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European Electronic Communications Code aims to boost connectivity and competitiveness with the roll-out of very high capacity networks in a 5G era

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On 17th December 2018 the European Electronic Communications Code ("the Code") was [published](#) in the Official Journal. This revision of the EU framework for telecoms regulation marks the end of a long negotiation process and puts in place one of the essential building blocks for a Digital Single Market in Europe. Member States have until 21 December 2020 to transpose the new rules into national law.



Adoption of this Code is designed to reflect the reality of today's electronic communications market, which has transformed over the last 20 years from a landscape of national monopolies to a competitive market comprising of a range of well-established players and many new providers, offering a wide variety of services to consumers. The new rules mark a significant revision of the old regulatory framework, which dates from 2009. The Code integrates the current telecommunications directives into one and significantly amends them, aiming to promote connectivity to high capacity networks in the EU. This objective has been specifically added to the three long pre-existing objectives that have been the core of the telecoms framework (promoting competition, the internal market and interests of citizens).



The Code specifically encourages more investments in new very high capacity networks, such as 5G and new fibre optical networks, by adding detailed articles on topics like access regulation and facilitating 5G roll-out. The European Commission regards encouraging investment in very high capacity networks as increasingly important to strengthen the internal market for many sectors of the economy, including education, healthcare, manufacturing and transport.

It extends regulation to providers and services that were not regulated on the basis of the prior regulatory framework, like over the top (OTT-)services, which use the internet to offer a variety of services, such as communication, content and cloud-based services.

We will describe some of the biggest changes below.



Access obligations for parties who do not necessarily have significant market power

Under the prior regulatory framework, obligations to provide access to networks were generally only imposed on providers with significant market power or to ensure interconnection and interoperability of relatively traditional telecommunications services.

The code adds to that the power for telecoms regulators to impose obligations on relevant providers of non-traditional number-independent interpersonal communication services (if they reach a significant level of coverage and user uptake) to make their services interoperable, where end-to-end connectivity between end-users is endangered due to a lack of interoperability.

The Code also makes it possible that if replication of network elements would be economically inefficient or physically impracticable, regulators may require providers to grant access to bottlenecks, such as wiring and cables and associated facilities inside buildings or up to the first concentration or distribution point or, if deemed necessary, beyond that first point. These obligations can also be imposed providers who do not have significant market power or on owners of wiring and cables, who are not providers of electronic communication networks.



Lighter SMP regulation to encourage investments in new very high capacity networks

At the same time, the Code also amends the framework for regulation of providers with significant market power (SMP), specifically aimed at encouraging investments in new very high capacity networks. Under certain (strict) conditions, an SMP-provider that enters into co-investment agreements (e.g. co-ownership or long-term risk sharing) with its competitors, may be subject to lighter regulation or even be exempted from SMP regulation altogether. And – unless that does not sufficiently remedy end-user issues – true wholesale-only providers can only be subjected to a limited set of obligations (non-discrimination, access and "fair and reasonable pricing"). Moreover, instead of having to review their SMP-decisions every 3 years, regulators now need to do so within 5 years (or 7 years in case of co-investment commitments).



Ensuring investments in 5G and harmonising spectrum

Ensuring investments in and quick roll-out of 5G is one of the main goals of the Code. The Code for example sets out rules ensuring efficient and coordinated use of harmonised radio spectrum, including rules on ensuring coordinated timing of assignment of 5G spectrum (the 3.4-3.8 GHz band and 1 GHz of the 24.25-27.5 GHz band by 31 December 2020). In order to ensure regulatory certainty and to promote long-term investments, a minimum license term of 20 years should apply in principle (15 years + 5 years extension term).

