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The Transposition of the EECC into the Draft New Law (DNL) on Electronic Communications in the Republic of Albania

Consultation Workshop
Tirana International Hotel
7 July 2022

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Overview

1. **Background**

Project "Technical Assistance to the Telecommunications sector"

The current Electronic Communications Law in Albania

The EECC Directive

Albania's commitments towards the EU

2. **European Electronic Communications Code Transposition**

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Geographic mapping

Access regulation

Other measures

3. **Co-ordination and next steps**

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1. Background

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Background of the Project

"Technical Assistance to the Telecommunications sector"



- This project is part of the assistance provided by the European Union to the Republic of Albania through its Integration Facility (EUIF) for the year 2020.
- The overall project consists of two components – Component 1 is concerned with aligning the Albania's and the EU's telecom acquis. Component 2 is concerned with freeing up the 700 MHz frequency band so that it can be assigned for 5G usage.
- The EU Delegation in Tirana is implementing the Project through direct management as the first programme in support of the Telecommunications sector.
- The project was awarded to Planet S.A. for delivery in the course of 2022.

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Background of the Project

"Technical Assistance to the Telecommunications sector" continued

- Component 1 of this project seeks to support the Ministry of Infrastructure and Energy of Albania (MIE), AKEP and AMA to draft the appropriate legal and regulatory framework in line with Directive (EU) 2018/1972 establishing the European Electronic Communications Code.
- The project team held a large number of meetings to consult with MIE, AKEP and AMA and other relevant stakeholders from the public and private sectors to fully assess the current regulation of electronic communication networks and services in Albania.
- That assessment allowed a review of the best way to define the institutional design and the best way to draft the DNL.

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Background of the Project

"Technical Assistance to the Telecommunications sector" continued

- The Draft New Law reflects the changes in Directive (EU) 2018/1972 (the EECC/ the Code) and is now proposed for Public Consultation.
- In addition, a draft Regulatory Impact Assessment (RIA) is also put forward for Public Consultation.
- The project team is supporting MIE through the consultation process.
- The project team will provide training to MIE, AKEP and other stakeholders on the main aspects and enforcement considerations.

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The current Electronic Communications Law in Albania



- The Republic of Albania has a modern connected telecommunications sector that has been following and applying the European legislative acquis.
- In 2008, Albania enacted its Electronic Communications Law thereby introducing a General Authorisation Regime for all Electronic Communications networks and services in alignment with the 2002 Regulatory Framework.
- Albania also entrusted the competent Ministry, currently MIE, to make proposals and monitor the implementation of the policy on electronic communications whilst the Authority for Electronic and Postal Communications (AKEP) was given the responsibility to supervise the relevant legal framework.

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The current Electronic Communications Law in Albania



- The Electronic Communications Law, Law 9918, was amended several times but principally in 2012, and includes all the EU requisites to establish an effective regulatory framework for the development of telecommunications network and services.
- Law 9918 is now being reviewed by the Ministry of Infrastructure and Energy in cooperation with AKEP in order to align it with the new European Electronic Communications Code of 2018 (EECC).

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European Electronic Communications Code EECC / the Code



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• The EECC was agreed on 11 December 2018 and entered into force on 21 December 2018.

- Article 124 of Directive 2018/1972 requires transposition of the EECC **within 2 years of its entry into force i.e. December 2020.** By that date only 3 Member States had transposed the Code.
- Under Article 260(3) of the Treaty on the Functioning of the EU (TFEU), if a Member State fails to transpose a Directive adopted by the European Parliament and the Council into national law within the required deadline, the Commission may call on the Court of Justice of the European Union to impose financial sanctions.
- On 6 April 2022, the Commission referred 10 Member States to the Court of Justice of the EU – they are Spain, Croatia, Latvia, Lithuania, Ireland, Poland, Portugal, Romania, Slovenia and Sweden

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Albania conditions to be fulfilled (Chapter 10 on Information Society and Media in the Accession Negotiations)



