

Official Journal of the European Union

L 439



English edition

Legislation

Volume 63

29 December 2020

Contents

II Non-legislative acts

REGULATIONS

- ★ **Commission Implementing Regulation (EU) 2020/2244 of 17 December 2020 laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2015/884 ⁽¹⁾** 1

RECOMMENDATIONS

- ★ **Commission Recommendation (EU) 2020/2245 of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code (notified under document C(2020) 8750) ⁽¹⁾** 23

Corrigenda

- ★ **Corrigendum to Commission Delegated Regulation (EU) 2020/1794 of 16 September 2020 amending Part I of Annex II to Regulation (EU) 2018/848 of the European Parliament and of the Council as regards the use of in-conversion and non-organic plant reproductive material (OJ L 402, 1.12.2020)** 32
- ★ **Corrigendum to Commission Delegated Regulation (EU) No 667/2014 of 13 March 2014 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to rules of procedure for penalties imposed on trade repositories by the European Securities and Markets Authority including rules on the right of defence and temporal provisions (OJ L 179, 19.6.2014)** 33

⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2244

of 17 December 2020

laying down rules for the application of Directive (EU) 2017/1132 of the European Parliament and of the Council as regards technical specifications and procedures for the system of interconnection of registers and repealing Commission Implementing Regulation (EU) 2015/884

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law ⁽¹⁾, and in particular Articles 24 and 13i(5) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2015/884 ⁽²⁾ sets out the technical specifications and procedures required for the system of interconnection of registers established by Directive 2009/101/EC of the European Parliament and of the Council ⁽³⁾, which has been codified and repealed by Directive (EU) 2017/1132. Further procedures for the system of interconnection of registers have subsequently been introduced in Directive (EU) 2017/1132 by Directive (EU) 2019/1151 of the European Parliament and of the Council ⁽⁴⁾ together with a requirement for the Commission to adopt implementing acts setting out the corresponding technical specifications and procedures by 1 February 2021.
- (2) It is necessary to lay down technical specifications defining the methods of exchange of information between the register of the company and the register of the branch in case a branch is opened or closed or when changes occur in the data and information of the company.
- (3) There is a need to specify what should be the detailed list of data when providing information between the register of the company and the register of the branch in order to ensure efficient exchange of data.
- (4) The procedure and technical requirements for the connection of the optional access points for Commission or other Union institutions, bodies, offices or agencies to the platform needs to be specified to ensure consistent rules for the establishment of such access points.

⁽¹⁾ OJ L 169, 30.6.2017, p. 46.

⁽²⁾ Commission Implementing Regulation (EU) 2015/884 of 8 June 2015 establishing technical specifications and procedures required for the system of interconnection of registers established by Directive 2009/101/EC of the European Parliament and of the Council (OJ L 144, 10.6.2015, p. 1)

⁽³⁾ Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

⁽⁴⁾ Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law (OJ L 186, 11.7.2019, p. 80).

- (5) For the exchange of information on disqualified directors established by Directive (EU) 2019/1151 detailed arrangements and technical details need to be laid down to ensure effective, efficient and prompt exchange of information.
- (6) In order to ensure clarity and legal certainty, all the procedures and technical specifications for the system of interconnection of registers required by Directive (EU) 2017/1132 should be included in a single Implementing Regulation. Implementing Regulation (EU) 2015/884 should therefore be repealed and the technical specifications and procedures set out in that Implementing Regulation should be included in this Regulation.
- (7) Any processing of personal data under this Regulation is subject to Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁵⁾ and Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽⁶⁾, as applicable.
- (8) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 31 July 2020.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Interconnection of Central, Commercial and Companies Registers,

HAS ADOPTED THIS REGULATION:

Article 1

The technical specifications and procedures for the system of interconnection of registers referred to in Article 22(2) of Directive (EU) 2017/1132 are set out in the Annex.

Article 2

Implementing Regulation (EU) 2015/884 is repealed.

References to the repealed Implementing Regulation shall be construed as references to this Regulation.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 December 2020.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁵⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁶⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

ANNEX

Technical specifications and procedures

Where reference is made in this Annex to 'registers', it is to be understood as 'central, commercial and companies registers'.

The system of interconnection of registers is in this Annex referred to as the 'Business Registers Interconnection System (BRIS)'.

1. Methods of communication

BRIS shall use service-based methods of electronic communication, such as Web-services, for the purpose of interconnection of registers.

The communication between the portal and the platform, and between a register and the platform, shall be one-to-one communication. The communication from the platform to the registers may be one-to-one or one-to-many.

2. Communication protocols

Secure internet protocols, such as Hypertext Transfer Protocol Secure (HTTPS), shall be used for the communication between the portal, the platform, the registers and the optional access points.

Standard communication protocols, such as Simple Object Access Protocol (SOAP), shall be used for the transmission of structured data and metadata.

3. Security standards

For the communication and distribution of information via BRIS, the technical measures for ensuring minimum information technology security standards shall include:

- (a) measures to ensure confidentiality of information, including by using secure channels (HTTPS);
- (b) measures to ensure the integrity of data while being exchanged;
- (c) measures to ensure the non-repudiation of origin of the sender of information within BRIS and the non-repudiation of receipt of information;
- (d) measures to ensure logging of security events in line with recognized international recommendations for information technology security standards;
- (e) measures to ensure the authentication and authorisation of any registered users and measures to verify the identity of systems connected to the portal, the platform or the registers within BRIS.

4. Methods of exchange of information between the register of the company and the register of the branch**4.1. Branch disclosure notification**

The following method shall be used for the exchange of information between the register of the company and the register of the branch in accordance with Articles 20 and 34 of Directive (EU) 2017/1132:

- (a) The register of the company shall make available, without delay, to the platform the information on the opening and termination of any winding-up or insolvency proceedings and on the striking-off of the company ('disclosed information');
- (b) To ensure receipt without delay of the disclosed information, the register of the branch shall request that information from the platform. That request may consist of indicating to the platform the companies on which the register of the branch is interested to receive disclosed information;
- (c) Upon that request, the platform shall ensure that the register of the branch has access to the disclosed information without delay.

4.2. *Branch registration notification*

The following method shall be used for the exchange of information between the register of the branch and the register of the company in accordance with Article 28a of Directive (EU) 2017/1132:

- (a) The register of the branch shall send a message, without delay, through BRIS to the register of the company ('branch registration notification');
- (b) Upon receipt of the notification, the register of the company shall, without delay, send a message acknowledging the receipt of the notification ('acknowledgement of receipt of branch registration notification').

4.3. *Branch closure notification*

The following method shall be used for the exchange of information between the register of the branch and the register of the company in accordance with Article 28c of Directive (EU) 2017/1132:

- (a) The register of the branch shall send a message, without delay, through BRIS to the register of the company ('branch closure notification');
- (b) Upon receipt of the notification, the register of the company shall, without delay, send a message acknowledging the receipt of the notification ('acknowledgement of receipt of branch closure notification').

4.4. *Notification on changes to documents and information about the company*

The following method shall be used for the exchange of information between the register of the company and the register of the branch in accordance with Article 30a of Directive (EU) 2017/1132:

- (a) The register of the company shall make available, without delay, to the platform the information on changes to documents and information about the company ('disclosed information'). The message format shall make it possible to include attachments;
- (b) To ensure receipt without delay of the disclosed information, the register of the branch shall request that information from the platform. That request may consist of indicating to the platform the companies on which the register of the branch is interested to receive disclosed information;
- (c) Upon that request, the platform shall ensure that the register of the branch has access to the disclosed information without delay.
- (d) Upon receipt of the disclosed information, the register of the branch shall, without delay, send a message acknowledging the receipt of the notification ('acknowledgement of receipt on the notification on changes to documents and information of the company').

4.5. *Communication errors*

Appropriate technical measures and procedures shall be in place to handle any communication error between the register and the platform.