The Code also enables, under certain conditions, requirements to be imposed to share passive infrastructure or conclude localised roaming access agreements. These obligations may be imposed on undertakings when they are deemed directly necessary for the local provision of services which rely on the use of radio spectrum, and provided that no viable and similar alternative means of access to end-users is made available to any undertaking on fair and reasonable terms and conditions. Finally, the competent authorities may only impose such obligations where this

possibility is clearly provided for when granting the rights of use for radio spectrum and where justified based on specific market circumstances (overcoming insurmountable economic or physical obstacle) where access to networks or services by end-users are severely limited. In those circumstances where access and sharing of passive infrastructure alone does not suffice to address the situation, national regulatory authorities may impose obligations on sharing of active infrastructure.

It will also be easier and cheaper for (mobile) providers to deploy so-called 'small area wireless access points' (such as femtocells, picocells, metrocells or microcells), crucial for the roll-out of 5G. Authorities, such as municipalities, are not permitted to unduly restrict their deployment. Deployment shall not be made subject to individual permits, fees or charges (other than administrative fees) and Member States shall ensure that public buildings and other public infrastructure, like street signs, traffic lights, and public transport stops are made available on fair, reasonable, transparent and non-discriminatory terms and conditions for the deployment of small-area wireless access points and connections.



A more harmonised level of protection for end-users, resulting in new services and providers falling under the scope of the Code

All end-users in the EU should enjoy the same level of end-user protection. That is why maximum harmonisation is introduced for these provisions. Due to the more clarified definition of electronic communication services, this level of protection is also to be guaranteed by providers of so-called number-based interpersonal communications services, which enable direct personal and interactive exchange of information between a finite number of persons, such as traditional voice calls, all types of email, messaging services or group chats, connecting through publicly assigned numbering resources. These end-user protection provisions for instance relate to specific information requirements for contracts, including a contract summary which consists of predefined elements. The Commission shall adopt implementing acts specifying a contract summary template to be used by the providers. The information is to be published in a set way and end-users should have access to at least one independent comparison tool.

Provisions are extended to facilitate switching between providers of internet access services. The end-user protection provisions now specifically apply also to bundled offers, if the bundle includes an internet access service or a number-based interpersonal communications service.

Even though the end-user protection provisions concern maximum harmonisation, the provisions do leave room for Member States to take the specific national circumstances into account when implementing them and for application by the regulator.

More generally, end-users in Member States with low broadband network coverage could also significantly benefit from the Code, as Member States have to ensure that they have access to a broadband internet access service. In addition, where Member States establish that retail prices for voice communication and broadband internet access services are not affordable for consumers with a low income or special social needs, it has to take measures to ensure affordability of these services. This may result in a requirement for all providers of these services to offer special tariff options or packages to those consumers. In exceptional circumstances, in particular where this would result in a demonstrated excessive administrative or financial burden for providers or the Member State, a Member State may decide to impose the obligation to offer such special tariffs packages only on designated undertakings.



New tariff caps for intra-EU roaming and EU-wide single termination rates

After the 2017 EU roam-like-at-home rules generally lowered the charges for data services, voice calls and SMS when travelling in a different Member State, the amendment to the roaming provisions in the Open Internet Regulation introduced in the context of the Code, will also cap the charges for voice calls and SMS from the home country to a different Member State: €0.19/minute and €0.06 SMS messages.

By 31 December 2020, the Commission shall also set an EU-wide single maximum mobile and fixed voice termination rate. This results in harmonisation of the now often diverging rates in the different Member States, but will also lead to redistribution of revenues: lower revenues for providers having more incoming than outgoing calls – and higher revenues for the others.



Additional acts and regulations to come and the role of BEREC

The Code itself already introduces a significant number of changes and additions compared to the prior framework, but there is still more to come. The Commission shall in addition adopt delegated acts or implementing acts.