- The Commission's Albania 2021 Report presented to the EU Parliament - (SWD(2021) 289 final) mentions:
- *“The finalisation of the digital switchover was completed in December 2020 and further financial efforts are still required to implement the European emergency number 112.*
- *In the coming year, Albania should in particular:*
 - continue to adopt the necessary amendments to the Law on Electronic Communication, in alignment with the new European Electronic Communications Code***
 -”*

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2. European Electronic Communications Code Transposition

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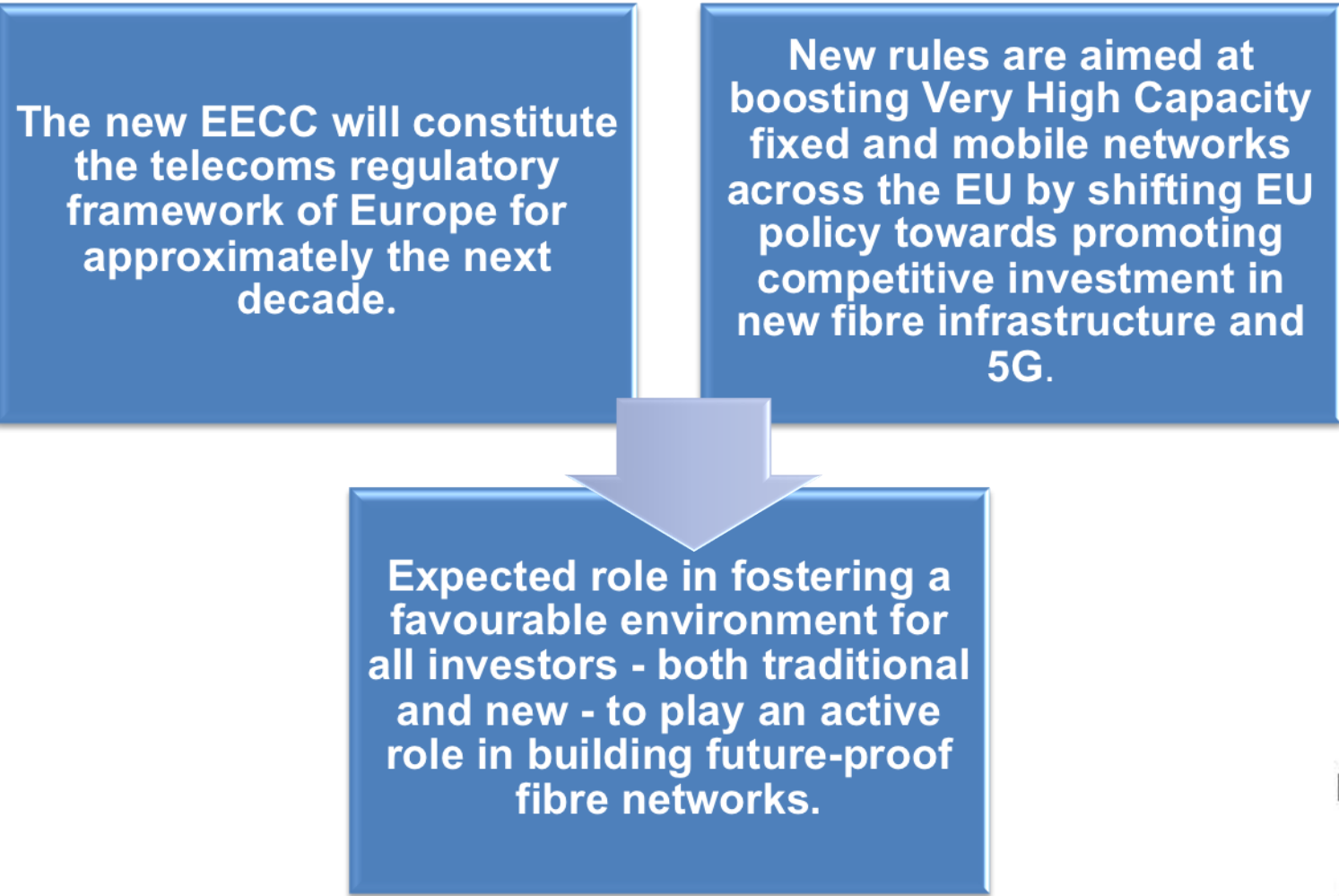


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European Electronic Communications Code



Top-Level Aspects



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Context of Analysed Articles



DNL is more than 200 pages, there are more than 150 Articles.

