



EU4Digital

EU4Digital: supporting digital economy  
and society in the Eastern Partnership

# Framework law on Electronic Communications for Ukraine

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## TITLE I NRA GOVERNANCE

### CHAPTER I Status of the NRA, general provisions and regulatory principles

The articles below this box cover the following criteria:

- Status of NRA – legally distinct and functionally independent (1.1.1.)

#### Article 1 National regulatory authority

1. The NRA is charged, in accordance with its assignments, with the functions of regulation, supervision, monitoring and sanctioning provided for in the present law.
2. This law and adopted by the NRA statutes of the authority ensure:
  - a) Its independence as an organisational and financial body, functionally separated from the Government, and endowed with the means necessary for the execution of its functions;
  - b) The effective prohibition for the NRA to seek and any other body to give instructions in relation to the exercise of tasks assigned to the NRA under this law;
  - c) Its independence as an organisational and financial body, functionally separated from undertakings which provide electronic communications networks and services and equipment;
  - d) The effective separation of regulatory functions from powers associated with the ownership or control of undertakings of the sector upon which the State retains ownership or control.

### CHAPTER II NRA legal nature and purpose

#### Article 2 Legal nature and purpose of the NRA

1. NRA is a public body endowed with financial and administrative autonomy and its own assets.
2. The aim of NRA is to regulate, supervise and represent the communications sector under the terms of this law.

#### Article 3 Legal regime of the NRA

NRA is governed by the contents of this law, by the respective specifically applicable legal provisions, and, to a subsidiary degree, by the legal regime for public business entities, except for the specific situations anticipated by this law and the rules incompatible with the non-business nature of same.

#### Article 4 Independence

NRA is independent in the exercise of its functions, in the context of law, without prejudice to the guiding principles of communications policy set by the Government, according to constitutional and legal terms and the acts subject to ministerial tutelage under terms anticipated by law.

#### Article 5



## Principle of specialty

1. The legal capacity of NRA encompasses the rights and obligations necessary for it to accomplish its purpose.
2. NRA may not undertake activities or use powers outside its responsibilities, nor may it use its resources for ends other than those it has been assigned.

### The articles below this box cover the following criteria:

- Decision making powers, prohibition to seek or take instructions (1.1.2.)
- Powers to develop NRA's own strategy (1.1.3.)
- Legislative initiative powers of NRA (1.1.9.)
- Powers of enforcement of regulation (2.1.1.)

## Article 6

### Regulatory objectives

1. The objectives of electronic communications regulation to be pursued by the NRA are:
  - a) To promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services;
  - b) To promote the interests of citizens, pursuant to the present law.
2. In respect of point a) of the preceding paragraph, the NRA is charged with:
  - a) Ensuring that users, including users with disabilities, derive maximum benefit in terms of choice, price and quality;
  - b) Ensuring that there is no distortion or restriction of competition in the electronic communications sector;
  - c) Encouraging efficient infrastructure investment, and promoting innovation;
  - d) Incentivising the efficient use of radio frequencies and numbering resources and ensuring their effective management.
3. In respect of point c) of paragraph 1, the NRA is charged with:
  - a) Ensuring that all citizens have access to the universal service as defined in the present law;
  - b) Ensuring that consumers enjoy a high level of protection in their relationship with providers of electronic communications services and networks, in particular through the establishment of procedures for the resolution of disputes, which procedures shall be simple and inexpensive and directed by bodies that are independent of the parties in dispute;
  - c) Contributing to the guarantee of a high level of protection of personal data and privacy;
  - d) Promoting the provision of clear information, and requiring in particular that tariffs and conditions for using publicly available electronic communications services are transparent;
  - e) Addressing the needs of specific social groups, in particular users with disabilities;
  - f) Ensuring that the integrity and security of public communications networks are maintained.





4. All decisions and measures taken by the NRA shall be reasonable and proportionate to the regulatory objectives established in the present article.
5. The NRA is charged with adopting all reasonable and proportionate measures which are necessary to ensure that any undertaking is able to provide electronic communications services or to establish, extend or provide electronic communications networks.
6. The decisions and measures taken by the NRA shall, at all times, have basis in the provisions of the preceding paragraphs.
7. In the performance of its regulatory remit as specified in this law, and in particular with respect to ensuring effective competition, the NRA shall seek to ensure the technological neutrality of regulation, without prejudice to the adoption of suitable measures for the promotion of specific services, where such measures are necessary for the pursuit of the regulatory objectives stipulated in this article.
8. The NRA may contribute, within the scope of its remit, to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as pluralism, in particular in respect of the media.
9. Every public entity and authority shall, within the scope of its respective remit, likewise contribute to achieving the objectives of electronic communications regulation.

## **Article 7 Strategy**

1. Electronic communications policy development is defined in the strategy for the development of electronic communications adopted by the Parliament/Government for the period of five years.
2. The strategy referred to in paragraph 1 of the Article hereof shall define long-term development goals and guidelines for the development of electronic communications and meeting the interests of consumers, taking into account technological and economic criteria, in accordance with environmental protection principles, measures for shared use of electronic communications network and promotion of competitiveness in the electronic communications market.
3. For the purpose of attaining the goals defined in the strategy for the development of electronic communications, the NRA in charge of electronic communications shall adopt its own strategy and defines annual programmes plans for its implementation.
4. Upon the expiry of the period for which the programme and/or business plan was adopted, the NRA shall report to the Parliament on the implementation thereof.

## **Article 8 Legislative and advisory powers**

1. NRA will pronounce itself on all matters within its area of responsibilities that are submitted to it by the Parliament or the Government and may, on its own initiative, suggest or propose political or legislative measures in matters pertinent to its responsibilities to the Parliament or the Government.
2. NRA will respond within a maximum of 60 days to consultations addressed to it by authorised entities on matters within its jurisdiction.

## **Article 9 Regulatory and supervisory procedures**

In the scope of its powers of regulation and supervision, NRA may adopt, under terms of the law, the following procedures:



- a) The elaboration of regulations in cases anticipated by law and when shown to be indispensable for the exercise of its responsibilities;
- b) Accompany activities of the entities subject to its oversight and the functioning of communications markets;
- c) Monitor compliance with the law and applicable regulations in the communications sector;
- d) Approval of acts anticipated by law;
- e) Effect registration as anticipated by law;
- f) The initiation and accompaniment of cases involving sanctions, and the punishment of infractions within its jurisdiction;
- g) Give orders and formulate tangible recommendations;
- h) Disseminate information;
- i) Publish studies;
- j) Others anticipated by law.

## CHAPTER III NRA organisation

**The articles below this box cover the following criteria:**

- Ability to set remuneration for Board members and employees (1.1.8.)
- Terms in Office as head or collegiate body performing that function (1.2.4.)

### **Article 10 Organisation of the NRA**

1. The NRA has the following bodies: a collegiate decision-making body in form of a board and an executive body.
2. The board is the body responsible for the definition and implementation of the regulatory activity of NRA, as well as for the direction of its respective services. The board takes decisions on behalf of the NRA.
3. The board comprises a chairman and two or four board members.
4. The members of the board are appointed by resolution of the Parliament, upon proposal by the Government.
5. The members of the board are appointed for a once renewable period of five years, except for the case as set out in this article; the members remain in office until their effective replacement or declaration of cessation of functions.
6. The chairman and a member of the board shall be appointed to office by ensuring appropriate rotation so that in a period of 12 calendar months the term of office would end for not more than two members of the board or the chairman and one member of the board.
7. If, upon appointing the chairman or a member of the board to office for the term specified in in this article, appropriate rotation cannot be ensured, the chairman or a member of the board shall be appointed to office



for a term of office which is not less than five years and does not exceed seven years, ensuring appropriate rotation.

8. The NRA shall have the Statute which shall define, in particular: the manner of performing activities which are in public interest, in accordance with the law, competences and scope of activities of the bodies and expert services of the NRA, manner of adoption of enactments and other regulations, rights and responsibilities of the board, internal organisation and other matters relevant for the NRA operation, in accordance with the law.
9. The Statute of the NRA shall be adopted by the board, following a public consultation procedure.
10. Any legislation concerning state civil service as well as any non-NRA adopted provision on setup of the NRA and remuneration framework for members of the board and staff of the executive body shall not be applicable to the NRA.