5. **List of data to be exchanged between registers**

5.1. *Branch disclosure notification*

For the purposes of this Annex, the exchange of information between registers set out in Articles 20 and 34 of Directive (EU) 2017/1132 shall be referred to as 'branch disclosure notification'. The proceeding triggering that notification shall be referred to as 'branch disclosure event'.

For each branch disclosure notification referred to in point 4.1, Member States shall exchange the following data:

Data type	Description	Cardinality ⁽¹⁾	Additional description
Issuance Date and Time	Date and time when the notification was sent	1	Date and Time
Issuing Organisation	Name/Identifier of the organisation that issues this notification	1	Party data structure
Legislation Reference	Reference to relevant national or Union legislation	0...n	Text
Proceeding-related data		1	Group of Elements
Effective Date	Date when the proceeding affecting the company has come into effect	1	Date
Proceeding Type	Type of proceeding leading to a branch disclosure event as referred to in Article 20 of Directive (EU) 2017/1132	1	Code (Winding-up Opening Winding-up Termination Winding-up Opening and Termination Winding-up Revocation Insolvency Opening Insolvency Termination Insolvency Opening and Termination Insolvency Revocation Striking-off)
Company data		1	Group of Elements
EUID	Unique identifier of the company making subject of this notification	1	Identifier See section 8 of this Annex for structure of the EUID
Alternate ID	Other identifiers of the company (e.g. Legal Entity Identifier)	0...n	Identifier
Legal form	Type of legal form	1	Code As referred to in Annex II to Directive (EU) 2017/1132
Name	Name of the company making subject of this notification	1	Text
Registered Office	Registered office of the company	1	Text
Register Name	Name of the register where the company is registered	1	Text

⁽¹⁾ Cardinality 0 means that the data is optional. Cardinality 1 means that the data is mandatory. Cardinality 0...n or 1...n means that more than one piece of the same type of data may be provided.

The notification message may also include technical data necessary for the proper transmission of the message.

The exchange of information shall also include technical messages necessary for the acknowledgement of receipt, logging and reporting purposes.

5.2. Branch registration notification

For each branch registration notification referred to in point 4.2, Member States shall exchange the following data:

Data type	Description	Cardinality ⁽¹⁾	Additional description
Issuance Date and Time	Date and time when the notification was sent	1	Date and Time
Issuing Organisation	Name/Identifier of the organisation that issues this notification	1	Party data structure
Recipient Organisation	Name/Identifier of the register where the company is registered	1	Party data structure
Legislation Reference	Reference to relevant national or Union legislation	0...n	Text
Branch data		1	Group of Elements
Date of registration	Date when the branch was registered.	1	Date
Effective date	Date when the opening of the branch becomes effective, if available	0	Date
Name of the branch if it is different from the company name	Name of the branch subject of the notification. If it is the same as the company this field should be left empty	0	Text As referred to in Article 30(1)(d) of Directive (EU) 2017/1132
Additional names of the branch	If the branch has more than one name, the additional names can be included.	0...n	Text
EUID	Unique identifier of the branch subject of this notification	1	Identifier
Address of the branch	Address of the branch subject of the notification	1	Full address
Company data		1	Group of Elements
EUID	Unique identifier of the company to which the branch belongs	1	Identifier

Data type	Description	Cardinality ⁽¹⁾	Additional description
Alternate ID	Other identifiers of the company (e.g. Legal Entity Identifier)	0...n	Identifier
Legal form	Type of legal form	0	Code As referred to in Annex II to Directive (EU) 2017/1132
Name	Name of the company subject of this notification	0	Text

⁽¹⁾ Cardinality 0 means that the data is optional. Cardinality 1 means that the data is mandatory. Cardinality 0...n or 1...n means that more than one piece of the same type of data may be provided.

The notification message may also include technical data necessary for the proper transmission of the message.

The exchange of information shall also include technical messages necessary for the acknowledgement of receipt, logging and reporting purposes.

5.3. Branch closure notification

For each branch closure notification referred to in point 4.3, Member States shall exchange the following data:

Data type	Description	Cardinality ⁽¹⁾	Additional description
Issuance Date and Time	Date and time when the notification was sent	1	Date and Time
Issuing Organisation	Name/Identifier of the organisation that issues this notification	1	Party data structure
Recipient Organisation	Name/Identifier of the register where the company is registered	1	Party data structure
Legislation Reference	Reference to relevant national or Union legislation	0...n	Text
Branch data		1	Group of Elements
Date of striking off of the branch from the register	Date when the branch was stricken off from the register	1	Date
Effective date	Date when the closure of the branch becomes effective, if available	0	Date
Name of the branch if it is different from the company name	Name of the branch subject of the notification. If it is the same as the company this field should be left empty	0	Text As referred to in Article 30(1)(d) of Directive (EU) 2017/1132

Data type	Description	Cardinality ⁽¹⁾	Additional description
Additional names of the branch	If the branch has more than one name, the additional names can be included.	0...n	Text
EUID	Unique identifier of the branch subject of this notification	1	Identifier
Company data		1	Group of Elements
EUID	Unique identifier of the company to which the branch belongs to	1	Identifier
Alternate ID	Other identifiers of the company (e.g. Legal Entity Identifier)	0...n	Identifier
Legal form	Type of legal form	0	Code As referred to in in Annex II to Directive (EU) 2017/1132
Name	Name of the company subject of this notification	0	Text

⁽¹⁾ Cardinality 0 means that the data is optional. Cardinality 1 means that the data is mandatory. Cardinality 0...n or 1...n means that more than one piece of the same type of data may be provided.

The notification message may also include technical data necessary for the proper transmission of the message.

The exchange of information shall also include technical messages necessary for the acknowledgement of receipt, logging and reporting purposes.

5.4. *Notification on changes to documents and information of the company*

For each notification on changes to documents and information of the company referred to in point 4.4, Member States shall exchange the following data:

Data type	Description	Cardinality ⁽¹⁾	Additional description
Issuance Date and Time	Date and time when the notification was sent	1	Date and Time
Issuing Organisation	Name/Identifier of the organisation that issues this notification	1	Party data structure
Recipient Organisation	Name/Identifier of the register where the branch is registered	1	Party data structure
Legislation Reference	Reference to relevant national or Union legislation	0...n	Text
Proceedings-related data		1	Group of Elements

Data type	Description	Cardinality (1)	Additional description
Proceedings Type	Type of proceeding leading to a notification on changes to documents and information of the company	1	(a) change in the company's name; (b) change in the company's registered office; (c) change in the company's registration number in the register; (d) change in the company's legal form; (e) change in the documents and information referred to in point (d) of Article 14; (f) change in the documents and information referred to in point (f) of Article 14
Date of registration	Date when the change to documents and information of the company was registered	1	Date
Effective date	Date when the change to documents and information of the company takes effect, if available	0	Date
Relevant data to be updated, depending on the Proceeding Type	Change in the company data	1	One of the following: (a) company's new name and the previous name (b) company's new registered office and the previous registered office; (c) company's new registration number in the register and the previous registration number; (d) company's new legal form and the previous legal form; (e) New documents and information referred to in point (d) of Article 14 (attachments possible), which shall include the following data: — whether it is a natural person or legal person. — In case of a natural person — Name, surname, — date of birth if available, otherwise the national identification number, — In case of a legal person: — name of the company

Data type	Description	Cardinality (')	Additional description
			— EUID of the company or, if available, other registration number if not a company listed in Annex II to Directive (EU) 2017/1132, — legal form — Notwithstanding whether it is a natural person or legal person: — Address (if available in the register). — whether it is an appointment or a termination, or an update to an existing appointment — whether the person falls under Article 14(d) (i) or 14(d) (ii), — in case of persons falling under 14(d) (i), whether alone or joint representation with the option to provide additional information, if needed, in a document or text, or, in other cases, a description provided in a document or a text — title — option to provide a document or a text describing possible restrictions to the power of representation (e.g. value and type of business). — option to provide only documents for the persons falling under Art 14(d)(ii) (f) new documents and information referred to in point (f) of Article 14 (attachments possible), which shall include the following metadata: financial year.
Additional data to be, provided optionally regarding point (d) of Article 14	Change in the company data	0...n	Optional data: — National personal identification number

Data type	Description	Cardinality ⁽¹⁾	Additional description
			— Number of identification document (ID card, passport) — Nationality/ies — Place of birth
Company data		1	Group of Elements
EUID	Unique identifier of the company to which the branch belongs	1	Identifier
Alternate ID	Other identifiers of the company (e.g. Legal Entity Identifier)	0...n	Identifier

⁽¹⁾ Cardinality 0 means that the data is optional. Cardinality 1 means that the data is mandatory. Cardinality 0...n or 1...n means that more than one piece of the same type of data may be provided.