Seeking to draw your attention to some of the most important changes:

- Article 4: General Objectives
- Article 37: Geographical surveys of network deployments
- Article 90: Access to civil engineering
- Article 98: Wholesale-only undertakings
- Article 94: Regulatory treatment of new very high capacity network elements
- Article 97: Commitments procedure
- Article 83: Market analysis procedure
- Articles 55-60: Spectrum Policy
- Other measures

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Article 4: General Objectives



Article 4 DNL – Includes a new investment objective

1. AKEP to take all reasonable measures aimed at achieving the objectives:
 - Promote investment in and take-up of VHCN
Article 4(2)a - promote connectivity and access to, and take-up of, Very High Capacity Networks (VHCN), including fixed, mobile and wireless networks, by all Albanian citizens and businesses;
 - Promoting competition,
 - Promoting the internal market
 - Promoting Albanian citizens' interests.
2. AKEP and other competent authorities should encourage fibre investment by ensuring that access obligations take into account risks incurred by investing operators and by permitting cooperative arrangements between investors and parties seeking access to diversify the risk of investment, whilst ensuring competition.

IMPACT: Create an investment-friendly environment to accelerate fibre deployment in Albania.

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What is VHCN?



Article 3,2 DNL – Definition of Very High Capacity Connectivity

- VHC connectivity is now defined as corresponding to fibre (at least up to the distribution point at the serving location, or featuring fibre-similar characteristics (e.g. available down/uplink bandwidth, resilience, error-related parameters, latency and its variation))
- Cornerstone of all measures aimed at fostering ultrafast connectivity: regulatory incentives aimed at guaranteeing adequate return of investment for network roll-out plans only apply when such plans focus on VHCN.

IMPACT: Fostering investment in fibre connectivity and steering fixed operators' deployment strategy towards fibre.

NOTE WELL: Article 4,5c – the DNL should be applied in a technologically neutral fashion, consistent with EU practice, **to the extent that this is consistent with the achievement of the objectives.**

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Article 37 – Geographical surveys of network deployments



- AKEP in cooperation with the Ministry and other competent authorities, as appropriate shall conduct a **geographic survey of broadband networks within 5 years** of the transposition deadline and update it at least every 3 years, which:
 - shall include the current reach of broadband networks
 - may include a forecast of broadband (at least 100Mbps) and in particular VHCN deployments
- **Designated areas:** areas where there are no existing or planned networks capable of at least 100Mbps download speeds during the forecast period will be designated as “**challenge areas**” and published. A procedure to declare intention to deploy in such areas might be followed with fines for intentionally misleading information or gross negligence.

IMPACT: more transparency with regard to BB/VHCN coverage & deployment plans and better informed - potentially geographically adjusted - regulatory and State Aid decisions.