## **Article 11**

### **Independence of members of the board**

Without prejudice to the provisions of article (policy making) and the preceding articles, the members of the board are independent in the exercise of their functions and are not subject to instructions or specific orientations.

## **Article 12**

### **Powers of the board**

The board is endowed with the following powers:

- a) To define the general orientation of NRA and monitor its execution;
- b) To approve regulations and effect the deliberations anticipated in this measure or necessary for the performance of its functions;
- c) To draft the findings anticipated in the current statutes;
- d) To annually elaborate a report on the situation of communications and on its regulatory and oversight activity, and to disseminate same to the public by the most appropriate means, submitting it to the Ministry of tutelage by the date set for elaboration of the annual report and accounts;
- e) To approve the organisation and functioning of NRA;
- f) To constitute attorneys and designate representatives of NRA to other entities;
- g) To collect revenues and authorise expenditures;
- h) To manage the property of NRA; it may acquire, alienate or encumber moveable or immoveable property, and accept donations, inheritances or legacies;
- i) To submit for tutelary approval the multi-annual activity and financial plans, the budgets and the annual report and accounts of NRA;
- j) To submit for approval by the Ministry of tutelage the opening or closing of branch offices or agencies of NRA;
- k) To practice all the divers acts necessary to fulfil the responsibilities of NRA where no other body has jurisdiction.



## **Article 13**

### **Delegation of powers**

1. The board may delegate, by act, powers to one or more of its members or to NRA workers, and authorise the sub-delegation of those powers, fixing in each case the respective limits and conditions.
2. Without prejudicing the inclusion of other powers, the assignment of a position implies delegation of the necessary powers to direct and supervise the respective services, and to practice the acts of management current to the respective organisational units.
3. Deliberations that involve the delegation of powers must be subject to publication in the Official Gazette.

## **Article 14**

### **Functioning**

1. The board ordinarily meets once a week and extraordinarily when convoked by its chairman upon own initiative or when requested by two of the other members.
2. The board may designate an employee to provide its assistance, with the duty, among other tasks, to promote the respective summons and prepare the minutes of meetings.

## **Article 15**

### **Chairman of the board**

1. The responsibilities of the chairman of the board are:
  - a) To convoke and preside over the board and lead its meetings;
  - b) To co-ordinate the activity of the board;
  - c) To represent NRA in court or outside it, except when the law or other statutes require other form of representation;
  - d) To assure relations between NRA and the Government and other authorities.
2. The chairman of the board designates the voting member who will replace him when absent or otherwise prevented from attending; in cases where no such designation has been made, he is replaced by the most senior voting member, or, in case of equal seniority, by the oldest voting member.
3. In cases of duly grounded urgency, the chairman of the board or his replacement when absent or otherwise prevented from attending may practice any acts within the powers of the board, which are nevertheless subject to ratification at the next ordinary meeting of the board.
4. The chairman of the board may delegate the exercise of part of his powers to any of the other board members.

## **Article 16**

### **Legal binding of NRA**

1. NRA is bound by signature:
  - a) Of the chairman of the board and two other members, if no alternate manner has been deliberated by the same board;
  - b) Of whomsoever is charged to that end, under the terms and scope of the respective mandate.



2. Acts of mere expedient may be signed by any member of the board or by NRA employees to whom such power has been explicitly granted.
3. Without prejudice to the previous paragraphs, NRA is also obliged by the signature of its attorneys, within the restricted bounds of the powers granted thereto.

**The article below the following criteria:**

- Cooperation setup with other competent authorities (1.1.12.)

**Article 17  
Cooperation**

1. The NRA and the competent authorities and services, particularly in the area of consumer protection, shall jointly cooperate, whenever necessary, in matters of common interest.
2. The NRA and national competition authority shall cooperate with each other in matters related with the application of the legal regime of competition in the electronic communications sector.
3. In the cases set out in articles DDD and DDD, the NRA shall request the prior opinion of The Competition Authority.
4. Where, within the scope of cooperation as provided for in the preceding paragraphs, the NRA and other competent entities exchange information, particularly in respect of competition matters, the entity in receipt of such information shall ensure the same level of confidentiality as authority from which it was obtained is bound to provide; the NRA and the national competition authority may use said information in the exercise of their respective powers.

## CHAPTER IV Management of finances and assets of the NRA

**The articles below this box cover the following criteria:**

- Formation of NRA's budget (1.1.4.)

**Article 18  
General rules**

1. The activity of NRA regarding finances and assets is governed by the provisions of this law and also by the legal regime applicable to public entities, except where this law provides otherwise.
2. The management of the finances and assets of NRA is governed according to the principles of law; the general regime for financial activity of autonomous services and funds is not applicable thereto, without prejudicing compliance with the rules of international and community law on public markets.
3. Any budgetary proposal shall only cover the costs of performance of functions as set forth by this law.
4. NRA should in all cases adopt contractual procedures governed by the requirements of advertisement, competition and non-discrimination, as well as quality and economy.
5. The budget of NRA, which will be stipulated in the General State Budget, is drawn up by the NRA in accordance with the General Accounting Plan and the NRA shall be awarded opportunity to participate in the budgetary scrutiny process and unless otherwise proven in a transparent and non-discriminatory procedure, the budget shall be adopted as drawn up.



6. Any revenues collected by the NRA for performance of functions as stipulated by this law shall only be used for implementation of this law.
7. In case there is a budgetary surplus, the funds shall be returned to the payers in a proportionate manner, based on the procedure established by the NRA.

## **Article 19 Assets**

The assets of NRA consist of the whole of the property, rights and guarantees it acquires or contracts in the pursuit of its duties, as well as those assigned it by law.

**The articles below this box cover the following criteria:**

- Sources of NRA's financing (1.1.5.)

## **Article 20 Revenues**

The revenues of NRA consist of:

- a) The fees collected as a percentage of annual turnover;
- b) The fees and other revenues collected in the scope of management of the radio spectrum and the national numbering plan;
- c) The fees and other revenues collected in the scope of the assignment of authorisations, rights of use and licences authorising activity and the supervision of operators and providers of communications services;
- d) The product of the application of contractual fines, as well as other charges applied under terms of the law;
- e) Revenues from the provision of services, namely from its laboratories;
- f) Any other revenues, income or values that derive from its activity or that by law or contract have been assigned to it or become its property, as well as any donations, subsidies or other forms of financial support;
- g) The product of the alienation of own property and the constitution of rights over same.

**The articles below this box cover the following criteria:**

- Possibilities to execute (spend) NRA's budget (1.1.6.)

## **Article 21 Expenditures**

1. The expenditures of NRA consist of those undertaken in the context of exercising its incumbent responsibilities and powers, which concern the duties inherent to its activities and the acquisition of immovable goods.
2. The NRA shall publish an annual financial statement shall contain financial indicators of NRA operation.



3. The financial statement of the NRA shall be subject to annual audit by an independent authorised auditor.
4. Expenses of the audit shall be covered by the NRA.
5. The financial statement shall be submitted to the President of the Parliament.

## CHAPTER V Services and personnel

**The articles below this box cover the following criteria:**

- Recruitment of personnel and experts (1.1.7.)

### **Article 22 Services**

NRA is endowed with technical and administrative support services, approved by the board and dependent on approval of the activities plan and budget.

### **Article 23 Personnel regime**

1. NRA personnel are subject to the legal regime for individual work contracts and are covered by the general regime for social security.
2. NRA may be a party to collective labour regulation instruments.
3. The hiring of personnel will be preceded by public announcement and carried out according to objective selection criteria, to establish by regulation of NRA.
4. Conditions with respect to discipline and the provision of work are defined in a regulation specific to NRA, with observance of the necessary legal provisions of the regime for individual work contracts.

