mechanism

Further SMP obligations on VHCN

- if significant competition problems that cannot otherwise be addressed…

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Wholesale-only networks – article 80

- Lighter regulatory treatment for wholesale-only operators, even when they hold SMP
- Rationale: business model that runs a reduced risk of certain anti-competitive behaviour
- Condition: the undertaking cannot have activities in the relevant retail market
- SMP obligations: limited to **access to specific networks elements, non-discrimination** or **fair & reasonable pricing**
- Possible exemption from symmetric obligations

Flexible NGA pricing – article 74

more pricing flexibility to stimulate NGA investment

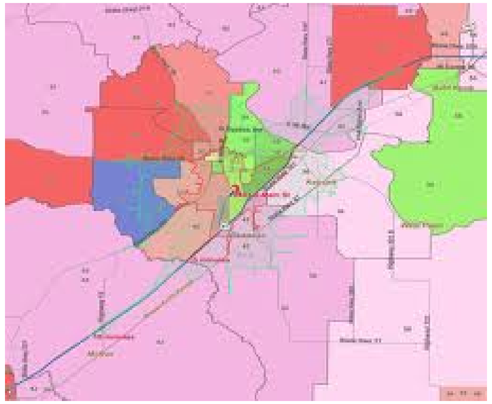
additional safeguards to protect competition

Conditions for lifting or non-imposition of wholesale NGA price controls – based on 2013 recommendation on costing

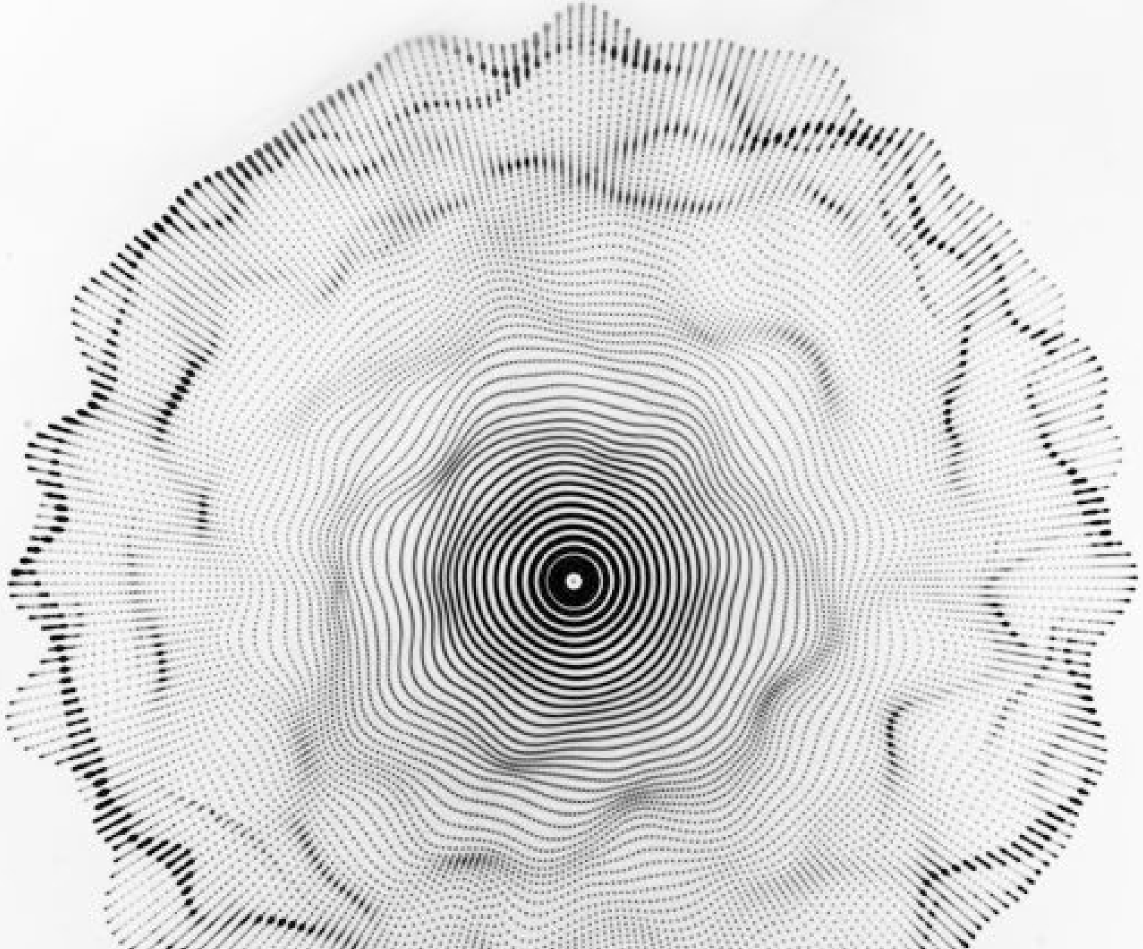
- a demonstrable retail price constraint: copper based or alternative infrastructure
- effective and non-discriminatory access in place, including economic replicability