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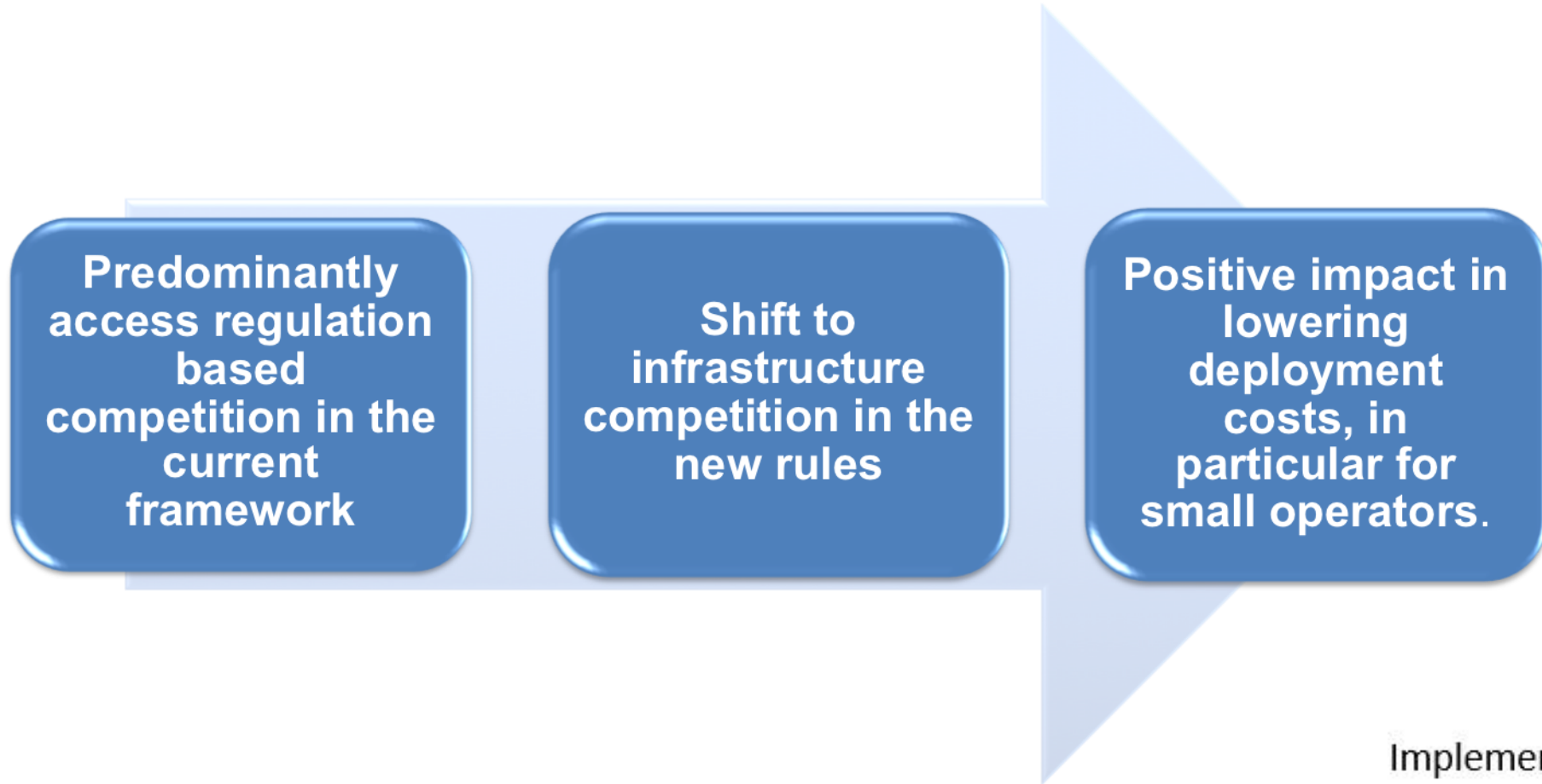




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Article 90 DNL – Access to civil engineering to facilitate new network build



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Article 90 DNL – Access to civil engineering

- With the new rules, for the imposition of access obligations on SMP operators, **AKEP has to examine whether obligations on civil infrastructure are a proportionate means to promote competition and end-user interests, before imposing access obligations.**
- **If appropriate, AKEP can impose obligations on access to, and use of, civil engineering including building cables, antennae, poles and ducts.**

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Article 98: Wholesale-only undertakings



Lighter regulatory treatment for wholesale-only model

Impact: Facilitating further the emergence of wholesale-only operators and fostering their role in attracting long-term investment in VHC networks.

Major risk averted: the obligation to give access to civil infrastructure resulting in a higher risk of overbuild could have hampered the wholesale only business model.