Box: EC delegated acts and implementing acts required by the Code

	Topic	By date
Delegated acts	To set a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate, which are imposed on any provider of mobile voice termination or fixed voice termination services, respectively, in any Member State.	31 December 2020
	The measures necessary to ensure the compatibility, interoperability, quality, reliability and continuity of emergency communications in the Union with regard to caller location information solutions, access for end-users with disabilities and routing to the most appropriate PSAP.	21 December 2022
Implementing acts	Specification of the physical and technical characteristics, such as maximum size, weight, and where appropriate emission power of small-area wireless access points.	30 June 2020
	Specification of a contract summary template to be used by providers	21 December 2019

BEREC is required to issue guidelines on at least 10 topics, such as the relevant criteria for determining the first concentration or distribution point (relevant for symmetric access obligations), the identification of the network termination point and the criteria for a network to be considered a very high capacity network. Regulators and sometimes even Member States are to take utmost account of BEREC's guidelines. Furthermore, BEREC will maintain at least three databases, will issue reports and benchmarks and will be able to request information from undertakings.

Box: BEREC deliverables required by the Code

Product/deliverable	Topic	By date
Guidelines	For the notification template, to approximate notification requirements	Not specified
	Assistance of consistent performance of geographical surveys and forecasts	21 June 2020
	Criteria for determining the first concentration or distribution point the point beyond that first concentration point, capable of hosting a sufficient number of connections, which network deployments can be considered new, which projects can be considered small and which economic or physical barriers to replication are high and non-transitory	21 December 2020
	Identification of the network termination point in different network topologies	Not specified
	Minimum criteria for a reference offer to contribute to the consistent application of transparency obligations.	21 December 2019
	Criteria for SMP-parties co-investing in very high capacity networks to not impose any additional obligations for these networks	Not specified
	Criteria a network has to fulfil to be considered a very high capacity network, in particular in terms of down- and uplink bandwidth, resilience, error-related parameters and latency	21 December 2020 and to be updated by 31 December 2025
	Common criteria for the assessment of the ability to manage numbering resources and the risk of exhaustion of numbering resources.	21 June 2020
	Detailing the relevant QoS parameters, including parameters relevant for end-users with disabilities, the applicable measurement methods, the content and format of publication of the information, and quality certification mechanisms. (Of internet access services and interpersonal communications services).	21 June 2020
On how to assess whether the effectiveness of public warnings through publicly available electronic communications services other than mobile number-based interpersonal communications services is equivalent to public warnings through the mobile number-based interpersonal communications services.	21 June 2020	
Opinion	On the national implementation and functioning of the General Authorisation and on their impact on the single market.	21 December 2021 and every 3 years thereafter
	On the market and technological developments regarding the different types of electronic communication services and on their impact on the application of Title III of the Code.	21 December 2021 and every 3 years thereafter Or upon a reasoned request from at least two of its members
Report	On best practices of Member States in respect of	21 June 2020

	defining the adequate broadband internet access service (US). To be taken into account by Member States while defining the adequate broadband internet access services. To be updated regularly to technical advances and changes in consumer usage patterns.	
Database	EU database of notifications transmitted to the competent authorities.	Not specified
	On the numbering resources with a right of extraterritorial use within the Union.	Not specified
	Of E.164 numbers of European emergency services to ensure that they are able to contact each other from one MS to another	Not specified

The Code foresees reviews for the Recommendation on relevant markets (at the end of 2020) and the end-user rights provisions (end of 2021). A general review of the framework is foreseen for the end of 2025.

Next steps

The next step will be the transposition of the Code into national law by each of the member states, for which the Code sets a deadline of 21 December 2020. There are still critical choices to be made by the Member States during this two-year transposition phase.

In the meantime, some obligations set at the EU level already need to be complied with before the two-year implementation term has ended, most notably the intra-EU communications cap of €0.19/minute and €0.06 SMS messages (discussed above) which will apply from 15 May 2019.

Now is the time to prepare for these initial obligations as well as the process of national transposition, not only of Member State legislators and regulators, but also for companies that will be affected by the new and amended rules introduced by the Code.

For further information and advice on these topics please contact one of our specialists.

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