The new documents and information referred to in point (f) of Article 14 of Directive (EU) 2017/1132 shall not be sent to the register of the branch if the Member State in question applies the option referred to in the second paragraph of Article 31 of that Directive.

The notification message may also include technical data necessary for the proper transmission of the message.

The exchange of information shall also include technical messages necessary for the acknowledgement of receipt, logging and reporting purposes.

5.5. Cross-border merger notification

For the purposes of this Annex, the exchange of information between registers as referred to in Article 130 of Directive (EU) 2017/1132 shall be referred to as 'cross-border merger notification'. For each cross-border merger notification referred to in Article 130 of Directive (EU) 2017/1132, Member States shall exchange the following data:

Data type	Description	Cardinality ⁽¹⁾	Additional description
Issuance Date Time	Date and time when the notification was sent	1	Date and Time
Issuing Organisation	Organisation that issued this notification	1	Party data structure
Recipient Organisation	Organisation this notification is addressed to	1	Party data structure
Legislation Reference	Reference to relevant national or Union legislation	0...n	Text
Merger-related data		1	Group of Elements
Effective Date	Date when the merger became effective	1	Date

Data type	Description	Cardinality ⁽¹⁾	Additional description
Merger Type	Type of merger as defined by Article 119(2) of Directive (EU) 2017/1132	1	Code (Cross-border merger by acquisition Cross-border merger by formation of new company Cross-border merger of wholly owned company)
Resulting company		1	Group of Elements
EUID	Unique identifier of the company resulting from the merger	1	Identifier See section 8 of this Annex for structure of the EUID
Alternate IDs	Other identifiers	0...n	Identifier
Legal form	Type of legal form	1	Code As referred to in Annex II to Directive (EU) 2017/1132
Name	Name of the company resulting from the merger	1	Text
Registered Office	Registered office of the company resulting from the merger	1	Text
Register Name	Name of the register where the company resulting from the merger was registered	1	Text
Merging Company		1...n	Group of Elements
EUID	Unique identifier of the company being merged	1	Identifier See section 8 of this Annex for structure of the EUID
Alternate IDs	Other identifiers	0...n	Identifier
Legal Form	Type of legal form	1	Code As referred to in Annex II to Directive (EU) 2017/1132
Name	Name of the company taking part in the merger	1	Text
Registered Office	Registered office of the company taking part in the merger	0...1	Text
Register Name	Register where the merging company was registered	1	Text

⁽¹⁾ Cardinality 0 means that the data is optional. Cardinality 1 means that the data is mandatory. Cardinality 0...n or 1...n means that more than one piece of the same type of data may be provided.

The notification message may also include technical data necessary for the proper transmission of the message.

The exchange of information shall also include technical messages necessary for the acknowledgement of receipt, logging and reporting purposes.

6. Structure of the standard message format

The exchange of information between the registers, the platform and the portal shall be based on standard data-structuring methods and shall be expressed in a standard message format such as XML.

7. Data for the platform

The following type of data shall be provided for the platform to perform its functions:

- (a) Data allowing for the identification of systems that are connected to the platform. Those data could consist of URLs or any other number or code uniquely identifying each system within BRIS;
- (b) An index of the particulars listed in Article 19(2) of Directive (EU) 2017/1132. This data shall be used to ensure consistent and quick results of the search service. Where the data is not made available to the platform for indexation, Member States shall make the same particulars available for the purpose of the search service in a way that guarantees the same level of service as provided by the platform;
- (c) Unique identifiers of companies referred to in Article 16(1) of Directive (EU) 2017/1132 and unique identifiers of branches referred to in Article 29(4) of Directive (EU) 2017/1132. These identifiers shall be used to ensure the interoperability of registers via the platform;
- (d) Any other operational data that is necessary for the platform to ensure the proper and efficient functioning of the search service and the interoperability of registers. Those data may include code lists, reference data, glossaries and related translations of those metadata, as well as logging and reporting data.

The data and metadata handled by the platform shall be processed and stored in line with the security standards outlined in section 3 of this Annex.

8. Structure and use of the unique identifier

The unique identifier for the purpose of communication between registers shall be referred to as the EUID (European Unique Identifier).

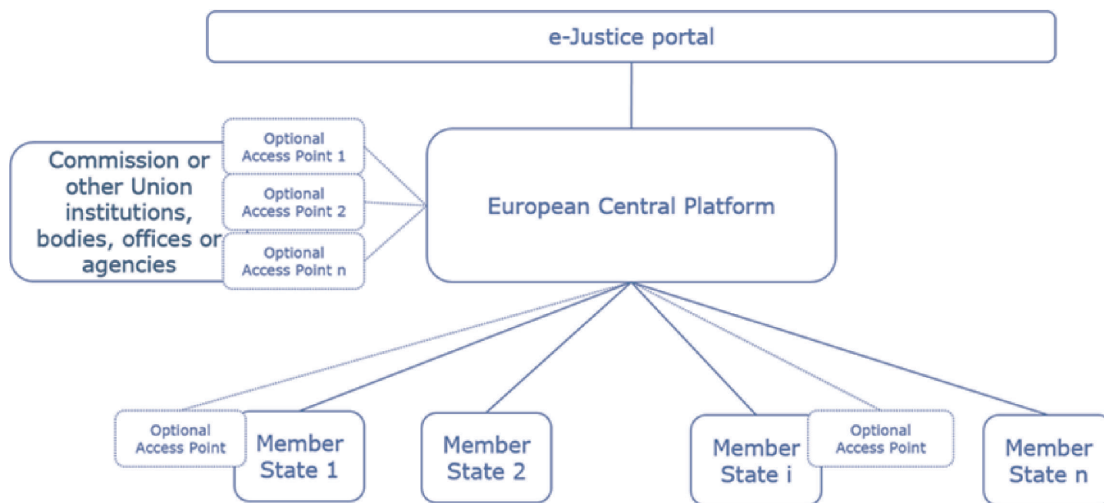
The structure of the EUID shall be compliant with ISO 6523 and shall contain the following elements:

EUID element	Description	Additional description
Country code	Elements making it possible to identify the Member State of the register	Mandatory
Register Identifier	Elements making it possible to identify the domestic register of origin of the company and of the branch respectively	Mandatory
Registration number	Company/branch number refers to the registration number of the company/branch in the domestic register of origin	Mandatory
Verification digit	Elements making it possible to avoid identification errors	Optional

The EUID shall be used to unequivocally identify companies and branches for the purpose of the exchange of information between registers via the platform.

9. **Methods of operation of the system and information technology services provided by the platform**

For the distribution and exchange of information, the system shall be based on the following technical method of operation:



For the delivery of messages in the relevant language version, the platform shall provide reference data artefacts, such as code lists, controlled vocabularies and glossaries. Where relevant, these shall be translated into the official languages of the Union. Where possible, recognised standards and standardized messages shall be used.