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Article 98 DNL – Definition of Wholesale-Only undertaking

Lighter regulatory treatment for Wholesale-Only model (W/O) in Articles 79, 94.

- Wholesale-only operators to benefit from lighter regulatory treatment even when they hold SMP: recognition of their potential to enhance competitive VHCN roll-out. Exemption from access obligations to civil infrastructure and from extended symmetric regulation.
- Recognition of beneficial role of W/O models in fostering VHC connectivity, in particular in challenged and rural areas.

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Article 94 DNL – Regulatory treatment of new Very High Capacity Network elements



AKEP can lift obligations on SMP operators when they offer:

1. Commitments in the form of long-term co-investment deals to deploy FTTP or fibre to the base station.
2. Offer co-ownership or long term risk sharing
3. Share risk through co-financing or through purchase agreements

AKEP to assess commitments by SMP operator by:

- Obtaining a commitments procedure and
- Performing a market test, in particular on the offered terms,
- Conducting a public consultation of stakeholders and interested parties.

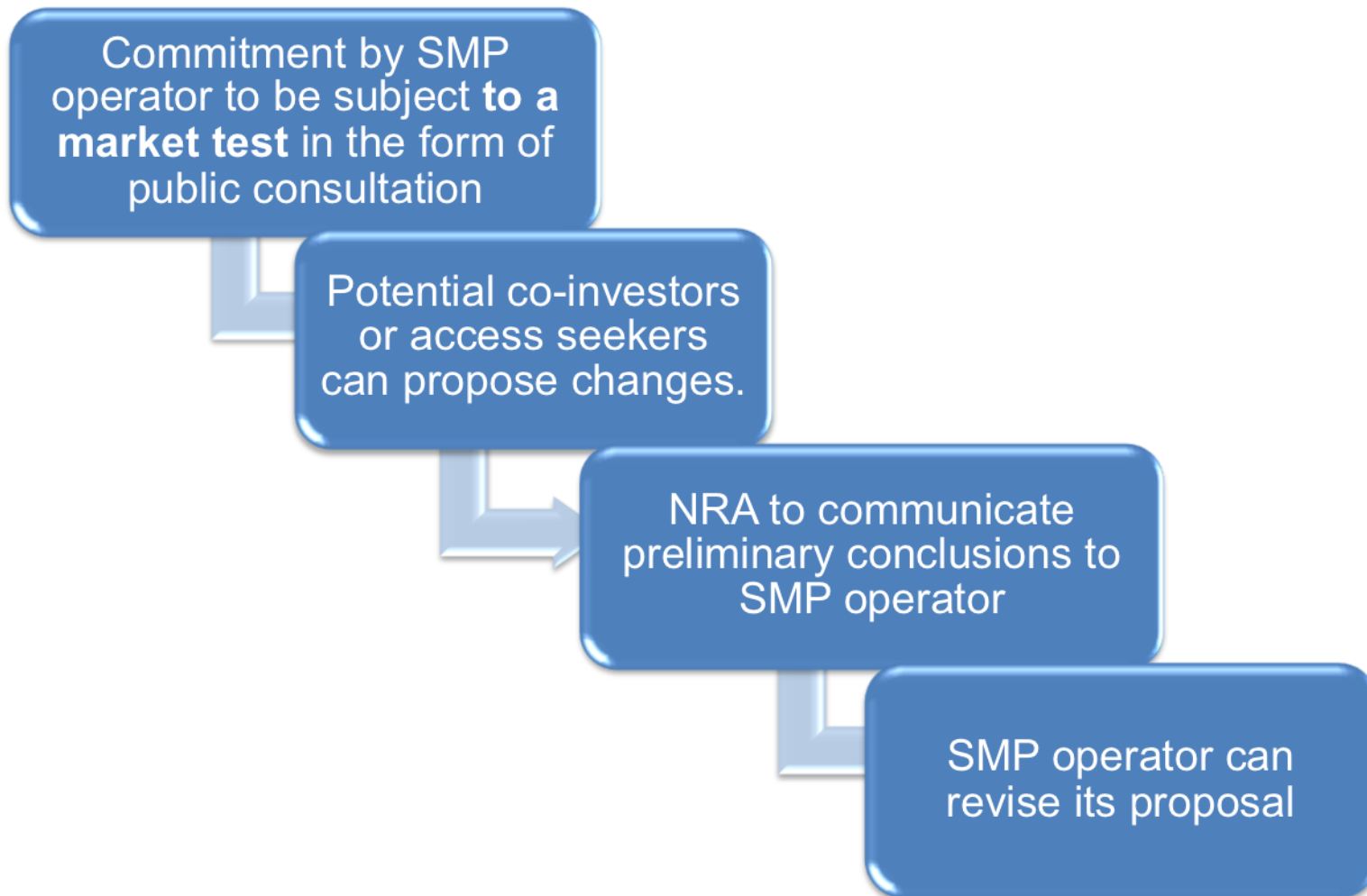
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Article 97 – SMP Commitments Procedure