Geographical surveys – article 22

- Geographical surveys of broadband networks by NRAs: by 2023 and updated every 3 years
- *May* include forecast deployment, including VHCN (≥100 Mbps) plans
- Purpose: empower NRAs with tools to provide investment certainty in less attractive areas by mapping network investment intentions
- Designation of areas where no one has planned VHCN deployment and inviting operators and public authorities to deploy in this area



Spectrum management



No major spectrum management reform

Objective: to lay the groundwork for the deployment of 5G across Europe by more coordinated and efficient spectrum management

Most Commission proposals were watered down :

- Minimum licence duration: 15+5 years (instead of 25)
- Peer review of national assignment measures: entirely voluntary (instead of binding)

Some Commission successes :

- 5G spectrum to be available by end-2020: 3.4-3.8 GHz and 26 GHz
- Easier rollout of small-cell wireless access points

Measures to attract investment

Minimum licence duration for harmonised bands – article 49

Regulatory certainty for ‘*at least 20 years*’ which includes:

- licence durations of ‘*at least 15 years*’
- an ‘*adequate*’ extension

Licence renewals – article 50

- ‘*in a **timely** manner*’
- maximum **5 years** before expiry, at the holder’s request

Use of harmonised WBB spectrum – article 53

- 30 months after technical conditions have been adopted
- exemptions possible

Most tangible results

Assignment deadlines for 5G pioneer bands – article 54

- by 31 December 2020
- 3.4-3.8 GHz and at least 1 GHz in 26 GHz

Small-area wireless points ('small cells') – article 57

- not subject to any individual planning permits, fees or charges
- exceptions for specific sites or public safety reasons
- access to any suitable publicly owned infrastructure on fair, reasonable, transparent and non-discriminatory terms
- physical and technical characteristics to be set by Commission implementing act by 30 June 2020

Spectrum peer review – article 35

- A **completely voluntary** review, **upon request** of a member state or **exceptionally by RSPG** if risk for the EECC objectives
- Any opinions or reports only at the request of the member state
- **Carried out by RSPG** and open to voluntary participation by experts from BEREC and other competent authorities

End-user rights & OTTs

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Main changes

Objective: to ensure that end-users are effectively and equally protected when using functionally equivalent services

Redefinition of electronic communications services (ECS):

- Internet access services (IAS)
- Interpersonal communications services (ICS): number-based (NB-ICS) and number-independent (NI-ICS)
- Conveyance of signals (M2M, broadcasting)

Maximum harmonisation of end-user rights at the EU-level

Most provisions only apply to IAS and NB-ICS

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Scope of electronic communications services

Electronic communications services

Service normally provided for remuneration via electronic communications networks

IAS

Publicly available ECS that provides **access to the internet** and thereby connectivity to virtually all end points of the internet (same as TSM)

ICS

Normally paid, providing direct **interpersonal and interactive exchange** of information between finite number of persons as determined by initiator

NB-ICS: connects with PSTN by means of numbering resources or by enabling communication with numbers in plans