The Commission shall share with the Member State further details on the technical method of operation and the implementation of the information technology services provided by the platform.

10. **Search criteria**

At least one country shall be selected when running a search.

The portal shall provide the following harmonised criteria for the search:

- company name,
- registration number of the company or the branch in the domestic register.

Further search criteria may be available on the portal.

11. **Payment modalities**

For the documents and particulars for which Member States charge fees and which are made available on the e-Justice portal via BRIS, the system shall allow users to pay online by using widely used payment modalities such as credit and debit cards.

The system may also provide alternative online payment methods, such as bank transfers or virtual wallets (deposit).

12. **Explanatory labels**

In relation to the particulars and types of documents listed in Article 14 of Directive (EU) 2017/1132, Member States shall provide the following explanatory labels:

- (a) A short title for each particular and document (for example: 'Articles of incorporation');
- (b) As appropriate, a brief description of the content of each document or particular, including, optionally, information on the legal value of the document.

13. **Availability of services**

The service time frame shall be 24/7 days, with an availability rate of the system of at least 98 % excluding scheduled maintenance.

Member States shall notify the Commission of maintenance activities as follows:

- (a) 5 working days in advance for maintenance operations that may cause an unavailability period of up to 4 hours;
- (b) 10 working days in advance for maintenance operations that may cause an unavailability period of up to 12 hours;
- (c) 30 working days in advance for infrastructure computer room maintenance, which may cause up to 6 days unavailability period per year.

To the extent possible, maintenance operations shall be planned outside working hours (19:00h – 8:00h CET).

Where Member States have fixed weekly service windows, they shall inform the Commission of the time and day of the week when such fixed weekly windows are planned. Without prejudice to the obligations in points (a) to (c) of the second paragraph, if Member States systems become unavailable during such a fixed window, Member States may choose not to notify the Commission on each occasion.

In case of unexpected technical failure of the Member States systems, Member States shall inform the Commission without delay of their system unavailability, and, if known, of the projected resuming of the service.

In case of unexpected failure of the central platform or of the portal, the Commission shall inform the Member States without delay of the platform or portal unavailability, and if known, of the projected resuming of the service.

14. **Optional access points**

14.1. *Optional access points to BRIS according to the first subparagraph of Article 22(4) of Directive (EU) 2017/1132*

14.1.1. Procedure

Member States shall provide information on the planned timing of the establishment of the optional access points, the number of optional access points that will connect to the platform, and contact details of the person (s) that could be contacted for the purpose of establishing the technical connection.

The Commission shall provide the Member States with the necessary technical details and support for the testing and deployment of the connection of each optional access point to the platform.

14.1.2. Technical requirements

For the connection of optional access points to the platform, Member States shall comply with the relevant technical specifications set out in this Annex, including security requirements for transmission of data via the optional access points.

Where payment is necessary via an optional access point, Member States shall provide the payment methods of their choice and shall handle the related payment operations.

Member States shall carry out appropriate testing before the connection to the platform becomes operational and before any significant changes are made to an existing connection.

After successful connection of the optional access point to the platform, Member States shall inform the Commission of any upcoming significant change of the access point that may affect the functioning of the platform, in particular the closing of the access point. Member States shall provide sufficient technical details in relation to the change, in order to allow for proper integration of any related changes.

Member States shall indicate on each optional access point that the search service is provided via BRIS.

14.2. *Optional access points to BRIS according to the second subparagraph of Article 22(4) of Directive (EU) 2017/1132*

14.2.1. Procedure

The Commission shall assess any request received for the establishment of an optional access point in accordance with the second subparagraph of Article 22(4) of Directive (EU) 2017/1132.

The requester shall provide all the information needed for the proper assessment of the request.

The Commission shall provide the requester with the necessary technical details and support for the testing and deployment of the establishment of each optional access point to the platform.

14.2.2. Technical requirements

For the establishment of optional access points to the platform, the requester shall comply with the relevant technical specifications set out in this Annex, including security requirements for transmission of data via the optional access points.

Where payment is necessary via an optional access point, the requester shall provide the payment methods of their choice and shall handle the related payment operations.

The requester shall carry out appropriate testing before the establishment to the platform becomes operational and before any significant changes are made to an existing connection.

After successful establishment of the optional access point to the platform, the requester shall inform the Commission of any upcoming significant change of the access point that may affect the functioning of the platform, in particular the closing of the access point. The requester shall provide sufficient technical details in relation to the change, in order to allow for proper integration of any related changes.

The requester shall indicate on each optional access point that the search service is provided via BRIS.

14.3. *Requirements applicable to optional access points according to Article 22(4), first and second subparagraph*

The Commission shall inform the Member States about a request received.

The technical requirements shall also include measures to ensure that optional access points do not affect the correct functioning of BRIS nor compliance with the safety, security and data protection requirements, with due regard to the respective responsibility of each party within the part of the system under its technical control.

15. **Exchange of information on disqualified directors**

15.1. *Introduction*

The exchange of information referred to in Article 13i(4) of Directive (EU) 2017/1132 shall cover cases where a person is disqualified from becoming a director of a company of one of the types listed in Annex II to that Directive further to a decision of a court or another competent authority of a Member State based on its national law.

The exchange of information shall not cover cases where, under national law, a person is generally incapable of contracting or restricted in his or her general legal capacity or further to a decision of a court or another competent authority of a Member State based on its national law and therefore unable to become a director of a company of the type referred to in the first paragraph.

The exchange of information shall not cover cases based on specific rules under Union law, such as the rules on fitness and propriety provided under Article 91(1) of Directive 2013/36/EU of the European Parliament and of the Council ⁽¹⁾.

⁽¹⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

Where, in accordance with national law in a Member State, legal persons are allowed to be directors of companies of the type referred to in the first paragraph, such legal persons shall fall under the scope of the exchange of information. Each Member State shall inform the other Member States and the Commission whether this possibility exists in its national law.

15.2. *Methods of exchange of information between Member States*

The following method shall be used for the exchange of information between the registers in accordance with Article 13i of Directive (EU) 2017/1132.

The queries and the answers under this section shall be transferred through BRIS using end-to-end encryption.

Member States shall exchange the information needed to correlate queries and the answers under this section concerning the same request.

15.2.1. First level of exchange of information

15.2.1.1. First level query on disqualification

Member States' competent authorities may request, through BRIS, information from one or more Member States on whether a person who applies to become a director of a company of one of the types listed in Annex II to Directive (EU) 2017/1132 is disqualified or is recorded in any of their registers that contain information relevant for disqualification of directors.

The requesting Member State shall decide to which Member State or Member States the query shall be sent. The queries shall be sent with a view to ensure effective, efficient and prompt exchange of information.

Each query shall cover one single person and shall provide the data for identification of the person. The requesting Member State shall process such data in compliance with Regulation (EU) 2016/679. The Member States shall ensure that only necessary data and only data concerning the applicant in question is exchanged.

15.2.1.2. First level answer on disqualification

Upon receipt of the query, the competent authorities of the requested Member State shall, without delay, provide an answer through BRIS.

The answer shall indicate whether the person identified in the query is disqualified or is recorded in any of the registers of the requested Member State that contain information relevant for disqualification of directors.

In case the answer is that the person is disqualified or is recorded in any of the registers that contain information relevant for disqualification of directors, the requested Member State may indicate in its answer, which specific data provided by the requesting Member State matches the data available in the requested Member State and which specific data included in the query cannot be confirmed by the requested Member State as it is not recorded in its registers.

If it is necessary, the requested Member State may ask the requesting Member State to provide further data to ensure unequivocal identification of the person. Such data shall be processed in compliance with Regulation (EU) 2016/679.