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Article 97 – Commitments procedure



Applies to co-operative arrangements, co-investment proposals

- Functional separation and voluntary separation proposed by SMP Operator.
- Commitments may extend beyond normal market analysis cycle (perhaps linked to duration of investment for example).
- Commitments procedures is without prejudice to the outcome of the market analyses and imposition of ex ante remedies, except when it concerns co-investment.
- AKEP to monitor, supervise and ensure compliance with the commitments offered (or face penalties – Articles 156/157 of DNL)

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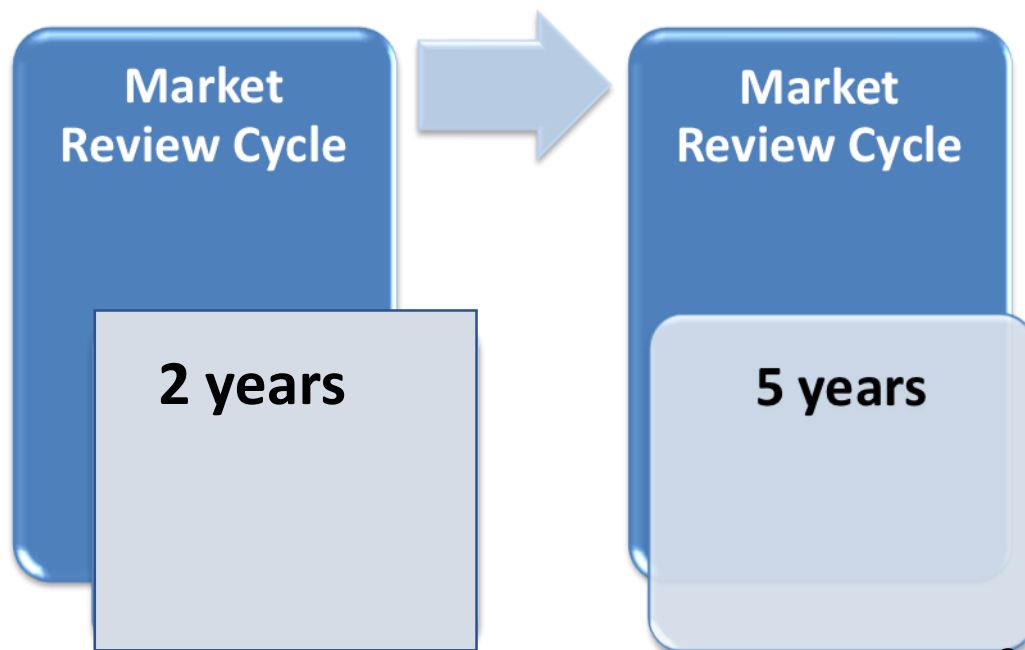
Article 83 DNL – Market Analysis Procedure



Longer market review cycles

- Duration of cycles of market reviews carried out by AKEP increased from 2 to 5 years. Exceptional further extension of 1 year possible

IMPACT: Increase regulatory stability and facilitate network investment.