**The articles below this box cover the following criteria:**

- Ability to set remuneration for Board members and employees (1.1.8.)

### **Article 24 Status**

1. The members of the board enjoy the status of public manager in all that does not derive from these statutes, with their remuneration system established by NRA, following a public consultation procedure, taking into account comparable remuneration frameworks within the regulated undertakings.
2. The general regime for social security is applicable to members of the board, except when they are on the public service rolls, in which case the specific regime of their post of origin will be applied.
3. The members of the board may not, during their mandate, exercise any other public function or professional activity, except with regard to part-time teaching activities in higher education.
4. The members of the board are subject to the incompatibilities and impediments regarding holders of high public office.



## CHAPTER VI Composition and appointment and dismissal of the board

The articles below this box cover the following criteria:

- Procedure and conditions set for recruitment of head or collegiate body performing that function (1.2.1.)
- Appointment of the head or collegiate body performing that function (1.2.2.)

### Article 25

#### Composition and appointment

1. The members of the board are nominated from among people of recognised capacity, independence and technical and professional competence.
2. Ineligible for nomination are those who have been members of the managing bodies of companies in the communications sector for the past two years, i.e., who have worked with or been permanent collaborators of same with directorial or leadership duties during that same period of time.
3. The members of the board may not retain interests of a financial nature or shares in regulated companies in the sectors of communications.
4. The members of the board are appointed for a non-renewable period of five years; the members remain in office until their effective replacement or declaration of cessation of functions.

The articles below this box cover the following criteria:

- Dismissal of the head or collegiate body performing that function, criteria for dismissal (1.2.3.)

### Article 26

#### Cessation of functions

1. The members of the board cease exercise of their functions:
  - a) When the time period for which they were designated is finished;
  - b) Due to permanent incapacity or subsequent incompatibility of the office holder;
  - c) By resignation;
  - d) Due to condemnation for the practice of any felony.
2. The mandate of members of the board will end if said body is dissolved or NRA is legally disbanded or merged with another regulatory body.
3. In case of individual cessation of mandate, the new member is always appointed for a period of five years.
4. After the end of their period of duty, members of the board are barred from carrying out any function or providing any service to companies in the regulated sectors for a period of two years.
5. During the impediment period established in the previous paragraph, the regulatory entity will continue to provide ex-members of the board with 2/3 of the remuneration corresponding to the respective position; this allowance will cease from the moment in which same are contracted or appointed to carry out any





remunerated public or private service or function, except for the functions anticipated in paragraph DDD of article DDD.

## CHAPTER VII Transparency of the NRA

**The articles below this box cover the following criteria:**

- Consultation and transparency requirements (1.1.11.)

### **Article 27 Consultation procedure**

1. Where the NRA, in the exercise of the powers as set forth by the present law, intends to take measures which have a significant impact on the relevant market, it shall publish the respective draft of said measure and give interested parties the opportunity to comment on it, for which purpose a fixed period, of not less than 30 days, shall be provided. In addition to consultation, at the discretion of the NRA, a public hearing process may take place.
2. A written report on the results of public consultation shall be made publicly available and shall include an explanation of the NRA attitudes in relation to the proposals that were submitted during the consultation.
3. For the purpose of implementation of the paragraphs 1 and 2 of this Article, the NRA shall adopt a regulation on consultation procedure.

## CHAPTER VIII Complaints, dispute resolution and appeal procedures

### SECTION II Dispute resolution

**The articles below this box cover the following criteria:**

- Powers of resolve disputes between undertakings (1.3.2.)
- Powers to solve customer complaints (2.4.2.)

### **Article 29 Administrative dispute resolution**

1. The NRA is charged, at the request of either party, with the resolution, by way of a binding decision, of any dispute connected to the obligations arising under this law and between undertakings subject thereto in the national territory, without prejudice to the possibility of appealing to the courts.
2. The intervention of the NRA shall be requested within a period of one year from the date on which the dispute commenced.
3. The decision of the NRA shall, except in exceptional circumstances, be issued no later than four months following the date on which the request was made, which decision and grounds therefor shall be notified to the interested parties and, provided that commercial confidentiality is safeguarded, published.
4. In the resolution of disputes referred to in the present article, the NRA shall make a decision that is in accordance with the provisions of this law and has regard to the pursuit of the objectives of regulation established in article 5.



5. In the course of a dispute resolution, all undertakings providing electronic communications networks or services shall cooperate fully with the NRA, specifically by complying with any requests made in this scope.
6. Decisions of the NRA issued pursuant to the present article may be appealed under the terms of paragraph DDD of article DDD.

## **Article 30**

### **Refusal of the dispute resolution request**

1. The NRA may only deny a request to resolve a dispute made pursuant to the preceding article in the following cases:
  - a) Where the request does not concern compliance with the obligations arising from the present law;
  - b) Where the period specified in paragraph DDD of the preceding article has expired;
  - c) Where the NRA deems that other mechanisms, including mediation, exist which are more suitable for the resolution of the dispute in a timely manner, in accordance with the provisions of article DDD.
2. The NRA shall notify the parties without delay in the event that it denies a request, and, in the case set out in point c) of the preceding paragraph, of the most suitable means for the resolution of the dispute.
3. In the event that, in the case set out in point c) of paragraph 1, the dispute is not resolved within a period of four months following the notification of the parties and court proceeding have not been initiated for the purpose of resolving such dispute, the NRA may, at the request of either party, instigate the procedure set forth in the preceding article, so terminating any previously initiated process of dispute resolution.

## **Article 31**

### **Resolution of cross-border disputes**

1. In the event of a dispute arising in respect of the obligations resulting from the regulatory framework on electronic communications occurring between undertakings which are subject thereto and established in different Member States, and where such dispute lies within the remit of national regulatory authorities from more than one Member State, any party may refer the dispute to the competent NRA, without prejudice to the possibility of either party bringing an action before the courts.
2. In the case set forth in the preceding paragraph, the national regulatory authorities concerned shall coordinate their intervention in order to bring about a resolution of the dispute in accordance with the provisions of article DDD, while the decisions taken shall conform with the regulatory framework on electronic communications.
3. National regulatory authorities may jointly decide to deny a request to resolve a dispute, pursuant to point c) of paragraph 1 and to paragraphs 2 and 3 of the preceding article.

## **Article 32**

### **Out-of-court dispute resolution**

1. Without prejudice to the resort to courts and to entities responsible for the protection and promotion of consumer rights end-users may submit disputes with undertakings providing electronic communications networks and services to the legally constituted arbitration and mediation mechanisms.
2. It is incumbent upon the NRA to encourage the development of mechanisms for out-of-court resolution of disputes which may arise between undertakings providing electronic communications networks and services and end-users.
3. For the purposes of the preceding paragraph, the NRA may cooperate in the creation of the referred mechanisms or establish agreements with entities which have previously carried out the implementation of such mechanisms, and in particular set out a system whereby the NRA, within the scope of its supervision and monitoring powers, receives regular reports in respect of consumer complaints submitted to such mechanisms.



## TITLE II NRA POWERS AND OBLIGATIONS

### CHAPTER I Supervision and monitoring

The articles below this box cover the following criteria:

- Powers of enforcement of regulation (2.1.1.)

#### Article 34 Exercise of oversight

1. Under terms of the law, NRA may proceed with inquiries and tests at any site or entity within the scope of those functions.
2. For effects of the aforementioned paragraph, the NRA may accredit especially skilled or qualified persons or entities.

#### Article 35 Procedures for sanctions

1. NRA is responsible for initiation legal cases and punishing administrative infractions of the laws and regulations whose implementation or supervision is within its jurisdiction, as well as those resulting from non-fulfilment of its own determinations.
2. The sanction procedures respect the principle of hearing for the interested parties, the contesting party and the other divers principles contained in the Code of Administrative Procedure, and, when appropriate, the regime for offences.
3. It is also incumbent upon NRA to report to the proper authorities when it learns of infractions during the performance of its duties.

### CHAPTER III Access to open internet and quality of service

The articles below this box cover the following criteria:

- Powers to regulate net neutrality (2.1.5.)