15.2.2. Second level of exchange of information

The exchange for additional information may take place through other appropriate means than BRIS. If the second level of exchange of information is carried out through BRIS, the rules set out in points 15.2.2.1, 15.2.2.2, 15.3.3 and 15.3.4 shall apply.

15.2.2.1. Second level query on disqualification

In case a requested Member State indicates in the first level answer that a given person is disqualified or is recorded in any of its registers that contain information relevant for disqualification of directors, the requesting Member States may request further information from the requested Member State concerning the person identified in the first level query.

The second level query shall cover the same person as the first level query and first level answer.

15.2.2.2. Second level answer on disqualification

The requested Member State may decide, under its national law, which additional information to provide. In case that Member State's national law does not allow further exchange of information, it shall inform accordingly the requesting Member State.

15.3. Detailed list of data

For the exchange of information on disqualified directors, Member States shall include the following data.

15.3.1. First level query on disqualification

Data type	Description	Cardinality (!)	Additional description
Issuance Date and Time	Date and time when this query was sent	1	Date and Time
Issuing Organisation	Name/Identifier of the organisation that issues this query	1	Party data structure
Recipient Organisation	Name/Identifier of the register of the requested Member State	1	Party data structure
Legislation Reference	Reference to relevant national or Union legislation	0...n	Text
First level query on disqualification If the person who applies to be a director is a natural person			
First name	First name of the person who applies to be a director	1	Text
Surname	Surname of the person who applies to be a director	1	Text
Date of birth	Date of birth of the person who applies to be a director	1	Date
Further identification data	Further data processed according to the requesting Member State's national law and in compliance with Regulation (EU) 2016/679	0...n	Text/date/identifier
First level query on disqualification If the person who applies to be a director is a legal person			

Data type	Description	Cardinality ⁽¹⁾	Additional description
Name of the legal entity	Name of the legal entity which applies to be a director	1	Text
Legal form	Legal form of the legal entity which applies to be a director	1	Code As referred to in Annex II to Directive (EU) 2017/1132 of the company therein or other legal form if the legal entity falls outside of the scope Directive (EU) 2017/1132
EUID	EUID if it is a company listed in Annex II to Directive (EU) 2017/1132.	1	Identifier
Other registration number	Other registration number if not a company listed in Annex II to Directive (EU) 2017/1132.	0	Identifier
Alternate ID	Other identifiers of the company (e.g. Legal Entity Identifier)	0...n	Identifier

⁽¹⁾ Cardinality 0 means that the data is optional. Cardinality 1 means that the data is mandatory. Cardinality 0...n or 1...n means that more than one piece of the same type of data may be provided.

Member States shall provide information on the means of identification needed for an efficient exchange of information on disqualified directors. That information may consist in providing the data that is necessary to identify the persons covered by a request.

Member States may also use e-identification means for the identification of persons in the exchange of information.

Queries covering a legal person shall be sent only to those Member States which allow legal persons to be directors and which allow disqualification of such legal persons.

15.3.2. First level answer on disqualification

Data type	Description	Cardinality ⁽¹⁾	Additional description
Issuance Date and Time	Date and time when this answer was sent	1	Date and Time
Issuing Organisation	Name/Identifier of the organisation that issues this answer	1	Party data structure
Recipient Organisation	Name/Identifier of the register of the requesting Member State	1	Party data structure
Legislation Reference	Reference to relevant national or Union legislation	0...n	Text

Data type	Description	Cardinality ⁽¹⁾	Additional description
Yes/no/no sufficient data for identification	‘Yes’ if the person is disqualified or is recorded in any of its registers that contain information relevant for disqualification of directors ‘No’ if the person is not disqualified or is not recorded in any of its registers that contain information relevant for disqualification of directors ‘No sufficient data for identification’ if the data provided does not make it possible to unequivocally identify the person and more information is needed.	1	Select an option
Further identification data required	Indicate what data is needed for unequivocal identification	1...n (only if no sufficient data for identification)	Text/date/identifier
No second level answer will be provided through BRIS	If “yes”, option to indicate that no answer will be provided for second level query through BRIS	0	Select the option

⁽¹⁾ Cardinality 0 means that the data is optional. Cardinality 1 means that the data is mandatory. Cardinality 0...n or 1...n means that more than one piece of the same type of data may be provided.

15.3.2.1. Provision of further identification data

In case the requested Member State requires further identification data to ensure unequivocal identification, the requesting Member State shall provide the data using the following message format:

Data type	Description	Cardinality ⁽¹⁾	Additional description
Issuance Date and Time	Date and time when this query was sent	1	Date and Time
Issuing Organisation	Name/Identifier of the organisation that issues this query	1	Party data structure
Recipient Organisation	Name/Identifier of the register of the requested Member State	1	Party data structure
Legislation Reference	Reference to relevant national or Union legislation	0...n	Text

Data type	Description	Cardinality ⁽¹⁾	Additional description
Further identification data	Further data required by the requested Member State to ensure unequivocal identification processed according to the requesting Member State's national law and in compliance with Regulation (EU) 2016/679	1...n	Text/date/identifier

⁽¹⁾ Cardinality 0 means that the data is optional. Cardinality 1 means that the data is mandatory. Cardinality 0...n or 1...n means that more than one piece of the same type of data may be provided.

15.3.3. Second level query on disqualification

Data type	Description	Cardinality ⁽¹⁾	Additional description
Issuance Date and Time	Date and time when this query was sent	1	Date and Time
Issuing Organisation	Name/Identifier of the organisation that issues this query	1	Party data structure
Recipient Organisation	Name/Identifier of the register of the requested Member State	1	Party data structure
Legislation Reference	Reference to relevant national or Union legislation	0...n	Text
Request further information	Request for further information	1...n	Request further information at least on one of the following: — grounds for disqualification under national law, — date of decision, — period or validity of the disqualification, — file number, issuer of the decision. — Information on any limitation to such disqualification (e.g. sector specific disqualifications)

⁽¹⁾ Cardinality 0 means that the data is optional. Cardinality 1 means that the data is mandatory. Cardinality 0...n or 1...n means that more than one piece of the same type of data may be provided.

15.3.4. Second level answer on disqualification

Data type	Description	Cardinality ⁽¹⁾	Additional description
Issuance Date and Time	Date and time when this answer was sent	1	Date and Time

Data type	Description	Cardinality ⁽¹⁾	Additional description
Issuing Organisation	Name/Identifier of the organisation that issues this answer	1	Party data structure
Recipient Organisation	Name/Identifier of the register of the requesting Member State	1	Party data structure
Legislation Reference	Reference to relevant national or Union legislation	0...n	Text
Further information	Request for further information	1...n	Further information at least on one of the following: — grounds for disqualification under national law, — date of decision, — period or validity of the disqualification, — file number, issuer of the decision. — Information on any limitation to such disqualification (e.g. sector specific disqualifications) — No further information provided in case the Member State's national law does not allow further exchange of information - list data on which further information is not provided. (attachment of documents possible)

⁽¹⁾ Cardinality 0 means that the data is optional. Cardinality 1 means that the data is mandatory. Cardinality 0...n or 1...n means that more than one piece of the same type of data may be provided.

15.4. *Operation of the exchange of information*

Member States shall indicate if they face difficulties due to high numbers of queries received. In such a case, the Commission and the Member States shall assess the issue with a view of ensuring smooth operation of the exchange of information and further development of the system.