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Spectrum Management



- Article 55: Principles of Spectrum Use. Overall consistency in spectrum allocation processes and predictability. Allocations to be based on objective, transparent, pro-competitive, non-discriminatory and proportionate criteria
- Article 66: Duration of rights. Spectrum licenses to be guaranteed for at least 15 years, with possibility of extension based on e.g. efficient spectrum use and technological evolution. Predictability and efficient usage are the watchwords.
- Article 68: Transfer or lease of individual rights of use for radio spectrum. The right to transfer or lease spectrum goes with the longer duration and the greater autonomy that ensures efficient use.

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Other measures



Consumer protection

- The consumer protection provisions of 9918 are elaborated and continue to apply.
- Transparency, e.g. Information requirements for contracts and comparison of offers (Article 123 DNL), information on quality performance (Article 124 DNL), measures on contract duration and termination (Article 109 DNL) and security provisions, e.g on minimum service quality will be applicable to all services (traditional and OTTs).
- Article 119: Exemptions for certain microenterprises

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Other measures



Universal Service

- Legacy services removed from the scope.
- Focus on the provision of voice communications at a fixed location and available adequate broadband.
- Broadband internet access can be defined taking into consideration min. bandwidth enjoyed by majority of consumers (Article 102)
- Measures regarding the affordability of these services may also be taken (Article 103, 104).
- Universal Service may be financed under a sectorial fund, to which stakeholders will contribute according to their turnover (Article 110).

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Regulatory Impact Assessment

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A Regulatory Impact Assessment accompanies the DNL

Options evaluated in order to achieve the policy objectives:

- Option 1. Baseline; option where nothing changes and the status quo is maintained.
- Option 2. Lighter regulation; whereby most regulation is administered on the basis of symmetric regulation
- Option 3. VHCN; option whereby the focus shifts to ensuring investment in VHCN networks

Separate evaluation for Spectrum Reforms:

- Option 1. Baseline; option where nothing changes and the status quo is maintained.
- Option 2: Non-binding rules for enhancing consistency of spectrum management
- Option 3. Binding and enforceable rules for enhancing coordination of spectrum management with a greater focus to adapt spectrum rules to the future 5G challenges

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3. Coordination and next steps

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Relevant Ministries and Agencies



The Code has cross references with a number of other legislative instruments. The Ministries and agencies should review and comment on:

- AMA (Spectrum plus Must Carry, Conditional Access, general objectives....)
- Ministry of Defence (regarding 112, PSAP (Articles 131 and 132 – plus spectrum)
- Ministry of Internal Affairs (regarding 1112, PSAP (Articles 131 and 132)

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Relevant Ministries and Agencies

- Ministry of Finance and Economy
 - Commissioner for consumer protection (AKEP Functioning/Financial independence)
 - Public funding of network investment (State Aids)
 - Standardisation
- Ministry of Justice (structure)
- Competition Authority (regarding Article 22 and Market Analyses procedures)

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Relevant Ministries and Agencies

- Commissioner for Data Protection (Regarding Articles 50/52 140, 120 ...)
- National Authority for eSignature and Cybersecurity (Article 52-CSIRT).
- Commissioner for Consumer Protection (regarding Articles 25, 105, 124)
- National Agency on Information Society

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Relevant Ministries and Agencies

- National Territory Planning Authority/ Association of Local Government (Articles 48, 49)
- Ministry of Europe and Foreign Affairs
- Any other relevant authorities

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Next steps



First phase of consultation is launched today July 7, 2022.

- A series of roundtables with different institutions and market players to be held at the end of July.
 - Roundtable on 27 and 28 July with Institutions
 - Roundtable on 29 July with market players
- Objective is to get first feedback on the DNL.
- After feedback from first phase of consultation, a revised formal consultation will launch at the beginning of September.
- The draft will be available on the website of the Ministry during this phase.
- After the consultation is completed, there will a training on the operation of the New Law.

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Thank you

Team Leader: Serena Romano
Key Expert: Tony Shortall

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