



# Authorisation Directive

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*The views expressed in this presentation are purely those of the author and may not in any circumstances be regarded as stating an official position of the European Commission*

# Outline

- Scope and aim
- General authorisation and rights of use
  - Characteristics and conditions attached
  - Amendments to the conditions
- Spectrum management
  - Allocation
  - Assignment
- Enforcement powers
- Administrative charges and fees for rights of use

## Scope and aim

- *Harmonising (and simplifying) the authorisation rules and conditions applicable to the provision of ECS and ECN (Article 1(1))....*
- *....with a view to ensure the freedom to provide electronic communications services and networks (Article 3(1))*

# General authorisation

- *General principle: the provision of ECS/N is subject only to a general authorisation*
- *Key concept defined by Article 2(2): is a legal framework applicable to all or specific types of ECS/N.*
  - ***It excludes the need of an individual decision in order to allow a provider to carry on the activity (Article 3(2))***
  - ***It may encompass only a notification requirement, subject to maximum harmonisation (only information necessary for the identification) Article 3(3) and may be "certified" pursuant to Article 9***
  - ***It entails some minimum rights listed in Article 4***

# Rights of use

*Exception to the general principle: there are cases where an individual decision granting the use of certain resources may be required*

- **Radio frequencies: when necessary for the reasons set out in Article 5(1)**
  - Continued compliance with these reasons if duration is above 10 years (Article 5(2))
- **Numbers**

*With specific regard to the management of rights of use for radio frequencies, specific provisions on **spectrum management***

## Conditions attached

*The Directive harmonises the conditions/obligations that can be imposed in relation to general authorisation and rights of use (Article 6)*

- **Numerus clausus** listed in the Annex
- **Non-discrimination, proportionality and transparency (and in accordance with Article 9 FD for spectrum management)**
- **Specific obligations only in view of the Regulatory Framework (SMP, US, ...)**
- **Prohibition to duplicate other conditions already applicable under general legislation**

# Amendments to the conditions (Article 14)

*Substantive and procedural requirements in order to provide safeguards against unilateral modifications*

- **Objective justification (e.g. re-farming, see Article 1(2) amended GSM Directive...) and proportionality**
- **Notice and consultation of interested parties, unless minor amendments agreed with the right holder**
- **Withdrawal and restriction: compliance with national provisions on compensation**

# Spectrum management: 1) Allocation (Article 8a to 9b of the Framework Directive)

*Managing use of spectrum resource in general (allocation) and of individual rights of use in particular (assignment)*

*Allocation (Article 9 Framework Directive)*

- **Effective management and allocation based on objective, transparent, non discriminatory and proportionate criteria (Article 9(1))**
- **General principle: technological and service neutrality (Article 9(3) and (4))**
  - Derogations to be justified pursuant to para 3 and 4
  - Existing non-neutral assignment: conversion upon request till 2016, MS will have to adopt appropriate measures afterwards (Article 9a)
- **Compliance with the conditions specified in harmonisation decisions (Article 8a FD as legal basis for spectrum harmonisation decisions)**
- **Effective management tools**
  - Avoiding spectrum hoarding (Article 9(7))
  - In principle tradeability of rights of use harmonised by spectrum decisions (Article 9b)





## 2) Assignment of individual rights of use (Article 5 and 7 Authorisation Directive, see also Directive 2002/77/EC)

*Rules ensuring the possibility to have access to the resource*

- **General principle: open, objective, transparent, non-discriminatory and proportionate procedures (Article 5(2) )**
  - Specific procedure and criteria for rights of use used for broadcasting may be applicable (entailing also a derogation to openness), but they shall nevertheless be objective, transparent, non-discriminatory and proportionate to the general interest pursued (Article 5(2) and CJEU *Centro Europa 7* C-380/05)

*Limitation of rights of use available or extension of existing rights beyond the original terms (Art. 7)*

- **Market consultation (Article 7(1))**
- **Objective, transparent, non-discriminatory and proportionate selection criteria (Article 7(3))**
- **Competitive (auction) or comparative (beauty contest) procedure may justify extension of deadlines to proceed with the assignment**



# Enforcement powers (Article 10)

*NRA shall monitor and supervise compliance with the conditions (Article 10(1))...*

*... and therefore shall be empowered to impose (Article 10(3))*

- **Dissuasive financial penalties**
- **Order to cease or delay the provision of services significantly harming competition**

*Guarantees for the provider*

- **Notice, right of defence (Article 10(2)), duty to state reasons (10(3)) and to appeal (10(7))**
- **Withdrawal and suspension in case of serious or repeated breaches (Art. 10(5))**
- **Without prejudice for interim measures, but maximum time limit to adopt the final decision (Art. 10(6))**

## ... and request of information (Article 11)

- *List of reasons underpinning requests for information*
- *Proportionality and objectivity*
- *Stating the purpose*
- *Not as a prerequisite for market entry*

# Administrative charges (Article 12)

*Charge: any payment imposed to undertaking providing the service under the general authorisation or to whom a right of use has been granted*

- **It does not entail harmonisation of every tax imposed on ECS/N..... but it covers any charge levied in the context of the general authorisation**

## *Requirements*

- **Proportionality, non discrimination, objective, transparent**
- **Max amount: covering the administrative costs of regulation**
- **Transparency and adjusting mechanism (Article 12(2))**



# Fees for rights of use and to install facilities (Article 13)

- *Different from administrative charge: payment due for the use of a scarce resource (frequencies, numbers, land) and paid by the owner of this right (C-55/11 Vodafone)*
- *Requirement: need to reflect the optimal use; objective justification, transparency, non discrimination and proportionality, in view of objectives of the Framework*
  - **Example: price resulting in auction**

**Thank you for your attention !**