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2020/2245

of 18 December 2020

on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code

(notified under document C(2020) 8750)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Having regard to Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code ⁽¹⁾ (the Code), and in particular Article 64(1) thereof,

Whereas:

- (1) Directive (EU) 2018/1972 seeks, in addition to the three primary objectives of promoting competition, the internal market and end-user interests, to promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks, for the benefit of all citizens and businesses of the Union.
- (2) The appropriate incentives for investment in new, very high capacity networks, which support innovation in content-rich internet services, will strengthen the international competitiveness of the Union while delivering benefits to its consumers and businesses. It is therefore crucial to promote sustainable investment in the development of very high capacity networks by means of an appropriately adapted and predictable regulatory framework.
- (3) One of the aims of the new regulatory framework is to progressively reduce *ex ante* sector-specific rules as competition in the markets develops and, ultimately, to ensure that electronic communications markets are governed only by competition law. In line with this objective, the purpose of this Recommendation is to identify those product and service markets in which *ex ante* regulation may be justified.
- (4) The definition of relevant markets may change over time as the characteristics of products and services available on such markets evolve and the possibilities for demand and supply substitution change due to technological, market and regulatory developments. For this reason, this Recommendation should therefore replace the 2014 Recommendation ⁽²⁾.
- (5) Article 64(1) of the Code requires the Commission to identify markets within the electronic communications sector, the characteristics of which may be such as to justify the imposition of regulatory obligations in accordance with the principles of competition law. Competition law principles are therefore used in this Recommendation to define relevant product markets in the electronic communications sector.

⁽¹⁾ OJ L 321, 17.12.2018, p. 36.

⁽²⁾ Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (OJ L 295, 11.10.2014, p. 79).

- (6) The ultimate objective of regulatory intervention is to produce benefits for end-users in terms of price, quality and choice by achieving sustainable competition at retail level. The starting point for the identification of relevant markets in this Recommendation should be the definition of retail markets in a forward-looking perspective over a given time horizon, guided by competition law. Indeed, where retail markets are effectively competitive in the absence of wholesale regulation, national regulatory authorities should conclude that regulation is no longer needed on related wholesale markets.
- (7) In accordance with Article 67(1) of the Code, imposition of *ex ante* regulatory obligations may be justified only in markets where the three criteria referred to in Article 67(1)(a), (b), (c) are cumulatively met. This Recommendation includes product and service markets, which the Commission, after observing the overall trends in the Union, found to meet the three criteria. Hence these markets are considered by the Commission to have characteristics which may justify the imposition of regulatory obligations at least in some geographic areas and over a foreseeable period. It should be for the national regulatory authorities to consider in their analyses of these markets whether the further requirements set in Article 67(2) are met.
- (8) The first criterion relates to the presence of high and non-transitory barriers to entry. It seeks to establish whether, when, and to what extent market entry is likely to occur, and to identify the relevant factors for a successful entry into an electronic communications market. From a static point of view, two types of barriers to entry are particularly relevant for the purpose of this Recommendation: structural barriers and legal or regulatory barriers.
- (9) Structural barriers to entry derive from different cost or demand conditions that determine asymmetric conditions between incumbents and new entrants, impeding or preventing market entry of the latter. High structural barriers may also be found, for instance, when the market is characterised by absolute cost advantages or substantial economies of scale and/or network effects, capacity constraints and/or high sunk costs. Structural barriers can also exist where the provision of service requires a network component that cannot be technically duplicated or its duplication is not economically feasible.
- (10) Legal or regulatory barriers may have a direct effect on the conditions of entry and/or the positioning of operators on the relevant market. In regulated sectors, authorisation procedures, territorial restrictions, safety and security standards, and other legal requirements may deter or delay entry. However, the relevance of legal and regulatory barriers in electronic communications markets is decreasing. Legal or regulatory barriers that are likely to be removed within the relevant time horizon of 5 years should not normally constitute a barrier to entry such as to fulfil the first criterion.
- (11) In innovation-driven markets characterised by ongoing technological progress, such as the electronic communications markets, barriers to entry may progressively become less relevant. In such markets, competitive constraints often come from threats exerted by potential innovative competitors that are not currently in the market. Therefore, the possibilities to overcome barriers to entry within the relevant time horizon should also be taken into consideration when identifying the relevant markets for possible *ex ante* regulation. This Recommendation identifies markets where barriers to entry are expected to persist for the period of the next 5-10 years.
- (12) Different barriers to entry should not be considered in isolation but cumulatively. While an entry barrier when regarded individually may not be considered as high, together with other barriers might create effects which cumulatively would prevent or impede entry into the market.
- (13) The second criterion addresses whether a market structure tends towards effective competition within the relevant time horizon, having regard to the state and prospect of infrastructure-based competition and other sources of competition behind the barriers to entry. An analysis of effective competition implies that the market will become effectively competitive absent *ex ante* regulation within the period of review, or will do so after that period, provided that clear evidence of positive dynamics in the market is observable already within the period of review. For instance convergence of products, delivered via different network technologies, may give rise to competitive constraints being exercised by operators active in distinct product markets and may lead to the convergence of markets.

- (14) Even when a market is characterised by high barriers to entry, other structural factors in that market may indicate that the market still tends towards effective competition within the relevant time horizon. In markets where an increased number of networks can be expected on a forward-looking basis, the application of this criterion entails primarily examining the state and likely future development of infrastructure-based competition.
- (15) In assessing the adequacy of competition and the need for regulatory intervention, national regulatory authorities should also take into account whether wholesale access is available to any interested undertaking on reasonable commercial terms permitting sustainable competitive outcomes for end-users on the retail market. Commercial agreements, including agreements on wholesale access, co-investment agreements and reciprocal access agreements between operators, which have been entered on a lasting basis and are sustainable, have the potential to improve competitive dynamics and may ultimately resolve competition concerns at the related retail market and therefore lead to deregulation of the wholesale markets. Thus, provided that they comply with principles of competition law, they should be taken into consideration when assessing whether a market is expected to become competitive on a forward-looking basis.
- (16) Technological developments, or the convergence of products and markets, may give rise to competitive constraints being exercised between operators active in distinct product markets. In this respect, over-the-top (OTT) services, which today are generally not considered as direct substitutes to traditional services provided by electronic communication service providers, and which in any case do not provide physical and data connectivity, might nevertheless play a more important role in certain retail markets in the coming years due to further technological developments and their continuous expansion and subsequently exercise indirect constraint on wholesale markets.
- (17) The decision to define a market as susceptible to *ex ante* regulation should also depend on an assessment of the sufficiency of competition law to address adequately the market failures identified. This third criterion aims to assess the adequacy of competition law to tackle identified persistent market failure(s), in particular given that *ex ante* regulatory obligations may effectively prevent competition law infringements. Competition law based interventions are likely to be insufficient where frequent and/or timely intervention is indispensable to redress persistent market failure(s). In such circumstances, *ex ante* regulation should be considered an appropriate complement to competition law. In general, the application of general competition rules in markets characterised by sustainable and effective infrastructure-based competition should be sufficient.
- (18) The application of these three cumulative criteria should limit the number of regulated markets within the electronic communications sector and thereby contribute to reducing *ex ante* sector-specific regulation progressively as competition in those markets develops. Failure to meet any of the three criteria would indicate that a market is not susceptible to *ex ante* regulation. It is essential that *ex ante* regulatory obligations are imposed on a wholesale market in order to ensure sustainable competition only where there are one or more undertakings with significant market power and where competition law remedies are not sufficient to address the problem.
- (19) Newly emerging markets are considered to comprise products or services where, due to their novelty, it is difficult to predict demand conditions or market entry and supply conditions, and consequently difficult to apply the three-criteria test. Such markets should not be subject to inappropriate *ex ante* regulatory obligations in order to promote innovation, while preventing, at the same time, foreclosure by the leading undertaking ^(*). Incremental upgrades to existing network infrastructure rarely lead to the creation of new or emerging market. The lack of substitutability of a product has to be established from both demand and supply side perspectives before it can be concluded that it is not part of an already existing market. The emergence of new retail services may give rise to a new derived wholesale market to the extent that such retail services cannot be provided using existing wholesale products.