#### Article 40 Access to open internet

The NRA shall have necessary powers and obligations under 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' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union related to access to open internet and Articles 3, 4 and 5 thereof in particular.

The articles below this box cover the following criteria:

- Powers to control quality of service requirements (2.1.6.)



## Article 41 Quality of service

1. Undertakings which provide publicly available electronic communications services shall publish and provide end-users with information on the quality of their services, which information shall be comparable, clear, complete and up-to-date.
2. For the purposes of the preceding paragraph, the NRA shall, following the general consultation procedure referred to in article DDD (consultation procedure), specify, inter alia, the quality of service parameters to be measured and the content, form and manner of information to be published, based of regulation adopted by the NRA.
3. Undertakings shall also provide the NRA with regular and up-to-date information on the quality of their services, in accordance with article DDD.

**The articles below this box cover the following criteria:**

- Powers to supervise EU Broadband Cost Reduction Directive implementation from 2014 (2.1.7.)

## Article 42 On measures to reduce cost of rollout of broadband networks

The NRA shall have necessary powers and obligations under Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks related to dispute settlement body and single information point (Articles 4, 6 and 7).

## CHAPTER IV Market analysis and regulatory controls

### SECTION I Market analysis procedure and imposition of obligations

**The articles below this box cover the following criteria:**

- Powers to define and analyse relevant markets (2.2.1.)
- Powers to implement *ex-ante* obligations (2.2.2.)
- Powers to regulate interconnection and access (2.2.3.)
- Powers to regulate access to ducts and/or other network infrastructure (2.2.4.)
- Powers to regulate termination and/or origination and/or transit tariffs (2.2.5.)

## Article 45 Scope and general principles

1. The present title applies to undertakings providing publicly available networks and services.
2. Market analysis and the imposition of specific regulatory obligations shall comply with the principles of full reasoning for the application of specific regulatory obligations.
3. In establishing the grounds for decisions to apply specific regulatory obligations, the NRA shall cumulatively prove that the imposed obligation:
  - a) is appropriate to the identified problem, and is proportional and justified in the light of the objectives set forth in article (DDD Article on Targets of Law) of the present law;



- b) is objectively justified in respect of the networks, services or infrastructure to which it refers;
- c) does not result in undue discrimination in respect of any other entity;
- d) is transparent in regard to its purposes.

## Article 46

### Scope of Task

The NRA is charged, according to the rules provided for in this article, with:

- a) Identifying the relevant markets of products and services, having regard to the recommendation of the European Union issued pursuant to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002, hereinafter referred to as the recommendation of the European Commission, as well as other relevant markets not mentioned therein;
- b) determining whether or not a relevant market is effectively competitive;
- c) designating undertakings with significant market power in the relevant markets;
- d) imposing, maintaining, amending or withdrawing obligations in respect of undertakings with or without significant market power, including the imposition of technical and operational conditions on the provider and/or beneficiaries of access;
- e) performing the tasks as identified in the paragraph d) within three years from the adoption of a previous measure relating to that market;
- f) performing the tasks as identified in the paragraph d) within two years from the adoption of a revised recommendation on relevant markets, for markets previously not reviewed;
- g) performing the tasks as identified in the paragraph d) within two years from their accession to the European Union.

#### The article below the following criteria:

- Cooperation setup with other competent authorities (1.1.12.)

## Article 47

### Cooperation with the Competition Authority

The draft measures of the NRA in respect of the analysis of the market and the determination of whether or not an undertaking holds significant market power are subject to the prior opinion of the national competition authority, with opinion shall be issued within 30 days of the respective request.

## SECTION II

### Market definition and analysis

#### The articles below this box cover the following criteria:

- Powers to regulate national and/or international roaming (2.1.4.)
- Powers to define and analyse relevant markets (2.2.1.)
- Powers to implement *ex-ante* obligations (2.2.2.)
- Powers to regulate interconnection and access (2.2.3.)
- Powers to regulate access to ducts and/or other network infrastructure (2.2.4.)
- Powers to regulate termination and/or origination and/or transit tariffs (2.2.5.)



## **Article 48**

### **Market definition**

1. The NRA is charged with defining the relevant markets of products and services within the electronic communications sector, including the relevant geographic markets, in accordance with the principles of competition law.
2. In the course of market definition, the NRA, having regard to national circumstances, shall take utmost account of the recommendation of the European Union that identifies, in accordance with the principles of competition law, the relevant product and service markets, the characteristics of which may be such as to justify the imposition of specific regulatory obligations and shall also take due account of the “Guidelines for market analysis and assessment of significant market power”, hereinafter referred to as the guidelines.
3. The NRA may define markets that differ from those mentioned in the recommendation of the European Union, following the procedure referred to in guidelines.
4. The market definition may be reviewed in the event that the recommendation of the European Union is amended or where the NRA deems that there are grounds for such a review.

## **Article 49**

### **Market analysis**

1. The NRA is charged with carrying out an analysis of the relevant markets defined pursuant to the preceding article, taking account of the guidelines.
2. Within the scope of market analysis, the NRA shall determine whether or not a relevant market is effectively competitive, for the purposes of imposing, maintaining, amending or suppressing obligations set forth in the present title.
3. Where the NRA concludes that the market is effectively competitive, it shall not impose any specific regulatory obligation and it shall remove any existing obligations, giving an appropriate period of notice to parties affected by such removal.
4. Where the NRA determines that a relevant market is not effectively competitive, it shall identify undertakings with significant market power in that market and impose appropriate and specific regulatory obligations, or maintain or amend such obligations where they already exist.
5. Where the NRA identifies transnational markets, by means of a decision taken pursuant to Directive no 2002/21/EC of the European Parliament and of the Council of 7 March 2002, the NRA shall, jointly with the other national regulatory authorities concerned, conduct an analysis of the market or markets concerned, taking account of the guidelines, in order to formulate a position in respect of on any imposition, maintenance, amendment or withdrawal of obligations provided for in this title.
6. The analysis of the market shall be reviewed in the event that a new definition of the markets is established or where NRA deems that there are grounds for such a review.

## **Article 50**

### **Significant market power**

1. For the purposes of the present law, an undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and consumers.
2. The NRA, when assessing whether two or more undertakings have a joint dominant position in a market, shall act in accordance with European Union law and take the guidelines into account.



3. The NRA may consider that two or more undertakings are in a joint dominant position if, even in the absence of structural or other links between them, they operate in a market whose structure is considered to be conducive to coordinated effects.
4. Where an undertaking has significant market power in a specific market, it may also be deemed to have significant market power in an adjacent market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking.

## CHAPTER V Access and interconnection

### SECTION I General provisions

**The articles below this box cover the following criteria:**

- Powers to regulate national and/or international roaming (2.1.4.)
- Powers to regulate interconnection and access (2.2.3.)
- Powers to regulate access to ducts and/or other network infrastructure (2.2.4.)
- Powers to regulate termination and/or origination and/or transit tariffs (2.2.5.)
- Powers to set tariffs and/or prices (2.2.6.)
- Powers to apply cost accounting and allocation methodologies (2.2.7.)
- Powers to set Weighted Average Cost of Capital (2.2.8.)

#### **Article 51 Freedom of negotiation**

Undertakings providing electronic communications networks and services are entitled to negotiate and agree between themselves technical and commercial arrangements for access and interconnection, without prejudice to the competence of the NRA provided for in the present chapter.

#### **Article 52 Competence of the national regulatory authority**

1. In exercising the powers set out in the present chapter, the NRA shall, acting in pursuit of the regulatory objectives set out in article DDD, encourage and, where appropriate, ensure suitable access and interconnection, as well as interoperability of services, aiming at promoting efficiency and sustainable competition, and at providing maximum benefit to end-users.
2. The NRA is charged with:
  - a) Imposing obligations in matters of access and interconnection on undertakings providing electronic communications networks and services;
  - b) Intervening upon its own initiative whenever justified or, in the absence of an agreement between undertakings, at the request of either of the parties involved pursuant to articles DDD and DDD, in order to secure the objectives established in article DDD, in accordance with the provisions of the present law.
3. Operators shall comply with obligations in the form, way and time to be determined by the NRA.