NI-ICS: all other services (OTTs), including those using numbering resources for other purposes than communications

Signals

Services consisting mainly in the **conveyance of signals**, such as transmission services used for provision of M2M and broadcasting

OTTs are now addressed

Number -based
interpersonal communications
services
(NB-ICS)

Number -independent
interpersonal communications
services
(NI-ICS)

Light-touch regulation of OTTs

- NI-ICS are exempted from most of the sector-specific end-user rights regulation, except for provisions on **security, privacy, contact information** and **comparison tools where applicable** (articles 40, 102 – 104)

- Possible future **interoperability obligations** (article 61)
  If necessary and justified to ensure end-to-end connectivity, subject to Commission decision and only for providers with a 'significant level of coverage and user uptake' (recital 151)

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Maximum harmonisation of end-user rights

Harmonisation (article 101)	• Member states may not apply more or less stringent provisions • More strict rules allowed until 21 December 2021	exemptions for expenditure control and newly emerging issues
Contract information (article 102)	• Commission to set a binding contract summary template by 21 December 2019 • Specific requirements for IAS based on TSM	
Contract duration (article 105)	• Maximum 24 months commitment period • Longer duration allowed for instalment contracts	Member states may apply shorter maximum commitment periods
Provider switching (article 106)	• Process led by receiving provider • No direct charges to end-users • Number activation within one working day • No more than one working day service loss • Refund of prepaid credit • Compensation for delays	Number portability and IAS

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Maximum harmonisation of end-user rights

Bundled offers (article 107)

- Applies to bundles of services and bundles of services and terminal equipment comprising at least an IAS or NB-ICS
- EECC end-user rights provisions apply to all elements of the bundle, including those not covered by the EECC
- Right to contract termination applies to all elements of the bundle
- Additional services do not extend the duration of original contract

Public warning system – ‘reverse 112’

Public emergency warnings (article 110)

- Public warnings system in case of major emergencies and disasters to be implemented by 21 June 2022
- Applies to providers of mobile NB-ICS
- Member states may decide on alternative public warning system through other public ECS and mobile applications if equivalent in terms of coverage and capacity to reach end-users

Universal service

Main changes

Objective: modernise the US regime by removing mandatory legacy services from the scope and focusing on the **affordable adequate broadband internet access**

- Technology neutral voice and broadband at a **fixed location**
- Specific services for consumers with disabilities
- Obligation for member states to define the **adequate broadband access service** in light of national conditions
- Possibility for member states to ensure **affordability of mobile services**
- Consumers may choose to limit the US to **voice services**

Revised universal service scope – article 84

Affordable adequate broadband and voice services

Directories and directory enquiry services

Public payphones

Affordable tariffs for people with low income and special social needs

Adequate broadband internet access

- **Bandwidth** necessary to support *at least the minimum set of services* (Annex V EECC defines 11 basic applications):
  email, search engines, online education tools, online news, banking, e-government…

- Obligation for member states to define the adequate broadband universal access based on the '***minimum bandwidth enjoyed by the majority of consumers***' taking into account the BEREC report on best practices

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Affordable universal service – article 85

- Member states shall take measures to ensure affordability if retail prices are not affordable for consumers with a low income or special social needs

- Through direct support provided to such customers and/or
- Requiring providers of such services to offer to those consumers social tariff options

Additional and legacy services

Member states may

- continue provision of public payphones and directories
- require **additional mandatory services**

Operators' contribution for sharing the net cost of **additional mandatory services** provision is not allowed

Next steps

Much work ahead

Transposition into national law : 21 December 2020

BEREC guidance:
14 topics

European
Commission

European Commission
secondary legislation:
13 topics

Reviews – too much, too soon?

- December 2021
  End-user rights and possibly **general authorisation**
- December 2023
  BEREC mandate
- December 2025
  General review

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Thank you!

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What the Commission wanted ..and got

Incentives for investment:

Fibre
5G

Increased EU influence on spectrum

Governance reform

More clarity on OTTs

Maximum harmonisation of end-user rights

Transposition into national law : 21 December 2020