(*) See Recital 23 of the Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (OJ C 159, 7.5.2018, p. 1) and Recital 163 of the EEC.

- (20) Given the evolution of competition, including infrastructure-based competition, this Recommendation identifies only relevant markets at the wholesale level, as was the case in the 2014 Recommendation. *Ex ante* regulation imposed at the wholesale level should be considered sufficient to tackle potential competition problems on the related downstream retail market(s).
- (21) In line with Recital 165 of the Code, national regulatory authorities should at least analyse the markets that are listed in the Recommendation, including those markets that are listed but no longer regulated in the specific national or local context. With respect to the markets listed in the Annex to this Recommendation, national regulatory authorities may still consider it appropriate, based on specific national circumstances, to conduct the three-criteria test. National regulatory authorities may conclude that the three-criteria test is not met in the specific national circumstances. If the three-criteria test is not met for a specific market listed in the Recommendation, national regulatory authorities should not impose regulatory obligations on that market.
- (22) National regulatory authorities should also analyse markets that are not contained in this Recommendation, but that are regulated within the territory of their jurisdiction on the basis of previous market analyses, or other markets, if they have sufficient grounds to consider that the three criteria test is met. Hence, the national regulatory authorities can also define other relevant product and service markets, not listed in this Recommendation, if they can prove that in their national context, the markets meet the three criteria test.
- (23) When carrying out a market analysis under Article 67 of the Code, both the national regulatory authorities and the Commission should start the analysis from the retail markets. The assessment of a market should be done with a forward-looking perspective in the absence of regulation based on a finding of significant market power and starting from existing market conditions. The analysis should assess whether the market is prospectively competitive and whether any lack of competition is durable, by taking into account expected or foreseeable market developments. The analysis should take into account the effects of other types of regulation applicable to the relevant retail and related wholesale market(s) throughout the relevant regulatory period.
- (24) If the retail market concerned is not effectively competitive from a forward-looking perspective in the absence of *ex ante* regulation, the corresponding wholesale market(s) susceptible to *ex ante* regulation in line with Article 67 of the Code should be defined and analysed. In addition, when analysing the boundaries and market power within (a) corresponding relevant wholesale market(s) to determine whether it is/they are effectively competitive, direct and indirect competitive constraints should be taken into account, irrespective of whether these constraints result from electronic communications networks, electronic communications services or other types of services or applications that are equivalent from the end-users' perspective.
- (25) When defining the relevant wholesale markets which may be susceptible to *ex ante* regulation, national regulatory authorities should start by analysing the market which is most upstream of the retail market in which competitive problems have been identified. National regulatory authorities should conduct an analysis of the markets that are situated downstream from a regulated upstream input, to determine whether they would be effectively competitive in the presence of regulation upstream, until it reaches the retail market.
- (26) The most upstream market may, depending on national circumstances, consist of or include more generic cross-market wholesale products such as physical infrastructure access (e.g. duct access) or passive access products. In particular, where civil engineering infrastructure exists and is reusable, effective access to such infrastructure may significantly facilitate the roll-out of very high capacity networks and encourage development of infrastructure-based competition to the benefit of end-users.
- (27) For these reasons, the Commission has considered the appropriateness of including a separate market for access to physical infrastructure in this Recommendation. However, as there are significant differences in network topologies, availability of ubiquitous ducts and level of demand for access to ducts and poles across the Union, the Commission concluded that a separate market for access to physical infrastructure cannot, at present, be identified at Union level and should therefore not be included in the list of markets susceptible to *ex ante* regulation.

- (28) Furthermore, Article 72 of the Code allows national regulatory authorities to impose access to civil engineering as a stand-alone remedy on any relevant wholesale market. Such obligation to provide access to civil engineering may be justified irrespective of whether the physical infrastructure to which access is granted is part of the regulated relevant market and should be considered by national regulatory authorities before other access obligations are imposed downstream, if proportionate and sufficient to promote competition in the benefit of the end-users.
- (29) As regards wholesale broadband markets, virtual access products may be designed in a way that they display similar or equal product features, regardless of the location of the handover point for access. Therefore, it could be technically possible to provide wholesale broadband access at central or local level with comparable quality of service from both the access seeker and the end-users' perspectives. In this context both the product features and the willingness of access seekers to migrate between access points or to make use of various handover points within the network architecture need to be analysed as part of the substitutability analysis.
- (30) Many alternative operators climbed the ladder of investments and developed their own networks to the local access point. Those operators would likely not consider central access products as a substitute for local access as it would leave the investments into their own network infrastructure stranded. At the same time, it has to be acknowledged that the access network is the most difficult part of the network to replicate due to the high sunk deployment costs in relation to the number of customers that can benefit from the deployment.
- (31) Despite the observed increase of infrastructure-based competition, local access is still characterised by high entry barriers and regulated in the majority of Member States. The wholesale local access market still meets the three-criteria test, given that the access network is the part of the network most difficult to replicate. However, on a forward-looking basis, the barriers to entry into the central access market can no longer be regarded as high and non-transitory at Union level as the market tends towards effective competition due to the presence of alternative platforms, the widespread commercial availability of trunk capacity and the possibility of locally interconnected operators to provide central access. Where access products, provided at various handover points, are identified as being substitutes under specific national circumstances, the market should be found to encompass all such products. Whether such a broad market meets the three criteria test needs to be established on a case by case basis.
- (32) The increased capabilities of electronic communications networks providing mass-market products may satisfy the connectivity needs even of certain business customers. However, an important segment of the business market, as well as the new demand emerging from digitization of industry and from socioeconomic drivers such as public services e.g. hospitals and schools, will require also dedicated connections. Therefore, certain businesses still require products with characteristics that are distinct from those of mass-market products.
- (33) With a view to delineating the boundaries of the market for dedicated capacity and other business access products national regulatory authorities should, while ensuring that the relevant wholesale products correspond to the retail market problem identified, take into account several factors such as different product functionalities and intended use, price evolution over time and cross-price elasticity. The distinguishing product characteristics of dedicated capacity are their ability to provide dedicated and uncontended connections and symmetrical speeds and should be assessed, as for products in other markets, by means of a substitutability analysis.
- (34) The deployment of alternative infrastructures providing a dedicated fibre connectivity for business has increased significantly in particular in more densely populated areas, commercial centres and business districts. However, there may be areas in which, even though the deployment of an alternative infrastructure for mass-market connectivity may be economically viable, it may be less economically viable to duplicate networks providing isolated dedicated connections due to the size of the addressable market. In those less densely populated areas, due to lack of infrastructure-based competition, there is a risk that the demand for dedicated capacity would not be served by competitive offers in the absence of regulation.