## **Article 53**

### **Access and interconnection conditions**

1. The terms and conditions of access and interconnection provision shall be consistent with obligations imposed by the NRA in such respect.
2. Operators shall have a right and, when requested by other undertakings, an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services.
3. Traffic shall remain the property of the undertaking operating the network or providing the service where the traffic is originated, unless otherwise agreed, and the respective conveyance, as well as the delivery point, may be freely negotiated between the parties.
4. In the case of transnational agreements, the undertaking requesting access or interconnection does need to be covered by the general authorisation laid down in the present law, provided that it does not provide electronic communications networks and services within the national territory.

## **Article 54**

### **Confidentiality**

1. Undertakings shall respect the confidentiality of information received, transmitted or stored, before, during or after the process of negotiating and making agreement in respect of access or interconnection, and shall use that information solely for the purpose for which it was supplied.
2. The received information shall not be passed on to any other party, in particular other departments, subsidiaries or partners, for whom such information could constitute a competitive advantage.
3. The provision of the preceding paragraphs does not prejudice the exercise of the supervisory and monitoring powers of the NRA, particularly in respect of information requested pursuant to article DDD.

## **SECTION II**

### **Obligations applicable to undertakings with significant market power**

## **Article 55**

### **Imposition, maintenance, amendment or withdrawal of obligations**

1. The NRA is charged with determining the imposition, maintenance, amendment or withdrawal of the following obligations, in respect of access or interconnection applicable to undertakings designated as having significant market power:
  - a) Obligation of transparency in relation to the publication of information, including reference offers, pursuant to articles DDD to DDD;
  - b) Obligation of non-discrimination, in relation to the provision of access and interconnection and the respective provision of information, pursuant to article DDD;
  - c) Obligation for accounting separation in respect of specific activities related to access and interconnection, pursuant to article DDD;
  - d) Obligation to respond to reasonable requests for access, pursuant to article DDD;
  - e) Obligation of price control and cost accounting, pursuant to article DDD to DDD;
  - f) Obligation of functional separation.





2. For the purposes of the preceding paragraph, the NRA shall impose the appropriate obligations, having regard to the nature of the problem identified, which obligations shall be proportionate and justified according to the objectives set out in article DDD.
3. The obligations set out in paragraph 1 shall not be imposed on undertakings which have not been designated as having significant market power, except in the cases where such imposition is necessary to comply with international commitments.

## **Article 56**

### **Obligation of transparency**

1. The obligation of transparency consists of the requirement to publish appropriate information in respect of the provision of access and interconnection by an operator, including accounting information, technical specifications, network characteristics and terms and conditions for supply and use, including prices.
2. For the purposes of the preceding paragraph, the NRA is charged with specifying the information to be published, and the form and manner of its publication.

## **Article 57**

### **Reference offer**

1. The NRA may, on a case by case basis, determine, in particular to operators which have obligations of non-discrimination, that access or interconnection reference offers be published, which offers shall:
  - a) Be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested;
  - b) Give a description of the relevant offerings broken down into components according to market needs;
  - c) Give a description of the associated terms and conditions, including prices.
2. For the purposes of the preceding paragraph, the NRA may determine the components which as a minimum shall be included in the reference offers, specifying the precise information to be made available, the level of detail required and the manner of publication.
3. The NRA may further determine:
  - a) Changes to published reference offers, at any time and where necessary with retroactive effect, to give effect to obligations imposed under the provision of article DDD;
  - b) The immediate inclusion of the imposed changes in the agreements concluded, provided that such changes have specific and sufficient content.

## **Article 58**

### **Reference offer for access to the local loop**

1. Where an operator is subject to the obligation to offer unbundled access to the local loop, it shall publish the respective reference offer for access to the local loop including as a minimum the following list of components, without prejudice to the provision of paragraph 2 of the Article DDD:
  - a) Conditions for unbundled access to the local loop;
  - b) Co-location;
  - c) Information systems;
  - d) Supply conditions.



2. For the purposes of point a) of paragraph 1, the following items shall be specified:
  - a) Network components to which access is offered, covering in particular access to local loops and access to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop;
  - b) Information concerning the location of physical access sites, the availability of which may be restricted to interested parties, in order to avoid public security concerns, as well as availability of local loops in specific parts of the access network;
  - c) Technical conditions related to access and use of local loops, including the technical characteristics of the twisted metallic pair in the local loop;
  - d) Ordering and provisioning procedures and usage restrictions.
3. For the purposes of point b) of paragraph 1, the following items shall be specified:
  - a) Information on the notified operator's relevant sites, the availability of which may be restricted to interested parties, in order to avoid public security concerns;
  - b) Co-location options at the sites indicated in the preceding point, including physical colocation and, as appropriate, distant co-location and virtual co-location;
  - c) Equipment characteristics, including restrictions, if any, on equipment that may be installed under the regime of co-location;
  - d) Security issues, including measures put in place by notified operators to ensure the security of their locations;
  - e) Access conditions for staff of competing operators;
  - f) Safety standards;
  - g) Rules for the allocation of co-location space where this is limited;
  - h) Conditions whereby beneficiaries may visit the locations at which physical co-location is available, or sites where co-location has been refused on grounds of lack of capacity.
4. For the purposes of point c) of paragraph 1, the conditions governing access to the notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing shall be specified.
5. For the purposes of point d) of paragraph 1, the following items shall be specified:
  - a) Time needed to respond to requests for supply of services and facilities; service level agreements, fault resolution, procedures to return to a normal level of service and quality of service parameters;
  - b) Standard contract terms, including, where appropriate, compensation provided for failure to meet the time limit applicable for replying to requests;
  - c) Prices or pricing formulae for each feature, function and facility provided for.

## **Article 59**

### **Obligation of non-discrimination**

The imposition of the obligation of non-discrimination consists particularly of the requirement for an undertaking to apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services and to provide services and information to third parties under the same conditions and with the same quality as the services and information provided to its own departments or to those of its subsidiaries or partners.



## Article 60

### Obligation of accounting separation

1. The imposition of the obligation for accounting separation in relation to specified activities related to access and interconnection consists, particularly, of the requirement that operators, and especially those that are vertically integrated, present their wholesale and internal transfer prices in a form that has transparency in order to ensure, inter alia, compliance with the obligation of non-discrimination where applicable or, where necessary, to prevent unfair cross-subsidy.
2. For the purposes of the provision of the preceding paragraph, the NRA may specify the format and accounting methodology to be used.
3. Operators shall make available to the NRA, upon request, their accounting records, including data on revenues received from third parties, in order that compliance with obligations of transparency and non-discrimination may be verified.
4. The NRA may publish the information made available pursuant to the preceding paragraph, to the extent that is necessary to contribute to an open and competitive market, while respecting the commercial confidentiality of such information.

## Article 61

### Obligations of access to, and use of, specific network facilities

1. The NRA may impose obligations on operators to respond to reasonable requests for access to and use of specific network components and associated facilities, including passive infrastructure such as but not limited to ducts, masts, poles, particularly in situations where the denial of access or the setting of unreasonable conditions would hinder the emergence of a sustainable competitive market at the retail level or harm the interests of end-users.
2. In exercising the competence provided for in the preceding paragraph, the NRA may, in particular, impose the following obligations on operators:
  - a) To give third parties access to specified network components and/or facilities, including unbundled access to the local loop;
  - b) Not to withdraw access to facilities where access has been already granted;
  - c) To interconnect networks or network facilities;
  - d) To provide co-location or other forms of facility sharing, including duct, building or mast sharing;
  - e) To provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;
  - f) To grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
  - g) To provide specified services on a wholesale basis for resale by third parties;
  - h) To provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
  - i) To negotiate in good faith with undertakings requesting access.
3. The NRA may attach conditions in respect of fairness, reasonableness and timeliness to the imposition of obligations provided for in the preceding paragraph.



4. In considering whether or not to impose the obligations set forth in the preceding paragraphs, the NRA shall take special account of the following factors, particularly when assessing whether such obligations would be proportionate to the regulatory objectives set out in article DDD:
  - a) The technical and economic viability of using or installing competing facilities, in the light of the rate of market development and taking into account the nature and type of interconnection and access involved;
  - b) The feasibility of providing the proposed access, in relation to the available capacity;
  - c) The initial investment by the facility owner, taking into account the risks involved in making such investment;
  - d) The need to safeguard competition over the long term;
  - e) Any relevant intellectual property rights, where appropriate;
  - f) The provision of pan-European services.

## **Article 62**

### **Technical and operational conditions**

1. Where necessary and to ensure the normal functioning of the network, the NRA may, when imposing the obligations provided for in paragraphs 1 and 2 of the preceding article, impose technical or operational conditions on the provider and/or beneficiaries of access.
2. The conditions imposed pursuant to the preceding paragraph shall be objective, transparent, proportionate and non-discriminatory, and where they refer to the application of technical rules or specifications, shall comply with rules on standardization, in accordance with the terms of article DDD.

## **Article 63**

### **Obligation of price control and cost accounting**

1. Where a market analysis indicates that, as a result of a lack of effective competition, the operator concerned might sustain prices at an excessively high level or apply a price squeeze to the detriment of end-users, the NRA may impose obligations in respect of cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems for the provision of specific types of access or interconnection.
2. In imposing the obligations referred to in the preceding paragraph, the NRA shall:
  - a) Take into account the investment made by the operator and allow said operator a reasonable rate of return on the capital invested, taking the risks involved into account;
  - b) Ensure that any mandatory cost recovery mechanism or pricing methodology promotes efficiency and sustainable competition and maximises benefits for consumers; further account may also be taken of prices available in comparable competitive markets.

## **Article 64**

### **Demonstration of cost orientation**

1. Operators subject to the obligation of cost orientation of prices shall demonstrate that charges are based on costs, including a reasonable rate of return on the investments made.
2. The NRA may require an operator to provide full justification for its prices, and may, where appropriate, require such prices to be adjusted.



3. The NRA may use cost accounting methods independent of those used by the undertaking, for the purpose of calculating the cost of efficient provision of services.

## **Article 65**

### **Verification of the cost accounting system**

1. The NRA, or another independent body appointed by the NRA, shall, in order to ensure compliance, undertake an annual audit of the cost accounting system intended to allow the control of prices, and shall, in addition, issue and publish the respective statement.
2. Operators upon whom the NRA imposes the obligation of implementing cost accounting systems shall make public the respective description, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs.

## **SECTION III**

### **Obligations applicable to all undertakings**

## **Article 66**

### **Imposition of access and interconnection obligations**

1. The NRA is charged with imposing obligations of access and interconnection on any undertaking, as far as such obligations may be necessary, regardless of whether or not it holds significant market power, under the following terms:
  - a) On undertakings that control access to end-users, in particular those that operate cable networks, including, in justified cases, the obligation to interconnect their networks;
  - b) To provide access to APIs (application program interfaces) and EPGs (electronic programme guides), on fair, reasonable and non-discriminatory terms, in order to ensure that digital radio and television broadcasting services as specified by the competent authorities under the law are accessible to end-users.
2. When imposing the obligations provided for in the preceding paragraph, the NRA may establish technical or operational conditions pursuant to article DDD.
3. Obligations imposed in accordance with the preceding paragraphs shall be objective, transparent, proportionate and non-discriminatory.

## **Article 67**

### **Provision of conditional access**

1. All operators of conditional access services which, irrespective of the means of transmission, provide access services to digital television and radio services, whereby broadcasters depend on such services in order to reach any group of potential viewers or listeners, shall:
  - a) Offer technical services to all broadcasters, on a fair, reasonable and non-discriminatory basis compatible with Community competition law, enabling the digitally-transmitted services of broadcasters to be received by viewers or listeners duly authorised by means of decoders administered by the service operators, and comply with Community competition law;
  - b) Keep separate financial accounts regarding their activity as conditional access providers.
2. Having regard to the provision of point a) of the preceding paragraph, the conditions of provision, including prices, disclosed by broadcasters of digital television shall specify whether or not material related to conditional access is supplied.



3. Operators referred to in paragraph 1 shall notify the NRA of the technical procedures adopted to ensure the interoperability of the different conditional access systems, within five days from the implementation thereof.
4. For the purposes of the preceding paragraph the NRA is charged with publishing the reference to the applicable technical specifications, through a notice in national official publication and in a digital format on the Internet.

## **Article 68**

### **Transfer of control**

1. Operators providing conditional access services shall adopt systems with suitable technical capability for a cost-effective transfer of control, to be agreed with the support network operators.
2. The transfer referred to in the preceding paragraph shall allow the full control by network operators, at local or regional level, of services using such conditional access systems.

## **Article 69**

### **Industrial property rights**

1. Without prejudice to applicable legislation, holders of industrial property rights in respect of conditional access products and systems are to ensure that licences to manufacturers of consumer equipment are granted on fair, reasonable and non-discriminatory terms.
2. The granting of licences referred to in the preceding paragraph, which shall also take into account technical and commercial factors, shall not be subject to conditions prohibiting, deterring or discouraging the inclusion in the same product of:
  - a) A common interface allowing connection with other conditional access systems than that of the holder of the industrial property right;
  - b) Means specific to another conditional access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as he is concerned, the security of transactions of conditional access system operators.

## **Article 70**

### **Amendment or removal of conditional access obligations**

1. The NRA may carry out a market analysis under the terms set out in the present law, in order to decide whether or not to amend or remove the conditional access obligations provided for in articles DDD to DDD.
2. Where, as a result of the market analysis, the NRA finds that one or more operators do not have significant market power, it may determine the amendment or removal of the conditional access obligations with respect to those operators, provided that there is no adverse effect on:
  - a) Accessibility for end-users to radio and television broadcasts and to broadcasting channels and services specified in accordance with article DDD;
  - b) The prospects for effective competition in the markets for retail digital television and radio broadcasting services and conditional access systems and other associated facilities.
3. The NRA shall give an appropriate period of notice to parties affected by such amendment or removal of obligations.
4. The provisions of this article are without prejudice to the possibility of imposing obligations in respect of the presentation of electronic programme guides and similar listing and navigation facilities, under the law.



## CHAPTER VI Control on retail markets

### Article 71

#### Minimum set of leased lines

1. The NRA shall impose obligations on undertakings with significant market power regarding the provision of the minimum set of leased lines, defined in article DDD, as well as the conditions for such provision set out in the following article, with reference to the full minimum set or specific components thereof, in all or part of the national territory.
2. The NRA is charged with:
  - a) Defining appropriate objectives for the established conditions of supply, where it considers that the achieved performance for the provision of the minimum set of leased lines does not meet the needs of users;
  - b) Authorising the amendment of conditions governing provision in a specific case, where, faced with a particular request, an undertaking has grounds for considering the provision of a leased line in the minimum set under its published tariffs and supply conditions to be unreasonable.

### Article 72

#### Conditions for the provision of leased lines

1. The provision of the minimum set of leased lines by undertakings identified as having significant market power shall follow the basic principles of non-discrimination, cost orientation and transparency.
2. The principle of non-discrimination makes mandatory the application of similar conditions in similar circumstances to organisations providing similar services, and where applicable, the provision of leased lines to others under the same conditions and of the same quality as they provide to their own services, or to those of their subsidiaries or partners.
3. For the purposes of the principle of cost-orientation, undertakings shall draw up and implement a suitable cost accounting system.
4. The principle of transparency makes disclosure of the following information on the minimum set of leased lines mandatory:
  - a) Technical characteristics, including the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point;
  - b) Tariffs, including the initial connection charges, the periodic rental charges and other charges; where tariffs are differentiated, this must be indicated;
  - c) Supply conditions, including, in particular and obligatorily, information concerning the ordering procedure, the typical delivery period, the contractual period, the typical repair time, and refund procedure, where such exists.
5. For the purposes of point c) of the preceding paragraph:
  - a) Typical delivery period means the period elapsing from the date when the user makes a firm request to lease a line until the time at which 95 % of all leased lines of the same type have been put through to the customers, which period shall be established on the basis of the actual delivery periods of leased lines during a recent period of reasonable duration, and which calculation may not include cases where late delivery periods were requested by users;



- b) Contractual period means the period which is in general laid down in the contract and the minimum contractual period which the user is obliged to accept;
- c) Typical repair time means the period elapsing from the time when a failure message is relayed to the responsible unit within the undertaking up to the moment at which 80 % of all leased lines of the same type have been re-established and, where appropriate, at which users have been notified of their return to operation; where different classes of quality of repair are offered for the same type of leased lines, the different typical repair times shall be indicated.

## **Article 73**

### **Selection and pre-selection**

1. Undertakings declared as having significant market power for the provision of connection to and use of the public telephone network at a fixed location may be required by the NRA to provide their subscribers with access to the services of any provider of publicly available telephone services with which said undertakings are interconnected:
  - a) On a call-by-call basis by dialling a selection code of the undertaking;
  - b) By means of pre-selection, with a facility to override any pre-selected choice on a call-by-call basis by dialling the selection code of the undertaking.
2. The NRA shall assess and decide on user requirements for the inclusion of facilities provided for in the preceding paragraph on other networks or in other ways, in accordance with the market analysis procedure set out in article DDD and under the terms of article DDD.
3. The NRA shall ensure that pricing for access and interconnection related to the provision of the facilities in paragraph 1 complies with the principle of cost orientation and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities.
4. The NRA shall, following the general consultation procedure provided for in article DDD, in determining the rules necessary for the performance of selection and pre-selection.

## **Article 74**

### **Other controls**

1. The NRA shall impose appropriate regulatory obligations on undertakings identified as having significant market power in a given retail market, previously defined and analysed pursuant to the present law, where cumulatively:
  - a) It determines a lack of effective competition in that retail market;
  - b) It concludes that the imposition of obligations laid down in chapter III of the present title or in article DDD would not result in the achievement of the regulatory objectives set out in article DDD.
2. The regulatory obligations imposed under the preceding paragraph shall be based on the nature of the problem identified and be proportionate and justified in respect of the objectives laid set out article DDD, and may require in particular that the identified undertakings:
  - a) Do not charge excessive prices;
  - b) Do not inhibit market entry or restrict competition by setting predatory prices;
  - c) Do not show undue preference to specific end-users;
  - d) Do not unreasonably bundle services.





3. With specific reference to prices practised by such undertakings and in order to protect end-user interests while at the same time promoting effective competition, the NRA may apply appropriate price cap measures, measures to control individual tariffs, or measures to orient tariffs towards costs or prices in comparable markets.
4. Without prejudice to articles DDD and DDD, the NRA shall not apply retail control mechanisms under this article to geographical or user markets where it is satisfied that there is effective competition.
5. Undertakings subject to price regulation pursuant to this article or subject to other relevant retail controls shall implement analytical accounting systems which are appropriate for the application of the imposed measures.
6. The NRA, or an independent body which it has appointed, shall undertake an annual audit of the cost accounting system supporting price controls, in order to verify the compliance thereof, and shall issue and publish the respective statement.

## **CHAPTER VII Frequencies and numbers**

**The articles below this box cover the following criteria:**

- Powers to monitor radio frequencies (2.3.2.)
- Powers to manage numbering plans (2.3.3.)

### **Article 75 Responsibilities in field of radio frequencies spectrum**

1. The responsibilities of the NRA in the field of radio frequencies spectrum are to assure management of the radio spectrum, including planning, the assignment of spectrum resources and their supervision, and also to oversee co-ordination between civil, military and paramilitary communications;
2. The space where radio waves may propagate constitutes a public domain of the State.

### **Article 76 Frequencies**

1. The NRA is charged with the management of the spectrum which shall be understood as being the set of frequencies associated with radio waves.
2. The NRA shall, in respect of the management of the spectrum, plan frequencies in accordance with the following criteria:
  - a) Availability of radio spectrum;
  - b) Guarantee of conditions of effective competition in the relevant markets;
  - c) Effective and efficient use of frequencies.
3. The NRA shall allocate and assign rights of use of frequencies according to criteria which are objective, transparent, non-discriminatory and proportionate.
4. The NRA shall promote a harmonised usage of frequencies in the European Union, in order to ensure the effective and efficient use thereof, within the scope of 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).



## Article 77

### National Frequency Allocation Plan

1. The NRA shall adopt and publish the National Frequency Allocation Plan (NFAP), which shall include:
  - a) The frequency bands and number of channels already allocated to undertakings providing publicly available electronic communications networks and services, including the date on which each allocation is to be reviewed;
  - b) The frequency bands which are reserved and are to be made available in the following year, in respect of electronic communications networks and services, whether publicly available or not, specifying the cases where frequencies usage rights are required and the respective procedure of allocation;
  - c) The frequencies whose usage rights may be transferred, pursuant to article DDD.
2. The requirements for publication set out in preceding paragraph do not apply to frequencies which are 78 to the Armed Forces and to security forces and services.

## Article 78

### Numbering

1. Suitable numbering resources shall be available for all publicly available electronic communications services.
2. The NRA is charged with:
  - a) Defining the guidelines and general principles of the National Numbering Plan;
  - b) Managing the National Numbering Plan according to the principles of transparency, efficiency, equality and non-discrimination, including the establishment of conditions for the allocation and assignment of national numbering resources;
  - c) Allocating rights of use of numbering resources according to objective, transparent and non-discriminatory assigning procedures;
  - d) Publishing the guidelines, general principles and principle components of the National Numbering Plan, as well as all subsequent additions or amendments thereto, allocation and retrieval procedures, which publication shall be subject only to limitations imposed on the grounds of national security;
  - e) Ensuring that an undertaking which has been allocated a range of numbers does not discriminate against other providers of electronic communications services in respect of the number sequences used to allow access to their services;
  - f) Supporting the harmonisation of numbering resources within the European Union where such is necessary for facilitating the development of pan European services, and coordinating its position with the other competent bodies of the Union in respect of international organisations and forums in which decisions are taken on issues related to numbering, where such is appropriate in order to ensure full and global interoperability of services;
  - g) The allocation of numbering resources to electronic communications services which are not publicly available, where this is necessary and without prejudice to the guarantee of availability of numbering resources for publicly available services pursuant to the preceding paragraphs;
  - h) Entities responsible for the allocation of names and addresses of electronic communications networks and services shall coordinate their positions with the other competent bodies of the European Union in international organisations and forums in which decisions are taken on these issues, where such is appropriate in order to ensure full global interoperability of services.



## CHAPTER IX Universal Service

### SECTION I Scope of the universal service

The articles below this box cover the following criteria:

- Powers to set universal service obligations (2.5.1.)
- Powers to define universal service's baskets (2.5.2.)

#### Article 81 Concept

1. The universal service consists of a minimum set of services, as defined in the present law, of specified quality which is available to all users regardless of their geographical location and at an affordable price.
2. The scope of the universal service shall evolve in line with advances in technology, market developments and changes in user demand, which scope shall be modified where justified by such evolution.
3. It is incumbent upon the Government or the NRA, in the pursuit of their respective assignments:
  - a) To determine the most efficient and appropriate solutions for ensuring the implementation of the universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality;
  - b) To minimise market distortions, in particular the provision of services made at prices or under other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

#### Article 82 Scope of the universal service

1. The provision of a minimum set of services made available in the scope of the universal service shall be limited:
  - 1.1. Connection at a fixed location to the public telephone network and access to publicly available telephone services at a fixed location;
  - 1.2. Provision of a comprehensive directory and of a comprehensive telephone directory enquiry service;
  - 1.3. Adequate provision of public pay telephones.
2. The specific scope of universal services shall be determined by the NRA, following a consultation procedure, taking into account provisions of this law.

#### Article 83 Network connection and access to telephone services at a fixed location

1. The providers of the universal service shall meet all reasonable requests for connection to the public telephone network at a fixed location and for access to publicly available telephone services at a fixed location.
2. The connection and access referred to in the preceding paragraph shall allow end-users to make and receive local, national and international telephone calls, facsimile communications and data



communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

## **Article 84**

### **Directory and enquiry services**

1. The following universal service obligations shall be comprised in the scope of directory and enquiry services:
  - a) To draw up, publish and make available to end-users a comprehensive directory, which shall be printed and/or electronic and which comprises all subscribers of publicly available telephone services, without prejudice to provisions on protection of personal data and privacy;
  - b) To update and make available every year the directory referred to in the preceding point;
  - c) To provide end-users with an enquiry service, through a short number, involving the disclosure of data in the directory referred to in point a);
  - d) To apply the principle of non-discrimination to the treatment and presentation of information that has been provided, including information submitted by other undertakings.
2. For the purpose of the preceding paragraph, undertakings providing publicly available telephone services shall agree with the providers of the universal service on the format and conditions for the provision of relevant information on the respective subscribers, on terms which are fair, objective, cost oriented and non-discriminatory.
3. In the absence of an agreement and in the event of non-compliance with the terms agreed or with the obligation established in the preceding paragraph, the NRA may demand that undertakings providing publicly available telephones services submit the information referred to in the preceding paragraph, determining, where necessary, the format and conditions for the provision thereof, in order to render it available to the providers of the universal service, aiming at complying with the obligations laid down in points a) and c) of paragraph 1.
4. The NRA is hereby empowered to create and manage, directly or through an appointed independent body, a database comprising the information received pursuant to the preceding paragraph, approving for this purpose the respective functioning conditions, following the prior opinion of the NCDP.
5. The NRA shall approve and disclose the form of directories referred to in the present article and the conditions by which such directories are to be made available to end-users.

## **Article 85**

### **Public pay telephones**

1. The NRA shall define, following consultation under the terms of article DDD, the obligations applicable to the providers of universal service in respect of the provision of public pay telephones, in order to ensure that the reasonable needs of populations, including users with disabilities, are met.
2. The obligations defined by the NRA shall take into account the possible availability of facilities or comparable services and take account of the needs of end-users in terms of geographical dispersion, population density and quality of services, including in particular the determination of different means of payment.
3. Public pay telephones of universal service providers shall allow:
  - a) Access, without charge, to the various emergency systems, using the single European emergency number “112” and other emergency and assistance numbers defined in the National Numbering Plan, without the need to use coins, cards or any other means of payment;
  - b) Access to the comprehensive directory enquiry services under the terms defined in point c) of paragraph 1 of article DDD.



4. Pre-payment telephone cards for access to publicly available telephone services by means of public pay telephones operated by universal service providers shall be of one type only, so that the use thereof shall be viable on any public pay telephone operated by such providers.
5. Universal service providers shall comply with the technical rules of access to urban buildings, in accordance with the specific legislation, in order to ensure that end-users with disabilities have access to the service.

## **Article 86**

### **Specific measures for disabled users**

1. Universal service providers shall make available specific provisions in order to ensure that end-users with disabilities enjoy access that is equivalent to that enjoyed by other end-users, to publicly available telephone services, including access to emergency services, directory enquiry services and directories.
2. The specific provisions may, in particular, consist of:
  - a) The provision of telephones and/or public text telephones or equivalent measures for people who are deaf or who have speech-impairment;
  - b) The provision of services such as directory enquiry services or equivalent measures free of charge for blind or visually impaired people;
  - c) The provision of itemised bills in alternative formats upon the request of a blind or visually impaired person.
3. It is incumbent upon the NRA, following the general consultation procedure laid down in article DDD, to define the terms and conditions by which such provisions are to be made available.
4. The NRA may take specific measures to ensure that end-users with disabilities may also benefit from the choice of service providers which is available to the majority of end-users.

## **Article 87**

### **Quality of service**

1. Universal service providers shall make available to end-users as well as to the NRA, appropriate and up-to-date information on their performance in the provision of the universal service, based on quality service parameters, definitions and measurement methods established in the annex.
2. The NRA may specify, in particular, additional rules in respect of quality of service in order to assess the performance of universal service providers as regards the provision of services to end-users and consumers with disabilities, where relevant parameters have been defined.
3. Information on the performance of the universal service providers as regards the parameters referred to in the preceding paragraph shall be made available to end-users and likewise to the NRA.
4. The NRA may further specify the content, form and manner in respect of which the information referred to in the preceding paragraphs shall be provided, in order to ensure that end-users and consumers have access to clear, comprehensive and comparable information.
5. Without prejudice to the provision of the preceding paragraphs, the NRA, following the general consultation procedure laid down in article DDD, may set performance objectives applicable to the different obligations of the universal service.
6. The NRA may order independent audits or mechanisms by which the performance of the universal service providers may be verified, which shall be at the expense of such providers and which shall have the aim of ensuring the accuracy and comparability of the data made available by providers.



## SECTION II Pricing framework

### Article 88 Price regime

1. The NRA shall take all necessary steps to ensure that affordability of access to universal service is guaranteed, having regard in particular to national consumer prices and national income.
2. For the purposes of the preceding paragraph, the NRA shall assess and decide on the most suitable means by which affordable access may be guaranteed, whereby it may determine:
  - a) The availability of tariff options or packages which are different from those provided under normal commercial conditions, in particular to ensure that consumers on low incomes or with special social needs are not prevented from accessing or using the publicly available telephone service;
  - b) The imposition of price caps and the application of common tariffs, including geographical averaging of prices, throughout the territory;
  - c) Other similar schemes.
3. Where any of the measures referred to in the preceding paragraph have been imposed, the NRA shall ensure that the implemented conditions are fully transparent and are published and that such conditions are applied in accordance with the principle of non-discrimination.
4. The NRA may require that specific conditions practised by universal service providers be modified or withdrawn at any time.
5. Without prejudice to the provisions of the preceding paragraphs, other measures may be implemented, as an alternative or cumulatively, in order to support consumers identified as having low incomes or special social needs.

### Article 89 Control of expenditure

1. In order to allow subscribers to verify and control the charges incurred in using the public telephone network at a fixed location and related publicly available telephone services, the universal service providers shall make available the following minimum set of facilities and mechanisms:
  - a) Itemised billing;
  - b) Selective and free of charge barring of outgoing calls of defined types or to defined types of numbers, upon the request of the subscriber, without prejudice to the provision of article DDD;
  - c) Pre-payment systems for access to the public telephone network and use of publicly available telephone services;
  - d) Phased payment of fees for the connection to the public telephone network;
  - e) Measures applicable to the non-payment of telephone bills, pursuant to article DDD.
2. For the purposes of point a) of the preceding paragraph, the following minimum level of detail shall be ensured, without charge and without prejudice to legislation applicable in matters of protection of personal data and privacy:
  - a) Initial price of the connection to the telephone service, where applicable;



- b) Subscription price, where applicable;
  - c) Price of use, identifying the different traffic categories, indicating each call and the respective charge;
  - d) Periodical equipment rental prices, where applicable;
  - e) Price for the installation of additional material and equipment requested subsequent to the commencement of service provision;
  - f) Subscriber's debts;
  - g) Compensation resulting from reimbursement.
3. Universal service providers may offer, at the request of the subscriber, additional levels of detail, at reasonable tariffs or at no charge, and shall not include calls that are free of charge to the calling subscriber, including calls to helplines.
  4. For the purposes of point b) of article DDD, the NRA, having heard the universal service providers, shall define the types of calls which are may be barred.
  5. The NRA shall waive the application of paragraph 1 where it is satisfied that the interests protected through the availability of facilities and mechanisms provided therein are duly safeguarded.
  6. Where universal service providers offer facilities and services additional to those referred to in article DDD or in point a) of paragraph DDD of article DDD, they shall establish terms and conditions whereby the subscriber is not obliged to pay for facilities or services which are not necessary for the service requested.