- (35) In both the above wholesale access markets, competitive problems are unlikely to persist uniformly across a given Member State and such markets should be subject to a thorough geographical analysis. Therefore, when defining relevant markets in accordance with Article 64(3) of the Code, national regulatory authorities should identify geographic areas where the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different, having particular regard to the question whether the potential operator having significant market power acts uniformly across its network area or whether it faces appreciably different conditions of competition to a degree that its activities are constrained in some areas but not in others.
- (36) To date, national regulatory authorities have found most markets to be national because the incumbent's copper network had a national coverage. However, as the deployment of alternative networks progresses, competitive conditions can vary significantly and sustainably between different areas of the same Member State (for instance between urban and rural areas), thus making necessary the definition of separate geographic markets.
- (37) For the purpose of the geographic market definition, national regulatory authorities should define a basic geographic unit as a starting point for assessing competitive conditions. Such unit might follow the network topology or administrative boundaries, depending on national circumstances. In all cases, following the Commission's practice ⁽⁴⁾, the geographic unit should be (a) of an appropriate size, i.e. small enough to avoid significant variations of competitive conditions within each unit but big enough to avoid a resource-intensive and burdensome micro-analysis that could lead to market fragmentation, (b) able to reflect the network structure of all relevant operators, and (c) have clear and stable boundaries over time. As regards condition (b), national regulatory authorities should rely, where relevant, on the geographical survey of networks conducted in accordance with Article 22 of the Code.
- (38) Following the principles of competition law, and based on the analysis of the geographic units previously described, national regulatory authorities should then establish a first definition of the scope of the geographic markets by aggregating together units that exhibit similar competitive conditions. National regulatory authorities should assess competitive conditions in a forward-looking manner, by looking at structural and behavioural indicators, taking into account in particular, in line with Article 64(3) of the Code, the importance of infrastructure-based competition. Such indicators can be, *inter alia*, the networks footprint, the number of competing networks, their respective market shares, trends in market shares, localized or uniform pricing behaviour, characteristics of demands and customer switching and churn. The resulting definition of geographic markets should be checked against an analysis of demand and supply side substitutability. Non-adjacent geographic markets that present similar competitive conditions may be analysed together at this stage.
- (39) Significant variations of competitive conditions should be taken into account on a forward-looking basis at the stage of market definition. Segmentation of remedies may be used to address less significant or less stable variations in competitive conditions, including by adjusting remedies periodically or punctually, without thereby undermining regulatory predictability.
- (40) Article 75 of the Code empowers the Commission to adopt a delegated act setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate (together referred to as 'the Union-wide voice termination rates'). The Union-wide voice termination rates will directly apply to any provider of fixed and mobile termination services in the Union. The Union-wide single voice termination rates are based on the efficient costs of providing termination services. The application of the Union-wide voice termination rates will limit the ability of mobile and fixed operators to set excessive termination rates. Thus, the risk of excessive termination rates, which has been the most serious threat to competition on these markets, would disappear. Due to the strict cost orientation applied in setting the Union-wide voice termination rates, as required by the Code, the termination rates should be similar to those expected in case of competitive markets. Therefore, the termination markets would no longer meet the three-criteria test at Union level.

⁽⁴⁾ In particular, Communication from the Commission C/2018/2374 – Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (OJ C 159, 7.5.2018, p. 1).

- (41) Nevertheless, specific circumstances may justify regulation of selected aspects of the termination markets in some Member States. Specific national circumstances may indicate that these markets do not tend towards competition on a forward-looking basis or that competitive problems continue to exist. This may be the case where operators were denied interconnection or have experienced problems with terminating calls from their network in other operators' networks. National regulatory authorities should address such problems, either by imposing SMP based obligations other than price control, if the three-criteria test is fulfilled, or by using other appropriate regulatory tools, i.e. Article 61(2) of the Code, if the conditions specified there are met.
- (42) The markets listed in the Annex to this Recommendation no longer include three markets that were listed in 2014 Recommendation as they do not fulfil the three-criteria test, i.e. the markets for wholesale call termination on individual public telephone networks provided at a fixed location (market 1), wholesale voice call termination on individual mobile networks (market 2), and wholesale central access provided at a fixed location for mass-market products (market 3b).
- (43) The remaining markets of the 2014 Recommendation, namely markets 3a (local wholesale access provided at fixed location) and 4 (wholesale high quality access provided at fixed location), the latter partially redefined, still warrant *ex ante* regulation as they meet the three-criteria test at Union level. National regulatory authorities should take into account their national circumstances when delineating these markets, in particular as regards their geographic dimension.
- (44) With a view to ensuring adequate consideration of the impact of regulation imposed on related markets when determining whether a given market warrants *ex ante* regulation, national regulatory authorities should ensure that related markets are analysed in a consistent manner and, where possible, at the same time or as close as possible to each other in time.
- (45) When considering whether to amend or maintain existing regulatory obligations, national regulatory authorities should also apply the three-criteria test to those markets listed in the Annexes to Commission Recommendation 2003/311/EC ⁽⁵⁾, Recommendation 2007/879/EC ⁽⁶⁾ and Recommendation 2014/710/EU but are no longer listed in the Annex to this Recommendation.
- (46) The Body of European Regulators for Electronic Communications was consulted in accordance with Article 64(1) of Directive (EU) 2018/1972 and delivered an opinion on 16 October 2020,

HAS ADOPTED THIS RECOMMENDATION:

1. In defining relevant markets appropriate to national circumstances in accordance with Article 64(3) of Directive (EU) 2018/1972, national regulatory authorities should analyse the product and service markets identified in the Annex.
2. When considering that any of the markets listed in the Annex is not susceptible to *ex ante* regulation in the specific national circumstances, national regulatory authorities should perform the three criteria test and demonstrate, and the Commission will verify, that at least one of the three criteria referred to in Article 67(1) of Directive (EU) 2018/1972 is not met.

⁽⁵⁾ Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (OJ L 114, 8.5.2003, p. 45). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003H0311>

⁽⁶⁾ Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (OJ L 344, 28.12.2007, p. 65). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007H0879>

3. When identifying relevant geographic markets within their territory in accordance with Article 64(3) of the Code, national regulatory authorities should carry out a granular analysis of demand and supply-side substitutability, starting from an appropriate geographic unit, and aggregating such units that exhibit similar competitive conditions. The assessment of competitive conditions should be forward-looking and should be based, *inter alia*, on the number and characteristics of competing networks, distribution of and trends in market shares, prices and behavioural patterns.
4. This Recommendation is without prejudice to market definitions, results of market analyses and regulatory obligations adopted by national regulatory authorities in accordance with the regulatory framework in force prior to the date of adoption of this Recommendation.
5. This Recommendation is addressed to Member States.

Done at Brussels, 18 December 2020.

For the Commission
Thierry BRETON
Member of the Commission

ANNEX

Market 1: Wholesale local access provided at a fixed location

Market 2: Wholesale dedicated capacity

CORRIGENDA**Corrigendum to Commission Delegated Regulation (EU) 2020/1794 of 16 September 2020 amending Part I of Annex II to Regulation (EU) 2018/848 of the European Parliament and of the Council as regards the use of in-conversion and non-organic plant reproductive material***(Official Journal of the European Union L 402 of 1 December 2020)*

On page 24, in the second paragraph of Article 2:

for: '1 January 2021',

read: '1 January 2022'.

Corrigendum to Commission Delegated Regulation (EU) No 667/2014 of 13 March 2014 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to rules of procedure for penalties imposed on trade repositories by the European Securities and Markets Authority including rules on the right of defence and temporal provisions

(Official Journal of the European Union L 179 of 19 June 2014)

On page 34, in Article 6(5):

for: 'The limitation period for imposing fines and periodic penalty payments shall be suspended for as long as the decision of ESMA is the subject of proceedings pending before the Board of Appeal, in accordance with Article 58 of Regulation (EU) No 1095/2010, and before the Court of Justice of the European Union, in accordance with Article 69 of Regulation (EU) No 648/2012.';

read: 'The limitation period for imposing fines and periodic penalty payments shall be suspended for as long as the decision of ESMA is the subject of proceedings pending before the Board of Appeal, in accordance with Article 60 of Regulation (EU) No 1095/2010, and before the Court of Justice of the European Union, in accordance with Article 69 of Regulation (EU) No 648/2012.'.

On page 34, in Article 7(5) point (b):

for: 'enforcement of payment is suspended pursuant to a pending decision of ESMA Board of Appeal, in accordance with Article 58 of Regulation (EU) No 1095/2010, and the Court of Justice of the European Union, in accordance with Article 69 of Regulation (EU) No 648/2012.';

read: 'enforcement of payment is suspended pursuant to a pending decision of ESMA Board of Appeal, in accordance with Article 60 of Regulation (EU) No 1095/2010, and the Court of Justice of the European Union, in accordance with Article 69 of Regulation (EU) No 648/2012.'.

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)



Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN